

SEPTEMBER/OCTOBER 2024 | VOLUME 85, NUMBER 5

THE ALABAMA LAWYER



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Alabama State Bar President Tom Perry and family

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

Tom Perry
ttp@manleytraegerlaw.com



The Joy in Doing Serious Business

Just under thirty years ago, my senior partner, Rick Manley, offered me a piece of advice that would shape my professional journey: “Tom, you should get involved in the Alabama State Bar. I think you’ll enjoy it and learn a lot.”

Trusting Mr. Manley’s wisdom, I followed his lead, and what an incredible journey it has been. Serving the lawyers of Alabama for nearly three decades has been both an honor and a privilege.

As a native of West Alabama, I’ve had the unique opportunity to dine with Supreme Court justices and build personal relationships with them. They are not only brilliant legal minds but also kind and professional individuals. The attorneys I’ve met and interacted with have become true friends, enriching my life beyond measure. These friendships, cultivated over time, are among my most cherished experiences.

The lawyers of Alabama will face many challenges in the near future, but we are fortunate to have an outstanding executive director, general counsel, and bar staff guiding us through these changing times. Their dedication and excellence are unparalleled. As the saying goes, “If it ain’t broke, don’t try to fix it.” Our bar staff is the best in the country, and I have no intention of seeking changes, but rather, hope they will continue their exceptional work on our behalf.



Becoming an Alabama lawyer remains the proudest moment of my professional life. While we face numerous challenges as a profession, I firmly believe that unity and collective effort will enable us to overcome these obstacles and emerge stronger. The success of the coming year depends on you, the lawyers of Alabama. I urge each of you to contribute your time and efforts to better our profession. As the 149th President of the Alabama State Bar, I pledge to vigorously defend and uphold the principles that have made our profession great. I enjoy having a good time, but I assure you that I take this responsibility very seriously and will never take it lightly.

In the coming year, I encourage each of you to take a moment to appreciate your progress and goals as lawyers. We can enjoy our serious work and have fun while doing it. Let's remember the wise words of our late Past President Taze Shepard: "If you want to be a better lawyer, then start with being a better person."

Thank you for allowing me to serve as your president for the upcoming year. Together, we can achieve great things. ▲

Sincerely,

Taylor T. "Tom" Perry, Jr.
Alabama State Bar President



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EXECUTIVE DIRECTOR'S REPORT

Terri Lovell
terri.lovell@alabar.org



Towards a Brighter Future

Thank you to everyone who made the 147th Annual Meeting a resounding success! We were blessed with a top-notch group of sponsors, speakers, and exhibitors. It was truly inspiring to connect with so many of you and witness the energy and passion you bring to our profession. We were also thrilled to welcome our newly installed president, Tom Perry, whose vision and leadership promise to guide us through an exciting year ahead.

Our meetings and events staff – Robyn Bernier and Amy Fawcett – provided exceptional planning, attention to detail, and service to our members. They do a wonderful job every year, supported by many other dedicated ASB team members.

At the annual meeting, we released our annual report, which highlights the many activities and achievements of our bar, its members, and its leaders over the past year. In addition, you'll find a complete listing of all the board's actions as we seek to keep you informed and engaged. You can read a copy on our website at www.alabar.org/2024-annual-report/

As we celebrate these milestones and forge ahead with the work of this bar year, I want to remind you of the incredible benefits and discounts available to you as a member of the Alabama State Bar. Whether you're planning your next getaway with travel, hotel, and rental car bookings, or looking to streamline your practice, ASB members have access to a host of resources and discounts. I also encourage you to browse our retail discounts for shipping, office supplies, and wellness programs. Additionally, we offer comprehensive insurance options, including life, disability, cybersecurity, and health.

One of the most valuable member benefits is our Ethics Helpline. While all ethics advice is non-binding and intended only for informational purposes for the inquiring lawyer's prospective conduct, reliance on telephonic ethics advice may be considered a mitigating factor in a disciplinary proceeding. You can reach the Ethics Helpline by calling (334) 269-1515 and asking for the ethics counsel or by emailing ethics@alabar.org.

Our Law Practice Management Program provides technology and management assistance to Alabama lawyers, including CLE programming, individual training, and firm-level consulting. Law school education doesn't always prepare attorneys to effectively run the business of a practice. The program's strategic tools are designed to help you run your law practice with increased efficiency and profitability. Many resources will especially assist solo and small firm lawyers, but all lawyers can benefit from staying up-to-date on available technology. Call (334) 517-2130 or email chris.colee@alabar.org for a quick question or to schedule a free consultation.

The Alabama State Bar building in Montgomery offers conference rooms, office space, a Zoom room, and other meeting spaces free for ASB members. If you have a law-related meeting, deposition, or need a place to work for the day, we encourage you to use this space. You can call (334) 269-1515 to inquire about availability and reserve a room.


Our newest member benefit is a partnership with BetterHelp, which provides all bar members with one month of free online therapy. This initiative, which complements the Alabama Lawyer Assistance Program (ALAP), offers confidential access to licensed therapists and a continuation option at a discounted rate.

This benefit is available to all ASB members, regardless of whether they've used ALAP services, and ensures privacy, with no information shared with the state bar. The pressures and vicarious trauma faced by attorneys and judges make mental health care essential for maintaining their ability to

serve clients. The hope is that more Alabama lawyers will seek the help they need to manage common mental health challenges, improving their well-being and their practice.

You can read more about this new offering and all your member benefits on our website.

These perks are designed to make your professional and personal life a little easier, so please take advantage of them. As we look ahead to an exciting bar year under the dynamic leadership of our new president, I am confident that we will continue to thrive and innovate together. Our shared commitment to excellence and service will drive us to new heights, and I encourage each of you to stay engaged and take full advantage of the benefits and opportunities available through your membership. ▲




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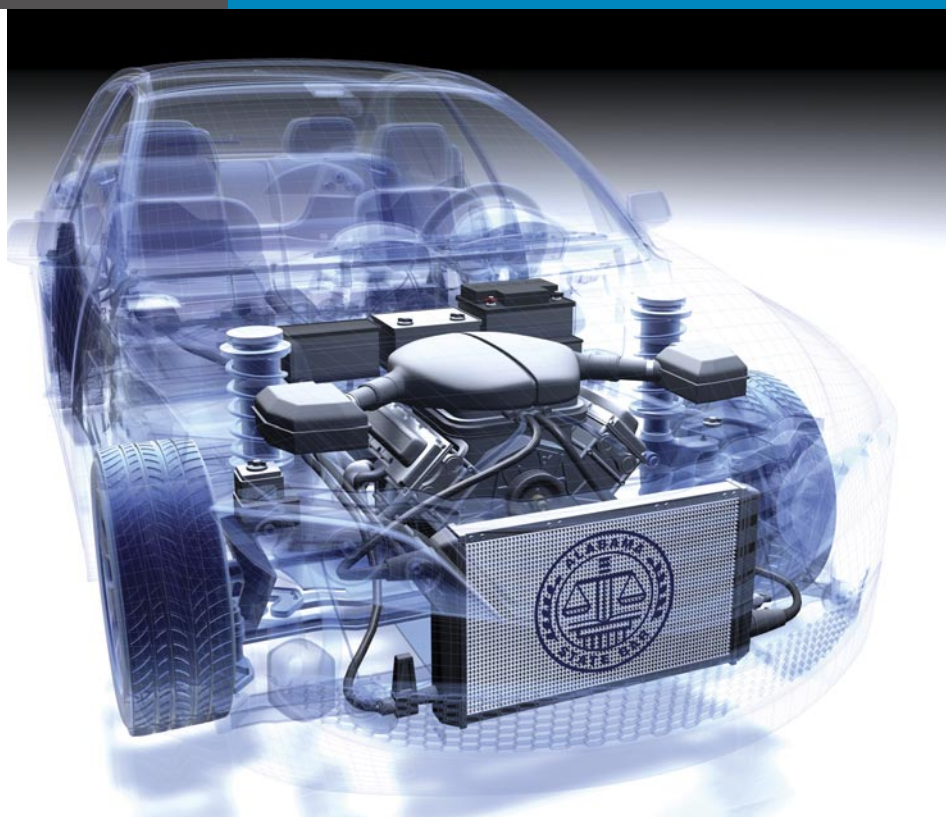
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For further information and a membership list, visit our website:
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Wilson F. Green
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EDITOR'S CORNER



A Look Under the Hood

I'm a car guy. ICE cars, that is. Old school - guttural, purring, and whirring. Cars in which you can feel the mechanical power pulsating off dead stop. (For me, a silent engine is an oxymoron.) Body design and redesign are for me, the artist's canvas, where math and science meet; where engineering, good taste, and even s--- appeal converge. (Did I say that out loud?)

Mind you, I know very little about the mechanics of cars. I'm just an enthusiast. I'd like to know more about what's going on under the hood - it's just that I don't have the time to learn. Fortunately, I get by with a little help from my friends.

I want to spend a minute telling you about the "help from my friends" on our work in this magazine. Because we can't do this magazine thing without each of them.

First, there's the Bar staff. Margaret Murphy served this magazine for nearly 40 years. She is an icon who has left an indelible mark on this publication. **Melissa Warnke**, the bar's communications director and our new managing editor, has set a torrid pace in assuming her role. Melissa keeps the trains running on time and is providing a clear

strategic trajectory. She is assisted by the unflappable and creative **Olivia Walker**, communications coordinator for the bar.

Melissa and Olivia are both working under the hood. For starters, you might have noticed a refresh of the last issue's cover. Olivia created it, and it was just smashing. Back in the shop, Melissa is adding fresh perspective to the editorial process.

Second, there's our revamped Editorial Board, starting with co-chair **Conrad Anderson** (the *primus inter pares*).

When I took this gig, I knew Conrad would be indispensable. I just didn't realize *how* indispensable. And there are our Board members – **Rudy Hill, Allen Mendenhall, Anil Mujumdar, Sherrie Phillips, Marc Sterett, Thomas Richie, and Robin Wolfe**. Each of them reviews and revises at least one article in every issue. That process takes significant time and effort. They're all master mechanics at the end of the production line.

If you know these people, thank them for what they're doing for the bar. We get by with a lot of help from them. ▲

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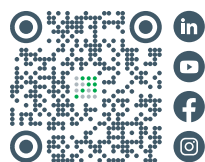


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Renewal notices for payment of annual license fees and special membership dues were emailed on Sept. 9. The fee for an Occupational License is \$300 (payments made after Oct. 31 will be subject to the statutory late fee) and the dues for a Special Membership are \$150.00. The mandatory Client Security Fund fee of \$25 is also automatically assessed unless you have already filed a request for an exemption with our Office of General Counsel. Payments are due by Oct. 1.

Payment may be made online or by creating and printing an invoice to mail with a check at www.alabar.org. **As a reminder, you will not receive a paper invoice in the mail.** ▲

Guidelines for Arbitration Proceedings in Alabama

N O W A V A I L A B L E

The Alabama Supreme Court Commission on Dispute Resolution (the Commission) developed an exemplary arbitration model for parties to use by agreement in arbitration proceedings in Dec. 2023. The model is designed for cases where no arbitration forum is specified in the agreement or both parties prefer to use this model instead of the designated forum (e.g., AAA).

The Commission is most grateful to former Commission member Boyd Miller, who provided the framework and was the guidelines' lead author.

The *Alabama Supreme Court Commission on Dispute Resolution Guidelines for Arbitration Proceedings in Alabama* may be found at the Alabama Center for Dispute Resolution website (https://alabamaadr.org/web/resources/files/2023_ALSCT_COMMISSION_ON_ADR_GUIDELINES_FOR_ARBITRATION.pdf)

The Commission was formed in 1994 by order of the Alabama Supreme Court and promotes alternative dispute resolution throughout Alabama.



FROM COMPLEXITY TO CLARITY: Alabama Courts Adopt Singular Pagination for Appellate Filings

*By Scott Mitchell**

Preparing an appellate brief can
be a challenging endeavor,

requiring not only a persuasive legal argument with accurate citations but also adherence to specific formatting rules and requirements. One such rule, the dual pagination requirement using both Roman and Arabic numerals, has long been a staple in Alabama appellate practice as well as a pain sometimes for attorneys and their support staff when formatting a brief.

However, relief is in sight with the forthcoming amendment to Rule 28, Ala. R. App. P., effective Oct. 1, 2024. This amendment will help streamline formatting by mandating a single pagination scheme using Arabic numerals exclusively. The shift aims to address the growing complexities of pagination of digital briefs, where discrepancies between dual pagination and PDF page numbers can hinder efficient document navigation.

The American Bar Association's Council of Appellate Lawyers (CAL) provided valuable insights

on enhancing electronic briefs in a 2017 white paper, *The Leap from E-Filing to E-Briefing: Recommendations and Options for Appellate Courts to Improve Functionality and Readability of E-Briefs*.¹ The CAL suggested reforms to make digital briefs more functional, more readable, and more helpful. Alabama has already embraced some of the white paper's recommendations, such as transitioning away from the Courier New font to Century Schoolbook 14-point and replacing page counts with word counts. The CAL white paper also advocated for a single pagination scheme starting from the first page of the document to simplify navigation within digital briefs and pleadings. This approach ensures that the page number displayed in the footer corresponds accurately with the PDF page number, mitigating confusion during digital navigation.

Alabama's appellate courts were national pioneers in electronic filing, but the transition from paper to digital for the Courts has been more gradual. The Interim Electronic Filing and Service Rule adopted in 2007 required attorneys to submit hard copies alongside digital briefs. The justices, judges, and court staff initially relied heavily on the hard copies. However, as we have moved into the digital age, the Courts have come to embrace digital briefs. Recent amendments to the Alabama Rules of Appellate Procedure have eliminated the requirement for hard

copies of digital briefs in the Court of Criminal Appeals, retaining the filing of hard copies in only very specific circumstances in the Court of Civil Appeals², and reduced the number of hard copies to just two (2) for the Alabama Supreme Court. Given the Courts' reliance on digital briefs, it made sense to implement the CAL's recommendation of a single pagination scheme.

Effective Oct. 1, 2024, all briefs and pleadings filed with Alabama's appellate courts must comply with the single pagination scheme. Pagination will begin with the first page of the document and continue through the entire document. The page number, however, will not appear on the first page but should be displayed on all succeeding pages. For instance, in a brief, the cover will be considered page number 1, but this number will not appear on the cover itself. The statement regarding oral argument will be page number 2, and the number "2" should be shown in the footer of that page. For a motion filed with the appellate courts, the first page of the motion will be page number 1. Again, like a brief, the page number will not appear on the first page. However, the pagination should appear in the footer of the second and succeeding pages.

This change promises to facilitate easier internal navigation of appellate filings, benefiting justices, judges, court staff, and legal practitioners alike. By using a sin-

gle pagination scheme, Alabama's appellate rules aim to enhance the efficiency and readability of digital appellate filings, ultimately aiding all parties involved in the appellate process.

With the implementation of this rule change, practitioners can anticipate a more streamlined approach to brief formatting, reducing the administrative burden associated with dual pagination and improving overall document management. This change underscores the Alabama Judiciary's commitment to using technology effectively while meeting the needs of legal professionals. ▲

*Clerk of the Alabama Court of Criminal Appeals.

Endnotes

1. This white paper may be found at https://www.americanbar.org/content/dam/aba/administrative/appellate_lawyers/2017_cal_ebrief_report.pdf.
2. The Court of Civil Appeals requires two hard copies of briefs in cases where the Court has ordered an answer to a petition for extraordinary writ.

Scott Mitchell has been the Clerk of the Alabama Court of Criminal Appeals since August



2012. A native of Wilcox County, he is an alumnus of Erskine College and the University of Alabama

School of Law. He currently serves as the president-elect of the National Conference of Appellate Court Clerks.



Alternative Dispute Resolution in Alabama After 30 Years

By Eileen Harris and Jimmy Walters

Alternative dispute resolution (ADR) was in its infancy in 1992

when the Alabama Supreme Court adopted an amendment to Rule 16 of the Alabama Rules of Civil Procedure to provide that the parties to a civil action could consider “the voluntary use by all parties of extrajudicial procedures to resolve the dispute ...”. The purpose of that amendment was to encourage early resolution of pending litigation through voluntary ADR methods.

The Alabama Civil Court Mediation Rules were also adopted in 1992. Four years later, in 1996, the Alabama Legislature enacted Section 6-6-20, *et seq.* of the Alabama Code, commonly referred to as the Mandatory Mediation Act, which introduced a statutory basis for Alabama courts to order mediation of pending cases.

Appellate mediation began in Alabama in 2003 with the Alabama Supreme Court’s adoption of Rule 55 of the Alabama Rules of Appellate Procedure. The Supreme Court commented that the intent of that

rule was to permit and encourage mediation at the appellate level.

More recently, in 2012, the Alabama Legislature enacted Section 12-11A-1, *et seq.* of the Alabama Code authorizing the appointment of former or retired judges to serve as private judges when all parties to an action file a written petition with the circuit clerk. A private judge has many of the same powers as a judge of a circuit court; however, trials by private judges are always to be conducted without a jury and may be heard at any time, and at any place in Alabama. The Alabama Legislature amended the act in 2018 to allow probate judges who are attorneys to serve as private judges.

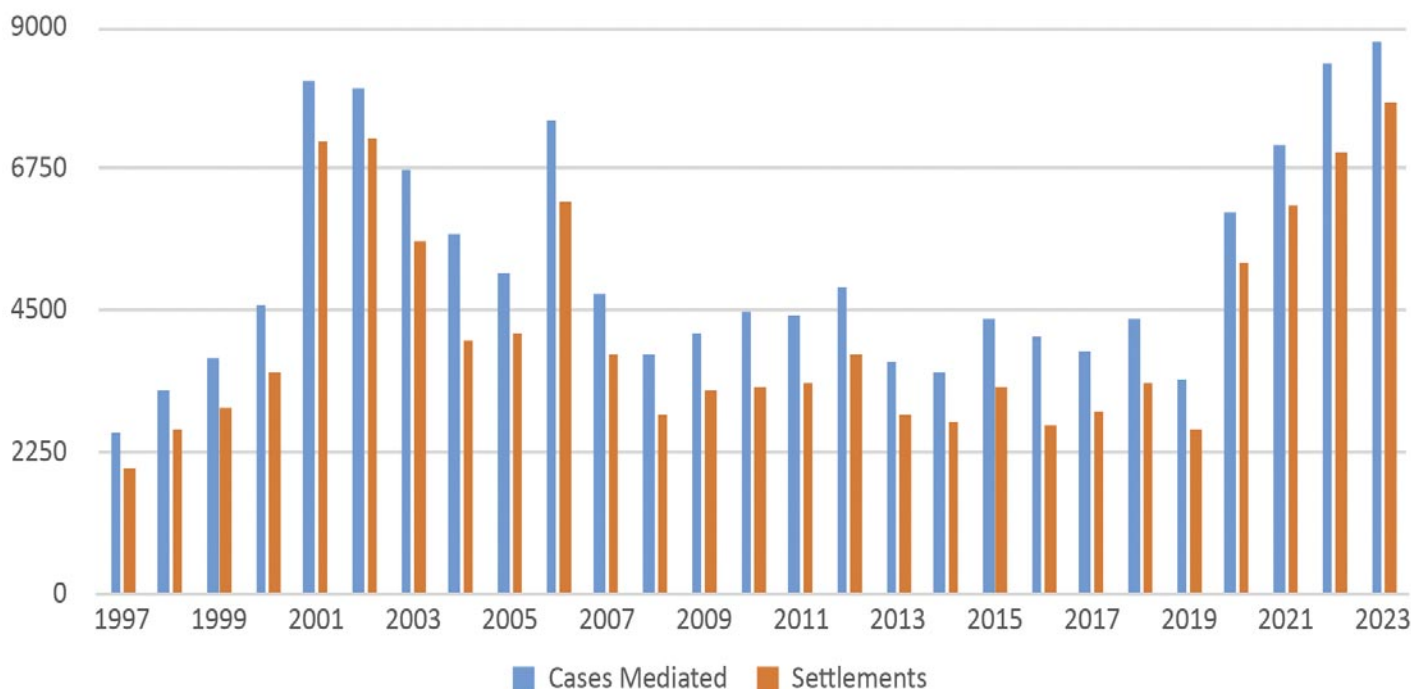
Concurrent with those rules and statutes, organizations supporting ADR were created in Alabama. In 1994, the Alabama State Bar recognized the section now known as the Dispute Resolution Section. Also in 1994, the Alabama Supreme Court created the Alabama Supreme Court's Commission on Dispute Resolution ("Commission"). Among other duties, the Commission develops qualification criteria and standards of conduct for mediators and arbitrators and supervises the Alabama Center for Dispute Resolution ("Center"). The

Center keeps statistics on ADR activities in the State of Alabama through annual survey information obtained from mediators, arbitrators, and private judges registered with the Center. Since 1997, the Center has surveyed its registered mediators, arbitrators, and more recently, private judges on an annual basis and compiled statistics regarding the use of ADR in Alabama.

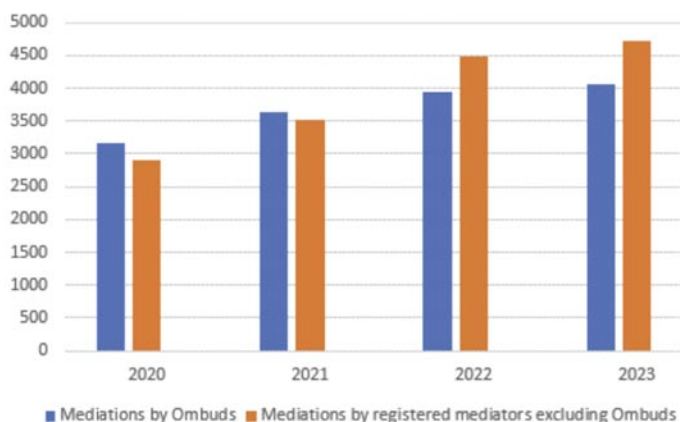
MEDIATION

As depicted in the following graph, survey responses indicate that from 1997 to 2023, approximately 140,000 civil and domestic relations cases were mediated by registered Alabama mediators. Because less than one-half of registered Alabama mediators responded to the annual surveys, it can be estimated that well over 200,000 cases were mediated in Alabama over the past 26 years. Notably, 80 percent of those reported mediated cases resulted in settlement.

The number of reported mediations has fluctuated during the 26-year reporting period, from as few as 2,574 cases in 1997, to a high of 8,771 cases in 2023. The pandemic and the addition of Alabama Department



of Labor’s Ombuds to the mediator roster contributed significantly to the rise in mediations since 2020. Additionally, parties increasingly turned to the use of Zoom and telephone mediations to resolve cases while trials were curtailed by the pandemic. The Alabama Department of Labor’s Ombuds have averaged 3,696 mediations since 2020, and their numbers are increasing steadily year over year. The number of registered mediators (excluding Ombuds) have also seen an increase since 2020.



For 2023, Alabama mediators reported that they conducted a record 8,771 civil mediations. As depicted in the graph below, over 3,200 of those reported mediations involved civil matters other than domestic relations. Fifty-three percent of those mediations were court ordered. The settlement rate for civil mediations was 82 percent. The vast majority of the 1,619 domestic relations mediations were court ordered. The settlement rate for domestic relations mediations was 78%. Alabama mediators were once again generous with their time during 2023, with 1,077 pro bono hours reported in civil mediation.

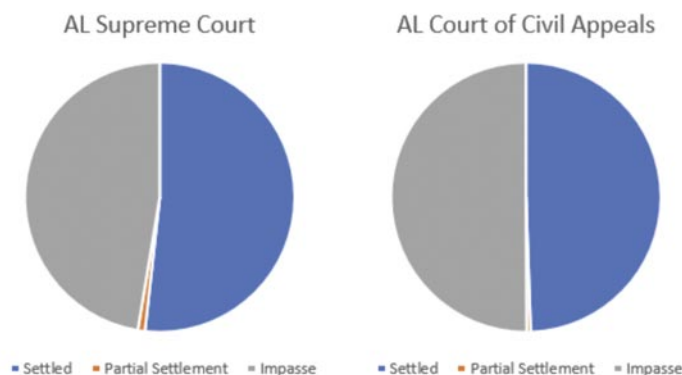


So-called “non-court mediations” totaled 3,872, yielding a 99 percent settlement rate. Non-court mediations are those conducted for matters not filed in court or pre-litigation, e.g., neighborhood disputes, employee-employer-related matters, and Alabama Department of Labor Ombuds workers compensation mediations. Registered mediators provided 3,777 in pro bono services for non-court mediations.

While the pandemic ushered in the use of web-based mediations, most Alabama mediations are still conducted in person. Alabama registered mediators, excluding the Alabama Department of Labor Ombuds, reported that 66 percent of mediations during 2023 were conducted in person. The remaining mediations were web-based (15 percent), by telephone (2 percent) or by a combination of telephone, web-based and in-person (17 percent).

APPELLATE MEDIATION

Appellate mediation continues to be successful in Alabama. As depicted below, 2,245 appeals to the Alabama Supreme Court were mediated between January 2004 through 2023. Full settlements were reached in 52% of those cases. Similarly, 2,532 appeals to the Alabama Court of Civil Appeals were mediated over that 19-year period, resulting in a settlement rate of 50% according to the statistics provided by the appellate mediation office. It is more difficult to settle cases on appeal than at the trial level for a variety of reasons.¹ The success of appellate mediation in Alabama is attributable both to the expertise of the appellate mediation office in screening for appeals that are appropriate for mediation as well as the skill of Alabama’s appellate mediators.



ARBITRATION

Statistics provided by the Center indicate that the use of arbitration in Alabama has ebbed and flowed over the past 29 years. Alabama arbitrators reported 48 arbitrations in 2023, which is a 14 percent decrease over 56 arbitrations reported in 2022. Bear in mind that these are only those arbitrations reported to the Center; it is very likely that substantially more arbitrations actually take place than are reported, since arbitration is an inherently private process.

From reported arbitration data, a wide variety of disputes are being arbitrated in Alabama. The most common arbitrations are commercial disputes, accounting for approximately 29 percent of total arbitrations in 2023. The other significant arbitration subject areas in recent years are construction, labor/employment, nursing home, consumer, and contract disputes.

Among reported arbitrations, fewer than 30 percent were court ordered. The American Arbitration Association continues to be the most popular provider of arbitration services in Alabama.

Nationwide, disputes resolved through arbitration were decided in significantly less time than federal court proceedings. A 2017 national study² found that federal court cases took more than 12 months longer to get to trial than arbitrations administered by the American Arbitration Association (24.2 months vs. 11.6 months). When the comparison involved time through appeal or post-award proceedings, federal court cases required at least 21 months longer than arbitrations to resolve (33.6 months vs. 11.6 months). Although the Center does not maintain similar statistics, it is likely that disputes resolved through arbitration are decided in less time than judicial proceedings in Alabama, consistent with the national data.

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PRO BONO MEDIATION INITIATIVES

The Center maintains the Alabama State Court Roster of registered neutrals (mediators, arbitrators and private judges). Registered neutrals are encouraged to give at least ten hours of pro bono time each year.

The Center has been successful in writing and receiving grants and contracts to provide free mediation services for various types of court cases. The Center's free mediation programs not only assist litigants but also help reduce the burden on Alabama's judicial system. The Center is grateful to the Alabama Supreme Court, the Alabama Law Foundation, the Alabama Access to Justice Commission, and the Alabama Civil Justice Foundation for funding the programs through the years. Here is a fuller description of those programs.

Parents are Forever Family Mediation Program

The Parents are Forever Family Mediation Program began in 2013. Parents undergoing a divorce, or parents who have never been married with minor children, may be eligible to receive the help of a free registered family mediator with initial child support cases. The gross annual family income must be less than \$60,000 a year. The parents agree to work with a registered family mediator to develop a parenting plan and a financial plan subject to judicial review. During 2022, the program was expanded to include custody modifications. Contempt cases are not funded under the program.

Over 1,200 families have been referred to the program since 2013, with 926 families completing mediation. Seventy percent (70 percent) of the cases settled, 23 percent did not settle, and 7 percent reached a partial settlement. Parental feedback about the work of the mediators and the program continues to be overwhelmingly positive. To date, 48 counties are participating in the program.

Alabama First Landlord/Tenant Mediation Program

Through the Alabama First Landlord/Tenant Mediation Program, landlords and tenants work with a free mediator on unlawful detainer cases, eviction cases

and/or landlord/tenant disputes. Mediators participating in the program must be registered with the Alabama Center for Dispute Resolution to participate in this court-ordered mediation program. Landlord/Tenant mediators may be found at www.alabamaadr.org under the heading "Mediators/Arbitrators" and using the term "Landlord/Tenant" in the search field for practice area.

The pandemic created housing insecurity issues. As noted by Jefferson County Judge Shera Grant noted, during her Sept. 13, 2021 interview with AL.com: "tenants obviously are in a serious situation, but landlords have also not been able to receive any rent for over a year. Some of our landlords are seniors who have used this as retirement income, who have not been able to receive any rental income, and so they have been put in a very difficult position as well. So, it hurts everyone."

"Mediation helps to put the decision-making process in the hands of landlords and tenants as well as promoting peaceful resolution to the conflict," said Eileen Harris, the Center's Director. Parties unable to reach an agreement can have their case heard by a judge. Mediators participating in this court-ordered mediation program must be registered with the Alabama Center for Dispute Resolution.

Foreclosure Prevention/Mortgage Modification Mediation Program

Funded by the Alabama Law Foundation, this court-ordered program provides a trained registered mediator to assist with any case that jeopardizes a homeowner's ability to pay a mortgage. Participants must be at or below 250 percent of the federal poverty level. The property in question must be the homeowner's primary residence. Participants contact the Alabama State Bar Volunteer Lawyer Program (VLP), which conducts an income eligibility check. If the party is income eligible, the VLP refers the case to a registered mediator who has completed a specialized foreclosure mediation training program approved by the Alabama Center for Dispute Resolution.

Probate Court Mediation

The Probate Court Mediation project was the brainchild of the Alabama Probate Court Judges Association. The Center received a \$50,000 grant from the Alabama Law Foundation during 2023 to provide registered free

mediators for will contests/disputes, guardianship matters, conservatorship matters, condemnation, and/or any other probate court matter determined by the court where mediation would be helpful to disputants.

District Court Mediation Pilot Program

Two judges in Jefferson County are testing the viability of district court mediators to help with small claims cases. The Jefferson County Small Claims Court Mediation program's goal is to provide free mediation services for a minimum of 125 small claims cases filed in the district court, where the amount in controversy is \$6,000 or less. Litigants may be *pro se* or represented by counsel. The court uses a form order to appoint a registered mediator to help litigants.

Though in its infancy, this program is receiving favorable reviews. Here is one reaction from Jefferson County District Court Judge Martha Reeves Cook: "as a District Court Judge in Jefferson County, I am fortunate to have regular volunteer mediators appear in my court during dockets involving the types of cases described above. Unlike a judge, a mediator can sit with plaintiffs and defendants in these cases and give the parties time to shed some of the emotions which bubble to the surface and which are often the cause of litigation. Even if the case does not settle in mediation, the time spent in mediation allows the parties to confront the emotional obstacles and focus on the legal issues which need to be tried before the judge. The opportunity to refer cases to mediation under a program for small claims cases is a welcome addition in my courtroom."

CONCLUSION

ADR has come a long way in Alabama since the 1990s. Thousands of cases are mediated in this state each year, resulting in the settlement of most of those cases. The future is promising. ADR continues to evolve with several pilot programs being tested to integrate technology into the dispute resolution process – such as online traffic resolution and small claims mediation.

Much of the success of ADR in Alabama has been due to the vision and coordinated efforts of the Alabama State Bar; the Circuit, District, and Probate Court Judges' Associations; the Alabama Supreme Court; and the Alabama Supreme Court Commission on Dispute Resolution. The Alabama Center for Dispute Resolution continues to be a valuable resource to the judiciary, the bar and to the public. The Center is always looking for ways to promote the use of mediation, arbitration, and private judging to help litigants resolve their disputes. Positive outcomes through ADR help litigants move forward, reduce the case-load on the courts, and put the decision-making process in the hands of the parties. ▲

Endnotes

1. Steve Emmert, "Appellate Mediation: Why is it so Hard to Settle During an Appeal," *ABA Appellate Issues*, 2019 Summer Edition, September 6, 2019.
2. Weinstein, Edes, Hale and Pearsall, *Efficiency and Economic Benefits of Dispute Resolution Through Arbitration Compared With U.S. District Court Proceedings* (Micronomics Economic Research and Consulting, March 2017).

Eileen Harris is the Executive Director of the Alabama Center for Dispute Resolution. She also serves as the Secretary of the Alabama Supreme Court Commission on Dispute Resolution. Eileen is a strong proponent for using appropriate dispute resolution to help parties resolve their conflicts.



James N. Walter, Jr. is a shareholder with Capell & Howard, P.C. He serves on the Alabama Supreme Court Commission on Dispute Resolution, is a certified mediator and arbitrator registered with the Alabama Center for Dispute Resolution and is a member of the American Arbitration Association's Roster of Neutrals. He is a member of the National Academy of Distinguished Neutrals and the Alabama Academy of Attorney Mediators.





Perspectives on Mediation

By Jon E. Lewis

What techniques have benefited you in mediation as attorney or mediator?

Sam Crosby: Creative solutions like having the parties donate the disputed funds to charity.

Lang Floyd: I use a racehorse/sponge analogy. A racehorse focuses only on winning the race. A sponge soaks up all the water

(evidence) but then squeezes out the excess. It is more likely to be a successful mediation if the parties will adjust their focus from winning like a racehorse to recognizing all the facts like a sponge soaking up all the water.

David Marsh: Provide the mediator with as much information as possible before the actual mediation. It is important to be open about any legal or factual problems/weaknesses and openly discuss them, and then explain how you will deal with them if the case does not resolve. This establishes credibility with the mediator and, hopefully, the other side.

Rod Max: Mutual, confidential inquiries of “Areas of Relevancy”

Bob Methvin: As a mediator, I prefer a pre-mediation call with the attorneys over an initial caucus at the mediation. Such a call allows each lawyer to communicate freely his or her view of the case.

Kathy Miller: Being alert for opportunities to mediate during the course of the case.

Jim Rives: Learning as much as possible about the case in advance is very helpful.

Gaynor St. John: Get something to the mediator to review ahead of the mediation, whether it be a position statement, an expert disclosure, or something as simple as an accident report.

Holly L. Sawyer: I try to lower mediation clients’ anxiety by setting expectations: prolonged down time, restroom and kitchen location, etc. The tone of my office is a place of comfort and order, and it conveys to the parties that I genuinely care about them. I bake homemade cookies and brownies for mediations, and I have a “therapy poodle” named Regina George. When faced with a party who is overwhelmed or cannot make a decision, I change my approach from asking the client the open-ended question of what he or she wants to distilling the issue down to finite options of A, B, or C. When we have the case within a range that both parties can tolerate, I covertly get the client to tell me what is most important to him or her by suggesting that the counteroffer be: “I agree to everything you want, except for this one thing upon which I insist.” When all else fails, I make them laugh.

Thomas “Spin” Spires: Be a student of the case facts. I try to learn as much as I can about the lawsuit/dispute before I conduct any mediation. For example, in a medical case, I obtain as much information as is possible about the illness or operation or treatment, and in a car wreck case I access Google Earth to see the scene. The accident report can also be invaluable to determine what the

investigating officer’s testimony is probably going to be.

Harold Stephens: It is very important as an attorney to provide the mediator with a mediation position statement that outlines the strengths and weaknesses of your case. My first approach is to try to identify those issues/matters in which the parties are in agreement. From there, many of the techniques we use as mediators are now fairly widely known and often used including using brackets, taking a break, flipping the view (“If you were in the other room, what would you be thinking?”), trying to identify non-monetary interests, having a lawyers-only meeting, and the ultimate technique for resolution – offering a mediator’s proposal.

Michael Upchurch: (1) If the parties hit a wall, particularly on one or two discrete issues, I might get everyone together to exchange information and perspectives, but NOT to argue or debate. (2) I ask one room to tell me what the other room is thinking or how the other side is going to react to an offer. Sometimes it helps when one party has to say out loud what the opponent’s points and thoughts/feelings are. (3) I get the lawyers together without clients at times to have a frank discussion of whatever is keeping us from reaching a deal. (4) Sometimes, I ask the parties how they expect the trial to go and what that expectation is based on. Then, we discuss if that expectation is realistic. (5) I ask what the ideal resolution or compromise would be and try to figure out if



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there are terms we could negotiate that are not available to the parties in a verdict but might be valuable/important and get us to a deal. (6) Sometimes, I ask a party to envision a bad result at trial and then months or years from now when they look back at the opportunity they had to compromise the case at this mediation and ask: “Would you wish you had settled when you had the chance?”

Marty Van Tassel: I think the most powerful technique in the mediator’s arsenal is active listening. By asking questions, we can engage with the parties and attorneys, gain insight into interests, and build trust.

What advice would you give to young mediators or attorneys based on your experiences?

Sam Crosby: Cultivate patience and kindness.

Lang Floyd: Point out the positives of the case to encourage the parties before identifying the negatives. Give the parties a chance to talk it out and consider alternatives, but don’t ever push a party to settle. Follow up later to see if you can continue the negotiations.

David Marsh: Be very careful and deliberate in the messages that you deliver from the very first demand or offer. If you say it, mean it.

Rod Max: “Build bridges” along your paths of dispute resolution.

Bob Methvin: Focus first on building trust with all the parties. This starts by explaining the process, tempering expectations, and urging patience.

Kathy Miller: Prepare and know your case.

Jim Rives: My advice would be to know that every offer sends a message. For that reason, put some thought into each offer, rather than automatically starting every mediation with “policy limits” or a lowball offer. Ridiculous offers are usually counterproductive. Initial offers set expectations that can create a battle with one’s own client. Err on the side of extending the olive branch early to the other side. If the other side doesn’t extend it back, you can slow down.

Gaynor St. John: Know your updated subrogation/lien amounts by the date of your mediation and have a contact number to discuss payment or reduction of these sums.

Holly L. Sawyer: Consider legal issues from every angle, determine all possible outcomes, and ask yourself *why* the other party wants what he or she wants. This leads to a better understanding of the case, more creative problem solving,

and fleshes out blind spots. Be sure that what you are saying has validity and purpose. Be helpful to other lawyers when you are able, and be considerate of others’ time. Pursue leadership positions within your local and state bar associations, attend lawyer functions, and learn from your peers. Emulate the lawyers you admire and ask them questions, and when you feel slighted by another lawyer, commit that you will not behave that way to someone else. Manage your clients’ expectations from the outset.

Thomas “Spin” Spires: To harken back to the motto from my Boy Scout days: “Be prepared.” If you know that we are going to be dealing with a hospital and/or insurance lien, obtain the appropriate information well ahead of the mediation. I would also encourage lawyers to remember that we all have to work together. If you are consistently dogmatic and unyielding in your position and attitude, those traits will inevitably come back to haunt you. The old expression of “sometimes you are the windshield and sometimes you are the bug” should never be far from anyone’s mind in how they conduct themselves because we all have some good cases and we all have some bad cases. It has been my experience that a burned bridge usually stays burned.

Harold Stephens: Do not be shy about asking to attend and observe a mediation session. Also look for opportunities to conduct mediations either on a pro bono

basis through the Alabama Center for Dispute Resolution programs or perhaps through a district court mediation program. These are excellent ways to gain experience.

Michael Upchurch: Spend most of your time at the beginning of a mediation listening. Ask questions. Show the client you care and understand. Don't make suggestions or push hard until the client has gotten comfortable with you and the process and has developed some trust and confidence in you. Then ask if they want you to be a devil's advocate and bring up issues that might be problems so they

can make a good decision. Make triple sure each settlement offer you deliver is complete and accurate. Address problem areas and issues head on.

Marty Van Tassel: Make sure that the parties' communications through the mediator serve the purpose of advancing the negotiations. Both words and numbers have meaning, and both should be carefully crafted to convey something that is important to the process.

What is the key to your success in mediation either as a lawyer or as a mediator?

Lang Floyd: I try to fall back on my years as a judge to help the parties understand a judge's or jury's perspective. But I avoid "being a judge" in the mediation.

David Marsh: Be prepared. Have your client prepared. Set their expectations. Have patience. Sometimes it just takes a little time to allow the "process" to happen. I like to ask the mediator his or her opinions, get feedback from them, and consider the same. I do not look at the mediator as simply a way to deliver offers and counter offers; rather, I really like to get the mediator's input and opinions about the case.

Rod Max: Never quit!


Bob Methvin: Preparation and tenacity are the keys to success. Being adequately prepared helps to build trust with the parties and chart a path to successful resolution. Being tenacious means working until all avenues of potential resolution have been exhausted.

Kathy Miller: Choose a mediator with trial experience who relates well to people. If there is a mediator you think will be effective, ask the other parties if they will agree to him or her early in the case – even if you don't plan to mediate until later – and let the Court know that you have agreed upon a mediator. Give the mediator a realistic appraisal of your case – if there are things you don't want the mediator to share, tell them.


Jim Rives: I try to remember that the case I'm mediating is one or every side's most important case. No mediation should just be another number. We are dealing with real feelings, real problems, and real monetary and/or emotional investments in most cases. I work hard to create empathy and earn trust.

Gaynor St. John: PATIENCE! – Don't give up on the process.

Holly L. Sawyer: My key to success as a mediator is that I understand people and how our minds work, and I base my approach on how I read the particular client. I look for something relatable about the person, and from that I build a



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rapport. I choose my words carefully. I try to make the lawyer's job easier. Clients need the validation that their lawyer has done a good job for them, and I compliment their lawyer's work to assist in that process. I am creative in problem solving, and I do not judge people. Another key is letting the client vent so they can be heard. This allows the client to offer clues as to what is really important. Everyone has a story. Some are spicier than others, and no one wants to be judged on his or her worst day.

Thomas "Spin" Spires: I try to be candid with people as much as possible. Telling someone what they want to hear is no way to try to get a case settled. The parties need to know how the venue or medical records will potentially affect their case. I am also a big fan of getting the lawyers to sit down in a room and talk to me privately if there are issues that need to be discussed.

Harold Stephens: From the mediator's perspective, two of the keys to success are the timing of the mediation and simply being a good listener. Mediation can only be successful in terms of settlement if both parties come to the mediation fully prepared to negotiate, to make reasonable moves toward reasonable goals – recognizing that there are strengths and weaknesses on both sides – and to reach a point where all parties conclude that the offer on the table is preferable to the time, expense, and uncertainty associated with a trial. From an

attorney's perspective, I think it is critical to a successful mediation that you be patient with the process.

Michael Upchurch: Persistence, empathy, and experience

Marty Van Tassel: Two things – preparation, and to keep working, even if the mediation apparently "fails." A lot can happen post-mediation, and the mediator should continue to follow up.

How do you prepare the parties for mediation (as a lawyer and/or as a mediator)?

Sam Crosby: Thoroughly explain the process.

Lang Floyd: As a mediator, I send out a short information sheet explaining mediation and what everyone's role is, especially mine. I try to talk to the lawyers in advance to see what the parties' positions are. Then, at the opening of the session, I give introductory remarks to explain what we will try to accomplish in the mediation and the process we will follow. I make sure the parties understand that I am not there to tell the other party why they are wrong. I try to get them to understand at the outset that a resolution will always require some degree of compromise by both sides.

David Marsh: We meet in person with our clients before the mediation. We explain the process, what to expect, and what not to expect. We also stress to them the importance of not having preconceived lines in the dirt and having an open mind. We discuss the monetary "range" of what would constitute a fair settlement. We also discuss the factors that have gone into our evaluation and recommendation: the facts, the venue, the law, the appellate landscape, and opinions in similar cases. We also explain that the plaintiffs' room will have a lot of downtime and urge them to bring a book, magazines, or computers to fill the time between offers. We urge our clients to ask questions, and we answer them as best we can. We also explain that the mediation is a process and not to get discouraged early – that we will guide them and let them know if and when it's time to pull the plug. Otherwise, it is important to follow the mediator's lead and let the process unfold.

Rod Max: For attorneys, preparation (receipt of pleadings, orders, briefs, and/or position statements); and, for mediators, pre-mediation caucuses between/among parties' counsel and, where relevant, their representatives.

Bob Methvin: When I am the mediator, I discuss the mediation process with the lawyers and clients as soon as they arrive. I emphasize my role as a neutral: My job is not to take sides but instead to give my assessment of the strengths and weaknesses of the case. I remind

the parties that a good settlement includes compromise from all sides. Resolution is in the best interest of all involved because it means closure and the ability to move on with their lives.

Kathy Miller: Provide your client with a full and realistic evaluation of the chances of a verdict or judgment in their favor and an estimate of the jury verdict range based upon what you know as of that point.

Jim Rives: I explain what my role is, that this is not the trial, confidentiality, etc. I explain the pitfalls, hurdles, delays, uncertainties, and expenses of the legal system. I remind them that first offers will not be accepted by either side. We talk about making a business decision and that settlements seldom/never occur on terms that either side considers “fair.”

Gaynor St. John: Explain that the first numbers your clients hear during mediation do not reflect the true value of the case.

Holly L. Sawyer: By the time we get to mediation, I have already given my client my opinion as to the value of the case, the range of possible outcomes, and the strengths and weaknesses of our position, so I use mediation to give my client a second opinion on a case. I build up mediation to my client by focusing on maintaining control over the outcome and finality. If I don’t know the mediator, I research him or her online so that I am able to tell my client the mediator’s experience and credentials. I explain to

my client that mediation works because the mediator gets to “peek behind the curtain and see what Oz thinks” and from that he or she can offer us guidance. And that we are well-served to follow that guidance.

Thomas “Spin” Spires: I try to have pre-mediation phone calls and emails with the parties ahead of time. If possible, I want to make sure I am aware of what is important to all sides of a dispute before we get to a mediation. At mediation, I explain to those people that have never experienced one what to expect; that it is a process that will take us some time to accomplish; and how we are there to try and bring some immediate finality and certainty to a situation that a trial will never do.

Harold Stephens: As an attorney, it is critical to meet with your client and review the case in its entirety well in advance of the mediation. This includes a candid discussion with your client about the strengths and weaknesses of his or her case as well as those of the other party. Discuss goals with your client, but be careful to avoid creating unrealistic expectations and/or drawing arbitrary lines in the sand before the mediation begins. I also think the parties and their counsel should give more attention to the planned first offers on both sides. First offers can and often do set the tone for the mediation session. As for mediators, I often find a pre-mediation telephone call with counsel to be helpful for everyone. I do think there is no substitute for a well thought out

mediation position statement to help prepare the mediator with what he or she needs to know about your case.

Michael Upchurch: I tell them what they already know: Compromise is hard. I explain that mediation requires both sides to make concessions. I tell them that I am going to try as hard as I can to get us to a settlement and I ask if they will do the same. I ask them to describe for me who will be on their jury. I ask them to think about two scenarios: they walk out of my office with a resolution and the dispute behind them, or they walk out with all the expense, uncertainty, and stress of litigation in front of them.

Marty Van Tassel: I encourage position statements, and I like to see them exchanged. At mediation, I talk with the parties, either in a group or separately, about how mediation works, what to expect, and what the basic ground rules are. ▲

The responses have been lightly edited for readability.

Jon E. Lewis



After graduating from Tulane in 1989 with a degree in business and finance, Jon followed in his father’s footsteps toward becoming an attorney, and he attended

Vanderbilt School of Law. Jon has practiced law for 32 years and has spent most of his career representing injured individuals. Currently, Jon works with Danny Feldman at Lewis and Feldman, LLC. Jon has been a registered mediator since 2017 and is currently the chair of the Alabama State Bar Dispute Resolution Section.

M E D I A T O R B I O S

Sam Crosby

For the last 28 years, of his 42 years in law practice, Sam Crosby has been recognized as a premier mediator, well known for his legal, analytical and conciliation skills. He has successfully conducted hundreds of mediations throughout Alabama, including many complex, high profile cases.

*Crosby***J. Langford Floyd**

After 20 years as a District and Circuit Judge in the 28th Judicial Circuit, covering Baldwin County, Lang retired from the bench in Dec. 2016 and began his ADR practice. He currently manages a statewide mediation and arbitration practice from his hometown of Fairhope.

*Floyd***David H. Marsh**

David Marsh is the founding partner of the firm of Marsh, Rickard & Bryan, P.C., and has been practicing law and representing Alabamians from all walks of life in personal injury, wrongful death, and complex business cases for more than forty years.

*Marsh***Rodney A. Max**

Rodney Max has 35 years of trial and mediation experience. Mr. Max has established a highly successful national ADR practice, specializing in mediation and arbitration of mass torts, class action complex tort, commercial and consumer cases. He has mediated over 2500 cases in 31 different states and the District of Columbia.

*Max***Robbert G. Methvin**

Bob Methvin is the managing shareholder of Methvin, Terrell, Yancey, Stephens & Miller, P.C. He practices in the areas of class actions and complex litigation, business litigation, and insurance and annuity litigation. Bob serves as a mediator in a wide variety of cases. He also serves as an arbitrator with the American Arbitration Association and is a registered mediator with the Alabama Center for Dispute Resolution.

*Methvin***M. Kathleen Miller**

Kathy Miller has practiced law with Armbrrecht Jackson LLP in Mobile since 1980 and served as managing partner of the firm from 2009 through 2018. Her practice focuses on maritime law, insurance coverage and professional liability and business litigation. She is an Adjunct Professor of Admiralty at the University of Alabama School of Law.

*Miller***Jim Rives**

Jim Rives is a partner with Ball, Ball, Matthews & Novak, where this year will mark his 35th year of practice as a litigator and 25th year as a mediator. Certified as a mediator in 1999, Jim has mediated more than 3,000 legal matters. He also serves as an arbitrator and maintains an active litigation practice.

*Rives***Gaynor St. John**

Gaynor St. John has been a partner at St. John and St. John for more than 28 years. She offers a wealth of civil litigation experience spanning over 30 years of practice and more than 60 civil jury trials to verdict. In 2022, she expanded her dispute resolution work and became affiliated with Schreiber ADR.

*St. John***Holly L. Sawyer**

Holly Sawyer is a highly energetic attorney and mediator located in Dothan. She began her legal career at Lewis, Brackin, Flowers & Johnson, where she became a partner in 2011. In Jan. 2019, she opened The Law Office of Holly L. Sawyer, where her practice includes general litigation representing plaintiffs and defendants, business organization, probate, family law, and mediation.

*Sawyer***Thomas S. Spires**

Thomas S. "Spin" Spires is a practicing member of the U.S. District Courts for the Northern, Middle and Southern Districts of Alabama, and the U.S. Court of Appeals for the 11th Circuit. Spin also serves on the

*Spires*

United States District Court Panel of Neutrals and he is a certified mediator with the 11th Circuit Court of Appeals. He is also a member of the Alabama Academy of Attorney Mediators and the National Academy of Distinguished Neutrals. Spin's areas of practice include products liability, trucking litigation, industrial accidents, mediation, wrongful death, insurance coverage disputes, premises liability and environmental claims. He also serves as a mediator in a wide variety of cases including products liability, automobile and trucking accidents, premises liability, personal injury, wrongful death, as well as insurance and coverage issues.

Harold Stephens

Harold Stephens is a partner in the firm of Bradley Arant Boult Cummings LLP. Harold currently serves on and was previously chair of the Alabama Supreme Court Dispute Resolution Commission. He is a charter member of the Alabama Academy of Attorney Mediators, a member of the National Association of Distinguished Neutrals and a member of the Panel of Neutrals for the United States District Court for the Northern District of Alabama.

*Stephens***Michael Upchurch**

Michael Upchurch is a certified mediator and since 1993 has mediated approximately 1600 disputes of all types. Michael's mediation experience includes resolving disputes and litigation involving, and between, governmental agencies and departments such as ADEM, the Alabama Attorney General, and the United States Department of Justice. He also mediates cases on appeal for the Alabama Supreme Court and Eleventh Circuit Court of Appeals and maintains an active trial practice in addition to his mediation and arbitration.

*Upchurch***Marty Van Tassel**

Marty Van Tassel became a mediator in 1996. He started practicing mediation full-time in 1999, covering a wide variety of complex and multi-party cases. His extensive trial experience, together with his extensive experience as a mediator, give him the ability to work with all parties to achieve a satisfactory resolution for all concerned.

*Van Tassel*



Access to Justice and Online Dispute Resolution

By Judge Brent Craig and Chris Colee

Access to justice – that has been a recurring theme

of Alabama Supreme Court Chief Justice Tom Parker. For a *pro se* litigant in a small claims case in Alabama, access to justice can often be difficult because it requires missing work, driving to the courthouse, and waiting with others to discuss a settlement with the plaintiff's attorney.

Due to the high caseloads in district court, efficiency is vital to clear cases in a timely manner. Alabama's Small Claims Online Dispute Resolution System (ODR) was created to serve both of these needs by saving the *pro se* litigant from missing work and by efficiently disposing of cases as quickly as possible. An added benefit to ODR is it saves creditor attorneys trips to the various courthouses where they have cases pending.

The ODR pilot program began in the Morgan County District

Court in March 2022. To date, the pilot program has expanded into seven additional counties with over 2,200 cases settling statewide through ODR. Judges, court clerks, and programmers meet every Thursday via Zoom to discuss any technology issues, needed changes, and future additions.

The ODR process is simple and straightforward. When the defendant is served with the summons and complaint, the defendant also receives instructions on how to go online to file an answer online and engage in settlement discussions with the plaintiff. The defendant is free to instead file a written answer with the court and bypass ODR. Statistically, the majority of defendants (who file an answer with an ODR-eligible case) will do so through the ODR system. Most of them will do so from their smartphone.

In addition to filing an answer online, the defendant may propose a simple settlement offer to the plaintiff, specifying the total amount willing to be paid and whether the payment will be in a lump sum or a series of monthly payments. The system will send the offer to the plaintiff, who may accept it or reply with a counterproposal. Once the parties reach a settlement, the system will draft the settlement agreement for the parties to sign electronically. It will then forward the settlement agreement to the court in the form of a joint motion for settlement. The judge can accept the settlement and enter a preformulated order within a matter of seconds. It is worth noting here that neither the judge nor court personnel will have access to the settlement details unless an agreement is reached, only the litigants will be privy to that information.

In the pilot program, well over 60 percent of those who enter into ODR negotiations will settle their case. It has proven convenient. The very first settlement offer generated by a defendant was sent between 1:00 a.m. and 2:00 a.m. For litigants whose work hours make it difficult for them to appear in court, they may

enter into ODR negotiations any time of the day or night.

Of course, the parties are free to end settlement negotiations at any time and, if so, the court will be notified, and the case will proceed as it normally would with the parties needing to appear for trial at a future date.

Without ODR, how would the small claims litigants settle their case without appearing in court? In the vast majority of small claims cases the plaintiff (usually a creditor) is represented by an attorney and the defendant is *pro se*. To reach a settlement with payment terms involving a consent judgment, the attorney would need to contact the defendant, agree upon terms, draft a settlement agreement, and send that agreement to the defendant. Upon receipt, the defendant would need to sign the agreement and return it to the plaintiff's attorney, who would file it with the court. Of course, this process can take quite a bit of time, sometimes several days or longer. Due to their heavy

caseloads and the short time between service and the trial date, some creditor attorneys may find it impractical to pursue settlement before reaching the courthouse, as there simply isn't enough time. With the ODR system, the entire settlement process can be handled within a matter of minutes.

Another advantage of ODR for the plaintiff's attorney is that the defendant initiates the settlement negotiations. An attorney with hundreds of cases across the state can then respond only to those defendants who are genuinely interested in settling, making it a significant time saver.

Attorney Lydia Lake of Zarzaur & Schwartz, P.C. says ODR has been a "game changer" for her firm. "We have been big fans of ODR. It is so helpful for both sides and saves a ton of time. We would love for it to expand to other counties. Most defendants set up payment arrangements with our firm. I think allowing

When the defendant is served with the summons and complaint, the defendant also receives instructions on how to go online to file an answer online and engage in settlement discussions with the plaintiff.

the defendants the option to do ODR would be valued instead of having to try to get in touch with a firm or appear for court and take time off work.”

In addition to not missing work to go to court, the defendants also have a financial incentive to utilize ODR. Built into the settlement agreement is a waiver of post-judgment interest provided the defendant does not miss any payments.

While every county is different, in Morgan County a typical district court civil docket is composed of both district court civil (DV) and small claims (SM) cases with the total number of cases on the docket being around 15 cases. They are designed to be half-day dockets. To date, since ODR’s induction, 392 cases have been settled through ODR in Morgan County. Those parties were not required to appear, and those cases were removed from the docket. Again, every county is different, but in Morgan County that equals approximately 26 dockets (392 divided by 15) that were not necessary, benefitting not only those litigants, and court personnel but also the litigants who need a trial. Those cases are getting set more quickly because there are additional available spots on dockets due to the ODR cases that were settled before trial and removed from the docket.

In Morgan County, the number of failures to appear on the day of court are unverifiable, but it certainly appears there are fewer failures to appear at trial since ODR has been implemented. This is expected. Defendants who file an answer through ODR and state they want a trial (and, a very small number who did not end the settlement process and did not settle) will remain on the docket. These litigants are far more likely to appear in court than the entire class of defendants.

The next phase of Small Claims ODR is the payment module. Once this is implemented, at the defendant’s option, she may pay online. Provided all payments are made through the ODR payment module, the system

will monitor the payments, send reminders, and maintain the current balance. The court clerk can send disbursements to the plaintiff’s attorney. This aids the plaintiff in the collection and benefits the defendant by adding the convenience of paying from home or wherever she has a smartphone or computer.

Those cases are getting set more quickly because there are additional available spots on dockets due to the ODR cases that were settled before trial and removed from the docket.

Another tool that provides online access to justice is the Alabama Online Traffic Resolution system (OTR). OTR is the online resolution system for traffic tickets that do not require a court appearance and are issued by county sheriffs and state troopers. OTR started as a pilot project in Morgan County in December 2020. Pike and Tuscaloosa counties followed in February of 2021. The program added another 27 sites as Pilot Project testers in 25 counties from June 2021 to December 2022.¹ Counties were able to voluntarily join OTR

starting on February 1, 2023, and an additional 13 sites had joined as of March 2024.²

When the ticket is issued in a participating county, the officer issuing the ticket provides the OTR website address <https://traffic.alacourt.gov>. The website lists the counties that have OTR available and contains more general information. After entering her information online, the defendant has multiple options depending on the county in which the ticket was issued. A defendant may plead guilty and pay in full or request a payment plan. The defendant may be eligible to request driving school. The system may offer the ability to correct issues such as improper window tint, failure to show proof of insurance or driver’s license, or improper tag. Alternatively, the defendant may still contest the ticket and leave it set for trial.

OTR has proven an effective tool in disposing of traffic tickets outside of the courtroom and the Circuit Clerk’s offices. According to the Alabama Administrative Office of Courts (AOC), over 76,000 tickets have been issued by state troopers and sheriff’s offices in all sites participating in OTR as of March

2024. AOC has an impressive array of tools to monitor and break down every piece of data related to each ticket and to track them from entry into the system to disposal. Of the 76,000 tickets, 45,652 were for speeding less than 25 mph over the speed limit. Another 11,658 were for other speeding-related violations and 2,613 violations were for driving with an expired tag.

From the beginning of OTR to March 2024, the following data was collected:

- 27,954 defendants elected to pay their tickets in full prior to their court date;
- 25,449 defendants requested to attend Defensive Driving School;
- 7,735 defendants uploaded their Certificate of Completion to the court;
- 9,113 defendants requested more time to pay their tickets;
- 1,702 people uploaded their proof of insurance;
- 960 uploaded proof of registration;
- 449 uploaded proof of their driver's license; and, 405 uploaded evidence that they remedied their equipment or window tint violation prior to their court date.

Tuscaloosa County, one of the counties with a larger volume of tickets issued, piloted OTR early in the process. Judge Joanne Jannik, a District Court Judge in Tuscaloosa County, stated that the traffic ticket dockets in Tuscaloosa can have as many as 400 to 500 defendants. "We want everyone to be in compliance, but we also want to help them in this process," Judge Jannik said. "So, not only is OTR beneficial to the courts, but it prevents making people come to court to sit three to four hours waiting to see a judge just to request a payment plan or show proof of insurance."

Unlike the courts, online dispute resolution can operate 24 hours a day, 7 days a week. Kim McCarson, the Circuit Clerk of Calhoun County said, "OTR is an easy and convenient method for our citizens to resolve traffic citations without ever coming to the courthouse. The OTR system is extremely beneficial, not only to our citizens but to the court system as a whole."

Both ODR and OTR are not finished products. AOC is always working with the court system to improve processes and accessibility. Jurisdictions in other

states and around the world have used online dispute resolution in areas such as family law, criminal law, and other areas. Some legal online dispute resolution systems have utilized mediators or facilitators to work with the parties to help in the negotiation process. Although in the early stages, AI is already being used in alternative dispute resolution. The Alabama Administrative Office of Courts IT staff has played a key role in making ODR and OTR a reality in Alabama. As these technologies continue to evolve, Alabama continues to look for ways to increase access to justice and to maximize efficiency. ▲

Endnotes

1. The following counties/sites were added as follows: June 2021 - Autauga, Baldwin, Bibb, Blount, Calhoun, Cherokee, Etowah (withdrew in April 2023), Greene, Talladega, Sylacauga, Washington; September 2021 - Perry, Colbert; October 2021 - Lee, Montgomery; November 2021 - Madison; March 2022 - Clay, Coosa, Geneva, Shelby; April 2022 - Cullman; May 2022 - Chambers, Cleburne, Ashville, Pell City; November 2022 - Mobile; December 2022 - Lauderdale.
2. Sites added to OTR after February 1, 2023: Chambers, Clarke, Covington, Dallas, Escambia, Franklin, Geneva, Jefferson, Lawrence, Limestone, Lowndes, Marion, and Russell.

Brent Craig has held the office of Morgan County District Judge, Place 1 since 2009. He has served as Chairman of the Alabama Administrative Office of Courts Technology Commission since 2019. He is a graduate of Samford University's Cumberland School of Law and Auburn University.



Chris Colee is the practice management advisor for the Alabama State Bar and has led the Law Practice Management program since Dec. 2021. Chris provides law practice management advice and assistance to bar members and manages the bar's member benefits. Chris started his legal career as a prosecutor and later ran his own solo practice. Prior to working for the bar, Chris was a staff attorney with the Alabama Administrative Office of Courts for over seven years, primarily working with AOC's IT division. Chris has degrees from the University of Alabama and the University of Nevada Las Vegas, and graduated from Jones School of Law in 2005.





COLLABORATIVE LAW

By Frances Ross Nolan and Virginia E. Miller

What is Collaborative Law?

Collaborative law is an extra-judicial, non-adversarial, and interest-based approach to resolution of legal conflict that was created in 1990 by veteran Minnesota divorce attorney, Stuart Webb.¹ Inspired by the near universal dissatisfaction of his clients, Webb sought a new approach to conflict resolution that might yield better, more durable outcomes.² Webb surmised that lawyers could limit the scope of representation to become settlement specialists who would decline to litigate the dispute if settlement failed, which would, in turn, allow them to work

with parties to explore a broader range of solutions not available under the law.³ With lawyers and parties all unified under the goal of settlement, Webb sought to achieve agreements that could be viewed by both parties as a “win.”⁴

Is Collaborative Law Ethical?

In short, yes! The American Bar Association (“ABA”) Standing Committee on Ethics and Professional Responsibility explicitly deemed collaborative law an ethical practice of law in Formal

Opinion 07-447, issued in August 2007.⁵ In addition to the ABA, eight states have issued ethics opinions deeming collaborative law ethical.⁶

Today, collaborative law is an accepted alternative approach to resolution of legal conflicts that has been blessed by the American Bar Association.⁷ The Uniform Law Commission adopted the Uniform Collaborative Law Act (“UCLA”) in 2009 based on three years of work and input from experienced collaborative lawyers and legal experts.⁸ The National Conference of Commissioners on Uniform State Laws finalized the UCLA and Uniform Collaborative Law Rules in 2010. Twenty-eight states, including Alabama, have adopted the UCLA.⁹

The Nuts and Bolts

Collaborative law is an alternative dispute resolution method which occurs completely outside the litigation process without the use of a third-party decision maker.¹⁰ The collaborative case proceeds without entering the court system. Collaborative law engages two or more clients, depending on the type of case, and their respective lawyers, in a series of conferences wherein the attorneys and the clients work towards resolving their issues in order to reach an agreement.¹¹ The conferences are held privately in conference rooms or other meeting spaces at one of the lawyer’s offices and not in a courthouse. The conferences are used as negotiation

sessions for the parties with the assistance of their respective attorneys.

Collaborative divorce utilizes the same process, but in addition, relies on an interdisciplinary team.¹² The interdisciplinary team in collaborative divorce is comprised of two clients, their respective attorneys, and any necessary financial, vocational, and psychological experts.¹³ The clients and their respective attorneys make a mutual decision as to what additional team members are needed beyond the client’s two respective lawyers. Typically, in addition to the clients and their attorneys, the interdisciplinary team is comprised of a divorce coach and a financial neutral. The divorce coach is a mental health professional who is often a psychologist or licensed professional counselor. Two models exist with regard to the mental health professional. In the one coach model, one mental health professional is the neutral coach for the interdisciplinary team.¹⁴ In the two-coach model, each party has a coach and the coach is not neutral or detached as in the one coach model.¹⁵

During the conferences, the parties, their respective attorneys, and any other members of the interdisciplinary teams may speak freely to each other.¹⁶ Opposing counsel may speak directly to a client during a conference as long as the client’s respective attorney is present. Despite being able to speak to opposing parties during conferences, the attorneys are not neutrals and do not have comparable duties to both parties. The lawyers

are advocates for their respective clients and promote an outcome which serves their client’s interest.¹⁷ Outside of the conferences, the attorneys communicate with each other, and the clients may communicate with each other as well.¹⁸ Moreover, if the case has an interdisciplinary team, the members of the team may communicate with parties directly. For example, the financial neutral may communicate with the parties regarding records to be reviewed in preparation for a conference. Formal discovery is not pursued in this process. Because the parties have agreed to operate in good faith at the onset, they voluntarily disclose to each other all information and documents requested by anyone on the interdisciplinary team.¹⁹

Prior to each conference, an agenda is drafted and circulated to the members of the interdisciplinary team and the parties for review and approval. After each conference, the professionals debrief together in order to mutually process the events that occurred during the meeting.

In the collaborative divorce process, the petition for divorce is not filed unless the process ends in a resolution similar to an uncontested divorce.²⁰ If the process ends with an agreed resolution, the written agreement is drafted, reviewed by the parties and their attorneys and, once executed, filed along with the divorce petition and any other necessary documents (such as child support forms).²¹

If the collaborative process breaks down and does not end in

resolution, the clients engage new counsel and proceed to litigation. All parties are contractually bound to keep confidential any information revealed during the collaborative process.²²

Understanding Alabama's Statute and Rules for Collaborative Law Practice

As a relatively early adopter of the UCLA and the Alabama Rules of Privilege in Collaborative Law Practice, it is important for all lawyers to understand how to engage in this practice ethically and in a manner that is consistent with the Alabama rules and statute.

The Alabama UCLA ("AUCLA") commences by defining the terms common to collaborative work,²³ the most important of which are the "collaborative law participation agreement"²⁴ and the "collaborative law process."²⁵ The AUCLA requires that a collaborative law participation agreement²⁶ ("PA") be in a record that identifies the collaborative lawyer that represents each party and that is signed by the parties.²⁷ The PA is the contract entered into between the parties and their lawyers at the outset of a collaborative process. It must state the parties' intention to resolve the matter through a collaborative law process and contain a statement by each collaborative lawyer confirming their collaborative representation.²⁸ Additionally,

The termination or withdrawal of a collaborative lawyer from the process does not affect an automatic termination of the collaborative process.

the PA must articulate the obligation of the parties to seek alternate counsel for litigation of their case if the matter cannot be resolved amicably, contain a statement explaining that each party is expected to voluntarily produce any and all documents and/or information relevant to resolution of their dispute, and express that withholding any such documents or information would be grounds for termination of the process.²⁹

The AUCLA defines the Collaborative law process as "a procedure intended to resolve a collaborative matter without intervention by a tribunal" in which the participants "sign a collaborative law participation agreement" and "are represented by collaborative lawyers."³⁰ Experience indicates that attempts to engage in a collaborative process in the absence of specific training in collaborative law may run afoul of Rule 1.1 of the Alabama Rules of Professional Conduct, which requires that, "A lawyer shall provide competent representation to a client.

Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."³¹ And when the scope of the representation is limited as in collaborative work, the Rule provides that, "competence means the knowledge, skill and thoroughness and preparation reasonably necessary for such limited representation."³²

Although the collaborative process has found application in a number of legal practice areas, the most successful by far has been in the context of family law. The AUCLA defines a "Collaborative Matter" as "a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is described in a collaborative law participation agreement and arises under the family or domestic relations law of this state."³³

The collaborative law process commences with execution of a PA and is concluded by a signed record of the agreements reached by the parties, or if applicable, upon termination of the process.³⁴ The process can be terminated by a party at any time, for any reason,³⁵ but must be done in writing.³⁶ The collaborative process is automatically terminated upon unilateral commencement of a court proceeding related to the collaborative matter.³⁷ The termination or withdrawal of a collaborative lawyer from the process does not affect an automatic termination of the collaborative process. A lawyer's termination or withdrawal from the process must also be noted to all in writing,³⁸ and in such event, the process continues if a successor collaborative lawyer is engaged and the parties consent to continuing.³⁹

The intent is to provide time for selection of another collaborative lawyer without pressure to do so more expeditiously than possible. In the event a new collaborative lawyer is selected, the replacement lawyer's involvement must be confirmed with the same formality as the original lawyer by reaffirmation of the PA, and the requirements it entails.⁴⁰

Courts have no statutory authority under the AUCLA to order participation in a collaborative law process over a party's objection. Although mediation is also a voluntary method for resolving disputes, Alabama courts are statutorily empowered to order participation in mediation upon motion of either party, or by the court's election, even if there is an objection to doing so.⁴¹ This makes sense given the costs associated with employment of collaborative professionals and the voluntary nature of the discovery process required in collaboration.

It is possible to commence a collaborative law process when there is a matter pending before a tribunal and in such instance, the parties must promptly file notice of their PA after it has been signed; under the AUCLA, such a filing operates as an application for a stay of the proceedings.⁴² The parties are also required under the AUCLA to notify the tribunal of conclusion of the process by agreement or in the event of termination.⁴³ The tribunal may require status updates, but cannot seek or consider any "report, assessment, evaluation, recommendation, finding, or other communication regarding the collaborative law matter or process."⁴⁴ The tribunal is required to provide

notice and an opportunity to be heard before dismissing a stayed collaborative law matter for failure to prosecute or delay.⁴⁵

In the event of emergency circumstances relative to the safety, welfare or interest of a party or a child of either party, a tribunal may issue emergency orders.⁴⁶ A collaborative lawyer may also move the tribunal for approval and adoption of agreements reached in the collaborative process.⁴⁷

Lawyers are cautioned by the AUCLA to make sufficient inquiry to ensure neither party to a prospective collaborative process has a history of coercive or violent conduct in their relationship, and must continue to assess such concerns throughout the process.⁴⁸ If the lawyer has reasonable belief that the prospective client has a history of such conduct toward the other party, the lawyer is prohibited under the AUCLA from commencing (or continuing) the collaborative process unless the lawyer reasonably believes the safety of the vulnerable party can be adequately protected.⁴⁹

One of the greatest appeals of the collaborative law process for parties is confidentiality. Under the Alabama Rules of Privilege in Collaborative Law Practice, collaborative communications, including those of a nonparty participant, are not discoverable or admissible in evidence.⁵⁰ Any evidence or information that is otherwise admissible or subject to discovery (such as bank records or tax returns, for example), are not protected solely because of disclosure in a collaborative process. The parties are the holders of this privilege. Attorneys in the collaborative process maintain the

traditional attorney-client privilege which allows the client to waive the privilege, even if the attorney objects.⁵¹

Nonparty participants are encompassed by these rules of privilege in recognition of the fact that the collaborative law process often requires mental health and financial professionals to work in tandem with lawyers in their effort to assist the parties in achieving an amicable resolution.⁵²

A privilege may be waived only if expressly waived by all parties, including applicable nonparty participants.⁵³ If a person makes a disclosure or representation about a collaborative communication that prejudices another person in a proceeding, the disclosing party may not assert privilege, but only inasmuch as is required to allow the prejudiced person to respond.⁵⁴

While the statute and associated rules provide legitimacy and guardrails for the practice of collaborative law in Alabama, they do not provide any guidance regarding generally accepted or best practices in the implementation of a collaborative law process.

Conclusion

Collaborative law is not usually appropriate for cases involving domestic violence, serious mental health issues, chemical dependency, or severe imbalances of power between the parties.⁵⁵ However, successful collaborative cases may require less time and money, preserve family relationships, offer better pacing and more self-direction, and often provide better outcomes than litigated cases.⁵⁶ ▲

Endnotes

1. Gregory R. Solum, *Collaborative Law: Not Just for Family Lawyers*, 67-FEB BBMN, 29 (2010).
2. *Id.*
3. *Id.*
4. *Id.*
5. Formal Ethics Opinion 07-447, American Bar Association (2007).
6. According to the ABA Standing Committee on Ethics and Professional Responsibility, collaborative law is ethical as long as: "[b]efore representing a client in a collaborative law process, a lawyer [advises] the client of the benefits and risks of participation in the process. If the client has given his or her informed consent, the lawyer may represent the client in the collaborative law process. A lawyer who engages collaborative resolution processes still is bound by the rules of professional conduct, including the duties of competence and diligence." The Uniform Collaborative Law Act Frequently Asked Questions, Uniform Law Commission 1-11, 3.
7. RESOLVED, that the American Bar Association approves the Uniform Collaborative Law Rules and Uniform Collaborative Law Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as appropriate Rules or an appropriate Act for those states desiring to adopt the specific substantive law suggested therein. *ABA House of Delegates, Resolution No. 703, Adopted February 5, 2024*
8. *See generally Uniform Collaborative Law Act*, 38 HOFLR 421 (2009).
9. Alabama adopted the Alabama Uniform Collaborative Law Act, § 6-6-26 et seq., Ala. Code 1975 which went into effect January 1, 2014, and adopted the Alabama Rules of Privilege in Collaborative Law Practice February 9, 2015. • Florida (2016); Louisiana (2024); Kentucky (2024); Missouri (2024); New Hampshire (2021); Colorado (2021); Virginia (2021); North Carolina (2020); Tennessee (2019); Pennsylvania (2018); New Mexico (2017); Illinois (2017); North Dakota (2016); Montana (2015); Arizona (2015); Michigan (2014); New Jersey (2014); West Virginia (2023); Washington (2013); Ohio (2013); District of Columbia (2012); Hawaii (2012); Texas (2011); Nevada (2011); Utah (2010); and Massachusetts (2020).
10. Susan Daicoff, *Law as a Healing Profession: The "Comprehensive Law Movement"*, 6 Pepp. Disp. Resol. L.J. 1, 24 (2006).
11. *Id.* at 25
12. Gary L. Voegelé et al., *Family Law: Collaborative Law: A Useful Tool for the Family Law Practitioner to Promote Better Outcomes*, 333 Wm. Mitchell L. Rev. 971, 1012 (2007); note 9, at 976 n.25 (citing authority at n.25)
13. *Id.*
14. Daicoff, *supra* note 10, at 27
15. Voegelé et al., *supra* note 12, at 976-77
16. Ted Schneyer, *The Organized Bar and the Collaborative Law Movement: A Study in Professional Change*, 50 Ariz. L. Rev. 289, 298-99 (2008) note 62, at 297.
17. Pauline H. Tesler, *Collaborative Law: What It is and Why Family Law Attorneys Need to Know About It*, 13 Am. J. Fam. L. 215 (1999): note 4, at 144.
18. Daicoff, *supra* note 10, at 27
19. Jennifer M. Kuhn, *Working Around the Withdrawal Agreement: Statutory Evidence Safeguards Negate the Need for a Withdrawal Agreement in Collaborative Law Proceedings*, 30 Campbell L. Review 363, 366 n.21 (2008) note 40, at 371
20. ALA. CODE § 6-6-26.04 (comment) ("read together, these sections allow, for example, collaborative lawyers in divorce proceedings to present uncontested settlement agreements to the court for approval and incorporation into a court order as local practice dictates.")
21. *Id.*; *see also* ALPRAC-FAM § 34:5 (2023).
22. *See* Voegelé et al., *supra* note 12, at 1021-22
23. ALA. CODE § 6-6-26.01 (1975).
24. *Id.* at 26.01(2).
25. *Id.* at 26.01(3).
26. *Id.* at 26.03.
27. *Id.* at 26.03(a).
28. *Id.*
29. *Id.*
30. ALA. CODE § 6-6-26.01(3) (1975).
31. AL ST RPC Rule 1.1.
32. *Id.*
33. ALA. CODE § 6-6-26.01(5) (1975).
34. *Id.* at 26.04.
35. *Id.* at (f) .
36. *Id.* at (d)(1).
37. *Id.* at (d)(2)(A).
38. *Id.* at (d)(3).
39. *Id.* at (g).
40. *Id.*
41. Alabama Mandatory Mediation Act, Ala. Code § 6-6-20 Alabama Code (1975).
42. ALA. CODE § 6-6-26.05(a) (1975).
43. *Id.* at (b)
44. *Id.* at (c)-(d)
45. *Id.* at (e)
46. ALA. CODE § 6-6-26.06 (1975).
47. *Id.* at 26.07.
48. *Id.* at 26.14(a)-(b).
49. *Id.* at 26.14(c).
50. Ala. R. of Priv. in CLP, Rule 2
51. Ala. R. of Priv. in CLP, Rule 2(c).
52. *See* Alabama Committee Comment to Rule 2, Ala. R. of Priv. in CLP
53. Ala. R. of Priv. in CLP, Rule 3(a)
54. *Id.* at Rule 3(b).
55. *See* Voegelé et al., *supra* note 12, at 1012.
56. *Id.*

Frances Ross Nolan has practiced in the



area of matrimonial and family law exclusively since 2005. She and her partner, Leigh Reynolds Byers founded Nolan Byers, PC in March 2013. Nolan

has been a leader and moving force in the effort to make the Collaborative process available to Alabama families. A certified Collaborative lawyer and family law mediator, she co-founded and served as inaugural president of Alabama's first Collaborative Practice Group, Birmingham Collaborative Alliance.

Virginia Miller is currently a partner at



Anderson Miller LLC in Birmingham. She practices primarily in domestic relations, which encompasses all types of family law proceedings. She has extensive

training in collaborative law and is a registered mediator in Alabama. She has had the opportunity to serve on the Birmingham Collaborative Alliance's Executive Board and the Executive Board of the Alternative Dispute Resolution Section.



ANNUAL MEETING HIGHLIGHTS

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2024 ALABAMA STATE BAR ANNUAL AWARDS

To learn more about award recipients, visit www.alabar.org/2024-alabama-state-bar-annual-awards/

JUDICIAL AWARD OF MERIT

Judge John H. Graham

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



MICHAEL D. ERMERT AWARD OF MERIT

Cassandra W. Adams

The Michael D. Ermert Award of Merit is the highest honor given by the Alabama State Bar to a lawyer and serves to recognize outstanding constructive service to the legal profession in Alabama.



COMMISSIONERS' AWARD

Felicia A. Long

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



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

Sam Crosby

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



ANTHONY "TONY" MCLAIN PROFESSIONALISM AWARD

John Watson

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



PRESIDENT'S AWARD

The President's Award is presented to members of the bar who best exemplify the Alabama State Bar motto, "Lawyers Render Service." The recipients are chosen by the current bar president. The 2024 recipients, selected by 2023-2024 President Brannon Buck are:

L. Conrad Anderson IV
Manish Patel
Robin Wolfe



Anderson



Patel



Wolfe

PRO BONO AWARDS

ALBERT VREELAND PRO BONO AWARD

David Weston

The Albert Vreeland Pro Bono Award is presented to an individual who demonstrates outstanding pro bono efforts through the active donation of time to the civil representation of those who cannot otherwise afford legal counsel and by encouraging greater legal representation in, and acceptance of, pro bono cases.



LAW FIRM/GROUP AWARD

Tuscaloosa County Bar Association

MEDIATOR AWARD

Holly L. Sawyer

LAW STUDENT AWARD

Rolanda Tina Turner

PUBLIC INTEREST ATTORNEY AWARD

Michael L. Forton



Tuscaloosa County Bar Association



Sawyer



Turner



Forton

WOMEN'S SECTION AWARDS

MAUD MCLURE KELLY AWARD

Honorable Inge Prytz Johnson

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



SUSAN B. LIVINGSTON AWARD

Kim Bessiere Martin

This award is presented by the Women's Section in memory of Susan Bevill Livingston who practiced law at Balch & Bingham. The criteria for this award are a continual commitment to those around her as a mentor, a sustained level of leadership throughout her career, and a commitment to the community in which she practices.



Martin (center)

JUSTICE JANIE L. SHORES SCHOLARSHIP

Hannah Hart and Sandy Kimble

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



Hart and Kimble

ALABAMA LAWYER ASSISTANCE PROGRAM AWARD

JEANNE MARIE SERVICE AWARD

Johnny V. Berry and Robert E. Clute, Jr.

This award recognizes exemplary service to lawyers in need in the areas of substance abuse and mental health and is presented by the Alabama Lawyer Assistance Program Committee.

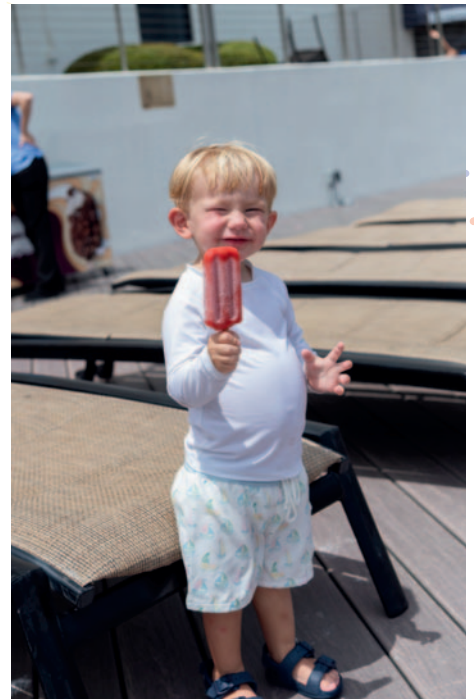


Johnny V. Berry and Robert E. Clute, Jr. with ALAP Interim Director Shannon Knight.

Note: The Alabama State Bar will honor 50-year members at our inaugural Milestone Luncheon in lieu of a presentation at the annual meeting. This change aims to provide a more fitting and expanded celebration for honorees. The first luncheon will be held in September at the Renaissance Birmingham Ross Bridge Golf Resort and Spa. Look for photos and a list of recognized individuals in the November magazine.

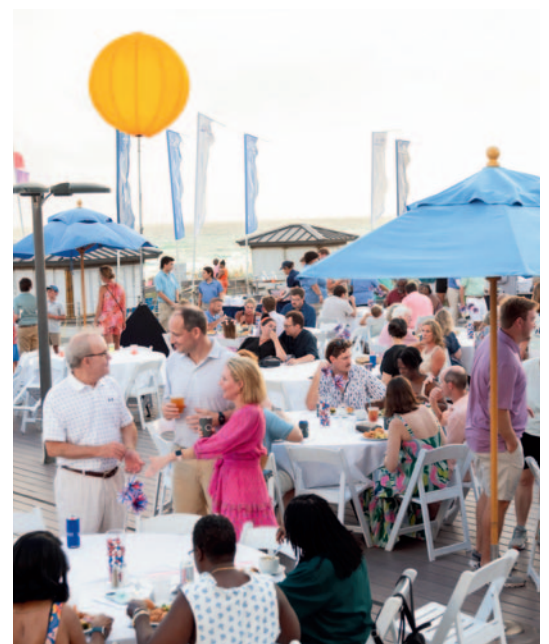














Thank you, Pro Bono Mediators

The Alabama Center for Dispute Resolution thanks the following mediators who performed pro bono mediations last year:

Cassandra Adams
Stephanie Bain
John Bentley
Nettie Blume
Sally Bowers
Herbie Brewer
Jenna Brooks Smith

John Bull
John Bush
Margaret Casey
Lynne Coker
Louis Colley

C. Kevin Coonrod
Samuel Crosby

Katie Crow
Rudene Crowe

Latrice Dawson-Chaney

Kelli Day

Tonya Denson

LaSheryl Dotch

Melanie Duckworth

Christine Evangelides Dodd

James Fancher

R.A. "Sonny" Ferguson

J. Langford Floyd

Patricia Fraley

James Fullan

Ronald Gault

Louis Geiger

Amy Gentle

Edgar Gentle

Randy Gibson
Jeremy Gillentine
Rebekah Graham
Christy Graham
Brett Granger
William Gray
Fletcher Green

Sandra Gregory
Annie Guthrie
Alison Herlihy
Thomas Hinote
L.D. Holt

Carmen Howell
Sam Irby

Sharon Johnston
Christopher Jones

Judith Kesterson

Ross Kinder

John Lewis

Amanda Lewis

Jon Lewis

Larry Madison

Joseph "Trey" McClure

Sonia Merchant Mawani

R. Boyd Miller

Tamika Miller

James Owens

Hon. Deborah Bell Paseur

Patrick Pendleton

A. Riley Powell

Robert Reed

Ferris Ritchey
Terrence Robinson
Theodore Roose
Samantha Rush
James Russell
Malik Sanders
Holly Sawyer
Yvonne Saxon
Joseph Allen Schreiber
Melissa Schultz-Miller

Sara Senesac
Kristina Sexton
Gerald Sills

Janine Smith
Moriah Smoot
Angeline Sperling

Fred Steagall
Gerald Stringer
Robert Thomas

Kelly Ann Traver
James Turnbach
George Van Tassel

Gregory Vaughan
Barbara Wade
Rebecca Walker

H. Bryan Wallace
James Walter, Jr.
Thomas Whatley

Faith Whidden-Buster
LaShunta White-Boler
Theresa Williamson



PRO BONO *month*

CLE SERIES
2024

THE PRO BONO CELEBRATION TASK FORCE
presents
5 NEW CLE PROGRAMS

EACH WEDNESDAY IN
OCTOBER AT NOON

Check The Sidebar for registration details.



BAR BRIEFS

Please email announcements to
melissa.warnke@alabar.org.



Alabama Law Foundation 2024 Fellows

The Alabama Law Foundation established the Fellows program in 1995 to recognize esteemed Alabama attorneys for their notable contributions to both their profession and local communities. Membership is limited to no more than 1 percent of Alabama State Bar members.

The Alabama Law Foundation is pleased to announce the following attorneys were selected for the ALF Fellows 2024 class:

Dean William Styne "Bill" Brewbaker III - Tuscaloosa
 Mr. Jeffrey Scott "Jeff" Brown - Decatur
 Mr. David Jonathon Canupp - Huntsville
 Ms. Elizabeth Brannen "Liz" Carter - Montgomery
 Mr. Joel Davidson Connally - Montgomery
 Mr. Phillip Dale Corley Jr - Birmingham
 Honorable Vicki Marie Davis - Mobile
 Honorable Christy Ollinger Edwards - Pike Road
 Mr. Walter Brad English - Huntsville
 Honorable Gregory Oswald Griffin Sr. - Montgomery
 Mr. Edgar Robert "Ed" Haden - Birmingham
 Mr. David Patrick "Pat" Harris - Pike Road
 Ms. Eileen Lucille Harris - Prattville
 Mr. William Michael "Mike" House - Birmingham
 Honorable Linda Collins Jensen - Mobile
 Ms. Felicia Abernathy Long - Montgomery
 Honorable James Christopher "Chris" McCool - Gordo
 Honorable Sibley Grady Reynolds - Clanton
 Ms. Megan Byrne Rhodebeck - Montgomery
 Ms. Lindsay Lankford Sinor - Birmingham
 Mr. Scott Burnett Smith - Huntsville
 Honorable Sarah Hicks Stewart - Mobile
 Mr. Brian Paul Strength - Tuskegee
 Mr. Christopher William "Chris" Weller - Montgomery
 Honorable Mary Becker Windom - Montgomery

What are Bar Briefs?

We are excited to announce the return of *Bar Briefs*. We hope you'll help us fill this space with your achievements, accolades, and honors. We particularly welcome news from local bar associations, practice-area associations, and other affinity groups.

We look forward to celebrating the accomplishments and good news of our members in this section!

ALI Announces Will Hill Tankersley as a Fellow

The Alabama Law Institute (“ALI”) works to clarify and simplify the laws of Alabama, to revise outdated laws, and to fill gaps in areas of the law that are confusing or incomplete. The 2024 Annual Meeting of the Alabama State Bar marked the 55th anniversary of work for the ALI. It began operations in 1969 after having been created by statute as the official law reform agency of the State of Alabama. Housed in the Law Center at the University of Alabama, the organization is guided by its Director Othni Lathram and its Deputy Director, retired Alabama Circuit Judge David Kimberley. This year, in honor of his service to the community, the lawyers of Alabama, and the Institute, the ALI selected Will Hill Tankersley as a Fellow. He is only the second person to receive that honor in 20 years.

ALI Membership is limited to 150 members of the Alabama State Bar who serve for fixed terms. In addition, the ALI is composed of the Justices of the Alabama Supreme Court; judges of courts of appeal, and circuit courts; federal judges domiciled in Alabama; full-time faculty members of Cumberland Law School and the University of Alabama School of Law, members of the ALI Council; and the members of the legislature who are attorneys licensed to practice in Alabama. The ALI Council, which is the organization’s governing body, is composed of six practicing attorneys from each congressional district along with representatives from the appellate courts, the Attorney General’s office, the Alabama State Bar, law schools, the Alabama Legislature, and the governor’s office.

The ALI mission covers a broad range of legislative services, which include conducting training workshops, producing handbooks (and other publications), providing legislative analysis, and administering a legislative intern program. The ALI’s primary mission is to draft legislation for the Legislature’s consideration. This task is carried out with the help of hundreds of Alabama lawyers (on a pro bono basis), who are led by ALI members. The lawyers on these ALI drafting committees are hand-picked by the ALI to work collaboratively on committees to draft new legislation or modify uniform laws to fit Alabama’s evolving needs. Alabama lawyers with subject-matter expertise are called upon to lead these committee efforts and produce legislation for sponsorship and passage by Alabama legislators.

Over the lifetime of the ALI, tens of thousands of hours and millions of dollars of lawyer time have been devoted to



Tankersley (center)

the ALI bill-drafting efforts. ALI bill-drafting committees provide an excellent opportunity for the mentorship of young lawyers to work with subject-matter experts throughout the State. Additionally, the participation of Alabama lawyers on ALI legislative drafting committees fills a void created by the significant decrease in recent decades of lawyer legislators.

The ALI bill-drafting process includes building committees of lawyers who represent the broad scope of stakeholders and perspectives for the subject matter under consideration. While their views may differ dramatically, these ALI committee members must work collaboratively to reach a consensus on complex legal issues. At the end of this process, which sometimes takes years, a carefully considered and thoroughly vetted piece of proposed legislation is presented for the Alabama Legislature’s consideration. Decades of dedicated, skillful, and non-partisan work have made ALI legislation the gold standard of solid, practical, and much-needed legislation. Among the many landmark pieces of legislation drafted by the ALI that were passed into law are the Criminal Code, the Alabama Business and Nonprofit Entities Code, the Uniform Commercial Code, the Probate Code, the Landlord-Tenant Act, the Elections Code, the Condominium Act, a revision of Alabama’s Non-Compete Law, a Right of Publicity Act, and many others.

This year, Will Hill Tankersley (known to all as “Will Hill”) joins Scott Ludwig of Huntsville as the only two ALI Fellows in the last two decades. At the ALI meeting in June 2024, Othni Lathram mentioned the various ALI bills for which Will Hill had served as a committee chair or a member in his areas of subject matter expertise: intellectual property, fair competition, and civil litigation. Othni also observed that Will Hill has led or served on every intellectual property pattern jury instruction drafting committee for the State of Alabama and the United States Court of Appeals for the Eleventh Circuit. He is the only lawyer ever to have done so. Othni likewise described Will Hill’s long history of leadership and service, including in the United States Army as a Mechanized Infantry Platoon Leader as part of the Rapid Deployment Force stationed in Fort Stewart, Georgia; a Special Forces Officer on a Mountain Warfare Team in Bad Tolz, West Germany; and an Armored Company Commander who led an Alabama National Guard tank company on a large training exercise in the Mojave Desert. After 11 years of service, Will Hill took inactive status, having achieved the rank of Major.

Othni also described Will Hill’s public service as a retired lawyer living in Autauga County. That work has included being the senior warden of St. John’s Episcopal Church of Montgomery, serving on the board of the Alabama Law Foundation, and administering a leadership and service scholarship at The Montgomery Academy. Othni closed by describing Will Hill’s work over the last two years as a Session Counsel advising the rules chairman in the Alabama House of Representatives.

(Continued from page 271)

In his acceptance remarks, Will Hill told the gathered ALI members: "I have always known that the ALI is viewed by the Alabama Legislature as being the source of solid, careful, and important legislation. What I have come to learn working as a session counsel is that an ALI bill comes to the Legislature with a presumption of excellence. That well-deserved reputation is the product of the unheralded contributions of so many superb Alabama lawyers. The ALI is a great force for good for the citizens of this State. Thank you for this honor. It has been a privilege to be part of this enterprise."

Bradley Arant Boulton Cummings LLP

Bradley Arant Boulton Cummings LLP announces that Birmingham partner Anne Marie Seibel has been elected as a member of The American Law Institute (ALI).

Alabama Defense Lawyers Association Elects 2024-2027 Officers, District Directors, And Young Lawyers Section Leadership

- The Alabama Defense Lawyers Association (ADLA) held its 59th Annual Membership Meeting and Elections on June 15, 2024, confirming a new slate of officers and directors at the close of the business meeting.
- Montgomery attorney Megan K. McCarthy of Ball Ball Matthews & Novak, PA has begun her term as president of the ADLA.
- Bains Fleming of Norman Wood Kendrick & Turner assumes the position of president-elect.
- Mark Debro of Grace Matthews and Debro in Huntsville was elected as secretary-treasurer.
- Jonathan M. Hooks is the immediate past president. Hooks is a partner at Weinberg Wheeler Hudgins Gunn & Dial, LLC in Birmingham.
- The ADLA welcomed the following new members of the Board of Directors to serve a three-year term ending in 2027:

- > District 1 Director: Travis Jackson is a partner at Lanier Ford Shaver & Payne in Huntsville.
- > District 2 Director: Jack Gray is a partner at Smith, Spires, Peddy in Birmingham.
- > District 3 Director: Jordan Speake Jenkins joined Hill Hill Carter Franco Cole and Black in 2017.
- > District 4 Director: Gaby Reeves of Christian & Small, LLP.
- > Additionally, the ADLA welcomed 2024-2026 Young Lawyers Section Officers
- Andrew Townsley assumes the position of Chair of the Young Lawyers Section. Andrew is a shareholder at Lanier Ford Shaver & Payne in Huntsville.
- Stephen Palmer was elected 1st Vice Chair. Steve is an attorney at Hickcox, Robertson, & Stunda.
- Kevin Bufford was elected 2nd Vice Chair of the Young Lawyers Section. Kevin is a partner at Samford & Denson, LLP in Opelika, AL
- Hannah H. Stokes is the Immediate Past Chair of the Young Lawyers Section. Stokes is Corporate Counsel in the legal department of NaphCare.

Thompson Burton Teams With Columbia High School For Service Project

Thompson Burton law firm joined teachers and students from Columbia High School to build beds for Huntsville's Sleep in Heavenly Peace (SHP).

The group built 40 beds for the nonprofit in less than three hours. The effort was led by Thompson Burton attorney and SHP-Huntsville chapter president Mary Ena Heath, along with Stuart Maples, head of the Thompson Burton Huntsville office.

"Every bed we deliver tells a story," said Heath. "Sometimes a grandmother has taken in grandchildren who all need beds. Or a family is moving out of a homeless shelter to their first apartment without any furniture. Another time we may serve a single mom and children who have escaped a toxic situation with only the clothes on their backs. Regardless of the need, at the end of our delivery, each child has a new bed, new mattress, new bedding, and new pillow- a safe haven they can call their own. SHP delivers more than beds: SHP delivers HOPE."





MEMORIALS

▲ Robert Franklin Prince

▲ Huey Thomas “Tommy” Wells, Jr.

▲ Charles Douglas Cleveland

Robert Franklin Prince

Robert Franklin Prince, a 50-year member of the Alabama State Bar and founding partner of the civil litigation firm Prince Glover Hayes in Tuscaloosa, passed away on May 2, 2024, after a courageous battle with cancer. Bob’s legacy of service will forever live on through his family, his firm, and the countless lawyers and clients who benefited from his life of service. There will never be another Bob Prince, and he will be deeply missed.

Bob genuinely cared for his family, friends, clients, and even total strangers who later became beneficiaries of his generosity. He was a consummate professional, a lawyer’s lawyer, and the kind of fighter clients wanted in their corner.

A devoted Christian, Bob accepted Jesus Christ as an adult at JH Ranch on Aug. 2, 2001. JH Ranch, Outback America, and the Christian church remained at the forefront of Bob’s mind and actions each day since. He was a dedicated Sunday School teacher, and those who had the privilege of being his students regarded him as one of the best teachers of the Bible. He used his knowledge of the Bible and personal experiences to help “build the Kingdom,” as he called it, leading many to a personal relationship with Jesus.

Originally from Franklin County, Bob received his education from the University of Alabama, earning both his B.S. and J.D. degrees there. He was admitted to the Alabama and Florida Bars and was authorized to practice in the U.S. District Courts for the Northern, Middle, and Southern Districts of Alabama, as well as before the Eleventh Circuit Court of Appeals and the U.S. Supreme Court. Bob was an active trial attorney who tried cases all over Alabama. His verdicts, settlements, and results for his clients over his 50-year career were extraordinary and too numerous to mention. Suffice it to say, both sides of a dispute often tried to hire Bob—it was a matter of who got to him first with a meritorious claim. Bob thrived in the courtroom and loved representing people who needed a strong advocate.

Bob’s courtroom skills were legendary. Juries paid attention to every word he said, he commanded the attention of judges, and opposing counsel always knew they were in for a challenge. Bob generously shared these talents as well. He was an Adjunct Professor of Trial Advocacy at the University of Alabama Law School for more than 40 years. During that time, he successfully coached his teams to numerous regional championships, several national top-10 finishes, and a national championship. Over those 40 years, Bob taught trial advocacy skills to thousands of law students from across the state and country, many of whom are now noted for their own courtroom prowess. Each of them attributes a great deal of their success as a litigator to the instruction, coaching, encouragement, dedication, and (sometimes tough) love of Bob Prince. That is a legacy that will endure.



Prince

(Continued from page 273)

Before limiting his practice to civil litigation, Bob tried numerous felony criminal trials, including multiple murder and capital murder cases. He was recognized throughout his career for his trial skills and devotion to the advancement of the legal profession. Among Bob's many accomplishments, he consistently held an AV Martindale-Hubbell rating for his professionalism and ethics, served as president of the Alabama Association for Justice and the Alabama Civil Justice Foundation, and obtained the ranking of Board-Certified Trial Advocate by the National Board of Trial Advocacy. He received the Bench and Bar Outstanding UA Law Alumnus Award and the Walter P. Gewin Award and was inducted into the University of Alabama Law School's Lawyer Hall of Honor. He was also distinguished as a Master Benchers with the Tuscaloosa Inn of Court. Bob was a sought-after speaker at legal seminars and conferences for many years on all aspects of trial practice. He was an active member of Christ Episcopal Church, a former member of First United Methodist Church, and a former Director of Outback America, among his many other community endeavors.

Bob Prince is survived by his wife of 36 years, Dena Drury Prince; his four adult children: Courtney Dacre, Mary Elizabeth Garvey, Will Prince, and Grace Prince; his eight grandchildren: Kendall Walker, Reagan Walker, Patrick Walker, John Dacre, Eliza Garvey, Caroline Garvey, Ford Garvey, and Grace Garvey; his sister, Linda Owens; his niece, Jonna Lee; and his great-niece, Macy Lee.

Contributions may be made to Christ Episcopal Church Foundation, 605 Lurleen Wallace Boulevard North, Tuscaloosa, AL 35401, or to the Robert Franklin Prince Endowed Law Scholarship at the University of Alabama School of Law, Box 870382, Tuscaloosa, AL 35487.

Bob Prince was a devoted Christ-follower, son, father, brother, husband, leader, lawyer, fighter, reconciler, Sunday School teacher, mentor, coach, uncle, father-in-law, and friend. He was known by many names—Robert F. Prince, Bob, Prince, Bobby, Dad, Bobcat, Daddy Bob. Whatever name you knew him by, you will never forget him, and your life is likely better because your path crossed his.

—Josh Hayes, *Partner*, Prince Glover Hayes

Huey Thomas ("Tommy") Wells, Jr.

Maynard Nexsen sadly announces the passing of Huey Thomas ("Tommy") Wells, Jr. on July 31, 2024.

Tommy dedicated his life to mentorship, philanthropy, leadership, and uplifting those around him. A native of Gadsden, Tommy graduated from the University of Alabama School of

Law in 1975, and proudly served his country as a member of the Air Force, working as legal counsel in the Pentagon. He later became a founding partner of Maynard, Cooper & Gale, now known as Maynard Nexsen. His storied career as a litigator and environmental lawyer was consistently recognized through legal accolades such as Chambers USA, Best Lawyers, and The Best Lawyers in America.



Wells

"Tommy was a dear friend and a great mentor to many of our lawyers, including me," said Jeff Grantham, CEO and managing shareholder of Maynard Nexsen. "He was an exceptional trial lawyer, and I had the privilege of watching him in action. No matter the difficulties of any case or circumstance, Tommy was up to the challenge."

"He was unflappable," Jeff added. "His calm demeanor, good humor and positive nature were contagious and made those around him better. He was respected by his partners, opposing counsel, clients and judges. He loved everything about the profession, and it showed. It showed in his passion."

Throughout his career, he dedicated himself to what he called "common core values that unite" the legal profession: access to justice, independence of the bar and judiciary, diversity, and the rule of law. His service was honored by Legal Services Alabama, who created the "Tommy Wells Justice Award" to recognize outstanding service in promoting access to justice and legal services.

Tommy served as president of the American Bar Association from 2008 to 2009. He held several other leadership roles in the organization, including chair of the House of Delegates, chair of the Section of Litigation and co-chair of the Special Committee on Disaster Response after Hurricane Katrina.

He was also initiated as a Fellow of the International Academy of Trial Lawyers, the Litigation Counsel of America, and the American College of Environmental Lawyers. Tommy was awarded an honorary Doctor of Laws from Suffolk University in 2008.

"Tommy Wells was a foundational member of our firm whose contribution is hard to measure," said Greg Curran, Chairman of the Board and Head of Client Relations for Maynard Nexsen. "Tommy was not only a superb lawyer, but he was also a great teacher, mentor and friend. Tommy loved our firm and never missed an opportunity to be a cheerleader and enthusiastic supporter. If you worked at our firm, you were Tommy's friend. We will miss him."

A community leader, Tommy served on the Board of Directors for the YMCA of Greater Birmingham, the Board

of Directors for Scholarships for Kids, the University of Alabama President’s Council, the Board of Governors for Shoal Creek, and as the former director of the American Judicature Society.

Maynard Nexsen extends our heartfelt condolences to the Wells family, including Tommy’s wife of 51 years, Jan McKenzie Wells, their children, and many grandchildren. Visitation was held at St. Francis Xavier Catholic Church in Birmingham, Alabama, on Friday, Aug. 9, 2024, from 10:00 a.m. to noon, followed by a funeral mass.

In lieu of flowers, donations may be made to the YMCA of Greater Birmingham, Legal Services Alabama, Scholarships for Kids, the American Heart Association or St. Francis Xavier Catholic Church.

-Maynard Nexsen Firm

Charles Douglas Cleveland

Charles Douglas Cleveland passed away at his home on Apr. 16, 2024, at the age of 96. Charlie Cleveland was born in Sylacauga, Alabama on Oct. 24, 1927. He was named after Charles Lindbergh and Douglass Fairbanks, favorite celebrities at that time of his older brother, Billy Cleveland

Upon graduating from Castle Heights Military Academy in Lebanon, Tennessee, he joined the United States Marine Corps. Charlie served from July 1945 until November 1946. He was stationed in Tientsin, China (now Tianjin) where his unit was taking over from Japanese occupiers after the surrender.



Cleveland

Upon returning home, Charlie enrolled in Howard College (now Samford University) in Birmingham to major in Journalism. He transferred to the University of Alabama Law School where he obtained a LLB in 1952. On Dec. 25, 1952, he married Ruby Alice Bryant.

They had three children, Kenneth Lee, Joel Mark, and Kimberly Cay.

Charlie began his legal career as an associate for Robert Gordon in 1952 and then became a partner in the firm Gordon, Cleveland, & Gordon with Robert Gordon and his son, Bruce Gordon. The firm grew and became Gordon, Silverman, Loab, Cleveland & Gordon. When his eldest son, Kenneth Lee Cleveland, graduated from Alabama Law School in 1985, Charlie left his law firm to practice with his son; eventually forming Cleveland & Cleveland, P. C. Charlie practiced law with Lee Cleveland until he retired in 2022. During his 70 years of law practice, Charlie Cleveland tried many cases in state and federal courts across Alabama and appeals in the Alabama Court of Civil Appeals, the Alabama Supreme Court, the Fifth Circuit Court of Appeals Supreme Court of the United States, which he won.

Charlie was appointed to the Birmingham Water Works Board in the late 1970s and served for 14 years. Charlie was a member of the Unitarian Universalist Church of Birmingham. He served at various times as a board member, president, treasurer, and trustee. Charlie believed strongly in equal rights and was actively involved in the Civil Rights Movement. He worked to change the form of government in Birmingham from a Commission to the current Mayor-Council form.

Charlie was an avid chess player and a member of the Birmingham Chess Club. In 1968 he won the Alabama State Chess Championship. Also an avid sailor, Charlie owned a sailboat from the early 1960s until the mid-2000s and enjoyed taking anyone interested in a sail around Logan Martin Lake. Charlie Cleveland was admired by all who knew him for his keen legal mind and his great sense of humor. ▲

-Lee Cleveland, Joel Cleveland, and Kim Hartley

Dan Dumont
Mobile
Died: July 29, 2023
Admitted: Sept. 26, 1975

Charles Herbert Erwin
Mobile
Died: July 4, 2024
Admitted: Apr. 4, 1967

Ishmael Jaffree
Mobile
Died: July 30, 2024
Admitted: Apr. 18, 1977

Hon. Henry Mark Kennedy
Montgomery
Died: July 17, 2024
Admitted: Sept. 22, 1977

James Stuart McAtee
Birmingham
Died: Feb. 17, 2024
Admitted: Apr. 26, 1996

Christopher Lyle McIlwain
Tuscaloosa
Died: June 22, 2024
Admitted: Sept. 26, 1980

Thomas Julian Motes
Mobile
Died: July 10, 2024
Admitted: Sept. 23, 1983

Clarence Glenn Powell
Tuscaloosa
Died: Mar. 11, 2024
Admitted: Apr. 12, 1966

Huey Thomas Wells, Jr.
Birmingham
Died: July 31, 2024
Admitted: Sept. 26, 1975



Gillian Purser
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LEGISLATIVE WRAP-UP



2024 Legislative Recap

While it seems to many the 2024 Regular Session will forever be remembered for what did not pass and what almost passed, it was in fact a very productive session. This column will cover noteworthy legislation that passed during the 2024 Legislative Session. During this session, there were 654 general bills, 119 local bills, and 39 proposed constitutional amendments introduced, for a total of 843 bills. At the end of the session, there were 453 total bills enacted, including 199 general bills, 72 local bills, and 17 proposed constitutional amendments. Given the volume of acts adopted, this column will only highlight select bills most likely to be encountered by practitioners around this state. Practice areas highlighted here include Business & Financial Institutions, Consumer Protection, Counties & Municipalities, Courts, Crimes & Offenses, Criminal Procedure, Economic Development, Education, Elections, Government Administration, Health, Insurance, Labor & Employment, Law Enforcement & Public Safety, Prisons, Property, State Government, and Taxation. Summaries of every general act can be found on the website of the Alabama Legislature at <https://alison.legislature.state.al.us/> under the Legislative Services Agency (LSA) Legal Division Publications.

Business & Financial Institutions

Alabama Business and Nonprofit Entities Code (Act 2024-413, SB112)

Senator Sam Givhan

This act substantially amends the Alabama Business and Nonprofit Entities Code to: (1) eliminate references to the old Alabama Nonprofit Corporation Law; (2) clarify certain procedures relating to registered agents, the ratification process of certain actions, and the sale of property by business and nonprofit corporations in accordance with Delaware law changes; (3) provide for the exculpation of certain officers for certain actions in accordance with changes to Delaware law and the Model Business Corporation Act; (4) further provide for the issuance and acquiring of stocks and the meeting of stockholders; and (5) clarify the amendment and restatement process. This act also adds Sections 10A-5A-1.11, 10A-8A-1.14, 10A-9A-1.15, and Chapter 18 to Title 10A of the Code of Alabama 1975, to: (1) provide a process for ratification of certain actions and transactions for limited liability companies, limited partnerships, and partnerships; and (2) adopt the Alabama Statewide Trade Association Law, which provides requirements relating to trade association records, financial review, and membership lists. Sections 3 and 4 of this act shall become effective on June 1, 2024, and the amendatory language to Sections 10A-1-1.03, 10A-1-1.108, and 10A-1-3.32, Code of Alabama 1975, shall become effective Jan. 1, 2025. The remaining provisions of this act shall become effective on Aug. 1, 2024.

Corporate Annual Reporting Requirements (Act 2024-213, HB230)

Representative Margie Wilcox

This act: (1) removes the requirement that corporations must file an annual report with the Secretary of State and references thereto; and (2) repeals Section 10A-2A-16.11, Code of Alabama 1975, relating to requiring corporations to file an annual report with the Secretary of State. Effective Oct. 1, 2024.

Consumer Protection

Age-Verification for the Electronic Distribution of Material Harmful to Minors (Act 2024-97, HB164)

Representative Ben Robbins

This act: (1) requires certain commercial entities that knowingly publish or distribute sexual materials harmful to

minors through an adult website to use age-verification to keep individuals under 18 years of age from accessing the materials; (2) prohibits the retention of any personally identifying information collected to verify an individual's age; (3) following a violation of this act, authorizes an injured individual to bring a civil action against and the Attorney General to recover a civil penalty of up to \$10,000 per violation from the offending commercial entity; (4) requires a commercial entity to obtain written consent from every individual depicted in a private image before distributing it; (5) requires a commercial entity required to use age verification to display a notice regarding the dangers of pornography; (6) levies a 10 percent tax upon the gross receipts of any commercial entity operating an adult website; and (7) authorizes the Department of Revenue to adopt rules. This act also further provides that no internet service provider has committed the crime of distributing a private image solely by providing access or connection to or from a website. Effective Oct. 1, 2024, except that Section 10, relating to the levying of a tax, is effective Sept. 1, 2025.

Counties & Municipalities

Limitation of Liability (Act 2024-162, SB63)

Senator Josh Carnley

This act: (1) provides that a county commission is not liable in a suit challenging the use of public funds where a local or general law authorizes the use of the funds at the discretion of a single public official; and (2) provides that no damages or litigation costs may be recovered from the county commission for such suits. Effective Oct. 1, 2024.

Municipal Filing Fees (Act 2024-104, HB156)

Representative Chad Robertson

This act exempts candidates for municipal office from the filing requirements of Sections 17-5-4 and 17-5-8, Code of Alabama 1975, unless he or she receives contributions or makes expenditures in excess of \$1,000. Effective June 1, 2024.

Training for Municipal Officials (Act 2024-194, SB291)

Senator Jabo Waggoner

This act requires each individual elected to serve as mayor or as a member of the governing body of a municipality to: (1) complete a training course about municipal government during each year of his or her first elected term, unless he or she has successfully completed the Certified Municipal Official Program administered by the Alabama League of Municipalities; and (2) complete five hours of continuing education courses after he or she completes the aforementioned training. Effective Jan. 1, 2025.

(Continued from page 277)

Crimes & Offenses

Alabama Child Protection Act of 2024 (Child Sexual Abuse Material) (Act 2024-98, HB168)

Representative Matt Woods

This act revises crimes relating to the possession or distribution of a private image, including permitting a child to engage in child sexual abuse material to: (1) expand the definition of “child sexual abuse material” to include certain images of individuals under 18 years of age and include virtually indistinguishable depictions of child sexual abuse; (2) provide that a person who knowingly advertises, distributes, or solicits child sexual abuse material is guilty of a Class B felony, even if the material is merely purported to be such material; (3) provide an affirmative defense if the actual individual depicted was 18 years of age or older; (4) provide that a responsible person, as defined, who permits his or her child under 18 years of age to engage in the production of child sexual abuse material is guilty of a Class A felony; and (5) provide that each depiction of child sexual abuse material constitutes a separate offense. This act also: (1) provides that an individual is civilly liable for the distribution of a private image, or the distribution, possession, production, or promotion of child sexual abuse material, to the individual depicted in the material; (2) requires each local board of education to adopt and disseminate a policy relating to the distribution of private images and child sexual abuse material; and (3) repeals Section 13A-12-195, Code of Alabama 1975, relating to the commercial exploitation of child sexual abuse material. Effective Oct. 1, 2024.

Crimes Against Election Officials (Act 2024-341, HB100)

Representative Adline Clarke

This act: (1) establishes minimum criminal penalties for a crime committed against an election official that is motivated by that individual’s role as an election official; and (2) expands the felony offenses constituting crimes of moral turpitude to include a felony committed against an election official that is motivated by an individual’s role as an election official is a crime of moral turpitude and certain other felonies. Effective Oct. 1, 2024.

Distributing a Private Image (Act 2024-96, HB161)

Representative Parker Moore

This act: (1) expands the crime of distributing a private image to include knowingly creating, recording, or altering a private image when the depicted individual has not consented to the creation, recording, or alteration of the image, if the depicted individual had a reasonable expectation of privacy; (2) expands the definition of private image to include a recording that a reasonable person would believe actually depicts an identifiable individual, including artificially generated images; and (3) provides that an internet service provider, search engine, cloud service provider, or developer or provider of technology may not be charged with distributing a private image solely because it was used in the creation, distribution, or storage of a private image. Effective Oct. 1, 2024.

Distribution of Controlled Substance Containing Fentanyl (Act 2024-103, HB10)

Representative Chris Pringle

This act: (1) provides that the crime of manslaughter includes proximately causing the death of an individual by selling or otherwise distributing a controlled substance containing fentanyl in violation of law; and (2) provides that it is not a defense that the individual did not know that the controlled substance contained fentanyl. Effective Apr. 23, 2024.

Distribution of Deceptive Media in an Attempt to Influence an Election (Act 2024-349, HB172)

Representative Prince Chestnut

This act: (1) prohibits the distribution of materially deceptive media in an attempt to influence an upcoming election, unless certain conditions are met; (2) provides that a violation is a Class A misdemeanor, except that a second or subsequent conviction within five years is a Class D felony; (3) provides certain exceptions; (4) authorizes the Attorney General, a depicted individual, certain candidates for office, and any entity that represents the interests of voters to seek permanent injunctive relief against an individual that violates this act; and (5) provides procedures for a frivolous complaint. Effective Oct. 1, 2024.

Fraudulent Sale or Lease of Residential Real Property (Act 2024-237, HB182)

Representative Craig Lipscomb

This act: (1) creates the crime of fraudulent sale or lease of residential real property; (2) provides that persons who knowingly advertise, rent, or lease residential real property for which they have no legal authority to do so commit this crime and are guilty of a Class A misdemeanor; (3) provides procedures by which an owner of a dwelling may request removal of certain unauthorized individuals by law enforcement; and (4) defines the term squatter and excludes such persons from this state's landlord and tenant laws. This act also: (1) expands the crime of burglary in the third degree to include knowingly remaining in a dwelling and intentionally causing certain damage; and (2) expands the crime of perjury in the second degree to include knowingly presenting certain false documents relating to real property. Effective June 1, 2024.

Possession of Electronic Nicotine Device (Act 2024-79, SB95)

Senator Vivian Figures

This act: (1) prohibits an individual under 21 years of age from possessing an electronic battery-powered device capable of being used to deliver any e-liquid or other substance through the inhalation of vapor; (2) clarifies that a violation is committed upon mere possession of an electronic nicotine delivery system or other electronic battery-powered device, irrespective of whether any substance was contained or otherwise used in the device; and (3) exempts devices used to deliver medications lawfully prescribed by a physician in this state. Effective Oct. 1, 2024.

Sound of Freedom Act (Human Trafficking) (Act 2024-87, HB42)

Representative Donna Givens

This act: (1) expands the crime of human trafficking in the first degree to include an attempt to give monetary consideration or a thing of value to engage in any sexual conduct with a minor; and (2) requires a minimum of life imprisonment for a defendant 19 years of age or older convicted of human trafficking in the first degree when the trafficking victim is a minor. Effective Oct. 1, 2024.

Swatting (Act 2024-297, HB78)

Representative Phillip Ensler

This act: (1) creates the crime of swatting; (2) provides that a person commits the crime of swatting if he or she knowingly reports, or causes to be reported, false or misleading information regarding a crime or emergency in certain circumstances where the information is likely to cause a response from law enforcement; and (3) provides that a

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violation is a Class A misdemeanor if the report is of a misdemeanor offense, a Class C felony if the report is of a felony offense or emergency, a Class B felony if the report is of a felony offense or emergency and the response causes physical injury to any person, and a Class A felony if the report is of a felony offense or emergency and the response causes serious physical injury or death to any person. Effective Oct. 1, 2024.

Criminal Procedure

Indigent Defense (Act 2024-161, HB275)

Representative Cynthia Almond

This act: (1) amends the membership requirements of each judicial circuit's voluntary indigent defense advisory board (the board) to include two attorneys who regularly practice in the criminal or juvenile courts of that judicial circuit; (2) provides a procedure to replace the presiding judge of a board in the event that he or she has a conflict of interest; (3) provides for the review of attorney fee declarations or cumulative timesheets by the board; (4) provides board members with certain immunity; (5) provides for the hourly compensation of attorneys appointed to defend indigent individuals, dependent on the original charge of the defendant, and raise the associated fee caps; and (6) authorizes the board to recommend remedial action for excess work. Effective Oct. 1, 2024.

Involuntary Procedure (Act 2024-193, SB240)

Senator Will Barfoot

This act: (1) revises the criteria for who may be involuntarily committed by a judge of probate to include an individual who suffers from a substance use disorder that occurs secondarily to a primary diagnosis of one or more mental illnesses; (2) changes the jurisdiction of the sheriff who is required to serve a commitment petition to the sheriff of the county in which the respondent was located at the time of the filing; (3) authorizes a judge of probate to consult with or seek an evaluation by a licensed medical physician or qualified mental health professional when determining whether to place limitations placed upon an individual's liberty; and (4) further provides for when a judge of probate may order a respondent into custody. This act also adds Section 15-16-26

to the Code of Alabama 1975, to authorize a judge of probate who has issued a commitment order against a respondent who is confined for certain charges to communicate with the appropriate judge to discuss whether to suspend criminal proceedings to fulfill the commitment order. Effective Jan. 1, 2025.

Youthful Offenders (Act 2024-407, SB153)

Senator Andrew Jones

This act provides that a person who has been adjudged a youthful offender where the underlying charge is a misdemeanor offense, violation, traffic violation, or municipal ordinance violation may file a petition to expunge the records relating to the charge and conviction under certain circumstances. Effective Oct. 1, 2024.

Courts

Notary Publics (Act 2024-314, SB289)

Senator Merika Coleman

This act: (1) provides that both notaries who are licensed professionals or are the employees of licensed professionals may lawfully perform notarial acts that are required in the practice of their profession; and (2) includes credit unions in the list of what a notarial officer may hold not more than one percent of total issued and outstanding stock with the same effect as if the officer did not hold or own any stock. Effective Oct. 1, 2024.

Economic Development

Alabama Growth Alliance Act (Act 2024-309, SB252)

Senator Greg Reed

This act: (1) provides for the formation of the Alabama Growth Alliance as a public corporation to coordinate the creation and maintenance of the state's long-range economic development strategy; (2) creates and provides for the board of directors for the alliance; (3) provides for the powers and duties of the alliance and the board; (4) authorizes the board to enter into certain agreements and contracts; (5) authorizes the Governor, Speaker of the House of



Representatives, and President Pro Tempore of the Senate to amend the alliance's application for formation; (6) provides for the dissolution of the corporation by a three-quarters vote of the board; and (7) provides annual reporting requirements. Effective Oct. 1, 2024.

Inland Ports and Transfer Facilities (Act 2024-450, SB60)

Senator Arthur Orr

This act: (1) creates the Inland Ports and Intermodal Development Fund within the Department of Economic and Community Affairs for the purpose of financing improvements to existing publicly-owned inland ports and intermodal facility infrastructure; (2) provides a competitive application process for the receipt of funds; (3) requires the department to prioritize funding for certain ports and facilities that have proven performance in certain circumstances; and (4) requires the department to adopt rules. Effective Oct. 1, 2024.

Education

Alabama School of Healthcare Sciences (Act 2024-192, HB163)

Representative Cynthia Almond

This act: (1) creates the Alabama School of Healthcare Sciences in Demopolis in Marengo County; (2) provides for membership, powers, compensation, and terms of the school's board of trustees; and (3) provides for programs and operations of the school, including participation in extracurricular activities and eligibility requirements. Effective Aug. 1, 2024.

Alabama Workforce Pathways Act (Workforce Pathways High School Diploma) (Act 2024-126, SB253)

Senator Donnie Chesteen

This act: (1) requires the State Board of Education to establish a Workforce Pathways diploma pathway and curriculum; (2) provides that any student who earns a diploma through this pathway is eligible for admission to any postsecondary educational institution, subject to the institution's admission requirements; (3) authorizes the board to seek additional funding from the Legislature to upgrade or construct career and technical education centers; and (4) authorizes the Legislature to provide funding for the Alabama Short-Term Credential Program for scholarships toward in-demand college courses in the Alabama Community College System. Effective Oct. 1, 2024.

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Assistant Principals (Act 2024-296, HB22)

Representative Mark Gidley

This act: (1) defines the role of assistant principals to include assisting the principal with the administration and enforcement of board policy and applicable laws, including those related to student discipline; and (2) requires each public K-12 school to have an assistant principal, contingent on the availability of funding. Effective Oct. 1, 2024.

CHOOSE Act (Education Savings Accounts) (Act 2024-21, HB129)

Representative Danny Garrett

This act: (1) establishes a refundable income tax credit program (the CHOOSE Act program) to offset the cost of qualifying educational expenses; (2) provides a credit for participating students attending participating schools in the amount of either \$7,000 or the actual cost of qualifying educational expenses, whichever is less; (3) provides a credit for participating students not enrolled in a participating school in the amount of either \$2,000 or the actual cost of qualifying expenses, whichever is less; (4) until Jan. 1, 2027, makes the credit available to families of a participating student with an adjusted gross income not exceeding 300 percent of the federal poverty level and, after Jan. 1, 2027, makes the credit available to all families of participating students; (5) provides that credits do not constitute taxable income; (6) establishes CHOOSE Act program requirements for parents of participating students, education service providers, and participating schools; (7) directs the Department of Revenue to establish education savings accounts to be made available to parents of participating students in order to access program funds; (8) requires the Department of Revenue to administer the CHOOSE Act program; (9) provides measures to prevent fraud or other misuse of CHOOSE Act program funds; and (10) establishes the CHOOSE Act fund. Effective March 7, 2024.

Due Process for Students (Act 2024-262, HB188)

Representative Terri Collins

This act provides a uniform system of procedural due process protections for students facing long-term suspension or expulsion that: (1) requires each principal to consider certain factors before initiating disciplinary action against a student; and (2) when considering long-term alternative school placement, suspension, or expulsion of a student, requires the local board of education to afford him or her with

the opportunity for a disciplinary hearing that meets certain criteria relating to notice, who may participate, availability of records, and the right to appeal. Effective Oct. 1, 2024.

First Grade Readiness (Act 2024-347, HB113)

Representative Pebblin Warren

This act: (1) requires a child to complete kindergarten or demonstrate first-grade readiness before entering the first grade; (2) authorizes local boards of education to admit children under five years of age on Sept. 1 to kindergarten in certain circumstances; (3) authorizes local boards of education to admit a child under six years of age on or before December 31 to first grade if the child demonstrates first-grade readiness; (4) requires the State Department of Education to create, and the State Board of Education to approve, an assessment on first-grade readiness; and (5) requires the State Department of Education to develop an informational campaign to promote kindergarten. Effective July 1, 2024.

Posting of Public K-12 School Curricula (Act 2024-35, SB48)

Senator Greg Reed

This act: (1) requires each public K-12 school to post classroom curricula on its website; (2) permits the parents or guardians of enrolled students to request and receive information on instructional and supplemental classroom materials; (3) requires all required reading material to be included on the class syllabus; (4) establishes a process for parents or guardians to file a complaint with the local superintendent of education about a classroom teacher who violates this act; and (5) requires each local superintendent of education to provide an annual report regarding complaints to the State Superintendent of Education. Effective June 1, 2024.

School Security Act (Act 2024-356, SB98)

Senator Arthur Orr

This act: (1) establishes the School Security Program, which requires school facilities to be inspected at least once every five years for compliance with school security criteria; (2) provides procedures for the State Board of Education (the board) to implement and administer the School Security Program; (3) creates a school security rubric and provides for the rating of each facility following inspection; (4) creates the School Security and Fire Safety Fund for grants to assist local boards of education in complying with the security criteria; (5) establishes the School Mapping Data Program within the Alabama State

Law Enforcement Agency (ALEA) to produce maps of schools for use in emergencies; (6) provides procedures by which to implement and administer the School Mapping Data Program; (7) requires local boards of education to designate a district safety coordinator and provides duties and authorities of the coordinator; (8) directs the board and ALEA to adopt rules for the implementation and administration of these programs; and (9) provides that certain information relating to these programs is not public record. Effective Oct. 1, 2024.

Teachers' Bill of Rights (Act 2024-409, SB157)

Senator Arthur Orr

This act: (1) authorizes teachers to exclude students from the classroom who engage in disorderly conduct or certain other behaviors; (2) provides procedures a principal must follow before returning the student to the classroom depending on the circumstances surrounding the exclusion; (3) requires each local board of education to establish a process for a teacher to appeal the principal's decision to return a student to the classroom; and (4) requires certain data relating to disciplinary action to be annually collected and reported. This act also: (1) provides that education employees may not be held

civily or criminally liable for certain actions while addressing student behavior, with exceptions; (2) authorizes the Educators' Liability Trust Fund to reimburse education employees for reasonable legal expenses in certain circumstances; (3) requires the trust fund or applicable local board of education to reimburse education employees who successfully defend themselves; (4) creates a rebuttable presumption that teachers take necessary actions to restore or maintain the safety of the classroom; (5) prohibits teachers from reprimand or disciplinary action if they were acting in conformance with local board of education or State Board of Education policy; (6) requires the board to adopt a model policy and each local board to implement a policy. Effective June 1, 2024.

Elections

Absentee Ballots (Act 2024-33, SB1)

Senator Garlan Gudger

This act: (1) deletes a provision allowing a handwritten request for an absentee ballot in lieu of an absentee ballot application form; (2) requires each applicant for an absentee

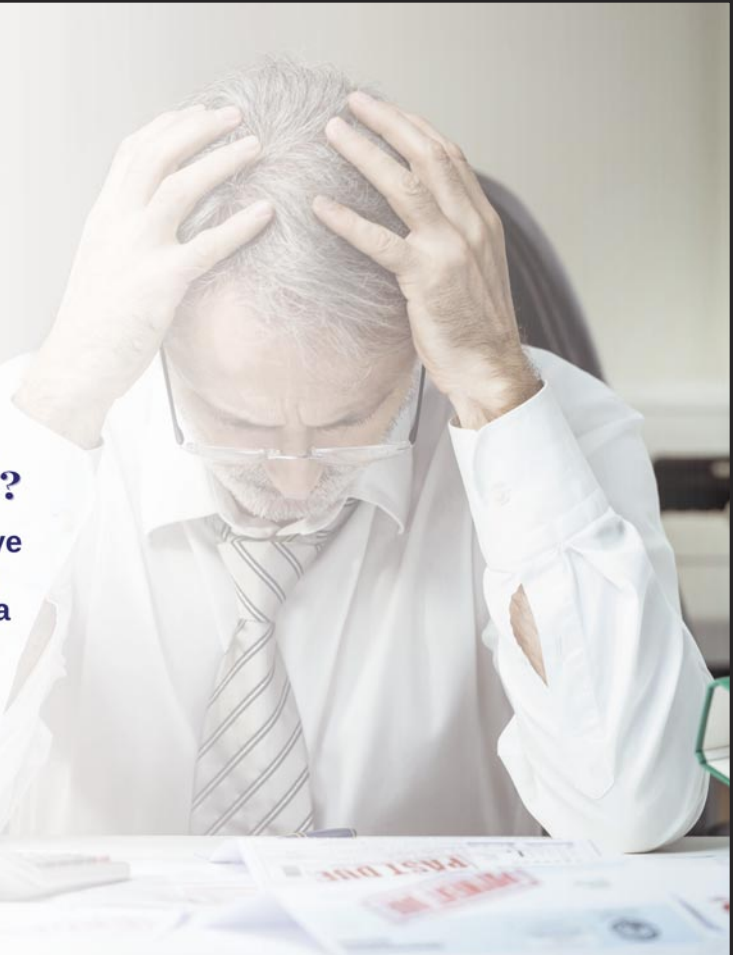


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ballot to declare that he or she is not barred from voting because of a disqualifying felony conviction; (3) prohibits the distribution of absentee ballot applications that are prefilled with voter information; (4) prohibits an individual from submitting a completed absentee ballot application for anyone other than himself or herself, with exceptions; (5) authorizes a voter who is blind, disabled, or unable to read or write to be given assistance; (6) exempts voters voting through the Uniformed and Overseas Citizens Absentee Voting Act; and (7) provides that a violation is a Class A misdemeanor. This act also provides that it is a Class C felony to knowingly receive a payment or gift, and a Class B felony to knowingly pay or provide a gift to another, for distributing, ordering, requesting, collecting, prefilling, completing, obtaining, or delivering a voter's absentee ballot application. Effective March 20, 2024.

Election Expenses (Act 2024-92, HB101)

Representative Adline Clarke

This act: (1) expands the items that are considered election expenses which must be reimbursed to counties by the state to include costs associated with training an absentee election manager, costs incurred in using electronic poll books and electronic voting machines, and rental payments to a facility used as a polling place; and (2) requires requests for reimbursements to be submitted to the Comptroller within 90 days following the date of the election in which the expenses were incurred. Effective Oct. 1, 2024.

Government Administration

Diversity, Equity, and Inclusion (Act 2024-34, SB129)

Senator Will Barfoot

This act: (1) defines the terms "divisive concept" and "diversity, equity, and inclusion program"; (2) prohibits: state agencies, local boards of education, and public institutions of higher education from: (i) sponsoring or maintaining an office that promotes any diversity, equity, and inclusion program; (ii) requiring a student, employee, or contractor from affirming a divisive concept or participating in any diversity, equity, and inclusion program, training, or course work; (iii) authorizing, expending, or applying for funding for the purpose of compelling assent to a divisive concept or otherwise

violating this act; and (iv) taking certain other actions related to diversity, equity, and inclusion programs and divisive concepts; (3) authorizes a state agency, local board of education, and public institution of higher education to discipline or terminate an employee or contractor who knowingly violates this act, with exceptions; (4) provides various exceptions relating to student, staff, or faculty organizations, compliance with federal laws and regulations, research, and classroom instruction; and (5) requires public institutions of higher education to designate multiple occupancy restrooms for use by individuals based on their biological sex. Effective Oct. 1, 2024.

Health

In Vitro Fertilization (Act 2024-20, SB159)

Senator Tim Melson

This act provides: (1) civil and criminal immunity for the death of or damage to an embryo to any individual or entity when providing or receiving services related to in vitro fertilization; and (2) criminal immunity and the calculation of damages for the death of or damage to an embryo against manufacturers of goods used to facilitate the in vitro fertilization process or the transport of stored embryos. The immunity provided by this act is retroactive. Effective March 6, 2024.

Off-label Prescriptions (Act 2024-414, SB72)

Senator Arthur Orr

This act prohibits the Alabama Board of Medical Examiners and the Medical Licensure Commission of Alabama from taking adverse action against a physician who prescribes or recommends off-label medical treatments, except: (1) if the treatment presents a threat of significant harm; or (2) for the prescription, administration, or dispensing of any controlled substance. Effective Oct. 1, 2024.

State Committee on Public Health (Act 2024-247, SB128)

Senator Tim Melson

This act: (1) abolishes the State Board of Health and confers all board duties and authorities to the State Committee of Public Health; (2) revises the membership of the committee; (3) requires the Governor to appoint, from a list of

names submitted by the committee, the State Health Officer; and (4) provides a mechanism to require the committee to review certain actions taken by the State Health Officer and take disciplinary action. This act also adds Section 22-2-8.1 to the Code of Alabama 1975, to require certain emergency directives relating to mitigating disease outbreaks issued by the State Health Officer to be approved by the Governor and filed with the Secretary of State, subject to exceptions. Section 22-2-8, Code of Alabama 1975, providing for the appointment of a State Health Officer, is effective upon a vacancy in the position of the State Health Officer occurring on or after Oct. 1, 2024, and the remainder of this act is effective Oct. 1, 2024.

Insurance

Motor Vehicle Insurance (Act 2024-38, SB47)

Senator Shay Shelnett

This act: (1) establishes the Alabama Automobile Insurance Plan to equitably apportion the cost of certain high risk motor vehicle liability policies; (2) requires the plan to be approved by the Commissioner of Insurance; (3) requires all insurance companies authorized to issue motor vehicle liability policies in the state to subscribe to the plan; (4) authorizes service providers to issue motor vehicle liability policies in the name of the plan; and (5) requires an audited financial report to be filed annually with the commissioner. Effective Oct. 1, 2024.

Labor & Employment

Alabama Workforce Transformation Act (Department of Workforce) (Act 2024-115, SB247)

Senator Steve Livingston

This act: (1) renames the Alabama Department of Labor the Alabama Department of Workforce and designates the head of the department as the Secretary of Workforce; (2) further provides for the duties and authorities of the department and secretary; and (3) transfers certain state and federal workforce programs, staff, and assets to the department. This act adds Chapter 15 to Title 25 to the Code of Alabama 1975, to: (1) establish the Alabama Workforce Board as the State Workforce Development Board; (2) provide duties and authorities of the board; (3) establish the executive committee of the board, which shall work with the secretary to create



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(Continued from page 285)

the strategic workforce plan to guide state and federal workforce development policies; and (4) permit the formation of regional workforce boards. This act also: (1) renames the Alabama Department of Commerce Workforce Development Division the Alabama Industrial Development Training Institute and provides for the operation of the institute; (2) repeals Sections 41-29-290 through 41-29-297, Code of Alabama 1975, relating to the Alabama Workforce Council and Section 41-29-300, Code of Alabama 1975, relating to Regional Development Councils; and (3) directs the Code Commissioner to make certain revisions to the Code of Alabama 1975, to conform with these changes. Effective Oct. 1, 2024.

Penalties for Child Labor (Act 2024-285, SB119)

Senator Robert Stewart

This act: (1) increases the civil penalty against an employer who violates certain statutory provisions relating to child labor from between \$1,000 and \$5,000 to between \$5,000 and \$10,000; and (2) increases the criminal penalty against an employer who violates those provisions to a Class B felony or a Class C felony, depending on the circumstances. Effective Oct. 1, 2024.

Law Enforcement & Public Safety

Abram Colin Act (Training for Fire-Protection Personnel and Emergency Medical Services Personnel) (Act 2024-81, HB126)

Representative Leigh Hulsey

This act requires the following training on interacting with individuals with sensory needs or invisible disabilities: (1) for fire-protection personnel, one hour within six months of becoming certified; (2) for all fire-protection personnel and certified volunteer firefighters, one hour every other year; and (3) for emergency medical services personnel, one hour each year. This act also requires the Alabama Firefighters' Personnel Standards and Education Commission and the Alabama Department of Public Health to collaborate with a nonprofit entity to provide the training without compensation. Effective Jan. 1, 2025.

Prisons

Prisoner Feeding Fund (Act 2024-251, SB149)

Senator Arthur Orr

This act: (1) increases the amount per prisoner to be placed in the Prisoner Feeding Fund from \$2.25 per day to \$2.50 per day beginning on Oct. 1, 2024, \$2.75 per day on Oct. 1, 2025, and \$3.00 per day on Oct. 1, 2026; (2) authorizes the sheriff or county commission to use funds from any source for the feeding of federal or municipal prisoners; (3) increases the amount automatically appropriated into the Emergency Prisoner Feeding Fund each year from \$500,000 to \$750,000; and (4) increases the maximum that a county commission may receive from the emergency fund per year from \$25,000 to \$50,000. Effective June 1, 2024.

Property

Alabama Uniform Commercial Real Estate Receivership Act (Act 2024-380, HB350)

Representative David Faulkner

This act provides statewide uniform procedures to govern receivership actions, including: (1) processes and regulations by which courts may appoint a receiver to manage and administer real property subject to dispute; (2) duties and authorities of receivers and property owners; and (3) factors according to which such actions shall be adjudicated. Effective Jan. 1, 2025.

Tax Lien Auctions and Sales (Act 2024-324, HB335)

Representative Jim Hill

This act: (1) modifies procedures and fees related to public auctions and redemption for the sale and transfer of delinquent tax liens; (2) provides for the purchase price of a tax lien if a holder of a tax lien certificate fails to purchase a subsequent tax lien; (3) authorizes any person with interest in the property to redeem a tax lien auctioned or sold; (4) prohibits the holder of a tax lien certificate from entering, possessing, or altering the relevant property until he or she has received a deed; and (5) prevents the holder of a tax lien certificate from being held criminally or civilly liable for any code violation occurring on the property before he or she obtains the deed, with exceptions.

This act also adds Section 40-10-202 to the Code of Alabama 1975, to provide that certain books and records are prima facie evidence in the trial of any issue involving the auction, sale, or redemption of a tax lien certificate, action for public auction, or foreclosure and quiet title action. Effective June 1, 2024.

State Government

Public Records Requests (Act 2024-278, SB270)

Senator Arthur Orr

This act: (1) provides guidelines relating to how a public officer must respond to a standard public records request; (2) requires a public officer to acknowledge receipt of a proper public records request within 10 days of receiving the request and provide a substantive response either fulfilling or denying the request within 15 business days of acknowledging receipt; (3) provides additional procedures and a lengthened deadline for response if the public records request is time-intensive; (4) creates a rebuttable presumption that a proper standard request or time intensive request has been denied in certain circumstances; (5) requires a public records request to be reasonably specific; (6) authorizes a public officer to seek clarification or additional information relating to the request; (7) provides guidelines relating to how a resident may request access to public records; and (8) exempts the judicial branch and certain state offices from those requirements. Effective Oct. 1, 2024.

Taxation

Alabama Workforce Housing Tax Credit Act (Act 2024-302, HB346)

Representative Cynthia Almond

This act, for taxable years beginning on or after Jan. 1, 2025: (1) creates the Alabama Workforce Housing Tax Credit for qualified workforce housing projects; (2) authorizes the Alabama Housing Finance Authority (the authority) to administer the tax credit program, adopt guidelines and qualified allocation plans, and award the tax credit to the owner of certain qualified projects; (3) provides eligibility requirements for tax credit awards; (4) limits the annual award for each qualified project to \$2,000,000 and provides for the calculation of maximum amounts that may be awarded for each award cycle; (5) requires the authority to incentivize and prioritize four percent qualified projects and award at least 20 percent but no more than 25 percent of the award cycle cap to qualified projects in rural areas; (6) allows the tax credits to be claimed for 10 years against the tax liability of a qualified taxpayer; (7) allows a carryforward for earned but unused tax credits; and (8) requires the Department of Insurance and the Department of Revenue to adopt rules. Effective Oct. 1, 2024.

Childcare Tax Credit (Act 2024-303, HB358)

Representative Anthony Daniels

This act: (1) establishes the employer tax credit; (2) authorizes employers to claim the non-transferable tax credit against applicable taxes for certain eligible expenses regarding childcare facilities; (3) authorizes the Department of Revenue to award the tax credit to employers who meet certain requirements; (4) limits each employer to up to \$600,000 in tax credits per year and creates aggregate annual caps; (5) authorizes childcare providers that meet certain eligibility requirements to claim a facility tax credit; (6) provides for the calculation of the facility tax credit, based on the average monthly number of children who participate in the Child Care Subsidy Program and the quality rating of the childcare facility; (7) provides that no more than \$5,000,000 in facility tax credits may be awarded each year; and (8) provides that each tax credit is effective for tax years beginning on or after January 1, 2025, and ending Dec. 31, 2027. This act also: (1) authorizes the Department of Human Resources to make grants to nonprofit childcare providers; (2) limits each nonprofit childcare provider to up to \$50,000 in grants per year and limits the aggregate amount of funding available for grants to \$5,000,000 per year; (3) requires the Department of Revenue and the Department of Human Resources to adopt rules to implement this act and to prioritize employers or nonprofit childcare providers in certain rural areas; (4) creates the Childcare Tax Credit Account within the Education Trust Fund for the payment of any refunds of employer tax credits or facility tax credits; and (5) requires the Department of Finance to adopt rules relating to the use of any unencumbered funds. Effective Jan. 1, 2025.

Tax Delinquent Properties (Act 2024-261, HB270)

Representative Chris Sells

This act: (1) revises the time period for the distribution of excess funds arising from tax sales occurring during certain time periods; (2) shortens the time period during which certain tax lien purchasers may bring an action to foreclose the right to redeem and quiet title to property under certain conditions; (3) requires the holder to pay all due and owing taxes and other fees prior to filing certain actions; (4) expands who must be served notice before the commencement of an action to include certain individuals who may reasonably be believed to have an interest in a property; (5) provides guidelines relating to the provision and content of such notice; (6) further provides for the granting of judgments in a tax lien foreclosure action; (7) further provides for the rights and obligations of a person who is entitled to redeem; (8) provides the procedures for the sale of public property at public auction; and (9) provides for the distribution of proceeds of certain public auctions. Effective Oct. 1, 2024. ▲



OPINIONS OF THE GENERAL COUNSEL

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What do you do with unclaimed client funds in the trust account?

QUESTION:

A solo practitioner with an active trust account died. Attorney A was appointed executor and took on the responsibility of winding up the practice and distributing the funds from the trust account. The solo practitioner maintained an accounts ledger of the trust account, but the balances did not reconcile with the bank account. After several years, Attorney A was able to determine the clients who owned the various accounts, and appropriate disbursements were made. He was unable, however, to determine the owners of some of the funds or the whereabouts of certain clients. What distribution should Attorney A make to close the account?

ANSWER:

There are two categories of funds in the account. The first category involves those funds that cannot be attributed to a particular client. After a reasonable and good faith effort is made to determine the ownership of the funds, and after holding the funds as long as necessary to assure that no unidentified client could make a successful claim against the account, Attorney A may distribute the funds to the solo practitioner's estate. The second category of funds in the account are those that can be attributed to a client, but the location of that client is unknown. After making a good faith and reasonable effort to locate the client, Attorney A must hold the funds until they are presumed abandoned under state law, at which time he should turn them over to the state.

DISCUSSION:

Attorney A should first make every reasonable effort to ascertain the identity and location of the clients entitled to the funds. This would include the publication of a notice in a newspaper of general circulation, not only in the area where the decedent practiced, but also in the last known area where the client or clients reside or do business.

Regarding the funds that cannot be attributed to a client or clients, several state ethics committees have held that after reasonable and good faith attempts to ascertain the ownership and after holding the funds long enough to ensure that no unidentified client could make a claim against the funds within any applicable statute of limitations, they may be distributed to the attorney's personal account or his estate.

Unidentified funds in a trust account may include deposits made to cover service charges, to prevent a potential shortfall, or fees earned but not yet withdrawn.

The Michigan Bar Committee on Professional and Judicial Ethics held that funds unassociated with any specific client or file, presumed to belong to former attorneys of the firm, or representing interest earned on an account, could be retained by the attorneys involved after notifying former clients and giving them an opportunity to substantiate any claims [Opinion CI-947 and CI-752].

Similarly, in Virginia, it was held that such unidentifiable funds must be placed in an interest-bearing account for a sufficient length of time to determine that no successful claim by an unidentified client could be made. If no owners or claims are found, the lawyer may then transfer the funds to his own account [Virginia Opinion 548]. In a separate Virginia Opinion, it was held that unidentifiable funds in a trust account could be distributed to a deceased lawyer's estate or distributed according to law to meet the deceased lawyer's non-trust obligations, provided a good faith effort to determine ownership is made and the funds are retained a sufficient length of time to assure that a successful claim could not be made.

The Alabama Disciplinary Commission addressed a similar question in RO-82-649. In that case, there were several thousand dollars in a deceased attorney's trust account that could not be "traced to its rightful owner." The Commission held that: "Some type of legal proceeding should be instituted whereby notice by publication could be given to potential claimants. Although other proceedings may be available, we suggest that the property could be disposed of under the Alabama Uniform Disposition of Unclaimed Property Act, Section 35-12-20, Code of Alabama, 1975." Further, the Commission assumed that all the funds were client funds and were not earned attorney's fees that had failed to be withdrawn. The opinion then cites an earlier opinion where the client was known but could not be located.

In the case at hand, we make no such assumptions and hold that where it cannot be determined that the funds are

client funds by reasonable, diligent, and good faith efforts, including public notice in a newspaper of general circulation and after holding the funds long enough to assure that no successful claim will be filed by an unknown client, the funds may be distributed to the deceased attorney's estate.

The second category of funds in the trust account are those that can be attributed to a client but the whereabouts of the client are unknown. In this situation Attorney A does not have the option of distributing the funds to the deceased attorney's estate because the money clearly does not belong to the deceased attorney. In situations such as this, numerous opinions of state bar ethics committees, including the Disciplinary Commission of the Alabama State Bar, have held that the funds must be retained until presumed abandoned under state law at which time the funds must be turned over to the state [Mississippi State Bar Ethics Committee Opinion 104 (6/6/85); State Bar of New Mexico Advisory Opinions Committee, Opinion 1983-3. (7/25/83); North Carolina State Bar Association Ethics Committee Opinion 372 (7/25/85); Michigan Committee on Professional and Judicial Ethics of the State Bar of Michigan, Opinion CI-1144 (4/9/86); Committee on Professional Responsibility of the Vermont Bar Association, Opinion 87-9 (8/87)].

The Office of General Counsel and the Disciplinary Commission have, in a number of opinions, held that where funds in a trust account may be attributed to a client but the location of the client is not known, that some type of legal proceedings should be instituted whereby notice by publication could be given to the owner of the deposited funds. The opinions also hold that although other proceedings may be available the property could be disposed of under the Alabama Uniform Disposition of Unclaimed Property Act, §35-12-20, Code of Alabama, 1975, [RO-82-649, RO-83-14, RO-84-26, RO-84-48, RO-83-146, and RO-84-106].

In situations where the client is known but cannot be found the money clearly does not belong to the attorney. Consequently, the lawyer has no alternative but to retain the funds on the client's behalf at least until such time as the funds may be considered legally abandoned.

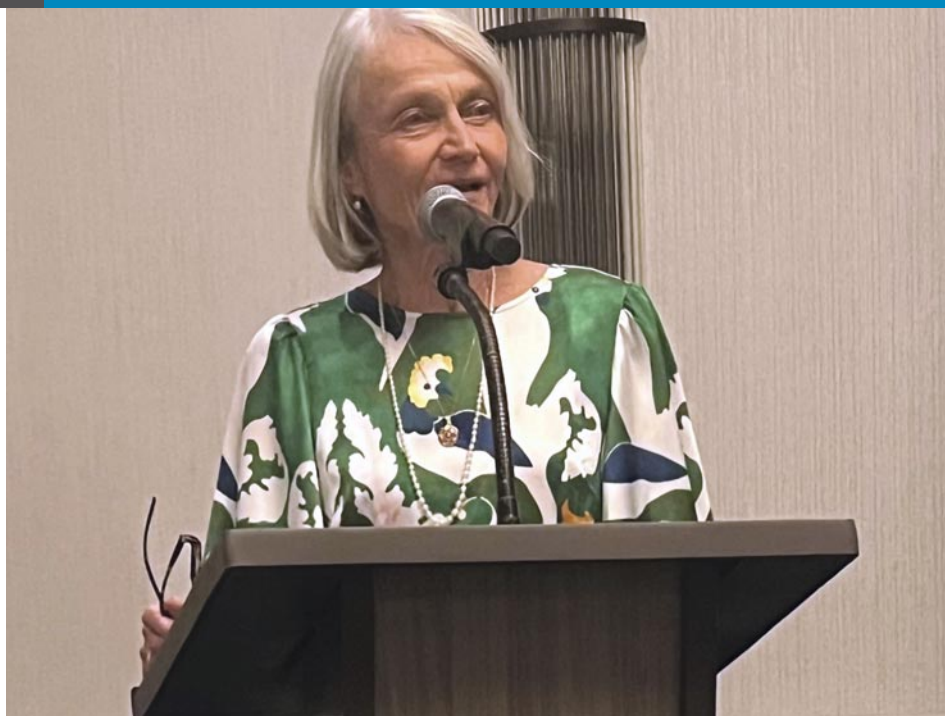
Consequently, in the case at hand, we hold that Attorney A must make every reasonable effort to locate the client, including public notices in a newspaper of general circulation in the area where the deceased lawyer practiced as well as in the area where the client maintained his last known address or business. If these efforts are unsuccessful then Attorney A must hold the funds until such time as they may be considered abandoned under the Alabama Uniform Disposition of Unclaimed Property Act, Chapter 12, Article II of Title 35, Code of Alabama, 1975.

If you have any questions about this opinion or another matter, please call us at the Alabama State Bar or via email at ethics@alabar.org ▲



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WOMEN'S SECTION UPDATE



Judge Inge Johnson

Celebrating Maud McLure Kelly Award Recipient Judge Inge Johnson

The Alabama State Bar Women's Section selected Judge Inge Johnson as the 2024 Maud McLure Kelly Award recipient.

Established in 2002 by the Women's Section, the Maud McLure Kelly Award honors a female attorney "who has made a lasting impact on the legal profession and has been a pioneer and leader within the state".¹ Kelly, born in Anniston, in 1887, was the first female attorney in Alabama.² She studied law on her own while working as a stenographer for her lawyer father.³ She applied to the University of Alabama Law Department in 1907 where she was only the second female to be admitted, obtaining senior-level status at her admission due to her outstanding performance on the entrance exam.⁴ Ms. Kelly graduated in 1908 with highest honors.⁵ She received her license to practice law in only after legislation was passed to change language in the Code of Alabama from "his" diploma to "his or her" diploma.⁶

Ms. Kelly was one of the first female attorneys in the South to be certified before the United States Supreme Court in 1914, and had a diverse civil and criminal practice, advocating for the poor and underprivileged.⁷ As a devoted suffragist, Ms. Kelly was a vocal leader in the crusade for women's right to vote.⁸ After working as an attorney for the U.S. Department of the Interior, she returned to Alabama in 1924 due to family obligations where she renewed her private practice until she retired in 1931.⁹

Ms. Kelly began working at the Alabama Department of Archives and History in 1943.¹⁰ She worked as an acquisition agent until 1956, when she retired from that position.¹¹ During her time with the Department, Ms. Kelly was the editor of the *Alabama Historical Quarterly* and penned legislation granting the department jurisdiction over Alabama's public records.¹²

In May of 1967, Ms. Kelly stated, "The only thing of which I am very proud of is that I opened the door to the active, actual practice of law here [in Alabama] to women. All other things I did were minor."¹³ In honor of her many accomplishments and her unrelenting work on behalf of women, and women lawyers, the Women's Section annually selects a female attorney who exemplifies Ms. Kelly's spirit of breaking barriers.

Judge Inge Johnson is the 2024 Maud McLure Kelly Award Recipient. Born in Svendborg, Denmark, in 1945, Judge Johnson received her Certificate in English Law in 1968 from City of London College, and her Certificate of Jurisprudence in 1969 from the University of Copenhagen School of Law.¹⁴ Thereafter, she attended The University of Al-

abama on a Fullbright travel grant and studied comparative law, and in 1973 she earned her Juris Doctor from The University of Alabama School of Law.¹⁵ Judge Johnson practiced law in the Shoals area from 1973-1979, during which time she became a United States citizen.¹⁶ In 1978, Judge Johnson became the first female attorney in Alabama to be elected circuit court judge and served in that position for the 31st Judicial Circuit until 1998, holding the position of presiding judge from 1980 until 1998.¹⁷ She also served as an officer for the Alabama Association of Circuit Judges.¹⁸ In 1998, Judge Johnson was nominated by President Bill Clinton for a position on the United States District Court for the Northern District of Alabama, and was confirmed in that same year.¹⁹ Judge Johnson was known for her impressive closure rate of cases.²⁰ She presided over the Pfizer Inc. litigation, which included over 2,600 federal lawsuits claiming that Pfizer's smoking cessation drug led to psychological issues including suicides and attempts at suicide.²¹ In 2012, Judge Johnson took Senior Judge status and retired from the federal court in 2015.²²

Among her accolades, Judge Johnson was recognized by the Birmingham Bar Women Lawyer's Section in 2006 as the recipient of the Nina Miglionico "Paving the Way" Leadership Award.²³ In her acceptance speech, Judge Johnson noted "it behooves us all to go back and thank all the women who went before us, whether they were in public or private life, they all had a role in who we are today and where women are today"²⁴

Judge Inge Johnson, much like Maud McLure Kelly, has made a lasting impact on female attorneys in Alabama. ▲

Endnotes

1. <https://www.alabar.org/about/awards-recognitions/>
2. "Maud McLure Kelly (1887-1973)". Alabama Women's Hall of Fame (2005), <http://awhf.org/kelly.html> (Last visited July 28, 2024).
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. Mark Kelly, "Maud McLure Kelly, Alabama's first female lawyer, continues to inspire", Alabama News Center (03/30/2022), <https://alabamaneWSCenter.com/2022/03/30/maud-mclure-kelly-alabamas-first-women-lawyer-continues-to-inspire/> (Last visited July 28, 2024).
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. Jennifer Taylor, "Maud McLure Kelly", *Special Collection Treasures*, (May-June 2007), <https://library.samford.edu/special/treasures/2007/kelly.html> (Last visited July 28, 2024).
14. <https://www.fjfc.gov/node/1390776> at the *Biographical Directory of Federal Judges*, a publication of the Federal Judicial Center.
15. *Id.*
16. *Id.*
17. Alabama State Bar, "Judge Inge Prytz Johnson First Recipient of Nina Miglionico 'Paving The Way' Leadership Award, *The Addendum*, (October 2006), Page 3.
18. *Id.*
19. *Id.*
20. *Id.*
21. Kent Faulk, "U.S. District Judge Inge Johnson goes into semi-retirement", www.al.com, Published October 19, 2012, at 10:19 p.m., Updated October 19, 2012 at 11:19 p.m. (Last visited July 30, 2024).
22. *Id.*
23. Alabama State Bar at pg. 6.
24. *Id.*



Marc A. Starrett

Marc A. Starrett is an assistant attorney general for the State of Alabama and represents the state in criminal appeals and habeas corpus in all state and federal courts. He is a graduate of the University of Alabama School of Law. Starrett served as staff attorney to Justice Kenneth Ingram and Justice Mark Kennedy on the Alabama Supreme Court, and was engaged in civil and criminal practice in Montgomery before appointment to the Office of the Attorney General. Among other cases for the office, Starrett successfully prosecuted Bobby Frank Cherry on appeal from his murder convictions for the 1963 bombing of Birmingham's Sixteenth Street Baptist Church.



J. Thomas Richie

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

RECENT CIVIL DECISIONS

From the Supreme Court of Alabama

Education

***Helena v. Pelham Bd. of Educ.*, No. SC-2023-0516 (Ala. Aug. 2, 2024)**

The Supreme Court of Alabama held that a board of education could build an athletic field complex on land that is adjacent to a high school operated by the board of education but located within the city limits of another city. It reached this conclusion for two reasons. First, it determined that Ala. Code § 16-11-9's geographic limitations relate to the location of a public school and do not otherwise restrict a board of education's powers. Second, the Court rejected the city's argument that the city's zoning ordinance forbade the development, reasoning that the board of education was a state agency performing a state function. As a result, it rejected the city's argument that the dispute was merely between two municipalities.

From the Alabama Court of Civil Appeals

Civil Procedure

***Ex parte Roberts*, No. CL-2024-0295 (Ala. Civ. App. July 26, 2024)**

The Alabama Court of Civil Appeals held that the trial court could properly have construed a mother's custody-modification petition as an independent action under Rule 60(b) because the substance of the petition alleged fraud on the court. Accordingly, the court found the petition timely—given the 3-year window available for bringing independent actions alleging that a previous judgment resulted from fraud on the court—and denied the father's mandamus petition.

Divorce

***DeJean v. DeJean*, No. CL-2023-0887 (Ala. Civ. App. July 12, 2024)**

The court affirmed the trial court's award of sole custody of the children to the mother but reversed the property division because of issues related to the marital residence. The residence was financed through a VA loan for which the father qualified. The house was awarded to the mother through the property division, but, in the appellate court's judgment, the division's award of alimony to the mother and a judicial lien to the father against the marital residence fell outside of the trial court's jurisdiction.

***Crocker v. Crocker*, No. CL-2023-0319 (Ala. Civ. App. July 26, 2024)**

The court reversed the trial court's property division as to a joint account into which the wife had deposited the majority of the funds from a personal injury settlement she received. It found that the trial court's equal division of the funds in the joint account did not comport with the undisputed evidence.

Appellate Jurisdiction

***M.C. v. K.H.*, No. CL-2023-0818 (Ala. Civ. App. July 12, 2024)**

The trial court dismissed a protection from abuse case before entering an order purporting to reinstate it more than a month later. The court of civil appeals held that the order fell outside of the 30-day window during which the trial court had jurisdiction to amend, modify, or vacate the order, so it dismissed the appeal and directed the trial court to vacate the order reinstating the case.

***Todd v. Todd*, No. CL-2024-0069 (Ala. Civ. App. July 19, 2024)**

The Alabama Court of Civil Appeals held that a property division that did not direct that the marital residence be sold but instead retained jurisdiction to order such a sale if the parties could not agree on how to divide the residence's equity was not a final judgment that would support an appeal. It dismissed the appeal.

Harmless Error

***Alabama Bd. of Heating, Air Conditioners & Refrigeration Contractors v. Blanchard*, No. CL-2023-0795 (Ala. Civ. App. July 12, 2024)**

The board revoked the defendant's license but inadvertently cited the wrong code section in the orders accomplishing the revocation. The hearing officer that recommended revocation cited the correct statutes, and the Board adopted those findings and recommendations in its revocation order. The Jefferson County Circuit Court, sitting as an appellate court, set aside the revocation orders based on the citation of the wrong statute. The court of civil appeals found the citation of the wrong statute to be harmless error and reversed.

Probate

***Sumblin v. Ward*, No. CL-2023-0197 (Ala. Civ. App. July 19, 2024)**

The court of civil appeals first declined to hold that a defendant that had obtained relief from a default judgment did so improperly even though the defendant had not

included both argument and evidence showing that it had a meritorious defense. Instead, because the court construed the motion for relief from default to be under Rule 60(b)(4)—even though the defendant styled the motion as being brought under Rule 60(b)(6)—no showing of a meritorious defense was required. It affirmed the trial court's award of interest on waiver grounds but reversed the award of attorneys' fees as being inadequately supported by the record. Specifically, the court found that the trial court wrongly relied on an arbitrary percentage of the amount of a debt as the value of a reasonable attorneys' fee and did not consider other evidence related to the Carver factors. Lastly, the court of civil appeals held that the trial court erred in entering a judgment against a corporate entity when the plaintiff had sued an individual who was doing business in the name of a corporation. The plaintiff had evidence that the individual was merely doing business as a lawncare business and there was no evidence that the plaintiff ever did business with the corporate entity. It reversed that portion of the judgment as well.

Termination of Parental Rights

***W.C.M. v. M.P.*, No. CL-2023-0615 (Ala. Civ. App. July 19, 2024)**

The Alabama Court of Civil Appeals reversed the termination of a father's parental rights arising from a custody case, finding that the evidence did not support the juvenile court's determination that terminating the father's rights would serve the child's best interest. Judges of the appellate court disagreed as to whether the father properly raised his challenge to the juvenile court's judgment, with three judges concluding he did and two concluding he did not. The main opinion is a plurality.

***Ex parte Madison Cty. D.H.R.*, No. CL-2023-0524 (Ala. Civ. App. July 26, 2024).**

In a procedurally complex case, the court of civil appeals affirmed the termination of parents' parental rights. The court found that the father's motion to dismiss DHR's petition was in substance an answer, meaning that DHR could not voluntarily dismiss its petition under Rule 41(a)(1). It then held that foster parents had properly intervened, despite their failure to file a pleading in connection with their motion to intervene. As a result, by the time DHR moved to dismiss under Rule 41(a)(2), the foster parents were parties. The court then affirmed the termination of parental rights and the placement of the child with a placement agency.

(Continued from page 293)

RECENT CRIMINAL DECISIONS From the U.S. Supreme Court

Presidential Immunity

***Trump v. United States*, 144 S. Ct. 2312 (2024)**

The President is absolutely immune from criminal prosecution for conduct within his or her exclusive sphere of constitutional authority, and Congress cannot limit that authority.

Homelessness; Cruel and Unusual Punishment

***City of Grants Pass, Oregon v. Johnson*, 144 S. Ct. 2202 (2024)**

Ordinances that prohibit sleeping or camping on public property and subject violators to criminal prosecution or civil fines do not constitute cruel and unusual punishment when applied to homeless people.

Confrontation Clause

***Smith v. Arizona*, 144 S. Ct. 1785 (2024)**

The Confrontation Clause prohibits the prosecution from introducing an absent laboratory analyst's testimonial out-of-court statements to prove the result of forensic testing. In this case, the testifying analyst had no involvement in the forensic testing of the drugs found in the defendant's possession. The Supreme Court concluded that the analyst's out-of-court statements were offered to prove the truth of the matter asserted, but remanded for the state court to determine whether the statements were testimonial in nature.

Obstruction of Justice

***Fischer v. United States*, 144 S. Ct. 2176 (2024)**

Reviewing a charge arising from the Jan. 6, 2021 Capitol protest, the Supreme Court construed 18 U.S.C. § 1512(c)(1) in the context of its enactment – the Enron accounting scandal – and held that proof of its violation must establish that the defendant “impaired the availability or integrity for use in an official proceeding of records, documents, objects, or ... other things used in the proceeding, or attempted to do so.”

From the Alabama Court of Criminal Appeals

Confrontation Clause; Certificate of Analysis

***Ramirez v. State*, No. CR-2023-0282 (Ala. Crim. App. June 28, 2024)**

The defendant did not preserve his Confrontation Clause challenge to the admission of a certificate of analysis under Ala. Code § 12-21-300 *et seq.* without testimony from the analyst. He was required to file a written request for a hearing regarding cross-examination of the analyst no later than 30 days prior to trial, but he failed to file the request in circuit court for his *trial de novo*. The State's filing of notice of its intention to introduce the certificate in district court was sufficient, with no need to refile the notice in circuit court.

Value of Stolen Property; Variance Between Exhibit Index and Transcript

***Calloway v. State*, No. CR-2023-0108 (Ala. Crim. App. June 28, 2024)**

A conviction for receiving stolen property must be reversed if there is no proof of the value of the property in question. Here, the State proved that the defendant received a stolen vehicle, but it did not introduce evidence showing its value. Though the record on appeal's exhibit index indicated that a document containing the vehicle's value was admitted into evidence, “the index of exhibits does not control over the actual transcript,” which did not reflect its admission.

Motion In Limine; Cruel and Unusual Punishment

***Wolfe v. State*, No. CR-2023-0871 (Ala. Crim. App. June 28, 2024)**

The defendant did not preserve his argument against the admission of a recorded telephone conversation between him and a minor whom he molested. Though the circuit court denied his motion in limine seeking to exclude it, that ruling was not “absolute or unconditional,” thus requiring an objection at trial for preservation. While the Court of Criminal

Appeals reversed two of the defendant's sodomy convictions for lack of proof, it rejected the notion that his consecutive sentences totaling 180 years' imprisonment on his remaining two sodomy convictions constituted cruel and unusual punishment. The claim was not first presented to the circuit court, and, regardless, the sentence did not violate the Eighth Amendment.

Jury's Access to Extraneous Information

***D.M.G. v. State*, CR-2023-0245 (Ala. Crim. App. June 28, 2024)**

Concluding that this was a rare case where prejudice was presumed "based on the seriousness and prejudicial nature of the extraneous information[,] the Court of Criminal Appeals reversed the defendant's convictions for sodomy of a single child due to the jury's consideration of evidence indicating that he molested both that child and her sibling. Juror affidavits revealed that they had reviewed a redacted exhibit that inadvertently described the defendant's second alleged victim.

Conflict of Interest; Non-Unanimous Sentencing Verdict; Use of Conviction for Aggravating Factor

***Smith v. State*, No. CR-2022-0504 (Ala. Crim. App. June 28, 2024)**

The Court of Criminal Appeals rejected the capital murder defendant's claim that the entire district attorney's office was required to recuse itself from his case after it hired his former defense attorney from his first trial. There was no imputed conflict of interest, and the attorney had been "fire-walled" from the case in accordance with National District Attorney's Association guidelines. There was also no error in the jury's less-than-unanimous death advisory verdict, for there is no unanimity requirement for a sentencing verdict. The defendant's prior robbery conviction was properly considered as an aggravating sentencing factor, regardless that he committed the robbery as a minor.

Conflict of Interest; Allocution

***C.C. v. State*, No. CR-2022-1258 (Ala. Crim. App. June 28, 2024)**

The district attorney's office was not required to recuse itself from the defendant's second trial where the defendant consulted with the district attorney, who was then in private practice, four years before the second trial and his election to the office. The district attorney explained that he met the defendant for no more than 30 minutes, had no specific memory of the consultation or information regarding the facts of

the case, and recalled only that the defendant indicated that he was not guilty and was going to be retried. The defendant's sentences were reversed, however, because he was not given an opportunity to allocute before their imposition.

DUI; Prior Bad Acts

***Harvell v. City of Huntsville*, No. CR-2023-0543 (Ala. Crim. App. June 28, 2024)**

The circuit court erred in admitting a DUI defendant's statements to a police officer at the scene of his traffic stop and at the jail. The statements reflected his history of driving under the influence of alcohol, and their admission violated Ala. R. Evid. 404(b)'s general prohibition against evidence of other crimes, wrongs or acts used to prove bad character. That the statements were spontaneous or made in response to the police officer did not render them admissible under Rule 404(b).

Pharmacy Robbery; Double Jeopardy; Business Record Hearsay Exception

***Spencer v. State*, No. CR-2022-1213 (Ala. Crim. App. June 28, 2024)**

The circuit court did not err in admitting a document through the testimony of a pharmacy asset-protection employee, regardless that he did not have personal knowledge of its content and creation, because it was admissible under Ala. R. Evid. 803(6)'s business record hearsay objection. But the defendant's convictions of pharmacy robbery and first-degree robbery constituted double jeopardy, because the jury could have found that he committed both offenses from the same evidence.

Writ of Mandamus; Jurisdiction to Modify Judgment

***Ex parte State (v. Tramaine Bonner)*, No. CR-2023-0660 (Ala. Crim. App. June 28, 2024)**

The Court of Criminal Appeals had previously granted the State's request for mandamus relief and ordered the circuit court to set aside its order granting a judgment of acquittal following a jury's guilty verdict. However, the circuit court determined that it did not possess jurisdiction to set aside its order. Finding this incorrect, the Court of Criminal Appeals granted mandamus relief and again directed the circuit court to set aside its order. It cautioned, however, that a petitioner seeking mandamus relief should seek a stay of the lower court's proceeding if jurisdictional issues might arise during pendency of the mandamus proceeding. ▲



ABOUT MEMBERS, AMONG FIRMS

Please email announcements to
melissa.warnke@alabar.org.

Among Firms

Bainbridge, Mims, Rogers & Smith, LLP is pleased to announce that **John W. Clark IV** has returned to the firm as a partner.

Bradley Arant Boult Cummings LLP announces **Kelsi A. Long** has joined the firm in its Huntsville office. Also, **Richard H. Monk III** was appointed the new office managing partner in Birmingham, and **Scarlett Singleton Nokes** was named a new practice group leader for Government Enforcement & Investigations

Hand Arendall Harrison Sale announces **Spencer E. Walker** has joined the firm's Mobile office as an associate in the litigation section.

Hill Hill Carter Franco Cole & Black, PC announces **Esther Nyarko** has joined the firm in its Montgomery office.

Lanier Ford Shaver & Payne PC of Huntsville announces that **Susanne H. McCrary** joined as an associate.

Porterfield, Harper, Mills, Motlow & Ireland, PA is pleased to announce **Joel S. Isenberg, Matthew W. Nicholson, and Robert E. Norton** have joined the firm.

Sanders & Williams LLC announces **Tomi Adediji** and **Ronni Stuckey** have joined as associates. ▲

About Members

Brooke-Anne Freeman announces the opening of **BA Law LLC** in Hoover.

Mark P. Eiland, JD, LLM has established the boutique estate planning firm of **Heircraft Planning LLC**, focusing on estate planning, business succession planning, and mediation of disputes involving wills and trusts. The firm will serve clients in Alabama and Florida.

David Trice announces the opening of **Trice Law Group, LLC** in Fairhope, which focuses on business law and litigation, healthcare law, and probate and estates.

About Members, Among Firms highlights ASB members on the move. Whether you're taking on a new role within your current company, organization, or firm; being hired at a new firm or organization; or starting up your own practice – send your announcements to *melissa.warnke@alabar.org* for publication consideration.



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NOTICE

DISCIPLINARY NOTICES

▲ DISCIPLINARY PROCEEDINGS

▲ SUSPENSIONS

▲ PUBLIC REPRIMANDS

DISCIPLINARY PROCEEDINGS

- **Darryl Tyrone Blackmon**, who practiced law in Mobile, and whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within twenty-eight (28) days of this publication, or, thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB Nos. 2023-1180, 2023-1308, 2023-1330, 2023-1550, 2023-1634. [ASB Nos. 2023-1180, 2023-1308, 2023-1330, 2023-1550, and 2023-1634]

SUSPENSIONS

- **Muhammad Atif** was suspended from the practice of law in the State of Alabama, by order of the Supreme Court of Alabama, with conditions, for a period of one hundred eighty-one (181) days, with forty-five (45) days of the suspension to be served with the remaining held in abeyance, followed by a two (2) year probation, effective Apr.25, 2024. The Disciplinary Commission's Order was based on the Conditional Guilty Plea submitted by Atif in ASB No. 2023-568, in which Atif waived the filing of formal charges and pled guilty to violating Rules 1.15, Rule 5.5, 7.2, and 8.4(c) and (g), Alabama Rules of Professional Conduct. Atif resides and practices law in New York but is not licensed to practice law in New York. As such, Atif only practices immigration law in New York. Atif admitted failing to maintain an IOLTA account and records as required by Rule 1.15. Atif admitted to commingling client and personal funds in his law firm's business account and his personal checking account. Atif also failed to maintain any records of payments from his clients. [ASB No. 2023-568]
- Montgomery attorney **Kynesha LaBonte Adams-Jones** was suspended from the practice of law in the State of Alabama, by order of the Supreme Court of Alabama, for a period of three (3) years, with ninety (90) days of the suspension to be served and the remaining held in abeyance, followed by a two (2) year probation, with conditions, effective April 17, 2024. Adams-Jones was also prohibited from serving as appointed counsel for at least two years. Adams-Jones pled guilty to violating Rules 1.5, 1.15, 8.1,

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(Continued from page 298)

- and 8.4(c) and (g), Alabama Rules of Professional Conduct. On June 23, 2023, the Office of Indigent Defense Services notified the Alabama State Bar that Adams-Jones had overbilled the State of Alabama in several matters in which she had been appointed to represent an indigent client. Adams-Jones admitted that she inadvertently overbilled on appointed cases, failed to maintain accurate time entries, and improperly double-billed her time on occasion. [ASB 2023-854]
- Jacksonville, Florida attorney **Emily Christine Williams**, who is also licensed in the State of Alabama, was ordered by the Supreme Court of Alabama, to receive reciprocal discipline of a 91-day suspension in the State of Alabama, effective May 1, 2024, pursuant to Rule 25, Alabama Rules of Disciplinary Procedure. The Supreme Court based its decision on an order issued by the Disciplinary Board of the Alabama State Bar on April 9, 2024. Williams was suspended for 91-days from the practice of law in the State of Florida for failing to competently and diligently represent her clients, for failing to adequately communicate with her clients, and for charging or collecting an excessive fee. [Rule 25, Pet. No. 2023-1237, ASB No. 2023-1000]
 - Montgomery attorney **Barry Reid Holt** was suspended from the practice of law in the State of Alabama for a period of ninety (90) days, with thirty (30) days to be served and the remaining sixty (60) days to be held in abeyance, followed by a one-year (1) probation, effective April 26, 2024. The suspension was based upon the Disciplinary Commission's acceptance of Holt's Conditional Guilty Plea, wherein Holt entered a plea of guilty to violating Rules 1.15 [Safekeeping Property] and 8.4(d) and 8.4(g) [Misconduct], Alabama Rules of Professional Conduct. Holt commingled client funds, failed to move his earned fees from his IOLTA account, and failed to maintain proper trust account ledgers. [ASB No. 2021-277]

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PUBLIC REPRIMANDS

- Mobile attorney **Michael Bruce Smith**, upon completion of a two-year probationary period, was issued a Public Reprimand with General Publication by the Disciplinary Commission of the Alabama State Bar on May 3, 2024, for violating Rules 1.4 [Communication], 1.15(a) [Safekeeping Property], 1.16(d) [Declining or Terminating Representation], and 8.4(g) [Misconduct], Alabama Rules of Professional Conduct. The order of the Disciplinary Commission was based on a complaint filed with the Office of General Counsel wherein, after investigation, it was determined that Smith accepted unearned fees from a client prior to his transfer to Inactive Status. As a result of the transfer, he was unable to perform the work for which he was paid. After his transfer, he failed to timely return the unearned fees. Smith also admitted to over-drafting his trust account. [ASB Nos. 2014-1735 and 2014-1874]
- Birmingham attorney **Louis James Willie, III** received a Public Reprimand with General Publication by the Disciplinary Commission of the Alabama State Bar, on May 3, 2024, for violating Rules 1.3 [Diligence], 1.4 [Communication], 1.15 [Safekeeping Property], 1.16 [Declining and Terminating Representation], and 8.4(d) and (g) [Misconduct], Alabama Rules of Professional Conduct. Willie failed to keep the client informed about the status of his case and failed to competently and diligently handle a matter entrusted to him. Willie also failed to make a timely refund of unearned fees in the matter. [ASB No. 2023-769]
- Birmingham attorney **Willie Florence, Sr.**, received a public reprimand with general publication by the Disciplinary Commission of the Alabama State Bar on March 8, 2024, for violating Rules 1.4(a) and (b) [Communication] and 1.5 [Fees], *Alabama Rules of Professional Conduct*. Florence failed to provide the client with a copy of the employment agreement, failed to properly invoice the client, and failed to provide the client with copies of pleadings and periodic updates about the status of the case. In addition, the fee agreement contained inconsistent and contradictory financial terms. [ASB No. 2021-829] ▲



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Since starting my legal career nearly two decades ago, I have known my law partner, James Bradford, to be witty, a deep thinker, and extremely well-versed on real estate law. What I did not know until only a few months ago is that he also has an affinity for poetry.

When his daughter, who would later go to law school, was just a toddler, James discovered that reading poetry was an excellent way to help her fall asleep. One particularly effective work was Tennyson's *Crossing the Bar*. After going back to that well so many times that he could recite it almost from memory, James started thinking of how it might be rewritten from the perspective of a law school grad anxiously awaiting bar exam results.

Putting pen to paper, James did just that. His work, *Passing the Bar*, maintained Tennyson's meter and rhyme words, but changed the subject matter. The result was a clever piece of prose that produced a snicker instead of slumber. James would repeat that exercise with other well-known works until enough "rewrites" had been penned to warrant composition in book form.

In aid of our attempt to bring a bit of levity and lighthearted fare to our readers, James has graciously agreed to allow reproduction of his works, now found in *Poetic Justice: Famous Poems Rewritten for & about the Legal Profession*. For our first foray, we'll start at the same place James did.

Copies of the book, with all 40-plus "rewritten" poems, are available for purchase (\$11.99 per copy) from the publisher at <https://localbooknook.com/product/poetic-justice/>, with all profits going to the Alabama Lawyer Assistance Program (ALAP) Foundation.

-Conrad Anderson, Co-Chair,
Alabama Lawyer Board of Editors

[REWRITE]

The Lawyer Rewrite

Passing the Bar

One sat: a rising star,
Which happened to be me.
I'll not be moaning at the bar
Results I'm soon to see.

I've had no nightmares while asleep;
I've mixed no tears in my beer's foam;
I drew the answers from down deep:
The law will be my home!
I know, while listening for the bell,
My future is not dark,
And there will be no sadness of farewell
As I embark.

For through the narrow mail slot of my Place
Arrive results to bear me far:
I hope to see my Postman face to face
When I have passed the bar.

[ORIGINAL]

Alfred Lord Tennyson

Crossing the Bar

Sunset and evening star,
And one clear call for me!
And may there be no moaning of the bar,
When I put out to sea,

But such a tide as moving seems asleep,
Too full for sound and foam,
When that which drew from out the
boundless deep
Turns again home.

Twilight and evening bell,
And after that the dark!
And may there be no sadness of farewell,
When I embark;

For tho' from out our bourne of
Time and Place
The flood may bear me far,
I hope to see my Pilot face to face
When I have crossed the bar.

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