

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Abdul Karim Kallon

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

United States Circuit Judge for the Eleventh Circuit

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 Courthouse for the Northern District of Alabama
1729 Fifth Avenue North
Birmingham, Alabama 35203

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

1969; Freetown, Sierra Leone

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.

1990 – 1993, University of Pennsylvania Law School; J.D., 1993

1986 – 1990, Dartmouth College; A.B., 1990

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.

2010 – present

United States District Court for the Northern District of Alabama
1729 Fifth Avenue North
Birmingham, Alabama 35203
United States District Judge

1994 – 2010
Bradley Arant Boult Cummings
1819 Fifth Avenue North
Birmingham, Alabama 35203
Partner (2001 – 2010)
Associate (1994 – 2000)

1993 – 1994
The Honorable U.W. Clemon, United States District Judge (Retired)
United States District Court for the Northern District of Alabama
1729 Fifth Avenue North
Birmingham, Alabama 35203
Law Clerk

1991 – 1993
W.E.B. DuBois College House
University of Pennsylvania
3900 Walnut Street
Philadelphia, Pennsylvania 19104
Graduate Fellow

Summer 1992
Thompson & Knight
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Summer Associate

Summer 1991
Squire Sanders & Dempsey
127 Public Square
4900 Key Tower
Cleveland, Ohio 44114
Summer Associate

Other Affiliations (uncompensated):

2015 – present
Alabama Law Foundation
415 Dexter Avenue
Montgomery, Alabama 36104
Board of Trustees

2012 – present
Beta Kappa Boulé Charitable Foundation
No Physical Address
Chair

2011 – present
District Judges Association of the Eleventh Circuit
No Physical Address
Secretary & Treasurer (2011 – 2013)
Vice President (2013 – present)

2007 – 2010, 2014 – present
Bethel Baptist Church Historical Renovation
3200 Twenty Eighth Avenue North
Birmingham, Alabama 35207
Board Member

2004 – present
Children's Village Board of Directors
2001 Eighteenth Street SW
Birmingham, Alabama 35211
Board of Directors (2004 – present)
President (2008 – 2010)
Vice President (2007 – 2008)

2007 – 2012
Birmingham Sister Cities Commission
Mayor's Office
Third Floor, Economic Development
710 North 20th Street
Birmingham, Alabama 35203
Chair (2010 – 2011)
Vice Chair (2007 – 2010)

2007 – 2012
Alabama Center for Law and Civic Education
800 Lakeshore Drive
Birmingham, Alabama 35229
Board Member

2007 – 2009
Girl's Inc. of Central Alabama
5201 Eighth Avenue
Birmingham, Alabama 35224
Board Member

2006 – 2008
Legal Aid Society of Birmingham Board of Directors
310 Richard Arrington Jr. Boulevard North
Birmingham, Alabama 35203

President (2008)
Board Member (2006 – 2008)

2003 – 2007
Big Brothers Big Sisters of Greater Birmingham
1901 Fourteenth Avenue South
Birmingham, Alabama 35205
Board Member

2002 – 2006
The Magic City Bar Association
No Physical Address
Board of Advisers (2003 – 2006)
President (2002)

Approximately 1999 – 2002
Alabama Lawyers Association
No Physical Address
Parliamentarian (Approximately 2001 – 2003)
Northern District Representative (Approximately 1999 – 2001)

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 never served in the military. I registered with the selective service when I turned 18 in 1987.

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.

Forty Fifth Street Baptist Church Profiles in Living History Award (2016)

Green White and Blue Commission Lifetime Achievement Award (2011)

Martindale AV Rating (2004 – 2010)

Listed in *Best Lawyers in America* – Labor and Employment (2007 – 2009)

Listed in *Chambers USA America's Leading Lawyers for Businesses* – Labor and Employment (2006 – 2009)

University of Pennsylvania Journal of International Business Law, Articles Editor (1991 – 1993)

Dartmouth College – Gary Love Prize for highest grade point average in African and Afro-American Studies (1990)

Dartmouth College – Casque and Gauntlet Senior Society (1989 – 1990)

Dartmouth College – Palaeopitus Senior Society (1989 – 1990)

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 State Bar Association

Unauthorized Practice of Law Committee (2003 – 2005)

Allied Professionals Task Force (2007 – 2009; co-chair)

Mentoring Program (2008 – 2009)

Alabama Law Foundation

Board of Trustees (2015 – present)

Fellow (Class of 2015)

Alabama Lawyers Association

Parliamentarian (approximately 2001 – 2003)

Northern District Representative (approximately 1999 – 2001)

American Bar Association

American Law Institute

Bankruptcy Court Committee for the Northern District of Alabama

Birmingham Bar Association

Diversity Task Force (2007)

Grievance Committee (2008 – 2009)

Committee on the Re-Appointment of United States Magistrate Judge Michael Putnam, Northern District of Alabama (2002)

Court Reporters Committee for the Northern District of Alabama

District Judges Association of the Eleventh Circuit

Secretary & Treasurer (2011 – 2013)

Vice President (2013 – present)

Just The Beginning Foundation

Magic City Bar Association
President (2002)
Board of Advisers (2003 – 2006)

National Bar Association

Eleventh Circuit Judicial Council Committee on Pattern Jury Instructions

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.

Pennsylvania, 1994

Alabama, 1995

I took inactive status in Pennsylvania in July 1996 when I decided to stay in Alabama. My active membership in Alabama never lapsed during my years as a practicing attorney. When I became a judge in 2010, I became exempt from the licensing requirement by virtue of my position. At that time, I became eligible for special membership. I became a dues-paying special member in 2014.

- 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.

United States Court of Appeals for the Eleventh Circuit, 1995
United States District Court for the Middle District of Alabama, 1995
United States District Court for the Northern District of Alabama, 1995
United States District Court for the Southern District of Alabama, 2007
Supreme Court of Alabama, 1995
Supreme Court of Pennsylvania, 1994

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 Center for Law and Civic Education Board of Directors (2007 – 2012)

Alpha Phi Alpha Fraternity, Theta Zeta Chapter, Dartmouth College (1987 – 1990, inactive 1990 – present)

Bethel Baptist Historical Renovation Board of Directors (2007 – 2010, 2014 – present)

Big Brothers Big Sisters of Greater Birmingham (2000 – 2007)
Young Advisory Board (2000 – 2003)
Board of Directors (2003 – 2007)

Birmingham Sister Cities Commission (2000 – 2012)
Chair (2010 – 2011)
Vice Chair (2007 – 2010)

Children's Village Board of Directors (2004 – present)
President (2008 – 2010)
Vice President (2007 – 2008)

Ethics, Legal, and Social Issues Sub-Committee Member of the Project Among African Americans to Explore Risks for Schizophrenia (approximately 2003 – 2006)

Girls Inc. of Central Alabama Board of Directors (2007 – 2009)

Legal Aid Society of Birmingham Board of Directors (2006 – 2008)
President (2008)
Vice President (2007)

Sigma Pi Phi Fraternity (2010 – present)
Chair, Beta Kappa Boulé Charitable Foundation (2012 – present)

- 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.

I am a member of Sigma Pi Phi Fraternity and, as of 1990, an inactive member of Alpha Phi Alpha Fraternity, both of which are social fraternities that restrict their membership to men (although their community programs are open to all and, in the case of Sigma Pi Phi, spouses are also granted an auxiliary membership). I

have not taken any action to change this practice in either organization. To my knowledge, none of the other organizations 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.

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.

I wrote an article in 1995 or 1996 for the Birmingham Bar Association Magazine on The Uniformed Services Employment and Reemployment Rights Act. 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.

As a member of the Birmingham Bar Association's Grievance Committee, I prepared reports for the grievances assigned to me and presented them to the Committee and, at times, to the Executive Committee of the Birmingham Bar. The reports generally contained the allegations of misconduct, my findings, and my recommendations to the Committee. Due to the confidential nature of our work, we were precluded from retaining any of the materials. As a result, I do not have any of the reports I drafted.

I believe I also investigated some allegations of unauthorized practice of law during my service on the Alabama State Bar's Unauthorized Practice of Law Committee. However, I do not recall any specifics and do not have any of the materials I may have drafted.

Finally, as the co-chair of the Task Force on Allied Professions for the Alabama State Bar, I was part of a group of lawyers that made a presentation to the Bar Commissioners in 2007 regarding a recommendation that the State Bar establish a credentials program for paralegals. I do not have a copy of the report we presented. Meeting minutes 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.

On November 4, 2009, I testified at the Senate Judiciary Committee hearing regarding my nomination to serve as a United States district judge. I also answered Questions for the Record presented to me by United States Senator Sessions. A video recording of my remarks is available at <http://www.senate.gov/isvp/?comm=judiciary&type=live&filename=judiciary110409&st=xxx> and a copy of my responses to the written questions is supplied.

In 2003, I was one of seven Technical Advisors for Governor Robert Riley's Commission on Education Spending. The actual Commission had 34 members. As a Technical Advisor, I was assigned to provide support and advice to the subcommittee on Education Trust Fund Accountability and Education-Related Spending, which was tasked with looking at how the state allocated and spent education trust fund dollars. At the end of the project, the entire Commission issued a report to the Governor. Since my name was included in the report as one of the Technical Advisors, I am supplying a copy of the report.

- 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.

The list that follows represents my best efforts, through searches of my records, calendars, and Internet databases, to identify speeches and remarks that I have given. There may be other speeches or remarks that I have been unable to recall or identify.

As a judge, I have participated in the following programs:

February 21, 2016: Speaker, Recipient of the Profile in Living History Award for Invaluable Contributions towards Civil Rights in Birmingham, Forty Fifth Street Baptist Church, Birmingham, Alabama. I thanked the church for their award, for paving the way for my generation through their involvement in civil rights, and discussed how each of us can use our faith and actions to shine a light on the darkness plaguing our community. I have no notes, transcripts or recording. The address of the Forty Fifth Street Baptist Church is 7600 Division Avenue, Birmingham, Alabama 35206.

February 12, 2016: Speaker, Seminar on Professionally Interacting with Alabama's Courts, Magic City Bar Association Judicial Council, Bessemer

Justice Center, Bessemer, Alabama. Along with other judges, I offered practical advice to a group comprised primarily of younger lawyers on appropriate ethical and professional behavior, ranging from professional attire, the need to respect the court and opposing counsel, and the importance of providing accurate factual and legal citations to the court. I have no notes, transcript, or recording. The address of the Bessemer Justice Center is 1851 Second Avenue North, Suite 350, Bessemer, Alabama 35020.

December 8, 2015: Speaker, "Technology in the Workplace/Bring Your Own Device (BYOD): Where Does That Leave Us," 22nd Annual Employment Law Update, Cumberland School of Law, Birmingham, Alabama. Handout supplied.

November 11, 2015: Speaker, 2015 Hall of Fame Class Inductions, Alabama Lawyers Association, Montgomery, Alabama. Notes supplied.

October 22, 2015: Panelist, Federal Bar Association of the Middle District of Alabama, Montgomery, Alabama. I participated in a session dealing with the practices of visiting judges in which we relayed to the lawyers our general expectations and practices. I have no notes, transcript, or recording. The address of the Federal Bar Association is c/o Jerusha Adams (President), United States Attorney's Office, 131 Clayton Street, Montgomery, Alabama 36104.

September 3, 2015: Speaker, Orientation for Law Clerks of the Northern District of Alabama, Birmingham, Alabama. I used the same notes that were provided for the October 7, 2011 presentation.

July 16, 2015: Panelist, "Overview of Developments in Commercial and Business Litigation Jurisprudence," Annual Meeting, Alabama State Bar, Point Clear, Alabama. I spoke primarily on the Eleventh Circuit's decision in *Lisk v. Lumber One Wood Preserving*, 792 F.3d 1293 (11th Cir. 2015). I have no notes, transcript, or recording. The address of the Alabama State Bar is 425 Dexter Avenue, Montgomery, Alabama 36104.

May 19, 2015: Speaker, Naturalization Ceremony, United States Courthouse, Birmingham, Alabama. I used the same notes that were provided for the May 24, 2011 presentation.

March 25, 2015: Judge, Moot Court Competition, University of Alabama School of Law, Tuscaloosa, Alabama. I was one of three judges for the final round of the moot court competition. I have no notes, transcript, or recording. The address of the University of Alabama School of Law is 101 Paul W. Bryant Drive, Tuscaloosa, Alabama 35401.

February 14, 2015: Panelist, Bench and Bar Retreat, Birmingham Bar Association, Montgomery, Alabama. I participated in a session dealing with generational issues in the workplace. I have no notes, transcript, or recording.

The address of the Birmingham Bar Association is 2021 Second Avenue North, Birmingham, Alabama 35203.

December 16, 2014: Speaker, "Observations from the Bench," Employment Law Seminar, CLE Alabama, Birmingham, Alabama. Outline supplied.

September 4, 2014: Speaker, Orientation for Law Clerks of the Northern District of Alabama, Birmingham, Alabama. I used the same notes that were provided for the October 7, 2011 presentation.

March 20, 2014: Judge, Mock *Katzenback v. McClung* Oral Argument, Birmingham Bar Foundation and Cumberland School of Law, Birmingham, Alabama. I was one of four mock justices in the recreation of the oral argument as part of the Birmingham Bar Foundation's celebration of the 50th anniversary of the Civil Rights of 1964, "It Began in Birmingham." I have no notes, transcript, or recording. The address of the Birmingham Bar Foundation is 2021 Second Avenue North, Birmingham, Alabama 35203.

March 7, 2014: Panelist, Bench and Bar Retreat, Birmingham Bar Association, Prattville, Alabama. I participated in a session dealing with generational issues in the workplace. I have no notes, transcript, or recording, but press coverage is supplied on pages 28 and 30 at http://www.bhambarbulletin.com/fall_2014/index.html. The address of the Birmingham Bar Association is 2021 Second Avenue North, Birmingham, Alabama 35203.

November 14, 2013: Speaker, Naturalization Ceremony, United States Courthouse, Birmingham, Alabama. I used the same notes that were provided for the May 24, 2011 presentation.

October 10, 2013: Speaker, Children's Village Luncheon, Birmingham, Alabama. I gave the closing remarks about the importance of supporting children in foster care and thanking the attendees on behalf of the board president, who could not attend. I have no notes, transcript, or recording. The address of Children's Village is c/o Sharon Bolden, Executive Director, 2001 Eighteen Street SW, Birmingham, Alabama 35211.

September 20, 2013: Speaker, Orientation for Law Clerks of the Northern District of Alabama, Birmingham, Alabama. I used the same notes that were provided for the October 7, 2011 presentation.

June 27, 2013: Panelist, "A View from the Bench: Persuasive Advocacy," The Summit for Workers' Rights, National Employment Lawyers Association, Denver, Colorado. Notes supplied.

May 17, 2013: Speaker, "Basic Suggestions for Effective Legal Writing," Annual

Meeting, Young Lawyers Section of Alabama State Bar, Destin, Florida. Notes and PowerPoint supplied.

May 1, 2013: Panelist, Law Day Luncheon – “50 Years Later, Diversity in the Birmingham Bar, Then, Now, and the Future,” Birmingham Bar Association, Birmingham, Alabama. I was on a panel with Judge U.W. Clemon (retired), Presiding Circuit Judge of Jefferson County Houston L. Brown (retired), Jefferson County Circuit Judge Caryl Privett (retired), and Birmingham Bar President Robin Burrell and spoke about the changes I have witnessed in the diversity of the profession in Birmingham since I started practicing law in 1994. I have no notes, transcript, or recording. The address of the Birmingham Bar Association is 2021 Second Avenue North, Birmingham, Alabama 35203.

March 1, 2013: Panelist, Bench and Bar Retreat, Birmingham Bar Association, Prattville, Alabama. I participated in the federal courts question and answer session with some of my judicial colleagues. I have no notes, transcript, or recording. The address of the Birmingham Bar Association is 2021 Second Avenue North, Birmingham, Alabama 35203.

February 26, 2013: Speaker, Division of Youth Services’ Bridging the Gap – Conversations with Living History Program, City of Birmingham, Birmingham, Alabama. Notes supplied.

February 12, 2013: Panelist, Dade County Bar Association Young Lawyers Section, Miami, Florida. I was visiting Judge Donald Graham and joined him and some of the judges on the Southern District of Florida and the Eleventh Circuit for lunch with the Young Lawyers Section. I talked to the lawyers about the practice of law and answered their questions. I have no notes, transcript, or recording. The address of the Dade County Bar Association Young Lawyers Section is 123 NW First Avenue, Suite 214, Miami, Florida 33128.

February 12, 2013: Speaker, “Diversity Committee Business Meeting and Presentation,” Mid-Year Meeting, International Association of Defense Counsel, Boca Raton, Florida. Notes supplied.

February 6, 2013: Speaker, Huntsville Bar Association, Huntsville, Alabama. Notes supplied.

September 14, 2012: Speaker, Orientation for Law Clerks of the Northern District of Alabama, Birmingham, Alabama. I used the same notes that were provided for the October 7, 2011 presentation.

September 11, 2012: Panelist, Future Leaders Forum, Birmingham Bar Association, Birmingham, Alabama. I spoke to the 2012 class about the legal practice. I have no notes, transcript, or recording. The address of the Birmingham Bar Association is 2021 Second Avenue North, Birmingham, Alabama 35203.

May 20, 2012: Speaker, Birmingham Division's 2012 Conference on Law Enforcement and Civil Rights: Civil Rights for Everyone, Federal Bureau of Investigation, Birmingham, Alabama. Notes supplied.

April/March 2012: Speaker, Legal Awareness Workshop with Restoration Academy, Birmingham Bar Association, Birmingham, Alabama. I met with students from Restoration Academy when they toured the courthouse, spoke to them briefly about my life and how I became a judge, and answered their questions. I believe I also met with students from the school on at least two other occasions when they visited in the courthouse over the last three to four years, but do not recall the dates. I have no notes, transcripts, or recordings. The address of the Birmingham Bar Association is 2021 Second Avenue North, Birmingham, Alabama 35203.

March 9, 2012: Panelist, Federal Practice Section Program on Effective Legal Writing, Bench and Bar Retreat, Birmingham Bar Association, Tuscaloosa, Alabama. Notes supplied.

October 19, 2011: Speaker, "A New Judge's Perspective on the First Year of the Job," Phase I Orientation Seminar for Newly Appointed District Judges, Federal Judicial Center, Richmond, Virginia. Notes supplied.

October 7, 2011: Speaker, Orientation for Law Clerks of the Northern District of Alabama, Birmingham, Alabama. Notes supplied.

October 4, 2011: Speaker, Angel Award Presentation to Past President of the Board of Directors Denis Devane, Children's Village, Birmingham, Alabama. Notes supplied.

September 13, 2011: Speaker, Presentation on Section 1983, Magic City Bar Association Judicial Council, Bessemer, Alabama. I used a PowerPoint presentation prepared by my colleague Judge R. David Proctor. Notes supplied.

July 15, 2011: Panelist, "Hot Topics in Commercial Litigation," Annual Meeting, Alabama State Bar, Point Clear, Alabama. I was on a panel with two or three judges and, as best as I recall, I spoke on recent U.S. Supreme Court cases. I have no notes, transcript, or recording. The address of the Alabama State Bar is 425 Dexter Avenue, Montgomery, Alabama 36104.

May 24, 2011: Speaker, Naturalization Ceremony, United States Courthouse, Birmingham, Alabama. I presided over the proceedings and used remarks I received from judicial colleagues. Outline supplied.

May 5, 2011: Speaker, Law Day Program on John Adams, Birmingham Bar Association, Birmingham, Alabama. Notes supplied.

April 9, 2011: Speaker, Receipt of Lifetime Achievement Award, Green White and Blue Commission, Washington, District of Columbia. I thanked the group for selecting me for the award. I have no notes, transcript, or recording. The address of the Green White and Blue Commission is 4519 Crandall Court, Lanham, Maryland 20706.

April 5, 2011: Participant, Video Remarks for the Investiture of Birmingham Municipal Judge Nya Parsons Hudson, Birmingham, Alabama. I gave brief congratulatory remarks since I could not attend the investiture. I have no notes, transcript, or recording. The address of the Municipal Court of Birmingham is 801 17th Street North, Birmingham, Alabama 35203.

March 31, 2011: Participant, Investiture of Bessemer Municipal Judge Lynneice Powell, Bessemer, Alabama. I gave brief congratulatory remarks and administered the oath of office. I have no notes, transcript, or recording. The address of the Municipal Court of Bessemer is 23 15th Street North, Bessemer, Alabama 35020.

March 10 – 11, 2011: Judge, 16th Annual National Moot Court Competition, Hispanic National Bar Association, New Orleans, Louisiana. I was one of the judges for the early rounds of the competition. I have no notes, transcript, or recording. The address of the Hispanic National Bar Association is 1020 19th Street NW, Suite 505, Washington, District of Columbia 20036.

March 4, 2011: Panelist, Bench and Bar Retreat, Birmingham Bar Association, Prattville, Alabama. I participated in a general question and answer session on the federal courts with some of my judicial colleagues. I have no notes, transcript, or recording. The address of the Birmingham Bar Association is 2021 Second Avenue North, Birmingham, Alabama 35203.

February 11, 2011: Speaker, Seminar Luncheon, National Employment Lawyers Association, Birmingham, Alabama. Notes supplied.

December 3, 2010: Speaker, “A View From the Bench,” Employment Law Continuing Legal Education Program, Cumberland School of Law at Samford University, Birmingham, Alabama. I have no notes, transcript, or recording. The address of Cumberland School of Law at Samford University is 800 Lakeshore Drive, Birmingham, Alabama 35229.

October 12, 2010: Panelist, Future Leaders Forum, Birmingham Bar Association, Birmingham, Alabama. I spoke to the 2010 class about the legal practice. I have no notes, transcript, or recording. The address of the Birmingham Bar Association is 2021 Second Avenue North, Birmingham, Alabama 35203.

October 8, 2010: Speaker, Labor & Employment Section Annual Meeting,

Alabama State Bar, Destin, Florida. PowerPoint supplied.

April 29, 2010: Speaker, Black History Month Program, United States Attorney's Office for the Northern District of Alabama, Birmingham, Alabama. Notes supplied.

April 22, 2010: Speaker, "Judicial Process and Procedures" Class, Miles College, Birmingham, Alabama. The students and their professor, Jerome Green, visited my courtroom, and I shared my background and general thoughts about the practice of law. I have no notes, transcript, or recording. The address of Miles College is 5500 Myron Massey Boulevard, Fairfield, Alabama 35064.

February 26, 2010: Speaker, The Birmingham Pledge Foundation Program, Birmingham, Alabama. I no longer remember the specifics of my talk. However, given that the Birmingham Pledge Foundation aims to eliminate racial prejudice, I suspect my talk may have been on racial tolerance. I have no notes, transcript, or recording. The address of The Birmingham Pledge Foundation is 2829 Second Avenue South, Birmingham, Alabama 35233.

February 14, 2010: Speaker, Black History Month Celebration, First Missionary Baptist Church, Munford, Alabama. Notes supplied.

January 29, 2010: Speaker, Formal Investiture as a United States District Judge, United States Courthouse for the Northern District of Alabama, Birmingham, Alabama. Transcript supplied.

As a lawyer, I participated in the following programs:

October 2, 2009: Speaker, Children's Village Luncheon, Birmingham, Alabama. I gave welcome and thank you remarks as president of the organization. I have no notes, transcript, or recording. The address of Children's Village is c/o Sharon Bolden, Executive Director, 2001 Eighteen Street SW, Birmingham, Alabama 35211.

December 5, 2008: Speaker, Recent Developments in Labor and Employment, Magic City Bar Association, Birmingham, Alabama. Handout supplied.

October 2007: Speaker, "The Changing Landscape: Electronic Discovery and Technology Issues in the Workplace," Honda Manufacturing of Alabama Supplier Meeting, Canton, Georgia. Handout supplied.

June 15, 2007: Panelist, "Prostate Cancer Screening and Treatment: Ethical, Legal and Social Implications," Alabama Comprehensive Cancer Control Coalition's Prostate Cancer Call to Action Summit 2007, University of Alabama School of Medicine, Division of Continuing Medical Education, Birmingham, Alabama. I have no notes, transcript, or recording. The address of the University of Alabama

School of Medicine, Division of Continuing Medical Education is Volker Hall, Box 603, 1530 Third Avenue South, Birmingham, Alabama 35294.

March 8, 2007: Speaker, Annual Labor and Employment Law Seminar, Bradley Arant, Birmingham, Alabama. I do not remember the exact topic; however, as I recall, the labor and Employment Practice Group held the seminars annually and the members of the group rotated on presenting on recent developments in the law, and also provided advice on best practices, and I spoke at several of these seminars during my tenure at the firm. I have no notes, transcripts, or recordings. The address of Bradley Arant is One Federal Place, 1819 Fifth Avenue North, Birmingham, Alabama 35203.

2001 and April 10, 2003: Panelist, "About Labor Employment and Law," Outreach Program to Law Students at the University of Alabama and Cumberland Law School, Labor and Employment Section of the Birmingham Chapter of the American Bar Association, Birmingham and Tuscaloosa, Alabama. I spoke about practicing employment law from a management perspective. I have no notes, transcripts, or recordings. The address of the Birmingham Chapter of the American Bar Association is c/o Heather Leonard, P.O. Box 43768, Birmingham, Alabama 35243.

March 20, 2003: Speaker, Birmingham Chapter of the National Association of African Americans in Human Resources (NAAAHR), Birmingham, Alabama. I gave a presentation on recent developments in employment law. I have no notes, transcript, or recording. The address of the Birmingham Chapter of NAAAHR is P.O. Box 12851, Birmingham, Alabama 35202.

October 2001: Speaker, "Dealing With Problem Employees," Lorman Education Services, Birmingham, Alabama. Handout supplied.

July 2001: Speaker, "Recent Significant Developments in the Law of Harassment in the Eleventh Circuit," Annual Meeting, Alabama State Bar, Destin, Florida. Handout supplied.

April 2000: Speaker, "Maintenance of Personnel Records and Other Documentation," Council on Education in Management, Birmingham, Alabama. Handout supplied.

1999: Speaker, Recent Developments in Employment Law Seminar. I do not remember the sponsoring organization, and believe the seminar was in Birmingham, Alabama. Handout supplied.

Approximately late 1990s: Guest Lecturer, University of Alabama – Birmingham, Birmingham, Alabama. As I recall, I spoke as a guest lecturer on two occasions, once in a legal studies class regarding my legal practice and once in a history class on African Civilizations regarding ancient Egypt. I have no notes,

transcripts, or recordings. The address for the University of Alabama – Birmingham is 1720 Second Avenue South, Birmingham, Alabama 35294.

- 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.

Mike Oliver, *Federal Judge Removes Self from Health Care Fraud Case Where He Did Business with Company Now Under Investigation*, Birmingham News, November 6, 2014. Copy supplied.

Robert Gordon, *Birmingham's Abdul Kallon Takes Oath of Office as Federal Judge*, The Birmingham News, January 7, 2010. Copy supplied.

Mary Orndorff, *Senate Confirms Kallon for Federal Bench in Birmingham*, Birmingham News, November 24, 2009. Copy supplied.

Update Reader Abdul Kallon Nominated to Federal Bench, Birmingham Jewish Federation, August 7, 2009. Copy supplied.

“Know Your Rights” Law Day Program Radio Interview, Magic City Bar Association, April 2002. I was president of the Magic City Bar Association that year and in the interview I talked about the organization, our mission, and the upcoming program. I have no notes, transcript, or recording.

Paul Zielbauer, *Racial Profiling Tops N.A.A.C.P. Agenda*, New York Times, July 11, 1999. Copy supplied.

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.

I have served as a United States District Judge for the Northern District of Alabama from January 7, 2010, to the present. I was nominated by President Barack Obama on July 31, 2009, and confirmed by the United States Senate on November 21, 2009. The United States District Court is the trial court within the federal court system that hears nearly all categories of civil and criminal matters over which there is federal subject-matter jurisdiction.

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

I have presided over 59 cases that have gone to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials:	88%
bench trials:	12%
civil proceedings:	59%
criminal proceedings:	41%

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

Please see attached list of opinions, which lists the opinions in reverse chronological order.

- 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. *Long Lewis Sterling W. Star of Bessemer, et al., v. Sterling Truck Corp., et al.*, No. 2:09-cv-0233-AKK, 2011 U.S. Dist. LEXIS 48897 (N.D. Ala. Mar. 31, 2011)

Long Lewis alleged, in part, that Daimler Chrysler violated a sales and service agreement when it decided to discontinue a product line in 2008. Long Lewis also alleged that Daimler Chrysler renegotiated the agreement in bad faith by, among other things, forcing it to purchase 2008 models in exchange for each higher demand 2007 model Long Lewis wanted and by failing to disclose that it was considering shutting down production of the entire product line. After a hearing, I granted summary judgment in favor of Daimler Chrysler, and the Eleventh Circuit affirmed. 460 F. App'x 819 (11th Cir. Feb. 17, 2012).

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2. *Collins v. Experian Info. Solutions, Inc.*, No. 2:11-cv-938-AKK (N.D. Ala.)

The issue in this case involved, in part, whether a plaintiff can pursue a claim for an erroneous entry on a credit report under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681i, when the plaintiff has no evidence that the credit reporting agency disclosed the erroneous report to a third party. The plaintiff alleged that Experian failed to conduct a reasonable investigation and to provide a proper consumer disclosure report in response to the plaintiff disputing the accuracy of his credit report. In my case, the plaintiff’s claim consisted solely of emotional distress damages, and the plaintiff failed to demonstrate that Experian published the erroneous report to a third party. Based on the briefing, the evidence, and the case law, because the FCRA requires the plaintiff to suffer actual damages, and, in light of the evidence that no third party received the erroneous credit report, I held that the plaintiff’s damages claim of emotional distress failed to qualify as “actual damages.” Therefore, I granted Experian’s motion for summary judgment on the negligence claim. I also found that the evidence failed to demonstrate that Experian wantonly, willfully, recklessly, or maliciously violated the FCRA, and that the FCRA preempted the plaintiff’s state law negligence claim since he failed to establish a willful violation. Opinion supplied.

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3. *Lenyard v. Utility Lines Constr. Servs., Inc.*, No. 2:09-cv-0197-AKK (N.D. Ala.)

This case involved alleged racial discriminatory and retaliatory discharge, and racial harassment. Mr. Lenyard claimed that on one single day, the crew leader of his work group directed the “N” word at him on three occasions. Mr. Lenyard reported the crew leader the next morning and the company immediately investigated the report. Ultimately, the company suspended the crew leader for a week with no pay, required that he attend anti-harassment training, and transferred Mr. Lenyard to different work crews. Mr. Lenyard was discharged two weeks later and alleged that the discharge was due to his race and in retaliation for his complaint. Mr. Lenyard also alleged that the crew leader’s conduct created a racially hostile environment and that the company failed to respond effectively since it did not discharge the crew leader. I disagreed and granted partial summary judgment for the company, ruling that it effectively addressed Mr. Lenyard’s complaints because the harassment stopped and nothing in the law dictates that a discharge is the only effective response to allegations of harassment. However, I denied the company’s motion for summary judgment on the retaliation and race discrimination discharge claims since the discharge occurred two weeks after Mr. Lenyard reported his crew leader. Opinion supplied. After a two-day trial, the jury returned a verdict for the company.

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4. *Prof. Asset Strategies, et al. v. Continental Cas. Co.*, No. 2:09-cv-1238-AKK, 2010 WL 4284991 (N.D. Ala. Aug. 27, 2010)

This case involved significant financial losses a company incurred due to a dishonest employee who stole money from his relatives' brokerage accounts. The company submitted a claim under a professional liability policy that covered losses for professional services. The company argued, in part, that it was due coverage since the employee's theft exceeded the scope of his duties and that it was also due to prevail under the innocent insured provision. Based on the evidence, the briefing, and the case law, I granted summary judgment for the insurance company. The Eleventh Circuit affirmed, 447 F. App'x. 97 (11th Cir. 2011), and the Fourth Circuit cited to my opinion in a similar case before it, *Bryan Brothers, Inc. v. Continental Cas. Co.*, 660 F.3d 827, 832 (4th Cir. 2011).

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5. *Olds v. Fairfield S. Co., et al.*, No. 2:08-cv-1816-AKK (N.D. Ala.), *Dial v. Fairfield S. Co., et al.*, No. 2:08-cv-1817-AKK (N.D. Ala.), and *Burts v. Fairfield S. Co., et al.*, No. 2:08-cv-1818-AKK (N.D. Ala.)

In these consolidated cases, the plaintiffs alleged, in part, that their employer subjected them to a racially hostile environment because of the presence of a hangman's noose in the workplace. The defendants denied the allegations and also contended that the object in question was not a noose and they sought summary judgment. Citing the history of the noose and its use to evoke terror, I denied the motion and found that it was for a jury to decide whether the object was, in fact, a noose. My opinion denying the motion for summary judgment is not reported. Opinion supplied. The parties subsequently reached a settlement.

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6. *J.W., et al. v. Birmingham Board of Education, et al.*, No. 2:10-cv-3314-AKK (N.D. Ala.)

High school students alleged that Birmingham Police Department School Resources Officers assigned to their schools violated their constitutional rights and subjected them to excessive force by using chemical spray on them unnecessarily for minor school-based infractions and by purportedly failing to follow proper decontamination procedures. The officers asserted a qualified immunity defense and moved for summary judgment. After a hearing, I denied their motion, finding that the facts, when viewed in the light most favorable to plaintiffs, state a clearly established right, that the plaintiffs displayed little to no hostility to the officers, did not resist arrest, and that it was unreasonable under the circumstances for the officers to use the chemical spray. Opinion supplied. The Eleventh Circuit affirmed. *J.W. ex rel. Williams v. Roper*, No. 12-155551, 2013 WL 5273324 (11th Cir. Sept. 19, 2013). I also granted in a separate opinion the plaintiffs' motion for class certification. 2012 WL 3849032 (N.D. Ala. Aug. 31, 2012). On remand, I held a two-week bench trial and issued an opinion in which I found for some of the plaintiffs on their individual claims and for the class on the need for additional training for the officers and on the failure to utilize adequate decontamination measures. 2015 WL 6945118 (N.D. Ala. Sept. 30, 2015).

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7. *Jackson v. Dunn Constr.*, 927 F. Supp. 2d 1229 (N.D. Ala. 2013)

The plaintiff alleged that his employer subjected him to racial harassment, discriminated against him because of his race, and retaliated against him for complaining about the alleged discrimination and harassment. The company sought summary judgment on the discrimination claim because the plaintiff could not identify an employee outside his protected class whom the company treated more favorably. Relying on *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321 (11th Cir. 2011), I found that the failure to identify a comparator did not foreclose the plaintiff's case and that his contention that his supervisor called him "boy" over 200 times, the supervisor's alleged failure to discipline a Caucasian employee who used the "N" word, and the alleged decision to discharge the plaintiff shortly after he complained were sufficient to create a triable issue concerning the employer's discriminatory intent. The parties settled the case shortly before the trial.

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8. *Morton v. City of Guntersville, et al.*, No. 5:10-cv-1658-AKK (N.D. Ala.)

Mr. Morton, who was paralyzed from his chest down after being shot seven times from close range, filed an excessive force lawsuit against a police officer, the

officer's partner, and the City of Guntersville. The officer who shot Mr. Morton claimed he was entitled to qualified immunity since he shot Mr. Morton, in part, to protect his partner who was purportedly in imminent danger of being run over by Mr. Morton. The two officers approached Mr. Morton's car with the officer who shot Mr. Morton approaching the driver's side door and the other officer approaching the front of the car. As they approached, allegedly the engine revved and the officer shot Mr. Morton to purportedly prevent him from running over the other officer at the scene. The officer in front of Mr. Morton's car testified that he was never in danger and would have discharged his gun if he felt otherwise. Since qualified immunity analysis requires courts to view the facts from the perspective of the reasonable officer at the scene, the case raised the question of whether, in this case, it was the perspective of the officer who shot Mr. Morton or that of the officer who was purportedly in the line of danger and who eliminated that danger by simply taking a step back and never perceived himself as being in danger. Based on the facts, I rejected the shooting officer's claim that he was entitled to qualified immunity and ruled that it was a question for a jury to decide. Opinion supplied. The Eleventh Circuit affirmed. *Morton v. Kirkwood*, 707 F.3d 1276 (11th Cir. 2013). After a four-day trial, a jury returned a verdict for the officer.

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9. *United States v. Campbell*, No. 2:10-cr-0186-AKK-JEO (N.D. Ala.)

The defendant was charged with mail fraud, conspiracy, wire fraud, and money laundering in a 96-count superseding indictment. The indictment maintained that the defendant used his position as state director of the Alabama Small Business Development Consortium to funnel millions of state funds into a private entity he created and for his own personal use. The defendant moved to dismiss the

indictment on multiple grounds, including a statute of limitations challenge, vagueness, and that the alleged offenses did not constitute criminal conduct. I adopted the report and recommendation of a magistrate judge and denied the motion to dismiss. After an eight-day trial, the jury found the defendant guilty on all 96 counts. I sentenced the defendant to 188 months, and the Eleventh Circuit affirmed, 765 F.3d 1291 (11th Cir. 2014).

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10. *United States v. Riggs, et al.*, No. 2:10-cr-0483-AKK-PWG (N.D. Ala.)

In this 59-count superseding indictment, 18 defendants were charged in a conspiracy to possess and distribute heroin, cocaine, oxycodone, and marijuana, and with separate counts individually of possession and distribution of the drugs. The conspiracy spanned over two years and purportedly generated \$1.5 million in proceeds for the defendants. Seventeen of the defendants pleaded guilty. A jury convicted the remaining defendant after a five-day trial. The sentences ranged from 39 to 235 months.

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- 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. *University of Alabama Board of Trustees v. New Life Art, Inc., et al.*, No. 7:05-cv-0585-AKK, 2013 WL 5442191 (N.D. Ala. Sept. 27, 2013).

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2. *Freeman v. Home Depot*, No. 2:08-cv-2272-AKK (N.D. Ala.). Unpublished opinion supplied.

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3. *Barrs, et al. v. The S. Conference*, No. 2:10-cv-1227-AKK. Unpublished opinion supplied. I separately denied a motion to dismiss at 734 F. Supp. 2d 1229 (N.D. Ala. 2010).

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4. *J.W., et al. v. Birmingham Board of Education, et al.*, No. 2:10-cv-3314-AKK (N.D. Ala.). Unpublished opinion previously supplied in response to Question 13c. The opinion on class certification and the opinion I issued after the bench trial are reported at 2012 WL 3849032 (N.D. Ala. Aug. 31, 2012) & 2015 WL 6945118 (N.D. Ala. Sept. 30, 2015).

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5. *Jackson v. Dunn Const.*, 927 F. Supp. 2d 1229 (N.D. Ala. 2013).

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6. *Set Free Community Dev. Corp. v. Bentley, et al.*, No. 2:11-cv-1802-AKK,
2011 U.S. Dist. LEXIS 157950 (N.D. Ala. Sept. 23, 2011).

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7. *Blount Cty. Bd. of Educ. v. Bowens*, 929 F. Supp. 2d 1199 (N.D. Ala. 2013),
aff'd, 2014 U.S. App. LEXIS 15051 (11th Cir. Aug. 5, 2014).

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8. *Rollins v. Bd. of Trs. of the Univ. of Ala., et al.*, 885 F. Supp. 2d 1239 (N.D. Ala. 2012) & 2014 WL 4829540 (N.D. Ala. Sept. 29, 2014).

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9. *Morton v. City of Guntersville, et al.*, No. 5:10-cv-1658-AKK, *aff'd sub nom.*, *Morton v. Kirkwood*, 707 F.3d 1276 (11th Cir. 2013). Unpublished opinion previously supplied in response to Question 13c.

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10. *Quainoo v. City of Huntsville, Ala., et al.*, No. 5:10-cv-0104-AKK, 2011 U.S. Dist. LEXIS 156910 (N.D. Ala. Dec. 9, 2011), *aff'd*, 505 F. App'x 928 (11th Cir. 2013).

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

CSX Trans., Inc. v. Ala. Dep't of Revenue, et al., 892 F. Supp. 2d 1300 (N.D. Ala. 2012), *rev'd*, 720 F.3d 863 (11th Cir. 2013), *rev'd*, 135 S. Ct. 1136 (2015), *vacated*, 797 F.3d 1293 (11th Cir. 2015).

Holyfied-Vega v. United States, No. 5:12-cv-4023-AKK (N.D. Ala.), *aff'd*, No.13-10999 (11th Cir. Jan. 8, 2014), *cert. denied*, 135 S. Ct. 168 (2014).

Green v. U.S. Steel Corp., No. 2:09-cv-30-AKK (N.D. Ala.), *aff'd*, 550 F. App'x 773 (11th Cir. Dec. 19, 2013), *cert. denied*, 135 S. Ct. 82 (2014).

Russell v. Geddes, Tr., No. 5:12-cv-1918-AKK (N.D. Ala.), *aff'd*, No. 12-13537 (11th Cir. Nov. 13, 2012), *rehearing denied* (Jan. 28, 2013), *cert. denied*, 134 S. Ct. 75 (2013).

- 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.

CSX Transp., Inc. v. Ala. Dep't of Revenue, 892 F. Supp. 2d 1300 (N.D. Ala. 2012), *rev'd*, 720 F.3d 863 (11th Cir. 2013), *rev'd*, 135 S. Ct. 1136 (2015), *vacated*, 797 F.3d 1293 (11th Cir. 2015). CSX alleged that the imposition of Alabama sales and use taxes on diesel fuel and gasoline purchased and used for rail transportation purposes is discriminatory under the Railroad Revitalization and Regulatory Reform Act. I disagreed and found for the State of Alabama. The Eleventh Circuit reversed, and the Supreme Court reversed the Eleventh Circuit, finding that the Eleventh Circuit failed to consider whether Alabama could justify its decision to exempt motor carriers from sales and use taxes – which rail carriers are required to pay – through the state's decision to subject motor carriers instead to a fuel excise tax.

Brennan v. Commissioner, Ala. Dep't of Corrections, No. 2:13-cv-00152, 2014 WL 2875466 (June 24, 2014), *aff'd in part, vacated in part*, 626 F. App'x 939 (11th Cir. Sept. 17, 2015). The plaintiff filed a claim under the Eighth Amendment and state law alleging that he received inadequate medical care at a state prison. After reviewing the complaint and the briefs, I adopted the magistrate judge's recommendation to dismiss the case for failure to state a claim. The Eleventh Circuit reversed as to some of the defendants, finding that the plaintiff, in fact, sufficiently pleaded claims against them.

Lisk v. Lumber One Wood Preserving, LLC, 993 F. Supp. 2d 1376 (N.D. Ala. Jan. 8, 2014), *rev'd*, 792 F.3d 1293 (11th Cir. 2015). The plaintiff sought to maintain a class action for a violation of the Alabama Deceptive Trade Practices Act (ADTPA), which explicitly bars class actions by consumers. I dismissed the claim finding that, as to this claim, allowing the plaintiff to maintain a class action under

Rule 23 of the Federal Rules of Civil Procedure would violate the Rules Enabling Act's requirement that federal rules "not abridge, enlarge, or modify any substantive right." 28 U.S.C. § 2072(b). The Eleventh Circuit found that a class action would not alter the substantive right granted by the ADTPA to consumers.

Terry v. Crawford, No.5:14-cv-1996-AKK (N.D. Ala.), *aff'd in part, rev'd in part*, 615 F. App'x 629 (11th Cir. July 8, 2015). This was a challenge to state ad valorem taxes that I dismissed as barred by the Tax Injunction Act, 28 U.S.C. § 1341. Opinion supplied. The Eleventh Circuit agreed with my decision that the Tax Injunction Act barred the plaintiff's claim. However, it held that I should have dismissed the case without prejudice rather than with prejudice.

King v. Volunteers of America, N. Ala., Inc., No.3:08-cv-856-AKK (N.D. Ala.), appeal from jury trial, *aff'd in part, rev'd in part*, 614 F. App'x 449 (11th Cir. June 10, 2015). I inherited this case from another district court judge after the Eleventh Circuit reversed an earlier grant of summary judgment to the defendants. At the conclusion of a trial, I granted in part the defendant's motion for a directed verdict as to the discrimination claim, finding that the plaintiff had failed to establish that racial, rather than retaliatory, animus caused her discharge. On appeal, the Eleventh Circuit held that there was sufficient evidence to support both the discrimination claim and the retaliation claim.

Collins v. Experian Info. Solutions, Inc., No. 2:11-cv-938-AKK (N.D. Ala.), *aff'd in part, rev'd in part*, 775 F.3d 1330 (11th Cir. 2015), *pet. for rehearing denied*, 781 F.3d 1270 (11th Cir. 2015). The issue on appeal involved, in part, whether a plaintiff can pursue a claim for an erroneous entry on a credit report under the Fair Credit Reporting Act, 15 U.S.C. § 1681i, when the plaintiff has no evidence that the credit reporting agency disclosed the erroneous report to a third party, and when the plaintiff's claim consists solely of emotional distress damages. In an issue of first impression, the Eleventh Circuit disagreed with my finding that the plaintiff had to show actual publication and held that a "consumer's credit report need not be published to a third party in order to entitle the consumer to actual damages under 1681i(a)" 775 F.3d at 1331.

Lamar v. Wells Fargo, 2 F. Supp. 3d 1202 (N.D. Ala. 2014), *aff'd in part, vacated in part*, 2014 U.S. App. LEXIS 22773 (11th Cir. Dec. 1, 2014). The plaintiff filed a lawsuit claiming that Wells Fargo denied her reinstatement rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA). I granted Wells Fargo summary judgment on the basis that the plaintiff's USERRA claim was time-barred because she failed to seek reemployment within 90 days. The Eleventh Circuit reversed in part, finding that I failed to consider the exception to the 90-day requirement for individuals for whom it was impossible or unreasonable to return due to circumstances beyond their control.

West v. United States, 2013 WL 2106774 (N.D. Ala. May 13, 2013), *vacated*, 579 F. App'x 863 (11th Cir. Sept. 10, 2014). The plaintiff filed a motion to vacate, set

aside, or correct his sentence in 1999 based on alleged ineffective assistance by his trial and appellate counsel and sought relief under 28 U.S.C. § 2255. Due to an administrative error, his motion languished for 14 years, and only came to the court's attention when he filed a second motion in 2012 and his case was assigned to me. I denied the second motion on timeliness grounds, and I denied the first due to his failure to satisfy the *Strickland v. Washington*, 466 U.S. 668 (1984), standard for ineffective assistance. However, I granted him a certificate of appealability (COA) on whether the delay of 14 years to rule on his motion violated his due process rights. The Eleventh Circuit found that I erred when I issued the COA without stating whether reasonable jurists would find it debatable whether my decision to deny the second motion on jurisdictional grounds was correct. The Eleventh Circuit subsequently vacated its decision after the plaintiff's death. *West v. United States*, No. 13-13781-BB (11th Cir. Jan. 6, 2015).

Bradley v. Franklin Collection Serv., Inc., 2013 WL 1346714 (Mar. 28, 2013), *aff'd in part, rev'd in part*, 739 F.3d 606 (11th Cir. 2014). This was a Fair Debt Collection Practices Act (FDCPA) case challenging defendant's collection practices, and, as to the reversal, the 30% collection fee added to the actual debt. Based on Section 1692f of the FDCPA, which prohibits the "collection of any amount (including any . . . fee . . . or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law," 18 U.S.C. § 1692f(1), the plaintiff challenged the 30% collection fee. I found that collection costs, which the plaintiff agreed to pay, fell within § 1692f's exception for amounts "expressly authorized by the agreement creating the debt" and granted summary judgment on this claim. In an issue of first impression, the Eleventh Circuit joined the Eighth Circuit in finding that a debt collector violates the FDCPA when it charges a debtor a collection fee based on a percentage of the principal balance of the debt due rather than the actual cost the debtor incurs to collect the debt.

Franklin v. Curry, et al., 2:12-cv-3646-AKK, 2012 WL 6755060 (N.D. Ala. Dec. 27, 2012), *rev'd*, 738 F.3d 1246 (11th Cir. 2013). The plaintiff sued the county sheriff and other supervisory deputies for an alleged sexual assault perpetrated on her by a deputy while she was in a county jail. The Eleventh Circuit reversed my decision to deny the defendants' motion to dismiss, ruling that I erred by finding plaintiff's allegations that the defendants knew or should have known about the deputy's alleged behavior were sufficient to meet a deliberate indifference claim, and by finding plaintiff's conclusory allegations sufficient to satisfy the pleading standard set forth in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Gray v. Bostic, et al., 7:03-cv-2989-AKK, *rev'd*, 720 F.3d 887 (11th Cir. 2013). This case started in 2003 and involved the plaintiff's claim that a school resource officer subjected her to excessive force when he handcuffed her at a time when she was nine years old. The case's history includes the plaintiff's successful challenge to the original judge's dismissal of her claim on qualified immunity grounds. 127 F. App'x 472 (11th Cir. 2004). When the case ultimately was tried,

the jury only awarded her \$1 in damages. The issue thereafter was whether the plaintiff was a prevailing plaintiff entitled to her attorney fees. The prior judge awarded her legal fees, which the Eleventh Circuit reversed, in part, because the prior judge relied on the number of times the Eleventh Circuit case reinstating the case was cited by other courts. 613 F.3d 1035 (11th Cir. 2010). After reviewing the case, I awarded the plaintiff some of the attorney fees she sought in an unpublished opinion. Copy supplied. The Eleventh Circuit reversed, finding that the plaintiff only achieved a technical victory in light of the \$1 award by the jury and that she was not a prevailing party for purposes of awarding her attorney fees. 720 F.3d 887 (11th Cir. 2013).

- 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.

My decisions are generally unpublished since I have never requested that any of my opinions be published. These opinions are stored on the court's electronic filing system under each case number in which they are docketed. Although I have not submitted any of these decisions for publication, approximately 22 of my decisions have been published in reporters and over 400 are available on Lexis and Westlaw.

- 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.

Voketz v. City of Decatur, Alabama, et al., No.5:14-cv-540-AKK, opinion supplied.

Set Free Community Dev. Corp. v. Bentley, et al., 2:11-cv-01802-AKK, 2011 U.S. Dist. LEXIS 157950 (N.D. Ala. Sept. 23, 2011).

Morton v. City of Guntersville, et al., 5:10-cv-1658-AKK, opinion previously supplied in response to Question 13c.

J.W., et al. v. Birmingham Bd of Educ., et al., 2:10-cv-3314-AKK, unpublished opinion previously supplied in response to Question 13c, and most recent opinions are at 2012 WL 3849032 (N.D. Ala. Aug. 31, 2012) & 2015 WL 6945118 (N. D. Ala. Sept. 30, 2015).

Moore v. Birmingham Public Library, 2:12-cv-2517-AKK, 2013 WL 1498974 (N.D. Ala. April 9, 2013).

Cunningham v. The City of Alabaster, et al., 2:12-cv-3992-AKK, 2013 WL 754798 (N.D. Ala. Feb. 27, 2013).

Jamar v. United States of America, 5:08-cv-1145-AKK, opinion supplied.

Price v. United States of America, et al., 2:10-cv-1592-AKK, opinion supplied.

United States v. Guice, 2:10-cr-148, 2011 WL 117235 (M.D. Ala. Jan. 13, 2011).

- 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 sat by designation on the United States Court of Appeals for the Eleventh Circuit on March 8 and 10, 2016. To date, we have only ruled on two of the six cases I heard. The *per curiam* opinions affirming the district courts are reported at *Motley v. Fulton Cty., Ga.*, No: 15-11628, 2016 WL 1039566 (11th Cir. Mar. 16, 2016) and *Roper v. Kawasaki Heavy Indus., Ltd.*, No. 15-13363, 2016 WL 1085489 (11th Cir. Mar. 21, 2016).

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.

The clerk's office has my recusal list (which consists of a law firm, close friends, mentors, and businesses or companies in which my wife and I own stock or have a financial interest) and if a case involving a company whose shares we own is assigned to me or it is a case filed by a lawyer on my recusal list, the clerk will reassign the case to another judge automatically. For those cases the clerk misses or cases in which a lawyer or a law firm on my recusal list enters an appearance subsequently, I enter a recusal order *sua sponte*. As best as I have been able to ascertain, the cases in which I have entered an order of recusal based on my standing recusal list include:

Lynn v. Wyeth, et al., 2:04-cv-2465-KOB

Burroughs v. Pfizer, Inc., et al., 7:05-cv-74-SLB

Logan, et al. v. Absolute Drug Detection Servs., Inc., et al., 2:08-cv-2404-VEH
Townsel v. Homewood City Bd. of Educ., 2:08-cv-2276-WMA
Tropeano v. Mayer Prop. II, LLC, 2:09-cv-346-WMA
Woodruff v. Blue Springs Hatchery, Inc., 2:09-cv-1141-KOB
Sullivan, et al. v. Suncoast RV, Inc., et al., 2:09-cv-1308-RDP
Adams, et al. v. PlasmaCare, Inc., 2:09-cv-1351-KOB
Whatley v. Sloss Indus., 2:09-cv-1552-RDP
Beverly v. S. Pipe & Supply Co., Inc., 2:09-cv-2308-KOB
Chambers, et al. v. Merrill Lynch & Co., Inc., et al., 2:09-cv-2236-RDP
Young v. Trussville City Bd. of Educ., 2:09-cv-2325-WMA
Herring's Air Conditioning Serv., Inc. v. Serv. Tech, Inc., 2:09-cv-2440-RDP
Ellison v. Blount Cty. Bd. of Educ., et al., 2:10-cv-478-WMA
Young v. Summit Am., LLC, 2:10-cv-513-KOB
Hamilton, et al. v. Magellan Behavioral Health, Inc., et al., 2:10-cv-949-RDP
Price v. Hawkins, et al., 2:10-cv-1288-WMA-TMP
Cooper, et al. v. Cavalier Homes, Inc., 5:10-cv-1434-IPJ
Set Free Cmty. Dev. Corp. v. Riley, et al., 2:10-cv-1769-VEH
Crane v. Kwik Check Supermarkets, Inc., 2:10-cv-2566-KOB
Ramsey v. Baptist Health Sys., Inc., et al., 2:10-cv-3072-RDP
Bryant, et al. v. Southland Tube, Inc., 2:10-3215-SLB
Kent v. Mountain Brook Bd. of Ed., 2:10-cv-3486-RDP
United States v. Savage, 2:11-cr-336-SLB
Taunton v. Noland Health Care, Inc., 2:11-cv-368-KOB

Lewis v. Noland Health Servs., Inc., 2:11-cv-373-IPJ

Stinespring v. Metropolitan Life Ins. Co., et al., 5:11-cv-1955-IPJ

Cutten v. SouthBank, 5:11-cv-2348-CLS

Finebaum v. Citadel Broadcasting Co., et al., 2:11-cv-2765-LSC

Gill v. Am. Express Co., et al., 5:11-cv-3170-CLS

NP v. Midfield Bd. of Ed., 2:11-cv-3463-WMA

Nichols v. Rite Aid Corp., 2:11-cv-3510-KOB

Logan v. Trustmark Nat'l Bank, 2:11-cv-4161-VEH

Nicholson v. Metropolitan Life Ins. Co., 2:12-cv-29-RDP

Rush, et al. v. Metlife Bank NA, 5:12-cv-234-CLS

Carter v. Madison Surgery Center, LLC, 5:12-cv-261-CLS

United States v. Edwards, 2:12-cr-393-MHH

Carter v. Metropolitan Life Ins. Co., et al., 2:12-cv-746-IPJ

Nichols, et al. v. HealthSouth Corp., et al., 2:12-cv-823-SLB

Porter Capital Corp. v. Johns Manville, Inc., 2:12-cv-925-RDP

Helmer, et al. v. Pogue, et al., 2:12-cv-1781-WMA, 2:12-cv-1782-WMA, and 2:12-cv-1783-WMA

Gault v. Organon USA, Inc., et al., 2:12-cv-2134-RDP

Rounsavall v. Goulds Pumps., Inc., 5:12-cv-2785-LSC

Wilson-Givens v. Tri-State Computer Inst., Inc., 2:12-cv-2841-RDP

King v. Associated Grocers of the South, Inc., et al., 2:12-cv-2884-WMA

Streetman v. Merion Realty Mgmt., LLC, 2:12-cv-3457-KOB

Campbell v. Alacare Home Health Servs., Inc., 2:12-cv-4128-LSC

United States v. Bell, 2:13-cr-281-SLB

Rupson, LLC v. Fed. Deposit Ins. Corp., 2:13-cv-302-KOB

Webb v. Virginia Coll., LLC, et al., 2:13-cv-342-VEH

Leary v. Fresenius Med. Care Holding, Inc., 2:13-cv-371-RDP

United States v. Garrett, 1:13-cr-515-LSC

Woods v. Wyeth, LLC, et al., 2:13-cv-543-KOB

Foster v. Metro. Life Ins. Co., 2:13-cv-595-KOB

IPVX Patent Holdings, Inc. v. Adtran, Inc., 5:13-cv-706-RDP

Odom, et al. v. Bank of Am. NA, et al., 2:13-cv-716-VEH

Palmore, et al. v. Monsanto, 2:13-cv-777-KOB

Mitchell v. Paramount Mktg. Grp., LLC, et al., 2:13-cv-811-LSC

Walker v. UAB Inverness, 2:13-cv-1181-RDP

McCullough v. Insight Capital, LLC, 2:13-cv-1551-VEH

Glenn v. Checksmart Fin. Co, et al., 2:13-cv-1715-KOB

Kimbrough, et al. v. Pfizer, Inc., 5:13-cv-1913-CLS

Luminex Corp. v. Diatherix Labs, Inc., 5:13-cv-2054-MHH

Price v. Hollingsworth, et al., 5:14-cv-130-MHH

Rose v. CMC Steel Fab, Inc., 2:14-cv-160-KOB

United States v. Land in Madison Cty. Ala., 5:14-cv-241-CLS

Whittington v. Mountain Brook Country Club, 2:14-cv-243-WMA

Lucas, et al. v. Acheson, et al., 2:14-cv-856-MHH

Lockett v. Decatur Hous. Auth., 5:14-cv-1003-MHH

United States v. Turner, et al., 5:14-cr-168-MHH

United States v. Parker, 2:14-cr-265-RDP

United States v. Collins, 5:14-cr-301-MHH

Robinson v. Hibbett Sporting Goods, 2:14-cv-2046-RDP

Hickman v. Bayer Pharm., Inc., 2:14-cv-2110-WMA

United States v. Mollica, 2:14-cr-329-KOB

United States v. Tidwell, 4:14-cr-404-RDP

United States v. Jackson, 1:14-cr-402-RDP

Joao Bock Trans. Sys. v. Regions Bank, 2:14-cv-749-RDP

Piland, et al. v. Bank of America, 5:15-cv-819-CLS

United States v. Latham, 4:15-cr-166-RDP

Murgatroyd v. Bank of America, 2:15-cv-597-VEH

In re Motion to Depose Fed. Prisoner, 1:15-mc-1011-LSC

United States v. Tolbert, 4:15-cr-244-LSC

United States v. Davis, 5:15-cr-349-MHH

United States v. Griffin, 5:15-cr-350-MHH

I also issued an order of recusal in a criminal case in which I authorized some of the wire taps during the investigation: *United States v. Medina, et al.*, 2:12-cr-237-LSC-HGD.

Finally, I have had six motions for my recusal filed, all of which I have denied. When a party moves for my recusal, I review the motion as an initial matter. If it appears to have merit, I will refer the motion to a magistrate judge. Thereafter, depending on the recommendation of the magistrate, I will either recuse or consult with the chief judge for additional guidance. In the case of the motions outlined below, based on my review, I found that none raised any justifiable basis for a recusal and, as such, disposed of them without referring them to a magistrate judge for a report and recommendation.

Shuler, et al. v. Ingram & Associates, No. 2:08-cv-1288-AKK. The Shulers, proceeding *pro se*, moved for my recusal after I dismissed their claim on summary judgment, on the grounds that I was biased. I denied the motion to recuse because

they filed it after the entry of judgment and because it was premised on an insufficient basis for a recusal, *i.e.* their dissatisfaction with my rulings. They filed a response to my order, which the clerk classified as a renewed motion to recuse. Because their appeal of the judgment I entered against them was pending, I denied that motion without prejudice to them refile it in the event they prevailed on their appeal. The Eleventh Circuit affirmed my decision to grant summary judgment and, as a result, I did not have to revisit the renewed motion to recuse.

Shuler, et al. v. Swatek, et al., No. 2:10-cv-1215-AKK. In this lawsuit, the Shulers, proceeding *pro se*, filed claims against the Alabama State Bar Association, the Shelby County sheriff, a circuit judge, and others. They moved for my recusal on the basis that my prior association with my former law firm and the law firm's representation of Governor Bob Riley (who was not a defendant in the case) impacted my ability to be objective. I denied the motion because they filed it after the entry of judgment in the case, it was based on their dissatisfaction with my rulings, and my old law firm was not a party in the lawsuit and did not represent any of the parties in the case.

Thomas v. H. Allred, et al., No. 2:12-cv-0227-AKK. Mr. Thomas moved for my recusal, alleging that I treated him unfairly because he was proceeding *pro se*, conspired with the state judge he named as a defendant to imprison him for failing to pay child support and thereby prevented him from timely filing his appeal, and required him to serve his complaint on a defendant prior to giving him the chance to conduct discovery. I denied Mr. Thomas' motion because he presented no justifiable basis for a recusal.

Miller v. Home Depot, et al., No. 2:12-cv-3769-AKK. Mr. Miller requested my recusal because he felt the briefing schedules in his case did not account for his status as a *pro se* litigant and that I was biased because I shared the same race as some defendants in the case. I denied the motion because he presented no justifiable basis for a recusal. However, I extended some of the deadlines he found unfair because of his *pro se* status.

King v. Volunteers of America, No. 3:08-cv-00856-AKK. After a jury returned a verdict against her, Ms. King asked that I recuse from her case. Ms. King alleged I was biased because I had asked questions of one of her witnesses at trial, which in her view inappropriately communicated to the jury that the witness was not credible and her claims were not meritorious. I denied the motion, indicating the proper forum for her claim was in an appeal. To the extent that Ms. King raised the issue on appeal, there is no discussion of it in the circuit court's opinion, which affirmed the jury verdict against her. 614 F. App'x 449 (11th Cir. June 10, 2015).

Chandler v. Volunteers of America, No. 3:10-cv-2961-AKK. Ms. Chandler worked for the same company as Ms. King and shared the same lawyer. This case was reassigned to me from another judge. After I denied Ms. Chandler's motion to reconsider an adverse ruling by the prior judge, Ms. Chandler filed a motion for recusal, alleging that the other judge's bias against her counsel had influenced me in

ruling against her. I denied the motion since the recusal motion alleged bias against Ms. Chandler's lawyer, rather than a party, which is an insufficient ground to support recusal. I also denied the motion because it had no merit.

After the jury returned a verdict against Ms. Chandler and during her appeal, I held the trial in the *King* case. During that trial, counsel indicated that he planned to call Ms. Chandler as a witness for Ms. King. Outside of the presence of the jury, I told counsel to control Ms. Chandler during her testimony since she was a "hothead." Subsequently, Ms. Chandler filed a second motion to recuse, alleging that the comment indicated that I had a deep-rooted bias against her. I disagreed, and in my order denying her motion, I reminded Ms. Chandler that when she testified in her case, on multiple occasions, she refused to answer questions directly, talked over counsel for Volunteers and the court, made references to evidence the court had ruled was inadmissible, and that she was generally disruptive. On appeal, the circuit found that I properly denied the motions. *Chandler v. Volunteers of N. Ala., Inc.*, 598 F. App'x 655 (11th Cir. Jan. 27, 2015).

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 held no public office other than my judicial position. I have not had any unsuccessful candidacies for elected 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 never held any formal titles on any campaigns. However, I helped Judge Eric Fancher (District Judge for Jefferson County, Alabama) put up campaign signs during his first run for office in 1997 and also made phone calls to registered voters on his behalf. I also raised money at my old law firm for United States Congresswoman Terri Sewell in 2009, former United States Congressman Artur Davis in 2005 to 2009, Jefferson County Alabama Circuit Judge Clyde Jones in 2002, and Jefferson County Alabama District Judges Katrina Ross and Shanta Owens in 2006 and 2008, respectively.

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 served as a law clerk to the Honorable U.W. Clemon (now retired), United States District Judge for the Northern District of Alabama, from August 1993 to August 1994.

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

I have never practiced 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.

1994 – 2010
Bradley Arant Boult Cummings
1819 Fifth Avenue North
Birmingham, Alabama 35203
Associate (1994 – 2000)
Partner (2001 – 2010)

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 never served as a mediator. I was a grievance officer for approximately one year in a discrimination case against the Alabama Department of Transportation. As I understand it, the parties agreed as a part of a consent decree to refer subsequent disputes of members of the plaintiff class to grievance officers for a resolution. During my brief service as a grievance officer, I believe I may have handled one grievance in which an employee alleged discrimination. However, I do not recall the specifics of the matter.

b. Describe:

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

I spent the bulk of my fifteen years in private practice handling corporate civil defense matters at both the district and appellate court levels. From 1994 to 1997, I divided my practice equally between labor and employment and general litigation matters. However, at the end of 1997, I decided to focus primarily on labor and employment law. As a result, from 1998 until I left the law firm in 2010, approximately 90 percent of my practice involved some aspect of labor and employment law on behalf of businesses. The rest involved general contract issues and product liability.

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

I represented for-profit and non-profit entities, primarily in labor and employment matters and with some contracts and products liability matters periodically.

- 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.

My practice was primarily litigation based and, as such, I spent the bulk of my time representing my clients in state and federal courts. I estimate that litigation accounted for approximately 75 – 85 percent of my practice, with the remaining being general advice and counseling on non-litigation matters.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 97%
- 2. state courts of record: 2%
- 3. other courts: 0.5%
- 4. administrative agencies: 0.5%

- 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.

To the best of my recollection, I tried eight cases to a jury verdict. I was lead counsel in two cases, one of two lawyers in five cases, and one of seven lawyers in one case.

- i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury: | 0% |

- 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.

Arrington v. Wilks, Case No. 94-1397, 1995 WL 17048829 (petition for a writ of certiorari), cert. denied, 514 U.S. 1065 (1995).

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:

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

- Matthews v. Jim Walter Resources*, Judge U.W. Clemon (Retired), No. 7:94-cv-2240-UWC (N.D. Ala.)

This was an employment discrimination case under the Americans with Disabilities Act involving whether employers must disregard the seniority provisions of a collective bargaining agreement to accommodate a disability. This was one of the earliest cases to address this issue and was also my first trial. Plaintiff worked underground in a coal mine and developed a hearing condition. He asked that the employer accommodate his disability by giving him a job above ground – all of which were held by employees with more seniority than the plaintiff. The case tried in 1995, and we obtained a directed verdict for our client Jim Walter Resources. I worked on the case from 1994 to 1995, drafted the motion for summary judgment, and presented the opening statement at trial.

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Current business contact information unavailable
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2. *Urban Construction v. Gaston-Thacker, et al.*, Judge Michael Moore, No. 1:95-cv-02326-KMM (S.D. Fla.)

This was a construction breach of contract matter in which Urban Construction alleged that Gaston-Thacker, as general contractor, caused it to delay the start of its work on the project. Urban's principals were prominent individuals in the Haitian American community in Miami and the case had some political undertones over the Dade County School Board's decision to hire an out-of-town company as the general contractor for a \$54 million project. I was co-counsel for Gaston-Thacker and was responsible for drafting the motion for summary judgment. I also helped try the case and did the cross examination of Urban's president and the direct examinations of some of our witnesses. I worked on the case from 1995 to 1997. The jury returned a verdict for Urban Construction.

Lead Counsel

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3. *McAboy v. Chemical Waste Management*, Judge William Acker, No. 2:95-cv-1193-WMA (N.D. Ala.)

This was a Title VII race discrimination case challenging a discharge that we tried to a jury after the plaintiff refused to settle the case for less than a million dollars even after we pointed out that the case fell under Title VII's statutory cap of \$300,000. Despite information from the court about the existence of the statutory caps and advice from his lawyers and from his wife to accept the settlement offer on the table, the plaintiff still insisted that my client pay him over a million dollars. Ultimately, the jury returned a verdict for the company. I worked on the case from 1995 to 1998, and my tasks included drafting the motion for summary judgment and the direct examination of some of our witnesses at trial.

Lead Counsel

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4. *McGhee v. United Parcel Service*, Judge H. Dean Buttram (Resigned), No. 2:95-cv-1570-HDB (N.D. Ala.)

The plaintiff alleged that an hourly co-worker and four supervisory employees sexually harassed her, that UPS retaliated against her when she complained, and that UPS paid her less than similarly-situated male employees. In discovery, the plaintiff produced tape recordings and a detailed diary which purportedly chronicled the alleged harassment. We were able to discredit the bulk of her evidence and eventually resolved the matter favorably for our client. I worked on the case from 1995 to 1999.

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Opposing Counsel

Marvin Stewart, Jr. (Disbarred)

5. *Evans v. Pemco Aeroplex, Inc.*, Judge C. Lynwood Smith, No. 2:96-cv-2801-CLS, 1998 WL 1048470 (N.D. Ala. Feb. 23, 1998)

This was a race and disability discrimination case that addressed the issue of when a disabling condition actually rises to an ADA disability. The plaintiff worked as a maintenance worker on aircrafts. He subsequently developed a climbing restriction and was hampered in his ability to climb and work on certain sections of the aircrafts. I represented Pemco and drafted the motion for summary judgment, which the court granted. I worked on the case from 1996 to 1998.

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6. *Tyner v. Jim Walter Resources*, No. 7:97-cv-2411-UWC (N.D. Ala.), initially with Judge Sam Pointer (deceased) and then with Judge U.W. Clemon (Retired)

This was a sexual harassment case over the alleged conduct of a supervisor and the company's alleged failure to respond effectively to the complaints. I began working on the case in 1997, drafted the motion for summary judgment, and helped try the case successfully for our client Jim Walter Resources to a jury in 2000. The Eleventh Circuit affirmed the jury verdict.

Co-Counsel

James P. Alexander (Deceased)

Opposing Counsel

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7. *Strong, et al. v. U.S. Pipe*, Judge U.W. Clemon (Retired), No. 2:00-cv-3686-UWC (N.D. Ala.).

This was a race and gender class action alleging discrimination in promotions and employment practices nationwide. I represented U.S. Pipe. I answered the complaint in April 2001 and was responsible for the discovery, including taking the depositions of the plaintiffs and defending the depositions of the company witnesses. In 2004, I helped successfully negotiate a consent decree that, among other things, implemented a posting procedure for promotion opportunities so that all interested employees could compete for the vacancies.

Co-Counsel

James P. Alexander (Deceased)

Opposing Counsel

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8. *Morgan, et al. v. Family Dollar*, Judge U.W. Clemon (Retired), No. 7:01-cv-0303-UWC (N.D. Ala.), and Eleventh Circuit Court of Appeals, 551 F.3d 1233 (11th Cir. 2008)

This was a nationwide Fair Labor Standards Act collective action by 2,500 store managers contending that the company improperly classified them as exempt salaried executives when they were not in charge of their stores and performed store clerk-like non-managerial duties instead. The store managers claimed they worked significantly more than 40 hours each week and were entitled to overtime compensation. I worked on this case representing Family Dollar from 2004 until

2009. We tried the case twice – there was a hung jury the first time and a jury verdict for the plaintiffs the second time. I gave the closing argument in the first trial, the opening and closing arguments in the second trial, and also conducted the direct and cross examination of several witnesses in both trials. The Eleventh Circuit affirmed the verdict for the plaintiffs in 2008, 551 F.3d 1233, and the Supreme Court denied Family Dollar’s petition for certiorari, 558 U.S. 816 (2009). I worked on the Eleventh Circuit Appeal but not the petition for certiorari. In light of the number of plaintiffs and the time span of the case, well over 20 lawyers on both sides worked on the case. I am only listing below the lawyers who had a significant role in the motions practice and/or the two trials.

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9. *Holsombeck, et al. v. First Transit, et al.*, Judge Karon Bowdre, No. 2:01-cv-01811-KOB (N.D. Ala.)

This was a class action lawsuit under Title III of the Americans with Disabilities Act (ADA), which mandates equal access to public facilities, alleging inadequate compliance with the ADA in bus service provided for disabled riders. I answered the complaint on behalf of First Transit on August 29, 2001, and, as lead counsel, successfully negotiated a consent decree that resolved the case in December 2003.

Opposing Counsel

Richard Meelheim (Deceased)

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10. *Edwards v. The John Deere Company, et al.*, Judge L. Scott Coogler, No. 7:03-cv-3451-LSC (N.D. Ala.)

This was a race discrimination case. The plaintiff worked for John Deere for over 20 years and directed one of its divisions. After his retirement, he tried to purchase a Deere dealership in Tuscaloosa, Alabama and claimed that Deere denied him because of his race. Counsel for plaintiff used national media outlets and other national officials to generate negative publicity for Deere. I was one of the lawyers for Deere and worked on the case from 2003 until we resolved it in 2005.

Lead Counsel

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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.)

I worked on multiple unfair labor practice charges a union filed against one of my clients challenging the client's decision to outsource work to a foreign manufacturer. The client believed that outsourcing the work in question was essential to its efforts to reduce costs and keep the plant financially viable. Two of the charges reached the arbitration stage. I lost one of the arbitrations and prevailed in the other. Ultimately, we resolved the remaining charges. However, unfortunately, a few years later, the company closed the plant.

I worked with the Southern Poverty Law Center in a matter against a nationwide mutual insurance company that provided its policy holders access to various fraternal lodges it owned and maintained for their use. Some of the lodges discriminated against African Americans. Richard Cohen of the Southern Poverty Law Center and my former partner, Robert Spotswood, were the lead lawyers and negotiated a resolution with the company. As a young associate, I was tasked with reviewing the quarterly progress reports to ascertain compliance with the settlement decree and ensuring that minority policy holders had full access to the lodges.

I worked with the Jefferson County, Alabama Teen Court program as a trainer, attorney coach and trial judge. Teen Court is an alternative sentencing program for first time non-violent offenders in which the lawyers and jurors are other teenagers. My role was to train the students to prepare them for their roles as prosecutors or defense lawyers and to work with them during the trials on those days when I was not serving as one of the judges.

Finally, I also conducted annual supervisory training sessions for a large number of my clients. This was an opportunity to have a forum with the individuals in the trenches to discuss problem areas and to make recommendations on how they could improve their employment practices to make the workplace more hospitable and fair to all.

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.

I have not held a teaching position.

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.

The only potential deferred income arrangement I have involves the 2013 sale of a two percent interest in a commercial building. I purchased the interest in 2008 from Jonathan Dunning of Synergy Real Estate Holdings and sold it back to him in 2013. Under the terms of the contract, Mr. Dunning's payments were due in quarterly installments over a one year period. Mr. Dunning made the first two payments, but has failed to make the final two. Mr. Dunning is currently awaiting trial for federal criminal charges related to his business dealings. I do not expect to receive the final two payments in light of Mr. Dunning's legal troubles.

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.

I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, if confirmed to the Court of Appeals for the Eleventh Circuit.

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.

The only potential conflicts I see involve companies in which my wife and I have a financial interest or in which the lawyers are close personal friends or relatives. Consistent with my current practice, I plan to continue to recuse in such cases, and, for a year following completion of their clerkships, in cases where my former law clerks are listed as counsel of record. Also, my wife is an Assistant Federal Defender. I have recused myself, and will continue to do so, from any cases in which she has participated.

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

If I am confirmed, I will apply the standards set forth in the Code of Conduct for United States Judges and in the relevant Canons and statutory provisions to any scenario involving a potential conflict of interest or an appearance of partiality.

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.

As a lawyer, I represented Children's Village in a lawsuit (*Lakisha Raby v. Children's Village*, 2:02-cv-2910-SLB) and on EEOC charges (Darryl Gardner and Bertha Strickland). I worked on the *Raby* case for about 18 months and on the Gardner and Strickland charges for a few months. I also handled matters pro bono for Aletheia House, a drug rehabilitation facility, and for Bethel Baptist Church. The Bethel Baptist work was related to the renovation of the historic church and lasted for over two years. Finally, I represented an individual pro bono in a misdemeanor criminal matter involving bad checks, and that representation lasted for about five hours.

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.

On November 18, 2013, I submitted an application to United States Congresswoman Terri Sewell's Screening Committee for Judicial Vacancies. Representative Sewell created the Committee to screen candidates for judicial vacancies, including the vacancy on the Eleventh Circuit. I interviewed with the Committee on December 15, 2013 in Birmingham, Alabama. On November 26, 2013, an official from the White House Counsel's Office spoke to me about my potential interest in serving on the United States Court of Appeals for the Eleventh Circuit. After that day, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 10, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 11, 2016, 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.