

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Madeline Hughes Haikala, nee Madeline Clair Hughes

2. **Position**: State the position for which you have been nominated.

United States District Judge for the Northern District of Alabama

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States District Court for the Northern District of Alabama  
Hugo L. Black United States Courthouse  
1729 Fifth Avenue North  
Birmingham, Alabama 35203

4. **Birthplace**: State year and place of birth.

1964; New Orleans, Louisiana

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1986 – 1989, Tulane University Law School; J.D. (*magna cum laude*), 1989

1982 – 1986, Williams College; B.A., 1986

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2012 – present

United States District Court for the Northern District of Alabama  
Hugo L. Black United States Courthouse  
1729 Fifth Avenue North

Birmingham, Alabama 35203  
United States Magistrate Judge

1990 – 2012  
Lightfoot, Franklin, & White, LLC  
400 20th Street North  
Birmingham, Alabama 35203  
Partner (1997 – 2012)  
Associate (1990 – 1997)

1998 – 2005  
Cumberland School of Law  
800 Lakeshore Drive  
Birmingham, Alabama 35229  
Adjunct Professor

August – December, 1989  
Bradley, Arant, Rose, & White  
(now Bradley, Arant, Boult, Cummings, LLP)  
2001 Park Place, Suite 1400  
Birmingham, Alabama 35203  
Associate

Summer 1988  
Riker, Danzig, Scherer, Hyland, & Perretti, LLP  
1 Speedwell Avenue  
Morristown, New Jersey 07960  
Summer Associate

Summer 1987  
Hebert, Mouldedoux, & Bland  
(now Mouldedoux, Bland, Legrande, & Brackett)  
601 Polydras Street  
New Orleans, Louisiana 70130  
Summer Associate

Summer 1986  
Louise S. McGehee School  
2343 Prytania Street  
New Orleans, Louisiana 70130  
Secretary

Summer 1986  
Various New Orleans grocery stores  
Planter's Peanut greeter and marketer

Other affiliations (uncompensated):

2011 – present  
Leading Edge Institute  
P.O. Box 59402  
Birmingham, Alabama 35259  
Member, Board of Directors

2003 – 2010  
Highlands School  
4901 Old Leeds Road  
Birmingham, Alabama 35213  
Member, Board of Trustees

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I am not required to register with the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Birmingham Volunteer Lawyer Program recognition for pro bono work (2012)

*Birmingham Magazine*, “Top Attorney” in appellate law (2011, 2012)

Tulane University Law School, Order of the Coif (1989)

Tulane University Law School, American Jurisprudence Prize (1988)

Tulane University Law School, Monte Lemann Award (1988)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Alabama Defense Lawyers Association

Alabama State Bar  
Appellate Section Treasurer (2011 – 2012)

American Bar Association

Birmingham Bar Association  
Women's Section Board of Directors (2011 – present)

Defense Research Institute (DRI)  
Women's Committee (2010 – 2012)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Alabama, 1989

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1998  
United States Court of Appeals for the Eleventh Circuit, 1989  
United States District Court for the Northern District of Alabama, 1989  
United States District Court for the Middle District of Alabama, 1990  
United States District Court for the Southern District of Alabama, 1991  
Supreme Court of Alabama, 1989

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Alabama Law Foundation (2010 – present)

Better Basics (approximately 2003 – 2009)  
Tutor in Birmingham public schools

Cornerstone Schools of Alabama (approximately 2003 – present)  
Guest Reader, K – 1st grade (2013)  
Women's Committee (approximately 2003 – present)

Cumberland Law School (2006)  
Judge Edward S. Smith Scholarship in Law Fund Committee

Highlands School  
Member, Board of Trustees (2003 – 2010)  
Chair, Parents' Auxiliary (2009 – 2010)

John Carroll Catholic High School (2006 – 2007)  
Curriculum Evaluation Committee for Strategic Planning

Leading Edge Institute (2011 – present)  
Member, Board of Directors

St. Francis Xavier Church (approximately 2002 – present)  
Minister to the sick & homebound

United Way Red Feather Association (2008)

Williams College Alumni Fund (2010 – 2012)  
Agent

Women's Fund of Greater Birmingham "Voices Against Violence" Domestic  
Violence Initiative (2007 – 2010)  
Chair (2010)  
Steering Committee (2009)  
Giving Circle, Corporate Counsel Committee Chair (2007 – 2008)

YWCA Family Law Center (2011)  
Fundraising Committee

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

DRI, Women in the Law Blog “Best Advice” (May 13, 2013). Copy supplied.

July 2007 to July 2011 - *Alabama Appellate Watch* - contributing author to Lightfoot, Franklin, & White blog. The blog is devoted to opinions that the Alabama Supreme Court and the Alabama Court of Civil Appeals issue. Blog entries summarize procedural aspects of Alabama’s civil appellate decisions and, occasionally, civil opinions from the Eleventh Circuit Court of Appeals. Copies of the blog entries that I could locate in my files or on the internet are supplied.

With Ivan B. Cooper, “Diversity Removals – Federal Jurisdiction’s Disappearing Act,” *In-House Defense Quarterly* (Summer 2010). Copy supplied.

“From Bass to Bard: Finding Tips for Persuasive Writing in Unexpected Places,” *For the Defense*, DRI Writer’s Corner (December 2009). Copy supplied.

With Laura Peck, “Birmingham Women Attorneys Lead Effort to Combat Domestic Violence,” *Addendum* (June 2008). Copy supplied.

“*Pavillion Development, LLC v. JBJ Partnership*: The Court’s Struggle with Waiver,” *Alabama Lawyer* (January 2008, Vol. 69, No. 1), introduction by Alabama Supreme Court Chief Justice Sue Bell Cobb. Copy supplied.

Lawyers Cooperative Federal Practice Guide, *Federal Appellate Procedure 11th Circuit* – American Inns of Court Series (1996) – Ch. 20 – “Review by Extraordinary Writ in Civil Cases” (With Warren B. Lightfoot). This edition of this practice guide for attorneys is out of print, and I have been unable to locate a copy.

“Fraudulent Suppression – Has the Exception Swallowed the Rule?” *56 Alabama Lawyer* 231 (July 1995). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have reviewed my files, searched the internet, and contacted the relevant organizations to locate any reports, memoranda or policy statements to which I might have contributed.

The Leading Edge Institute, 2011-2012 Annual Report. Copy supplied.

As an officer of the Women's Fund's "Voices Against Violence" domestic violence initiative, I participated in the preparation of reports that summarized the organization's fundraising efforts and described the ways in which the funds that the organization collected were disbursed. Copies of the 2009 and 2010 reports supplied.

As a member of the Board of Trustees of Highlands School, an elementary school in Birmingham, I chaired a health committee, and I drafted a health policy for the student handbook. I prepared the health policy in approximately 2004 or 2005. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

March 1, 2013: Birmingham Bar Association Bench & Bar Retreat – Federal Court Panel Discussion with Hon. Abdul Kallon and Hon. Mike Putnam. Notes supplied.

February 8, 2013: I was a guest speaker for a bioethics class at John Carroll Catholic High School. I spoke primarily about the legal challenges that homeless individuals face, and I discussed some of the work that I have done for the Homeless Experience Legal Protection (H.E.L.P.) program in Birmingham. I have no notes, transcript, or recording. The address of John Carroll Catholic High School is 300 Lakeshore Parkway, Birmingham, AL 35209.

October 29, 2012: My Investiture as a United States Magistrate Judge. Video recording supplied.

July 14, 2011 – Alabama State Bar Annual Meeting – Panel Discussion of waiver on appeal with Hon. Joel Dubina and Hon. Champ Lyons. Notes supplied.

I have searched my records and my memory, and I have not identified other talks or speeches that I have given.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Kent Faulk, “Birmingham Lawyer Madeline Haikala Begins New Job as Federal Magistrate Judge,” Birmingham News, Sept. 29, 2012. Copy supplied.

Kent Faulk, “Birmingham Lawyer Madeline Hughes Haikala Selected as U.S. Magistrate Judge for Northern Alabama,” Birmingham News, Aug. 10, 2012. Copy supplied.

The Women’s Fund of Greater Birmingham and NBC-13 News, “Blogging Against [Domestic] Violence,” October 7, 2009. I have no transcript or record of the blog interview.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On October 1, 2012, I was appointed to serve as a United States Magistrate Judge for the Northern District of Alabama. In the Northern District of Alabama, subject matter jurisdiction of United States Magistrate Judges is coextensive with the powers authorized under 29 U.S.C. § 636 and related rules of civil and criminal procedure.

United States Magistrate Judges are “on the wheel” in the Northern District of Alabama. In other words, ordinary civil cases are randomly assigned to Magistrate Judges, just as those cases are randomly assigned to District Judges. The parties have the option of consenting to dispositive jurisdiction of the Magistrate Judge assigned to their case. If the parties consent, the Magistrate Judge may conduct a trial and may enter final judgment or otherwise dispose of the lawsuit.

In felony cases, Magistrate Judges have jurisdiction to issue warrants and to conduct various pretrial proceedings, including detention hearings, competency hearings, and hearings regarding motions to suppress evidence.

Per 18 U.S.C. § 3401 and Local Rule 73.1(a), a District Judge may designate a Magistrate Judge to try persons accused of, and to sentence persons convicted of, misdemeanors and other petty offenses committed within the Northern District of Alabama.



Non-capital habeas proceedings and prisoner civil rights cases are randomly assigned to both a District Judge and a Magistrate Judge. The Magistrate Judge decides all non-dispositive motions and issues a report and recommendation with respect to dispositive motions, unless the parties consent to dispositive jurisdiction.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

Since I became a Magistrate Judge in October 2012, the cases that I have set for trial have settled, so I have not had the opportunity to preside over a trial yet.

- i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	0%
civil proceedings:	0%
criminal proceedings:	0%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

*Cunningham v. United States*, 2013 WL 1346396 (N.D. Ala. March 8, 2013).

*Oliver v. WHNT 19 News*, 2012 WL 7784147 (N.D. Ala. Dec. 3, 2012).

*Alabama Ins. Guar. Ass'n v. FrankCrum I, Inc.*, 2012 WL 5931784 (N.D. Ala. Nov. 27, 2012).

*Mitchell v. Pearce*, 2012 WL 7160431 (N.D. Ala. Nov. 7, 2012).

*Ramirez v. James*, 2012 WL 5511045 (N.D. Ala. Oct. 19, 2012).

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

(1) *Banks v. Birmingham Board of Education* (2:12-CV-01682-MHH).

*Banks* is a Fair Labor Standards Act ("FLSA") opt-in class action. A number of non-tenured employees of the Birmingham public school system allege that the Board of Education refused to pay them when they worked more than 40 hours per week. I held a hearing pertaining to the plaintiffs' motion for conditional class certification. The parties presented evidence and arguments in support of

their respective positions, and my decision is pending. The plaintiffs subsequently sought to dismiss because they wish to institute a new action. The parties are briefing the motion to dismiss.

Counsel for Plaintiffs:

Jerome Tucker  
1728 North Third Avenue, Suite 500  
P.O. Box 1333  
Birmingham, AL 35203  
(205) 328-0055

Counsel for Defendants:

Philip F. Hutcheson  
Deputy Attorney General  
Office of the Attorney General  
501 Washington Avenue  
P.O. Box 300152  
Montgomery, AL 36104  
(334) 328-8756

Mark S. Boardman  
Boardman Carr Hutcheson & Bennett, PC  
400 Boardman Drive  
Chelsea, AL 35043  
(205) 678-8000

(2) *Dudley v. City of Bessemer* (2:12-CV-01762-MHH).

This is a gender discrimination action. The plaintiff, a former Chief Court Clerk in the City of Bessemer, asserts Title VII and § 1983 claims against the City and § 1983 and assault claims against the former mayor of Bessemer. After hearing oral argument, I denied the defendants' motion to dismiss the plaintiff's complaint. Copy supplied.

Counsel for Plaintiff:

John D. Saxon  
John D. Saxon, PC  
2119 Third Avenue North, Suite 100  
Birmingham, AL 35203  
(205) 324-0223

Counsel for Defendants:

James W. Porter, II  
Porter, Porter & Hassinger, PC  
215 Richard Arrington Jr. Boulevard North, Suite 1000  
P.O. Box 128  
Birmingham, AL 35201  
(205) 322-1744

(3) *Alabama Ins. Guar. Ass'n v. FrankCrum I, Inc.*, 2012 WL 5931784 (N.D. Ala. Nov. 27, 2012).

When I joined the bench, I inherited pending cases that had been assigned to my predecessor. Upon review of the removal petition and complaint in *FrankCrum*, I discovered that the defendants premised removal jurisdiction on a unique theory of citizenship. I propounded three questions to the parties to further explore subject matter jurisdiction and asked them to submit briefs responding to the questions. The FrankCrum defendants filed a brief in which they conceded that they improperly pled the citizenship of the Alabama Guaranty Insurance Association (“AIGA”) and that the Court lacked subject matter jurisdiction. Consequently, though the case had been pending in federal court for more than one year, I remanded it to state court.

Counsel for Plaintiff:

Howard K. Glick  
Simpson, McMahan, Glick & Burford, PLLC  
2700 Highway 280, Suite 203W  
Birmingham, AL 35223  
(205) 876-1600

Counsel for Defendants:

James W. Porter, III  
Kirk D. Smith  
Haskell, Slaughter, Young & Rediker  
2001 Park Place North, Suite 1400  
Birmingham, AL 35203  
(205) 251-1000

Counsel for Third-Party Defendant:

Leslie R. Barineau  
Barineau & Barineau  
Title Building  
300 Richard Arrington Jr. Boulevard North, Suite 502

Birmingham, AL 35203  
(205) 251-9200

William P. Traylor, III  
Yearout & Traylor, PC  
3300 Cahaba Road, Suite 300  
Birmingham, AL 35223  
(205) 414-8160

(4) *Williamson v. Williamson, et al.* (2:12-CV-01841-MHH).

This is a breach of trust case that is governed by Alabama law. The defendant trustee terminated her co-trustee and, acting as the sole trustee, made investment decisions that the plaintiff challenges. The plaintiff asserts a host of tort claims against the defendant trustee and her co-defendants. Wells Fargo, one of the defendants, filed a pre-discovery motion for summary judgment. Wells Fargo argued that the defendant trustee was contractually authorized to terminate the bank's predecessor as co-trustee and that the bank was powerless under the terms of the trust documents to compel the individual trustee to substitute an alternative co-trustee for the bank. I recently held a hearing on the motion, which is pending.

Counsel for Plaintiff:

Peter A. McInish  
Peter A. McInish, LLC  
P.O. Box 610  
Dothan, AL 36302  
(334) 671-2555

Counsel for Defendants:

Earl F. Hilliard  
Hilliard & Associates  
P.O. Box 12445  
Birmingham, AL 35202  
(205) 326-8844

Victor L. Haslip  
William J. Long, IV  
Burr & Forman, LLP  
3400 Wachovia Tower  
420 North 20th Street  
Birmingham, AL 35203  
(205) 251-3000

Daniel J. Martin  
Johnston Barton Proctor & Rose, LLP  
568 Brookwood Village, Suite 901  
Colonial Brookwood Center  
Birmingham, AL 35209  
(205) 458-9483

(5) *K.R. v. Etowah Academy et al.* (4:09-CV-01307-MHH).

This is a case in which the plaintiff alleges violations of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. While he was in high school, K.R. transitioned from a local public school to Etowah Academy, a private school that offers an educational program geared toward children with certain learning disabilities. K.R. contends that the Academy and its owner denied him an education appropriate to his needs, needs which are shaped by learning and communication disabilities. The Rehabilitation Act claim presents a question of first impression about the scope of actions under the Act. In addition to his Rehabilitation Act claim, K.R. asserts state law breach of contract claims. I held a hearing on the parties' cross-motions for summary judgment. The motions are pending.

Counsel for Plaintiff:

Deborah A. Mattison  
Rachel L. McGinley  
Wiggins Childs Quinn & Pantazis LLC  
301 19th Street North  
Birmingham, AL 35203  
(205) 314-0500

Counsel for Defendants:

Carl E. Johnson, Jr.  
Bishop, Colvin, Johnson & Kent, LLP  
1910 First Avenue North  
Birmingham, AL 35203  
(205) 251-2881

(6) *Ryan v. Event Operations* (2:12-CV-00670-MHH).

This is an FLSA action for unpaid overtime wages. It is undisputed that the plaintiffs were not exempt from the FLSA's overtime provisions. The complaint was pled as an opt-in class action. The parties agreed to settle the case confidentially. To avoid making a record of the settlement, the parties asked the Court to direct the matter to arbitration. Because there was no arbitration agreement pursuant to which the Court could order arbitration, I denied the

motion to direct the litigation to arbitration. Copy supplied. The Court is in the process of reviewing the proposed FLSA settlements to determine whether it will approve them.

Counsel for Plaintiff:

Robert J. Camp  
The Cochran Firm  
505 North 20th Street, Suite 825  
Birmingham, AL 35203  
(205) 244-1115

Counsel for Defendant:

David B. Walston  
Christian & Small, LLP  
505 North 20th Street, Suite 1800  
Birmingham, AL 35203  
(205) 795-6588

(7) *Camp v. City of Pelham* (2:10-CV-01270-MHH).

This is a hybrid FLSA opt-in class action and Rule 23(b)(2) and (b)(3) class action. The plaintiff firefighters contend that the City improperly reimbursed them for overtime and for vacation pay. I recently entered an order on the plaintiffs' Emergency Motion to Limit Communications by the city of Pelham with Class Members, and I finalized the class notices for the FLSA opt-in class and the Rule 23(b)(3) damages class. I recently conducted a hearing on the defendant's motion for summary judgment. The motion is pending.

Counsel for Plaintiff:

F. Inge Johnstone  
Law Offices of F. Inge Johnstone  
One Independence Plaza Drive, Suite 520  
Birmingham, AL 35209  
(205) 383-1809

Heather N. Leonard  
Heather Leonard, PC  
2105 Devereux Circle, Suite 111  
P.O. Box 43768  
Birmingham, AL 35243  
(205) 977-5421

Counsel for Defendant:

Albert L. Vreeland, II  
Lehr, Middlebrooks, & Vreeland, PC  
2021 Third Avenue North  
P.O. Box 11945  
Birmingham, AL 35202  
(205) 326-3002

Arnold "Trip" W. Umbach, III  
Starnes, Davis, Florie, LLP  
100 Brookwood Place, 7th Floor  
P.O. Box 598512  
Birmingham, AL 35259  
(205) 868-6000

(8) *United States v. Wallace* (2:13-CR-00122-RDP-HGD).

This case offers an example of a typical detention hearing. The defendant was charged as a felon in possession of a firearm. The Government moved for pretrial detention. Based on the evidence presented at the detention hearing and the law governing the issue, I ordered the defendant remanded to federal custody for pretrial detention. Copy supplied.

Counsel for the Government:

Frank M. Salter  
Assistant U.S. Attorney, Northern District of Alabama  
1801 Fourth Avenue North  
Birmingham, AL 35203  
(205) 244-2208

Counsel for Defendants:

Kevin Butler  
Melanie Keiper  
Federal Public Defender, Northern District of Alabama  
505 20th Street North, Suite 1425  
Birmingham, AL 35203  
(205) 504-4440

(9) *United States v. McGowan* (2:11-CR-424-CLS-MHH)

The superseding indictment in this case charges that Mr. McGowan possessed with intent to distribute more than 500 grams of powder cocaine, more than 28 grams of crack cocaine, more than 100 grams of heroine, and a detectable amount

of marijuana. Mr. McGowan filed a series of motions in which he sought discovery of a wide assortment of information. The government filed an omnibus reply in which it asserted that it had complied with and would continue to comply with Rule 16 and the Court's standing discovery order. I denied the discovery motions. A copy of the opinion is supplied.

Counsel for the Government:

William R. Chambers, Jr.  
Assistant U.S. Attorney, Northern District of Alabama  
1801 Fourth Avenue North  
Birmingham, AL 35203  
(205) 244-2189

Counsel for Defendant:

Randy A. Dempsey  
Dempsey, Steed, Stewart, Ricthey & Gache, LLP  
1122 22nd Street North  
Birmingham, AL 35234  
(205) 328-0162

(10) *United States v. Thomas* (2:12-CR-00464-RDP-TMP).

This case involved a defendant who was charged with being a felon in possession of firearms. Pretrial services recommended detention. Defendant's appointed counsel, the Federal Public Defender, initially identified the defendant's girlfriend as a third-party custodian. As she testified, the Public Defender realized that it was extremely unlikely that the Court would appoint her as a custodian, so the Public Defender withdrew the suggestion. Instead, he offered the defendant's sister and brother as custodians. After I heard their testimony, I recessed the hearing and directed pretrial services to conduct an at-home interview with the potential custodians. When the detention hearing resumed, with the support of pretrial services, I appointed the defendant's sister and brother as his third-party custodians. I included in the supervised release order a provision that prohibited the defendant from seeing his girlfriend who had been providing marijuana to him. The Probation Office has reported Mr. Thomas's physical and emotional health improved significantly after he was placed in his relatives' custody.

Counsel for the Government:

Frank M. Salter  
Assistant U.S. Attorney, Northern District of Alabama  
1801 Fourth Avenue North  
Birmingham, AL 35203  
(205) 244-2208



Counsel for Defendant:

Kevin Butler  
Federal Public Defender, Northern District of Alabama  
505 20th Street North, Suite 1425  
Birmingham, AL 35203  
(205) 208-7170

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

(1) *Cunningham v. U.S.*, 2013 WL 1346396 (N.D. Ala. March 8, 2013).

Plaintiff:

Plaintiff is pro se.

Counsel for Defendants:

Elizabeth Anne Holt  
United States Attorney  
1801 Fourth Avenue  
Montgomery, AL 35203  
(205) 244-2182

(2) *Oliver v. WHNT 19 News*, 2012 WL 7784147 (N.D. Ala. Dec. 3, 2012).

Plaintiff:

Plaintiff is pro se.

Counsel for defendants did not have to appear because the Court dismissed the case *sua sponte* for lack of subject matter jurisdiction.

(3) *Alabama Ins. Guar. Ass'n v. FrankCrum 1, Inc.*, 2012 WL 5931784 (N.D. Ala. Nov. 27, 2012).

Counsel for Plaintiff:

Howard K. Glick  
Simpson, McMahan, Glick & Burford, PLLC  
2700 Highway 280, Suite 203W

Birmingham, AL 35223  
(205) 876-1600

Counsel for Defendants:

James W. Porter, III  
Kirk D. Smith  
Haskell, Slaughter, Young & Rediker  
2001 Park Place North, Suite 1400  
Birmingham, AL 35203  
(205) 251-1000

Counsel for Third-Party Defendant:

Leslie R. Barineau  
Barineau & Barineau  
Title Building  
300 Richard Arrington Jr. Boulevard North, Suite 502  
Birmingham, AL 35203  
(205) 251-9200

William P. Traylor, III  
Yearout & Traylor, PC  
3300 Cahaba Road, Suite 300  
Birmingham, AL 35223  
(205) 414-8160

(4) *Mitchell v. Pearce*, 2012 WL 7160431 (N.D. Ala. Nov. 7, 2012).

Plaintiff:

Plaintiff is pro se. Counsel for the defendant has not appeared yet.

(5) *Ramirez v. James*, 2012 WL 5511045 (N.D. Ala. Oct. 19, 2012).

Counsel for Plaintiff:

Jose D. Vega  
Spencer R. Mobley  
Bradley, Arant, Boulton, Cummings, LLC  
1819 Fifth Avenue North  
Birmingham, AL 35203  
(205) 521-8000

Counsel for Defendants:

Mary A. Goldthwaite  
Office of the Attorney General  
501 Washington Avenue  
Montgomery, AL 36109  
(334) 353-8189

(6) *Ryan v. Event Operations* (2:12-CV-00670-MHH). Copy supplied in response to Question 13c.

Counsel for Plaintiff:

Robert J. Camp  
The Cochran Firm  
505 North 20th Street, Suite 825  
Birmingham, AL 35203  
(205) 244-1115

Counsel for Defendants:

David B. Walston  
Christian & Small, LLP  
505 North 20th Street, Suite 1800  
Birmingham, AL 35203  
(205) 795-6588

(7) *Dudley v. City of Bessemer* (2:12-CV-01762-MHH). Copy supplied in response to Question 13c.

Counsel for Plaintiff:

John D. Saxon  
John D. Saxon, PC  
2119 Third Avenue North, Suite 100  
Birmingham, AL 35203  
(205) 324-0223

Counsel for Defendants:

James W. Porter, II  
Porter, Porter & Hassinger, PC  
215 Richard Arrington Jr. Boulevard North, Suite 1000  
P.O. Box 128  
Birmingham, AL 35201  
(205) 322-1744

(8) *Mayfield v. Progressive Specialty Insurance Co.* (7:12-CV-02898-MHH). Copy supplied.

Counsel for Plaintiff:

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(9) *Couch v. Talladega Circuit Courts, et al.* (1:11-CV-01737-JFG-MHH). Copy supplied.

Plaintiff:

Plaintiff is pro se.

Counsel for Defendants:

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501 Washington Avenue  
P.O. Box 300152  
Montgomery, AL 36130  
(334) 242-7300

(10) *United States v. McGowan* (2:11-CR-424-CLS-MHH). Copy supplied in response to Question 13c.

Counsel for the Government:

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Assistant U.S. Attorney  
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(205) 244-2189

Counsel for Defendant:

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Dempsey, Steed, Stewart, Ritchey & Gache, LLP  
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Birmingham, AL 35234  
(205) 328-0162

- e. Provide a list of all cases in which certiorari was requested or granted.

Certiorari has not been requested or granted in any case over which I have presided.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

*Mitchell v. Pearce, et al.*, 2012 U.S. Dist. LEXIS 186285 (N.D. Ala. Nov. 7, 2012), *adopted in part, vacated in part*, 2013 U.S. Dist. LEXIS 22047 (N.D. Ala. Feb. 19, 2013). I issued a Report and Recommendation in which I recommended that the district court enter judgment as a matter of law on all of the prisoner's § 1983 claims. The prisoner filed objections to the Report and Recommendation. The district court adopted the Report and Recommendation with respect to three of the defendants. The district court vacated the portion of the Report pertaining to the prisoner's retaliation claim against a prison officer.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Slightly fewer than 80% of my approximately 24 substantive orders and opinions are unpublished. They are available electronically on CM/ECF.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have issued no opinions that I would characterize as significant opinions on federal or state constitutional issues. I have issued opinions relating to habeas petitions and prisoner 1983 actions that address constitutional issues. For example:

*King v. Marino, et al.* (2:10-CV-01593-KBO-MHH). Copy Supplied.

*Ramirez v. James*, 2012 WL 5511045 (N.D. Ala. Oct. 19, 2012).

*Houston v. State of Alabama* (2:12-CV-02219-KOB-MHH). Copy Supplied.

*Mitchell v. Pearce, et al.*, 2012 U.S. Dist. LEXIS 186285 (N.D. Ala. Nov. 7, 2012), *adopted in part, vacated in part*, 2013 U.S. Dist. LEXIS 22047 (N.D. Ala. Feb. 19, 2013).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Our court has an automatic recusal list for me. Pursuant to Advisory Committee Opinion 24, for the first two years that I am on the bench, I may not participate in cases in which a lawyer from my former law firm, Lightfoot, Franklin, & White, LLC, is involved. Accordingly, the clerk's office excludes me from all cases in which a Lightfoot lawyer has appeared. The clerk's office also has a list of my

former clients, which the office uses to re-assign to other judges cases to which any of those clients is a party.

Beyond that general recusal policy, I have recused myself three times. On the first occasion, I was assigned to resolve a fee dispute in *Solutia, Inc. v. McWane, Inc.* Pursuant to Canon 3(D) of the Code of Conduct for United States Judges, I advised the parties that I had prepared a motion in a related case many years ago, and my firm had represented one of the defendants years ago. I gave the parties the option of requesting my recusal. One of the parties exercised the option, and I recused.

More recently, I was assigned to serve as the Magistrate Judge to manage discovery in multi-district litigation (“MDL”) concerning Blue Cross & Blue Shield. When I reviewed the list of 170 attorneys in the case, I discovered that one of my former partners and a Lightfoot, Franklin associate were representing one of the defendants. I learned that Lightfoot, Franklin was retained to represent the defendant before I joined the bench. Consequently, I recused myself from the MDL.

The week that I was nominated, the clerk’s office inadvertently assigned to me a case in which members of my former firm represent the defendant. Based on the general two-year recusal rule in Advisory Committee Opinion 24, I recused from the case and asked the clerk’s office to reassign the matter.

**15. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held office in, or rendered services to, any political party or election committee. I have not held a position or played a role in a political campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

August – December, 1989  
Bradley, Arant, Rose, & White  
(now Bradley, Arant, Boult, Cummings, LLP)  
2001 Park Place, Suite 1400  
Birmingham, Alabama 35203  
Associate

1990 – 2012  
Lightfoot, Franklin, & White, LLC  
400 20th Street North  
Birmingham, Alabama 35203  
Partner (1997 – 2012)  
Associate (1990 – 1997)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I did not serve as a mediator or arbitrator when I was in private practice.

- b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I began practicing law in the fall of 1989 as an associate with Bradley, Arant, Rose, & White. At the time, Bradley, Arant was the largest law



firm in the state of Alabama. I worked with the litigation group and was assigned to a wide range of cases.

Approximately four months after I began working at Bradley, Arant, in January, 1990, eight partners left to start the Lightfoot, Franklin firm. They asked four associates to join them, including me.

My practice at Lightfoot, Franklin came full circle in the 22 years that I worked with the firm. When I started practicing in 1989, I handled general litigation, focusing primarily on commercial litigation. In the early 1990s, Alabama juries issued a series of significant multi-million punitive damages awards. The defendants in those cases hired Lightfoot, Franklin to help the trial lawyers prepare the post-trial due process record and to handle the appeals of the jury awards. I began to specialize in those cases, and I helped the firm develop its post-trial and appellate practice. On occasion, plaintiff firms would hire us to help them retain a large damages award. Although my practice focused on post-trial and appellate practice, I worked on a few cases as trial counsel.

In the last five years before I joined the bench, I returned to a more balanced practice. My work was split almost evenly between trial and appellate work. I handled cases of every variety from product liability wrongful death actions to business disputes to environmental class actions. I typically was responsible for the legal aspects of the case. I wrote and argued motions, and, at trial, I was responsible for record preservation, motion practice, and charge conferences. Our practice extended well beyond Alabama, and I typically was responsible for mastering the state law that applied to cases that we litigated. I often was a triage lawyer, coming into a case after it jumped off track either before or after trial. My task was to master the case quickly and to help move the case toward a favorable resolution.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As a young associate, I practiced general litigation, with an emphasis on business litigation. Representative commercial clients include Liberty National Life Insurance Company, Universal Underwriters Insurance Company, and Unocal.

Over time, I developed a specialty in post-trial and appellate practice, but in doing so, I became a jack of all trades with respect to substantive law. Representative clients for whom I handled post-trial and appellate matters include Avondale Mills; CNH America, LLC; General Motors Company; Ford Motor Company; A.O. Smith; Supervalu, Inc.; and Prudential Insurance Company.

In the last five years of my practice, I continued my appellate practice, and I used my appellate skills as a member of trial teams. With the exception of the pro bono matters that I handled, my clients typically were large businesses such as Ford Motor Company; Cingular Wireless, LLC; CNH America, LLC; E.I. DuPont de Nemours & Company; Chase Mortgage Company; and SunBelt Chlor Alkalai Partnership.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.
- i. Indicate the percentage of your practice in:
- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 50% |
| 2. state courts of record:  | 50% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |
- ii. Indicate the percentage of your practice in:
- |                          |      |
|--------------------------|------|
| 1. civil proceedings:    | 100% |
| 2. criminal proceedings: | 0%   |
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried four cases to verdict. I was chief counsel in two cases and associate counsel in two cases. Serving as associate counsel, I tried two other cases that settled during trial.

- i. What percentage of these trials were:
- |              |     |
|--------------|-----|
| 1. jury:     | 50% |
| 2. non-jury: | 50% |
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I prepared the petition for writ of certiorari in *Supervalu Inc. v. Discount Foods, Inc.*, 525 U.S. 825 (1998). The petition is available at 1998 WL 34112183. The petitioner's reply brief is available at 1998 WL 34111948.

I opposed a petition for writ of certiorari in *Huss v. Gayden*, 571 F.3d 442 (5th Cir. 2009), *cert. denied*, 130 S.Ct. 1892 (2010). The opposition brief is available at 2010 WL 599163.

I have not presented oral argument in the United States Supreme Court.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) *Downes v. Ford Motor Co.*, CV-2010-000472 (Circuit Court of Houston County, Alabama), the Hon. Henry D. "Butch" Binford presiding.

I was part of Ford's trial team in this wrongful death action from early 2012 until the fall of 2012. The Court applied Florida substantive law and Alabama procedural law. The decedent's son alleged that his father's compact pickup truck was defectively designed because it did not include a rollover canopy, a safety option that Ford developed and installed in various Ford models. After a two-week trial, the jury returned a verdict in favor of Ford in less than 18 minutes. The plaintiff did not request a new trial and did not appeal from the jury's verdict. I first appeared in *Downes* in May 2012, a few months before the case went to trial. I drafted and argued many pre-trial motions. I also argued trial motions and handled jury charges.

Co-Counsel:

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Counsel for Plaintiff:

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Beasley, Allen, Crow, Methvin, Portis, & Miles, P.C.  
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218 Commerce Street  
Montgomery, AL 36103  
(800) 898-2034

(2) *SunBelt Chlor Alkalai Partnership v. Oxy Vinyls, LP*, CV-07-101 (Circuit Court of Washington County, Alabama), the Hon. Gaines C. McCorquodale presiding.

After a two-week trial, on August 24, 2012, a Washington County, Alabama jury returned a \$70 million verdict against OxyVinyls, LP, a subsidiary of Occidental Chemical Corporation and Occidental Petroleum Corporation, in a breach of contract case brought by our client, SunBelt Chlor-Alkali Partnership, a subsidiary of Olin Corporation. The jury found that OxyVinyls breached a contract under which OxyVinyls is obligated to purchase 250,000 tons of chlorine from SunBelt annually. In addition to \$20 million in compensatory damages that the jury awarded SunBelt, the jury awarded \$50 million in punitive damages for OxyVinyls's intentional, malicious breach of the contract. The case was governed by Delaware substantive law and Alabama procedural law.

I began working on the SunBelt case in 2011. I drafted multiple motions for the case and developed the punitive damages theory of recovery under Delaware law. I was slated to try the case with attorneys from Lightfoot, Franklin and with local counsel, but I had to drop off of the trial team when the trial was rescheduled so that it overlapped with Magistrate Judge school in August, 2012. Judge McCorquodale denied OxyVinyls's post-trial motions.

Co-counsel:

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Counsel for Defendant:

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(3) *Ligon Capital, LLC et al. v. CNH*, CV-2009-900339 (Circuit Court of Jefferson County, Alabama), Hon. Joseph L. Boohaker, presiding.

I became involved in this case in January 2012 after a Jefferson County jury returned an \$11.4 million verdict against our client. The verdict included \$3.8 million in compensatory damages and \$7.6 million in punitive damages. The jury found in favor of CNH on Ligon's breach of contract claim but returned a verdict against CNH on one of Ligon's fraud theories. Together with attorneys from my firm and CNH's trial counsel, I helped CNH develop its post-trial arguments, draft its post-trial briefs, and develop its post-trial due process evidence. I participated in the two day post-trial evidentiary hearing, putting on expert testimony in support of CNH's constitutional challenge to the verdict for the court's consideration in its de novo review of the punitive damages judgment. I worked on this case from January 2012 until October 2012 when I joined the bench. The trial court denied the post-trial motions. CNH's appeal is pending before the Alabama Supreme Court.

Co-counsel:

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Christopher M. Scaperlanda  
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M. Christian King  
E. Glenn Waldrop, Jr.

J. Chandler Bailey, II  
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Counsel for Plaintiff:

Hon. Drayton Nabers, Jr.  
Michael D. Mulvaney  
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Birmingham, AL 35203  
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(4) *Maggette v. BL Development, Corp.*, No. 2:07-CV-181MA (N.D. Miss.), the Hon. Michael Mills presiding.

This case pertained to a bus accident in Arkansas in which a number of passengers died and a number were injured. Together with three of my partners, I became defense counsel in this negligence action in late 2010 after the district court, as a discovery sanction, held that the bus driver, as a matter of law, was an agent of the defendant Mississippi casinos, eliminating the defendants' strongest defense. I was heavily involved in pre-trial motion practice and was responsible for jury charges (which were governed by Arkansas and Mississippi law) and other legal aspects of the case. I drafted the motions that the court decided in *Maggette v. BL Development Corp.*, 2011 WL 2134578 (N.D. Miss. May 27, 2011).

Motion practice continued through trial. The district court divided the case into four phases – a liability phase and three damages phases. The jury returned a verdict for the defendants and against all of the plaintiffs at the close of the liability phase in June 2011.

Co-counsel:

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(5) *Huss v. Gayden*, 130 S. Ct. 1892 (2010), on appeal from the United States Court of Appeals for the Fifth Circuit, 571 F.3d 442 (2009).

The Fifth Circuit ordered a new trial in a medical malpractice action, finding that the district court erred in excluding the defendants' expert's opinions. When the plaintiffs sought relief from the United States Supreme Court, our firm was hired to oppose the writ petition. With assistance from an associate in our firm, in early 2010, I wrote the brief in opposition to the petition for writ of certiorari. The United States Supreme Court denied the petition.

Co-counsel:

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John H. Daniels, III  
Dyer, Dyer, Jones & Daniels  
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(6) *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106 (D.N.J. Aug. 26, 2011), the Hon. Renee M. Bumb presiding.

Together with three of my partners, I represented DuPont in this environmental class action in New Jersey. The plaintiffs resided near a plant that DuPont operated. They alleged that they were adversely affected by perfluorooctanoic acid in their drinking water which purportedly was emitted from DuPont's plant. Pursuant to Rule 23(b)(2), the district court certified two subclasses, one consisting of private well owners who requested injunctive relief for private nuisance and the other consisting of customers of the local water company who sought injunctive relief for public nuisance.

The case was steeped in expert evidence and required detailed briefing, much of which I handled after our firm became involved in the case in 2009 following class certification. The case settled in 2011 while DuPont's summary judgment and *Daubert* motions were pending. Together with one of my partners, I drafted many of the settlement documents. The court's opinion approving the class action settlement reflects a lot of my work in the case.

Co-counsel:

John M. Johnson  
Lana Alcorn Olson  
Kevin E. Clark  
Lightfoot, Franklin, & White, LLC  
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(205) 581-0700

Counsel for Plaintiffs:

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Robert A. Bilott  
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Cincinnati, OH 45202  
(513) 381-2838

(7) *Cotton v. Cingular Wireless, LLC*, No. 1:06-CV-01486-KOB (N.D. Ala.);  
*Wheeler v. Cingular Wireless, LLC*; No. 1:06-CV-02055-KOB (N.D. Ala.), the  
Hon. Karon O. Bowdre presiding.

In these parallel wrongful death and personal injury actions, my partners and I represented Cingular Wireless. We became involved in the lawsuit toward the end of discovery. I prepared motions for summary judgment, multiple motions in limine, proposed jury charges, and a variety of other filings. I also prepared the case for trial. Ultimately, we settled the *Cotton* wrongful death claim, and we won summary judgment on the *Wheeler* personal injury premises liability claim on the eve of trial. Plaintiff appealed the second case, but it was settled while the appeal was pending. We also prevailed on Cingular's indemnity demand against a contractor for the wrongful death settlement without litigation.

Co-counsel:

Jere F. White, Jr. (deceased 2011)  
Enrique J. Gimenez  
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(205) 581-0700

Counsel for Plaintiffs:

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Opelika, AL 36803  
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(8) *Roebuck v. CNH*, AL CV-05-200273, 41 So. 3d 41 (Cir. Ct. Ala. 2009), the Hon. Allen T. Jolley presiding.

After counsel for CNH won a defense verdict, the trial judge ordered a new trial based on purported juror misconduct. I joined the case in the summer of 2008 and developed CNH's post-trial strategy. I renewed CNH's motion for judgment as a matter of law. After the trial court denied that motion, we appealed from the new trial order and from the order denying CNH's motion for judgment as a matter of law. In October 2009, the Alabama Supreme Court held that CNH was entitled to judgment as a matter of law and rendered judgment for CNH.

Co-counsel:

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Counsel for Plaintiff:

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(9) *Sullivan v. Avondale Mills*, CV-93-1762 (Circuit Court of Jefferson County, Alabama), *rev'd*, *Russell Corp. v. Sullivan*, 790 So. 2d 940 (Ala. 2001), the Hon. J. Scott Vowell presiding.

We were hired to assist Avondale Mills after a jury returned a verdict against Avondale Mills and its two co-defendants for \$155,000 in compensatory damages and \$52 million in punitive damages on nuisance and trespass claims. On appeal, the Alabama Supreme Court reversed and rendered judgment for the defendants. Over the course of approximately one year, I wrote Avondale Mills's post-trial and appellate briefs, and, together with Warren Lightfoot, I developed our client's post-trial evidence.

Co-counsel:

Warren B. Lightfoot  
Lightfoot, Franklin, & White, LLC  
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(205) 581-0700

Counsel for Plaintiffs:

M. Clay Ragsdale, IV  
The Law Office of M. Clay Ragsdale, IV  
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(205) 251-4775

(10) *In the matter of ZCE & NLE*, minors, No. DR06-177 (Circuit Court of St. Clair County, AL, Ashville Division), the Hon. Alan Furr, presiding.

I filed a motion to enforce a divorce settlement so that my pro bono client could resume contact with her two young sons. Over the course of a bench proceeding involving a number of witnesses, a Lightfoot associate and I proved that our client's ex-husband violated several of the terms of the divorce settlement. The trial court enforced the visitation provisions of the settlement agreement and ordered our client's ex-husband to pay money that he still owed under the terms of the agreement. I represented this pro bono client from approximately July, 2010 until I joined the bench in October, 2012. Additional details regarding this case appear below in my discussion of my pro bono work.

Co-counsel:

Audrey Brown  
Lightfoot, Franklin, & White, LLC

400 20th Street North  
Birmingham, AL 35203  
(205) 581-0700

Defendant:

The defendant was pro se.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Like other litigators, many of the cases that I have handled over the years have settled on the eve of trial. The year before I became a Magistrate Judge, I was involved in a significant case that was pending in federal court in Mississippi. The plaintiff's expert in that case opined that the conduct of the defendant hospital management company had caused the plaintiff to incur approximately \$100 million in damages. The parties litigated the case until the eve of trial and achieved a successful settlement shortly after I joined the bench. I participated in one of the court-ordered mediations in the case before I became a judge. I also have won many cases for clients on motions to dismiss and motions for summary judgment. Perhaps the most noteworthy clients for whom I won a motion to dismiss were a number of the justices of the Alabama Supreme Court. Years ago, disgruntled litigants sued the justices in federal district court. As an associate, I worked with a partner to successfully pursue a motion to dismiss on the justices' behalf.

I handled a variety of pro bono matters for indigent and homeless clients. Many of these cases involved family law issues. Through my representation of a number of women in shelters and treatment centers in Birmingham, I learned that many of the women living in those institutions have experienced domestic violence. Through the work that I did with Voices Against Violence, I learned about the tools that the legal system uses to address domestic violence and the ways in which law enforcement efforts can be coordinated to better equip law enforcement to respond to the needs of the victims of domestic violence. As a leader of the Voices Against Violence Campaign, I helped raise significant funding from the legal community. Voices Against Violence used those funds to purchase computers for the courts, cameras for law enforcement, and other tools to address domestic violence cases.

I have served on the Board of Directors for the Women's Section of the Birmingham Bar Association since 2011 and have been a member of the section for approximately five years. The Women's Section will celebrate its twentieth anniversary next year. The Board selects civic programs in which the Women's Section participates, develops networking and continuing education programs for the section's members and for women

in Alabama's law schools, and develops networking tools for women in the bar, a valuable asset for solo practitioners in particular. As a member of the Board, I have attended monthly Board meetings and participated in all of these activities. I also have attended many of the section's programs and volunteered as a mentor for women in Alabama's law schools. I have participated in a variety of the section's civic activities such as preparing breakfast for the YWCA's Santa's Workshop program for homeless families.

I have never performed lobbying or registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

From 1998 to 2005, I taught Appellate Law at Cumberland School of Law as an adjunct professor. The course offered a comprehensive study of appellate practice and strategy. It included brief writing and oral argument exercises. I have not been able to locate a syllabus from this class.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no such arrangements.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If confirmed, I do not currently have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am not aware of any potential conflicts of interest. If confirmed, I would maintain my current recusal list and would carefully review cases and parties for actual or potential conflicts of interest. I would adhere to the Code of Conduct for United States Judges and the relevant advisory opinions and statutory provisions.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed as a District Judge, I will continue to apply all relevant authority including the Code of Conduct for United States Judges and relevant statutory provisions to avoid all actual or potential conflicts and to avoid the appearance of impropriety.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have handled pro bono matters through the Homeless Experience Legal Protection program and the Birmingham Volunteer Lawyer Program (BVLP). I helped a number of residents of a women's shelter and a resident of an in-house drug treatment facility with a variety of legal matters. I represented clients in family law matters through BVLP.

The most significant pro bono matter in my career spanned two years. It was one of the most poignant and challenging cases that I handled in private practice. My client, L.A.E., was a resident of the First Light Shelter in Birmingham, Alabama. She asked me to help her get custody of her two sons. While I was representing L.A.E., she was diagnosed with Huntington's Disease, a fatal illness that causes muscle deterioration, personality changes, and difficulties with balance and memory. The diagnosis made providing a stable environment in which L.A.E. could have regular visits with her sons more pressing. After overcoming many obstacles, we filed a motion to enforce L.A.E.'s divorce settlement. The court ultimately found L.A.E.'s husband in contempt, ordered him to comply with the visitation provisions in the divorce decree, and ordered him to

pay L.A.E. money that he should have remitted years before under the terms of the divorce decree.

As a judge, I have continued my work with elementary school students. I visit Cornerstone Schools of Alabama every week to read to kindergarten and first grade classes. Cornerstone was founded in an effort to break the cycle of poverty: Cornerstone is a private school that is funded by community donations with parents generally paying only 8% of the cost of tuition. The median family income for Cornerstone students is \$17,800.

I also routinely judge practice rounds for the trial and moot court teams at Cumberland Law School.

**26. Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In February 2013, I was invited to meet with Representative Terri Sewell, who was screening potential candidates for the vacancy in the Northern District of Alabama. Also that month, Senator Jeff Sessions called to let me know that he had submitted my name to the White House as a candidate for the district court bench. Since February 21, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 29, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 9, 2013, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, Madeline Hughes Haikala, do  
swear that the information provided in this statement is, to the  
best of my knowledge, true and accurate.

May 10, 2013  
(DATE)

Madeline H. Haikala  
(NAME)

Amy Ford Hersey  
(NOTARY)

