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- Industry Expertise
- Powerful Insights

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It's no secret we have the best members; a few opened up about work, family and the mentors who had a significant impact on their professional careers
Are you proud of it, Stuart? I cannot tell you how many times my first mentor, Edgar M. Elliott, III, asked me that question when I turned in a brief or an assignment. Ed, who was an incredible trial lawyer and a former President of ADLA, was like a second dad to me, and I always wanted to be able to answer that question, “yes, I am proud of it.” Ed helped me understand the importance in taking pride in everything I do. It was a lesson that will never leave me. Today, as I write this column, I am so proud of ADLA. What an honor to have the chance to lead this organization during an exciting transitional year. Let me tell you about just a few of the reasons ADLA has made me proud in 2017-18.

Last June, just before I was to become President, I learned that I would be charged with recruiting and hiring a new Executive Director. This certainly was not a challenge I had planned or hoped for. But, with every challenge comes an opportunity. Immediately after our Annual Meeting, we got busy. We put in place a stellar Executive Director Search Committee made up of Bruce Barze (chair), Harold Stephens, Christie Estes, Pat Sefton and Michael Upchurch to take on the important work of conducting due diligence, creating a job description, posting the Executive Director position, selecting the candidates for interview and participating in a robust interview process involving many qualified candidates. I am so grateful to, and extremely proud of, these five incredible people. As with all that they have done for this organization over the years, they delivered excellence with the hiring of our new Executive Director.

Which brings me to perhaps the accomplishment I am most proud of this year – the ability to introduce to you our new Executive Director, Jennifer Hayes. I can hardly wait for all of our members to have the chance to meet Jennifer, who joined ADLA in January. Jennifer came to us from the Medical Association of the State of Alabama, where she had served for eight years as Director of Membership, and as Executive Director of five specialty medical associations. She literally hit the ground running before her first official day of work at ADLA, then got on a plane to Chicago with me for the DRI Leadership Meeting on her very first day on the job, and has never looked back.

With Jennifer’s guidance and nonstop efforts, accompanied by Administrative Assistant Leigh Stinebaugh, we have already accomplished more in the past three months than I could have hoped. Here are a few of the highlights, and a few projects in the works for the rest of the year:

Record enrollment for Deposition Boot Camp – 30 attendees, including 20 new members.

The Young Lawyers Section – Our YLS Board, chaired by Megan McCarthy, is a source of pride for ADLA. This year, they have developed a series of webinars for young lawyers. The first topic is Managing Clients and Creating Collaborative Relationships and will be available May 22nd. The Young Lawyers will hold their Spring 2018 Board Meeting on April 6, 2018 in Montgomery.

Annual Meeting at Perdido Beach Resort, June 21-23 – In addition to fantastic CLE planned by President-Elect Dennis Bailey and all the traditional activities, we have planned a deep sea fishing trip, beach bonfire and we will close the conference down with musical entertainment from Light Travelers Saturday night on the beach deck. The Annual Meeting promises to be a wonderful family event with sun and surf, golf, and networking activities galore. If you haven’t yet registered, please do! You can register online easily by going to www.adla.org and click on events. You can also pay your dues for 2019 at the same time.

New branding and a new website for ADLA – we are investing significantly to improve our on-line capabilities to provide more value for our members. We expect the new website to be online by September, and I am excited about our new look and website features. If you haven’t already found us on social media, please do. We are on Twitter at ALDefenseLaw and on LinkedIn by searching group name Alabama Defense Lawyers Association. Many thanks to Christie Estes for her tireless work as our social media czar.

Wednesday Briefcase- ADLA’s new members only e-newsletter is filled with bits of timely and important information, event registration, speaker spotlights, legislative updates, highlights of our members networking at ADLA events and more! If you are not receiving the e-newsletter, please contact the ADLA office and let them know. We don’t want you to miss out on anything. This new wcommunication tool will be the main source of how we will communicate to the membership.

Trial Academy – August 9-10, 2018 – I am proud of Board continued on page 13
The National Academy of Distinguished Neutrals

ALABAMA CHAPTER

www.ALMediators.org

Check preferred available dates or schedule appointments online directly with the state’s top neutrals

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The National Academy of Distinguished Neutrals is an invitation-only association of over 900 top-rated premier mediators & arbitrators throughout the US, and proud Neutral Database Partner to the national defense (DRI) & plaintiff (AAJ) bar associations. For more info, see www.nadn.org/about
The Alabama Defense Lawyers Association began 2018 with a brand new start and a renewed vision. As ADLA kicked off the New Year, I also began serving as your new executive director. If anyone had told me six months ago I would be starting the year off in this new position, I would have not believed it. The transition has been smooth and I am truly grateful for the opportunity to serve the members of ADLA. Thank you to everyone who has personally reached out to welcome me, as well as those I have already had the privilege to meet in person. I also want to recognize the executive search committee. They have been very gracious to me and went above and beyond to make my transition as easy as possible. Finally, I want to thank Leigh Stinebaugh for her hard work and support as we continue to navigate this change together. We are both looking forward to an exciting new year for ADLA.

I can tell you from my years of experience in association management, it’s obvious that ADLA has a stellar history of member leadership and staff support. Over the years, loyal members have contributed to the growth of the association, placing ADLA in a very strong position. However, ADLA is no different than other membership organizations that are looking for new and better ways to attract new members, retain current members, provide outstanding CLE opportunities and events for members to network with one another. I think we can all agree that our most valued professional relationships grow from networking opportunities. We are always looking to our peers for guidance and support. ADLA wants to be that source for you.

Since we began the New Year together, you should have already noticed a few changes in our communications. Members are now receiving an e-newsletter called the Wednesday Briefcase. This new communication tool provides brief updates on upcoming association events, legislative news, quality CLE opportunities, useful articles and so much more. We are very interested in your feedback for the e-newsletter. Please tell us if you have any ideas that will appeal to the membership, we are always open to suggestions to make it better.

We are excited about several big changes that you will see in the coming months. ADLA is currently undergoing a complete branding change that includes our new logo and website. The new branding will modernize the association’s image; giving ADLA a fresh new look. The new website is being designed to be user friendly and will provide a new source for ADLA members to access important information. The new website design will also incorporate new member benefits that we know you will enjoy. Stay tuned for the release dates.

“I have no doubt ADLA is poised to grow in new ways, and your support will make a huge impact on the future of the association.”

Other new changes that have been put into place are online registration for Annual Meeting and Deposition Boot Camp. In February, ADLA launched the 2018-2019 membership campaign, One Choice. Each year going forward, ADLA will promote the president’s message to the membership, as well as previous members who have not renewed their membership in hopes they will rejoin. ADLA’s new networking mixer event, ADLA After Hours, has already taken place in three districts; Montgomery, Mobile and Birmingham. We have more exciting networking events planned and we hope you will make time to attend new member events this year. We are also working to grow the attendance for Deposition Boot Camp and Trial Academy. As always, ADLA has excellent faculty members overseeing the programs; please continue to promote these events to junior lawyers in your firm.

I am excited to report that our new marketing efforts for this year’s Deposition Boot Camp have already netted twenty new members, resulting in the largest class in years. The planning process is well underway for the Trial Academy August 9-10 at Cumberland; it’s also shaping up to be a well attended meeting. ADLA wouldn’t be as successful today if it wasn’t for our dedicated sponsors and exhibitors that invest in our annual events, as well as advertising their services in the our Journal. As you can see in this Journal edition, we’ve implemented a new design. We will continue to work on the redesign so we can bring you more member news and highlight our association sponsors. New sponsorship opportunities have been created to enhance our Annual Meeting in June. Your entire family will enjoy what we have planned this year. ADLA is in the process of designing a new marketing package for 2019 that will offer our sponsors more exposure, increasing the value of your membership.

The Young Lawyers Section has been resurrected and they are in the planning process of bringing new benefits to

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ADLA AFTER HOURS

In March, ADLA hosted its first member mixers in Birmingham and Montgomery. Each event brought members together to network and meet the new executive director. ADLA is planning more networking events around the state to engage its members and recruit new civil defense lawyers to join the association. Stay up to date on upcoming member events in the *Wednesday Briefcase*, ADLA’s new members only e-newsletter.

*District 2 Birmingham, Trim Tab Brewery*
Sharon Stuart, Allen Estes, Jonathan Hooks, Bruce Barze and Bob Cooper

*District 2 Birmingham, Trim Tab Brewery*
Chase Espy, Jonathan Hooks, Jason Tompkins and Adam Israel

*District 3 Montgomery, Pine Bar*
Grant Sexton, Evans Bailey and Jesse Anderson

*District 3 Montgomery, Pine Bar*
Chris Reader, Dennis Bailey, Katie Davis, Evans Bailey and Paul James
In the past year, Governor Kay Ivey has appointed two Alabama natives to serve as associate justices on the Alabama Supreme Court. Dothan Circuit Judge Brad Mendheim joined the high court in January 2018 while Montgomery attorney Will Sellers joined in May 2017. Both Justices are running in the 2018 election cycle. We wanted to know more about them so, in early February, the Alabama Defense Lawyers Association sat down with Justices Mendheim and Sellers to talk about their judicial philosophies and their lives before going on the bench.

Brad Mendheim

Q Tell us how you got to the Supreme Court.
A Well, it all happened very quickly. If you had told me in November 2017 that I would be sitting here today, I would not have believed you.

I grew up in Dothan, Alabama where my dad worked as a pharmacist. I cannot tell you exactly when, but I knew before I ever graduated high school that I wanted to be a lawyer, primarily because I was interested in public service and knew that, as a lawyer, I would be able to do that. After graduating Northview High School in 1986, I attended Auburn University where I majored in history. I graduated a semester early so that I could work as a runner in a law firm in Dothan before going to law school. I started at Cumberland in the fall of 1990 and graduated in 1993.

My first year out of school, I practiced with a defense firm in Dothan. I quickly realized I did not want to make that my long term career. After my wife Michelle and I were married in 1994, I went to work for the District Attorney’s office for Dothan and Henry counties. I did that for seven years until I was elected to the district court in 2001. I was re-elected once before running for a circuit judge position for Houston and Henry counties in 2008.

I was re-elected to that position in 2014 without opposition and then appointed by Governor Ivey in January 2018. Again, it was surprising to me how quickly things moved. I have only been on the Court for about two weeks, but I am already reviewing briefs and working on opinions.

Q What things have changed between the time you started practicing law and now?
A The AlaCourt system is probably the single biggest change. I was already on the bench when it was introduced, and I think it largely changed things for the better. For instance, before AlaCourt, it might take several weeks for me to rule on simple motions, especially in the courthouses I only visited once or twice a month. I had to actually go there or wait for the papers to come to me. So, lawyers might have to wait as much as two weeks to find out whether their motion to continue would be granted. When AlaCourt was introduced, I was able to grant those motions the same day.

The downside of AlaCourt, in my experience, is that it can make it harder to keep track of cases. When you have a stack of papers on your desk, you know you have to do something with them. That is not as easy when you are doing it on a computer screen.

Q What differences have you noticed between the circuit court and the Supreme Court?
A There are several differences. The first thing I noticed is that cases are processed differently at the appellate level. In the trial court, I had an opportunity to interact with the lawyers and learn about their cases as they moved along. Here, we do not even see a case until the record is closed and all the briefs are submitted. Along the same lines, my role as a judge is very different. In the trial court, I did most of my work from the bench while wearing a robe. Now, I only wear a robe and interact with the lawyers at oral argument. I would say that is something I miss about the trial court, my ability to interact with other lawyers on a daily basis.

The computer system also surprised me. It is antiquated and limited compared to AlaCourt. In fact, we do not even have access to AlaCourt. Some lawyers think we can go on AlaCourt and look up the filings in their cases. I do not have a way to do that even if I wanted to. On the other hand, I have far more support staff here than I had in the trial court. We have several staff attorneys who typically look at the cases and provide a memorandum for us before we even see them. They also help us in drafting opinions after we have reviewed the briefs. In the trial court, I drafted most orders and decisions myself.

Finally, everything the Court does—literally everything—requires five votes. For example, if someone wants to hold a wedding
reception in the atrium of the Heflin-Torbert Judicial Building, that request has to be approved by five votes. That is a big difference from the trial court.

Q How did your time on the trial court bench prepare you to serve on the Supreme Court?

A It is funny you should ask that. When I was first appointed, many of the judges told me it was nice to have someone who had real experience trying cases. As a district attorney, I tried over 120 cases to a jury and also spent countless hours working with victims and their families. After going on the bench, I presided over more than 300 jury trials where I frequently interacted with the parties. These experiences gave me a deep appreciation for the people involved in these disputes. To lawyers, a case is often just another case, but for the litigants, it is one of the single most important events they will ever experience, especially in criminal and domestic cases. Because we have such little interaction with the lawyers and the parties at the Supreme Court, I think it would be easy to forget that behind the sheets of white paper there is a human being seeking justice. I think that my time on the trial bench has given me the perspective to avoid falling into that trap.

In addition to the human component, my trial court perspective enables me to understand the practical implications of our decisions. History has taught us that legal rules can be theoretically sound but also impossible to apply. My view is that legal rules should be both principled and practical.

Q Earlier you mentioned the impact that computers have had on the practice of law.

Do you have any thoughts about the impact of social media? On its relationship to the judiciary?

A I will answer your last question first. I think that social media and my role as a judge are like oil and water. On a personal level, I have made a point to stay away from it because it is so easy for anything you say on those platforms to be misinterpreted. On the other hand, I acknowledge that social media is now a central component of our society, especially for young people. So I have used social media in my campaigns because it helps me get my message out.

As for how it impacts cases, I would say that it is has become more common in just the last few years. It seems to come up a lot in certain types of cases and in certain ways. For example, social media is commonly at issue in domestic relations cases. I have also seen it come up a lot with jurors. No matter how much you tell them not to use it, some jurors are going to post things to social media during the trial. That can create some hard questions for the lawyers and the judge.

Q How do you approach cases now that you are on the Supreme Court?

A That depends on how the case reaches me. If the case is assigned to me, then I will read every word of every brief starting with the top brief and reading straight through to the end. I will make notes and then collaborate with a staff attorney regarding the preparation of a draft opinion. For cases that come to me from another judge, I will start with the judge’s draft opinion before I read the briefs.

STAY UP TO DATE WITH ADLA’S Wednesday Briefcase

It’s important to us to keep our members informed. Each week members receive timely information on association events, legislative updates, important news bites and more. Please contact us at adla@adla.org if you are not receiving the e-newsletter.
One thing that I want people to know is that we prepare a draft opinion in every case but frequently do not publish those opinions because of the amount of work required to move from a draft opinion to a publishable one. When the Court issues an “affirm, no opinion,” many lawyers and parties think the Court failed to give their case serious consideration. That has not been my experience at all. We dispose of cases without publishing an opinion for a number of reasons—the opinion would not create any new law, it was decided solely on the facts, the only meritorious argument was waived, etc. Publishing an opinion also requires a lot of administrative work. The staff attorneys must expand upon the initial draft, adding case law and refining the prose. The Reporter of Decisions also has to check the opinion for formatting, grammar, and style. If we had to go through that process for every single case, it would take years to issue an opinion. That delay would be far worse.

**Q** What things do you like to see in briefs?

**A** A good brief is, well, “brief” and to the point. In complex cases, good writing is critical because I am trying very hard to understand the issues and the facts. If you have a complex issue that you do not do a good job explaining, that makes my job much harder. For some issues, a chart or graph is a great way to present complicated information. For example, if there is a complex damages calculation or if a party is challenging certain categories of damages but not others, a chart showing those amounts and the issues related to them is very helpful. One suggestion I have is that lawyers should be very careful not to waive arguments either in the trial court or on appeal. I have already seen cases where there was probably an error in the trial court, but the lawyer waived it either by failing to raise the issue in the trial court or in his initial brief on appeal. In those cases, there is really not much that the Court can do.

**Q** What things do you not like to see in briefs?

**A** It may surprise some lawyers but I actually read the cases you cite. So, if you cite a case, you need to make sure it actually stands for the proposition for which it is cited. If I read the case and it does not actually support your proposition, then you have just lost credibility. Along the same lines, I do not like it when lawyers fail to provide appropriate citations. I have already encountered briefs with phrases like “The law of Alabama is . . .” without providing any citation to authority. Similarly, when lawyers fail to cite to the record, they are leaving us to guess whether or not the factual proposition is actually supported. Failure to cite authority or the record never helps your argument.

**Q** What do you like to do when you are not reading briefs and writing opinions?

**A** Spending time with my family is very important to me. I have college and high school age children so I spend a fair amount of time at high school and college sporting events. I am also a big baseball fan. I love going to see the Braves and Biscuits play. Spring break normally coincides with the Braves spring training, and I have enjoyed going down to that over the years. Also, living in Dothan, we are not that far from the beach or Disney World, two places that my children love to go. Personally, I like learning about history, especially the early American period. I enjoy reading biographies from that era.

**Q** Do you have any advice you would give to young lawyers?

**A** I would remind young lawyers that having a law license does not make you a skilled lawyer. You need time and experience to develop, and you must make a conscious effort to do so. In today’s legal environment, that may mean you have to take a pro bono case now and then to get some courtroom experience. No matter the situation, however, you should always show respect to both the court and the jury.

**Q** Given your love of history, who is one Supreme Court Justice that you really admire?

**A** I really admire Robert Jackson. He is not as well-known as some other Supreme Court Justices because he had an early death. He was the last Supreme Court Justice who did not graduate from law school before being admitted to the bar. He served as the Solicitor General for Franklin Roosevelt and as Attorney General before being appointed to the Supreme Court just before World War II. After the war, he took a leave of absence from the Court to serve as a prosecutor of the German war criminals at Nuremberg. He had a long running feud with Hugo Black, and he vehemently disagreed with some of his positions on the Supreme Court.

I admire him for his dissent in *Korematsu v. United States*, in which Justice Black held that Japanese Americans could be confined solely because the United States was at war with Japan. Justice Jackson countered that being an American citizen of Japanese descent is not a crime and pointed out that citizens of German or Italian dissent were not being interned. I think that dissent illustrates why the civil rights and liberties guaranteed by our Constitution are so important. It may not be a perfect document, but the Constitution is what secures our republic. I admire Justice Jackson for being willing to stand up for the rights guaranteed by the Constitution even though it was unpopular to do so.

**Q** Do you have anything else that you would like the people of Alabama to know about you?

“The best briefs are ones that give a thorough discussion of the controlling legal authority in a concise way and apply the facts accordingly.”
Yes, I want to thank them for the opportunity to serve them on the Supreme Court and let them know that I am honored to serve. I take this responsibility very seriously. As I mentioned earlier, I am a firm believer that the Constitution is what secures our republic and guarantees our civil rights. As a member of the Alabama Supreme Court, I promise to uphold those rights.

Will Sellers

Q Tell us about your life before you became a lawyer.

A I was born in Montgomery and have lived here most of my life. Growing up, I did not have much experience with the law. My father was an investment banker and my other extended family members were small business owners. My father, however, encouraged me to become a lawyer because he thought that a career at the intersection of law and business would be very rewarding.

I left Alabama briefly to attend Hillsdale College in Michigan, where I majored in History and Political Economy. I came back to the University of Alabama for law school, where I finished in 1988. My wife Lee and I were married that summer, and then immediately moved to New York so that I could get an LL.M. in tax from NYU.

Despite going to school in Michigan and New York, there was never any doubt in my mind that I was going to come back to Montgomery to practice law.

Q Tell us about your practice before being appointed to the Supreme Court.

A As I mentioned, I grew up around small business owners, and I felt like I had a pretty good understanding of the business world when I came out of law school. That is why I focused my tax practice on helping small businesses. That was a great way to approach the practice of law because my work as a tax attorney touched on a variety of areas impacting business and always gave me something interesting to do. This was especially true when Congress changed the law every two years or so.

From 1989 to 2001, I practiced with Kaufman & Rothfeder and then I moved to Balch & Bingham, where I practiced until Governor Ivey appointed me to the bench. I spent the majority of those 28 years in private practice representing individuals and businesses in tax controversies at the state and federal level. I encountered a wide variety of issues. Sometimes there was a dispute about valuation or computation that was more fact intensive. Other times we were arguing about the meaning of a statutory phrase or exemption.

I should point out that tax litigation is a little different from traditional litigation. There is rarely a jury; arguments are usually presented to an administrative law judge or tax court judge who issues findings of fact and conclusions of law. While this was not traditional litigation, it got me out of the office and afforded me the opportunity to practice oral advocacy.

My experience litigating tax issues helped led me to advise clients about how to avoid tax problems through planning and consultation on the front end. Toward the end of my time at Balch & Bingham, I was the de facto general counsel for several small businesses because my practice spanned both litigation and transactional matters. I rounded out my practice with work in estate planning and administration and also advised elected officials on campaign finance issues.

Q It sounds like growing up around business owners really influenced your approach to law. In your opinion, how do businesses approach the law?

A Most small businesses want to do three things: (1) grow their business, (2) take care of their employees, and (3) leave their business to the next generation. All three things require those businesses to understand the legal environment in which they operate. Often, legislation or regulation is well-intended but it is poorly executed or ill-applied. I think small businesses feel like the law creates a lot of hoops for them to jump through without actually accomplishing anything. Indeed, many businesses view the law as a behemoth that is dense and difficult to understand. I realized that I could help them understand the law and then organize their business affairs appropriately; I really enjoyed doing that. That is why I built my practice centered around the relationship between the law and business.

Q How has the practice of law changed over your career?

A The rise of electronic research tools—Westlaw and Lexis Nexis—is probably the single biggest change I have experienced. When I was in law school, Westlaw had just launched its electronic platform. At my first job, I did not even have a computer. After a lot of lobbying, I finally convinced my firm to buy me a computer and a printer. Now everyone has both. Dictaphones are another major change. When I started practicing, everyone dictated their briefs and letters. Now I draft those myself.

The rise of electronic research has also transformed the role of libraries at law firms. When I was a summer clerk, the library was the focal point of every law firm. The older and more prestigious the firm, the more impressive the library and the more extensive the collection. Now, cases and most books are available online so there is no reason to even leave your desk. I am not saying that is a bad thing, but I do miss going to the law library and looking at the old books.

Q You mentioned how technology has taken on a bigger role in your practice over the years, do you consider yourself a “techie” when it comes to the law?

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A Well, I do my own typing and send emails, but I would not consider myself a “techie.” As a general rule, I try to avoid social media. It is everywhere these days. Since going on the bench, I have been impressed at how often it comes up in criminal cases. I think that has strengthened my resolve to avoid social media.

Q Speaking of cases, how do you approach them?

A I approach all cases pretty much the same way. When a case is assigned to me, the court clerk first checks it into our electronic system and ensures there are no conflicts or major jurisdictional issues. Then I do a first pass of reading the briefs. I typically start with page one of the appellant’s initial brief and read straight through to last page of the reply brief. Then I create what I call an assignment memorandum. It is less of a memorandum than my thoughts on what the issues are, my concerns about the case, and what I think the holding should be. It is written in a stream of consciousness format. Then the case will pass to a staff attorney. We will work collaboratively to develop an opinion and a memorandum to the remainder of the Court explaining the rationale for our proposed result.

We prepare a memorandum or an opinion in every case. This was one of my misconceptions before I was appointed so I want to stress that every case has a fairly detailed memorandum prepared. The first draft is rarely of publishable quality but the legal reasoning is all there. I know that many lawyers see the phrase “affirm, no opinion,” and think the Court failed to give serious consideration to their case. I can assure you that is not true. I give every case serious consideration, and I am confident every other justice on this Court does the same. The reasons we do not publish an opinion in every case is that many decisions have no precedential value; plus, it requires a lot of additional time, especially for our Reporter of Decisions.

Q What do good briefs look like?

A They are concise, to the point, and focus on the real legal issue. Exceeding the page limit or talking about every single issue rarely makes a brief any better. The best briefs are ones that give a thorough discussion of the controlling legal authority in a concise way and apply the facts accordingly.

Q What are things that you do not like?

A I have not been on the Court long, but I can tell you that briefs which do not cite legal authority, do not cite to the record, or do not discuss the reasons for the trial court’s decision are extremely unhelpful. First, you must make a conscious effort to do so.

“Having a law license does not make you a skilled lawyer. You need time and experience to develop, and you must make a conscious effort to do so.”

Second, you have to cite to the record. When the case gets to us, we really have nothing but the record, and to fully understand the facts we need the lawyers’ help to point out the material facts in support of their position. Recently, an attorney filed a brief with no citations to the record. I understand the clerk sent the brief back and gave the attorney seven days to file a new brief with record citations. The attorney replied, “Do you know how long it would take me to cite to the record in this case?” Well, however long it might take you, it is going to take a whole lot longer for us. In that case I think the record was voluminous but this is true even when it is not.

Third, you cannot simply ignore the trial court’s controlling legal authority. An appellant needs to show that the trial court committed reversible error. I am befuddled by how many times I have seen a trial court decide an issue based on a particular precedent and the appellant never even discusses that case in their brief. To me, that is a red flag indicating that the appellant is probably going to lose because they cannot distinguish the case the trial judge used to rule against them.

Q What other advice would you give to attorneys?

A Well, I would again stress how important it is to cite clear and concise legal authority. It makes our job so much easier. Also, if something is not in the record or if the record is inaccurate, there is not much we can do. So, before you file your brief, check the record to make sure it is complete and accurate. Finally, I would remind attorneys that you must preserve issues for appeal. If an issue reaches us and it is not preserved, there really is not much that we can do with it. At trial, it is not enough to just object but you must state reasons for the objection and supply the trial court authority if the objection is overruled.

Q What do you like to do when you are not reading briefs and writing opinions?

A I enjoy reading and watching old movies. I also love history. My mother taught history, and I enjoy reading biographies; I just finished reading a book about Golda Meir—a fascinating leader. My favorite course in college was the history of science. This is a fascinating branch of history because you see how the starts and stops of progress are discovered to create new ideas. I enjoyed learning how different scientists pieced together their observations and then developed a theory that we now take for granted as being true.

I also spend a significant amount of my time volunteering with different civic organizations. For example, for the past six years I have been the community liaison for the International Officers School at Maxwell Air Force base. In a typical year, there are 65
or more foreign countries who send an officer to Air University in Montgomery. Our role is to show these folks around Montgomery and help them feel at home. It is my small way of conducting a foreign policy for Alabama.

**Q** You mentioned your love of history, who is one Supreme Court Justice that you really admire?

**A** That is a tough question to answer. I think that John Marshall did so much to chart the course for the role of the judicial branch in our society that I have to mention him. I also admire Justices William Rehnquist and Antonin Scalia, and I identify with their judicial philosophies even if I do not always agree with their legal conclusions. I certainly aspire to write opinions like Justice Scalia’s—that is, opinions that are both intellectually sound, sometimes humorous, and fun to read.

**Q** Earlier, you mentioned your father encouraging you to pursue law school because he thought it would be a rewarding career. Do you think he was right?

**A** Absolutely. I think my father realized that focusing my career on the intersection of law and business would allow me to live a good life. On that point, he was certainly right.

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**Did You Know?**

Alabama can boast (or not) having the longest __________ in the United States. The first ADLA member who responds to adla@adla.org with the correct answer wins a $200 Amazon gift card.

**message from the president** continued from page 4

members Kirby Howard and Hal Mooty for undertaking a project to combine our fact patterns for Deposition Boot Camp and Trial Academy so that we can offer these events as a package to our members. This year, in addition to the excellent trial training for young trial lawyers that Trial Academy always provides, we will also have a social event at Top Golf in Birmingham to coincide with Trial Academy, so that younger and more experienced members alike can get to know each other better. Whether or not you plan to attend Trial Academy, make plans to attend the Top Golf Social! Watch for your Wednesday Briefcase e-newsletter for online registration and event updates.

District Member Mixers – we have held member socials in Birmingham, Montgomery, and Mobile so far – North Alabama is next! These events are held at fun venues across the state so that defense lawyers can get together outside the courthouse.

Amicus Curiae Committee – as always, ADLA’s amicus committee, chaired by Mark Hess, is a source of pride for our organization as it continues to address issues of significance to the defense bar and our clients before the Alabama appellate courts. Already in 2018, the Alabama Supreme Court has issued an opinion in an important case in which ADLA authored a brief. ADLA’s Amicus Curiae briefs can be found on our website.

Legislative Affairs – I am proud of the way our Legislative Committee, chaired by Dennis Bailey, takes the time to review bills pending before the legislature so that we can quickly take action when necessary. As you no doubt have noticed, we have stepped up our efforts to notify our members of legislation impacting our clients and the defense bar. We intend to increase our service as a resource to legislators as they consider legislation affecting the defense bar and our clients.

Finally, I am proud of our members. Without each of us, this vibrant organization would not be possible. Together, we are powerful and successful. Some fifty-four years ago, in his invitation letter to potential ADLA members, founding member Red Clark described the type of association that the ADLA founders envisioned: “[A] group of lawyers dedicated to the defense have been working together towards the promotion of an organization to foster closer cooperation and communication among those of us who usually sit on the defense side of the counsel table.” Red concluded his invitation letter: “Your active participation in this movement is most important to us.” I couldn’t say it better myself. Thank you for actively participating in this great group. As defense lawyers, we have a lot to be proud of, and ADLA embodies the best of it all.
EVALUATING RELEASES UNDER ALABAMA LAW
By: Bridget Harris and Molly Drake

As litigators, the question of whether a release is both comprehensive and legally valid probably arises more than expected when we first decided to become courtroom lawyers. With settlements dominating the world of litigation, we often find ourselves in the position of drafting releases instead of defending them or picking them apart. Add in that clients include various waivers and releases in contracts as a matter of course, plus related questions like whether indemnification or insurance coverage exists, and we find ourselves surrounded by contracts, and, of course, releases.

With that in mind, below is a simple reference guide to releases under Alabama law and the questions to ask when considering one.

I. Categories of Releases

Releases ordinarily fall into one of two buckets: general or specific. But Alabama also has some specially-named releases that exist. Those releases, such as pro tanto releases, are most often referred to by name instead of as “general” or “specific.” We discuss these categories of releases below.

a. General Releases

General releases are, unsurprisingly, broader than specific releases, and are “not limited to a particular claim or set of claims, such as those at issue in a pending or contemplated lawsuit, but instead cover[] any actual or potential claim by the releasing party against the released party based on any transaction or occurrence before the release.” Black’s Law Dictionary (10th ed. 2014); see also Irvin v. Griffin Corp., 808 F.2d 802, 804 (11th Cir. 1987) (“Under Alabama law, an injured party’s execution of a general release arising from a tort claim operates as a bar to any other potential claim of the party arising from the same tort.”).

Historically, in order for an Alabama court to have concluded that a release had the effect of a general release, the language needed to state that “any and all other persons’ or words of like effect” were released from liability. Wittner v. Kemp, 529 So. 2d 961, 962 (Ala. 1988); see also Irvin, 808 F.2d at 804 (“This is simply a reflection of the old common law rule, that one who accepts payments from one tortfeasor and executes a release, which, in express terms, releases ‘any and all persons’ is held to have discharged both the payer party as well as other tortfeasors not party to the release agreement.” (citing cases)); Baker v. Ball, 473 So. 2d 1031, 1034 (Ala. 1985) (holding that “and any and all other persons, firms, corporations and parties whatever, jointly and severally, of and from any and all judgments, claims, demands, actions, causes of action, suits, costs, damages, expenses, compensation and liabilities of every kind” was sufficient to constitute a general release).

But this requirement was altered in 1989 by the Alabama Supreme Court, in recognition that these “any and all persons” words may not always reflect the intent of the parties, particularly as to unknown tortfeasors. See Pierce v. Orr, 540 So. 2d 1364 (Ala. 1989) (concluding that unnamed third parties technically included in release by words “any and all parties” or similar language, who did not pay consideration for their inclusion in the release, and who had no relationship in privity or otherwise with the releasee/payor, bear the burden of proof to establish that they were intended to be included in the scope of the general release); see also Ford Motor Co. v. Neese, 572 So. 2d 1255, 1257 (Ala. 1990) (implementing this burden and extending the holding of Pierce so that the burden to prove inclusion in release does not apply if the unnamed party “paid some part of the consideration for the release and is an agent, principal, heir of, assign of, or otherwise occupies a privity relationship with, the named payor.”); Ala. Code § 12-21-109 (1975) (release to have effect according to terms and intent of the parties).

Another characteristic of a general release is that “the parties obviously intend to release all claims.” Regional Health Services, Inc. v. Hale County Hosp. Bd., 565 So. 2d 109, 114 (Ala. 1990) (reversing where trial court permitted conversion claim to proceed to jury trial and noting that “the trial court erred. [] If the parties had wanted to limit the release, they could have expressly reserved and excepted certain claims, including tort claims, from the release”); see also id. at 114 n.2 (“Our holding today, as it relates to the release of ‘claims,’ should be distinguished from the holding in our recent case referring to ‘any and all persons.’”). Accordingly, where a release refers to “any and all claims” or similar language, Alabama courts will enforce them on the basis that they are unambiguous and “could have been limited if the parties so desired.” Nix v. Henry C. Beck Co., 572 So. 2d 1214, 1216 (Ala. 1990) (releasee’s argument that release was intended to bar contract-related claims only failed where he released “any and all manner of claims, demands, damages, causes of action or suits that it might now have or that might subsequently accrue to it by reason of any matter or thing whatsoever, and particularly growing out of or in anywise

“Another characteristic of a general release is that the parties obviously intend to release all claims.”
connected with directly or indirectly, that certain contract entered into [by the parties]); see also Baker v. Blue Circle, Inc., 585 So. 2d 868, 870 (Ala. 1991) (“Having not so limited the release, Baker cannot now assert a restriction on the scope of the release that is not found within the four corners of that document.”).

b. Specific Releases

In contrast to general releases, specific releases “specifically limit[] the scope of the release, [and] the release will not bar claims outside the scope of the release.” Ex parte PinnOak Resources, LLC, 26 So. 3d 1190, 1201 (Ala. 2009). Specific releases are not as common as general releases for the obvious reason that if a release is executed, the parties (particularly the defendant) want it to be as broad as possible to bar any future liability. Although there sometimes exists context-specific reasons for parties to enter into specific releases, a broad general release tends to be the favored route. But see, e.g., Ex parte PinnOak Resources, 26 So. 3d at 1201 (discussing a release with specific time frame); Cooper v. Volvo Group North America, Inc., 2013 WL 12284452, at *16 (N.D. Ala. 2013) (analyzing specific release “from any and all claims of any type or nature, whether known or unknown which have or could have been made, arising from or relating in any way to the subject trucks or their operation up to and including the date of this agreement”); Cavender v. State Mut. Ins. Co., 748 So. 2d 863, 868 (Ala. 1999) (analyzing specific release and noting that “the wording emphasized here limits the release to two areas. First, any future claim relating to mistaken projections would be precluded . . . Second, any future claim relating to fraud in selling policies would be precluded”).

c. Other Releases

Other categories of releases exist in Alabama too. For example, a pro tanto release allows “[a] person injured by two or more joint tortfeasors [to] accept a partial satisfaction and release one or more pro tanto, and continue against one or more of the others.” Williams v. Colquett, 133 So. 2d 364 (Ala. 1961). Said another way, in a suit with multiple defendants, a plaintiff can enter into a settlement agreement with one defendant, releasing that defendant from all liability, but continue against the other defendants. Such a release is ordinarily a general release as to just one defendant, including language to make it clear that the other defendants are not released. See, e.g., McGuffie v. Mead Corp., 999 F.Supp. 2d 1232, 1259 (N.D. Ala. 2014) (pro tanto release that included language releasing its present and former parents, subsidiaries, successors held to be unambiguous and effective). But see, e.g., Ford Motor Co. v. Neese, 572 So. 2d 1255, 1255 & 1258 (Ala. 1990) (affirming reformation of apparent general release into pro tanto release based on intent of the parties).

II. Release Language

Although there is no magic language for a valid release under Alabama law, there are a few key buzz words to include. As noted above, if a general release is intended, one should include language that makes that intent clear, such as stating, at a minimum, that “any and all claims” are released. See, e.g., Nix v. Henry C. Beck Co., 572 So. 2d 1214, 1216 (Ala. 1990) (general release effective when party released “from any and all manner of claims, demands, damages, causes of action or suits that it might now have or that might subsequently accrue to it by reason of any matter or thing whatsoever . . . . It is the purpose of this release to forever settle, adjust and discharge all claims of whatsoever kind or nature.”). In contrast, for a specific release, precision is key. See, e.g., Jones v. Auth, 31 So. 3d 115, 122 (Ala. Civ. App. 2009) (where release listed precise claims released, claims that fell outside of the scope were permitted to proceed). Finally, a pro tanto release has not traditionally required an express reservation to pursue claims against other tortfeasors to be effective, so long as the proper party is alone released. See, e.g., Grimes v. Liberty Nat. Life Ins. Co., 514 So. 2d 965, 968 (Ala. 1987). Nevertheless, it is common to see such reservations in these releases, particularly because a reservation is required in certain instances, such as when an agent is released but not the party potentially responsible for that agent’s actions. See, e.g., Hundlev v. J.F. Spann Timber, Inc., 962 So. 2d 187, 192–93 (Ala. 2007) (“[T]he operative inquiry is whether, in the settlement agreement that precipitated that dismissal, [plaintiff] expressly reserved the right to pursue tort claims against other [related] parties.”).

III. General Contract Principles Applied to Releases

When analyzing the validity of a release, general contract principles apply. Just like any other contract provision, a release can be ineffective if, for example, the releasor lacked the power to release or if there is no consideration. These principles are discussed below.

a. Power to release

One of the first issues to consider when considering a release is whether the parties had the power to execute the release in the first place. For example (and, unsurprisingly) restrictions apply to minors. Minors in Alabama cannot freely enter into releases included in settlement agreements over $5,000. When a settlement agreement is over $5,000, court approval in the Alabama Circuit Court is required. See Ala. Code § 26-2A-6 (1975). Relatedly, minors are often appointed a guardian ad litem to represent the best interests of the child in negotiations, see Ala. R. Civ. P. 17(c), in addition to a fairness hearing to approve minor settlement agreements (including any releases). See Large v. Haybes by and through Nesbitt, 534 So. 2d 1101 (Ala. 1988). Although not automatically void in Alabama, the default rule is

“[F]or a specific release, precision is key.”
that contracts with minors are voidable. See J.T. ex rel. Thode v. Monster Mountain, LLC, 754 F. Supp. 2d 1323, 1326 (M.D. Ala. 2010).

Releasees and releasors also cannot be in an impaired mental (and sometimes physical) condition when they sign their name on the dotted line. See, e.g., McGinnis v. Continental Ins. Co., 628 So. 2d 470, 2 (Ala. 1993) (releasors signed in “weakened condition”). Releasees and releasors must be cognizant of his or her actions. A person that has taken medication, is seriously intoxicated, is infirm or has mental illness should be treated with caution, and extra safeguards may be necessary. If permitted to execute a release in such a state, such a release may also be voidable. See, e.g., Taylor v. Dorough, 547 So. 2d 536, 542 (Ala. 1989) (summary judgment reversed where releasor on medication, in pain, and in need of money).

b. Terms and Intent

Alabama Code § 12-21-109 explicitly states that “all receipts, releases and discharges in writing, whether of a debt of record, a contract under seal or otherwise, and all judgments entered pursuant to pro tanto settlements, must have effect according to their terms and the intentions of the parties thereto.” Since Pierce v. Orr, 540 So. 2d 1364 (Ala. 1989), discussed above, this provision has been “accept[ed] at face value” by Alabama courts in order to “give effect to contracts of release according to the intentions of the parties.” Id. at 1367.

Accordingly, when drafting a release, no matter the kind, it is imperative that the drafting party effectuate his or her intent through the appropriate language. Just like other contracts, determining one’s intent in drafting a release is an objective inquiry. So, a drafting error can be detrimental to the effect of the release, regardless of actual subjective intent. See, e.g., Minnifield v. Ashcraft, 903 So. 2d 818 (Ala. Civ. App. 2004) (holding that release was ambiguous and noting that, “[a]lthough parties may execute an agreement that will release claims or damages not particularly contemplated, the parties’ intent to do so must be clearly expressed in the agreement.”).

c. Reformation

If a release happens to contain a drafting error, another contract remedy—reformation—is an option for rectifying the error in equity. See Wittner v. Kemp, 529 So. 2d 961, 963 (Ala. 1988). But note that this equitable remedy has historically been available only when the original release is a general release, not a specific release. Id. One rationale behind this principle is that a specific release is specific, and a court will presume that the parties meant what they said when they intentionally limited the scope of the release. In contrast, a general release is broad and often boilerplate, and it makes more sense in that situation to believe that perhaps the parties intended something different.

d. Mutual Mistake of Fact

As with all contract provisions, a mutual mistake of fact can invalidate a release. This fact provides one more compelling reason why the terms of any release should be as precise as possible. Yet even if precise, a plaintiff may nevertheless attempt to make arguments in favor of rescission based on mutual mistake. One particular example that arises is with regard to future events or predictions. But the Supreme Court of Alabama has held that “as a matter of law, reliance on a prediction as to future events will not support a claim for rescission of a release based on a claim of mutual mistake of fact.” Boles v. Blackstock, 484 So. 2d 1077 (Ala. 1986).

e. Fraud in the Inducement

Perhaps the most common method of attempting to invalidate a contract or release is fraud in the inducement. A release induced by fraud is void. See Taylor v. Dorough, 547 So. 2d 536 (Ala. 1989). “Fraud has four elements: (1) misrepresentation of a material fact; (2) made willfully to deceive or recklessly without knowledge; (3) which was justifiably relied upon by the plaintiff under the circumstances; and (4) which caused damage to the plaintiff as a proximate consequence.” Ramsay Health Care, Inc. v. Follmer, 560 So. 2d 746, 749 (Ala. 1990).

But actually proving fraud in the inducement is a difficult hurdle to overcome. Under the justifiable reliance standard, “a plaintiff, given the particular facts of his knowledge, understanding, and present ability to fully comprehend the nature of the subject transaction and its ramifications, has not justifiably relied on the defendant’s representation if that representation is ‘one so patently and obviously false that he must have closed his eyes to avoid the discovery of the truth.’” Id.

f. Lack of Consideration

Releases, like any other contract, consist of offer, acceptance and consideration. Ex Parte Holland Mfg. Co., 689 So. 2d 65, 66 (Ala. 1996). Accordingly, a releasee must make some sort of payment or provide something of value to the releasor in exchange for the release. Absent this consideration, the release will be invalid. It is also worth noting that a release in some instances need not be in writing, but even in those rare instances, there still must be consideration. See Deason v. Thrash, 465 So. 2d 1118 (Ala. 1985).
IV. Conclusion

Releases serve an important purpose—to extinguish liability and the risk of future damages. To effectuate that purpose, we must write what we mean and mean what we write. Instead of just going through the motions when drafting a settlement agreement, we should ensure that it meets the necessary criteria discussed above. So next time you enter into a settlement agreement, don’t forget to check all the boxes, and may the release be ever in your favor!

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Endnotes

1 This Article is not legal advice, and you should not rely on any facts or opinions expressed, and, to the extent permitted by law, you waive and release any claims or potential claims, now and in the future, against the authors, their firm, the ADLA (and all heirs, successors, assigns, affiliates, agents, etc.) arising out of any and everything relating to this Article in any way whatsoever for the rest of time (and after that, too).

2 There are additional quirks in such a situation. Namely, the defendants who remain in the action “may plead the release as a bar to that amount paid by the released tortfeasor(s) or may place it in evidence to show payment for the injury up to the amount shown in the release.” Tatum v. Schering Corp., 523 So. 2d 1042, 1045 (Ala. 1988).
Employment claims have become an inevitable cost of doing business in Alabama. The majority of lawsuits filed in the federal courts in Alabama in this decade have been employment related. Employment-related claims under Alabama law have increased as well. Why? Studies vary wildly, but consider: Employees can file administrative charges and complaints with federal agencies without cost. Contingency fee arrangements place little, if any, financial risk on an employee. If an employer prevails and, against all odds, obtains an award of attorney’s fees, very few plaintiffs have the financial ability to pay such fee awards. Settlements driven not by the merits, but by the cost of defense and the monetary liability at risk further encourage employment claims.

Lurking behind litigation considerations is the specter of the jury trial. Juries are the large question mark in any employment litigation. An employer does not know who will be deciding the claims until after the jury is seated, and no one can predict with any degree of comfort what a jury may decide with respect to liability and legal damages. The concern is well-founded. In a 2017 survey by DecisionQuest® of 1,200 potential jurors from around the nation, over 60 percent stated they were pre-disposed to believe that discrimination claims are justified. Results of the survey differed along demographic lines.

Prior to 1991, concerns about jury trials were not as pressing. Title VII provided only equitable relief – back pay and reinstatement/front pay – and reasonable attorney’s fees. Compensatory damages for mental anguish and emotional distress and punitive damages were not available relief under Title VII. Title VII claims were tried before the bench and not a jury. The federal bench in Alabama was fairly conservative, as was the Eleventh Circuit. While claims under 42 U.S.C. § 1981 provided equitable back pay and reinstatement/front pay, compensatory damages, punitive damages, and a jury trial, the protected class was limited to race. Also, in Patterson v. McLean Credit Union, 491 U.S. 164, 178-81 (1989), the U.S. Supreme Court restricted Section 1981 claims to hiring decisions and promotions in which “a new and distinct” contractual relationship was at issue.

Then came the monumental shift. In response to Patterson, Congress enacted the Civil Rights Restoration Act of 1991, 42 U.S.C. § 1981a. Title VII now provided back pay, reinstatement/front pay, a reasonable attorney’s fee and costs, AND compensatory and punitive damages (although subject to statutory caps). Most significantly, employee-plaintiffs were afforded a jury trial with respect to determining liability and awarding compensatory and punitive damages in actions under Title VII and the Americans with Disabilities Act. Section 1981 now recognized discharge and retaliation claims, and ethnic origin claims entered the picture. The risk of liability and the amount of potential monetary liability increased drastically. After the passage of Section 1981a, in a presentation to the Alabama Employment and Labor Law Section, a U.S. District Court Judge stated his view that Title VII litigation was no longer about the law but was instead a question about fairness as perceived by a jury of the plaintiff’s peers. Employers now faced jury trials in virtually all employment litigation. Settlements increased in number and amount. It is not surprising that employers embraced arbitration as a way to avoid jury trials.

A. ARBITRATION

Arbitration was the first binding alternative dispute resolution (“ADR”) processes raised as a shield to against jury trials in employment litigation. Arbitration was sanctioned by the U.S. Supreme Court in Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991), in which the Court held that an agreement to arbitrate controversies “arising out” of employment was enforceable under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (“FAA”), and barred litigation under the Age Discrimination in Employment Act (“ADEA”) in a judicial forum. The Gilmer court based its holding on the following considerations:

1. In enacting the ADEA, Congress had not indicated an intention to preclude the waiver of a judicial forum for ADEA claims. Gilmer, 500 U.S. at 29.

2. Challenges to the sufficiency of the arbitration process were “far out of step with our current strong endorsement of the federal statutes favoring this method of resolving disputes.” Gilmer, 500 U.S. at 30.

3. Arbitration agreements are not unenforceable due to unequal bargaining power between the parties. Gilmer, 500 U.S. at 32-33.

Other statutory claims were soon included under Gilmer’s reasoning. See Bender v. AG Edwards & Sons, Inc., 971 F.2d 698 (11th Cir. 1992) (“We see no reason to distinguish between
ADEA claims and Title VII claims”). Gilmer opened the door for arbitration of statutory employment claims and the passage of 42 U.S.C. § 1981a caused employers to take notice.


Gilmer was not a carte blanche invitation to arbitrate employment claims. Employers have to satisfy the requirements of the FAA to invoke its protections. Section 2 of the FAA provides:

A written provision in any ... contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist in equity or law for the revocation of any contract.

9 U.S.C. § 2. Simply put, for the FAA to apply to a statutory claim, there must be a written enforceable agreement that involves interstate commerce and encompasses the claim(s) at issue.

a) Interstate commerce

Federal courts have applied this concept for years and have had no difficulty finding the FAA applicable to employment agreements. Not true for the Alabama courts. By statute, any agreement requiring the arbitration of a “controversy” was void as a matter of public policy. Ala. Code § 8-1-41(3). To avoid preemption by the FAA, the Alabama Supreme Court reasoned that the FAA applied to preempt Ala. Code § 8-1-41(3) only if the parties to the arbitration agreement contemplated substantial interstate activity when they entered the contract. Allied-Bruce Terminix Cos. v. Dobson, 628 So.2d 354 (Ala. 1993).

The U.S. Supreme Court reversed this decision. Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265 (1995). The Supreme Court noted that it was “interpreting an Act that seeks to broadly overcome judicial hostility to arbitration agreements and that applies in both federal and state courts.” Allied-Bruce, 513 U.S. at 272. After considering the language and background of the FAA, the Supreme Court concluded that the phrase “involving commerce” is the equivalent of the phrase “affecting commerce” used in other statutes enacted under the authority of the Commerce Clause of the U.S. Constitution and signified the intent of Congress to exercise its full powers under the Commerce Clause. Allied-Bruce, 513 U.S. at 273. Thus, the FAA applies even if the contract in question only tangentially affects...
or gives rise to interstate commerce.

b) Exemption from the coverage of the FAA

In an interesting twist, the FAA excludes from its coverage an arbitration agreement with an employee who is actually engaged in interstate commerce:

[N]othing contained herein shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

9 U.S.C. § 1. This phrase focuses on the work activities of the employee as opposed to the business of the employer. The Eleventh Circuit, several U.S. District Courts and the Alabama Supreme Court have all held that employees were excluded from application of the FAA only if the employee was personally engaged in the interstate activity. Paladino v. Avnet Computer Technologies, Inc., 134 F.3d 1054, 1060-61 (11th Cir. 1998) (technical support to computer salespersons); Kelly v. UHC Management Co., Inc., 967 F. Supp. 1240, 1251-52 (N.D. Ala. 1997) (J. Blackburn) (rej ecting argument that under 9 U.S.C. § 1 all employment contracts falls outside the FAA); Albert v. National Cash Register Co.) 874 F. Supp. 1324, 1327 (S.D. Fla. 1994) (Sales representative required to arbitrate Title VII, Section 1981, and State law claims). Not surprisingly after Allied-Bruce, the Alabama Supreme Court adopted narrow construction of 9 U.S.C. § 1. Gold Kist, Inc. v. Baker, 730 So.2d 614, 616 (Ala. 1999) (“manifest loader” required to place boxes of chicken onto pallets and to load the pallets onto trucks for shipment to customers in many states not exempted from arbitrating claim under Ala. Code § 25-5-11.1).

c) In writing

The terms of Section 2 require the agreement to arbitrate be in writing. Arbitration obligations cannot be created by implied contract. An employee cannot create a binding employment contract from a personnel manual that contains a disclaimer of such a contract. In the same vein, an employer cannot create a binding arbitration agreement from a provision in a non-binding personnel manual. Ex parte Beasley, 712 So.2d 338 (Ala. 1998) (“We agree with Beasley that the statement in the acknowledgment form signed by her that ‘no written statement or agreement in this handbook ... is binding’ vitiates the operative effect of the arbitration provision contained in the standard employee handbook.”). Compare, Ex parte McNaughton, 728 So.2d 592, 595 (Ala. 1998) (“McNaughton’s signed acknowledgement form indicates that the parties agreed to be bound by one provision of the employee handbook—the arbitration policy—but not by other provisions of the handbook.”). en forcing arbitration provision in employee handbook where employee signed acknowledgment form stating “the provisions in this handbook are guidelines, and, except for the provisions of the Employment Arbitration Policy, do not establish a contract.”).

It is important to note that only parties to the written agreement may enforce the agreement. Ex parte Hagan, 721 So.2d 167, (Ala. 1998) (Claim against parent company not arbitrable where parent company was not specifically named in arbitration agreement and not subject to arbitration and the arbitration agreement contained an exclusion which encompassed parent corporation). Also, by arguing that an affiliated entity enjoys the protection of arbitration for employment related claims gives rise to the argument that the affiliated entity is a “joint employer,” a status fraught with the risk of shared liability.

d) Enforceable contract

The FAA also requires a valid and enforceable contract under the law of Alabama: “[J]udicial determinations on the validity of an agreement to arbitrate are to be decided as a matter of contract” by looking to the state law governing formation of contracts. Wright v. Circuit City Stores, Inc., 82 F. Supp.2d 1279, 1283 (N.D. Ala. 2000).

1) Adequate consideration

Under general contract law, any contract must be supported by adequate consideration. Drawing from cases involving restrictive covenants, the Alabama Supreme Court held that at-will employment was itself sufficient consideration for an arbitration agreement. See McNaughton, 728 So.2d at 595-96 (“This Court has consistently held that an employer’s providing continued at-will employment is sufficient consideration to make an employee’s promise to his employer binding.”) and Kelly v. UHC Management Co., 967 F.Supp. 1240, 1260 (N.D. Ala. 1997) (“The consideration given by the plaintiffs was their promise to arbitrate employment disputes. Defendants gave consideration in continuing to employ the plaintiffs in exchange for their signing the arbitration agreements.”).

2) Grounds for revocation

Once the public policy of Ala. Code § 8-1-41(3) yielded to the
FAA, arbitration provisions have survived attacks of fraudulent inducement, unconscionability, adhesion, lack of mutuality of obligation and lack of voluntary execution. See Judge Blackburn’s thorough discussion in *Kelly*, 967 F. Supp. at 1255-60. Although presented with the opportunity to avoid application of the FAA through interpretation of state contract law, the Alabama Supreme Court reached the same conclusion in *McNaughton*, 712 So.2d at 597-98. The crux of these decisions is the fact that the arbitration agreements did not deprive the employees of any statutory remedy, just the forum of their preference.

e) Claim subject to the arbitration agreement

In addition to establishing an enforceable written contract to arbitrate, the employer bears the burden of making a threshold showing that the dispute is subject to the arbitration agreement. Generally speaking, an agreement calling for the arbitration of “any and all claims arising out of or relating to, an employee’s employment with an employer” will be sufficient to encompass all common law and statutory claims arising in the employment context. Indeed, the Alabama Supreme Court has held that the phrase “arising out of [his] employment” with encompassed claims arising during the hiring process, even though the plaintiff was not technically an “employee” at the time the claims arose.


f) Limited restrictions on remedies and procedures

With the elimination of jury trials accomplished through arbitration, the question became what, if any, other restrictions employers could accomplish through arbitration agreements. Despite an admonishment in *Gilmer*, employers attempted to limit statutory remedies and shorten statutes of limitation. These efforts failed. *Graham Oil Co. v. Arco Products Co.*, 43 F.3d 1244, 1247-48 (9th Cir. 1994), *cert. denied* 116 S.Ct. 275 (1995) (arbitration procedure must provide authority for the arbitrator to award all of the damages available under the statute and must not change the protected party’s rights to attorney’s fees or reduce the length of the statute of limitations.); *Cole v. Burns International Security Services*, 105 F.3d 1465, 1483-85 (D.C. Cir. 1997) (employer could not require the employee to pay fees or costs that the employee would not incur in a judicial forum.); *Paladino*, 134 F .3d at 1061-62 (11th Cir. 1998) (arbitration agreement that insulates employer from relief available under Title VII unenforceable).

Arbitration agreements, however, can limit discovery and other procedures. *Gilmer*, 500 U.S. at 31 (“discovery provisions, which

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allow for document production, information requests, depositions, and subpoenas, … will prove insufficient to allow ADEA claimants such as Gilmer a fair opportunity to present their claims. Although those procedures might not be as extensive as in the federal courts, by agreeing to arbitrate, a party “trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration.”). There is no definitive bright-line test regarding what discovery must be available. What is clear from Gilmer is that an arbitration agreement cannot preclude discovery entirely.

B. THE OTHER ADR OPTIONS

Employers fought long and hard to achieve the right to arbitrate state and federal employment-related claims. However, over the course of time, employers learned that arbitration has its downsides. Some studies have reported that employees enjoy a higher percentage of success in arbitrations, although monetary awards are less than in jury proceedings. The FAA severely restricts the scope of appellate review. An arbitration award can only be vacated if: (1) The award was procured by corruption, fraud, or undue means; (2) There was evident partiality or corruption by the arbitrator; (3) There was misconduct by the arbitrator prejudging the rights of any party; or (4) The arbitrator exceeded his or her powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

The former grounds of “legal error,” or “manifest injustice” are no longer grounds for vacatur of an arbitration award. An arbitrator’s misapplication or refusal to follow binding court precedents will not support the set aside of an arbitration award. The U.S. Supreme Court has held that arbitration agreements cannot expand the scope of review of an arbitration award. Simply put, since the employer wanted an arbitrator to make the decision, the employer must live with the arbitrator’s decision.

1. Jury Trial Waivers

In an effort to avoid jury trials AND the pitfalls of arbitration, some employers turned to jury trial waivers. Unlike arbitration agreements, that enjoy favored treatment under the law, jury trial waivers are disfavored under Alabama law and are narrowly construed. Recognizing the “inviolate” ban on impairing contracts outweighs the “preference” for trial by jury, the courts have honored contractual jury trial waivers – subject to certain requirements.

A waiver of the right to a trial by jury is enforceable if: (1) the waiver is not buried “deep” in a long contract; (2) the bargaining power of the parties is equal; and (3) if the waiver was intelligently and knowingly made. See Gaylord Department Stores of Alabama v. Stephens, 404 So.2d 586, 588 (Ala.1981). See also, Brown v. Utilities Board, City of Daphne, Alabama, 2016 WL 4870541 *2 (S.D. AL 2016) (“In making this assessment, courts consider the conspicuousness of the waiver provision, the parties’ relative bargaining power, the sophistication of the party challenging the waiver, and whether the terms of the contract were negotiable.) (citing Bakrac, Inc. v. Villager Franchise Sys., Inc., 164 Fed.Appx. 820, 823 (11th Cir. 2006)). In assessing these elements, courts have drawn from decisions relating to arbitration agreements. For example, new or continued at-will employment is adequate consideration for a jury waiver. Brown, 2016 WL 4870541 at *2 “[A] term in a contract waiving a party’s right to a jury trial is not unenforceable even though one party to a contract is a large corporation and the other party is simply an individual who is in need of the corporation’s services.” Brown, 2016 WL 4870541 *3. Additionally, “[t]he mere fact that an employee signs an employment agreement containing a jury trial waiver in a ‘take it or leave it’ situation does not make the waiver unenforceable or unconscionable. Brown, 2016 WL 4870541 *3 (“Assuming termination would have resulted if Plaintiff did not sign the waiver in the present action, Plaintiff still had the option to walk away from her employ if she found the terms of the waiver unacceptable.”). The “niceties” of arbitration contract – in writing, a clear statement that the agreement contains a jury trial waiver, a broad scope of claims, and a statement that it is a binding and enforceable agreement – should be contained in any jury trial waiver.8

A jury trial waiver returns federal employment law cases to the days of bench trials. The pool of decision-makers are known in advance and the actual judicial assignment is known at the commencement of the action. Bench trials provide the comfort of familiar procedures for counsel and full appellate rights to the employer and employee. A jury trial waiver, however, does not resolve the issue of protracted and costly litigation. The claims proceed through the federal or state court system, and are subject to the long delays caused by the large caseloads of the judges and back-logged dockets. Even without a jury, cases can linger for well-over a year or two years. If expedient resolution is the goal, a jury trial waiver is probably not the preferred ADR procedure.

2. The Alabama Private Judge Act

Employers should also consider a relatively unknown and
under-utilized ADR process. In 2012, the State of Alabama passed the Private Judge Act, Ala. Code § 12-11A-1 et seq. 9 There are no court decisions establishing the availability of a Private Judge proceeding for employment claims. However, the benefits of the Act make it an option worth exploring.

A Private Judge affords employers a middle ground between arbitration and jury waivers. For employers, the advantages of a Private Judge are:

- a Private Judge for an employment claim will be a former Alabama Circuit Court Judge;
- a Private Judge rules without a jury;
- the decision is subject to full appellate review; and
- Private Judges do not have dockets of cases, and proceedings can be conducted as expeditiously as arbitration proceedings.

There are downsides, however:

- The employer will be required to pay the Private Judge;
- The Act’s requirement that proceedings shall be subject to the Alabama Rules of Civil Procedures; 10 and
- For federal claims, a Private Judge and Alabama appellate courts may not be familiar with the intricacies of federal employment law.

Employers already carry the burden of paying an arbitrator. Arbitration requires full remedies, statute of limitations and sufficient discovery. A Private Judge proceeding can be as expedient as an arbitration proceeding. It appears there is little down-side when compared to arbitration. In comparison to a non-jury court proceeding, cost versus expediency are the primary factors.

**a) Scope of the Private Judging Act may limit its use**

Even if an employer decides the benefits outweigh the drawbacks, the path to a Private Judge for employment claims presently is uncertain. The Act authorizes a Private Judge to hear and decide cases “founded exclusively on domestic relations, contract, tort, or a combination of contract and tort.” Ala. Code § 12-11A-2(a)(3). The threshold question is whether employment law claims fall within these categories.

Alabama is an employment-at-will state. However, even an employment-at-will relationship is an employment contract. *Guyoungtech USA, Inc. v. Dees*, 156 So.3d 374, 378-789 ( Ala. 2014) (“Alabama is an employment-at-will state. Thus, an employment contract of indefinite duration ‘may be terminated by either party with or without cause or justification.’”) (bold emphasis added) (quoting *Hoffman-LaRoche, Inc. v. Campbell*, 512 So.2d 725, 728 ( Ala. 1987)). A claim of wrongful termination of employment, or the modification of the at-will relationship by contract, estoppel or promissory fraud, is a claim founded in an express or implied contract. Further, there can be no question that the torts of fraud, assault and battery, invasion of privacy, outrage and negligent training, supervision or retention arising from the employment context are “tort” claims within the scope of the Private Judge Act. It becomes less clear when statutory employment claims are involved.

Retaliatory termination claims for workers’ compensation claims (Ala. Code § 25-5-11.1) and jury service (Ala. Code § 12-16-8.1) are statutory exceptions to the employment-at-will doctrine. As modifications to the employment at-will doctrine, are such claims founded in an employment contract? Without an employment contract, such statute would not exist. Is this the meaning of “founded”? A better argument exists: The Alabama Supreme Court has deemed a claim under Ala. Code § 25-5-11.1 to be a tort action under Alabama law. See *Twilley v. Daubert Coated Products, Inc.*, 536 So.2d 1364, 1370 ( Ala. 1988) (“Twilley’s cause of action under the wrongful termination statute is a tort action.”) (on application for rehearing). Thus, although creatures of statute, it can be argued that these statutory exceptions to the employment-at-will doctrine are torts within the meaning of the Private Judge Act.

In the federal arena, the Civil Rights Act of 1866, 42 U.S.C. § 1981 states:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts.

42 U.S.C. § 1981(a) (bold and italic emphasis added). Section 1981 protects against adverse action with respect to the terms, conditions, and privileges of employment on the basis of race or ethnic origin. A prospective, existing or former employment relationship is central to employment claims under Section 1981.

The same holds true for claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.:  

**a) Employer practices**

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual,
It is difficult to characterize claims under Title VII and Section 1981 as breach of contract claims. However, the language of the Alabama Private Judge Act is broader — a case “founded” on contract. The breadth of the phrase has not been tested, but it is not an unreasonable argument that such claims fall within the realm of the Private Judge Act.

b) Employee consent is required

Once an employer gets past the issue of the scope of the Private Judge Act, another obstacle stands in the way — employee consent.

Section 2.

(b) person may act as a judge of a case under this act only if all of the following occur:

(1) All parties to the action file a written petition with the circuit clerk of court in which venue the action is pending.

 Ala. Code § 12-11A(b)(1) (bold emphasis). See also, Ala. Code § 12-11A(3)(b). Further, the Private Judge Act appears to contemplate only post-dispute agreements:

(d) The petition for an appointment of a private judge in a proceeding may be filed contemporaneously with the filing of the action or any time after the action has been filed.

 Ala. Code § 12-11A-3(d) (bold emphasis added). Read strictly, this provision does not provide for unilateral enforcement of pre-dispute agreement to use a Private Judge. Unlike the FAA, which expressly authorizes court-issued stays, see 9 U.S.C. § 3, and motions to compel arbitration, see 9 U.S.C. § 4, the Alabama Private Judge Act affords no mechanism or enforcement of a pre-dispute agreement.

Public policy arguments do exist to support enforcement of a pre-dispute agreement. The problem is the means to obtain such an order. It would be difficult to obtain affirmative injunctive relief. Is an employer going to argue to a state court that the employer will suffer irreparable harm if required to proceed with a jury trial as opposed to a Private Judge proceeding? An employer can file a motion for specific performance, but does it want to interject a contract claim into employment litigation? There is not expedient means of achieving enforcement of the agreement.

The better question is what incentives exist to encourage an employee to give up the right to a jury trial in favor of a Private Judge proceeding. The cost of litigation to the employee is the same. Expeditious adjudication probably will not outweigh the benefit of a jury trial to the employee. The employee has full appellate rights under both means of resolution. So again, why would an employee agree to the use of a Private Judge? Because the ADR Agreement provides the employer the authority to unilaterally select an alternative that is not as favorable as a Private Judge.

C. CONCLUSION

There are four possible proceedings available for the binding adjudication of employment claims: (1) jury trial; (2) non-jury trial; (3) arbitration; and (4) trial by Private Judge. Many employment defense attorneys advise clients to avoid the first option. Of the three non-jury alternatives, each has benefits and disadvantages. The key is that they are alternatives. An employer is not required to select only one method of dispute resolution. An ADR agreement proving for two or all three of the alternatives provides an employer choices. If an employer is not concerned about limited appellate review, arbitration may be the preferred option. If an employer wants the opportunity for full appellate review, a Private Judge may be the preferred option and worth the effort to argue the novel questions of law. If an employer believes it has a favorable judicial assignment, and is not concerned about drawn out litigation, a jury waiver may be preferred. Provide for the options and make the decision later.

David Walston is a partner at Christian & Small LLP and has practiced exclusively in the labor and employment arena for more than 30 years. He regularly defends businesses in claims alleging discrimination, harassment, and retaliation under federal and state statutes. He conducts compliance audits of clients’ employment policies and practices and provides advice to assist clients avoid or minimize risk in day-to-day employment matters.
Endnotes
1 Congress amended the Age Discrimination in Employment Act in 1978 and expressly provided a right to a jury trial with respect to liability and the amount of lost wages. 29 U.S.C. § 626(c)(2). Juries have always been available for statutory and torts employment claims in Alabama.
2 A well-respected employment attorney who recently retired recounted that prior to Section 1981a, he would try two to three trials each week. According to Magistrate Judge Ott, in the U.S. District Court for the Northern District of Alabama, extremely few employment cases tried to a jury verdict in 2017.
3 Coincidentally, Gilmer was decided in the same year as the passage of Section 1981a.
4 The Court did note, however, that an arbitration agreement could be revoked if it “resulted from fraud or overwhelming economic power that would provide grounds ‘for the revocation of any contract.” Gilmer, 500 U.S. at 33 (quoting Mitsubishi Motors Corp., 473 U.S. at 627).
5 The Alabama Supreme Court also rejected the plaintiff’s argument that the arbitration agreement was unconscionable because it allowed the employer to compel arbitration, but not the employee. McNaughton, 712 So.2d at 596-599.
6 Gilmer, 500 U.S. at 26 (“[b]y agreeing to arbitrate a statutory claim, a party does not forego the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.” (quoting Mitsubishi Motors Corp., 473 U.S. at 628)).
7 Ex parte AIG Baker Orange Beach Wharf, L.L.C., 49 So.3d 1198, 1200-01 (Ala. 2010):
Public policy, the Alabama Rules of Civil Procedure, and the Alabama Constitution all express a preference for trial by jury. Ex parte Cupps, 782 So.2d at 775. That said, “no constitutional or statutory provision prohibits a person from waiving his or her right to trial by jury.” Mall, Inc. v. Robbins, 412 So.2d 1197, 1199 (Ala.1982). See also Hood v. Kelly, 285 Ala. 337, 339, 231 So.2d 901, 904 (1970) (“The right of jury trial is a personal right, of which no person can be deprived against his will, but there is neither constitutional nor statutory provision which prohibits him from waiving his constitutional privilege in civil actions.”) (quoting Oliver v. Herron, 106 Ala. 639, 640, 17 So. 387, 387 (1894)); Shoney’s LLC v. MAC East, LLC, 27 So.3d 1216, 1222 (Ala. 2009) (“The ban on impairing the obligations of contracts provided in Ala. Const. 1901, § 22, is obviously one that shall forever remain inviolate. Alabama caselaw has maintained the constitutional prohibition on impairing contracts by consistently upholding the intent of the contracting parties.”)).
8 A waiver held to be enforceable can be found in Brown v. Utilities Board, City of Daphne, Alabama, 2016 WL 4870541 (S.D. AL 2016).
10 Presumably, the Private Judge has the authority to limit discovery as do Alabama Circuit Court Judges.
Locating the Bessemer Division

Opinions considering venue in the Bessemer Division often focus on whether a particular claim “arises” in the Division. In general, this issue is resolved by determining the location of the wrongful conduct at issue in the litigation. See, e.g., Ex parte Children’s Hosp., 931 So. 2d 1, 8-9 (Ala. 2005). The analysis necessarily requires some understanding of the Division’s geographic boundaries. See Ex parte Children’s Hosp., 931 So. 2d at 8 (“We agree… that venue is proper in the Division only as to those claims that arise within the territorial boundaries of the Bessemer Division.”) (emphasis added). But the case law rarely addresses the Division’s boundaries; rather, it is almost presumed the practitioner knows where the Division is located. See, e.g., Ex parte Central of Georgia Railway Co., 10 So. 2d 746, 748 (Ala. 1942) (defining the “territorial jurisdiction” of Bessemer Division while specifically omitting the physical description).

The purposes of this article are to identify the Bessemer Division’s geographic boundaries and to discuss how to prove the boundaries in litigation.

Identifying the Geographic Boundaries

The Bessemer Division was created by the State Legislature in the 1890’s. The initial legislation defines the Division’s geographic boundaries primarily by reference to then-existing precincts. Act No. 281, Ala. Acts 1892-93. No doubt Toadvine precinct No. 27 was a wonderful place in its day. Thankfully, though, we do not have to concern ourselves with delving into the precinct’s history (in order to determine its boundaries), because the legislation was ultimately revised to define the Division’s boundaries primarily by reference to survey townships:

“The Bessemer Division was created by the State Legislature in the 1890’s. The initial legislation defines the Division’s geographic boundaries primarily by reference to then-existing precincts.”
and 24 going South first intersects the Cahaba River in Township 19, Range 3 West on the County line between the Counties of Jefferson and Shelby, and runs thence North along said Section line to the Northeast corner of Section 11, Township 19, Range 3 West; thence West 3 miles to the Southeast corner of Section five, Township 19, Range 3 West; thence North three miles to the Northeast corner of Section 29, Township 18, Range 3 West; thence two miles to the Southeast corner of Section 24, Township 18, Range 4 West; thence North two miles to the Southeast corner of Section 12, Township 18, Range 4 West; thence West one-fourth of a mile to the East boundary line of the City of Fairfield as it now exists; thence in the general direction of North with and along the East Boundary line of the said City of Fairfield, and turning with and continuing along said boundary line of said City around the North end of said City, and in a general Southwest direction, continuing along said Boundary line of said City of Fairfield to the point where said boundary line intersects the line that bounds Section 11 and 12 in Township 18, Range 4 West, on the North, thence West to the Northwest corner of said Section 11, Township 18, Range 4 West, thence North 4 miles to the Northeast corner of Section 22, Township 17, Range 4 West; thence West two miles to the Southeast corner of Section 17, Township 17 Range 4 West; thence North one mile to the Northeast Corner of Section 17, Township 17, Range 4 West; thence due West to the Intersection of the County line between the counties of Walker and Jefferson; thence with and along said County line and turning with and continuing along the same as it divides the Counties of Walker and Jefferson to its intersection with the County line of Tuscaloosa County; thence with the variations of and along the County line of Tuscaloosa County in a general Southeasterly direction to the point where the said County line intersects the County line of Bibb County; thence in a general Easterly and North Easterly direction with and along said Bibb County line as it divides said County of Bibb from the County of Jefferson to the point where said County line intersects the County line of Shelby County; thence in a general Northeasterly direction with and along said Shelby County line as it divides the said Counties of Shelby and Jefferson to the point of beginning, and from and over the above mentioned and described territory all jurisdiction and powers heretofore or now exercised or existing therein by the Circuit Court of the Tenth Judicial Circuit as now held at Birmingham, is hereby expressly excluded."

Act No. 199, Ala. Local Acts 1943 (“the Act”) (emphasis added). 2

Townships are imaginary boxes measuring six miles by six miles. They are identified by reference to an arbitrary starting point, which is the intersection of a “base line” and a “principal meridian.” [For northern Alabama, this starting point is north of Huntsville on the Alabama-Tennessee border.] Townships are further subdivided into smaller imaginary boxes, known as sections, which each measure one mile by one mile. Sections are identified by a number, 1 – 36, which is assigned based on position within the Township. With this information in hand, refer back to the legal description set out above and note that only four townships are specifically referenced:

i. Township 19, Range 3 West;
ii. Township 18, Range 3 West;
iii. Township 18, Range 4 West; &
iv. Township 17, Range 4 West.

Survey townships have been in use in the United States since the late-1700’s. J.M Faircloth, Land Surveying in Alabama, p. 4-7. While the intent of the system is to create a standardized method of describing a particular parcel of land, the system can be confusing to the uninitiated. Drummond v. State, 61 Ala. 64, 66 (Ala. 1878) (“[I]n our professional experience we have found many men who were bewildered by the terms in which our land surveys and divisions are expressed.”). Let us analyze the first township (of the four referenced in the Act) to understand how survey townships are used to define the Bessemer Division’s geographical boundaries.

The portion of the Act that concerns the first-listed township is set out below and has been separated to emphasize the steps involved in this process:

(a) Begin at the point where the section line which divides Sections 23 and 24 going South first intersects the Cahaba River in Township 19, Range 3 West on the County line between the Counties of Jefferson and Shelby.
Many large organizations are subject to specific industry compliance regulations and liabilities that are set in place to safeguard information. When a business associate, which can include a variety of professional service providers, requests sensitive information from a compliance-oriented company, the same liability is extended to the associate, meaning that they must also meet the minimum standards and requirements.

Information Security Agreements (ISAs) spell out the framework of minimum security standards and are issued to business associates, which include law firms, accounting firms or other providers.

So, how can your organization work to satisfy compliances? The best step for your company is to seek out compliance certifications to confirm your ability to meet minimum standards. In doing so, you demonstrate your understanding of the importance of safeguarding data upfront.

Comparatively, it is equally important for your company to maintain the certifications once they have been established in order to keep up with the ever-changing industry requirements.

Below are three certifications to consider:

- **Health Information Trust Alliance (HITRUST)** – specific to common areas of compliance and risk management for a wide variety of industries
- **SOC 2, Type 2** – specific to understood processes and procedures for data handling
- **ISO 27001** – specific to the quality of the process that has been put in place to secure data

Your organization can also depend on qualified third-party service providers to administer professional services and advisory council regarding ISA requirements. Warren Averett Technology Group equips businesses and organizations with managed compliance solutions to ensure that your organization meets specific ISA requirements. Our team has the expertise needed to meet industry-specific needs, such as the Payment Card Industry Data Security Standards (PCI), HIPPA, FAR and DFARS for government contractors, as well as other industry-specific regulations. We can also provide assessment and solution options, including technology purchase and implementation, technical and physical safeguard administration and training, risk and control services, routine vulnerability and penetration testing and outsourced technology solutions customized to fit your needs.

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THE IMPORTANCE OF INFORMATION SECURITY AGREEMENTS (ISAs) AND HOW TO SATISFY INDUSTRY COMPLIANCES

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To find out how we can bring technology solutions to your business, call us at 800.759.7857 or visit our website at www.watechgroup.com.
Realize the above design is not a visual representation of the geographic boundaries of the Bessemer Division. At a minimum, such would require incorporating the county line. It would also require the work of someone who has knowledge of the boundary lines of the City of Fairfield as they existed in 1943. [And creating such a representation could implicate state law regulating the work of surveyors.] But the above design is a reasonable representation of the “dividing line” that results from drawing lines over the survey townships in accordance with Act’s legal description. And, when coupled with the realization that the Act’s legal description is composed entirely of the survey townships, county lines and the boundary lines of the City of Fairfield (as of 1943), the above design should allow one to fairly approximate the geographic boundaries of the Bessemer Division. Of course, for actual legal work, you should always refer to the official plats at the County Courthouse to identify the geographic boundaries of the Bessemer Division.

Proving the Geographic Boundaries in Litigation

Now for the good news. Having first determined for yourself whether the claims at issue “arise within the territorial boundaries of the Bessemer Division,” proving the issue to the Court could be relatively easy. As to be expected, courts can take notice of State law. Rayburn v. State, 366 So. 2d 708, 709-10 (Ala. 1979) (taking “judicial knowledge” of Alabama law). But Courts can also take judicial notice of official maps, plats, surveys, etc. Chestang v. Bower, 140 So. 537, 539 (Ala 1932) (taking judicial notice of location by referring to township and range description found in official survey). See also CHARLES W. GAMBLE & ROBERT J. GOODWIN, II McELROY’S ALABAMA EVIDENCE, § 483.01 (6th ed. 2009). So, practically speaking, you should be able to offer proof of the location of the wrongful conduct (at issue in your litigation) while asking the Court to take notice of the Bessemer Division’s boundaries. See Jones v. Fields, 150 So. 914 (Ala. Civ. App. 1933) (taking judicial notice of territorial limits of Bessemer Division); Order Approving Settlement Hearing (Doc. 130), Sheila Higdon v. GGGNSC Hueytown, LLC, 68-CV-2012-900765.00, Hon. Annetta Verin (September 13, 2013) (taking judicial notice that venue is proper in Bessemer Division).

One caveat does come to mind. The closer your incident is to “the dividing line,” the more forethought you need to give to how you intend to prove the location of the wrongful conduct. A car accident on I-65 may only require reference to the police report (or even just a reference to an averment in the Complaint), because I-65 is outside of the Bessemer Division. But a car accident somewhere in Fairfield may require you to go to great length to prove the exact location at issue. Cf. Jones, 150 So. at 915 (taking judicial notice of territorial limits of Bessemer Division and boundaries of City of Fairfield but refusing to take judicial notice of location of a lot within the city). Good luck! ☑
Endnotes
1 Section 2 of Act 281 reads in pertinent part: “...said jurisdiction and power shall...extend over that portion of the territory of the county of Jefferson, which is included in the following precincts, to wit: Williams’ precinct No. 1, Jonesborough precinct No. 2, Parsons’ precinct No. 3, Aarons’ precinct No. 4, Short Creek precinct No. 5, Meeks’ precinct No. 24, Toadvine precinct No. 27, Bessemer precinct No. 33, Gwinn’s precinct No. 35, Huey’s precinct No. 40. All that part of Bethlehem beat laying south of township seventeen (17), range four (4) west, and west of township eighteen (18), range three (3) west, except sections one, two, eleven and twelve in township eighteen (18), range four (4) west, as said precincts are at present constituted, ...”

2 Note that opinions generally cite legislation from 1919 when referring to “the Bessemer Act.” E.g., Ex parte Hanna Steel Corp., 905 So. 2d 805, 808 (Ala. 2004) (citing “Act. No. 213, Ala. Acts 1919, as amended”). The simple explanation for this is that, but for the physical description of the Division, the language of the legislation generally has not changed. See Ex parte Walter Indus., 879 So. 2d 547, 549-50 (Ala. 2003) (discussing history of legislation creating the Bessemer Division).


Rob Arnwine is a shareholder with Carr Allison in Birmingham. He has been an ADLA member since 2009.
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**THURSDAY** Night Beach Bonfire
Enjoy Smores, Beverages and More

**FRIDAY** Take the Kids Deep Sea Fishing
Challenge a colleague in GOLF & WELCOME RECEPTION

**SATURDAY** Night Beach Deck Party With Musical Entertainment BY LIGHT TRAVELERS from Fairhope, Alabama
THURSDAY, JUNE 21
4:30-6:00  SIGN-IN (Grand Reef, Lower Level)
6:30-8:30  Welcome Beach Bonfire with Family and Friends

FRIDAY, JUNE 22
ADLA & TDLA  Joint CLE Session (Grand Reef, Lower Level)
7:30  SIGN-IN (Grand Reef, Lower Level)  Strolling Breakfast for CLE Registrants and Exhibitors
8:00-8:10  Welcome
Sharon D. Stuart – ADLA President
Michael Mansfield – TDLA President
8:10-9:00  Early Case Assessment & Tools
The key considerations and best practices for selecting an ECA solution, settlement and strategy, and ECA tools will be covered.
Jennifer Beilstein, Solutions Architect – Epiq
9:00-10:00  What You Don’t Know CAN Hurt You: Understanding Insurance Company Metrics
Your ability to keep and grow your defense business, and your ability to get fee increases is being decided by “metrics.” This fast paced presentation will tell you what you and your firm need to know.
John C. Trimble, Esq. – Lewis Wagner, LLP
10:00-10:10  Introduction of Exhibitors & Sponsors
10:10-10:20  BREAK & VISIT with Exhibitors
10:20-11:00  Smartphone Forensics
This presentation provides an introduction to the emerging technology and relays current capabilities and constraints as they relate to the application of this data in the industry.
Chris Bloomberg, PE – Bloomberg Consulting
11:00-12:00  Defeating the Reptile: Defense Deposition Strategy
A witness training program that effectively combats the reptile strategy implemented by plaintiff attorneys early in case development.
Melissa Loberg PhD – Courtroom Sciences

FRIDAY AFTERNOON/EVENING
1:00-6:00  Deep Sea Fishing – SanRoc Cay Marina
1:30  Golf – Craft Farms
6:30-8:30  Welcome Reception (Salon EFGH)

SATURDAY, JUNE 23
7:30  Strolling Breakfast for CLE Registrants & Exhibitors
8:00-8:15  Welcome
Sharon Stuart – ADLA President
Alabama State Bar President-Elect
Sam W. Irby – Fairhope
8:15-8:20  DRI Report
Allen Estes – DRI State Representative
YLS Report
Megan McCarthy – YLS President
8:20-9:15  Interlocutory Appeal – When Can You Do It and When Should You Do It?
A discussion of the immediate appeal of immunities and other legal issues supporting immediate appeal from a procedural and strategic standpoint.
The Honorable Allen W. May, Jr., Alabama 6th Judicial Circuit
Elizabeth B. Carter – Montgomery
Melissa P. Hunter – Mobile
Terry A. Sides – Birmingham
9:20-9:35  PRIZE DRAWINGS
9:35-9:45  BREAK & VISIT with Exhibitors
9:45-10:30  Breaking News: Alabama Case Law Update
Significant recent civil decisions of the Alabama Supreme Court
Alex Holtsford – Montgomery
10:30-11:00  State of Judiciary and Judicial Reallocation
The Honorable Lyn Stuart, Chief Justice, and panel members comprised of the attending members of the Supreme Court and Court of Civil Appeals
11:00-12:00  Alabama Ethics Update
Doug McElvy – Alabama State Bar General Counsel
12:00-12:20  ADLA Annual Membership Meeting & Elections (Grand Reef, Lower Level)

SATURDAY EVENING
6:30-8:30  Beach Deck Party
Musical Entertainment by Light Travelers
The theme at this time of year always seems to be change. As I write, Spring is fighting its way into Baldwin County. Winter just cannot seem to accept defeat but is losing the battle nonetheless. With the ever-changing weather down here, we have lots of changes at ADLA this Spring as well. Please join me and the rest of the Executive Board in welcoming our new Executive Director, Jennifer Hayes. Jennifer has jumped right into the role of ED and we are excited for the many changes that she is bringing to ADLA.

Check out the new Wednesday Briefcase newsletter for timely and relevant ADLA news. That is just one small example of the many positive changes that she is implementing.

Another change, albeit a much smaller one, is that I am handing over the reins of the Deposition Boot Camp to Ben Heinz, Esq. It has been a privilege to serve as Boot Camp Director for the last several years. I had the opportunity to listen to some of the most skilled and talented lawyers in Alabama share their knowledge with hundreds of young lawyers. I leave that program every year with something new. It has taken a little while and a cooperative effort with the Board and the Young Lawyers group and we are now able to announce that we have combined the fact pattern of the Deposition Boot Camp with that of the Trial Academy. Now students can go from discovery to trial, developing and honing their skills. I am certain that Ben will do an outstanding job and I look forward to seeing the interplay between the Deposition Boot Camp and the Trial Academy. No doubt ADLA will continue to be a leader in educating and developing young defense lawyers.

We are also mixing it up for our Annual Meeting this year. We will be at the Perdido Beach Resort, right here in sunny, exotic Baldwin County. President-Elect Dennis Bailey has put together an impressive slate of speakers and it promises to be a benchmark event. (It will certainly be a tough act to follow next year.) I hope to see you all there.

Some things, however, stay the same. We have more great ADLA talent in this edition of the Journal. Steven Cohern sat down with new Supreme Court Justices Mendheim and Sellers for a candid “get to know them” session. Rob Arnwine tackled the unenviable task of determining what exactly constitutes the sometimes elusive and/or fluid Bessemer Division boundaries. David Walston penned a very thorough article on alternative dispute options in employment cases. Finally, Bridget Harris and Molly Drake provide an informative article on different types of releases and the language requirements and pitfalls therein. This edition hits your practice from start to finish and maybe even to appeal.

If you would like to write an article for the Fall, 2018, edition of the Journal, please contact me, Christina M. Bolin, at cbolin@alfordbolin.com or 251-490-6815. Article submissions are due by June 1, 2018.
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"POINTS"

NATIONAL COVERAGE
Thank you so much for allowing me to serve as the President of the Young Lawyers Section of ADLA over the past year. This has been a year full of exciting changes! I am pleased that Jennifer Hayes has accepted the position as the new ADLA Executive Director. Within a week of Jennifer starting with ADLA, she and I met at my office to discuss ways to attract young lawyers to our great association. Jennifer has also scheduled mixers in the Birmingham, Montgomery and Mobile areas. I know the mixers in Birmingham and Montgomery held in early March were a big hit. I hope all of you young lawyers in the Mobile area are available to attend the mixer on April 12th at Bluegill, which is located at 3775 Battleship Parkway in Spanish Fort, Alabama. I know this will be a great way to catch up with other young lawyers, as well as a networking opportunity with some "not so" young lawyers.

I also added a spring Young Lawyers Section Board meeting, which was held at my office in Montgomery on April 6th. At this meeting, we discussed how ADLA can provide more benefits to young lawyers who practice in the area of civil defense. Thank you to all Board members who took time out of your busy practices and contributed great ideas on this issue.

I would like to personally thank Jeremy Richter, who practices at Webster Henry Bradwell Cohan Speagle & DeShazo in Birmingham, for agreeing to be ADLA’s first webinar speaker. Jeremy’s webinar is titled “Managing Clients and Creating Collaborative Relationships.” It will be a sixty minute webinar that provides one hour of CLE credit. It will be free to ADLA members, and a small cost to non-ADLA members. I appreciate Jeremy volunteering his time and talent to something that will provide a great benefit to both young and experienced ADLA members.

This year’s Deposition Boot Camp was a huge success thanks to Ben Heinz (Boot Camp Director), Christina May Bolin, Christie Estes, Jeremy S. Gaddy, Jonathan Hooks, Harold Stephens, Steven Still, Jr., Evans Bailey and Dennis Bailey. Thirty young lawyers attended the Boot Camp in March at Jones School of Law, which was ten more than last year. As we all are aware, depositions are invaluable tools to not only knowing what the Plaintiff is actually claiming, but also impeaching the Plaintiff at trial. I believe that the young attorneys who attended Boot Camp now have the skills to take a well-executed deposition that will benefit the clients that they represent.

I want to remind all of our members that Trial Academy is quickly approaching. It will be held August 9th and 10th at Cumberland School Law. Kirby Howard and Hal Mooty have spent countless hours creating a new fact pattern for Trial Academy. This event will serve to provide the lawyers that attend with trial skills that will aid them in advocating for their clients at trial.

If you do not already have plans to attend the ADLA Annual Meeting at Perdido Beach Resort from June 21st through 23rd, I would suggest that you make plans to do so. The CLEs provided are excellent and have direct application to the practice of law in the civil defense area. It is also a wonderful time to catch up with old defense lawyer friends and meet new ones. Finally, your children will love all of the children’s activities too. If you have a webinar idea that you would like to share or any other ideas that can benefit the young lawyers in ADLA, please contact me at mmccarthy@hglawpc.com or (334) 215-8585. Thank you again for allowing me to serve as the ADLA Young Lawyers President this year.
appreciate the opportunity to serve as the DRI State Representative for Alabama. If you have questions about DRI and the benefits of membership in that nationwide organization, please contact me at aestes@balch.com or (205) 226-8717.

DRI and ADLA continue to look for ways to make being a member of both organizations valuable to defense attorneys in Alabama. One of the primary benefits that each organization offers is the social interactions provided at the various meetings. ADLA’s recent efforts to organize happy hour events throughout the state have been very well received by both ADLA and DRI members. I hope that each of you will be able to attend one of these gatherings in the near future.

You can always find the latest DRI and ADLA events by following us on Twitter – @DRICommunity and @ALDefenseLaw. One DRI event to highlight is taking place in Birmingham on Friday, April 20. That program, entitled Making Technology Work for your Firm and Practice, will begin at lunch on a Friday; making it is a great chance to interact with other defense lawyers without interrupting your work schedule (since very few of us will be working on a Friday afternoon in the Spring anyway). You can register for that event on DRI’s website, www.dri.org/education-cle/seminars.

A couple of other upcoming DRI seminars to note are the Construction Law Seminar (Nashville, April 25-27, 2018), the Business Litigation Seminar (Denver, April 26-27, 2018), and the Drug and Medical Device Seminar (New York, May 10-11, 2018). Finally, the DRI Annual Meeting is in San Francisco, October 17-21, 2018. For anyone who has never attended the DRI Annual Meeting, it is always a big production.

ADLA is one of the premier state defense organizations, and DRI is well positioned to represent defense attorneys at the national level. At the same time, our counterparts running the organizations on the plaintiff’s side of the bar are constantly refining the ways in which they attempt to influence our legal and political systems. So we need more defense attorneys to become active in both ADLA and DRI in order to continue to enhance the roles that ADLA and DRI play in the debates that impact our legal system. The more defense attorneys that we have actively engaged, the more effective we will be for our clients and ourselves. I look forward to continuing to work with each of you in these endeavors, and seeing you soon at an ADLA or DRI event.

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message from the DRI state representative

JUST AS A CONDUCTOR FASHIONS BEAUTIFUL HARMONIES FROM MANY INSTRUMENTS, OUR MEDIATORS FIND HARMONY AMID THE CLAMOR OF LITIGATION.

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RECENT AMICUS CURIAE BRIEFS SUBMITTED BY ADLA AND UPDATES REGARDING MATTERS IN SUPPORT OF WHICH AMICUS BRIEFS WERE PREVIOUSLY SUBMITTED

On March 2, 2018, the Alabama Supreme Court released its decision in Ex parte Industrial Warehouse Services, Inc, [Mss. 1170013 & 1170087], ___ So.3d ___ 2018 WL 1126576 (Ala. 2018), in which ADLA had filed an amicus curiae brief (written by Ed R. Haden and Michael P. Taunton of Balch & Bingham, LLP) in support of the defendant’s petition for writ of mandamus challenging the Bibb Circuit Court’s discovery order requiring full production of defendant’s trade secrets and other confidential proprietary information but refusing to enter a protective order protecting such confidential information from disclosure outside the case in which it was produced, even though counsel for the plaintiff acknowledged that the confidential information obtained pursuant to the discovery order was going to be shared through an attorneys’ network for use in other and potentially future cases. As reported in the Fall 2017 issue of the Journal, ADLA had argued that the Alabama Rules of Civil Procedure and of Evidence, and Alabama case law requires courts to protect a party’s confidential information to the maximum extent practicable, and confidentiality is not waived -- or entrusted to the discretion of the party’s adversary -- simply because the information is produced within the confines of a case between the parties.

In a divided opinion, seven (7) justices found that the defendant had demonstrated that its bills of lading containing customer information were confidential and warranted protection, but six (6) justices found that the defendant had failed to show that its training manual were confidential. However, all nine (9) justices seemed to agree, however, with the position advanced by ADLA that the confidential customer information was entitled to be protected from dissemination outside the boundaries of litigation under a protective order. The Court committed to the trial court’s discretion the crafting of an appropriate protective order that provides adequate protection for the defendant’s trade secrets.

As previously reported in the Fall 2017 issue of the Journal, the Alabama Supreme Court’s July 7, 2017 decision in Mazda Motor Corporation v. Hurst [Ms. 1140545, July 7, 2017] ___ So.3d ___, 2017 WL28857 (Ala. 2017) affirmed a judgment on verdicts totaling $6.9 million in a crashworthiness case involving an automobile’s allegedly defective fuel system. ADLA had appeared as amicus curiae in support of defendant/appellant Mazda and argued that contributory negligence bars recovery in a crashworthiness case regardless of whether that negligence related to the use of particular components, such as the fuel tank and muffler, or to the use of the whole product, such as the vehicle into which the components were incorporated. On November 17, 2017, the Court overruled without opinion the application for rehearing and issued its Certificate of Judgment.

ADLA POLICY RE: REQUESTS FOR AMICUS CURIAE BRIEFS IN CASES IN WHICH AN ADLA MEMBER IS COUNSEL FOR AN ADVERSE PARTY

At ADLA’s Board of Directors meeting on April 11, 2008, the Board voted to institute the following policy to be adhered to when a request for an amicus curiae brief is made in a case in which an ADLA member is counsel for an adverse party: (1) the request for an amicus curiae brief by ADLA will be considered solely on the basis of the issue presented, and membership in ADLA by a lawyer whose interest is adverse will not be a factor to be considered by the Amicus Curiae Committee in determining whether a brief should be submitted on behalf of ADLA; and (2) The request submitted to the Amicus Curiae Committee and all attachments thereto, the names of the Amicus Curiae Committee members considering the request for the brief, the details of the deliberation process, the vote of the Committee members, and the name of the ADLA member who has been asked to write the brief shall remain confidential (with the understanding that the name of the attorney writing the brief will be disclosed when the brief is filed). At ADLA’s Board of Directors meeting on June 13, 2013, the Board voted to institute a new ADLA policy precluding opposing counsel from having the opportunity to address the Amicus Curiae Committee.

ADLA POLICY RE: $3,000 PAYMENT OF FEE FOR PREPARATION OF AMICUS CURIAE BRIEF

ADLA’s Board of Directors has approved the payment of up to $3,000 per amicus curiae brief, to help underwrite the costs. In addition to the $3,000 fee, the Association will reimburse reasonable copying and binding costs associated with the brief.
It shall be the policy of the Association to authorize the filing of briefs *amicus curiae* sparingly and only in appropriate cases as described. Briefs *amicus curiae* authorized by the Association shall be filed only in the name of the Association.

**A. APPROPRIATE CASES**

1. Only at the appellate level and only in the highest court where the issue is likely to be determined.

2. Only when such a brief would constitute a significant contribution to the determination of the issue or issues involved and only where the issue or issues sought to be determined is:
   
   (a) of peculiar significance to the interests of the defense trial bar; or
   
   (b) of peculiar significance to the fair administration of justice.

3. Only to advance argument with respect to the legal issues and not factual questions.

**B. AUTHORIZATION**

Briefs *amicus curiae* filed on behalf of the Association shall be authorized by the *Amicus Curiae* Committee.

**C. APPLICATION**

1. Application for authorization of briefs *amicus curiae* may be submitted to the President who will refer the matter to the Executive Committee with the advice of the Chair of the *Amicus Curiae* Committee.

2. Each application shall be accompanied by:
   
   (a) A full statement of the facts of the controversy and the status of the litigation;
   
   (b) A statement of the principle or principles of law to be supported together with an explanation of the applicant’s reasons for believing that the case is an appropriate one for Association involvement;
   
   (c) A full disclosure of any personal or professional interest in the matter of any applicant or proponent of the application.

**D. JOINT BRIEFS**

As a general rule, the Association will not join in briefs *amicus curiae* with other organizations except other local defense associations.

**E. COSTS**

1. The Association will accept NO payment from any applicant for the preparation or argument of briefs *amicus curiae*.

2. Costs of printing and filing the brief shall be borne by the Association. A fee of up to $3,000 may be paid to the author of the brief, upon approval of the committee chair.

**F. APPEARANCES**

The brief *amicus curiae* shall show as counsel for the Association, the author of the brief, the President of the Association and Chair of the *Amicus Curiae* Committee.

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ADLA policy regarding *amicus curiae* briefs

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ADLA continues to adhere to the policy that no Association member can accept payment from any party for the preparation of *amicus curiae* briefs.

**REQUESTS FOR AMICUS CURIAE BRIEFS**

Please inform the Committee as soon as possible of issues on appeal that you believe would be of interest to the Association. The following information should be furnished with the request: (1) the name of the case and the appellate court where the case is pending; (2) a summary of the facts of the case and its procedural history; (3) a statement of all the issues of law involved in the appeal, identifying those with respect to which ADLA involvement is sought; (4) the date by which an *amicus* brief would have to be filed; and (5) the consent of the attorney of record for the party in support of whom ADLA involvement is being sought. The request must be in writing to be considered by the *Amicus Curiae* Committee. Please submit the request to the Chair of the *Amicus Curiae* Committee at the following address:

Mark D. Hess  
(205) 324-4400  
Hand Arendall Harrison Sale, LLC  
1801 5th Avenue North, Suite 400  
Birmingham, Alabama 35203  
mhess@handarendall.com
For those of you who periodically stumble upon my New Member Recruitment Committee Report, you might have noticed that the Journal editors give me a good bit of creative license. While I am certainly excited about the new members we have added in 2018, I am equally excited about the changes that I have seen in our organization over the past few months and the numerous exciting things on the horizon.

There is no denying that we live in a digital age. Even those who have been reluctant to embrace technology cannot deny the impact it has had on the practice of law. In recognition of this, we have worked very hard over the past year to increase our social media presence to communicate timely and useful information to our members. We invite you to follow us on Twitter @ALDefenseLaw. We provide information about upcoming events, CLE opportunities, and news about members. Many of our members and firms across the state utilize Twitter. We encourage you to tag us and share your news about defense verdicts, summary judgments, the addition of members to your firm, community involvement, and attorney honors and awards. Invite your firm administrator or social media director to email us press releases and announcements so we can share that information as well. ADLA exists for our members and we want to share your news!

In December, we welcomed Jennifer Hayes as our new Executive Director. Jennifer has worked tirelessly in her new role. Personally, I cannot begin to express my gratitude for her energy and dedication. (I could devote an entire column on that alone!) She brings to us incredible experience, a wealth of new ideas, and a commitment to advancing our organization. Jennifer dove right in and brought new ideas for communicating information to our members. Keep your eyes open for the “Wednesday Briefcase,” delivered to your inbox each week. It serves as a “one stop shop” so to speak for news and events with a few surprises and giveaways mixed in as well. It is also an excellent source for information about the Annual Meeting, including agendas, speaker spotlights, and more.

In March, thirty young lawyers from sixteen firms located throughout Alabama traveled to Montgomery to attend Deposition Boot Camp at Faulkner University’s Jones School of Law. The students spent two days participating in a practical CLE designed to hone deposition skills. I had the privilege of serving on the faculty and offer a few observations. I am grateful for the participation and enthusiasm from the students. Deposition Boot Camp is time consuming both in the preparation required and the time away from the office, none of which translates into any billable time. Through Deposition Boot Camp, we added twenty new members. I am also incredibly grateful for the firms who see the value in encouraging attendance at meaningful and practical CLE. Each year I serve on the faculty I probably learn more than I teach and I am always thankful for the opportunity to spend time with the other faculty members: Jonathan Hooks, Christina Bolin, Ben Heinz, Jeremy Gaddy, Megan McCarthy, Harold Stephens, Stephen Still, Evans Bailey and Dennis Bailey. Over the years, I have come to consider them some of my dearest friends.

In June, we will convene for our Annual Meeting, which will be held at the Perdido Beach Resort in Orange Beach, Alabama. This is the first time in over two decades that the Annual Meeting will be held at Perdido. I am sure there are some amongst us that will lament that we are not meeting in Sandestin this year. Let me take this opportunity to mention that a day spent at the beach by definition cannot be a bad day. Oh, and the resort is actually on the beach. So, book your room and make your plans to join us in June!

There are more exciting things on the horizon but I am given a limited amount of space. I am excited about the future of ADLA and you should be as well!
A DLA members Bruce Barze, Spence Taylor, and Todd Lowther are proud to announce the formation of their law firm, Barze Taylor Noles Lowther LLC, in Birmingham. The firm will focus on personal injury and product liability defense, insurance coverage matters, environmental counseling and litigation, and commercial disputes.

Fish Nelson & Holden, LLC is pleased to announce that its senior member, Mike Fish, prepared a chapter in “Workers’ Compensation Emerging Issues Analysis”, 2017 edition. The book is a reference guide to issues and cases as well as a 50 state survey of trends and developments. In his chapter, Fish analyzed the 2017 trends and developments in Alabama Workers’ Compensation law. The Co-editors-in-chief are Thomas A Robinson of LexisNexis and the National Workers’ Compensation Defense Network (NWCDN). Fish Nelson & Holden is the Alabama representative for the NWCDN and Fish is the current President of that organization.

Fish Nelson Holden, LLC announces that one of the firm’s attorneys, Charley M. Drummond, was recently elected as Chairman of Birmingham Bar Association Workers’ Compensation Section for 2018. Drummond’s practice with the firm focuses heavily on the representation of employers and insurers in workers’ compensation and related matters.

Cabaniss Johnston Gardner Dumas & O’Neal, LLP is pleased to announce that Diane Babb Maughan has been elected to serve on the firm’s Management Committee. Mrs. Maughan has been with the firm since 2000 and has been recognized for her expertise and skill as a lawyer by numerous publications. She primarily practices in the areas of business and commercial litigation, representing clients in many industries with respect to contract claims, commercial real estate and real property disputes, trademarks, health care-related litigation, and other matters.

Bradley Arant Boult Cummings LLP is pleased to announce that Charles Stewart, a partner in the firm’s Montgomery office, has been named by Who’s Who Legal as among the world’s leading product liability defense practitioners. He is listed in the Who’s Who Legal: Product Liability Defence 2018. Mr. Stewart is a member of Bradley’s Litigation, Intellectual Property and Labor & Employment Practice Groups and the Life Sciences industry team. He has more than 32 years of experience as a trial lawyer, having successfully tried a vast number of cases, primarily in the defense of corporations in product liability, employment, business disputes, class actions, intellectual property, antitrust, construction and catastrophic personal injury matters. He received his J.D. from Cumberland School of Law at Samford University and his Bachelor of Arts from Sewanee: The University of the South. Published by London-based Law Business Research Limited, the Who’s Who Legal: Product Liability Defence seeks to identify the top lawyers in all aspects of the defense of product liability claims, including mass tort, class action and cross-border litigation.

Lightfoot, Franklin & White LLC is pleased to announce the following ADLA members have been named “Litigation Stars” in the 2018 edition of Benchmark Litigation:


Lightfoot, Franklin & White LLC has elected James W. Gibson as a partner, effective January 1, 2018. Gibson, who has been with the firm for eight years and was a summer associate during law school, focuses on defense litigation, including product liability, medical malpractice and consumer fraud. Gibson has played a critical role in matters as diverse as a multi-week medical malpractice trial involving the death of a three-year-old child and an arbitration against claimants who sought millions of dollars in property loss and punitive damages. He was also an integral part of the trial team in a multi-week product liability case in federal court involving two international manufacturing defendants. In addition to his core areas of focus, Gibson has also handled business disputes, toxic torts cases, legal malpractice matters, construction defect claims and class actions. Gibson holds a J.D. from Vanderbilt University Law School and an A.B. and A.B.J. (magna cum laude) from the University of Georgia.

Longtime Lightfoot, Franklin & White LLC partner and ADLA member, Wynn M. Shuford, has accepted a position with the federal Drug Enforcement Administration in Arlington, Virginia. Shuford, who was with Lightfoot for nearly 25 years and recently finished out a term as its managing partner, will work in the Civil Litigation Section in the Office of Chief Counsel. Shuford maintained an active practice at Lightfoot, focusing on toxic tort, complex commercial, class action and mass tort litigation throughout the Southeast.

Lightfoot, Franklin & White LLC partner Brooke Garner Malcom has been named to the 2018 Board of Directors for the Birmingham Bar Volunteer Lawyers Program (BBVLP). She will serve as the organization’s Treasurer and Finance Committee Chair. Malcom has been actively involved with the BBVLP for over seven years, previously serving on its Board of Directors. Malcom defends clients in cases

Continued on page 41
LET'S MEET OUR NEW MEMBERS

Gabriella Alonso
Lightfoot Franklin & White
Birmingham

Hayden Bashinski
Carr Allison
Birmingham

Francisco F. Canales
Webster Henry Bradwell Cohan
Speagle & DeShazo
Birmingham

Rachel H. Cobble
Friedman Dazzio Zulanas
& Bowling
Birmingham

Sheena Delaney
Wallace Jordan Ratliff & Brandt
Birmingham

A. Patrick Dungan
Adams & Reese
Mobile

J. Britton Funderburk
Wallace Jordan Ratliff & Brandt
Birmingham

Mark Gibson
Carr Allison
Birmingham

Madeleine Greskovich
Starnes Davis Florie

Bridget Elizabeth Harris
Lightfoot Franklin & White
Birmingham

C. Richard Hill, Jr.
Capell & Howard
Montgomery

Nathan Hill
Grace Matthews & Debro
Huntsville

Caitlin Victoria Malone
Webster Henry Bradwell Cohan
Speagle & DeShazo
Montgomery

David Manush
Carr Allison
Birmingham

Zachary P. Mardis
Carr Allison
Birmingham

Logan Taylor Matthews
Lightfoot Franklin & White
Birmingham

Wade Norwood
Carr Allison
Birmingham

Mary “Alex”andra Parish
Carr Allison
Birmingham

Howard “Trey” Perdue, III
Carr Allison
Birmingham

Christopher Saville
Carr Allison
Birmingham

William Stevenson
Scott Dukes Geisler
Birmingham

Al Teel
Burr & Forman
Birmingham

William Thompson
Huie Fernambucq & Stewart
Birmingham

Paul Wallace, Jr.
Huie Fernambucq & Stewart
Birmingham

Katie Willoughby
Wallace Jordan Ratliff & Brandt
Birmingham
Christie J. Estes
Quality Correctional Healthcare, Inc., Birmingham
New Member Recruitment Chair, Former Board Member

Where did you grow up and what college did you attend?
I was born and raised in Birmingham, Alabama. I attended Samford University and then Cumberland School of Law.

Most memorable moment on the job?
Last summer, I toured fifteen Alabama Department of Corrections Facilities. I can now say that I have been on death row. I also have a 100% success rate of being able to leave jails/prisons at the end of the day.

Unusual job perk?
I can – and often do – wear scrubs to work.

What is the furthest you have traveled for work in a day?
Bend, Oregon to Destin, Florida.

What is the most rewarding aspect of your career?
Both in my current position and in private practice, I have the privilege of working with medical professionals who work tirelessly to provide health care to the inmate population in county and city jails. These individuals do a tough job in a tougher environment.

Most frustrating?
Procrastinators.

What is your best advice to young lawyers?
Two things: (1) Find a mentor and become a mentor. You are never too old to learn and you are never too young to have an impact on someone else. (2) Be the type of lawyer other lawyers want to work with. Be kind and show grace because, without fail, there will come a day when you need opposing counsel to do the same for you. There are times when you have to take a tough position to properly advocate for your client. Most of the time, you can (and should) work with opposing counsel. Learn to choose your battles wisely.

What was your biggest lesson learned when you started to practice that you didn’t already know?
The importance of communication. Absent missing a filing deadline, the majority of “mistakes” can be remedied. However, your supervising/senior lawyer can address zero percent of the issues he or she is not aware of. Communicate early and often. What you perceive a crisis may not even be a blip on the radar for a lawyer who has been practicing for twenty or thirty years.

Why are you a member of ADLA?
I have never met a more welcoming group of individuals and there are endless opportunities to be involved whether publishing in the Journal, attending the annual meeting, or teaching or attending Deposition Boot Camp or Trial Academy. For young lawyers, ADLA offers practical CLEs and publishing opportunities as well as leadership opportunities through the Young Lawyers Section.

If you had to choose a different profession, what do you think you would want to do?
I would probably do marketing of some variety.

Who was/is your role model/mentor in the profession?
Sharon Stuart. I think the phrase “I don’t know how she does it” was coined with her in mind. She is as gracious as she is brilliant.

Who do you pull for on football Saturday’s?
As for me and my house, we say “War Eagle!”

What is the last book you read?
“Just Mercy” by Bryan Stephenson. It definitely makes the “Top Five” list of books I have ever read.

Favorite movie?
The Blindside.

Christie hooks a whopper!

“As for me and my house, we say “War Eagle!”

Christie and Tyler Nixon, niece by friendship and daughter of ADLA Member Brooke Nixon

On the Record
Nobody tells your story better than you do. Our new ADLA Members On the Record feature in the Journal will spotlight several members in each issue. ADLA members will give us the inside scoop on what makes them tick, their success (and challenges), and what being a member means to them.

Chances are you just might learn something about a member that you would have never known.

ADLA Members
William (“Will”) J. Gamble, Jr.  
Phelps Dunbar, Mobile  
Former YLS President

Where did you grow up and what college did you attend?  
I grew up in Selma, Alabama. I graduated from Selma High School, and went on to obtain my college degree from the University of North Carolina at Chapel Hill.

Most memorable moment on the job?  
First Answer: I’ll never forget the day I cleared my calendar because my wife went into labor with our first child.  
Second Answer: I’ll probably never forget the time I was cross examining the plaintiffs’ expert in a jury trial, and we caught him exaggerating on some evidence. With the timing “feeling right”, I asked the standard question: “Just how much are you getting paid?” The expert hung his head, and responded: “Not enough.” Plaintiffs’ counsel was ready to settle shortly thereafter.

Unusual job perk  
We are defense lawyers, do we have perks?

What is the furthest you have traveled for work in a day?  
I’m assuming this question is asking about driving? If so, I’m going to take the moral high ground here, and answer “too far.” As a young lawyer, I would drive long distances to and from hearings, depositions, etc. in one day. We had an associate involved in a substantial rollover accident about 10 years ago. Since then, I try to break up any travel such that I’m not driving more than 5-6 hours in a given day. You are simply testing fate if waking up at 3 or 4 in the morning to get to a location, or are still on the road late at night after a long day. I encourage our associates to do the same.

What is the most rewarding aspect of your career?  
The best part of practicing law for me is when a client is genuinely grateful that we successfully navigated them through the litigation process. I know that what we do is “worth it” when I receive that hug, that handshake, that look of relief, that note from the client, etc.

Most frustrating?  
Unnecessary discovery done purely to aggravate/harass my client(s) is awful. I can’t define it, but I know it when I see it.

What is your best advice to young lawyers?  
Two things:
(1) When I was starting to practice, I was told to never sign a letter to opposing counsel if I was mad. The letter should go out the next day instead (and it almost ways got revised). In this day and age of emails, this advice is even more important since email exchanges often lack any “cooling off” time. Remember, there’s a good chance a Judge will see the email exchange if things get heated, and you always want to have the moral high ground.
(2) Conduct face to face meetings whenever possible (both with clients and opposing counsel). If it’s not practical to meet face to face, use the phone. Emailing and letter writing greatly reduces your ability to communicate effectively, and should be your last resort when substantive discussions are needed.

What is your biggest lesson learned when you started to practice that you didn’t already know?  
Growing up in a family of lawyers, I had a decent idea of what to expect. What I didn’t appreciate until I started practicing is the weight of putting other people’s problems on your own shoulders.

Why are you a member of ADLA?  
I don’t want my father (past ADLA President, Bill Gamble) to excommunicate me out of the family! Just kidding of course, right Dad?

If you had to choose a different profession, what do you think you would want to do?  
I’m not sure, but it would likely be somewhere in the islands.

Who was/is your role model/mentor in the profession?  
My Dad, period, end of statement.

Who do you pull for on football Saturday’s?  
Other than at sunrise and sunset, I despise the color orange. Roll Tide and Go Heels!

What is the last book you read?  
Eloise at the Plaza – I have a four year old daughter.

Favorite movie?  
If any male born in 1973 doesn’t answer Star Wars as his favorite movie, he is probably lying to himself.

Biggest Pet Peeves?  
In no particular order, some of my pet peeves include:

Biggest Pet Peeves?  
Tractor trailers that drive in the left lane and when the volume on the television increases 100 decibels during commercials.

What is one of your most embarrassing moments?  
I slipped and fell down a hill during an inspection because I wasn’t wearing appropriate footwear. Lawyer pro tip: when your expert tells you to wear flat shoes, he probably has a good reason for doing so.

If you could choose one ADLA member who has had a special impact on you, please tell us who and what you want us to know.  
Harold Stephens. I would want to know his most memorable trial.

From the steps of the Alabama Supreme Court, the day I was sworn in to practice law.

"Other than at sunrise and sunset, I despise the color orange. Roll Tide and Go Heels!"

Alex (age 10) and May (age 4)
but once I did fly to New York, took a deposition in LaGuardia airport, and flew back.

What is the most rewarding aspect of your career?
Getting to work with great people and great lawyers in my firm.

Most frustrating?
Ungrateful clients for whom you get a result far better than you imagined and yet they still complain.

What is your best advice to young lawyers?
Two things: (1) Treat others as you would want to be treated, whether clients, co-workers, or opposing counsel, and (2) Put your relationship with God, your relationship with your family, and your reputation above material gain.

What was your biggest lesson learned when you started to practice that you didn’t already know?
I knew being a litigator involved trying to persuade judges, but as much or more than judges it involves persuading the opposing party and, somewhat regularly, your own client.

Why are you a member of ADLA?
The trial lawyers association rejected my application.

If you had to choose a different profession, what do you think you would want to do?
I’m very satisfied being a lawyer, but probably something academic, some type of writer or columnist, or maybe a professional poker player.

Who was/is your role model/mentor in the profession?
I usually learn something from everyone I work with and even those on the opposing side (though sometimes I learn things not to do), but my earliest role model/mentor was Justice Hugh Maddox when I clerked for him at the Alabama Supreme Court out of law school. He had so much experience that he shared. I learned and respected how he approached cases as a judge and how he handled significant adversity during his last judicial campaign.

Who do you pull for on football Saturday’s?
I pull for Auburn and whomever is playing Alabama. No exceptions.

What is the last book you read?
The Dummy Line by Bobby Cole. It’s about a guy from east Mississippi who takes his 9-year-old daughter hunting in west Alabama and runs into some rough characters. I’m currently reading the follow-up book, Moon Underfoot.

Favorite movie?
Talladega Nights

1. Judges don’t always agree with my position;
2. My wife is usually right (by a wide statistical margin, I might add);
3. Even if she is wrong, my wife always wins the argument (granted she is the prosecutor, judge, jury, appellate court, and executioner- so it’s not a fair fight!);
4. sometimes can’t fall back asleep because I’m thinking about work; and
5. There simply are not enough hours in the day.

**What is one of your most embarrassing moments?**
On advice of counsel, I decline to respond to this question!

**If you could choose one ADLA member who has had a special impact on you, please tell us who and what you want us to know.**
Almost everyone I know spoke about my grandfather (attorney Harry Gamble) as a “True Southern Gentleman.” Many people have used similar words to me in describing my father. Dad once lectured me: “No one ever got hurt by you being nice.” As a litigator, it is exceptionally challenging to balance the role of advocate and yet being a “True Southern Gentleman.” Like my father and grandfather before me, maybe one day I’ll get there.

**Growing up in a family of lawyers, I had a decent idea of what to expect.**

---

**Michael “Mike” Jackson**
Wallace Jordan Ratliff & Brandt LLC
Birmingham

Where did you grow up and what college did you attend?
I grew up in the Birmingham area, first in Avondale through 6th grade, then from 7th grade through high school in Vestavia Hills. I then attended Auburn University.

Most memorable moment on the job?
A few months after I started work at my firm, fresh off of a judicial clerkship, the 1994 general election was held. Our firm was at the center of litigation in multiple courts over the race for Chief Justice between Perry Hooper Sr. and Sonny Hornsby, and we prevailed in preventing the stealing of that election and having Perry Hooper declared the winner of the election. It was about what normally would have been three years of litigation crammed into eleven months, and attending the investiture of Chief Justice Hooper was a memorable moment that was the culmination of a lot of hard work by a lot of people.

Unusual job perk?
Not really anything I’d classify as unusual.

What is the furthest you have traveled for work in a day?
I don’t have to travel more than driving distance very frequently,

---

“I pull for Auburn and whomever is playing Alabama. No exceptions.”

**What is one of your most frustrating aspects of your career?**
Ungrateful clients for whom you get a result far better than you imagined and yet they still complain.

**What is your best advice to young lawyers?**
Two things: (1) Treat others as you would want to be treated, whether clients, co-workers, or opposing counsel, and (2) Put your relationship with God, your relationship with your family, and your reputation above material gain.

**What was your biggest lesson learned when you started to practice that you didn’t already know?**
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**Why are you a member of ADLA?**
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**If you had to choose a different profession, what do you think you would want to do?**
I’m very satisfied being a lawyer, but probably something academic, some type of writer or columnist, or maybe a professional poker player.

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I usually learn something from everyone I work with and even those on the opposing side (though sometimes I learn things not to do), but my earliest role model/mentor was Justice Hugh Maddox when I clerked for him at the Alabama Supreme Court out of law school. He had so much experience that he shared. I learned and respected how he approached cases as a judge and how he handled significant adversity during his last judicial campaign.

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**What is the last book you read?**
The Dummy Line by Bobby Cole. It’s about a guy from east Mississippi who takes his 9-year-old daughter hunting in west Alabama and runs into some rough characters. I’m currently reading the follow-up book, Moon Underfoot.

**Favorite movie?**
Talladega Nights
Biggest Pet Peeves?
I’m pretty easy going and try not to let things bother me, but here are some that come to mind currently: Not using an Oxford comma; using a modifier in front of the word unique (unique means one of a kind, and there is no very unique or sort of unique – something is unique or it is not); when people I don’t know leave me voicemail messages with just their name and number and don’t say why they are calling; when people stand right outside the door to a building and smoke so you have to walk through the smoke; and loudly talking on a cell phone as a speaker phone or video phone (like Skype or Facetime) in public places.

What is one of your most embarrassing moments?
The question suggests that lawyers are capable of embarrassment, and I’m not sure they are. But the closest I came was probably in a deposition when I spilled a large full cup of water on a big pile of paper exhibits in the middle of the deposition. It was quite a mess.

Pat Sefton
Sasser Sefton & Brown, Montgomery
Past President

Where did you grow up and what college did you attend?
I grew up in Huntsville and attended Auburn University. I went to Alabama for law school.

Most memorable moment on the job?
Arguing cases before the 11th Circuit Court of Appeals. The preparation that goes into 10-15 minutes of argument is unbelievable but the challenge and satisfaction of completing it is all worth it.

Unusual job perk?
The firm sends me to the ADLA beach meeting every year! (Shameless plug for the publisher of this Q and A!)

What is the furthest you have traveled for work in a day?
Most of my cases are in Alabama or Georgia but I did travel to Maine a couple of years ago for a matter and that was lots of fun --- especially the looks I received every time I spoke. I must have a pronounced accent because I got lots of smiles from the folks in Maine.

What is the most rewarding aspect of your career?
Partnering with a client to solve a problem or dispute and then having that client hire me again on a future matter.

Most frustrating?
Keeping up with my daily time in tenths of a minute.

What is your best advice to young lawyers? Two things:
1. You should not be defined by your law practice and you will never be happy if your identity is based upon your professional success or failures.
2. Be flexible and adapt to change. You likely won’t be doing exactly what you are doing today 20 years from now.

What was your biggest lesson learned when you started to practice that you didn’t already know?
Clients want you to help them solve their problems with common sense. I thought every case was tried and every client wanted to have their day in court. Instead, clients want their problem solved and litigation is an awfully inefficient way of solving problems. Problem solving for clients sometimes means going to court but many times it means sitting down with opposing counsel and exploring a creative solution to a problem that the clients refused to consider before they hired us.

Why are you a member of ADLA?
A senior partner came by one morning and told me that I needed to be a member. He also asked if I could “cover” the ADLA meeting at the beach a couple of months later. I accepted his offer and have been a member ever since. Joining ADLA was the best professional decision I’ve made. ADLA has provided an environment for me to meet some of the very best lawyers and judges in Alabama and develop friendships with lawyers across the state. I firmly believe that if you try to “go at it alone” in this profession you will be miserable. People in every walk of life need community and ADLA is the pre- eminent lawyer community for Alabama lawyers and their families.

If you had to choose a different profession, what do you think you would want to do?
I’d love to work for ESPN College Game Day as one of the anchors.

Who was/is your role model/mentor in the profession?
My partner, Robert Sasser, who I’ve worked with for 22 years. Robert is a great lawyer with an innate ability to relate to people.
and develop long term client relationships. Most of all he is a
good husband, father and grand-father. As a young lawyer I was
blessed to work with someone that modeled that even above
practicing law.

Who do you pull for on football Saturday's?
Auburn. War Eagle!

What is the last book you read?
The Rooster Bar by John Grisham

Favorite movie?
National Lampoon’s Christmas Vacation

Biggest Pet Peeves?
People that take themselves too
seriously

What is one of your
most embarrassing moments?
As a very young lawyer, I
received a call from a Judge
in Montgomery one morning
wondering why I was not in his
courtroom for trial! I had just
filed an answer in the case and
had received no notice of a
trial setting. It was a retaliatory
discharge case and the answer
had been misfiled in the worker’s comp side of the case which
I was not handling. I walked into the courtroom with great
trepidation and embarrassment as the courtroom was full and
I felt like everyone was staring at me. When the Judge realized
what had happened he continued the case. I was still very
embarrassed!

If you could choose one ADLA member who has had a
special impact on you, please tell us who and what you
want us to know.
Wow…tough question because there have been so many that
I have developed great friendships with over the years but I’d
have to say my friend, Harold Stephens. I hit it off with him the
first time we met and our families have
often dined and played together at
multiple ADLA, State Bar and DRI
meetings. He is a consummate
professional, gentleman, Christ
follower and loyal friend. Harold is
a mentor not only professionally but as a husband, father, bar
leader and Christian. I likely would have never crossed paths with
Harold had I not taken the time to become involved in ADLA.

Most memorable moment on the job?
A key witness testifying at trial said he could not understand
questions during my examination because he pretended to only
speak Mandarin Chinese. What he didn’t know is that the judge
knew enough Mandarin to call his bluff. His English then began
to flow like water – with a southern accent to boot!

Unusual job perk?
Being asked to investigate accidents in some of the coolest (and
strangest) of places. My torts professor said you never know
where the law will take you, and he was right.

What is the furthest you have traveled for work in a day?
San Francisco, CA

What is the most rewarding aspect of your career?
Getting to meet people I would never get a chance to meet had
it not been for the practice of law.

Most frustrating?
Am I supposed to come up with
anything other than billing hours?

What is your best advice to young
lawyers? Two things:
Be genuine with everyone you meet, and never burn a bridge.
You never know when someone will become a good-paying
client one day, and, believe me, people are watching you.

What was your biggest lesson learned when you started
to practice that you didn’t already know?
The practice is as much or more about forming
relationships as
anything else.

Why are you a member of ADLA?
To continue relationships with members of the bar that do what
I do and see the same things I see on a daily basis.

If you had to choose a different profession, what do you
think you would want to do?
Lead a non-profit or some other form of public service.

Who was/is your role model/mentor in the profession?
I have always been intrigued by the character of Atticus Finch
as the archetype of what a real southern lawyer should seek to
attain in life.

John Browning
Burr Forman, Mobile
Former YLS President

Where did you grow up and what college did you attend?
Montgomery, AL and went to undergrad at Troy (then-State)
University

"The practice
is as much more
about
relationships as
anything else."

John Browning, with wife Margaret Sue, and daughter, Margaret
Who do you pull for on football Saturday’s?
Alabama and Troy

Go Trojans!

What is the last book you read?
An autobiography of Lee Roy Jordan

Favorite movie?
There are too many to even mention.

Biggest Pet Peeves?
Lawyers who attack other lawyers rather than advocating for their clients. There is a difference.

What is one of your most embarrassing moments?
There are too many to mention. (Thank God they didn’t have Facebook when I was in college or law school!)

If you could choose one ADLA member who has had a special impact on you, please tell us who and what you want us to know.
Forrest Latta was insistent that I participate and become active in the Association. He is the one who taught me that practicing law is as much or more about building relationships as anything else.

“There are too many to mention. (Thank God they didn’t have Facebook when I was in college or law school!)”
ADLA’s 2018 Deposition Boot Camp took place on March 22-23, at Jones Law School in Montgomery. This year’s Camp had 30 attendees which made it the largest ever. As many of you know, Depo Boot Camp is designed to give young defense lawyers the opportunity to hear from seasoned defense lawyers on all aspects of depositions ranging from properly completing a deposition notice to thoroughly questioning an opposing party’s key expert witness. In addition, attendees are given multiple opportunities to test out the skills they are taught during live-action breakout deposition sessions.

Deposition Boot Camp could not occur without the dedication of the faculty who are committed to the development of young civil defense lawyers in Alabama. This year’s faculty included ADLA members Evans Bailey, Dennis Bailey, Christina Bolin, Christie Estes, Jeremy Gaddy, Jonathan Hooks, Megan McCarthy, Harold Stephens, Stephen Still, and Jeremy McIntire, Assistant General Counsel at the Alabama State Bar. Ben Heinz served as the Camp’s Director.

@ALDefenseLaw
Alabama Defense Lawyers Association
ADLA HOSTS CUMBERLAND SCHOOL OF LAW LUNCH AND LEARN

Ranse Hare, ADLA’s Law School Student Representative at Cumberland, organized a student lunch and learn in March. Stephen Still from Starnes, Davis and Florie, LLP, spoke to the students about a variety of issues relating to what they can expect as they transition out of law school. Stephen spoke about business development, the value of summer internships, and what to expect as a brand new attorney in the workforce.

ADLA would like to recognize Ranse Hare for his dedication to the Law School Student Section as the Cumberland representative. Ranse is graduating from Cumberland Law School in May. After Ranse passes the Bar exam, he will practice in Mobile and has committed to being involved in ADLA’s Young Lawyer Section. Congratulations Ranse!

Stephen Still addresses Cumberland Law School Students

UNIVERSITY OF ALABAMA SCHOOL OF LAW JOHN A. CAMPBELL MOOT COURT COMPETITION

Each year, ADLA proudly presents the Frederick Douglass Moot Court Team with a $2,500 cash award to help fund many of the team’s expenses. Team members were: Barry Burkett, Daneal Barnaby, Imani Shaw, and Jodi Wilson. Professor Anita Kay Head served as their Faculty Advisor. The team competed admirably at the Southeastern Regional BLSA Competition in Birmingham in February.

This year’s Moot Court Competition Final Round included prestigious judges who challenged the students; making it very interesting for everyone who watched the competition. The following judges served on the Presiding Bench:

The Honorable Carlos F. Lucero
United States Court of Appeals for the Tenth Circuit

The Honorable Dennis W. Shedd
United States Court of Appeals for the Fourth Circuit

The Honorable Madeline Hughes Haikala
United States District Court for the Northern District of Alabama

UNIVERSITY OF ALABAMA SCHOOL OF LAW JOHN A. CAMPBELL MOOT COURT COMPETITION

Stephen Still addresses Cumberland Law School Students

Ranse Hare and Stephen Still
Feel the Freedom Difference
Seeing is Believing.

We Continually Strive to Make a Difference to Every Client, Every Job, Every Time.

Reliable People, Affordable Rates, Quality Transcripts and Videos, with Fast-Friendly Customer Service

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For more than 25 years, our professionals have served as forensic accountants and experts.

W. Allen Carroll, Jr.
acarroll@wilkinsmiller.com
251.410.6722

Stacy T. Cummings
stcummings@wilkinsmiller.com
251.410.6718

L. Page Stalcup, III
pstalcup@wilkinsmiller.com
251.410.6701

among the members continued from page 43

involving personal injury, products liability, as well as complex environmental and toxic tort matters.

Lightfoot, Franklin & White LLC Of Counsel Elizabeth H. Huntley has been named a Fellow of the Birmingham Bar Foundation. Huntley was formally inducted at the organization’s annual Fellows Dinner on February 17, 2018. In addition to handling large corporate litigation matters at Lightfoot, Huntley is a committed child advocate and provides legal and consultation services to government and nonprofit agencies that serve children and families. She is frequently appointed by judges to represent the legal interests of children in civil cases. Huntley was recently named a 2017 “Women Who Shape the State” honoree by This is Alabama.

Lightfoot, Franklin & White LLC is pleased to announce partners Sam Franklin, Lana A. Olson and Harlan I. Prater, IV have been named to Who’s Who Legal: Product Liability Defense for 2018 for the second year in a row.

Huie is pleased to announce Melissa Sinor has joined the firm as an associate. Sinor, a lateral hire with previous defense litigation experience, joins the firm’s product liability, medical malpractice and insurance coverage and defense practice groups. She earned her BA from Auburn University and her JD from Florida State University College of Law.

Huie is pleased to announce that senior partner Clay Clark received the Robert W. Lee Award for Excellence in Workers’ Compensation from the Birmingham Bar Association Workers’ Compensation Section. This recognition is awarded each year to one attorney who consistently works to raise the workers’ compensation bar. Since joining Huie in 1983, Clark has created value for long-lasting clients in the areas of employment law, workers’ compensation, industrial accident litigation, retaliatory discharge, sexual harassment, ADA litigation, discrimination, motor carrier litigation, premises liability and general liability litigation. He is an active member of the Alabama Defense Lawyers Association, Alabama Workers’ Compensation Defense Lawyers Association, American Bar Association, Birmingham Bar Association, Claims and Litigation Management, Defense Research Institute, National Retail and Restaurant Defense Association and State of Alabama Department of Industrial Relations Legal Advisory Board. Clark earned his BS from The University of North Alabama and his JD from Cumberland School of Law at Samford University.
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