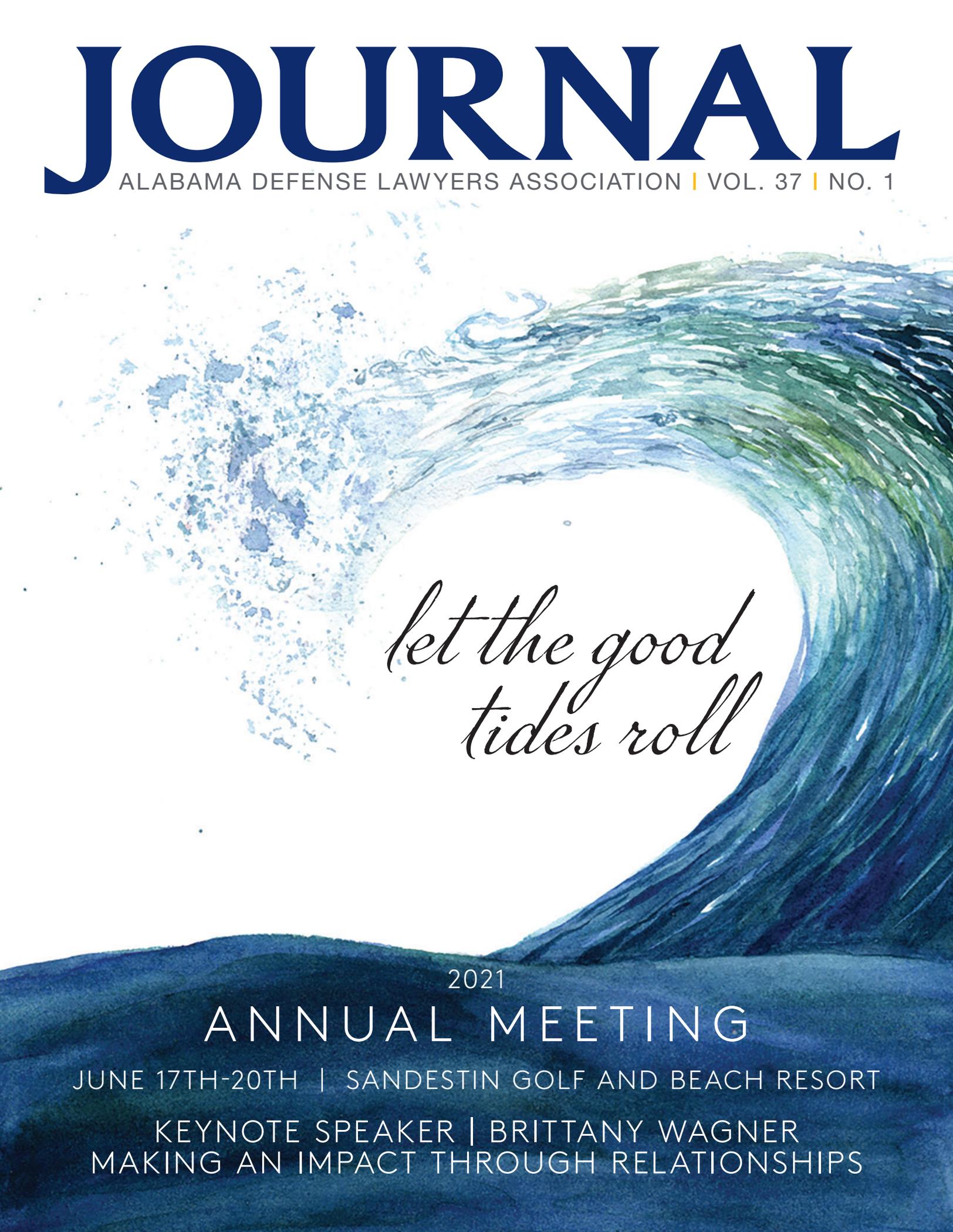


JOURNAL

ALABAMA DEFENSE LAWYERS ASSOCIATION | VOL. 37 | NO. 1



*let the good
tides roll*

2021

ANNUAL MEETING

JUNE 17TH-20TH | SANDESTIN GOLF AND BEACH RESORT

KEYNOTE SPEAKER | BRITTANY WAGNER
MAKING AN IMPACT THROUGH RELATIONSHIPS

WORKING REMOTELY?

WE PROUDLY
SUPPORT
ALABAMA
DEFENSE LAWYERS
ASSOCIATION

NEED TO TAKE A DEPOSITION, MEET WITH YOUR TEAM, OR PARTICIPATE
IN AN ARBITRATION OR HEARING REMOTELY?

TRY OUR REMOTE SOLUTIONS! | WWW.VERITEXT.COM/REMOTE

BE THERE WHEN YOU CAN'T BE THERE.

Veritext's virtual technology provides a convenient solution for conducting proceedings remotely. Easily connect with just your webcam-equipped computer, phone line, and internet access.

VERITEXT
LEGAL SOLUTIONS

USER-FRIENDLY SECURE PLATFORM

Hosted via a securely configured Zoom enterprise interface, Veritext Virtual remote proceedings comply with HIPAA & PII privacy protocols.

STREAMING VIDEO

A live-stream realtime video lets you view witness demeanor and body language with ability to accommodate up to 100 participants.

STREAMING REALTIME TEXT

Scrolling text of the proceeding can be highlighted, annotated and saved.

FLEXIBLE OPTIONS

Chat features, practice and breakout rooms are available upon request.

TECHNICAL SUPPORT

On call support by technical staff is provided for each session with options for live concierge support.

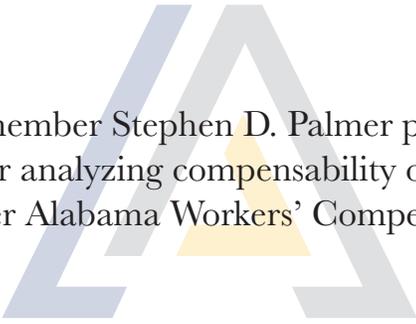
INTRODUCING EXHIBITS? ADD EXHIBIT SHARE!

Exhibit Share is a secure, straightforward tool that replicates in-person marking of exhibits using a self-managed folder.

Digitally stamp exhibits and share with all participants, local or remote, and alleviate the hassle of carrying bulky boxes of exhibits.

LEARN MORE:
www.veritext.com/es

SCHEDULE YOUR REMOTE PROCEEDING:
calendar-al@veritext.com | (877) 373-3660
www.veritext.com/remote



ADLA member Stephen D. Palmer provides a framework for analyzing compensability of COVID-19 claims under Alabama Workers' Compensation law.

8 **The Question of Compensability of COVID-19 Cases: An Analysis Under Alabama's Workers' Compensation Law**

4 **Message from ADLA 2020-2021 President, Andrew J. Rutens**
As my year as President comes to a close, I am truly thankful for all of the lawyers who have volunteered their time to assist ADLA in our efforts

8 **The Question of Compensability of COVID-19 Cases: An Analysis Under Alabama's Workers' Compensation Law**
By: Stephen D. Palmer

17 **Registration Open for 2021 Annual Meeting June 17th-20th at the Sandestin Golf & Beach Resort**

ADLA welcomes Keynote Speaker Brittany Wagner of 10 Thousand Pencils, LLC; bring the whole family for fun, fellowship and a top-notch CLE program

20 **The Importance of Setting Goals and Implementing Metrics to Track Them**
By: Jeremy W. Richter

26 **New Member Forum- Join the Discussion Today**
Ask, find and connect with other members by using this new members' only resource

28 **Legally Remote Fall Conference Wrap-up**
Members gathered for two days of virtual CLE and social networking

30 **Finally, A New Font! How Best to Comply with the Alabama Supreme Court's Latest Formatting Requirements**
By: Mary Margaret Bailey

34 **ADLA Supports Law School Charity Golf Tournament and Moot Court Team**
Faulkner Law School's Student Bar Association hosts 16th Annual Don Garner Charity Golf Classic & UA's School of Law Thurgood Marshall Moot Court Team wins award

36 **Wins for the Defense & Among the Members**
Read up on statewide civil defense wins and catch up on news and announcements from around the state



THE QUESTION OF COMPENSABILITY OF COVID-19 CASES



THE IMPORTANCE OF SETTING GOALS AND IMPLEMENTING METRICS TO TRACK THEM



FINALLY, A NEW FONT! HOW BEST TO COMPLY WITH THE ALABAMA SUPREME COURT'S LATEST FORMATTING REQUIREMENTS



ANDY RUTENS
President

Charles Darwin said, "It is not the strongest of the species that survives, not the most intelligent that survives. It is the one that is most adaptable to change." That statement is even more applicable to the practice of law than it has been at any time in recent memory. Those of us who have practiced long enough have seen the practice evolve from carbon paper to copiers, from typewriters to computers, and from digests to computer

research have seen our share of changes in the practice of law. While each of these changes is significant in and of themselves, the speed by which the legal profession has had to evolve over the past year is stunning. The limitations placed on the legal community by the Covid shutdown have led to inspiration and ingenuity by judges and lawyers to restart the wheels of justice. From the quick actions of the Chief Justice and the Supreme Court in making video platforms like Zoom available to the court system, to the actions of the various circuit courts in analyzing, rearranging and reimagining how courthouses could open and ultimately undertake jury trials. The legal community has been forced to adapt to the temporary emergency. However, while many of these temporary actions were borne out of necessity, it is our job now as defense lawyers to determine which of these adaptations should continue on in our practices in a post-Covid world and which, although necessary at the time, should not continue when the pandemic is over.

ADLA as well has had to adapt to the new environment. The single biggest way ADLA has adapted to the pandemic has been to ramp up our on-line CLE opportunities and to create a library of on-line CLEs that our members can access. These CLEs include renowned defense lawyers within the State providing presentations on litigation, updates on the law, and timely topics on how to develop, defend and litigate cases. We expanded our course offerings to also include CLE topics provided by approved sponsors that address expert and technical topics. These course offerings are vetted by the ADLA Education Committee to first determine if it is a topic that we feel will be of interest to our members and before the CLE is offered to our members, the content of the offering is reviewed by the same Committee to make sure you are being provided something useful and not just an infomercial. ADLA has also instituted a member chat forum on our website. This forum is a secure chat forum that allows our members to discuss issues, concerns, and challenges being faced with the entire membership of ADLA. While nothing can replace the opportunity to discuss matters with other ADLA members at a District Mixer or at a live seminar, we wanted to give our members the opportunity to candidly and privately discuss matters being faced in different jurisdictions and to get insight from others on how to address challenges they may be facing. These changes in how ADLA assists its members

have proven to be a benefit to the membership and will continue on.

As my year as President of the Alabama Defense Lawyers Association comes to a close, I am truly thankful for all of the lawyers who have volunteered their time to assist ADLA in our efforts to ensure that the changes in the practice of law were necessary and, as importantly, those changes are temporary. During this past year ADLA volunteers have logged hundreds of hours, analyzing proposed changes to the system and proposing alternatives when justice and common sense requires. To even begin attempting to name all the individuals who have donated their time and talent would be criminal. Too many of our members have volunteered to serve on state bar committees, local bar committees, and ADLA committees. We are truly indebted to everyone who stepped up to the call. To be sure, we will continue to see Zoom video hearings and the remote swearing-in of witnesses even after Covid is a memory. However, we will continue to undertake efforts to preserve live witness testimony in front of a jury and the full and frank opportunity to examine and cross-examine witnesses so that the trier of fact is placed in the best position to determine the truth and come to a verdict.

While we are indebted to everyone who assisted in developing emergency rules and temporary procedures that were required to restart the courts, our work is still not done. New committees are being formulated by the Bench and the Bar to determine what changes worked and which ones didn't. They are trying to determine what alterations worked and should continue on, and which ones don't need to continue. This review and analysis will be critical in framing the practice of law for the next several decades. Whether it be proposed changes to the Alabama Rules for Expedited Civil Actions, alterations to the Alabama Rules of Evidence, or the provisions of the Alabama Rules of Civil Procedure, ADLA members will need to step up and make sure that the balance of justice between the plaintiff and defendant is not fundamentally altered in such a way as we cannot perform our functions as an adviser and an advocate for our clients. These conversations and this analysis will occur; it is just a question of whether or not our positions and opinions will be heard. I have no doubt that Gerald Swann, as the incoming President of ADLA, and the other officers and members of the Board of Directors will use their combined wisdom and intelligence to determine the best course of action as these matters are addressed. I also have no doubt that they will use all of their available time and energy to do what must be done and say what must be said. However, to go back to Darwin, it is not just strength and intelligence that leads to survival. In order for ADLA to be where it needs to be to help develop the ideas, clarify the issues, and control the debate about changes in the practice of civil law within the State of Alabama, we must stand firm where we can, adapt where we must, but always act with the firm conviction that we are doing what we must to protect our clients now and in the future.

In my wildest dreams as a young attorney, I never envisioned serving as the President of the Alabama Defense Lawyers Association. It has truly been an honor and I want to thank each and every one for the opportunity to have served in this capacity. 



COURT REPORTING
CAPTIONING &
LITIGATION SUPPORT

877.478.3376

WHERE VOICE BECOMES VISIBLE.®



STATE & NATIONWIDE COVERAGE

NATIONWIDE SCHEDULING
REALTIME
COURT REPORTERS
VIDEOGRAPHERS
VIDEOCONFERENCING
TRIAL TECHNICIANS
DAILY COPY

OFFICES IN
BIRMINGHAM
HUNTSVILLE
MONTGOMERY
MOBILE
TUSCALOOSA
FLORENCE
GADSDEN
PENSACOLA
GULFPORT

BRINGING THE EXPERIENCE YOU NEED FOR YOUR NEXT BIG CASE.

WWW.ACRLITIGATION.COM

JOURNAL

ALABAMA DEFENSE LAWYERS ASSOCIATION

EDITOR

Gaby Reeves
 Christian & Small LLP
 Daphne
 gereeves@csattorneys.com

BOARD OF DIRECTORS

OFFICERS

PRESIDENT

Andrew J. Rutens
 Galloway Wettermark & Rutens LLP
 Mobile
 arutens@gallowayllp.com

PRESIDENT-ELECT

Gerald C. Swann, Jr.
 Ball Ball Matthews & Novak PA
 Montgomery
 gswann@ball-ball.com

SECRETARY TREASURER

Stephen W. Still, Jr.
 Starnes Davis Florie LLP
 Birmingham
 sstill@starneslaw.com

IMMEDIATE PAST PRESIDENT

Christina May Bolin
 Christian & Small LLP
 Daphne
 cmbolin@csattorneys.com

DISTRICT DIRECTORS

DISTRICT I

Daniel F. Beasley
 Lanier Ford Shaver & Payne PC
 Huntsville

J. Mark Debro

Grace Matthews & Debro LLC
 Huntsville

Bree Taylor Wilbourn

Grace Matthews & Debro LLC
 Huntsville

DISTRICT II

Christie J. Estes

Quality Correctional Healthcare, Inc.
 Birmingham

W. M. Bains Fleming III

Norman Wood Kendrick & Turner
 Birmingham

Martha L. Thompson

Balch & Bingham LLP
 Birmingham

DISTRICT III

Amanda C. Hines

Rushton Stakely Johnston & Garrett PA
 Montgomery

William L. Lee IV

Lee Livingston Lee Nichols & Barron PC
 Dothan

Megan K. McCarthy

Ball Ball Matthews & Novak PA
 Montgomery

DISTRICT IV

William J. Gamble Jr.

Phelps Dunbar LLP
 Mobile

Benjamin C. Heinz

Ball Ball Matthews & Novak PA
 Mobile

Jeffery L. Luther

Luther Collier Hodges & Cash LLP
 Mobile

DRI STATE REPRESENTATIVE

Christina May Bolin
 Christian & Small LLP
 Daphne
 cmbolin@csattorneys.com

PRESIDENT YOUNG

LAWYERS SECTION

Jay N. Robinson
 Frazer Greene Upchurch & Baker LLC
 Mobile
 jnr@frazergreene.com

EXECUTIVE DIRECTOR

Jennifer W. Hayes
 Auburn
 jhayes@adla.org



*Thank You
 to Our
 Advertisers*

Alabama Court Reporting & Litigation Support..... 5

Alabama Family Trust..... 13

Attorneys Insurance Mutual of the South, Inc..... 47

EDT Engineers..... 29

ESi 40

National Academy of Distinguished Neutrals 35

Norris Consulting Services... 16

Rimkus Consulting Group... 14

Upchurch Watson White & Max Mediation Group 42

VEAR, Inc..... 37

Veritext Legal Solutions..... 2

Vista Engineering & Consulting, LLC..... 25

Wilkins Miller, LLC 43



JENNIFER HAYES
Executive Director

ADLA is on the move in 2021! After putting an unprecedented year behind us, we are ready to get back to association activities and finally reunite with one another in person. We have learned a lot in the last twelve months, particularly finding new ways to keep the membership engaged.

Although all of our in-person events were canceled last year, ADLA offered members numerous

hours of quality CLE programs for free. Live and on-demand webinar options provided more than enough CLE credits for members to meet the required number of educational hours by the end of the year. This free resource proved to be the most popular member benefit in 2020. Members who did not take advantage of the free CLE last year are encouraged to visit ADLA's event page and CLE Library to see what's available.

ADLA will continue to provide CLE opportunities online; however, we are anxious to get everyone together for the Annual Meeting on June 17th-20th at the Sandestin Golf and Beach Resort. Online registration opened in February, and the discounted hotel room block is also open. ADLA contracts with the hotel three years in advance to bring attendees and their families discounts on room rates, as well as reduced costs for conference

food and beverage. Without these discounts, the quality of the Annual Meeting events would not be possible. Although alternate housing choices are available, ADLA strongly encourages all attendees to book inside the room block so the association avoids contractual, monetary penalties and future conference registration fees can remain at a minimum.

The resort is expected to sell out, so make your reservations early; the room block closes on May 18th. Discounted room rates will be offered 3 days prior and 3 days following the official conference dates, so extend your stay and soak up some sun. As always, the conference is family-friendly and all events are resort casual. After months of staying at or close to home, we hope that you will pack up the family and join us for a fun time of fellowship and education at the beach.

In case you haven't heard, the new Member Forum is live on the association's website at <https://adla.org/member-forum/>. Member login is required to access the forum. ADLA created and offered the discussion forum as a free benefit to members. The purpose of the forum is to foster useful discussion of civil defense litigation topics only among ADLA members. If you haven't accessed the forum yet, be sure to check it out.

Finally, it's that time again for members to renew their membership in ADLA. Members can quickly renew online at www.adla.org. Don't forget to follow ADLA on social media throughout the year. The association remains committed to providing excellent member services and valuable resources that keep members connected. If there is anything ADLA can do for you, please call 334-395-4455 or email me at jhayes@adla.org.

Stay healthy, and we hope to see you at the beach in June. 

DEPOSITION BOOT CAMP

MAY 19-20, 2021

THOMAS GOODE JONES SCHOOL OF LAW
MONTGOMERY

REGISTER ONLINE TODAY
[HTTPS://ADLA.ORG/EVENTS/](https://adla.org/events/)





THE QUESTION OF COMPENSABILITY OF COVID-19 CASES

AN ANALYSIS UNDER
ALABAMA'S WORKERS'
COMPENSATION LAW

By: **Stephen D. Palmer**, Carr Allison I Birmingham, AL



“ Litigation over whether a worker who comes down with the sickness is due workers' compensation benefits may be coming down the pipe in large numbers. ”

This virus has reminded us that we are all more fragile and connected than we might have imagined in the modern digital world. As of today, the Centers for Disease Control and Prevention (CDC) reports that there have been roughly 22 million cases in the United States so far, 248,500 new cases just today, 1.7 million cases added in the last week (or 73.8 per 100,000 people), and over 370,000 lives lost.¹ The news in Alabama is not any better with nearly 400,000 total cases, 30,000 new cases in the last week (or 86.5 per 100,000 people), and almost 5,300 total deaths.² Needless to say, the disease is real, it continues to spread rapidly through our State, and it is reasonable to assume that litigation over whether a worker who comes down with the sickness is due workers' compensation benefits may be coming down the pipe in large numbers. The aim of this brief essay is to lay out a basic framework that my fellow civil defense practitioners can use in analyzing this question of compensability for COVID-19 cases under Alabama law.

The General Scope of Compensability

A partner at my firm once wryly advised, "when in doubt, see what the law says." Relevant to the issue at bar, Alabama's Workers' Compensation Act (hereinafter "the Act")³ delineates a finite number of potentially compensable injuries leaving only a few realistic routes for an employee to argue that COVID-19 is a compensable injury. To wit, the Act allows for an employee to seek compensation and benefits for an on-the-job "injury" or death.⁴ However, the Act expressly defines the term "injury" to include only certain types of injuries:

"Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except for an occupational disease Injury shall include physical injury caused either by carpal tunnel syndrome disorder or by other cumulative trauma disorder . . . , and breakage or damage to . . . devices which function as part of the body. . . . Injury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him Injury does not include a mental disorder or mental injury that has neither been produced nor been proximately caused by some physical injury to the body.⁵

Thus, the Act only allows an employee to seek compensation for a defined set of injuries: injury by accident, occupational disease, cumulative trauma disorders, damage to devices functioning as part of the body, injuries caused by third parties/co-employees in certain instances, and mental injuries under the right circumstances. Of these types of potentially compensable injuries, an employee's most realistic chances for successfully establishing that COVID-19 is a compensable "injury" under the Act are to argue that her "injury" is either an accidental injury, an occupational disease, or a nonaccidental injury.

COVID-19 as an "Accidental Injury"

The first (realistic) way for an employee to argue that COVID-19 is a compensable injury under the Act is to argue that it is an "accidental injury" as defined therein. However, this strategy seems very unlikely to succeed.

The Act expressly defines the term "accident" as:

an unexpected or unforeseen event, happening suddenly and violently, with or without human fault, and producing at the time injury to the physical structure of the body or damage to an artificial member of the body by accidental means.⁶

Contracting COVID-19 may happen unexpectedly and suddenly with the inhalation of a contaminated particle; moreover, from what has been widely reported about how the virus attacks the body, it certainly can produce injury to the physical structures of the body such as permanently damaging its victims' lungs.

But such lasting physical damage takes the virus time to first infect, then multiply, and finally prosecute its fell work. COVID-19 does not therefore seem to meet the necessary condition of an "accident" under the Act because it does not produce an injury to the physical structure of body at the moment of infection.

COVID-19 as an "Occupational Disease"

The second (and most likely) route that an employee could take in arguing that COVID-19 is compensable under the Act is to assert that it is an "occupational disease;" however, establishing same may depend on the employee's particular course of infection and involve developing prohibitively onerous facts.

Section 25-5-110(1) defines an "occupational disease" as:

A disease arising out of and in the course of employment . . . which is due to hazards in excess of those ordinarily incident to employment in general and is peculiar to the occupation in which the employee is engaged but without regard to negligence or fault, if any, of the employer. A disease . . . shall be deemed an occupational disease only if caused by a hazard recognized as peculiar to a particular trade, process, occupation, or employment as a direct result of exposure, over a period of time, to the normal working conditions of the trade, process, occupation, or employment.⁷

Although § 25-5-110(1) could be arguably interpreted as limiting the scope of occupational diseases to only those that are uniquely tied to a certain jobs, Alabama's Court of Civil Appeals has found instead that, "§ 25-5-110 does not limit occupational diseases only to those diseases, like byssinosis or silicosis, identified with a particular occupation."⁸ Instead, any disease can be a compensable occupational disease if an employee can establish both legal and medical causation under § 25-5-110.⁹ Likewise, while the Act's text itself is silent on the subject, the Court has interpreted an occupational disease to be "more than temporary" and to

*...the Act only allows
an employee to seek
compensation for a
defined set of injuries.*



These cases will be legally complicated and factually intensive requiring a close reading of the Act, a deft hand, and skilled advocacy.

“denote[] a serious disorder which has impaired the constitution or left in its wake some organic or chronic effect that has undermined the employee’s general health.”¹⁰ Thus, any type of disease may be compensable under the Act so long as an employee can show the chronic nature of her illness and that it is also “occupational.”

Under § 25-5-110(1), in order to establish that a disease is “occupational” an employee must pass a two-prong legal causation test. First, to meet the excess hazard prong, an employee must prove “that the normal working conditions over a period of time exposed [her] to an increased risk of contracting the complained-of disease.”¹¹ An employee is exposed to an “increased risk” if her employment conditions elevate the risk of contracting the disease beyond that of the risk faced by the general employment population.¹²

Second, to meet the peculiar-risk prong, an employee must also show that the excessive employment hazards are “different in character” from those found in the “general run of occupations.”¹³ Critically, the peculiar-risk test is met if an employee can show sufficient evidence that she was exposed to a hazard in a “substantially different manner” than are persons in employment generally.¹⁴

For example, in *Greater Mobile Chrysler-Jeep, Inc. v. Atterberry*, plaintiff employee worked as an automobile detailer for defendant car dealership from April 2005 until he was hospitalized in February 2007 due to severe respiratory distress.¹⁵ Plaintiff employee sued his employer seeking workers’ compensation benefits on the theory that he had contracted an occupational disease (or as the result of a nonaccidental injury (discussed below)) caused by his exposure to hazardous chemicals over his nearly two-year tenure in the defendant’s employ.¹⁶

The Court held that the employee did not establish that he had suffered an “occupational disease” because he failed to offer evidence establishing “any causal link” between his exposure to chemicals in his employer’s garage and the lung disease he suffered from.¹⁷ At trial, the employee’s experts opined generally that he was exposed to amounts of the insalubrious chemicals in amounts materially more than people were normally exposed in their work.¹⁸ However, in ruling against the employee, the Court focused on the fact that the employee’s experts did not establish what exposure levels were in the employer’s garage nor what amount of those chemicals other workers were generally exposed to. Without such evidence, the

Court concluded that that the plaintiff had failed to prove that exposure to the chemicals in his employer’s garage caused his disease or had even caused him to be exposed to a greater risk of same.¹⁹

Similarly, in *Northeast Alabama Regional Medical Center v. Isbell*, an employee claimed that she suffered an occupational disease as a result of her exposure to airborne latex particles in the hospital where she worked as a secretary.²⁰ At trial she presented evidence that latex was present in the hospital, that her job duties required her to enter areas where latex was in use, and that her allergic reactions gradually worsened (even to the point of going into anaphylactic shock).²¹ The Court held that the worker’s latex allergy was not an occupational disease because she did not present substantial evidence indicating that her exposure to latex particles was a hazard in excess of the hazards posed by other jobs, and, critically, the evidence showed that any exposure to latex, even exposure occurring outside her employment at the hospital, contributed to her allergy.²²

Based on the foregoing, it seems theoretically possible that COVID-19 could be a compensable “occupational disease” under the Act, but establishing same may take a particular course of disease and be factually onerous. For starters, COVID-19 would not be excluded as a potentially compensable occupational disease since the Court has interpreted the Act to allow any kind of disease to be compensable so long as it is both “chronic” and “occupational.”

Whether COVID-19 meets the “chronic” criteria may depend on an employee’s experience with the virus. According to reporting on the virus, it is estimated that for a large majority of infected people, COVID-19 will be only a temporary illness, albeit a rather severe one, lasting a few weeks with lingering effects perhaps lasting a few more weeks afterwards. For others who suffer some of the worst symptoms of COVID-19 (including severe pneumonia, strokes, or death), the virus could easily denote a serious disorder that permanently impairs the constitution of an employee’s body and undermines his or her general health through permanent damage to the lungs or other organs. The Act’s “chronic” criteria thus presents the first significant hurdle to an employee seeking compensation for COVID-19 under a theory of occupational disease and may well exclude employees whose particular course with the virus is only mild or temporary.

The next hurdle that an employee would face in proving that her

COVID-19 is compensable is to show that it is “occupational” under the Act by meeting the two-prong legal causation test. As outlined above, under the first prong, an employee would have to show that her “normal working conditions” over a period of time exposed her to an increased risk of getting COVID-19. Given the pervasive economic, social, and employment disruptions that COVID-19 has created globally, it is hard to imagine that an employee’s work environment during this time were anything approximating “normal.” For example, a healthcare worker who contracted the virus after working in an ICU that has patients crowded into rooms at two to three times normal capacity with overflow patients literally lining the walls of the hallways would seem to have a difficult time construing that work environment as “normal.”

Nonetheless, assuming that an employee could meet the “normalcy” criteria, a nurse, doctor, or other worker in the healthcare setting for example, would seem to have a strong commonsense argument that during the peak of the pandemic, he or she worked in a virtual stew of virus-laced air and was therefore exposed to a risk far greater than workers in the general employment population (many of whom were off work all together under Alabama’s Stay-at-Home Order).

However, such a commonsense argument may not be enough under Alabama case law. For example, the plaintiff in *Atterberry* suffered a severe lung disease after working around toxic chemicals as a detailer in a car dealership’s garage for several years and also seemed to have a rather strong “commonsense” argument that his work was the source of his lung disease. However, the Court disregarded the non-data based testimony

of the employee’s experts and demanded empirical proof of a causal link between the chemicals in the employer’s garage and the employee’s disease in the form of evidence comparing the amount of chemicals in the employer’s garage to the amounts of other work environments. Likewise, the Court in *Isbell* demanded similar proof of the amounts of latex in the plaintiff’s hospital work environment as compared to the amount of latex in other work environments.

Similarly, a court could dismiss a healthcare workers’ commonsense argument that her job positioned her for greater risk of COVID-19 and instead demand strict empirical proof comparing the amount of the virus at the employee’s place of work with the amount of virus she may have encountered while working elsewhere. Practically speaking, such empirical proof would seem to be both expensive to obtain and nearly impossible to capture given the fact that the virus can only survive in the air or on surfaces for a relatively short period of time.

Moreover, several pundits in the workers’ compensation area have opined recently that the burden of showing where an employee actually contracted COVID-19 would be near impossible. For example, nationally recognized workers’ compensation guru John Geaney from New Jersey recently blogged,

It will difficult for an employee to show that contracting the virus resulted from a risk of employment. The reason being that, like the flue, you face the same sort of risk when you go home or when you walk about in public . . . Without a statutory presumption in place, it would be nearly impossible to prove causation.²³



Nonetheless, if an employee is able to clear the hurdles involved with the first prong of the legal causation test, then it seems likely that she would also be able to show that she confronted the virus in a “substantially different manner” than employees in general. Meeting this second prong of the legal causation test would seem to be easily met by a healthcare worker, for example, who may have spent hundreds of hours in crowded hospital corridors treating sick patients who were literally emitting the virus with every breath.

COVID-19 as a “Non-Accidental Injury”

A final way that an employee could argue that her bout with COVID-19 was a compensable injury would be for her to argue that her infection with same is a “non-accidental injury;” but, as was the case with an occupational disease argument, proving same may be, practically speaking, prohibitively onerous. The test for legal causation for a “non-acci-

dental injury” is similar to an occupational disease and requires a worker to present a higher standard of proof, clear and convincing evidence, that she was exposed to a “danger or risk materially in excess” of that danger to which people are “ordinarily exposed to in their everyday lives.”²⁴ Additionally, an employee must also establish medical causation by presenting clear and convincing evidence that her exposure to the danger was a contributing cause of her injury.²⁵

The plaintiff car detailer in *Atterberry* also tried this legal theory and failed for similar reasons to his argument that he had suffered an occupational disease.²⁶ In finding in favor of the employer, the Court again highlighted the facts that even though the plaintiff’s experts used “the magic words” indicating that he was exposed to chemicals to a degree materially in excess of the exposure people encountered in their everyday lives, the experts’ testimony also revealed that they did not have “any factual basis” for making that assertion because they did not actually know, nor had they tested for, the amounts of the harmful chemicals used at the employer’s garage as compared to the amounts of same in everyday household products.²⁷

In terms of the potential compensability of COVID-19 under a theory of a non-accidental injury, an employee would seem to face very similar practical challenges as she does when attempting to prove she suffered an occupational disease. Specifically, while it seems theoretically possible to show for example that a healthcare worker was exposed to the hazard of the virus in a way in materially excess to the way the general population was, under *Atterberry*, a court could demand that an employee have an empirically verifiable factual basis for asserting that the levels of the virus were greater at her place of employment than they were in the general public. As discussed above, obtaining that sort of evidence could be practically impossible given the impermanent nature of the virus and prohibitively expensive given the compensation awards available under the Act.

Conclusions and Caveats

This essay is not intended to be a comprehensive compendium on the compensability of COVID-19; additional statutory provisions, cases, learned treatises, theories, arguments, policy considerations, anticipations of the future “normal,” and facts about the virus had to be left on the cutting floor in the interest of coherence, cogency, and brevity. Nonetheless, the ground we have covered, provides the topic’s general legal terrain and perhaps also suggests what we can expect in the future.

In brief, our discussion so far shows that the Act really only gives an employee a few possible routes for arguing that COVID-19 is a compensable injury. Of those, it seems unlikely that COVID-19 fits under the Act’s definition of an “accident” because it does not produce physical damage to the body at the time of infection. Nevertheless, the virus does seem like it could be construed as either an occupational disease or a non-accidental disease under the Act; but, based on prevalent Alabama case law, even if COVID-19 is theoretically compensable under either of these sorts of injuries, it may be impractical and prohibitively expensive to prove same to

the satisfaction of the Court.

Looking forward, claims for workers’ compensation benefits due to COVID-19 illness are likely coming down the pipe and may become a staple complaint in the future. Based on the foregoing discussion, it is reasonable to anticipate that these cases will be legally complicated and factually intensive requiring a close reading of the Act, a deft hand, and skilled advocacy. “Call me Alabama!” But on a serious and personal note, I hope you and yours are well; be safe. 🇺🇸

Endnotes

¹ CDC COVID Data Tracker: Maps, charts, and data provided by the CDC (January 10, 2021), https://covid.cdc.gov/covid-data-tracker/#cases_casesinlast7days.

² *Id.*

³ Ala. Code §§ 25-5-1 et. seq. (1975).

⁴ *Id.* § 25-5-52.

⁵ *Id.* § 25-5-1(9) (emphasis added).

⁶ *Id.* § 25-5-1(7) (emphasis added).

⁷ *Id.* § 25-5-110(1) (emphasis added).

⁸ *Greater Mobile Chrysler-Jeep, Inc. v. Atterberry*, 11 So. 3d 835, 842-43 (Ala. Civ. App. 2008)(citing 1 Terry A. Moore, *Alabama Workers’ Compensation* § 9:7 (1998)); see also Robert W. Lee and Steven W. Ford, *Alabama Workers’ Compensation Law and Handbook* § 9.01 (2nd ed. 2004) (explaining, “The legislature, when defining an occupational disease, did not exclude any specific disease or condition.”)

⁹ Moore, *supra* note 6, § 9:7 and § 9:10.

¹⁰ *Chrysler Corp. v. Henley*, 400 So. 2d 412, 414 (Ala. Civ. App. 1981).

¹¹ *ArvinMeritor, Inc. v. Handley*, 12 So. 3d 669, 683-84 (Ala. Civ. App. 2008)(cited in *Atterberry*, *supra* note 6 at 842)(emphasis added).

¹² *Drummond Co. v. Key*, 630 So. 2d 473, 476 (Ala. Civ. App. 1993); see also *City of Tuscaloosa v. Howard*, 318 So. 2d 729, 723 (Ala. Civ. App. 1975).

¹³ *Young v. City of Huntsville*, 342 So. 2d 918, 921 (Ala. Civ. App. 1976).

¹⁴ *Id.*; see also, *Alatex, Inc. v. Couch*, 449 So. 2d 1254 (Ala. Civ. App. 1984).

¹⁵ *Atterberry*, *supra* note 6 at 838.

¹⁶ *Id.*

¹⁷ *Id.* at 844.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Ne. Ala. Reg’l Med. Ctr. v. Isbell*, 802 So. 2d 1087, 1087 (Ala. Civ. App. 2001)

²¹ *Id.*

²² *Id.* at 1089-90 (emphasis added)

²³ John Geaney, *Questions and Answers Regarding Alabama’s Workers’ Compensation and COVID-19* (Mar. 20, 2020), <http://www.fishnelson.com/blawg-post/questions-and-answers-regarding-alabama-workers-compensation-and-covid-19>; see also, *How COVID-19 Impacts Alabama Workers* (May 7, 2020), <https://www.law-injury.com/how-covid-19-impacts-the-alabama-employee/> (concluding that proving an employee contracted the virus at work would be “likely hard to determine since there is no way to prove when your COVID-19 exposure occurred.”)

²⁴ *Ex parte Trinity Indus., Inc.*, 680 So. 2d 262, 269 (Ala. 1996).

²⁵ *Id.*

²⁶ *Atterberry*, *supra* note 6 at 845.

²⁷ *Id.* (emphasis added).



Stephen D. Palmer is an Attorney at Carr Allison in Birmingham, Alabama where his practice focuses on civil defense and workers’ compensation litigation. Steve did his undergraduate studies at Birmingham-Southern College, earned his masters at Duke University, and attended law school at the University of Alabama. In his free time, Steve he enjoys being a father and husband, taking his dog to the park, and watching Alabama football. He can be reached at spalmer@carrallison.com.

Manage Settlements With Special Needs Trusts from . . .



Alabama
Family Trust
ADMINISTERING SPECIAL NEEDS TRUSTS

Alabama Family Trust can be the court-ordered solution to ensure settlement funds are used and managed correctly.

On behalf of disabled Alabamians, Alabama Family Trust can administer special needs trusts of all sizes . . .

from \$1,500 to millions.

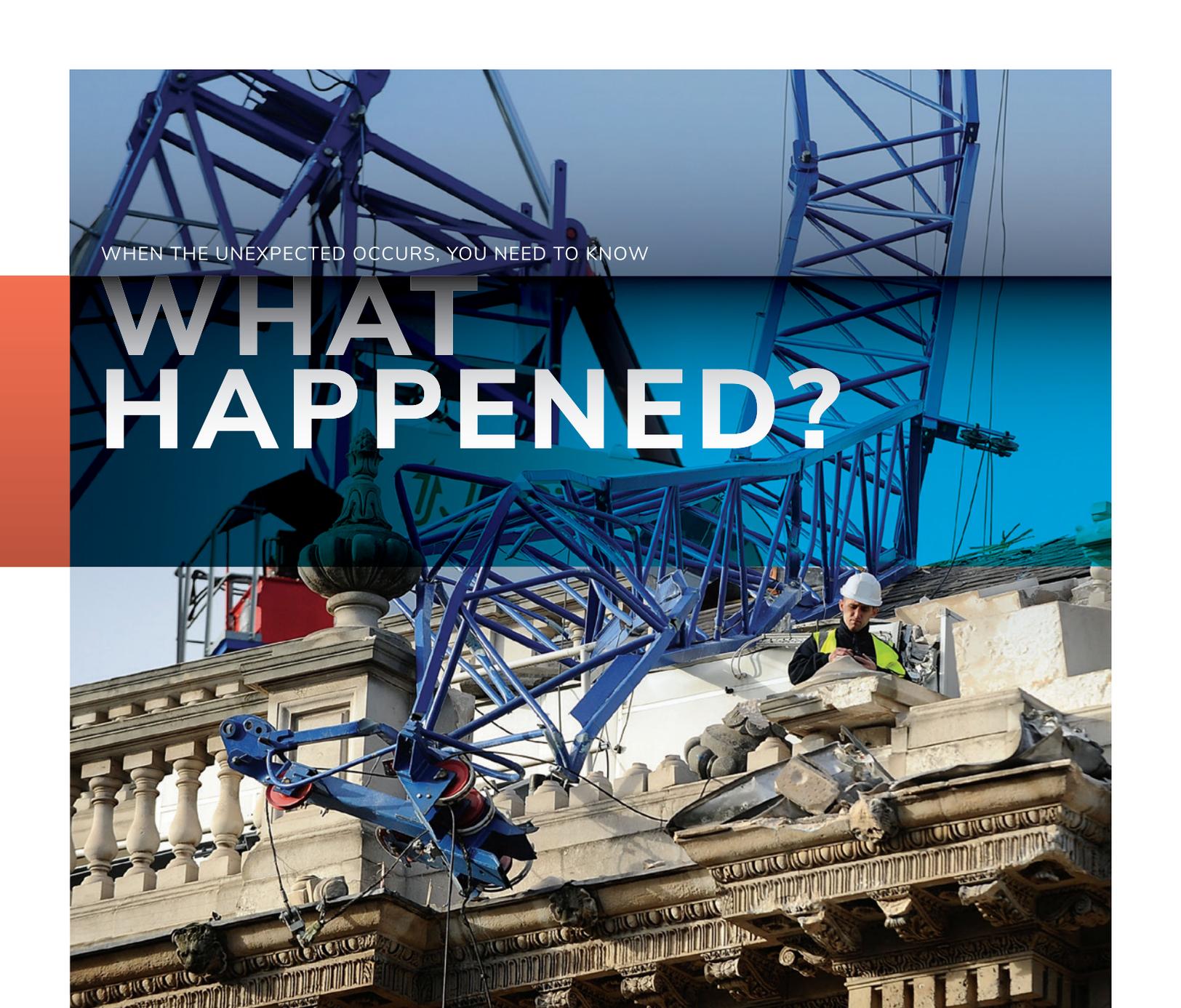
Alabama courts and government benefit agencies have known and trusted Alabama Family Trust's administration of special needs trusts for 25+ years. It is the only non-profit pooled trust in Alabama created by the Alabama Legislature.

Learn more on our webpage dedicated to attorneys that has downloadable trust documents.

www.alabamafamilytrust.com

info@alabamafamilytrust.com | 205-313-3915

2820 Columbiana Road, Suite 103, Vestavia Hills, AL 35126



WHEN THE UNEXPECTED OCCURS, YOU NEED TO KNOW

WHAT HAPPENED?

YOU HAVE QUESTIONS. WE PROVIDE ANSWERS.

Rimkus has the forensic consultants and expert witness services to piece together the cause of all types of claims and disputes. Our forensic engineers, fire investigators, scientists, and consulting experts are recognized for their commitment to service excellence. Our clients can count on timely delivery, clear communication. If you're facing a complex forensic challenge of any kind, count on us to uncover the facts.



GABY REEVES
Editor

Curiouser and curi-
ouser!' Cried Alice
(she was so much
surprised, that for
the moment she
quite forgot how to speak good
English)."¹

Over the past six months, there have been many moments during which I have "quite forgot how to speak good English."² My "surprise," just like Alice's, has been a product of the uncertainty born of this weird existence in which we all currently find ourselves.

While some aspects of life have stabilized, every positive carries a "but" or an "unless." For example, some sources report that the COVID infection and death rates are leveling off, but there are at least two mutated strains that are more contagious than the original. The COVID-19 vaccine is now widely available, but there have been distribution issues allowing the mutated strains to stay a step ahead. Most of us have returned to the office to work, unless we have children who are attending school virtually. Many schools have resumed in-person instruction, but your child could be quarantined for exposure at any minute, requiring you to relocate your office back to your home. Some circuits have resumed jury trials, but social distancing requirements make for logistical knots; it's difficult not being able to look at the jury during trial while simultaneously trying to hear and be heard through a face mask and a plexi-glass fortress. In short, it is still difficult to plan because none of us knows what to expect from one day to the next. This constant state of uncertainty is taking a toll on all of us. That middle in which we once met is closed due to COVID. We need look no further than the events of January 6, 2021 to realize we've gone down the rabbit hole and that "[w]e're all mad here."³ I quite forgot how to speak at all while watching fellow Americans storm our Capitol.

How do we climb out of the rabbit hole? We can't. It is impossible to go back using the same route by which we came. To get out of Wonderland, we have to make a concentrated effort to learn whatever we can about it.

In *The Importance of Setting Goals and Implementing Metrics to Track Them*, Jeremy W. Richter not only explains why it is important to set goals, but explains how to set measurable, attainable goals. Jeremy's model distinguishes not meeting a goal by a set date from failure. Success lies in recognizing what actually is accomplished simply by setting a particular goal. Now, to decide what new thing it will be your goal to learn. There is no shortage of choices for civil defense lawyers.

Nearly every sector of the insurance industry has been or will be affected by the coronavirus pandemic - life, health, disability, workers' compensation, event cancellation, travel, supply chain, contingent business interruption, professional liability, commercial general liability, commercial

property, business owners, directors and officers, employment practices, and business income and extra expense, to name a few.^{4,5} Several states have proposed legislation that would require property insurers to cover COVID-19 business interruption losses retroactively to early March 2020, regardless of whether the policy required a direct physical loss or damage or contained a virus exclusion.⁶ All of this affects, and will continue to affect well into the future, not only insurers, but also reinsurers.⁷ How these issues are addressed and determined now will have ramifications well into the future.

In his article, *The Question of Compensability of COVID-19 Cases: An Analysis Under Alabama's Workers' Compensation Law*, Stephen D. Palmer provides an astute assessment of how Alabama Workers' Compensation law will be challenged by COVID-19 claims. This article is also a prime example of how to analyze the affect pandemic will have on insurance law, as well as employment law, and any other sector of civil law.

No doubt this ongoing rise in litigation will be accompanied by a rise in appellate filings, so we all need to be aware of the Alabama Supreme Court's changes in the appellate brief formatting requirements, which became effective on October 1, 2020. In *Finally, A New Font! How Best to Comply with the Alabama Supreme Court's Latest Formatting Requirements*, Mary Margaret Bailey explains how, simply by adopting a different font and replacing page limits with word limits, the Supreme Court has provided ways for the writer to better direct the court's attention and to incorporate charts, graphs or images. While the changes are not perfect, they are, in many ways, less restricting. Mary Margaret's article offers the opportunity to prepare for implementing the new appellate writing requirements, so that you will be able to use them to your client's advantage when the time

EDITORIAL BOARD

Editor

Gabrielle E. Reeves
Mobile

W. H. Albritton IV
Birmingham

William H. Brooks
Birmingham

Patrick W. Franklin
Birmingham

C. Meade Hartfield
Birmingham

Ben C. Heinz
Mobile

Alex L. Holtsford Jr.
Montgomery

Allan Sidney Jones
Birmingham

William L. Lee IV
Dothan

Christopher L. McIlwain Jr.
Tuscaloosa

David Wooten Proctor
Birmingham

Alan T. Rogers
Birmingham

Deborah Alley Smith
Birmingham

H. Harold Stephens
Huntsville

comes to do so.

Lawyers derive their confidence from preparation and knowledge. The only way to survive in this weird Wonderland is to learn all we possibly can about the matters that affect us and our clients the most. So identify that matter, make it your goal to learn all you can about it and to keep learning about it, and be prepared. You won't be able to leave Wonderland right away, but just keep moving. Remember, Alice wasn't able to leave Wonderland until she reached her full potential during trial. 🚩

Be well.

Endnotes

¹ Lewis Carroll, *Alice's Adventures in Wonderland*, Chapter 2.

² *Id.*

³ *Id.*, Chapter 6.

⁴ Larry P. Schiffer, *When the Second Shoe Drops: COVID-19 Losses and Reinsurance*, 50 *The Brief* 1, Fall 2020 at 50-51.

⁵ As of February 17, 2021, an estimated 1,504 suits have been filed for breach of contract or declaratory judgment arising out of COVID-19 related business interruption claims alone, most of them in the hospitality industry. Covid Coverage Litigation Tracker. <https://cclt.law.upenn.edu> (last visited Feb. 17, 2021).

⁶ Larry P. Schiffer, *When the Second Shoe Drops: COVID-19 Losses and Reinsurance*, 50 *The Brief* 1, Fall 2020 at 52-53.

⁷ *Id.*



**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.

**Toxicology and Pharmacology
Expert Witness**

Dr. James C. Norris

- Chemicals
- Drug Effects/Reactions
- Drug Toxicology
- Fire Toxicology
- Medical Malpractice
- Mold
- Pesticides
- Pharmacology
- Product Liability
- Toxicology

norrisconsultingservices.com

Education: Ph.D., Toxicology/Pharmacology; M.S., Biochemistry/Chemistry; and B.S., Chemistry

Experience: Litigation/Arbitration experience in the United States, United Kingdom and Hong Kong; and testimony in U.S. Military Courts

Professional Qualifications: Diplomate of the American Board of Toxicology and EU Registered Toxicologist



Contact Information

Toll Free: 866-526-6774

Mobile: 815-955-5838

Email:

norristoxicl@earthlink.net



ADLA
ALABAMA DEFENSE LAWYERS
ASSOCIATION

**2021 ANNUAL
MEETING
June 17th-20th**

**Sandestin Golf and
Beach Resort**

Destin, FL

RESERVATIONS
Sandestin Group Reservations
1-800-320-8115
Group Code: 2406AQ
www.adla.org/events/



<https://tinyurl.com/ADLAAM21>

ANNUAL MEETING KEYNOTE SPEAKER
Brittany Wagner, 10 Thousand Pencils LLC



Brittany is a nationally respected athletic academic counselor and motivational speaker best known for her role as the breakout star of the hit Netflix documentary series, *Last Chance U*. Brittany's inadvertent stardom led to feature interviews

with *ABC's Nightline*, *The Dan Patrick Show*, *GQ*, *The New York Times*, *The LA Times* and *Sports Illustrated* -- to name just a few.

A new, scripted television series based on Brittany's personal and professional life is in the making! Actress Courteney Cox will be portraying Ms. Wagner in this series. Cox is also an executive producer of the show, along with Brittany and Michael Strahan.

ANNUAL MEETING CONFERENCE

Civil Case Law Update



Diversity & Mentoring



Enabling in the Legal Profession



Ethical Rules Relating to Frivolous Litigation



Keynote Address:
Making an Impact Through Relationships



Mentoring Young Lawyers



State of Judiciary

Join your **ADLA** friends & colleagues for **NETWORKING**, nightly **RECEPTIONS**, visit with **GUEST JUDGES**, play **GOLF** & relax on the **BEACH**. We'll have tons of **FUN GAMES** and **EVENTS** for the **ENTIRE FAMILY!**

All functions are resort casual.

Alabama Defense Lawyers Association

2021 ANNUAL MEETING

June 17-20 | Sandestin Golf and Beach Resort

Gerald Swann, Jr., Program Chair

THURSDAY, JUNE 17

2:30 pm-5:30 pm **Registration Desk Open** | Azalea Foyer

5:30 pm-7:30 pm **Welcome Reception** | Azalea Ballroom

FRIDAY, JUNE 18

ADLA & TDLA Joint CLE Session | Azalea Ballroom

7:00 am **Women in the Law Section Meeting**

7:30 am **Sign-In & Strolling Breakfast** for CLE Registrants & Exhibitors

7:50-8:00 am **Welcome** Andrew J. Rutens – ADLA President | Galloway Wettermark & Rutens LLP | Mobile
Heather H. Douglas -TDLA President | Manier & Herod | Nashville

8:00-9:00 am **Mentoring Young Lawyers:** *Moderator:* Jay N. Robinson, Frazer Greene Upchurch & Baker LLC *Panelists:* Helen J. Alford, Christian & Small LLP; Bill Gamble of Gamble Gamble Calame & Jones LLC; Robert P. MacKenzie III of Starnes Davis Florie LLP; and H. Harold Stephens of Bradley

9:00-10:00 am **Enabling in the Legal Profession** Jeremy Rakes, Director, Alabama Lawyer Assistance Program

10:00-10:10 am **Introduction of Exhibitors and Sponsors | Group 1**

10:10-10:30 am **Break & Visit with Exhibitors**

10:30-11:30 am **Keynote Speaker | Do You Have a Pencil?** Brittany Wagner of 10 Thousand Pencils LLC

11:30-12:30 pm **The "Big Lie:" How Election Fraud Lawsuits Have Spotlighted Ethical Rules Relating to Frivolous Litigation** Craig A. Alexander of Rumberger Kirk and Caldwell PC

Friday afternoon free for family and beach activities

1:00-5:00 pm **ADLA Annual Golf Tournament** | Raven Course, Box Lunch & Beverages Included

6:30-8:30 pm **Family Reception & Children's Activities** | Azalea Ballroom

SATURDAY, JUNE 19

Alabama CLE Session Room Azalea Ballroom | Tennessee CLE Session Camellia II Ballroom

7:30 am **Sign-In & Strolling Breakfast** for CLE Registrants & Exhibitors

7:50-8:00 am **Welcome** Andrew J. Rutens- ADLA President Galloway Wettermark & Rutens, LLP | Mobile

Alabama State Bar President's Update Bob Methvin of Methvin Terrell Attorneys and Justin Aday of the Alabama State Bar (Invited)

Alabama Association for Justice President's Update W.R. Rip Andrews of Marsh Rickard Bryan

8:00-9:00 am **Taking on Diversity & Mentoring** Honorable John H. England, Jr. | Retired Circuit Judge, Tuscaloosa County

9:00-9:10 am **Introduction of Exhibitors and Sponsors | Group 2**

9:10-9:20 am **Introduction of Guest Judges**

9:20-10:00 am **Prize Drawings & Break with Exhibitors**

10:00-11:00 am **Recent Civil Decisions of the Alabama Supreme Court** Alex L. Holtsford, Jr. of Holtsford Gilliland Higgins Hitson & Howard PC

11:00-11:30 am **State of Judiciary** The Honorable Tom Parker Chief Justice, and panel members comprising of the attending members of the Supreme Court and Court of Civil Appeals

11:30-12:00 pm **ADLA Annual Membership Meeting & Elections**

Saturday afternoon free for family and beach activities

5:45-6:30 pm **Women in the Law Cocktail Reception** | Grand Lawn

6:30-8:30 pm **Family Fun Night & Children's Activities** | Grand Lawn

SUNDAY, JUNE 20

Depart for Home

**Agenda subject to change*

This course or a portion thereof has been approved by the Mandatory Continuing Legal Education Commission of Alabama for a maximum of 6.5 hours' credit, including 2 hours of ethics.

THE IMPORTANCE OF SETTING GOALS AND IMPLEMENTING METRICS TO TRACK THEM

Jeremy W. Richter, Webster Henry Bradwell Cohan Speagle & DeShazo PC | Birmingham, AL



If there were one thing you could do to increase your likelihood of success by 40%, would you do it? Of course, you would. Statistics have confirmed that writing down your goals is that thing. But if you want to further increase your odds of a positive outcome for yourself or your business, you need to use metrics to measure your progress and have an action plan for achieving your goals.

The Importance of Goal-Setting

One of the most effective ways of growing your business is through goal-setting. Setting goals is a good way to clarify your focus, measure your progress, and track your achievements. Goals present a chance to push yourself to the outer limits of your comfort zone to take calculated risks. The more you are willing to stretch yourself, the greater gains you will make over the long term. Creating a plan for sustainable and intentional growth is the whole purpose of goal-setting and accompanying vision statements. By undertaking these tasks, you can aid your law practice in reaching new levels of success.¹

The system I prefer for goal-setting incorporates S.M.A.R.T. goals:

- **Specific:** Goals should be simplistically written and define what you will do.
- **Measurable:** Goals should be measurable so that you have tangible evidence that you have accomplished the goal. Usually, the entire goal statement is a measure for the project, but there are usually several short-term or smaller measurements built into the goal.
- **Achievable:** Goals should be achievable; they should stretch you slightly so you feel challenged, but defined well enough so that you can achieve them. You must possess the appropriate knowledge, skills, and abilities needed to achieve the goal.
- **Results-focused:** Goals should measure outcomes, not activities.
- **Time-bound:** Goals should be linked to a timeframe that creates a practical sense of urgency, or results in tension between the current reality and the vision of the goal. Without that tension, the goal is unlikely to produce a relevant outcome.²

Since the Fall of 2016, I have been diligent in setting goals for the upcoming year. The experience has been transformative for me in both my law and writing practices. I have not met all the goals I've set. Far from it. Maybe I've met half of them. But I'm certain that the practice of goal-setting has propelled me further down the path of success than where I would have been otherwise. That's the importance of goal-setting — it drives you toward achieving a particular objective and obtaining results you want to accomplish.

Be particularly mindful of the goals you think are too ambitious. They are sneaky. Even though they often go unfulfilled, they have the effect of driving you harder and creating momentum for future success. Whether you experience the particular joy of meeting a goal within the time pa-

rameters you set can be inconsequential. You should look instead at what having the goal enabled you to accomplish that you may not have done otherwise.

Consider these thoughts from Sonya Highfield of Real World Creatives: "The best thing I did to up level my business was acknowledge I had big dreams and accept I was allowed to pursue those. Once I realized I am just as exceptional, and human, as everyone making Oprah/Beyonce/Marie Forleo money, then I could direct my businesses in a way that aligned with my desires. I felt at ease charging more, working more hours, and talking about my goals and accomplishments. It's okay to set crazy-high goals no matter where you are in life. The truth is there's room for all of us to be wildly successful."³

Looking to the past for evidence of success

When I first bought the moleskin notebook where I write down ideas, two of my earliest entries pertained to goals for my law practice for 2017 and goals for my law blog for the last five months of 2016 and into 2017. I had launched the blog in June 2016, and up until August, traffic had been ... meager, stilted, inconsistent. So my goals for the rest of 2016 were humble: have daily traffic on the website; have at least one guest writer on the blog; and publish 6-8 posts per month.

So what happened the rest of the year? In November, I had 94 visitors to the blog and published 19 articles. In December, 393 visitors came to the site, and I published 17 articles. I was also listening to podcasts and reading as much as I could about growing the blog and improving my content. But most importantly, I found a community of people who supported my work and were interested in what I was doing.

At the same time that I committed those 2016 goals to paper, I also developed my goals for 2017: average 100 visitors were month; publish 2 articles per week; and publish my transportation litigation primer e-book.

Setting goals is a good way to clarify your focus, measure your progress, and track your achievements.

Based on where my blog was positioned when I made the goals, they felt big at the time. As it turned out, because of several factors (including the relationships I had formed), my goals should have been more ambitious. By the end of 2017, the blog had more than 2,200 visitors per month, and I met my other goals as well.

You may look at those numbers and think that they're still pretty meager. And I won't disagree with you. At that point my law blog was a fragile seedling, something I was just trying to keep alive. It has since developed into a profitable business on its own, a source of business referrals for my law practice, and the foundation on which I have built my author business.

I have also implemented goals when it comes to my book sales. I set five goals for 2019. One of them was ambitious, and even at the time of setting it, I was unsure whether it was achievable. I set out to sell 1,000 copies of my books, *Building a Better Law Practice* and *Stop Putting Out Fires*, in 2019. Knowing that my goal would be difficult to accomplish, I put a plan in place to increase the likelihood of selling my books. I promoted it on social media, did podcast interviews, had others with audiences review and help promote the book. I did all the things that I had time to do while still running a hectic litigation practice. And by the end of 2019, I had sold about 500 books. Half what I had set out to do, but more than I would have done had I not had a goal to push toward.

Looking to Others for Evidence of Goal-Setting's Effectiveness

Rather than tell you more stories about my own goal-setting successes and failures, I have reached out to two other lawyers. I asked them about what goal-setting has enabled them to accomplish with their businesses in the last year and what they have in mind for their futures.

Chris Ambrose of Harvest Legal, Emporia, KS. I've known Chris for a couple of years now, and we have had innumerable conversations about the efforts he's been making to grow his law practice. He's taken specific steps to be more productive and delegate work to increase his efficiency. These measures have paid off by enabling him to become more profitable and have room for growth.

Ambrose explained, "This past year I had set up in my practice management software some billing and time goals, which I've been able to keep. If anything I've underestimated them." Underestimated them is an understatement. I can't remember a month in 2019 in which Chris didn't meet his billable goals well before the month was out. He was able to track that because he set Specific and Measurable goals.

At the time of our interview in October 2019, Ambrose projected, "I will hit yearly goal by mid-November. As it stands, I'm 18% over my year to date goal as of today." Ambrose has been able to do this while still spending tons of time with his growing family and doing competitive cycling (which he's called a part-time job). Because he knows exactly what he wants to accomplish, Chris can do that without it having to come at the expense of his personal life.

With 2019 having gone so well, I asked Ambrose

what he had in mind for 2020. He responded, "For next year, we have implemented some new task tracking tools to help me better stay proactively on top of stuff so I don't accidentally fall behind due to the sheer amount of work I do. Also, I'll be continuing my practice management goals with more billable hours, and continuing to train my assistant to lean on her further for helping me get rid of all the non-billable work I can. Finally, the last goal will be to work on content creation in a meaningful way and not be so wrapped up in the work I have that I don't work on expanding my business still."

Be particularly mindful of the goals you think are too ambitious.



But his next sentences are the one that I found both most revealing and something I can identify with. “I’m thinking I’m going to up my billable goal by 11% next year. Part of me is anxious I won’t hit it.”

Good! If you’re not setting goals that create some uncertainty, you’re not being ambitious enough. Your goals should scare you a bit. The importance of goal-setting is that it stretches you beyond your comfort level. Entrepreneur Bedros Keuilian has this to say about ambitious goal-setting: “If you aren’t scared, it means you’re in your comfort zone. It’s impossible to grow in your comfort zone, so now’s the time to go charging out of it. Because big thinking leads to big results.”⁴

“Young Litigator” in the Wild West. If you aren’t following Young Litigator (@young_litigator) on Twitter, you are missing out on someone who has taken her practice by storm in a short time. She is transparent about both her good and bad experiences. And she is exemplary in the ways she conducts herself and her law practice.

Knowing that YL had experienced an incredible 2019, I asked her to share what that had looked like.

When I started 2019, I looked at how my 2018 ended and what I could do to grow in the upcoming year. Still newly solo and not entirely sure how to measure those goals and growth, I looked mainly to my 2018 numbers (I started solo March 2018). I hired my full time paralegal in Sept. 2018 and this is when I really started setting monthly minimums to meet instead of just flying by the seat of my pants.

I surpassed my first few months’ goals and continued that into 2019. Just trying to be a little better every month, being more cognizant of billable hours, and overall have a better monthly average for the full year revenue than the previous year.

But that doesn’t mean that the success she was experiencing came without any difficulties.

A hiccup I had in those goals was growing in office space. It was one of my priority goals for 2019 as I had outgrown the tiny space with a FT employee. Early on in the year I moved from a 1 office + reception suite to a 2 office + conference room + reception + supply closet/workroom suite. I had more than tripled in square footage, and it was in prime downtown district with other businesses.

The setback was that the expenses went up nearly 3x and added the expense of parking spaces, plus purchasing new furniture to fill the space, etc. So while I was steadily increasing my monthly revenues and I had met my goal of growing in space, I had the added expenses that were setting me back from making more take-home money.

After she ran into the problem, YL did exactly what she needed to overcome it – she created a plan for her business and set goals.

To overcome this, I realized I couldn’t just do a little better each month than my 2018 average. I needed to grow exponentially. First, I set guidelines for my paralegal in billing each week. She had really just been doing a lot of non-billable admin work before that.

I set guidelines for myself in billing each week. I also increased my retainers for family law matters and only took those that could pay those

higher retainers. This cut back on any outstanding unpaid bills. I also focused on advertising--where I should cut (I cut my monthly SEO package) and where I should spend (I added google ads for the first time, increased my Avvo boosts, and did a tv package). I focused on getting more contingency cases-PI and SSDI.

In 3 short months, I had so much new contingency business, I was turning a lot away. The little bit of advertising money was well spent.

In the end, what has resulted from all this growth for YL?

Now, my 2019 monthly avg revenue is up 65% from last year. (While my expenses are up 33%.) So I’m still managing growth just in different terms. And in a new office I love that I can continue to grow in for 2020.

Looking forward for future success

Dr. Gail Matthews of Dominican University in California studied goal-setting that revealed people are 42% more likely to achieve goals for the mere act of having written them down.⁵

It really is as simple as that. The singular act of writing down your goals increases your odds of success by more than 40%. Even if you’re skeptical about the importance of goal-setting, isn’t it worth doing? If you haven’t set written goals before, what have you got to lose?

If you have been setting goals, how are they coming along? Have you put your list where it’s staring at you every day beckoning you to take affirmative steps that will enable you to achieve those goals? Or has it been a rough start? Persevere. Keep plodding forward. The importance of goal-setting is that your goals serve as fixed points that help you navigate your practice and instruct the decisions you make.

Start planning now to give yourself the greatest likelihood of success. And don’t be timid about being ambitious. Richard Branson is quoted as saying, “When people are placed in positions slightly above what they expect, they are apt to excel.” Do this for yourself. Push yourself to excellence by increasing your expectations for yourself one goal at a time.

Monitor Goals with Key Performance Indicators

For 2019, I set as one of my goals generating a certain amount of revenue through my billable hours. To make that more manageable, I broke it down into how much I needed to bill each day to attain my yearly goal. This type of metric is a Key Performance Indicator (KPI) that would enable me to demonstrate how effectively I was achieving my business objective: being profitable.

I established that I wanted to generate a specific amount of revenue per day for 236 days. That wasn’t just a random number of days. Here’s how I arrived at it -- there were 251 workdays in 2019 (excluding weekends and holidays), so I figured between vacation, speaking events, attending conferences, and sick days, I should factor in missing up to 15 workdays.

My next step was to modify a spreadsheet that would enable me to keep up with those figures. Because I already had a spreadsheet for my time entries, all I had to do was add a column to my spreadsheet and plug in a formula that would allow me every day as I entered my time to see

how much money my time entries amounted to each day. The only value I had been looking at previously is the number of hours I was working each day. But since my rate varies by client, that one indicator was insufficient to inform me about how much revenue I was generating each day. I needed a new metric to monitor my progress toward my goal.

By using this metric to track my performance, I could surpass my goal. Not only that, I knew by August that as long as I kept tracking consistently with what I'd done the first eight months of the year that by the time the final bills went out for the year in December, I would have exceeded my goal. Here's what that looked like specifically, broken down by month, number of workdays in that month, and percentage of billable revenue generated compared to my goal.

- January (21) - 114%
- February (19) - 106%
- March (21) - 97%
- April (22) - 97%
- May (22) - 105%
- June (20) - 108%
- July (22) - 94%
- August (22) - 105%
- September (20) - 87%
- October (22) - 124%
- November (19) - 109%
- December (20) - 100%

Using Metrics to Measure S.M.A.R.T. Goals and KPIs

We can use this data to show how it can help us monitor S.M.A.R.T. goals with appropriate metrics (KPIs). My Specific goal was to generate \$X amount of billable revenue in 2019. Since that is a number, it is Measurable. When I set the goal in 2018, I was pretty sure it was Achievable since I was being made a partner and would get a rate increase along with my new position, but the new goal was an 18% increase over my goal from the year before. The goal was Results-focused in that it reflected the amount of work performed each day, rather than the individual tasks that comprised the number. Finally, the goal was Time-bound in that I had only a finite period to achieve it.

When goals and KPIs are clearly defined, they enable you to make sure that your daily activities align with your greater objectives for your practice. This alignment is the critical link between your daily performance and overall business success.⁶ Without goals or key performance indicators to provide you direction, you may be working hard, but paddling in circles and making no progress toward success. Setting goals and monitoring with KPIs ensures that your actions resonate with your intentions and move you toward a successful outcome.

Not all KPIs are this immediately quantifiable though. For each of the last three years, I have had as one of my goals to add one new insurance or corporate client to my book of business. While that meets all the S.M.A.R.T. criteria, achieving the goal is less straight forward than making sure I generate a certain amount of revenue each. The actions required to bring in a new corporate client are more nebulous.

By having the goal of adding a client I can keep in mind that there are things I need to do on a regular basis to achieve it. I have to continue to market myself and my firm, maintain existing relationships with clients, keep up my presence in my business and social communities, and push into new spaces. These all require specific actions that, while not quantifiable, are identifiable. And if necessary, I could create an actionable plan to track whether I'm progressing toward the goal.

Aligning Goals with Business Objectives

Whatever your specific goals, they should align with your vision for your business. To that end, you can ask yourself these questions to help yourself better understand the context of creating KPIs that will be effective for you.⁷

What is my vision for my practice? Hopefully, you've already put some thought into this one and maybe even written some things down. If not, now is a good time to do so.

Each of the goals that I discussed above is essential to the growth and success of my law practice – continuing to develop client relationships and being profitable. It is imperative that your goals and KPIs align with your greater vision for your business.

If your KPIs are not integral to the practice's success, you will be "aiming for a target that fails to address a business outcome. That means that, at best, you're working towards a goal that has no impact for your organi-

zation. At worst, it will result in your business wasting time, money, and other resources that would have best been directed elsewhere."⁸

What metrics will signify that I am progressing toward my vision? I've identified above how I used metrics to monitor my

progress. But your goals are likely different than mine. Maybe you want to increase your profitability by 10% or increase the number of phone calls you're receiving from potential clients by 25%. Determine how you can put metrics in place that will allow you to analyze your performance in that area.

What strategies should I implement to achieve my goals? Once you've established the goals and KPIs that will move you toward your vision, identify strategies you can deploy to achieve them. This will take time, creativity, and diligence. Once you put your processes in place, you will have to monitor for their effectiveness.

Can you access the data to monitor your KPIs? Goals and KPIs

The singular act of writing down your goals increases your odds of success by more than 40%.

are only as effective as your ability to track them. You will need to make sure you have the software or data available to you to keep up with the information. “When you’re deciding which KPIs to set up, plan how you’ll capture the information you need. Net profit requires a different set of data than customer satisfaction, for example, and requires access to different systems.”⁹

The metrics you need may be as simple as revenue and profitability. You may want to look at more advanced data like comparing profitability across various practice areas or lines of business. You’ll have to make sure you have access to that information. If you want to monitor customer satisfaction, you may have to create a survey or other tool that makes it measurable, and then entice customers to participate and give honest feedback.

What gets measured gets done ... sometimes

The axiom that “what gets measured gets done” is only partly true. Your goals and KPIs will not achieve themselves. While it is true that the mere act of writing down a goal boosts the likelihood of it being achieved, a regular awareness of your KPIs will prompt actions that result in achievement. 

Endnotes

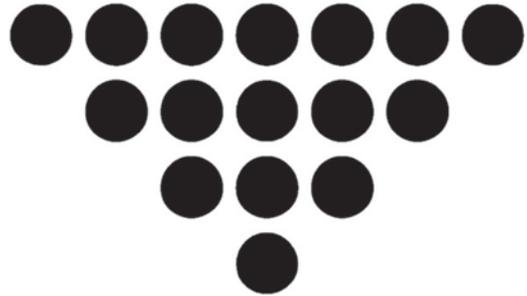
- ¹ Alyssa Gregory, “7 Ways to Take Your Small Business to the Next Level,” <https://www.thebalancesmb.com/small-business-next-level-2951535>.
- ² University of Virginia Human Resources, “Performance Management,” <https://hr.virginia.edu/career-development/performance-management>.
- ³ “Level Up Your Business,” <https://beckymollenkamp.com/level-up-advice/>.
- ⁴ Bedros Keuilian, “How to Level Up Your Business and Unlock Success,” <https://www.entrepreneur.com/article/327304>.
- ⁵ Peter Economy, “This Is the Way You Need to Write Down Your Goals for Faster Success,” <https://www.inc.com/peter-economy/this-is-way-you-need-to-write-down-your-goals-for-faster-success.html>.
- ⁶ “Performance Management and KPIs,” https://www.mindtools.com/pages/article/newT-MM_87.htm.
- ⁷ “Performance Management and KPIs,” https://www.mindtools.com/pages/article/newT-MM_87.htm.
- ⁸ “What Is a Key Performance Indicator?” <https://www.klipfolio.com/resources/articles/what-is-a-key-performance-indicator>.
- ⁹ “Performance Management and KPIs,” https://www.mindtools.com/pages/article/newT-MM_87.htm.



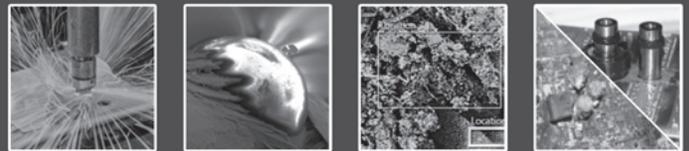
Jeremy W. Richter is a shareholder with Webster Henry in Birmingham, Alabama. His civil defense practice focuses on general business liability, transportation litigation, and insurance coverage questions. Jeremy is the author of *Building a Better Law Practice, Stop Putting Out Fires*, and most recently *Level Up Your Law*

Practice. He also hosts the *Lawyerpreneur* podcast and writes about litigation and law practice management topics at jeremywrichter.com.

VISTA ENGINEERING



Engineering simple solutions ©



Our clients rely on our experienced expert witnesses for forensic engineering support in product liability & personal injury cases.

- ISO Certified Laboratory
 - 17025 Accredited by A2LA
- Hitachi Scanning Electron Microscope
- 3D printed models to present evidence.
- Excellent feedback from our customers on the quality and professionalism of our services.

Call for a free evaluation of your next case. We’re happy to speak with you!



**130 Citation Ct.
Homewood, AL 35209
(205) 307-6550
vistaeng.com**



ADLA MEMBERSHIP DISCUSSION FORUM

Ask. Find. Connect.

ADLA created and offers the discussion forum as a free benefit to members. The purpose of the forum is to foster useful discussion of civil defense litigation topics only among ADLA members. When posting a question or comment, be sure to sign up for reply notifications.

Topics include: Attorneys, Business Torts, Courts, Pleadings & Trials

Join the discussion at www.adla.org/discussionforum





JAY N. ROBINSON
Young Lawyers Section President

2020 is officially over. It was a difficult year, but my hope is that 2021 presents us with a return to normalcy. For us lawyers, normalcy is a return to court, return to jury trials, in person depositions and the opportunity to interact with our fellow lawyers.

One of my concerns following our return to practice in the aftermath of COVID is our reliance on technology in the practice of law. During COVID, we have been forced to interact via Zoom, Skype and other forms of video conferencing. The practice of law is a face-to-face business. It requires relationships. It is about the interaction between members of the Bar and our Judges. Going to motion docket on a Friday with a packed courthouse was a highlight for a younger lawyer because of the opportunities to observe and interact with

other lawyers. These opportunities are lost when every interaction is from behind a keyboard. Zoom depositions are helpful, but do not have all of the benefits of being in person. Seeing the witness respond or watching the reaction of the other lawyers in the room are important in deciding the right approach to take. My hope is that we can return to in-person interactions, face-to-face discussions, and return to normalcy.

As always, ADLA will continue to try and develop opportunities for its members to learn, network and socialize. Included in these opportunities is ADLA's annual seminar at the Sandestin Golf and Beach Resort. The 2021 seminar is currently set for June 17 through June 20, 2021. My family and I have been going for years and it is a perfect opportunity to meet new people, enjoy time with old friends, interact with Judges from different areas of the State and spend quality time with your family.

I hope that 2021 offers us the opportunity to get together in person for another wonderful year in Sandestin. Finally, I want to thank Jennifer Hayes for all of the hard work she puts in to make ADLA so beneficial to its members. 



YOUNG LAWYERS SECTION

2020-2021 YLS OFFICERS

President

Jay N. Robinson
Frazer Greene Upchurch & Baker
Mobile

President-Elect

Hannah Torbert Kennedy
Wade S. Anderson & Associates-State Farm Mutual
Birmingham

Secretary

Andrew Townsley
Lanier Ford Shaver & Payne
Huntsville

Treasurer

Ashley C. Scarpetta
Carr Allison
Birmingham

BOARD OF DIRECTORS

District I

Travis S. Jackson, *Huntsville*
Jennifer Bottomley, *Huntsville*
Gerri Plain, *Huntsville*

District II

Trey Perdue, *Birmingham*
Hannah Stokes, *Birmingham*
Jordan Loper, *Birmingham*

District III

Jordan S. Jenkins, *Montgomery*
Kevin Bufford, *Opelika*
Chalankis Brown, *Montgomery*

District IV

Blake T. Richardson, *Mobile*
Woodruff R. Jones, *Selma*
Robert Alexander, *Daphne*

Connecting Legal Talent With Opportunity

Members can now view and post job opportunities on ADLA's new job board. All job announcements will be promoted to over 900 members for six weeks in the Wednesday Briefcase e-newsletter and on ADLA's website in the Member Resources section. There is a nominal fee for members to post an opening, please visit www.adla.org and click on member resources for more information.



LEGALLY REMOTE VIRTUAL CONFERENCE WRAP-UP

ADLA's first virtual meeting held on October 29th and November 5th was a huge success. Members earned up to 6.5 hours of CLE, including 2 hours of ethics. Program Chair Andy Rutens lined up expert speakers and guest judges to cover a wide range of important and timely issues. In addition to the program's educational sessions, members enjoyed two live demonstrations at The Battle House Hotel and Spa in Mobile. Andy mixed up some of the hotel's famous drinks and was promoted to chef status during the culinary experience.

The virtual conference is now available for on-demand viewing in ADLA's CLE Library. So, if you missed the live virtual event, you can still earn on-demand CLE credit at your leisure. On-demand registration fee applies. 



ADLA President Andy Rutens and Executive Sous Chef Johnathan McKinley together at the Virtual Culinary Experience

LEGALLY REMOTE CONFERENCE SPONSORS

R
RENAISSANCE[®]
THE BATTLE HOUSE HOTEL & SPA
MOBILE

Conference Sponsor

VERITEXT
LEGAL SOLUTIONS

Custom Cooler Attendee Bag Sponsor

EDT
Forensic Engineering
& Consulting

CLE Program Sponsor

 **ESI**

*CLE Program Sponsor & Mixology
Networking Experience Sponsor*

ADLA WELCOMES OUR NEW MEMBERS



Sammy Brown

Starnes Davis Florie LLP
Birmingham

Lawrence Bundrick

Balch & Bingham LLP
Birmingham

Bradley Dean

Mobile Area Water and Sewer System
Mobile

Payl Gaylord

Rushton Stakely Johnston & Garrett PA
Montgomery

Haley Hancock

Helmsing Leach Herlong Newman & Rouse PC
Mobile

John McGivaren

Cabaniss Johnston Gardner Dumas & O'Neal LLP
Birmingham

M. Wesley Smithart

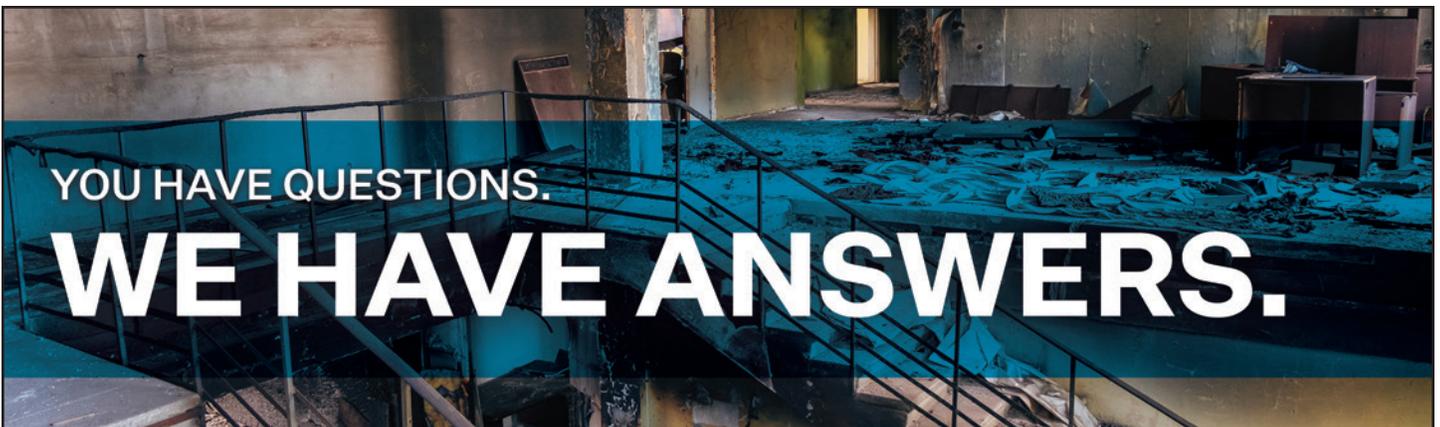
Lightfoot Franklin & White LLC
Birmingham

Alexander J. Townsley

Carr Allison
Daphne

Sydney Kay Brasfield

Ball Ball Matthews & Novak PA
Montgomery



YOU HAVE QUESTIONS.

WE HAVE ANSWERS.

When the unexpected happens, EDT Litigation support is here to provide objectivity and clarity so you can confidently plan your next steps.

Engineering Design & Testing Corp. (EDT) is a forensic engineering firm with consulting engineers with diverse experience and expertise. We provide experts in various engineering fields with trusted credentials and broad expertise, litigation support, and technical consultation. Whether the matter requires an accident reconstruction, a fire cause and origin investigation, a construction evaluation, a product liability analysis, or numerous other types of technical evaluations, EDT has the experience and ability to provide you the necessary technical support.

Contact us with Questions or to Assign a File:

24-Hour Rapid Response Number: 1-800-752-2373

Email: info@edtengineers.com

www.edtengineers.com



FINALLY, A NEW FONT!



HOW BEST TO COMPLY WITH THE ALABAMA SUPREME COURT'S LATEST FORMATTING REQUIREMENTS

By: **Mary Margaret Bailey**, Frazer Greene LLC | Mobile, AL



Goodbye and good riddance to Courier New 13! At long last, the Alabama Supreme Court has abandoned its requirement that we use this outdated typewriter-style font for appellate submissions. New formatting requirements went into effect October 1, 2020, and the Court has thankfully chosen a much better font – Century Schoolbook 14. ARAP 32(a)(7). Those of you who practice in our state appellate courts, whether often or only occasionally, will be pleased to know that use of this proportionally-spaced font with serifs will increase the readability of your submissions.

As always, your first consideration should be compliance with the current version of the Alabama Rules of Appellate Procedure. However, while some rules are absolute and non-negotiable, others have some built-in leeway. There are choices you can make which will further increase readability.

But, don't simply accept my word, three excellent sources of advice are: Matthew Butterick's *Typography for Lawyers*; the Council of Appellate Lawyers'

The Leap from E-Filing to E-Briefing: Recommendations and Options for Appellate Courts to Improve the Functionality and Readability of E-Briefs; and the Seventh Circuit Court of Appeals' Requirements and Suggestions for Typography in Briefs and Other Papers.

One caveat before I get started: the following recommendations are meant to apply to documents which must follow the Alabama Supreme Court rules.

1. Count and certify the number of words

The shift to a proportionally-spaced font has allowed the Court to move from page limits to word limits. Each place in the appellate rules where a particular page limit was specified has been amended to state a word limit.

The old page limit is still there in a parenthetical, but it now applies only to attorneys and pro se filers who certify that they do not have "access to equipment capable of producing [the specified] font." ARAP 32(a)(7).

New formatting requirements went into effect October 1, 2020, and the Court has thankfully chosen a much better font.

Many of you may not know the history behind this change. Prior to computers, appellate court briefs and opinions were produced on Courier typewriters, so they all looked the same and, because of the font's uniform spacing, all had roughly the same number of words per page. It made sense to control the length of briefs through page limits. Then, with the advent of computers, lawyers began experimenting with the numerous different fonts suddenly available to them. Some of these new fonts not only looked better but also allowed lawyers to exploit the page limit by squeezing more text onto each page. The Court's response was to force continued use of a monospaced typewriter-type font in a specific size, to set rigid formatting requirements, and to prohibit space-adjusting practices as "leading," "kerning" or "tracking."

Fortunately, the Court has realized that there is a simpler way to control the length of briefs – i.e. imposing a word limit which lawyers can easily check on their word processors. Unlike typewriters, all word processors have a word-count function so requiring lawyers to include a statement of compliance regarding the number of words in a document is neither overly burdensome nor overly difficult for the Court to verify. In this day and age, it's actually easier for lawyers to evade page limits than word limits.

Thus, the rules now specify word limits and require that all appellate submissions include a Statement of Compliance regarding both the font used and the number of words. ARAP 32(d). The rule governing briefs has been amended to include a Certificate of Compliance in the list of required content. ARAP 28(a)(12). And, the rule which specified what could be excluded from the former page limitation has been amended to apply to the new word limitation, so go there for guidance on which parts of the text to include in the word count. ARAP 32(c). And, be sure to have an additional signature line at the end of your certificate. There should be three signatures in total: at the end of the text, on the Certificate of Compliance and on the Certificate of Service.

The Court did not change the rule governing page numbers in briefs. This means that you should continue to use "lower case Roman numerals" up until the Statement of the Case and "Arabic numerals" from that point through the end. ARAP 28(j)(1). Such a rigid formatting requirement is no longer necessary, except for pro se filers, but it does result in some uniformity.

2. Fully justify and turn on hyphenation

The fact that the Court has opted to mandate full justification is my biggest disappointment with the new formatting requirements. Previously, there was no mention of justification in the appellate rules. Now, the rules specify that: "The margins of headings, sentences, and paragraphs in text and footnotes must be fully justified." ARAP 32(a)(7).

There are strong opinions on both sides of the full versus left-only justification issue. Many lawyers were already choosing to use full justification believing that straight edges on all four sides of the text creates a more

professional look. However, this perceived gain in "neatness" actually impairs readability. The word processing programs we use are less sophisticated than those used by professional publishers and leave unsightly gaps when implementing full justification. The Council of Appellate Lawyers ("CAL") recommends requiring left alignment of text, explaining that, "Justification creates uneven spacing between letters and words, thus requiring constant visual adjustments and increasing eye strain, whereas left-aligned text uses the spacing of the font itself."

Left alignment is strongly promoted by Matthew Butterick, the author of the go-to book *Typography for Lawyers*, which is now used in many law schools. However, Butterick advises that, "if you're going to use full justification [and we're going to as long as it's required by the Court], you must turn on hyphenation." Doing so will reduce the gaps and spaces because hyphenation helps the text fit the line length.

It may take some getting used to, but you will soon appreciate the more consistent text block that is created when using hyphenation. Just know that this feature is not automatic in Microsoft Word; you have to turn it on. It's still a good idea to review each hyphenation and alter or remove any which you find to be awkward.

3. Set an exact line spacing of .28

Our appellate rules continue to require that text other than long quotations, headings and footnotes "must be double-spaced." ARAP 32(a)(6). This spacing requirement is actually ambiguous. While the term "double-spaced" had only one meaning in the typewriter era – i.e. line spacing that is twice as large as the point size (not counting any additional

"leading" between lines) – it now has multiple meanings in the computer era.

Word processors offer users several pre-fabricated spacing options including "single" or "double." The results of these pre-fabricated options will vary depending on the particular program since each uses a slightly different algorithm. Another option is to enter an exact

line spacing. I was surprised to learn that the "double" option can result in a line spacing which is more than twice as large as the point size of the text. For instance, at a 14-point font size, Microsoft Word's "double" line spacing is about 33 points, when 28 points would actually qualify as double the size of the text and can be typed in as an exact line spacing.

According to the CAL, "ideal line spacing is closer to single spacing than double spacing," more like a setting of 1.2 or 1.3 in Word and WordPerfect. You don't have that option, of course, but you can at least avoid including more space than absolutely necessary in order to comply with the rules by setting an exact line spacing of .28, which is the setting recommended by Butterick. You may notice that use of this setting results in a slight difference in transitions to/from headings and block quotes because Word's algorithm leaves more of the space for variation above the text. Even so, getting closer to the ideal line spacing is worth that

*The move to word limits
has fundamentally changed
the nature of the game.*

minor drawback.

Now that the Court has adopted word limits, setting line spacing at exactly .28 cannot be viewed as an attempt to avoid the length requirement.

4. Add more white space

My favorite thing about the new formatting requirements is that I no longer need to focus on getting as much text as possible on each page. This is freeing. I can now do things that I wouldn't have done before simply because more space would be required.

The move to word limits has fundamentally changed the nature of the game. There's no longer any temptation to use single-spaced block quotes or some other typographical "trick" as a space-saving mechanism. Rather than thinking of white space as something to avoid, think of it as giving the reader a visual break.

There are several ways to add beneficial white space.

- "Chunk" text by using more headings and adding an extra line space before each heading. As the CAL explains, this "helps readers understand the organization of the brief, allows for meaningful bookmarks, and helps focus the reader's attention."
- Incorporate lists or bullet points to delineate examples or support for the argument.
- Provide the court with helpful charts, graphs or images.

The new formatting requirements give you the flexibility to do these types of things even though they will result in a longer overall page length

5. Insert only one space between sentences

The suggestion to include more white space doesn't extend to the spaces between sentences. With typewriters, inserting two spaces after punctuation was standard because it broke up the monospaced type. Now that the Court is mandating both a proportional font and full justification, there's no need for two spaces after a sentence-ending period and great reason to avoid the practice since it creates an abundance of excessive gaps which interfere with eye movement.

6. Use a smaller tab/indent setting

The suggestion to include more white space also doesn't extend to indents. Although the rules don't specify any particular tab setting or length of indentation, lawyers have traditionally used a setting of .5 (1/2 inch)

since that was the length of the indent created by using the tab key on a typewriter. Such a large indent really isn't ideal.

The Seventh Circuit Court of Appeals recommends indents of 1/4 inch or less, explaining that: "Big indents disrupt the flow of text." I must admit that I originally started following this recommendation (or at least using a setting of .3) because I realized that, as a side benefit, it would create

more space for my argument. Like me, you'll soon find yourself using a smaller tab/indent in all documents because doing so noticeably improves readability. The benefit is especially evident with headings and block quotes. There's simply no need to push each subheading over a full 1/2 inch and no need to use a full 1/2-inch indent on each side of a block quote.

7. Set slightly larger side margins

The rules continue to specify only that: "Margins must be at least one inch on all four sides." ARAP 32(a)(6). This specification was an important component of a system using page limits but is less relevant now. Under a word limit system, lawyers have the freedom to consider using larger margins.

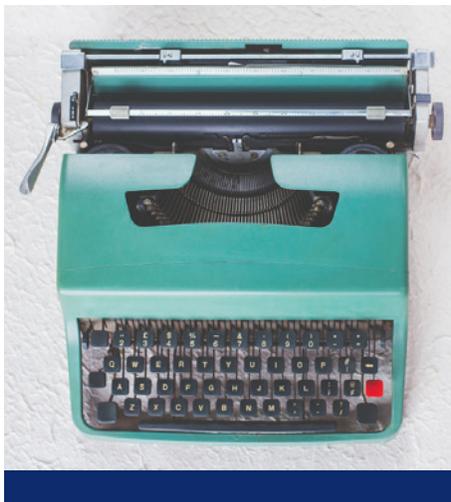
There are valid reasons for choosing a margin greater than one inch for documents that will be printed on 8.5 by 11 inch sheets of paper. The CAL recommends setting margins at 1.5 inches, explaining that, "The typewriter standard of 1" margins on all four edges of the page results in excessive line lengths that reduce legibility and are especially difficult to view on mobile devices."

A lawyer learning that most of the judges in a particular court are reading appellate submissions on electronic devices (which is not currently the situation in Alabama's appellate courts) would definitely want to use such wide margins when filing documents with that court.

Consider at least bumping your side margins up to 1.2 inches. If you're worried about judges being annoyed by more pages, it should ease your mind to know that any additional length created by slightly increasing side margins will be offset by decreasing the length of tabs (as recommended above).

8. Hope for greater flexibility

I already mentioned that I don't care for the new full-justification requirement. This requirement bucks the national trend which is moving towards left-only justification because it's actually better for reading comprehension. In addition to hoping the Court will consider dropping the justification requirement, I also hope the Court will eventually further amend the rules to allow for the use of multiple fonts and font sizes and to permit some flexibility in line spacing.



The rules should not only set a minimum degree of space between lines but also allow some variability in line spacing in order to remain flexible enough for the move to electronic reading.



Further amendments will need to be made as the manner in which briefs are read continues to evolve. More appellate judges are reading briefs on laptops or electronic tablets, and this trend will continue, at least until the next “new” type of electronic device is developed. With the implementation of an electronic document management and filing system here in Alabama, our appellate judges are no longer limited to paper copies when accessing filed documents.

It’s important for the filers of those documents to understand that the reading experience is affected by the mode of delivery. Screen readers expect instant gratification and often get distracted by multiple windows and notifications. Studies show that screen reading is 10 to 30 percent slower, which leads screen readers to compensate by skimming text, focusing on certain parts of the screen like the top of the page, headings, the first line or two of paragraphs, and text along the left side. If judges are receiving appellate submissions via electronic screen, then lawyers should have the ability to present their written argument in a format best suited to that mode of delivery – this might include using a different font style and size, making certain formatting changes, including additional navigational guidelines, and inserting bookmarks and hyperlinks.

If the Court were to accept multiple fonts, and even multiple font sizes, then it would be possible to create more visually appealing briefs. Lawyers could make headings stand out from the body of the text by using a different font (perhaps one which varies from the body of the text because it is sans serif) rather than by using underlining, italics or bold. Such variety is expressly allowed by the Federal Rules of Appellate Procedure which specify that a proportionally spaced font “must include serifs, but

sans-serif type may be used in headings and captions.” FRAP 32(a)(5)(A).

If the Court were to set only a minimum line spacing requirement, then it would be possible to add extra white space between paragraphs and adjust text density within paragraphs. The ideal line spacing may change somewhat depending on margin requirements and the format in which the document is read (paper versus screen). Larger margins, which are better for screen readers, require denser lines for optimal readability. However, denser lines are more readable when additional spacing is allowed before headings and between paragraphs. So, the rules should not only set a minimum degree of space between lines but also allow some variability in line spacing in order to remain flexible enough for the move to electronic reading.

For now, though, I will rejoice in the demise of Courier New 13 and continue to try and improve the readability of my submissions in ways which are permissible within the confines of the existing rules. 



Ms. Bailey is involved in civil litigation, primarily in the areas of medical malpractice and commercial disputes. Her practice is focused on the drafting of motions and briefs, both at the trial and appellate stages of litigation. She is a member of the Alabama Supreme Court’s Standing Committee on the Alabama Rules of Appellate Procedure and has served on the Alabama Law Foundation’s Board of Trustees since 2010.

LAW
CASES

LAW
CASES

LAW
CASES

LAW
CASES

LAW
CASES

LAW
CASES

ADLA YOUNG LAWYERS TEE OFF IN FAULKNER LAW'S 16TH ANNUAL DON GARNER CHARITY GOLF CLASSIC

Faulkner Law Thomas Goode Jones School of Law hosted its annual charity golf tournament on October 9th at the Arrowhead Country Club in Montgomery. This tournament is a fun opportunity for students, alumni, faculty, staff, and members of our community to come together to network while enjoying a beautiful day out on the green and raising money for our students in need. The tournament benefits the Student Relief Fund, which helps students with unexpected losses and emergencies.

ADLA young lawyer members who played in the tournament were **Miland Simpler** and **Chalankis Brown** of Ball Ball Matthews & Novak, PA in Montgomery.



ADLA SUPPORTS UNIVERSITY OF ALABAMA SCHOOL OF LAW'S THURGOOD MARSHALL MOOT COURT TEAM

Karmen Gaines and **Stephanie Avant** competed at the Black Law Student Association's Southern Regional Thurgood Marshall Moot Court Competition in February 2020, where they won an award for the Best Petitioner Brief and advanced to the knockout rounds of the competition, ultimately coming in Second Place and advancing to the National Competition rounds. The final round was held on March 10th, just before school shut down for COVID,

At nationals in Cincinnati, the team advanced to the semi-finals, turning in an outstanding performance before a panel of seven sitting judges. Stephanie and Karmen impressed the judges they saw and the competitors they faced, many of whom went out of their way to find and compliment the team at the convention gala.

The team was coached by Professors **Anita Kay Head** and **Anil Mujumdar**.





THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS ALABAMA CHAPTER

WWW.ALMEDIATORS.ORG

Check preferred available dates or schedule appointments
directly with the state's top mediators & arbitrators. For free.



Phil Adams
OPELIKA



Reggie Copeland
MOBILE



Sam Crosby
DAPHNE



Charles Denaburg
BIRMINGHAM



Charles Fleming
MOBILE



Langford Floyd
FAIRHOPE



Stevan Goozee
BIRMINGHAM



Arthur Hanes
BIRMINGHAM



Bernard Harwood
TUSCALOOSA



Braxton Kittrell
MOBILE



Debra Leo
BIRMINGHAM



Michael Maddox
BIRMINGHAM



Charles Malone
TUSCALOOSA



Rodney Max
BIRMINGHAM



Boyd Miller
MOBILE



Larry Moore
FLORENCE



William Ratliff
BIRMINGHAM



Ben Rice
HUNTSVILLE



Jim Rives
MONTGOMERY



Allen Schreiber
BIRMINGHAM



Kenneth Simon
BIRMINGHAM



Spin Spires
BIRMINGHAM



Harold Stephens
HUNTSVILLE



Glynn Tubb
DECATUR



Michael Upchurch
MOBILE



Marty VAN TASSEL
BIRMINGHAM



Michael WALLS
BIRMINGHAM



Brad Wash
BIRMINGHAM

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

wins for the defense

On September 18, 2020, ADLA member **David M. Wilson**, Senior Partner of Wilson & Berryhill, P.C. in Birmingham, Alabama, obtained a defense verdict in favor of his client in a trial captioned Miller, et. al. v. TWH Timber Company, Inc., et al. CV-2012-900043 in the Circuit Court of Sumter County, Alabama. This lawsuit involved a dispute over harvest of timber from “heir land.”



David M. Wilson

This case is notable not because of the complexity or amount in controversy, but because it was held during the first week which the Supreme Court of Alabama allowed the resumption of jury trials following the COVID-19 suspension of trials. Jury selection took two days due to spacing requirements. Testimony, argument and deliberations lasted three days.

Ras Miller had fourteen grandchildren, all fathered by his only son. He died in 1986 and willed his land, which contained timber, to these grandchildren. Twelve of the grandchildren were brothers and sisters (the Plaintiffs), while the other two were born to a different mother (half-brothers). One of the half-brothers contacted the client, a licensed timber Dealer, to harvest and sell the timber. The half-brother, the self-anointed “overseer” of the property asserted that the other heirs were in agreement for the timber to be harvested. There was no written contract. During the harvest, it was discovered by some of the Plaintiffs (all of whom had moved away from Alabama and had not visited the property in over 30 years) that timber was laying on the ground and had not been hauled away. The Dealer had made all payments for the timber jointly to the overseer and the Executrix of the Miller Estate. The tract was eventually completely harvested, and all monies paid by the Dealer according to the pricing agreed upon.

The Plaintiffs sued the overseer, the Dealer and the logging contractor who performed the cutting and hauling of the timber. The dealer successfully had all claims other than conversion dismissed on Summary Judgment.

The Plaintiffs alleged that the Dealer did not have the consent of the 12 grandchildren/brothers and sisters and as such had converted the timber. It was argued that the Dealer should have verified ownership of the property and prepared and obtained signatures of all owners on a Timber Deed or written contract. The Dealer defended on the ground that he had the apparent authority of the overseer and Executrix. Also, while the harvest was taking place, the Executrix instructed the Dealer to finish by removing all felled timber and harvesting the remaining standing timber. The Dealer also asserted that all monies due the Plaintiffs had been paid and deposited into a joint account. During the pendency of the case, that money was interpleaded into Court.

The Plaintiffs argued that the Defendants were required to pay double the amount of the timber harvested pursuant to a statute. The Dealer argued that no conversion took place and that the Plaintiffs had failed to prove their damages. The jury deliberated for 40 minutes and returned a verdict for all Defendants (Dealer was the only attorney represented Defendant – the others were Pro Se).

Huie attorney **De Martenson** recently received summary judgment for a major personal watercraft manufacturer in the United States District Court for the Northern District of Alabama. In the case, Plaintiff was riding as a passenger on a personal watercraft. For some unknown reason, Plaintiff fell off the rear of the watercraft and suffered very serious orifice injuries. Plaintiff sued the watercraft manufacturer, claiming product defect under a breach of the implied warranty of merchantability only. This decision was likely made to remove the potential for contributory negligence as an affirmative defense. In granting the manufacturer's summary judgment, the Court held that the sworn testimony proffered showed that the watercraft was reasonably safe for its intended use, was merchantable as a matter of law and violated no warranties, either express or implied. No appeal was taken by Plaintiff.



De Martenson

Submit your Wins for the Defense and Among the Members News to adla@adla.org by July 31, 2021 to be included in the Fall *Journal*



let's connect...



@ALDefenseLaw



Alabama Defense
Lawyer's Association



adla_women

VEAR, Inc. Crash Reconstruction and Human Factors



Services Include:

- Vehicular Crash Reconstruction
- Aerial Drone Photography
- Faro Scanning of scenes and vehicles
- 3D Crash Simulation and Animation
- Site Inspection, Mapping, and Animation
- Commercial and Passenger Vehicle Inspection
- Motorcycle Crash Reconstruction
- Event Data Recorder Downloads and Analysis
- Human Factors
- VinTrucks App
- 24/7 Rapid Response

VEAR, Inc.
130 Citation Ct.
Homewood, AL 35209
205-307-6543
www.vearexperts.com
www.VINtrucks.com

Bradley Arant Boult Cummings LLP is pleased to make the following announcements:

- We are pleased to announce that 53 of the firm's partners have been recognized in the 2021 edition of Benchmark Litigation, which also listed Bradley as a "highly recommended" firm. In addition, the firm was ranked Tier 1 nationally for Product Liability and Recall, and five attorneys were recognized as National Practice Area Stars.

Benchmark Litigation determines rankings through peer reviews and case examinations. Among the firm's partners listed in the guide, 34 are recognized as "Local Litigation Stars," who were consistently recommended by clients as being reputable and effective litigators. The guide names 19 Bradley partners as "Future Stars," who were consistently referenced by peers and clients as litigators who are likely to become "Local Litigation Stars" in coming editions of the guide. Benchmark Litigation is the only publication that focuses exclusively on U.S. litigation.

Following are Bradley partners in the firm's Birmingham office who are recognized as "Local Litigation Stars": **William S. "Buddy" Cox III**, **James W. Gewin**, **David G. Hymer**, **T. Matthew Miller**, and **Michael R. Pennington**.

Charles Stewart, Bradley partner in the firm's Montgomery, Ala., office is recognized as a "Local Litigation Star".

Following are Bradley partners in the firm's Birmingham office who are recognized as "Future Stars": **F. Wendell Allen**, **Jeffrey D. Dyess**, **John Mark Goodman**, and **Whitt Steineker** (also named to the 2020 Benchmark 40 & Under Hot List).

- Bradley partner **David G. Hymer** was selected as "Life Sciences Star," who is designated as among the preeminent life sciences practitioners in the United States. LMG Life Sciences attorney rankings are based on peer, client and firm feedback, combined with independent review of all research data, including publicly available information.

Fish Nelson & Holden LLC is pleased to announce that its senior member, **Mike Fish**, has been elected to serve on the Alabama State Bar Workers' Compensation Section Judicial Education Committee. The Committee, which is comprised of four plaintiff attorneys and four defense attorneys, will be responsible for planning and putting on educational workers' compensation programs for the Circuit Judges of Alabama, including preparing written, live, and virtual presentation materials, securing continuing education accreditation, and choosing speakers to present the materials.

Galloway Wettermark and Rutens LLP is pleased to announce that **David Walker** has become the newest partner of the firm. David has been a

member of the Alabama Bar for over twenty-four years, and he practices in the areas of business litigation, employment law and general defense litigation.

Holtsford Gilliland Higgins Hitson & Howard, PC is pleased to announce that **Ursula Shakespeare** has joined the firm as an associate in the Gulf Coast office, where she will be defending individuals, businesses, government entities, and insurers in all phases of litigation.

Huie Fernambucq & Stewart LLP is pleased to make the following announcements:

- Best Lawyers is the oldest peer-review publication in the legal profession and each year they recognize individual attorneys in designated metropolitan areas for excellence in specific practice areas.

For 2021, 13 Huie attorneys were recognized as The Best Lawyers in America, including three partners new to the listing: **Bart Cannon** (Construction Law), **John Herndon** (Insurance Law and Litigation – Insurance) and **Keith Gann** (Litigation – Insurance). Additionally, two partners received honors for excellence in new practice areas: **Gordon Sproule** (Medical Malpractice Law – Defendants) and **Jim Shaw** (Product Liability Litigation – Defendants).

Also, seven Huie attorneys were included in the inaugural Best Lawyers: Ones to Watch listing, which highlights attorneys earlier in their careers who provide outstanding professional excellence in private practice in the United States.

Huie attorneys selected by their peers for inclusion in the listings include the following:

The Best Lawyers in America

- **Tom Bazemore**: Insurance Law; Litigation – Insurance; Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants
- **G. Jimmy Brady**: Insurance Law; Litigation – Insurance
- **Bart Cannon**: Construction Law
- **Keith Gann**: Litigation – Insurance
- **Bob Girardeau**: Litigation – Real Estate; Professional Malpractice Law – Defendants
- **John Herndon**: Insurance Law

The Best Lawyers in America: Ones to Watch

- **Brent Almond**: Insurance Law; Litigation – Construction
- **Elizabeth Davis**: Insurance Law; Product Liability Litigation – Defendants
- **Hillary Fisher**: Insurance Law; Litigation – Environmental
- **Kimberly Jones**: Insurance Law; Litigation – Labor and Employment; Product Liability Litigation – Defendants

- **Madison Morrison:** Insurance Law; Personal Injury Litigation – Defendants; Workers’ Compensation Law – Employers; Litigation – Insurance
- **De Martenson:** Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants; Professional Malpractice Law – Defendants
- **Greg L. Schuck:** Product Liability Litigation – Defendants
- **Jennifer Devereaux Segers:** Insurance Law; Litigation – Insurance; Medical Malpractice Law - Defendants
- **Jim Shaw:** Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants; Professional Malpractice Law – Defendants; Transportation Law
- **Robert Gordon Sproule, Jr.:** Litigation – Health Care; Medical Malpractice Law – Defendants; Product Liability Litigation – Defendants
- **J. Allen Sydnor:** Medical Malpractice Law – Defendants
- **D. Alan Thomas:** Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants
- **Will Thompson:** Litigation – Labor and Employment
- **Alex Parish Underwood:** Insurance Law

• Huie partners **De Martenson, Alan Thomas** and **Paul Malek** were named Local Litigation Stars in Benchmark Litigation 2021. Martenson was recognized for excellence in commercial litigation and product liability and recall. Thomas was also recognized for exceling in product liability and recall, and Malek was listed for providing superior service in the product liability practice area. Additionally, Huie received accolades for providing high quality dispute resolution services and was listed as a “recommended” firm.

• **Elizabeth Davis** was selected as a 2020 Rising Stars of Law honoree by the Birmingham Business Journal.

The BBJ NextGenBHM: Law special feature highlights up-and-coming lawyers in the Birmingham metro area. Honorees were chosen based on their contributions to their firms, tangible results in their practice areas, involvement in their community and their potential to shape the legal industry going forward.

Elizabeth began her career at Huie as a summer clerk and now concentrates her law practice in the areas of automotive liability, product liability and discovery practice and procedure. She currently serves as national coordinating discovery counsel for a major automotive client. Elizabeth earned her BA, summa cum laude, from The University of Alabama and her JD, cum laude, from The University of Alabama School of Law.

• The 2020 Super Lawyers listings have been released, and 11 Huie attorneys were selected for inclusion on the lists, with four attorneys receiving new recognitions.

Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The patented selection process includes independent research, peer nominations and peer evaluations. Only 5% of attorneys in the MidSouth receive the Super Lawyers distinction. To be eligible for inclusion as a Rising Star, candidates must be either 40 years old or younger or in practice for 10 years or less. Only 2.5% of attorneys in the MidSouth receive this distinction.

Huie attorneys selected by their peers for inclusion in the 2020 listings include the following:

- Mid-South Super Lawyers
 - **Tom Bazemore**
 - **Jimmy Brady** (new to listing)
 - **De Martenson**
 - **Greg Schuck** (new to listing)
 - **John Isaac Southerland**
 - **Gordon Sproule**
 - **Alan Thomas**
- Mid-South Rising Stars
 - **Brent Almond** (new to listing)
 - **Elizabeth Davis**
 - **Stewart McCloud**
 - **Woods Parker** (new to listing)

Lightfoot Franklin & White LLC is pleased to make the following announcements:

• Associate **Bridget E. Harris** will serve on the Alabama State Bar’s new Helping Heroes in Healthcare Task Force.

The group, composed of lawyers from across the state appointed by the Alabama State Bar president, was created in response to the growing legal needs of healthcare workers arising from the coronavirus pandemic.

• Lightfoot, Franklin & White LLC received prominent rankings from Benchmark Litigation in its 2021 guide. The firm was listed as “Highly Recommended” in Alabama for the fifth consecutive year, and 17 lawyers are mentioned as being named “Local Litigation Stars,” “Future Stars” or to the “40 & Under Hot List.”

This year’s Lightfoot Local Litigation Stars are:

- **Chandler Bailey**
- **Michael Bell,**
- **Haley Cox**

- **Melody Eagan**
- **Sam Franklin**
- **Henry Gimenez**
- **Lee Hollis**
- **Johnny Johnson**
- **Chris King**
- **Lana Olson**
- **Adam Peck**
- **Harlan Prater**
- **Jack Sharman**

In addition, **Wes Gilchrist** and **Ashby Pate** were named Future Stars and Reid Carpenter was named to the “40 & Under Hot List.”

- Lightfoot, Franklin & White LLC has promoted **Jonathan R. Little** to the firm’s partnership, effective January 1, 2021. Little maintains a varied litigation practice, which includes representing media and communications companies, journalists and broadcasters in defamation and First Amendment matters. He also routinely defends companies in product liability, fire and personal injury litigation, and represents clients in commercial and securities litigation. In addition, Little has secured appellate victories for his clients at the Alabama Court of Civil Appeals, the Alabama Supreme Court and the U.S. Court of Appeals for the 11th Circuit.

Maynard Cooper Gale is pleased to announce that **Matthew Bowness** has joined the Firm’s Securities Litigation Practice. He brings six years of experience as a litigator representing clients in the insurance, energy, and construction industries. He has also helped achieve multiple multimillion-dollar settlements of construction defect claims. Mr. Bowness received his J.D., with high honors, from Emory University School of Law.

Neal Moore and **Setara Foster** announce the opening of Moore, Young, Foster & Hazelton, LLP located at 1122 Edenton Street, Birmingham, Alabama. The firm will continue to specialize in the civil defense of individuals, businesses, and insurance companies accused of wrongdoing. More information about the firm is available at www.MY-Defense.com.

**SHARE YOUR
GOOD NEWS
WITH US
ADLA@ADLA.ORG**



Engineering Consulting and Forensic Investigation

ESi is a full-service engineering investigation and consulting firm with locations coast-to-coast, serving clients across a global footprint. With state-of-the-art facilities and highly qualified professionals in almost every discipline, ESi is well-equipped to help clients with their most challenging technical issues.

Multidisciplinary Approach ♦ **Industry Expertise** ♦ **Powerful Insights**

www.engsys.com

(866) 596-3994



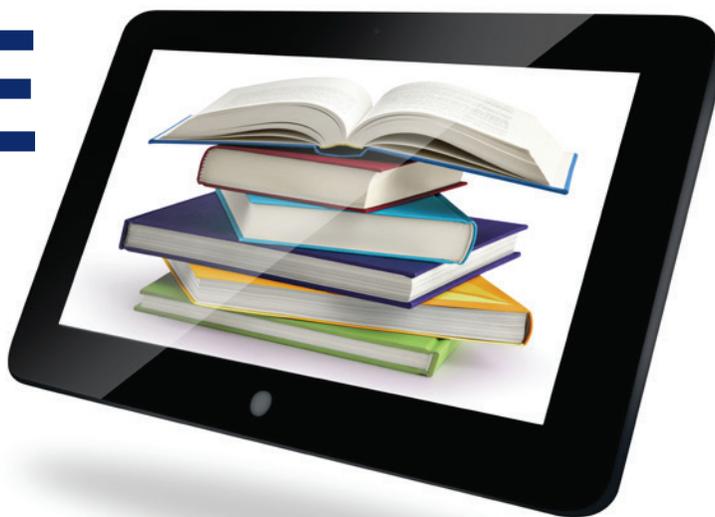
CHRISTINA MAY BOLIN
Alabama DRI Representative

It was an interesting year to serve as ADLA President and I know that the organization is in good hands with Andy Rutens at the helm. I am greatly enjoying my tenure as Immediate Past President. This is my first message to you as the DRI Alabama State Representative. Thank you for entrusting me to represent you in DRI and allowing me to continue to serve the ADLA membership.

As ADLA is evolving and adapting so too is DRI. DRI's annual meeting was held virtually from October 21-23, 2020. The meeting featured keynote speakers including political commentators and strategists Paul Begala and Michael Murphy and 37th U.S. Deputy Attorney General Rod Rosenstein. All three were extraordinary speakers. The agenda was jam packed. There were even virtual networking events. While the virtual Annual Meeting was a true success, DRI is committed to bringing back in person meetings. As of now, DRI is moving forward with an in-person conference at the Sheraton Boston Hotel from October 13-16. Registration information and more details will be forthcoming.

In the meantime, DRI offers a multitude of programming and assistance for your practice, including on demand webinars and webcasts. Please feel free to reach out to be with any questions that you have. I'm really looking forward to seeing everyone at the June ADLA Meeting in Sandestin. 

ADLA CLE LIBRARY



ADLA members have exclusive access to **free** on demand **CLE** at any time. Login to view the CLE Library at www.alda.org/CLELibrary and start earning online credit today.

THANK YOU TO OUR 2021 CLE WEBINAR SPONSORS

ADLA proudly supports the latest advancements in technology, products, and services available to its members. For more information on sponsoring an ADLA webinar event, please send an email to adla@adla.org.



COURT REPORTING &
LITIGATION SUPPORT



ATTORNEYS
INSURANCE
MUTUAL
of the South®

Our aim is your peace of mind.



AVALON HEALTH ECONOMICS



Forensic Engineering
& Consulting



ESI

Exponent®



Huseby.com

GLOBAL LITIGATION SUPPORT

Qforensics



Forensic Engineers and Consultants

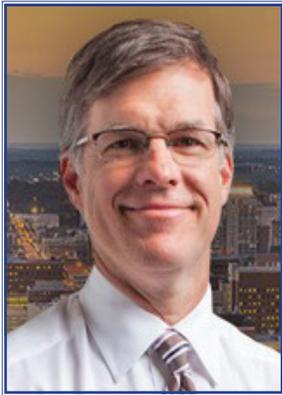


MEDIATION
GROUP



Applied physics & crash reconstruction
www.vearcorp.com
205.307.6543

Upchurch Watson White & Max Mediation Group



Alan B. Lasseter
alasseter@uww-adr.com

welcomes mediator Alan Lasseter to its distinguished panel of neutrals.

- » As a trial attorney, he represented the interests of individuals, businesses and insurers throughout Alabama for more than 27 years.
- » He handled more than 1,500 cases representing both plaintiffs and defendants before beginning his transition to being a neutral.
- » Alan has tried more than 60 jury trials to verdict in a wide variety of practice areas including personal injury, wrongful death, medical malpractice, trucking accidents, police liability and product liability.

MEDIATION | ARBITRATION | E-DISCOVERY | SPECIAL MASTERS
Successfully Resolving Conflicts in Alabama,
Florida & Nationwide Since 1988

CALL TOLL FREE: 888-435-9033 | READ MORE & SCHEDULE: WWW.UWW-ADR.COM



[linkedin.com/company/upchurch-watson-white-&-max](https://www.linkedin.com/company/upchurch-watson-white-&-max)



www.facebook.com/UWWMediation



[@UWWMediation](https://twitter.com/UWWMediation)



Just as a conductor fashions beautiful harmonies from many instruments, our mediators find harmony amid the clamor of litigation.

For more information about
Upchurch Watson White & Max, visit
UWW-ADR.com or call (205) 933-9033.

Craftsmanship.

VIDEOCONFERENCING / TELECONFERENCING AVAILABLE

By: David Sikes, APCA President | Montgomery, AL



know everyone has their own 2020 story – 2020 was indeed an interesting year.

From our perspective, we began 2020 with two seminars: Insurance Fraud in Oxford and Insurance Data Security Law in Montgomery. Then, the pandemic occurred, and restrictions were put in place that effectively prohibited in-person seminars. Personally, I was in London in March 2020 and witnessed the first shutdown of Lloyd's of London in over 300 years. The syndicates tested their ability to work from home instead of transacting business personally on the Underwriting floors.

We re-tooled our delivery mechanisms for continuing education credits via webinar. Since we had never done this before we engaged in many hours of testing to satisfy the requirements of the Alabama Department of Insurance (ALDOI) and "seminar security". The ALDOI needed to know that we had a system and plan to implement to assure attention and participation was being given to our on-line webinars and that attendees were not just logging on to the webinar and walking away to be able to gain CE credit.

2020 was a successful year in that we did not let the pandemic keep us from providing education and professional development for our members and for the industry.

We hosted seven (7) webinars in the last half of 2020 with ADLA

members providing instruction covering topics of: The Sudden Emergency Doctrine, UM/UIM Coverage, Loss of Consortium, Ethics, Eggshell Claimants, and Wrongful Death Claims. Even with two hurricanes affecting our policyholders in the last quarter of 2020, which required our claims adjuster membership

to respond with service, ninety-eight (98) adjusters attended these webinars to gain continuing education.

In 2021, we are looking forward to some more great webinars: Social Media Evidence in Civil Litigation, Appellate Issues for Claims Adjusters, Human Factors, Roofing Contractors' Issues with the Insurance Industry, Increased Cost of Construction Due to Ordinance or Law Coverage, and Biological Contaminant Remediation, and Mediation Practice for Adjusters are some of the topics we are working on.

If you have an idea for a topic that you think P&C adjusters would benefit from learning more about, call me and let me know. My office number is 334-386-4231. You can email me at apcaorg@gmail.com.



YOUR CASES RARELY START OUT SIMPLE...

LET US HELP MAKE IT SO

Wilkins Miller is a constant force leading you forward by bringing an expert staff of certified public accountants, business analysts, consultants and advisors to the table to help you see farther and reach higher. For more than 25 years, our professionals have served as forensic accountants and experts.

wilkinsmiller.com

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

Stacy T. Cummings
stcummings@wilkinsmiller.com
251.410.6718

Wilkins Miller
Forensic, Litigation & Valuation Services Group



Mobile, Alabama

41 W. I-65 Service Rd. N., Suite 400
5 Dauphin Street, Suite 100
251.410.6700

Fairhope, Alabama

56 South Section Street



CRAIG ALEXANDER
Chair

Greetings from the ADLA *Amicus Curiae* Committee. Since the committee's last report in the Fall 2020 issue of the ADLA Journal, the Committee has filed an *amicus* brief, in support of an application for rehearing, in one case before the Supreme Court of Alabama. By order issued on February 19, 2021, the court denied the application without opinion.

In *Ex parte Alfa Mutual Insurance Company*, ___ So.3d ___, 2020 WL 6372812 (Ala. Oct. 30, 2020), the court denied ALFA's petition for a writ of mandamus challenging an order by the trial court requiring ALFA to participate in the trial of its insured's liability claim against an uninsured motorist. ALFA had intervened in the case but after participating in discovery, it filed a motion to opt out. The trial court initially granted the motion, but subsequently entered an order vacating its prior order and requiring ALFA to participate in the trial of its insured's lawsuit.

ALFA's petition presented the general issue of whether existing Alabama law allowed an intervening insurer to subsequently opt out. The court denied the petition based on its conclusion that ALFA had not established a clear legal right to intervene in an uninsured-motorist suit and then opt out before trial. ALFA's counsel, ADLA member Michael Haggard, filed an application for rehearing and requested that ADLA file an brief in support of this application.

ADLA's *amicus* brief was authored by ADLA members Gregory Cook, Michael Taunton and Trey Bundrick. The Supreme Court granted ADLA's motion for leave to file an *amicus* brief and ADLA's brief was filed on December 9, 2020. ADLA's brief stressed the dilemma that the Court's ruling poses for insurers, who may have to choose between investigating the merits of the parties' claims through discovery at the risk of informing the jury of insurance coverage, or keeping the issue of insurance from the jury while remaining in the dark on the merits. The brief also stressed the lack of any significant justification for restricting the legal right to opt-out to insurers which were named as defendants in their insureds' lawsuits against uninsured motorists, and argued that recognizing that this right extends to insurers who opted-in for the purpose of participating in discovery would be fully consistent with the policy considerations recognized in the court's seminal case on this subject, *Lowe v. Nationwide Ins. Co.*, 521 So.2d 1309 (Ala. 1988).

ADLA appreciates the very capable work of the brief's authors in preparing the motion for leave and *amicus* brief, especially within the very compressed time frame involved in an application for rehearing.

The current policies and procedures for submitting a request for an ADLA *amicus* brief in an appeal are set forth below, but please feel free to contact committee chair Craig Alexander if you have any questions about the process of submitting a request for an *amicus* brief. We continue to look forward to the opportunity for the Association to "weigh in" when an appeal involves significantly important issues to the defense bar or to the fair administration of justice. Also, please remember that as part of a renewed and invigorated effort of the leadership of the ADLA to serve its members, recent *amicus curiae* briefs have been made available for download on the ADLA's website. 

**Keyword Search Our
Brief Bank**
by Name, Case Number & Brief Title



www.adla.org/briefbank

I. STATEMENT OF ADLA'S GENERAL POLICY

It is the policy of the Alabama Defense Lawyers Association that it should authorize the filing of *amicus curiae* briefs sparingly and only in appropriate cases. In deciding whether a specific case is appropriate, these primary factors will be considered:

- (1) Whether an *amicus curiae* brief is reasonably likely to make a significant contribution to the determination of the issue(s) to be addressed;
- (2) Whether the issue(s) will be of particular significance to the interests of the defense trial bar or of particular significance to the fair administration of justice;
- (3) Whether the case is on appeal before the highest appellate court where the issue is likely to be determined; and
- (4) Whether the determinative issue(s) in the case will be legal, instead of factual.

The ADLA ordinarily will not join in *amicus curiae* briefs with other organizations except local defense associations. Authorized *amicus curiae* briefs generally should be filed only in ADLA's name.

II. SUBMISSION OF REQUESTS FOR *AMICUS CURIAE* BRIEFS

A request by an ADLA member for an *amicus curiae* brief should be submitted to the Chair of the *Amicus Curiae* Committee as soon as reasonably possible. The request must be submitted by letter or electronic mail. The following information and documents should be furnished with the request:

- (1) The name of the case and the identification of the appellate court where the case is pending;
- (2) The order from which the appeal has been taken;
- (3) A summary of the relevant facts and the procedural history of the case;
- (4) A statement of all the issues of law that are expected to be raised in the appeal, specifically identifying each issue for which ADLA involvement is requested;
- (5) The date by which an *amicus curiae* brief would be due to be filed;
- (6) The consent of the attorney of record for the party in support of whom ADLA involvement is being sought, and
- (7) A full disclosure of any personal or professional interest in the matter on the part of the ADLA's member and the member's law firm.

III. PROCESSING OF REQUESTS FOR *AMICUS CURIAE* BRIEFS

The Chair of the *Amicus Curiae* Committee should promptly notify the ADLA President and the Chair of the ADLA Legislative Committee of the receipt of any request for an *amicus curiae* brief, which notification should include a summary of the issue(s) presented in the appeal. Any comments about the request by the President and the Chair of the Legislative Committee will be given to the Chair of the *Amicus Curiae* Committee, to be shared by the Chair with the members of the committee.

Once the *Amicus Curiae* Committee has considered and has voted on the

request, the committee chair will notify the ADLA President of the result of the vote and will provide a summary of the committee's analysis of the request.

The ADLA President has the authority to overrule a vote by the *Amicus Curiae* Committee in favor of filing an *amicus curiae* brief. The ADLA President does not have the authority to overrule a decision by the committee to decline a request for an *amicus curiae* brief.

IV. REQUESTS FOR *AMICUS CURIAE* BRIEFS IN CASES IN WHICH AN ADLA MEMBER IS COUNSEL FOR AN ADVERSE PARTY

Whenever a request is made for an *amicus curiae* brief by the ADLA in a case in which an ADLA member is counsel for an adverse party:

- (1) The request will be considered solely on the basis of the issue presented, and membership in ADLA by a lawyer whose client's interests are adverse will not be considered by the *Amicus Curiae* Committee in determining whether an *amicus curiae* brief should be submitted;
- (2) The request submitted to the *Amicus Curiae* Committee (including all attachments) the specifics of the Committee's deliberation process, the votes of the individual Committee members, and the name of the ADLA member who will prepare the brief shall be confidential (with the understanding that the name of the attorney writing the brief will be disclosed when the brief is filed); and
- (3) The *Amicus Curiae* Committee will not solicit and will not accept any comment or other input from any such ADLA member as part of its deliberation on the request for an *amicus curiae* brief.

V. APPEARANCES

Every ADLA *amicus curiae* brief, and every other court filing in an appeal in which ADLA is participating as an *amicus curiae*, shall identify as counsel for ADLA the author of the brief, the President of ADLA, and the Chair of the *Amicus Curiae* Committee.

VI. FEES AND COSTS

On approval of the Chair of the *Amicus Curiae* Committee, ADLA will pay a fee of up to \$3,000 for the preparation of an *amicus curiae* brief. ADLA also will reimburse reasonable copying and binding costs associated with the brief.

No ADLA member who prepares an *amicus curiae* brief may accept any fee or other payment from any party for the preparation of the brief. ADLA will not accept payment from any source to reimburse the expenses associated with participating in the appeal as an *amicus curiae*.

Adopted unanimously by email poll of the Board of Directors dated: January 9, 2019

LET ADLA HELP YOU FIND OUT ABOUT THE PLAINTIFF'S EXPERT WITNESS IN YOUR TRIAL

ADLA's Expert Witness Database

is a searchable list of inquiries from ADLA members regarding Plaintiffs' experts. Search our database by expert, specialty and location or request for an email blast inquiry to be sent out to fellow ADLA members. ADLA's email blast system can also be used to request a referral for a Defense expert.

Utilize this **member benefit** for gathering information about the expert witness who may be sitting on the other side of the deposition table or across the courtroom aisle.

Visit www.adla.org for more information on how to find out about the expert witness in your case.

**SEARCH BY
EXPERTISE**

**950
MEMBER
OUTREACH**

**SEARCH
PLAINTIFF'S
EXPERTS**

**SEARCH BY
LOCATION**

**DEFENSE
EXPERT
REFERRAL**

Lawyer malpractice insurance owned by you, managed by you.



Did you know that AIM was created by and for Alabama lawyers with the goal of providing legal malpractice insurance at a competitive price with dependable defense coverage?

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



**ATTORNEYS
INSURANCE
MUTUAL**
of the South®

Our aim is your peace of mind.

GET A QUOTE TODAY | 205.980.0009 | WWW.ATTORNEYSINSURANCEMUTUAL.COM



Alabama Defense Lawyers Association
PO Box 3240
Auburn, AL 36831



Presorted Std
U.S. Postage
PAID
Montgomery, AL
Permit 541



IT'S 2021-2022 MEMBERSHIP DUES RENEWAL TIME!

Connect with over 900 Alabama
Civil Defense Lawyers

Renew or Join Online at www.adla.org or
Call 334-395-4455 for More Information