

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Emily Coody Marks
Emily Michele Coody

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

United States District Judge for the Middle District of Alabama

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

Ball, Ball, Matthews & Novak, P.A.
445 Dexter Avenue, Suite 9045
Montgomery, Alabama 36104

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

1973; Tuscaloosa, Alabama

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.

1995 – 1998, University of Alabama School of Law; J.D., 1998

1991 – 1995, Spring Hill College; B.A. (*magna cum laude*), 1995

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.

Summer 1997; 1998 – present
Ball, Ball, Matthews & Novak, P.A.
445 Dexter Avenue, Suite 9045
Montgomery, Alabama 36104

Partner (2005 – present)
Associate (1998– 2004)
Summer Associate (Summer 1997)

1995–1998
BARBRI Bar Review
Alabama Regional Office
Washington office:
1150 18th Street, N.W., Lower Level
Washington, D.C. 20036
Student Representative

Summer 1997
Janecky, Newell, Potts, Wells & Wilson, P.C.
Now defunct
Mobile, Alabama
Summer Associate

Summer 1996
Office of the Alabama Attorney General
501 Washington Avenue
Montgomery, Alabama 36130
Summer Associate

Summer 1996
Capell, Howard, Knabe & Cobbs (now Capell & Howard)
150 S. Perry Street
Montgomery, Alabama 36104
Summer Associate

Summer 1995
Mobile County Law Library
Mobile County Courthouse
205 Government Street
Mobile, Alabama 36602
Clerical Aide

Other Affiliations (uncompensated unless otherwise indicated):

2005 – present
Federal Defenders for the Middle District of Alabama
817 South Court Street
Montgomery, Alabama 36104
Board of Directors
President (2014–2016)
Vice President (2013–2014)

2003 – present
JobMarks, Inc. d/b/a Match Staffing
3001 Zelda Road, Suite 100
Montgomery, Alabama 36106
Vice President

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

I have not served in the military. I was not required to register for selective service.

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

Martindale Hubbell AV rating (2012 – present)

Special Recognition Award, Alabama State Bar (2010)

River Region March of Dimes March for Babies Top Walker – First Place, top fundraiser (2008)

University of Alabama School of Law – Bench and Bar Legal Honor Society (1997); CALI Excellence for the Future Award for Criminal Procedure-Pretrial (1997); CALI Excellence for the Future Award for Problems in Environmental Law (1998); Student Bar Association Senate Resolution: Recognition and Commendation for Support to the Law School (1997)

Spring Hill College – President’s Scholar, English (1995); President’s Scholar, Foreign Languages (1995); Who’s Who Among American Universities and Colleges (1995); Andrea LaPointe Service Award (1995)

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

Alabama Defense Lawyers Association

Alabama State Bar Association (2000 – present)

Volunteer Lawyers Program (2005 – present)

Chair (2009 – 2012)

Co-Chair (2007 – 2009)

Committee to Re-write the Jury Questionnaire for the Middle District of Alabama
Chair (2006)

Defense Research Institute

Eleventh Circuit Judicial Conference
Alabama State Bar Association Delegate (2016)

Federal Bar Association, Montgomery County Chapter
President (2004 – 2005)
Vice President (2003 – 2004)

Montgomery County Bar Association

10. **Bar and Court Admission:**

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

Alabama, 1998

There has been no lapse in membership.

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

United States Supreme Court, 2016
United States Court of Appeals for the Eleventh Circuit, 2002
United States District Court for the Middle District of Alabama, 1998
United States District Court for the Northern District of Alabama, 1999
United States District Court for the Southern District of Alabama, 2002
Supreme Court of Alabama, 1998

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.

The Alabama Lawyer, Board of Editors (2010; 2016)

Fantasia (2000-present)

Federalist Society (2017-present)

Hugh Maddox Inn of Court,
Member (1999-present)
Master of the Bench (2013)

Jimmy Hitchcock Memorial Award Selection Committee (2015)

Les Mysterieuse (2007-present)

Mystic Order of Minerva (2010-present)

Phi Mu Fraternity, Delta Theta Chapter, Spring Hill College
Inactive Member (1995 – present)
Rush Chair (1995)
Member (1992 – 1995)

Society of Human Resource Managers (SHRM) (approximately 2006)

- 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.

As of 1995, I am an inactive member of Phi Mu Fraternity, a social sorority that, to my knowledge, restricts its membership to women. I have not taken any action to change this policy or practice. To my knowledge, this sorority does not currently discriminate and did not formerly discriminate on the basis of race, religion, or national origin. I am also a member of three local women's social organizations: Mystic Order Of Minerva, Les Mysterieuses, and Fantasia. To my knowledge, these organizations restrict their membership to women. I have not taken any action to change this policy or practice. To my knowledge, none of these three organizations currently discriminate on the basis of race, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies. However, because each of these three organizations is more than 50 years old, they may have discriminated on the basis of race, religion, or national origin, either through formal membership requirements or the practical implementation of the same, at some point in the

past before I joined. I have no specific information to suggest these three organizations did so discriminate, and to my knowledge, none of them have ever so discriminated at any time since I have been a member.

To my knowledge, none of the other organizations listed in response to 11a currently discriminate or formerly discriminated on the basis of sex, race, 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.

Employee Absences Do Not Make the Heart Grow Fonder, SES Legal Education Blog (October 8, 2015), <http://www.sterlingeducation.com/the-sterling-blog/employee-absences-do-not-make-the-heart-grow-fonder.html>. Copy supplied (republished on multiple websites).

Faces of the Legal Profession, River Region Living (September 2014). Copy supplied.

HR Holiday Wish List, SES Legal Education Blog, (November 25, 2013), <http://www.sterlingeducation.com/the-sterling-blog/bid/98352/HR-Holiday-Wish-List.html>. Copy supplied.

Archive of 2007 Posts with Rick Marks, March of Dimes, Share Your Story Blog: Charles and Lawrence Marks, <http://share.marchofdimes.org/blog/b/weblog18827/posts/marks-twin-boys#.WR9NCEmrMdU> (last visited September 9, 2017).

Living Wills Should Be the Rule and Not the Exception, Addendum (August XX, 2005). Copy supplied.

H.I.P., H.I.P., Hooray (Honors Internship Program), The Investigator (November XX, 1994). Copy supplied.

With Brian Smith, *SGA Presidential Race...*, The Springhillian, March 10, 1994. 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 Chair of the Committee to Re-Write the federal jury questionnaire for the Middle District of Alabama, I submitted recommendations to the Chief Judge on behalf of the committee regarding the content of the questionnaire and dissemination thereof to attorneys. Copy supplied.

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

None.

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

January 14, 2016: Speaker, "ADA, FMLA, and Workers' Compensation: Termination and the Role of Handbooks," Sterling Education Services, Montgomery, Alabama. Outline supplied.

November 6, 2015: Speaker, "Advanced FMLA and ADA Issues and Sexual, Racial, and Other Harassment and Discrimination," Sterling Education Services, Montgomery, Alabama. Outline supplied.

November 19, 2014: Speaker, "Wage and Benefit Issues and Employment Laws," National Business Institute, Montgomery, Alabama. Outline supplied.

November 7, 2014: Speaker, "Social Media and Harassment in the Workplace," Sterling Education Services, Montgomery, Alabama. Outline supplied.

April 10, 2014 (approximately): Speaker, "Discrimination in the Workplace," Montgomery Bar Association, Montgomery, Alabama. Outline supplied.

December 10, 2013: Speaker, "Human Resource Law," National Business Institute, Montgomery, Alabama. Outline supplied.

November 8, 2013: Speaker, "Social Media and Employment Laws," Young Lawyer's Section of the Alabama State Bar Association, Montgomery, Alabama. Outline supplied.

November 5, 2013: Speaker, "Hot Topics in Labor & Employment Law," Sterling Education Services, Montgomery, Alabama. Outline supplied.

August 4, 2013: Speaker, "Considerations When Hiring and Firing," Motorcoach Association Regional Meeting, Birmingham, Alabama. Outline supplied.

November 2012 (exact date unknown): Speaker, "Fundamentals of Employment Law," Sterling Education Services, Montgomery, Alabama. Outline supplied.

November 18, 2011: Recipient of award on behalf of the Alabama State Volunteer Lawyers Program, Beasley Allen Legal Strategies Conference & Expo, Montgomery, Alabama. I have no notes, transcript, or recording, however, press coverage supplied. The address of the Alabama State Bar is 415 Dexter Avenue, Montgomery, Alabama 36104.

December 5, 2007 (approximately): Speaker, Citizen of the Year Speech, March of Dimes, Montgomery, Alabama. Outline supplied.

May 7, 1995: Speaker, Senior Class Gift Presentation at Commencement, Spring Hill College, Mobile, Alabama. Video supplied.

- 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.

Putting the Spotlight on Alabama's Premature Births, WSFA 12 News (August 17, 2007, 5:30 P.M.),
<http://www.wsfa.com/story/6948330/putting-the-spotlight-on-alabamas-premature-births>. Copy supplied.

Bill Rice, *Many, But Not All Premature Births Have Happy Outcomes*, Montgomery Independent, May 21, 2007. Copy Supplied.

Lt. Col. Susan Turley, *Montgomery Chapter of Federal Bar Association Gives Attorneys a Chance to Look Beyond the "Robe"*, Addendum, (August 2006). Copy supplied.

Local Lawyers Take Steps To Fight Breast Cancer, Montgomery Independent, August 17, 2006. Copy supplied.

Leslie Baker, *Summer Spent Writing for FBI*, Mobile Press Register, October 15,

1994. Copy supplied (reprinted in multiple outlets).

Marie Sheldon, *FBI Selects Spring Hill Junior for Prestigious Intern Program*, Publication and date of publication unknown. Copy supplied (reprinted in multiple outlets).

Marie Sheldon, *Coody Selected as FBI Intern*, *The Springhillian*, March 10, 1994. 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 not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
- i. Of these, approximately what percent were:
- | | |
|-----------------------|---------------------|
| jury trials: | _____% |
| bench trials: | _____% [total 100%] |
| civil proceedings: | _____% |
| criminal proceedings: | _____% [total 100%] |
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- 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).
- 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.
- e. Provide a list of all cases in which certiorari was requested or granted.
- 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.

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

I have not held judicial office.

- 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.

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

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

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

- b. List all memberships and offices held in and services rendered, whether

compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held a position in a political party, election committee, or political campaign. I did serve on a host committee for a campaign event for Senator Luther Strange on April 11, 2017.

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

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

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

I did not serve as clerk to a judge.

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

I have not practiced law alone.

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

1998 – present
Ball, Ball, Matthews & Novak, P.A.
445 Dexter Avenue, Suite 9045
Montgomery, Alabama 36104
Associate (1998 – 2004)
Partner (2005 – present)

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 have not served as a mediator or an arbitrator.

b. Describe:

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

I have practiced law at Ball, Ball, Matthews & Novak since I graduated

from law school. As an associate, I primarily worked on general insurance defense litigation including premises liability, personal injury defense, civil rights defense, and appellate work. Over the years, I gradually shifted the focus of my practice to employment defense and civil rights defense. I regularly advise and defend clients on matters involving the First, Fourth, Fifth, Eighth, Eleventh, and Fourteenth Amendments to the United States Constitution, matters involving Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Pregnancy Discrimination Act, the Family Medical Leave Act, the Fair Labor Standards Act, employment policies and procedures, Section 1981, Section 1983, Section 1985, EEOC Charges of Discrimination and Department of Labor investigations. I have handled appeals throughout my career in both state and federal courts.

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

My clients have been primarily businesses (from small businesses to larger companies), and individual educators and/or administrators. I have also represented governmental entities, including municipalities, state agencies, and state actors/employees.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 75 %
 - 2. state courts of record: 20 %
 - 3. other courts: 0 %
 - 4. administrative agencies: 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.

I have tried at least 10 cases to verdict or judgment. Of those cases, I was sole counsel in three, lead counsel in two, and associate counsel in five.

With respect to my federal court practice, I am or have been counsel of record in 121 cases in the Middle District of Alabama, 18 cases in the Northern District of

Alabama and 15 cases in the Southern District of Alabama. Many of those cases were resolved on dispositive motions.

- i. What percentage of these trials were:
 - 1. jury: 70 %
 - 2. non-jury: 30 %

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I participated in opposing a petition for writ of certiorari in the Supreme Court of the United States in 2016. Specifically, I prepared the brief in opposition to the petition for writ of certiorari filed by an opposing party who had lost on a mandamus petition in the Alabama Supreme Court. At the time I submitted the brief to the Supreme Court, my application for admission to the Supreme Court bar was pending, so my name does not appear on the brief. My Supreme Court bar application was granted shortly before the petition for certiorari we opposed was denied by the Supreme Court. A copy of the brief is supplied.

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

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

- (1) *Arrington v. Courtyard Citiflats and Action Property Management*, Case No. CV-2014-447 (Circuit Ct. for Montgomery Cnty. July 18, 2014), *petition for mandamus granted sub nom. Ex Parte Courtyard Citiflats, LLC*, Case No. 1140264, 191 So. 3d 787 (Ala. June 12, 2015), *petition for cert. denied sub nom. Arrington v. Courtyard Citiflats, LLC*, 136 S. Ct. 1194 (February 29, 2016).

This was a wrongful death action brought against an apartment complex and its management company arising out of a drowning incident in the apartment swimming pool. I represented the apartment complex and the management company and filed a motion to dismiss based upon the expiration of the two-year

statute of limitations. The plaintiff filed the suit six days prior to the expiration of the statute of limitations but did not pay the filing fee. Instead, the plaintiff filed an affidavit of substantial hardship, asking the court to excuse the payment of the filing fee based on her indigent status. The court approved the affidavit, but only after the expiration of the statute of limitations. Under Alabama law, a case is not commenced for the purpose of the statute of limitations until either the filing fee is paid or the court rules on the affidavit of substantial hardship. The trial court denied the motion to dismiss and entered an order granting the affidavit *nunc pro tunc*, retroactive to the date the complaint was filed. The defendants filed a petition for writ of mandamus asking the Alabama Supreme Court to direct the trial court to enter an order dismissing the case based on the expiration of the statute of limitations. I argued that, under controlling Alabama law, the trial court did not acquire subject matter jurisdiction over the case before the trial court granted the affidavit of substantial hardship, which occurred after the expiration of the statute of limitations. Further, the trial court could not cure a jurisdictional defect *nunc pro tunc*. The Alabama Supreme Court granted the petition and directed the trial court to dismiss the case. The plaintiff filed a petition for writ of certiorari in the United States Supreme Court, which we opposed and which the Supreme Court denied. I was primarily responsible for the briefing in this case. Judge Charles Price presided in the Circuit Court for Montgomery County.

Co-counsel:

E. Hamilton Wilson, Jr.
William H. Brittain, II
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445 Dexter Avenue, Suite 9045
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(334) 387-7680

Opposing Counsel:

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492 S. Court Street
Montgomery, Alabama 36104
(334) 262-7232

J. Carlton Sims, Jr.
J. Carlton Sims, Jr., Attorney at Law
492 S. Court Street
Montgomery, Alabama 36104
(334) 328-2294

- (2) *Brackin v. Anson*, Case No. 2:12-cv-750-WKW, 2014 WL 555315 (M.D. Ala. Feb. 12, 2014), *aff'd*, Case No. 14-11180-C, 585 F. App'x 991 (11th Cir. Sept. 25, 2014).

This case arose out of the termination of the three plaintiffs from their employment with the Marine Resources Division of the Alabama Department of Conservation. Using data from GPS track sticks randomly placed in State vehicles and/or vessels the defendants compared it to corresponding reports and timesheets of the plaintiff employees. The defendants discovered that the plaintiffs had misrepresented their activities, the number of hours worked, and had received and used compensatory time they had not earned. The defendants recommended that the plaintiffs be terminated, and that recommendation was accepted. The plaintiffs sued the defendants (their supervisors) claiming denial of Equal Protection rights, denial of Due Process rights, conspiracy under 42 U.S.C. § 1985, defamation, and conspiracy. The district court granted summary judgment to the defendants. The plaintiff appealed to the Eleventh Circuit Court of Appeals, which affirmed the judgment entered in favor of the defendants. I was sole counsel for the defendants. Judge W. Keith Watkins presided in the district court, and Judges Jordan, Rosenbaum, and Fay heard the case in the court of appeals.

Opposing Counsel:
Mark G. Montiel, Sr.
Mark G. Montiel, P.C.
6752 Taylor Circle
Montgomery, Alabama 36117
(334) 356-1899

- (3) *Burt v. Chess*, Case No. CV-2010-900024.00 (Circuit Ct. of Chilton Cnty. March 17, 2010), *aff'd*, Case No. 2120158, 166 So. 3d 153 (Ala. Civ. App. Sept. 27, 2013), *petition for cert. denied*, Case No. 1110336, 176 So. 3d 383 (Ala. Dec. 13, 2013). Alabama Supreme Court, *cert denied*, Case No. 1110336, Judges Bolin, Malone, Woodall, Murdock, and Wise; Alabama Court of Civil Appeals, Case No. 2120158, Judges Donaldson, Thompson, Pittman, Thomas, and Moore; Circuit Court of Chilton County, Alabama, Case No. CV-2010-900024.00, Judge Sibley Reynolds.

This case, brought in the Circuit Court of Chilton County, Alabama, involved the plaintiff's attempt to redeem property purchased by my client at a foreclosure sale. The plaintiff filed to suit to exercise his right of redemption and the dispositive issue in this case was whether the plaintiff was excused from providing tender with his Complaint to redeem. The defendant was initially represented by attorney John Hollis Jackson, who obtained summary judgment on behalf of the defendant. When the plaintiff appealed to the Alabama Court of Civil Appeals, I joined the defense of the defendant. The Alabama Court of Civil Appeals reversed the summary judgment and remanded the case to the Circuit Court. I handled the litigation after remand and tried the case. At the close of trial, the court entered judgment in favor of the defendant. The plaintiff appealed the judgment to the Alabama Court of Civil Appeals, and after I briefed the issues, the Court affirmed with no opinion. The plaintiff filed a petition for writ

of certiorari to the Alabama Supreme Court, which was denied. Judge Sibley Reynolds presided in the Circuit Court of Chilton County, Judges Donaldson, Thompson, Pittman, Thomas, and Moore participated in the Court of Civil Appeals, and Justices Bodin, MAlon, Woodall, Murdock, and Wise participated at the Supreme Court level.

Anthony Bush
The Bush Law Firm, LLC
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(334) 263-7733

- (4) *Cooper v. Ambassador Personnel, Inc.*, Case No. 3:06-cv-138-MHT, 570 F. Supp. 2d 1355 (M.D. Ala. 2008).

This lawsuit was filed by a former employee of my client, Ambassador Personnel, Inc. The plaintiff claimed she was terminated on the basis of her pregnancy in violation of Title VII and the Pregnancy Discrimination Act. I was sole counsel for the defendant. I tried the case and the jury found that although the plaintiff proved by a preponderance of the evidence that her pregnancy was a motivating factor in the decision to terminate her, the defendant proved by a preponderance of the evidence that it would have taken the same action against her in the absence of the factor of her pregnancy. Therefore, judgment was entered in favor of the defendant. Judge Myron H. Thompson presided over the case.

Opposing Counsel:
Alicia Haynes
Haynes & Haynes
1600 Woodmere Drive
Vestavia Hills, Alabama 35226
(205) 879-0377

- (5) *Kirkpatrick v. Geneva County BOE*, Case No. 1:14-cv-00171-MHT-WC, 2015 WL 5853778 (M.D. Ala. Oct. 6, 2015).

This was an action brought by a former special education teacher against the school superintendent. I was sole counsel for the superintendent. Pursuant to 42 U.S.C. § 1983, the plaintiff asserted violations of her freedom of association rights under the First Amendment. I filed a motion to dismiss asserting the defense of qualified immunity. The district court granted the motion to dismiss, finding that at the time of the alleged actions, the law was not clearly established that the superintendent was violating the plaintiff's freedom of association rights. Judge Myron H. Thompson presided over the case.

Co-Counsel:
James R. Seale

Hill, Hill, Carter, Franco, Cole & Black, P.C.
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(334) 834-7600

Opposing Counsel:
William F. Patty
Alabama Department of Transportation
1409 Coliseum Boulevard
Montgomery, Alabama 36110
(334) 242-6348

Sabrina Comer
Comer Elder Law LLC
325 North Hull Street
Montgomery, Alabama 36104
(334) 265-7133

- (6) *Letson, et al. v. Cedilotte, et al.*, 7:00-cv-00934 (N.D. Ala. Aug. 3, 2002).

This diversity case arose from a fatal auto accident involving students from Canada who were traveling through Alabama. The vehicle carrying the students was driven by an employee of the Canadian school and collided with a vehicle driven by the decedent. This case was brought against the school and employees of the school. I was co-counsel for the school. The case was tried to a jury and I was second chair attorney at trial. The jury returned a verdict in favor of the defendants. Judge U.W. Clemon presided.

Co-Counsel:
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Alan T. Hargrove, Jr.
Rushton, Stakely, Johnston & Garrett
184 Commerce Street
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(334) 834-8480

F. Chadwick Morriss
Kirkland & Ellis, LLP
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D. Michael Andrews
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- (7) *McRae v. Knapp*, Case No. CV-11-900454 (Circuit Ct. of Mobile Cnty. 2011), *removed*, Case No. 1:11-cv-00361-CG-N, 2012 WL 2681832 (S.D. Ala. Jul. 6, 2012).

This was an action for relief under 42 U.S.C. §1983 and pursuant to state law brought by a plaintiff who claimed the defendant officer with the Alabama Department of Conservation and Natural Resources violated his rights under the Fourteenth Amendment by allegedly using excessive force during his arrest. The plaintiff also asserted various state law claims. The plaintiff brought suit against the officer in his individual and official capacities. I was co-counsel for the officer and filed a motion for summary judgment, which the district court granted in part and denied in part. We appealed the denial of qualified immunity to the Eleventh Circuit Court of Appeals, and successfully mediated the case. Judge Robert H. Smith presided over the case in the Circuit Court of Mobile County, and Judge Callie Granade heard the case in the Southern District of Alabama.

Co-Counsel:

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Opposing Counsel:

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- (8) *Pace v. Chapman*, Case No. 1:15-cv-00269-WS-N (S.D. Ala. Jul. 13, 2016).

This case arose out of the termination of the plaintiff from her position as a non-tenured fifth grade teacher at an elementary school in Mobile County, Alabama. This was a single motive race discrimination claim brought by the plaintiff under

42 U.S.C. § 1981 through 42 U.S.C. § 1983. The Plaintiff alleged that the principal recommended her termination on the basis of her race in violation of her rights under § 1981. The plaintiff brought suit against the principal in her individual capacity. I was sole counsel for the principal and filed a motion for summary judgment, pointing out to the court that the principal recommended the plaintiff's termination for legitimate, non-discriminatory reasons and asserting the defense of qualified immunity. In response to the motion for summary judgment, the plaintiff filed a motion to dismiss representing that she did not contest the entry of summary judgment. The district court entered judgment in favor of the defendant. Judge William Steele presided over the case.

Co-Counsel:

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Opposing Counsel:

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- (9) *Physiotherapy Corp. v. Kohn*, Case No. 2:16-cv-966-DAB (M.D. Ala. Aug. 17, 2017).

This case involved allegations of breach of contract and alleged violations of a non-compete/non-solicitation agreement. I was lead counsel for the defendant, a former employee of the plaintiff. The plaintiff filed a complaint and motion for ireliminary injunction, seeking to enjoin certain activities by the defendant. I submitted a brief in opposition to the motion for preliminary injunction. The plaintiff ultimately withdrew the motion and after completion of discovery, a mutual resolution was achieved. Judge David Baker presided over the case.

Co-Counsel:

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Opposing Counsel:

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- (10) *Snowden v. Sonny Davis Construction*, Case No. 03-cv-003356.00 (Circuit Ct. of Montgomery Cnty. November 20, 2001).

This case involved claims brought by homeowners against their home builder. The plaintiffs claimed the foundation of the house was improperly built resulting in structural damage to the home. I was lead counsel for the defendant. I tried the case to a jury, which returned a verdict in favor of the defendant. Judge Eugene W. Reese presided over the case.

Co-Counsel:

N. Gunter Guy, Jr.
(formerly at Ball, Ball, Matthews & Novak)
Most recent employer address:
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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.)

Representation of a Plaintiff with a Disability Discrimination Claim.

One of my most significant legal activities did not ripen into actual litigation. I represented an individual who had been employed as a manager for a company for over ten years. My client, unfortunately, was diagnosed with cancer and underwent a grueling cancer treatment regimen. On the day he returned to work after his cancer treatment, he was terminated.

In March, 2012, I contacted the company about my client's claim of disability discrimination under the American with Disabilities Act (ADA). I was soon thereafter contacted by the company's attorney, and we engaged in initial settlement negotiations. When those negotiations broke down, I filed a charge of discrimination with the EEOC on behalf of my client on May 16, 2012. After an investigation, the EEOC issued a right to sue letter. As I worked on a draft of the complaint alleging violations of the ADA and § 1981 (because my client had opposed racial discrimination), I contacted the attorney for the company again and asked if he wanted to enter into settlement negotiations before I filed the complaint. He agreed and we were able to resolve the matter in March, 2013 to the full satisfaction of my client and without his having to endure protracted litigation. My client was extremely grateful, and I found that communicating with opposing counsel before litigation becomes unduly adversarial and expensive can be an effective means of dispute resolution and in the best interest of the client.

Dissolution of a TRO Involving Enforcement of a Non-Compete Agreement

I was retained by an individual who lived in Spokane, Washington. His previous employer had obtained a temporary restraining order in the Circuit Court of Montgomery County, Alabama in an effort to enforce a non-compete agreement, and the case had been set for a quick hearing on a preliminary injunction. I immediately gathered the appropriate information from my client and his Washington counsel and filed a motion to dismiss asserting that the court lacked jurisdiction over my client because he had no ties to Alabama. At the hearing on the preliminary injunction, I examined the plaintiff corporation's witnesses, took testimony from my client via telephone, and argued the motion to dismiss to the court. The court subsequently dismissed the case against my client on the basis that it lacked personal jurisdiction over the defendant. This matter involved the traditional notion of fundamental fairness and the constitutional requirement that an individual have sufficient, minimal contacts with a forum such that he can reasonably expect to be haled into court there.

Oversight of Sexual Harassment/Discrimination Complaints in the Workplace

I have advised numerous clients as to the proper way to conduct investigations into workplace complaints about discrimination or harassment. I have guided my clients through the process of completing an investigation, making determinations based on the results of the investigation, and subsequently making the appropriate employment decisions. The importance of employers taking immediate, corrective action to ferret out and eliminate discrimination, retaliation, and harassment in the workplace cannot be understated. Employees must have the freedom to voice complaints about

workplace conditions and know that those complaints will be properly investigated and corrective action taken. When employers conduct proper investigations into workplace complaints, it sends the message to employees that improper behavior will not be tolerated and that complaints may be made without fear of retaliation.

Drafting Policies and Procedure Manuals for Clients

I have been retained to draft, edit, review, and revise employee handbooks and policies and procedures for various clients. I have found that effective policies and procedures, adequately communicated to employees, and correctly implemented by managers, lead to fewer workplace incidents, employee complaints, and provide a clear mechanism for employees to voice complaints about workplace conditions without fear of reprisal.

Aiding Clients in Responding to EEOC Complaints

I have represented many clients in matters brought before the EEOC. I have investigated allegations made in EEOC charges of discrimination and drafted responses on behalf of the responding parties. I have communicated effectively with representatives of the EEOC, including participation in both the mediation and settlement processes. Many times, I have found that cases can be resolved effectively prior to litigation by active participation in the EEOC charge process.

I have never acted or registered as a lobbyist.

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

None.

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

I paid capital into my law firm when I became a partner. The value of my partnership interest will be paid to me upon my departure from the firm.

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.

No.

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.

If confirmed, I will recuse in any litigation where I have ever played a role. For a period of time, I anticipate recusing from any case where my current firm, Ball, Ball, Matthews & Novak, represents a party. I will also recuse myself from cases in which a member of my family represents a party, including my sister, my stepmother, and my stepbrother. Further, I will recuse myself from cases involving my husband's companies, JobMarks, Inc. and Zeldamarks, LLC. Lastly, I will evaluate any real or potential conflict, or relationship that could give rise to an appearance of conflict, on a case by case basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary.

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

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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

I was chair of the Alabama Bar Association Volunteer Lawyers Program (VLP) committee for three years, from 2009 to 2012, and co-chair of the committee for two years, from 2007 to 2009. The purpose of this program is to promote access to justice by providing representation to citizens with limited means. During my time as chair and co-chair, my committee significantly increased attorney membership in the VLP, developed model pro bono policies for law firms, developed pro se forms to aid non-lawyers in navigating the legal process, and developed Limited Scope Representation Rules and Forms to enable lawyers to represent disadvantaged individuals on a limited basis, and increased training opportunities for lawyers in the areas of the law where indigent assistance is most needed. I have been a member of the VLP since 2000 and have handled numerous pro bono cases assigned to me by the VLP. I remain an active member of the VLP committee and serve on the Executive Committee.

I have served on the Board of Directors for the Federal Defenders in the Middle District of Alabama since 2005. I served as President of the Board from 2014 to 2016 and Vice President of the Board from 2013 to 2014. The purpose of this program is to provide quality representation to indigent criminal defendants. As a member of the Board of Directors, I help manage the business affairs and property of the Federal Defenders. In addition to my duties as a member of the Board, I also provide employment advice as needed to aid the organization in its day-to-day operations.

26. Selection Process:

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

In or around December 2016, I expressed my interest in being considered to fill one of the Alabama judicial vacancies to a member of Senator Richard Shelby's staff, and later sent a letter of interest, my resume, and a list of references to Senator Shelby. In May 2017, I participated in a telephone conference with Senator Shelby, who informed me that my name had been submitted to the White House. On May 17, 2017, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice, and since that time I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On September 7, 2017, 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.