

Freddie Heard, #272092
Eastern Corr. Facility
200 Wallace Dr.
Clio, AL. 36017

Ashley Rich
District Attorney
205 Government St
Mobile, AL. 36602

In re: Open Records Act Request 36-12-40 and 36-12-41

Dear Ms. Rich:

I am requesting whatever forms and instructions you have for a citizen to access the members of the Alabama State grand jury without having your office act as a "filter" to determine what I am allowed to present to the grand jury. If it is your policy to micro-manage what evidence may be presented to the grand jury (i.e., to block citizens access to the grand jury) please so state and furnish whatever written policy you have in that regard.

I believe Alabama law is clear on the issue(s):

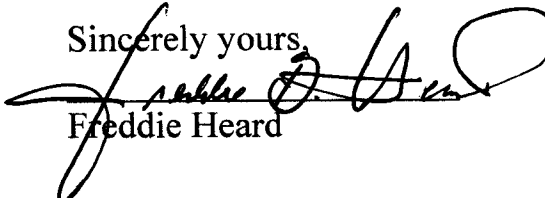
The grand jury is an integral part of our legal system, whose function it is to make investigations of all crimes committed within its jurisdiction. Public policy demands that the citizen, without hazard to himself, may freely bring before the grand jury the fact that a crime has been committed, request an investigation, and furnish such information as he had in aid of the investigation. In this the citizen is not a prosecutor. It is not essential that he have probable cause to believe any individual to be the guilty party. He is merely performing a duty in aid of the tribunal set up to ascertain whether there is probable cause to believe a crime has been committed, and if so, who is there probable cause to believe to be the guilty party. *American Surety Co. v. Pryor*, 217 Ala. 244, 115 So. 176; *smith v. Dollar*, 223 Ala. 661, 138 So. 277; 38 C.J. p. 385, § 2. [Emphasis added.]

Alabama Power Company v. John K. Neighbors No. 80-217 (Ala 1981)

The purpose of the Open Records Act is to allow private citizens to monitor the manner in which public officers discharge their public duties. See *Stone v. Consolidated Publ'g Co.*, 404 So. 2d 678, 681 (Ala. 1981); *Munger v. State Bd. for Registration of Architects*, 607 So. 2d 280, 284 (Ala. Civ. App. 1992) (quoting *Stone*, supra); and *Water Works & Sewer Bd. of Tallassee v. Consolidated Publ'g, Inc.*, 892 So. 2d 859, 862 (Ala. 2004). That right is the same whether the requestor is a single individual or a group of private citizens. Additionally, the public's right to access public documents does not depend upon whether the requestor intends to support or challenge the manner in which a public duty has been discharged.

In *Stone v. Consolidated Publishing Co.*, 404 So. 2d 678 (Ala. 1981), the Alabama Supreme Court determined that the phrase "public writing," as used in the Open Records Act, means "such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens." 404 So. 2d at 681.

Please advise the courts involved for inspection and copying, and mail, and I will have it forwarded to you.

Sincerely yours,

Freddie Heard

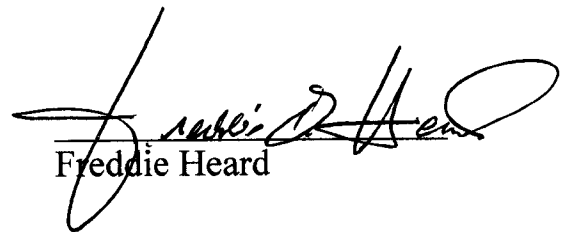
Certificate of Service

This certifies that I have on this 22nd day of March, 2021, placed a true and exact copy of my

**Letter to Ashley Rich, District Attorney, dated 03- -2021
In re appearing before the Federal Grand Jury**

in the U.S. Mails, first-class postage prepaid, addressed to:

Ashley Rich
District Attorney
205 Government St
Mobile, AL. 36602



Freddie Heard

**IN THE CIRCUIT COURT FOR THE 13TH JUDICIAL CIRCUIT,
MOBILE COUNTY, ALABAMA**

Freddie Heard)	
)	Case No.:
Plaintiff,)	CV-2022 900283
v.)	
)	
Ashley Rich)	
)	
Defendant.)	
)	

COMPLAINT

This is a lawsuit seeking to enforce the right to inspect public records pursuant to the Alabama Public Records Law, Ala. Code § 36-12-40 (2013). Plaintiff Freddie Heard, an Alabama prisoner, requested public records from Defendant, Ashley Rich, in her official capacity as District Attorney relating to access to the Alabama state grand jury. Regrettably, Ashley Rich has ignored Mr. Heard's requests for public records in violation of Ala. Code § 36-12-40. This Court's intervention is consequently required.

There is a cesspool of corruption in this county that grand jury members need to be made aware of.

JURISDICTION AND VENUE

1. This action arises under the authority vested in this Court by virtue of Ala. Code § 12-11-31(1) and 12-11-33(1).
2. Venue is proper in this Court pursuant to Ala. Code § 6-3-2(b)(3) (2013).

PARTIES

3. Plaintiff is a prisoner and still is incarcerated during the events at issue in this lawsuit. Mr. Heard is a resident of Barbour County, Alabama.
4. Defendant Ashley Rich is the district attorney for that office, and in such capacity has the possession of and control over the records that Plaintiff seeks. Defendant Ashley Rich resides in her official capacity in Mobile County, Alabama. The action this lawsuit seeks to compel will take place in Mobile.

FACTUAL ALLEGATIONS

5. Ashley Rich is the district attorney at that office. In that capacity, she is vested with authority to receive and respond on behalf of Alabama State Agency to requests for public records pursuant to the Alabama Public Records Act, Ala. Code § 36-12-40 (2013).
6. In March of 2021, Plaintiff Heard submitted a written request to Ashley Rich seeking the disclosure of categories of public records relating to access to the state grand jury. A true and correct copy of Heard's request is attached to this Complaint as Attachment 1.

7. To date Plaintiff's request has been ignored Alabama Open Records request.
8. By failing to give Plaintiff access to and copies of public writings within a reasonable time, Defendant has violated and is continuing to violate Plaintiff's rights under Ala. Code § 36-12-40.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

1. Assume jurisdiction over this action;
2. Enter an injunction against Defendant directing Defendant to comply fully and without further delay with the Alabama Public Records Law and to furnish Plaintiff all public records meeting the description in his records request;
3. Enter a declaratory judgment that Ala. Code § 36-12-40 grants Plaintiff the right to inspect and obtain copies of all documents described in his records request, and that Defendant has violated Plaintiff's rights and Ala. Code § 36-12-40 by failing to provide Plaintiff with timely access to and copies of such records;

CLAIMS FOR RELIEF

Count One: Violation of the Alabama Public Records Law

4. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.

5. The Alabama Public Records Law, Ala. Code § 36-12-40 (2013) also provides: “Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor...” One Alabama Attorney General Opinion provides, “If possible, a public agency should provide free copies of public records. However, if budgetary constraints prevent this, then a public agency may charge a nominal fee, if necessary, to cover its costs in providing copies of public records.” 251 Op. Att’y Gen. Ala. 38 (June 12, 1998).


6. Enter a judgment directing that Defendant must waive all fees associated with Plaintiff’s requests;

7. Award Plaintiff reasonable attorneys’ fees and costs, and;

8. Order such additional relief as the Court may deem just and proper.

DATED this 12th day of December, 2021.

Respectfully submitted,



Freddie Heard

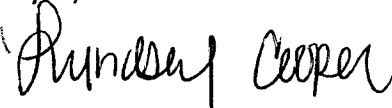
Freddie Heard
272092 E. C. F.
200 Wallace Dr.
Clio, AL 36017

February 17, 2022

Mr. Heard,

We were able to get the papers served to Mobile County District Attorneys Office. Enclosed you will find the return of service. Typically, we would send a copy of the return of service to the court as well, but we are unable to do so because there is no case number on it. Once you receive this if you need to send a copy of it to the court you will need to include the case number so they will take it. We also enclosed a copy of the money order we received to show you are paid in full. Please let us know if there is anything else, we can do for you. We hope everything goes well with your case.

Thank you,



Lyndsey Cooper

6460 Van Buren St. Ste 102
Daphne, AL 36526
ALL AGENCY
EXPERT INVESTIGATORS 251-272-3499

Paid in full

THIS CHECK IS PRINTED ON CHEMICAL REACTIVE PAPER WHICH CONTAINS VISIBLE FIBERS AND A WATERMARK - HOLD UP TO A LIGHT TO VIEW



UNIFY
FINANCIAL CREDIT UNION

P.O. Box 10018
Manhattan Beach, CA 90267-7518
877.254.9328



18-7971
3220

No. 0020650181

CASHIER'S CHECK

02/10/22

\$75.00

*** SEVENTY-FIVE DOLLARS AND 00 CENTS ***

PAY THE
SUM OF

EXACTLY 75 Dollars 00 Cents

THIS CHECK IS VOID 90 DAYS AFTER ISSUE DATE

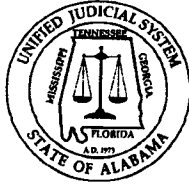
G. Howe

AUTHORIZED SIGNATURE

PAY
TO THE
ORDER
OF

ALI AGENCY LLC
RE: NELSON

⑈0020650181⑈ ⑆322079719⑆ 01000841312⑈



**JOJO SCHWARZAUER
CIRCUIT CLERK**

**CIRCUIT COURT OF MOBILE COUNTY, ALABAMA
THIRTEENTH JUDICIAL CIRCUIT**

CHARLES M. LEWIS, JR.
DEPUTY CLERK, CIVIL DIVISION
(251) 574-8420
ROOM C 936 36644-2936

ROOM C913
MOBILE GOVERNMENT PLAZA
205 GOVERNMENT STREET
MOBILE, ALABAMA 36644-2913
(251) 574-8786

Mr. Freddie D. Heard
AIS # 272097
Easterling Correctional Facility
200 Wallace Dr
Mobile, AL 36107

February 11, 2022

Dear Mr. Heard,

Our office is in receipt of your Civil Cover Sheet, Complaint, and In Forma Pauperis Declaration. The Civil Cover Sheet and the Complaint are fine. Instead of the In Forma Pauperis Declaration, the enclosed Affidavit of Substantial Hardship needs to be used. Also, the summons needs to be filled out. For your convenience these items have been enclosed. Please complete and return to our office, along with your Civil Cover Sheet and Complaint.

Sincerely

Chuck Lewis, Deputy Clerk,
Circuit Court-Civil Division

State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	SUMMONS -CIVIL-	Court Case Number
IN THE <u> Circuit </u> COURT OF <u> Mobile </u> COUNTY, ALABAMA <small>(Circuit, District, or Juvenile)</small> <small>(Name of County)</small>		
<u> Freddie D. Heard </u> v. <u> Ashley Rich </u> <small>[Name(s) of Plaintiff(s)]</small> <small>[Name(s) of Defendant(s)]</small>		
NOTICE TO: <u> Ashley Rich - 205 Government Street Ste C701, Mobile, Alabama 36644-2936 </u> <small>(Name and Address of Defendant)</small>		
THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S), <u> Freddie D. Heard #272097 H2/14A </u> , WHOSE <small>[Name(s) of Attorney(s)]</small>		
ADDRESS(ES) IS/ARE: <u> Easterling Correctional Center, 200 Wallace Drive, Clio, Alabama 36017 </u> <small>[Address(es) of Plaintiff(s) or Attorney(s)]</small>		
THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN <u> 30 </u> DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.		
TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:		
<input checked="" type="checkbox"/> You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant.		
<input type="checkbox"/> Service by certified mail of this Summons is initiated upon the written request of _____ <small>[Name(s)]</small> pursuant to the Alabama Rules of Civil Procedure.		
_____ <small>(Date)</small>	_____ <small>(Signature of Clerk)</small>	By: _____ <small>(Name)</small>
<input type="checkbox"/> Certified Mail is hereby requested. _____ <small>(Plaintiff's/Attorney's Signature)</small>		
RETURN ON SERVICE		
<input type="checkbox"/> Return receipt of certified mail received in this office on _____ <small>(Date)</small>		
<input type="checkbox"/> I certify that I personally delivered a copy of this Summons and Complaint or other document to _____ <small>(Name of Person Served)</small> in _____ County, Alabama on _____ <small>(Date)</small>		
_____ <small>(Type of Process Server)</small>	_____ <small>(Server's Signature)</small>	_____ <small>(Address of Server)</small>
_____ <small>(Server's Printed Name)</small>		_____ <small>(Phone Number of Server)</small>



ELECTRONICALLY FILED
3/2/2022 1:34 PM
02-CV-2022-900283.00
CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
JOJO SCHWARZAUER, CLERK

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

HEARD FREDDIE AIS #272097)

Plaintiff,)

v.)

Case No.: CV-2022-900283.00

ASHLEY RICH DISTRICT ATTORNEY)

Defendant.)

ORDER ON AFFIDAVIT OF SUBSTANTIAL HARDSHIP

Affiant is indigent and request is GRANTED. The prepayment of docket fees is waived.

IT IS FURTHER ORDERED AND ADJUDGED that the court reserves the right and may order reimbursement of attorney's fees and expenses, approved by the court and paid to the appointed counsel, and costs of court.

DONE this 2nd day of March, 2022

/s/ JAMES T. PATTERSON

CIRCUIT JUDGE



AlaFile E-Notice

02-CV-2022-900283.00

Judge: JAMES T. PATTERSON

To: ASHLEY RICH DISTRICT ATTORNEY (PRO SE)
MOBILE GOVERNMENT PLAZA C
205 GOVERNMENT ST.
MOBILE, AL, 36644-0000

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

FREDDIE HEARD V. ASHLEY RICH DISTRICT ATTORNEY
02-CV-2022-900283.00

The following matter was FILED on 3/2/2022 1:34:21 PM

Notice Date: 3/2/2022 1:34:21 PM

JOJO SCHWARZAUER
CIRCUIT COURT CLERK
MOBILE COUNTY, ALABAMA
CIRCUIT CIVIL DIVISION
205 GOVERNMENT STREET
MOBILE, AL, 36644

251-574-8420
charles.lewis@alacourt.gov



AlaFile E-Notice

02-CV-2022-900283.00

To: ASHLEY RICH DISTRICT ATTORNEY
MOBILE GOVERNMENT PLAZA C-701
205 GOVERNMENT ST.
MOBILE, AL, 36644

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

FREDDIE HEARD V. ASHLEY RICH DISTRICT ATTORNEY
02-CV-2022-900283.00

The following complaint was FILED on 2/23/2022 12:46:26 PM

Notice Date: 2/23/2022 12:46:26 PM

Service by sheriff in 02 - MOBILE County

JOJO SCHWARZAUER
CIRCUIT COURT CLERK
MOBILE COUNTY, ALABAMA
CIRCUIT CIVIL DIVISION
205 GOVERNMENT STREET
MOBILE, AL, 36644

251-574-8420
charles.lewis@alacourt.gov

State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	SUMMONS - CIVIL -	Court Case Number 02-CV-2022-900283.00
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IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA
FREDDIE HEARD V. ASHLEY RICH DISTRICT ATTORNEY

NOTICE TO: ASHLEY RICH DISTRICT ATTORNEY, MOBILE GOVERNMENT PLAZA C-701 205 GOVERNMENT ST., MOBILE, AL 36644

(Name and Address of Defendant)

THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S),
 Freddie AIS #272097 Heard

[Name(s) of Attorney(s)]

WHOSE ADDRESS(ES) IS/ARE: Easterling correctional facility 200 wallace dr., clio, AL 36017

[Address(es) of Plaintiff(s) or Attorney(s)]

THE ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:

You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant.

Service by certified mail of this Summons is initiated upon the written request of _____
 pursuant to the Alabama Rules of the Civil Procedure. *[Name(s)]*

03/02/2022

(Date)

/s/ JOJO SCHWARZAUER

(Signature of Clerk)

By: _____

(Name)

Certified Mail is hereby requested.

(Plaintiff's/Attorney's Signature)

RETURN ON SERVICE

Return receipt of certified mail received in this office on _____
(Date)

I certify that I personally delivered a copy of this Summons and Complaint or other document to _____

_____ in _____ County,
(Name of Person Served) *(Name of County)*

Alabama on _____
(Date)

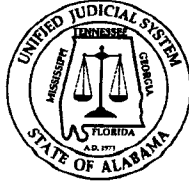
(Type of Process Server)

(Server's Signature)

(Address of Server)

(Server's Printed Name)

(Phone Number of Server)



**JOJO SCHWARZAUER
CIRCUIT CLERK**

**CIRCUIT COURT OF MOBILE COUNTY, ALABAMA
THIRTEENTH JUDICIAL CIRCUIT**

CHARLES M. LEWIS, JR.
DEPUTY CLERK, CIVIL DIVISION
(251) 574-8420
ROOM C 936 36644-2936

ROOM C913
MOBILE GOVERNMENT PLAZA
205 GOVERNMENT STREET
MOBILE, ALABAMA 36644-2913
(251) 574-8786

Mr. Freddie D. Heard
AIS # 272097
Easterling Correctional Facility
200 Wallace Dr
Mobile, AL 36107

February 11, 2022

Dear Mr. Heard,

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Sincerely

Chuck Lewis, Deputy Clerk,
Circuit Court-Civil Division

Civil Action No.

CV-2022900283

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (f))

This summons for (name of individual and title, if any) Ashley Rich, MCOA
was received by me on (date) _____

I personally served the summons on the individual at (place) MC District Atty receptionist
Mania Greenwood 205 Govt St. 17th floor on (date) Feb 17, 2022, or

I left the summons at the individual's residence or usual place of abode with (name) _____
_____, a person of suitable age and discretion who resides there,
on (date) _____, and mailed a copy to the individual's last known address; or

I served the summons on (name of individual) _____, who is
designated by law to accept service of process on behalf of (name of organization) _____
on (date) _____; or

I returned the summons unexecuted because _____; or

Other (specify): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date:

2/17/22

Rebecca Johnson
Server's signature

Rebecca Johnson
Printed name and title

6460 Van Buren St. Daphn, AL 36526
Server's address

Additional information regarding attempted service, etc:

Paid in full



UNIFY
FINANCIAL CREDIT UNION

P.O. Box 10018
Manhattan Beach, CA 90267-7518
877.254.9328



16-7971
3220

No. 0020650181

CASHIER'S CHECK

02/10/22

\$75.00

THIS CHECK IS VOID 90 DAYS AFTER ISSUE DATE

G. Howe

AUTHORIZED SIGNATURE

*** SEVENTY-FIVE DOLLARS AND 00 CENTS ***

PAY THE
SUM OF

EXACTLY 75 Dollars 00 Cents

PAY
TO THE
ORDER
OF

ALI AGENCY LLC
RE: NELSON

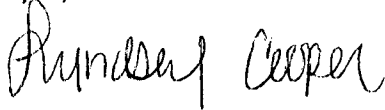
⑈0020650181⑈ ⑆322079719⑆ 01000841312⑈

February 17, 2022

Mr. Heard,

We were able to get the papers served to Mobile County District Attorneys Office. Enclosed you will find the return of service. Typically, we would send a copy of the return of service to the court as well, but we are unable to do so because there is no case number on it. Once you receive this if you need to send a copy of it to the court you will need to include the case number so they will take it. We also enclosed a copy of the money order we received to show you are paid in full. Please let us know if there is anything else, we can do for you. We hope everything goes well with your case.

Thank you,



Lyndsey Cooper



ALL AGENCY

6460 Van Buren St. Ste 102

Daphne AL 36526

251 272-3499



AlaFile E-Notice

02-CV-2022-900283.00

Judge: JAMES T. PATTERSON

To: HEARD FREDDIE AIS #272097 (PRO SE)
EASTERLING CORRECTIONAL F
200 WALLACE DR.
CLIO, AL, 36017-0000

NOTICE OF SERVICE

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

FREDDIE HEARD V. ASHLEY RICH DISTRICT ATTORNEY
02-CV-2022-900283.00

The following matter was served on 2/17/2022

D001 ASHLEY RICH DISTRICT ATTORNEY

Corresponding To

PROCESS SERVED

D001- SERVED VIA SPS - ACCEPTED VIA AUTHORIZED PARTY

JOJO SCHWARZAUER
CIRCUIT COURT CLERK
MOBILE COUNTY, ALABAMA
CIRCUIT CIVIL DIVISION
205 GOVERNMENT STREET
MOBILE, AL, 36644

251-574-8420
charles.lewis@alacourt.gov



ELECTRONICALLY FILED
3/8/2022 9:18 AM
02-CV-2022-900283.00
CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
JOJO SCHWARZAUER, CLERK

**PRETRIAL ORDER: JURY AND NON-JURY CASES
IN THE CIRCUIT COURT OF MOBILE COUNTY
BEFORE JUDGE JAMES T. PATTERSON**

In all pending cases before Judge Patterson, the following Pretrial Order will apply. This Order is in addition to the Fast Track Order or General Pretrial Order that may be filed with this case. To the extent this Pretrial Order conflicts with the Fast Track or the General Order, this Pretrial Order is the governing Order.

Counsel and their support staff please pay particular note to parts 9 and 15 below regarding AlaFile requirements and proposed orders.

Fast Track Order:

1. If any party objects to inclusion in the Fast Track System, the Court requires the party to file a Motion to Exclude along with a Proposed Scheduling Order. (See ¶ 9 below). At a minimum, the Proposed Scheduling Order must provide a proposed trial date (or month), the length of the trial, dispositive motion cut-off dates (see ¶ 5 below), factual discovery cut-off dates, expert discovery cut-off dates, and any limitations on discovery or exhibits. If the parties cannot agree on a Scheduling Order, the Court will conduct a Rule 16 conference to finalize one.
2. If case remains in the Fast Track system, the Court expects the parties to comply with the time constraints set forth in that Order. Once a party files a Motion to Set the Matter for Trial and a Certificate of Readiness, the Court will grant the motion, subject to any objection, and assign the case to a mediator to be mediated within 60 days. If the mediation is unsuccessful, the parties are required to file a report and the Court will assign a trial date.
3. If the parties anticipate that preparing for trial will take more than eighteen months, the parties must file a motion for a Rule 16 conference.

All Jury Trial Cases:

4. If at any time while the action is pending either party anticipates that the jury trial will take more than 5 days, that party must file a motion for a Rule 16 conference.
5. The Court requires any dispositive motion to be filed at least 4 weeks before trial unless otherwise agreed to by the parties. Any dispositive motion filed after this deadline will not be considered before trial.
6. The Court will conduct a Pretrial Conference approximately ten days prior to the trial setting. The attorney(s) who will be trying the case must attend the Pretrial Conference. The Court will issue a pretrial order after the conference addressing exchange of pre-marked exhibits, witness lists, jury charges, deposition testimony use

and other procedural trial issues.

7. All Motions to Strike and Motions in Limine must be filed at least 4 weeks before the start of trial. The Court will set these motions for a hearing at the pre-trial conference referenced in part 6 above. The Court will not hear any motions filed after this deadline unless for good cause shown.

All Cases:

8. All pleadings and evidentiary support must be e-filed. The Court will not accept paper-filed pleadings unless the Court has given counsel prior written permission.

9. **Motions must be accompanied with a proposed order properly uploaded into AlaCourt as a "proposed order."** The Court cautions the attorneys that when e-filing proposed orders, the proposed order cannot be filed within the body of the motion or as an "attachment" or an "exhibit" to the pending motion. It must be filed as a "proposed order." If the attorneys experience difficulty with this, see

<User Manual at www.alacourt.gov/pdfppt/alafileUserManual.pdf>

10. Motions for service by publication must be properly supported by an affidavit setting forth the facts averring avoidance of service. See Fisher v. Amaraneni, 565 So. 2d 84 (Ala. 1990); Wagner v. White, 985 So. 2d 458 (Ala. Civ. App. 2007).

11. Prior to requesting a continuance for a motion or trial setting, the requesting party must confer with opposing counsel and indicate the result of the conference in the Motion to Continue.

12. Counsel must confer the night before or the morning of a scheduled hearing on any discovery dispute and attempt to resolve the discovery dispute or narrow down the disputed issues. As a general rule, this Court highly disfavors unsupported "boilerplate" objections such as the request is irrelevant, vague, ambiguous, overly broad, unduly burdensome, or unlikely to lead to the discovery of admissible evidence. Objections to a discovery request must be specific and supported by detailed explanation of why the discovery request is improper. Ex Parte Dorsey Trailers Inc., 397 So. 2d 98 (Ala. 1981). Further, answering a discovery request subject to or reserving a general objection will be deemed a waiver of that objection. See Wright, Miller & Marcus, Fed Prac & Proc, Civil §2173 ("A voluntary answer to an interrogatory is also a waiver of the objection.").

13. Protective Orders containing provisions to seal court records and motions to seal court filings must be set for a hearing during which the party requesting to seal the records must provide clear and convincing evidence that the documents should be sealed. See Holland v. EADS, 614 So. 2d 1012 (Ala 1993).

14. The Court may request the parties e-mail proposed orders on certain issues directly to the Court. Any proposed orders sent to the Court through e-mail must be attached as a ".doc" in Microsoft Word format and counsel for opposing parties must copied on the e-mail.

15. Only documents filed as a "motion" appear in the Court's motion queue for review because of the nature of the Alacourt system. Documents filed as "other," "miscellaneous," "discovery," or "amended complaint/answer" (such as stipulations of dismissal, notice of removal, etc.) will appear in the case action summary sheet, but the Court has no notice that such a document has been filed. **If Court action is required in conjunction any pleadings, it needs to be filed as a "motion."**

Additional Rules Applicable to Workers Compensation Cases:

16. The parties must notify the Court when the plaintiff is at Maximum Medical Improvement. All cases will be mediated prior to trial on the merits and then set for trial within 90 days of notification of an unsuccessful mediation.

17. Motions to Compel filed where liability is disputed will be treated as a Request for Trial on the merits on liability only.

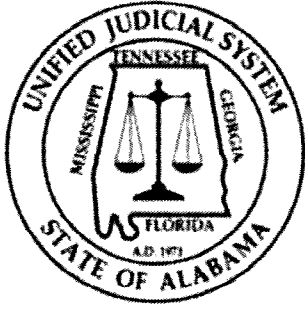
18. At the close of evidence in any case, the Court will request the parties submit through e-mail proposed Findings of Fact and Conclusions of Law to the Court. (See ¶ 14 above).

Additional Rules Applicable to Non-Jury Account Collection, Contract, Ejectment, and "Other" Similar Cases:

19. Service shall be perfected within 120 days or the case will be dismissed. Motions to Extend the Time for Service must be accompanied by an affidavit about service attempts and a proposed order. See ¶ 9 above. Motion for service by publication must be properly supported. See ¶ 10 above.

20. Once the Defendant(s) is served and fails to answer, the Court expects dispositive motions to be filed within 90 days of service. Motions for default must be supported appropriately and a proposed order filed. See ¶ 9 above. See Thomas v. American Express Bank, FSB, 139 So. 3d 809 (Ala. Civ. App. 2013).

21. Once the Defendant(s) is served and answers, the Court expects either a dispositive motion such as summary judgment or a request to set the case for trial within 90 days of the answer.



AlaFile E-Notice

02-CV-2022-900283.00

Judge: JAMES T. PATTERSON

To: HEARD FREDDIE AIS #272097 (PRO SE)
EASTERLING CORRECTIONAL F
200 WALLACE DR.
CLIO, AL, 36017-0000

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA


FREDDIE HEARD V. ASHLEY RICH DISTRICT ATTORNEY
02-CV-2022-900283.00

The following matter was FILED on 3/8/2022 9:18:51 AM

Notice Date: 3/8/2022 9:18:51 AM

JOJO SCHWARZAUER
CIRCUIT COURT CLERK
MOBILE COUNTY, ALABAMA
CIRCUIT CIVIL DIVISION
205 GOVERNMENT STREET
MOBILE, AL, 36644

251-574-8420
charles.lewis@alacourt.gov

STATE OF ALABAMA Unified Judicial System 02-MOBILE	Revised 3/5/08 <input type="checkbox"/> District Court <input checked="" type="checkbox"/> Circuit Court	 Cas CV2	ELECTRONICALLY FILED 3/16/2022 9:24 AM 02-CV-2022-900283.00 CIRCUIT COURT OF MOBILE COUNTY, ALABAMA JOJO SCHWARZAUER, CLERK
FREDDIE HEARD V. ASHLEY RICH DISTRICT ATTORNEY		CIVIL MOTION COVER SHEET <i>Name of Filing Party:</i> D001 - ASHLEY RICH DISTRICT ATTORNEY	
<i>Name, Address, and Telephone No. of Attorney or Party. If Not Represented.</i> Clay Thomas Rossi ESQ. 205 Government Street, Ste. C701 Mobile, AL 36604 Attorney Bar No.: ROS045		<input type="checkbox"/> Oral Arguments Requested	
TYPE OF MOTION			
Motions Requiring Fee		Motions Not Requiring Fee	
<input type="checkbox"/> Default Judgment (\$50.00) Joinder in Other Party's Dispositive Motion (i.e. Summary Judgment, Judgment on the Pleadings, <input type="checkbox"/> or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Judgment on the Pleadings (\$50.00) <input checked="" type="checkbox"/> Motion to Dismiss, or in the Alternative Summary Judgment (\$50.00) Renewed Dispositive Motion (Summary <input type="checkbox"/> Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Summary Judgment pursuant to Rule 56 (\$50.00) <input type="checkbox"/> Motion to Intervene (\$297.00) <input type="checkbox"/> Other _____ pursuant to Rule _____ (\$50.00) *Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees. <input type="checkbox"/> Local Court Costs \$ 0		<input type="checkbox"/> Add Party <input type="checkbox"/> Amend <input type="checkbox"/> Change of Venue/Transfer <input type="checkbox"/> Compel <input type="checkbox"/> Consolidation <input type="checkbox"/> Continue <input type="checkbox"/> Deposition <input type="checkbox"/> Designate a Mediator <input type="checkbox"/> Judgment as a Matter of Law (during Trial) <input type="checkbox"/> Disburse Funds <input type="checkbox"/> Extension of Time <input type="checkbox"/> In Limine <input type="checkbox"/> Joinder <input type="checkbox"/> More Definite Statement <input type="checkbox"/> Motion to Dismiss pursuant to Rule 12(b) <input type="checkbox"/> New Trial <input type="checkbox"/> Objection of Exemptions Claimed <input type="checkbox"/> Pendente Lite <input type="checkbox"/> Plaintiff's Motion to Dismiss <input type="checkbox"/> Preliminary Injunction <input type="checkbox"/> Protective Order <input type="checkbox"/> Quash <input type="checkbox"/> Release from Stay of Execution <input type="checkbox"/> Sanctions <input type="checkbox"/> Sever <input type="checkbox"/> Special Practice in Alabama <input type="checkbox"/> Stay <input type="checkbox"/> Strike <input type="checkbox"/> Supplement to Pending Motion <input type="checkbox"/> Vacate or Modify <input type="checkbox"/> Withdraw <input type="checkbox"/> Other _____ pursuant to Rule _____ (Subject to Filing Fee)	
Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees) <input checked="" type="checkbox"/>		Date: 3/16/2022 9:21:25 AM Signature of Attorney or Party /s/ Clay Thomas Rossi ESQ.	

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.
 **Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

FREDDIE HEARD,

*

Plaintiff,

*

v.

Case No.: CV-22-900283

*

ASHLEY RICH,

*

Defendant.

*

*

MOTION TO DISMISS

COMES NOW the Defendant ASHLEY RICH, D.A. (“Rich”) by and through the undersigned Assistant District Attorney and moves this honorable Court, pursuant to Rule 12 of the Alabama Rules of Civil Procedure, to dismiss this Defendant. As grounds for this Motion, the undersigned offers as the following.

PROCEDURAL BACKGROUND

On or about February 23, 2022 Plaintiff filed his complaint and a summons for Rich was issued that same day. (Doc. 4) A proof of service was filed with the court on March 3, 2022. (Doc. 9) Close inspection of that “proof of service” shows that (1) it was served on February 17, 2022 **five (5) days before** the entry of this action with the clerk; (2) it is a federal subpoena form¹; and (3) the complaint was not served upon Rich but was left at the District Attorney reception desk. (Doc.9)

¹ This federal form is probative only the degree that the complaint seems to be seeking Federal Grand Jury information, see *infra*.

ARGUMENT

The Plaintiff's action is due to be dismissed on the following grounds: (1) per Rule 12(b)(4) & (5) there is insufficiency of process and service of process; and (2) per Rule 12(b)(6) the Plaintiff has failed to state legally cognizable grounds upon which relief may be granted.

1. Dismissal is Proper under Rule 12(b)(4) & (5)

Dismissal under Rule 12(b)(4) & (5) is proper as service was not perfected in accordance with Rule 4.

As the complaint seeks relief from Rich "in her official capacity as district attorney" of the 13th Judicial Circuit. (Doc. 2 at p. 1) Accordingly, under Rule 4(c)(7),² the service upon the State must be made by "by serving the officer responsible for the administration of the department, agency, office, or institution, and by serving the attorney general of this state." Rich was not personally served as the "proof of service," (Doc. 9), explicitly states it the summons was left with a receptionist. Neither has the Attorney General been served. Therefore, service has not been perfected.

There is also the issue of Rich being served with the complaint five days before it was entered with the clerk's office. It is assumed that, as the complaint is dated December 12, 2021, (see Doc. 2 at p. 4), the Plaintiff attempted service during the period of time in

² It is worth noting that Ala. R Civ. P. 4(c)(6), *Corporations and Other Entities*, and Ala. R Civ. P. 4(c)(8), *Local and Government Entities*, allow for designated persons to be served on behalf of the corporate or government officer. This provision is omitted in Ala. R Civ. P. 4(c)(7). Under the rule of statutory interpretation, *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another), Ala. R Civ. P. 4(c)(7) must be read to require personal service directly upon on the "officer responsible."

which he was seeking indigent status. Having sought indigent status, the case should have been stayed for 90 days for the court to review the application and no service should have been attempted prior to approval of that status and the entry of the complaint with the clerk. See Ala. Code § 12-19-70. Any attempt at service prior to the entry of the complaint is ineffective as the case was stayed. Once again, service was not perfected on Rich.

Therefore, this matter is due to be dismissed.

2. Plaintiff Has Failed To State Cognizable Grounds For Relief

“It is well settled that a plaintiff’s complaint must plead a cognizable legal theory to defeat a motion to dismiss.” *Am. Suzuki Motor Corp. v. Burns*, 81 So. 3d 320, 324 (Ala. 2011). Under Alabama law, “a party can obtain a dismissal under Rule 12(b)(6) on the basis of an affirmative defense when ‘the affirmative defense appears clearly on the face of the pleading.’” *Lloyd Noland Found, Inc. v. HealthSouth Corp.*, 979 So. 2d 784, 791 (Ala. 2007) (citation omitted); see also *Ex parte Scannelly*, 74 So. 3d 432, 439 (Ala. 2011) (“Where the plaintiff includes allegations that show on the face of the complaint that there is an insuperable bar to relief, dismissal is proper.”) (citations omitted).

Here Plaintiff has filed what he characterizes as an action pertaining to an Alabama Opens Records request, pursuant to Ala. Code § 36-12-40, made to Rich for “categories of public records relating to access to the state grand jury”. (Doc. 2, p.3 at ¶ 3) A copy of the request is attached to the complaint. (Doc. 3, at p. 5) A closer review of the request is warranted which reads:

I am requesting whatever forms and instructions you have for a citizen to access the members of the Alabama State grand jury without having your office act as a “filter” to determine what I am allowed to present to the grand jury. If it is your policy to micro-manage what evidence may be presented to the grand jury (i.e., to block citizens access to the grand jury) please so state and furnish whatever written policy you have in that regard.

(Doc. 3, at p. 5). The Plaintiff is not requesting a “public record”³ as contemplated by the statute but “forms” and “instructions” to assist him with a public records request. These are not public records for the purposes of Ala. Code § 36-12-40.

Moreover, a request for “whatever forms and instructions you have” fails the specificity requirements of the statute. The Alabama Supreme Court has stated that the burden of requesting specific documents falls upon the requestor:

On the other hand, § 36–12–40 does not authorize a citizen to shift to the custodian of public writings the tasks of inspecting them and identifying the ones to be copied or the expense of copying those and does not require the custodian to undertake the burden and expense of mailing or otherwise delivering the copies. Rather, any inspection of the writings and any identification of the ones to be copied must be performed by the citizen or his or her agent (simply another citizen) under such reasonable safeguards as the custodian may impose for the preservation of the writings. Likewise, the burden and expense of copying the writings and taking the copies must be borne by the citizen or his or her agent as provided by law, see, e.g., § 36–12–41, Ala. Code 1975, and Rule 30, Ala. R. Jud. Admin., or as required by such reasonable safeguards as the custodian may impose.

Ex parte Gill, 841 So. 2d 1231, 1234 (Ala. 2002). Not only has the Plaintiff failed to make a specific request but has failed to make any efforts to assume the “burden and expense of copying the writings and taking the copies.”

³ The “public writing” spoken of in this section is such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by the citizens. See *Stone v. Consolidated Pub. Co.*, 404 So.2d 678 (Ala.1981); and *Bedingfield v. Birmingham News Co.*, 595 So.2d 1379 (Ala.1992).

The Plaintiff's request is further complicated as the request is (as alleged in complaint though not the actual request) for Grand Jury records. Grand Jury records have been given statutory secrecy. See Ala. Code § 12-16-214. Due to this secrecy, the only Grand Jury records potentially available to the Plaintiff would be demographic data concerning members of his grand jury, including race, gender, and age, in order to allow him to challenge makeup of grand jury on grounds that it was not representative of fair cross-section of community, but excluding any reference to names, addresses, or occupations of grand jury members in order to protect required secrecy of grand jury proceedings. See *State v. Matthews*, 724 So.2d 1140 (Ala.Crim.App.1998), rehearing denied 738 So.2d 944, affirmed 724 So.2d 1143, certiorari denied. It is uncontroverted that the Plaintiff was not seeking such demographic information.

Finally, the Plaintiff's putative request for Grand Jury records appears to potentially be for Federal Grand Jury Records, records which cannot be obtained pursuant to Ala. Code § 36-12-40:

**Letter to Ashley Rich, District Attorney, dated 03-22-2021
In re appearing before the Federal Grand Jury**

(see Doc. 2 at p. 7).

As the foregoing shows, Plaintiff's pleading is legally insufficient and fails to state a cause of action for which relief can be granted. The inconsistency of the complaint and the request also fails the standard under notice pleading:

Although the Alabama Rules of Civil Procedure have established notice pleading, *see* Rule 8, *a pleading must give*

fair notice of the claim against which the defendant is called to defend.” (Emphasis added.) Moreover, “[i]t is not the duty of the courts to create a claim which the plaintiff has not spelled out in the pleadings.

Ex parte Burr & Forman, LLP, 5 So. 3d 557, 566 (Ala. 2008) citing *McCullough v. Alabama By-Prods. Corp.*, 343 So.2d 508, 510 (Ala.1977)(emphasis original).

Based upon the complaint and attachments thereto, it does not appear that a records request for “public record” obtainable under Ala. Code § 36-12-40 was ever made, and so this action is due to be dismissed.

CONCLUSION

As Rich was never properly served, as the “records request” alleged in the complaint is not supported by the actual “records request” attached, and the as the request lacked the requisite specificity and/or was made for secret grand jury documents and/or federal documents not falling within the ambit of § 36-12-40, the Plaintiff’s complaint is due to be dismissed.

WHEREFORE, premises considered, Rich prays for an Order dismissing the complaint against her for the foregoing reasons.

Respectfully submitted,

s/Clay T. Rossi
CLAY T. ROSSI (ROS045)
Assistant District Attorney

Mobile County District Attorney Office
Mobile Government Plaza
205 Government Street, Suite C-701
Mobile, AL 36644-2501
clayrossi@mobileda.org

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 16th day of March 2022, filed the foregoing document with the Clerk of the Court and sent notification via the AlaFile electronic filing system to counsel of record and/or mailed by first-class mail.

Freddie Heard, AIS 272097
c/o Easterling Correctional Facility
200 Wallace Drive
Clio, AL 36017

s/Clay T. Rossi
CLAY T. ROSSI (ROS045)



ELECTRONICALLY FILED
3/18/2022 9:57 AM
02-CV-2022-900283.00
CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
JOJO SCHWARZAUER, CLERK

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

HEARD FREDDIE AIS #272097,)
Plaintiff,)

V.)

) Case No.: CV-2022-900283.00

ASHLEY RICH DISTRICT)
ATTORNEY,)
Defendant.)

ORDER DISMISSING

This matter having come before the Court on Defendant Ashley Rich's Motion to Dismiss, the Court finds based on a review of the record and the arguments offered by Rich that the Motion to Dismiss is hereby due to be granted and so is GRANTED.

This case is dismissed, with costs taxed as paid,

DONE this 18th day of March, 2022.

/s/ JAMES T. PATTERSON
CIRCUIT JUDGE



Mobile County Sheriff's Office

CV 2022 900283. 00

FREDDIE HEARD VS ASHLEY RICH DISTRICT ATTORNEY

COMPLAINT-SUMMONS

ASHLEY RICH DISTRICT ATTORNEY

205 GOVERNMENT ST Mobile, AL 36602

Due By:

Date Served: 03/04/2022

Service Attempt:

Action: Service Attempt Paper Served Drop Deputized

No Contact: Left Card Other (see notes)

Not Found: Moved - New Residence Moved - Unknown Location Deceased Vacant Residence / Lot
 Not Employed NIT (Not in Territory) RWA (Recalled W/O Action) CTO (Come to Office)
 Other (see notes) No Property Found Address Does Not Exist
 Subject Unknown at this Address Not Found After Diligent Search
 Not Found-Too Late For Service Not Found-Deputy Not Allowed on Property
 Recipient Unavailable for Service Before Due Date

Served To: MARIA GREENWALD (DA RECEPTIONIST)

Location Served: Listed Other

Deputized Person:

Location:

Notes:

03/04/2022 08:25 - SERVED MARIA GREENWALD (DA RECEPTIONIST) 03-04-22

Avoiding Service Deputized Person Posted on Property Executed Refused Service

I certify that I personally delivered to ASHLEY RICH DISTRICT ATTORNEY on 03/04/2022 by service on MARIA GREENWALD (DA RECEPTIONIST)

By: [Signature]

D.S. Copy mailed to defendant on _____

POWERS, JASON JOHN GLENN

MCSO Civil Division
510 S. Royal St.
Mobile, AL 36603
(251) 574-2423

Zeketha Raymond

FR
24R

State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	SUMMONS - CIVIL -	Court Case Number 02-CV-2022-900283.00
--	------------------------------------	---

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA
FREDDIE HEARD V. ASHLEY RICH DISTRICT ATTORNEY

NOTICE TO: ASHLEY RICH DISTRICT ATTORNEY, MOBILE GOVERNMENT PLAZA C-701 205 GOVERNMENT ST., MOBILE, AL 36644

(Name and Address of Defendant)

THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S),
 Freddie AIS #272097 Heard

(Name(s) of Attorney(s))

WHOSE ADDRESS(ES) IS/ARE: Easterling correctional facility 200 wallace dr., dco, AL 36017

(Address(es) of Plaintiff(s) or Attorney(s))

THE ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:

You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant.
 Service by certified mail of this Summons is initiated upon the written request of _____
 pursuant to the Alabama Rules of the Civil Procedure. *(Name(s))*

 03/02/2022 /s/ JOJO SCHWARZAUER By: JOJO
(Date) *(Signature of Clerk)* *(Name)*

Certified Mail is hereby requested.

(Plaintiff's/Attorney's Signature)
 Jo Jo Schwarzauer, Circuit Clerk

RETURN ON SERVICE TO MOBILE COUNTY-CIVIL DIVISION

Return receipt of certified mail received in this office on _____
 Mobile Government Plaza, Room C936
 205 Government Street
 Mobile, Alabama 36644-2936
(Date)

I certify that I personally delivered a copy of this Summons and Complaint or other document to _____
 _____ in _____ County,
(Name of Person Served) *(Name of County)*

Alabama on _____
(Date)

(Type of Process Server) _____
(Server's Signature) _____
(Address of Server)

(Server's Printed Name) _____
(Phone Number of Server)

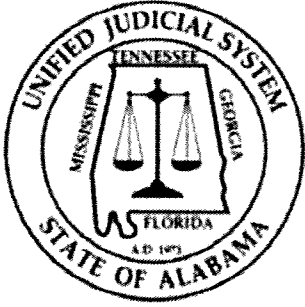
02-CV-2022-900283.00
FREDDIE HEARD V. ASHLEY RICH DISTRICT ATTORNEY

C001 - FREDDIE AIS #272097 HEARD v. D001 - ASHLEY RICH DISTRICT ATTORNEY
(Plaintiff) *(Defendant)*



2022 MAR -3 AM 7:58

SERVICE RETURN COPY



AlaFile E-Notice

02-CV-2022-900283.00

Judge: JAMES T. PATTERSON

To: HEARD FREDDIE AIS #272097 (PRO SE)
EASTERLING CORRECTIONAL F
200 WALLACE DR.
CLIO, AL, 36017-0000

NOTICE OF SERVICE

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

FREDDIE HEARD V. ASHLEY RICH DISTRICT ATTORNEY
02-CV-2022-900283.00

The following matter was served on 3/4/2022

D001 ASHLEY RICH DISTRICT ATTORNEY

Corresponding To

OTHER

D001- SERVED VIA SHERIFF- ACCEPTED VIA AUTHORIZED PARTY

JOJO SCHWARZAUER
CIRCUIT COURT CLERK
MOBILE COUNTY, ALABAMA
CIRCUIT CIVIL DIVISION
205 GOVERNMENT STREET
MOBILE, AL, 36644

251-574-8420
charles.lewis@alacourt.gov

Notice of Appeal Cross Appeal to the
 SUPREME COURT OF ALABAMA
 ALABAMA COURT OF CIVIL APPEALS

FILED: APR 22 2022
JOJO SCHWARZAUER, CLERK

IN THE Circuit COURT OF Mobile COUNTY, ALABAMA
(Circuit, District, or Juvenile) *(Name of County)*

Civil Action Number:
CV-2022-900283

APPELLANT(S):
Freddie Heard

[The name of each party appealing must be listed - see Rule 3(c), Alabama Rules of Appellate Procedure. Attach additional pages if necessary.]

V. APPELLEE(S):
Ashley Rich

[The name of each party against whom appeal is taken must be listed - see Rule 3(c), Alabama Rules of Appellate Procedure. Attach additional pages if necessary.]

TRIAL JUDGE: James T. Patterson

DATE OF JUDGMENT:
March 18, 2022

DATE OF POST-JUDGMENT ORDER:

Notice is Hereby Given that the above-named appellant(s) appeal(s) to the above-designated court from the Final Judgment Order _____ *(describe order)* entered in this cause.

CHECK THE PROPER DESCRIPTION OF THE APPEALED CASE UNDER THE APPROPRIATE COURT:

SUPREME COURT OF ALABAMA

- Summary judgment amount claimed more than \$50,000
- Judgment amount exceeds \$50,000
- Amount sought in trial court more than \$50,000, judgment for defendant
- Equitable relief, except for domestic relations
- Other: _____

ALABAMA COURT OF CIVIL APPEALS

- Summary judgment amount claimed \$50,000 or less
- Judgment amount \$50,000 or less
- Amount sought in trial court \$50,000 or less, judgment for defendant
- Workers' compensation
- Domestic relations
- Other: Alabama Public Records Law

APPELLANT FILES WITH THIS NOTICE OF APPEAL:

- Security for costs of appeal.
- A supersedeas bond in the amount of \$ _____.
- Deposited cash security of \$ _____.
- Is exempted by law from giving security for costs of appeal by virtue of In forma pauperis status *(Specify)*

Filed APR 22 2022
(Date)

Freddie Heard 272097 ECF

(Name of Appellant or Attorney for Appellant)

200 Wallace Dr.

(Address of Appellant or Attorney for Appellant)

Clio, AL 36017
(City) *(State)* *(Zip)*

(Telephone Number)

(E-mail Address)

CERTIFIED AS A TRUE COPY

(Certification is not required if the Notice of Appeal is filed electronically. See Rule 3(d)(3), Ala. R. App. P.)

Jojo Schwarzaeur *(Signature of Circuit Clerk)*
Jojo Schwarzaeur *(Printed Name)*

Freddie Heard Sr. #272097
(Signature of Appellant or Attorney for Appellant)

SECURITY FOR COSTS*

We hereby acknowledge ourselves security for costs of appeal. For the payment of all costs secured by this undertaking, we hereby waive our right of exemption as to personal property under the Constitution and laws of the State of Alabama. Executed with our seals this

_____ day of _____, 20____.
(Day) (Month) (Year)

Date Filed and Approved: _____

(Signature of _____)
Appellant-Principal (Printed Name)

(Signature of _____, Circuit Clerk)
(Printed Name)

(Signature of _____)
Surety (Printed Name)

*Note: If you are filing this Notice of Appeal electronically, the trial-court clerk's portion of the Security for Costs will be completed after the Notice of Appeal has been filed.

(Signature of _____)
Surety (Printed Name)

DESIGNATION OF THE RECORD ON APPEAL

Appellant(s) request(s) the clerk of the trial court to include the following checked materials in the clerk's record:

- Complaint
- Answer
- Counterclaim
- Cross-claim
- Third-party complaint
- Third-party answer
- Motion to dismiss
- Pretrial order
- Entire record (less items set forth in Rule 10(a), Alabama Rules of Appellate Procedure)
- Motion for summary judgment
- Opposition to motion for summary judgment
- Final judgment/order
- Motion for new trial
- Ruling on motion for new trial
- Others: _____
- Exhibit numbers: _____

TRANSCRIPT STATUS

- Transcript will not be ordered. See Rule 10(b), Alabama Rules of Appellate Procedure.
- Transcript will be ordered. See Rules 10(b)(2) and 11(a)(2), Alabama Rules of Appellate Procedure.

Name and address of court reporter(s): _____

NOTE: If more than one court reporter was involved in this case, you must file a Transcript Purchase Order Form in compliance with Rules 10(b)(2) and 11(a)(2), Alabama Rules of Appellate Procedure, and Form 1A or 1B.

CERTIFICATE OF FILING AND OF SERVICE

I certify I have this date filed electronically with the clerk of the trial court the foregoing notice of appeal through the trial court electronic-filing system or that I have this date hand-filed the original and _____ (number) copies of the foregoing notice of appeal (along with the \$200 docket fee) and such other instruments as have been completed and included herein. If I filed the notice of appeal electronically, I acknowledge that I must pay the \$200 docket fee directly to the appropriate appellate court clerk within seven (7) days.[†] A true or electronic copy of each of these items will be served by the clerk of the trial court or by the trial court's electronic-filing system on each of the following: (1) the clerk of the appellate court; (2) the court reporter; and (3) counsel for each appellee or the appellee if no counsel, as follows (provide names and addresses): _____

I further certify pursuant to Rules 3(d), 25(d), and 57(h)(5), Alabama Rules of Appellate Procedure, that I have this date served a copy of this Notice of Appeal on each party to the proceedings in the trial court in the manner indicated below (attach additional pages if necessary):

Name	Method of Service (AlaFile, U.S. Mail, Hand Delivery, etc.)	Service Address [‡]
Ashley Rich	United States Mail	205 Government St. Mobile, AL 36602

Done on this 19th day of April, 2022.
(Day) (Month) (Year)

[‡]If electronic service is selected, the e-mail address at which service was made via AlaFile must be listed as the service address.

Freddie D. Heard Sr. #272097
(Signature of Appellant or Attorney for Appellant) (Printed Name)

[†]NOTE: If the Notice of Appeal is filed electronically, payment of the \$200 docket fee must be mailed or hand delivered to the attention of the clerk of the appropriate appellate court at 300 Dexter Avenue, Montgomery, AL 36104. The payment shall be accompanied by a means of identifying the appeal to which the payment is applicable. See Rule 35A(a)(1), Ala. R. App. P.

State of Alabama Unified Judicial System Form ARAP-25 (front) 10/2019	DOCKETING STATEMENT Appeal to the Alabama Court of Civil Appeals	Appellate Case Number (to be filled in by appellate court) <hr style="border: 0; border-top: 1px solid black;"/>
--	---	---

NOTE: COMPLETED CIVIL CASE COVER SHEET MUST BE ATTACHED

COUNTY Mobile	CIVIL ACTION NUMBER CV-2022-900283	TRIAL JUDGE James T. Patterson
-------------------------	--	--

PARTY FILING APPEAL (Appellant) :
 Freddie Heard pro se

v. PARTY APPEALED AGAINST (Appellee)
 Ashley Rich

APPELLANT'S ATTORNEY: N/A		Telephone Number	
Email:			
Address	City	State	Zip Code

APPELLEE'S ATTORNEY:		Telephone Number	
Email: Ashley Rich			
Address	City	State	Zip Code
205 Government St.	Mobile	AL	36602

TYPE OF APPEAL: Appeal Cross-Appeal

JURISDICTION (TYPE OF CASE): Please check the proper description of the appealed case:

<input type="checkbox"/> A Summary Judgment, amount claimed equal to or less than \$ 50,000	<input type="checkbox"/> E Workmen's Compensation
<input type="checkbox"/> B Judgment Amount equal to or less than \$ 50,000	<input type="checkbox"/> F Administrative Agency
<input type="checkbox"/> C Amount Sought in trial court \$ 50,000 or less, judgment for defendant	<input type="checkbox"/> G Juvenile
<input type="checkbox"/> D Domestic Relations	<input checked="" type="checkbox"/> H Other <u>Open Records Law</u>

JURISDICTION (FINALITY): Date of entry of judgment appealed from: March 18 2022
 Month Day Year

1. Is the judgment or order appealed from in compliance with Rule 58, Ala. R. Civ. P.? Yes No
2. Is the order or judgment appealed from a final judgment (i.e., does it dispose of the case as to all claims by all parties)? Yes No
3. If the judgment was not final, did the trial court direct the entry of a judgment pursuant to Rule 54(b), Ala. R. Civ. P.? Yes No
4. If judgment was entered pursuant to Rule 54(b), Ala. R. Civ. P., did the trial court expressly determine that there was no just reason for delay and expressly direct that judgment be entered? Yes No
5. If there is no final judgment or if there has not been full compliance with Rule 54(b), Ala. R. Civ. P., please explain the basis for seeking appellate review and cite the authority for the appeal:

POST-JUDGMENT MOTIONS: List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rule 59.1, Ala. R. Civ. P.):

DATE OF FILING			TYPE OF POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year

DOCKETING STATEMENT Appeal to the Court of Civil Appeals

CONSTITUTIONAL ISSUES: 1. Are the provisions of Rule 44, Ala. R. App. P., applicable to this appeal? [] Yes [x] No
2. If so, have the provisions been complied with? [] Yes [] No

NATURE OF CASE ON APPEAL: In the left column of boxes preceding the categories listed below, check the box (check only one) that best describes or categorizes the basis or theory of the primary issue on appeal. In the right column of boxes, check any secondary theories that are applicable to the suit.

Grid of categories for case nature: TORTS - Personal Injury, TORTS - Property Damage, REAL PROPERTY, CONTRACTS, EQUITY/Non-Damages Action, STATUTES/RULES. Includes checkboxes for various legal categories like Bad Faith, Fraud, Malpractice, etc.

IF THE CASE WENT TO TRIAL, HOW MANY DAYS DID THE TRIAL TAKE? _____

BRIEFLY SUMMARIZE THE ISSUE(S) ON APPEAL. THIS INFORMATION IS FOR CASE PROCESSING AND STATISTICAL PURPOSES ONLY.

Open Records Law, how to access Alabama grand jury.

WITHOUT ARGUMENT, BRIEFLY SUMMARIZE THE FACTS TO INFORM THE COURT OF THE NATURE OF THE CASE. THIS INFORMATION IS FOR CASE PROCESSING AND STATISTICAL PURPOSES ONLY.

Plaintiff requested how to access Alabama grand jury. Circuit court judge denied Complaint.

SETTLEMENT CONFERENCE: The court may require that this appeal be subject to a moderated settlement conference. Do you think the case on appeal would be appropriate for such a conference? Yes No

Plaintiff made a simple request that requires a simple answer. Explain: _____

Date of Filing of the Notice of Appeal: April 19, 2022

Date 04/19/22

Signature of Attorney / Party Filing this Form: Freddie D. Heard 272097

Certificate of Service

I certify I have this date filed electronically with the clerk of the trial court the foregoing docketing statement through the trial court electronic-filing system or that I have this date hand-filed the original and _____ (number) copies of the foregoing docketing statement.

I further certify pursuant to Rules 3(d), 25(d), and 57(h)(5), Ala. R. App. P., that I have this date served a copy of this Notice of Appeal on each party to the proceedings in the trial court in the manner indicated below (attach additional pages if necessary):

Table with 3 columns: Name of Party, Method of Service (US Mail, AlaFile, etc.), Service Address. Row 1: Ashley Rich, U.S. Mail, 205 Government St. Mobile, AL 36602.

*If electronic service is selected, the e-mail address at which service was made via AlaFile must be listed as the service address.

Signature of Appellant or Attorney for Appellant: Freddie D. Heard

Printed Name: Freddie Heard

Date: 04/19, 20 22

(Signature of Appellant or Attorney for Appellant)

(Printed Name)

IN THE COURT OF CIVIL APPEALS OF ALABAMA

FREDDIE HEARD,)	
)	
Appellant,)	
)	Case No: CL-2022-0608
v.)	
)	CIRCUIT COURT OF MOBILE
ASHLEY RICH,)	COUNTY NO. CV2008-494
)	
Appellee.)	

ON APPEAL FROM THE CIRCUIT COURT
OF MOBILE COUNTY, ALABAMA

MOTION FOR ENLARGEMENT OF TIME

Oral argument not requested

Comes the Appellant, in the above captioned action, and moves this Court for an enlargement of time necessary for him to perfect his appeal.

Appellant is suffering from delays not of his making, e.g.,

It seems as if the administration in this prison wants to drag their feet when it comes to making copies. It all fell in place. Yesterday I got legal mail with the case # and I got the new Rules in the Civil Court.

WHEREFORE, Appellant moves this Court to grant him the relief he requests.

Respectfully Submitted,



Freddie Heard
272097
E. C. F.
200 Wallace Dr.
Clio, Ala. 36017

Certificate of Service

This certifies that I have on this 27 day of May, 2022 placed a true and exact copy of my

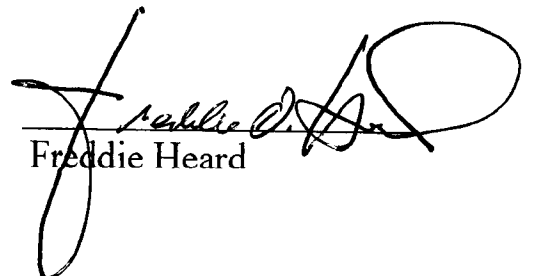
MOTION FOR ENLARGEMENT OF TIME

in the U.S. Mails, first-class postage prepaid, addressed to:

Office of the Attorney General
501 Washington Ave.
Montgomery, Al. 36130

Mobile County District Attorney Office
Ashley Rich District Attorney
Government Plaza
205 Government St., Ste C701
Mobile, Al. 36644

Alabama Court of Civil Appeals
300 Dexter Ave.
Montgomery, AL. 36104



Freddie Heard

The Alabama Court of Civil Appeals



NATHAN P. WILSON
CLERK

300 DEXTER AVENUE
MONTGOMERY, ALABAMA 36104-3741
TELEPHONE 334-229-0733

LYNN DEVAUGHN
ASSISTANT CLERK

June 1, 2022

CL-2022-0608

Freddie Heard v. Ashley Rich (Appeal from Mobile Circuit Court: CV-22-900283)

NOTICE

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals:

The appellant's motion requesting a hard copy of the record on appeal is denied without prejudice to the appellant's securing a paper copy of the record on appeal from the circuit-court clerk pursuant to Rule 11(a)(3), Ala. R. App. P.

A handwritten signature in black ink that reads "Nathan P. Wilson".

Nathan P. Wilson, Clerk

Statement Regarding Oral Argument

Oral Argument Is Not Requested

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Statement of Jurisdiction

The Court of Civil Appeals has jurisdiction over this appeal pursuant to Code of Ala. § 12-3-10. This is an appeal of Order entered by the Circuit Court on March 18th, 2022 denying Appellant's Alabama Public Records Law request.

The Notice of Appeal to the Court of Civil Appeals was filed on April 22nd, 2022, within the forty-two (42) days provided by Rule of Appellate Procedure 4(a)(3).

Table of Authorities

In re Complaint of Judicial Misconduct, 425 F.3d 1179, 1184-1185 (9th Cir. 2005)
(Kozinski dissenting).....7,8

Mahoney v. Loma Alta Property Owners Ass'n, 4 So.3d 1130
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Statement of the Case

Appellant sought to discover how to access the Alabama grand jury. To that end, Appellant filed a request to the Appellee and a subsequent civil action, Exhibits A and B, respectively.

The lower court then ruled against the Appellant, Exhibit C, with no statement of facts nor conclusion of law.

Statement of the Issue

Appellant is entitled to the relief he requests. What is the procedure necessary to access the Alabama grand jury and what documents describe the procedure?

Statement of the Facts

The facts are described in the Exhibits, adopted and incorporated by inference herein.

Summary of the Argument

Appellant was simply entitled to the relief requested.

Argument

The lower court appears to have merely acted as a 'rubber stamp' for the Appellee. This is not the way the court system is supposed to work.

"[T]he ore tenus rule does not extend to cloak with a presumption of correctness a trial judge's conclusions of law or the incorrect application of the law to the facts. '[W]hen the trial court improperly applies the law to the facts, no presumption of correctness exists as to the court's judgment.' *Griggs v. Driftwood Landing, Inc.*, 620 So.2d 582, 586 (Ala.1993)."

Waltman v. Rowell, 913 So.2d 1083, 1086 (Ala.2005).

Mahoney v. Loma Alta Property Owners Ass'n, 4 So.3d 1130 (Ala. Civ. App. 2008)

A Ninth Circuit Court of Appeals dissenting opinion explains the problem succinctly:

THE COURT: Denied; that's right.

MR. KATZ: May I ask the reasons, your Honor?

THE COURT: Just because I said it, Counsel.

I could stop right here and have no trouble concluding that the judge committed misconduct. It is wrong and highly abusive for a judge to exercise his power without the normal procedures and trappings of the adversary system—a motion, an opportunity for the other side to respond, a statement of reasons for the decision, reliance on legal authority. These niceties of orderly procedure are not designed merely to ensure fairness to the litigants and a correct application of the law, though they surely serve those purposes as well. More fundamentally, they lend legitimacy to the judicial process by ensuring that judicial action is—and is seen to be—based on law, not the judge's caprice.

In re Complaint of Judicial Misconduct, 425 F.3d 1179, 1184-1185 (9th Cir. 2005) (Kozinski dissenting).

Judicial action taken without any arguable legal basis—and without giving notice and an opportunity to be heard to the party adversely affected—is far worse than simple error or abuse of discretion; it's an abuse of judicial power that is "prejudicial to the effective and expeditious administration of the business of the courts." See 28 U.S.C. § 351(a); Shaman, Lubet & Alfini, *supra*, § 2.02, at 37 ("Serious legal error is more likely to amount to misconduct than a minor mistake. The sort of evaluation that measures the seriousness of legal error is admittedly somewhat subjective, but the courts seem to agree that legal error is egregious when judges deny individuals their basic or fundamental procedural rights."); *In re Quirk*, 705 So. 2d 172, 178

(La. 1997) (“A single instance of serious, egregious legal error, particularly one involving the denial to individuals of their basic or fundamental rights, may amount to judicial misconduct.” (citing Jeffrey M. Shaman, *Judicial Ethics*, 2 Geo. J. Legal Ethics 1, 9 (1988))).


Id.

For the reasons I explain below, I believe the judge who is the subject of the complaint in this case has committed serious misconduct by abusing his judicial power. See Jeffrey M. Shaman, Steven Lubet & James J. Alfini, *Judicial Conduct and Ethics*. § 2.07, at 50 (3d ed. 2000) [hereinafter Shaman, Lubet & Alfini] (“Judges abuse the power of the judicial office when they abbreviate or change critical aspects of the adversary process in ways that run counter to the scheme established by relevant constitutional and statutory law.”).

Id.

WHEREFORE, the decision of the lower court must be remanded and the relief requested, granted.

Respectfully Submitted,


Freddie Heard
272097
E. C. F.
200 Wallace Dr.
Clio, Ala. 36017

Certificate of Service

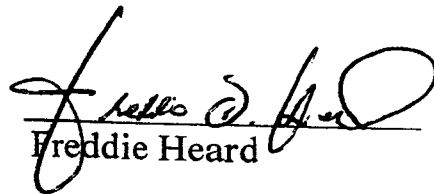
This certifies that I have on this 8th day of June, 2022 placed a true and exact copy of my

BRIEF OF APPELLANT

in the U.S. Mails, first-class postage prepaid, addressed to:

Office of the Attorney General
501 Washington Ave.
Montgomery, Al. 36130

Mobile County District Attorney Office
Ashley Rich District Attorney
Government Plaza
205 Government St., Ste C701
Mobile, Al. 36644


Freddie Heard



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

STEVEN T. MARSHALL
ATTORNEY GENERAL

501 WASHINGTON AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.ALABAMA.GOV

June 27, 2022

Nathan P. Wilson, Clerk
Alabama Court of Civil Appeals
300 Dexter Avenue
Montgomery, AL 36104-3741

Re: *Freddie Heard v. Ashley Rich*
On Appeal from Mobile Circuit Court: CV-22-900283
Case No.: CL-2022-0608

Dear Mr. Wilson:

This letter serves to confirm that the Appellee, Ashley Rich, has been granted a 7-day extension of time to file their brief making the Appellee's brief due Friday, July 8, 2022. If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Albritton".

Benjamin H. Albritton
Assistant Attorney General

BA/msc

cc: Freddie Heard
Easterling Correctional Facility
200 Wallace Dr.
Clio, AL 36017

No. CL-2022-0608

IN THE COURT OF CIVIL APPEALS OF ALABAMA

FREDDIE HEARD,
Plaintiff-Appellant,

v.

ASHLEY RICH,
Defendant-Appellee.

ON APPEAL FROM THE
CIRCUIT COURT OF MOBILE COUNTY
CV-22-900283

BRIEF OF APPELLEE
DISTRICT ATTORNEY ASHLEY RICH

BENJAMIN H. ALBRITTON
ASSISTANT ATTORNEY GENERAL
COUNSEL FOR APPELLEE
STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, Alabama 36130-0152
Telephone: 334.242.7300
Facsimile: 334.353.8400
Ben.Albritton@AlabamaAG.gov

Counsel for Ashley Rich

Dated: July 6, 2022

STATEMENT REGARDING ORAL ARGUMENT

Defendant-Appellee, Ashley Rich, in her official capacity as the District Attorney respectfully submits that oral argument is not necessary in this case. Oral argument would not substantially aid this court in the disposition of this case because the facts and legal arguments are adequately presented in the briefs, and the dispositive issues have been authoritatively decided. Therefore, oral argument is not necessary to affirm the ruling in this case.

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STATEMENT OF JURISDICTION

The Alabama Court of Civil Appeals has jurisdiction over this appeal pursuant to Ala. Code 1975 § 12-3-10. The Circuit Court of Mobile County granted DA Rich's motion to dismiss this case on March 18, 2022. (C. 31). Heard then timely appealed this case on or about April 19, 2022. (C. 35).

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STATEMENT OF THE CASE

Plaintiff-Appellant, Freddie Heard (“Heard”) filed a complaint against Defendant-Appellee District Attorney Ashley Rich (“DA Rich”), seeking to compel DA Rich to give him “public records” that relate to accessing a grand jury. (C. 12).

Heard filed his Complaint against DA Rich in her official capacity as District Attorney on February 23, 2022, claiming DA Rich failed to cooperate with Heard’s request for grand jury records in violation of the Alabama Public Records Law. (C. 10). Heard asserted in Count One of his Complaint that he is entitled to records “relating to access to the Alabama state grand jury” under Ala. Code § 36-12-40. (*Id.*). Heard sought injunctive relief compelling DA Rich to give him access to all the records that he requested. (C. 12).

On March 16, 2022, DA Rich filed a Motion to Dismiss. (C. 23). DA Rich argued that service was not perfected under Rule 4 and that Heard failed to state cognizable grounds for relief. (C. 24-25). After reviewing the record and DA Rich’s arguments, the Circuit Court granted the Motion to Dismiss on March 18, 2022. (C. 31).

Heard then filed Notice of Appeal on or about April 19, 2022. (C. 35).

STATEMENT OF THE ISSUES

- I. Did Heard waive his argument that service was perfected on DA Rich, and that DA Rich was in violation of the Alabama Public Records Law which was made in his initial Complaint when he failed to raise these arguments in his initial brief on appeal?
- II. Did the Circuit Court properly dismiss Heard's complaint because Heard failed to perfect service in accordance with Rule 4?
- III. Did the Circuit Court properly dismissed Heard's complaint because he failed to state a cognizable ground for relief?

STATEMENT OF THE FACTS

The Appellee, Ashley Rich, is the District Attorney for Mobile County, Alabama. The Appellant, Freddie Heard, is an inmate incarcerated by the Alabama Department of Corrections at Easterling Correctional Facility. (C. 11). On or about March 22, 2021, Heard submitted a letter to Ashley Rich that he characterized as an Open Records Act Request seeking information relating to the access of the members of the Alabama Grand Jury and what may be presented to them. (C. 14).

On or about February 23, 2022, Heard filed his complaint and summons against DA Rich. (C. 2). A purported “proof of service” was filed with the Court on March 3, 2022. (C. 19). The “proof of service”, however, was a federal subpoena form. It was also allegedly served on February 17, 2022, which was five days before the entry of this action with the clerk and was left at the District Attorney reception desk. (*Id.*).

DA Rich then filed a motion to dismiss on March 16, 2022. This motion was granted by the Circuit Court on March 18, 2022. Heard then filed a Notice of Appeal on or about April 19, 2022.

STANDARD OF REVIEW

The Court's review of a Rule 12(b)(4) dismissal for insufficiency of process "when the service of process on the defendant is contested as being improper or invalid, the burden of proof is on the plaintiff to prove that service of process was performed correctly and legally," *Ex parte Volkswagenwerk Aktiengesellschaft*, 443 So. 2d 880, 884 (Ala. 1983). The Court's review of a Rule 12(b)(5) dismissal for insufficiency of process is *de novo*. *Williams v. Skysite Communications Corp.*, 781 So. 2d 241, 245 (Ala. 2000).

The Court's review of a Rule 12(b)(6) dismissal for failure to state a claim upon which relief may be granted is "whether, when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle her to relief." *Nance By & Through Nance v. Matthews*, 622 So. 2d 297, 299 (Ala. 1993) (citing *Raley v. Citibanc of Alabama/Andalusia*, 474 So. 2d 640, 641 (Ala. 1985); *Hill v. Falletta*, 589 So. 2d 746 (Ala. 1991)). A dismissal of the rule "is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Id.* (citing *Garrett v. Hadden*, 495 So. 2d

616, 617 (Ala. 1986); *Hill v. Kraft, Inc.*, 496 So. 2d 768, 769 (Ala. 1986)). This Court may affirm the circuit court's judgment for any legal, valid reason. *State v. Epic Tech, LLC*, --- So.3d ----, 2022 WL 1597690 (Ala., May 20, 2022); *See also Liberty Nat'l Life Ins. Co. v. University of Alabama Health Servs. Found., P.C.*, 881 So. 2d 1013, 1020 (Ala. 2003).

SUMMARY OF THE ARGUMENT

This Court should affirm the Circuit Court's decision to dismiss this case. First, Heard argued in his complaint that DA Rich was in violation of Alabama Public Records Law but fails to raise this argument in his brief on appeal. The total of Heard's "argument" on this issue is his conclusory statement "Appellant was simply entitled to the relief requested." (Appellant's Brief, p. 6). Plaintiff offers no authority or argument to support this erroneous conclusion. In fact, Heard spends the entirety of his argument addressing perceived "judicial misconduct" – an issue never raised in the Court below. Heard therefore waived any argument regarding a public records violation asserted in his Complaint, since he did not raise this argument in his initial brief on appeal.

Second, Heard failed to perfect service in accordance with Rule 4 of the Alabama Rules of Civil Procedure. He did not serve the District

Attorney personally but instead left the “summons” with a receptionist. He also offered no argument or evidence of proper service. Heard therefore also waived any argument regarding proper service of his Complaint, since he also did not raise this argument in his initial brief on appeal.

Finally, Heard failed to state a cognizable ground for relief. The information that Heard is requesting is not public records under Ala. Code § 36-12-40. He also failed to meet the specificity requirements under Ala. Code § 36-12-40. Furthermore, Grand Jury records have been given statutory secrecy under Ala. Code § 12-16-214. Heard fails to state a claim upon which relief can be granted.

Therefore, this Court should affirm the Circuit Court’s decision to dismiss this case.

ARGUMENT

I. Heard Abandoned His Arguments that service was perfected, and that DA Rich was in Violation of the Alabama Public Records Law Because He Failed to Raise these Issues in His Initial Appellate Brief.

Heard waived any argument made in his Complaint that DA Rich was in violation of the Alabama Public Records Act (C. 12-13) because he did not raise this issue in his initial Appellate Brief. (Appellant’s Br. 6-

8). Alabama law holds that this Court “is confined in its review to addressing the arguments raised by the parties in their briefs on appeal; arguments not raised by the parties are waived.” *Gary v. Crouch*, 923 So. 2d 1130, 1135 (Ala. 2005) (citing *Boshell v. Keith*, 418 So. 2d 89, 92–93 (Ala. 1982)). Likewise, arguments raised for the first time in a reply brief are waived and will not be considered. *Ex parte Burkes Mech., Inc.*, 306 So. 3d 1, 7 (Ala. 2019). Therefore, Heard has waived this issue for appellate review, and this Court should only address the issues raised in his brief. Heard does not raise any argument made in his Complaint in his initial brief. He has therefore waived any argument made below against DA Rich.

A trial court may not be held in error for an issue not raised before it; this court's review is limited to issues and arguments asserted before the trial court. *Marler v. Lambrianakos*, --- So.3d ----, 2022 WL 570456 (Ala. 2022); *Marler v. Lambrianakos*, 281 So. 3d 415, 418 (Ala. 2018) (“Marler I”) (citing *Beavers v. County of Walker*, 645 So. 2d 1365, 1372 (Ala. 1994); *Andrews v. Merritt Oil Co.*, 612 So. 2d 409 (Ala. 1992); *Crest Constr. Corp. v. Shelby Cnty. Bd. of Educ.*, 612 So. 2d 425 (Ala. 1992);

and *Shiver v. Butler Cnty. Bd. of Educ.*, 797 So. 2d 1086, 1088 (Ala. 2000)).

A review of Heard's brief shows that the only issue raised in his Argument section is that the Circuit Court did not act in accordance with normal procedures. (Appellant's Br. 6-8). Heard's argument regarding his entitlement to unspecified "records" made in his Complaint but not in his initial brief has been waived.

Heard has likewise failed to demonstrate sufficient service of process, or even address the issue of service in his brief. Any argument at this point that service was proper or that dismissal was improper on this ground has also been waived due to Heard's failure to raise the issue in his initial brief. Nevertheless, even if the Court chose not to deem this argument waived, the lower court's dismissal of the case should be affirmed for the following reasons argued below.

II. The Circuit Court Properly Dismissed the Heard's Complaint because Heard Failed to Perfect Service in Accordance with Ala. R. Civ. P. 4.

The Circuit Court correctly dismissed this case under Rule 12(b)4 & 5 of the Alabama Rules of Civil Procedure because service on DA Rich was not perfected in accordance with Rule 4. Rule 4(c)(7), requires that

service upon the state must be made by serving “the officer responsible for the administration of the department, agency, office, or institution, and by serving the attorney general of this state.” Ala. R. Civ. P. 4(c)(7).

In this case, Heard sought relief from DA Rich in her official capacity as District Attorney. (C. 10). Heard, however, did not serve DA Rich personally. The summons was instead left with a receptionist. (C. 19). DA Rich was therefore never properly served. Because service was not perfected, the Court should affirm the lower court’s dismissal of this case.

III. The Circuit Court Properly Dismissed Heard’s Complaint Because He Failed to State a Cognizable Ground for Relief.

The Court has held that “a plaintiff’s complaint must plead a cognizable legal theory to defeat a motion to dismiss.” *Am. Suzuki Motor Corp. v. Burns*, 81 So. 3d 320, 324 (Ala. 2011). Under Alabama law, “a party can obtain a dismissal under Rule 12(b)(6), Ala. R. Civ. P., on the basis of an affirmative defense when ‘the affirmative defense appears clearly on the face of the pleading.’” *Lloyd Noland Found., Inc. v. HealthSouth Corp.*, 979 So. 2d 784, 791 (Ala. 2007) (citations omitted). The Court has also held that “where the plaintiff includes allegations

that show on the face of the complaint that there is an insuperable bar to relief, dismissal is proper.” *McCullough v. Alabama By-Prod. Corp.*, 343 So. 2d 508, 511 (Ala. 1977).

Heard filed what he characterized as an action pertaining to an Alabama Open Records request, pursuant to Ala. Code § 36-12-40, made to DA Rich for “categories of public records relating to access to the state grand jury.” (C. 11 & 12). More specifically, Heard stated in his request that he wanted:

whatever forms and instructions you have for a citizen to access the members of the Alabama State grand jury without having your office act as a “filter” to determine what I am allowed to present to the grand jury. If it is your policy to micro-manage what evidence may be presented to the grand jury (i.e., to block your citizens access to the grand jury) please so state and furnish whatever written policy you have in that regard.

(C. 14). According to this request, Heard is not simply requesting an identifiable “public record” that would fall under Ala. Code § 36-12-40, but instead is seeking either impermissible legal advice or statutorily exempt information. This is not considered public records, *see* Ala. Code § 36-12-40; *see also* *Stone v. Consol. Pub. Co.*, 404 So. 2d 678, 681 (Ala. 1981) (stating that a public record “is such a record as is reasonably

necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens”).

Heard’s request fails to meet the specificity requirements of Ala. Code § 36-12-40. Our Supreme Court has held:

§ 36–12–40 does not authorize a citizen to shift to the custodian of public writings the tasks of inspecting them and identifying the ones to be copied or the expense of copying those and does not require the custodian to undertake the burden and expense of mailing or otherwise delivering the copies. Rather, any inspection of the writings and any identification of the ones to be copied must be performed by the citizen or his or her agent (simply another citizen) under such reasonable safeguards as the custodian may impose for the preservation of the writings. Likewise, the burden and expense of copying the writings and taking the copies must be borne by the citizen or his or her agent as provided by law, see, e.g., § 36–12–41, Ala. Code 1975, and Rule 30, Ala. R. Jud. Admin., or as required by such reasonable safeguards as the custodian may impose.

Ex parte Gill, 841 So. 2d 1231, 1234 (Ala. 2002). In our case, Heard’s request for “whatever forms and instructions you have” does not specify any particular documents that he is requesting, and he also did not make

any efforts to assume the “burden and expense of copying the writings and taking the copies.” *Id.*

Furthermore, Heard states in his claim, but not in his initial request, that he is requesting “categories of public records relating to access to the state grand jury.” (C. 11). Grand Jury records, however, have been given statutory secrecy and are exempt from public records requests. *See* Ala. Code § 12-16-214 (1975). Because of this, the Alabama Supreme Court has found that individuals are only allowed access to demographic information, including race, gender, and age but excluding any reference to names, addresses, or occupations of grand jury members for the purposes of challenging the makeup of a grand jury “on the grounds that the grand jury was not representative of a fair cross-section of the community.” *State v. Matthews*, 724 So. 2d 1140, 1141 (Ala. 1998), *aff'd sub nom. Ex parte Matthews*, 724 So. 2d 1143 (Ala. 1998). In our case, it is uncontested that Heard was not seeking grand jury records for this purpose and therefore Heard’s request is barred under Ala. Code § 12-16-214. (C. 10).

Heard is also seeking “instructions you have for a citizen to access the members of the Alabama State grand jury without having your office

act as a “filter” to determine what I am allowed to present to the grand jury.” The request, without argument or support, assumes that he would be allowed to present evidence to a grand jury. Ala. R. Civ. P. Rule 12.6, however, permits only the witness being examined, the district attorney, assistant district attorneys, and any other person authorized to present evidence, such as the attorney general, the official reporter and an interpreter, if any, to be present in the grand jury room with grand jurors during sessions of the grand jury. Heard has not specified how he would be authorized to present any evidence at all to a grand jury much less specified what “instruction” he would be referring to.

This rule should be strictly adhered to because of strong public policy that grand jury deliberations should be surrounded by secrecy. There are many reasons for this policy. One is to prevent an accused from being afforded an opportunity to escape before an indictment is returned. Another is to protect the grand jury in their deliberations, so that they may freely state their opinions and cast their votes. *Blevins v. State*, 68 Ala. 92, 95 (1880); *Rush v. State*, 253 Ala. 537, 542, 45 So.2d 761 (1950). In addition, it is desirable to protect the good name of those not indicted, and to keep prosecution witnesses from being harassed or intimidated in

order to keep them away from the trial of the indictment before a petit jury. *State ex rel. Baxley v. Strawbridge*, 52 Ala. App. 685, 690, 296 So.2d 779 (1974). Furthermore, if the actions of the grand jury were made public, an accused would be given an opportunity to destroy, remove, or conceal evidence. A potential witness, if embarrassed, frightened or recalcitrant, could become unavailable before being subpoenaed to appear. General provisions for the empaneling, proceedings, etc. of grand juries can be found at Ala. Code, §§ 12-16-190 through 12-16-213 (1975). Grand jury secrecy is covered by Ala. Code, §§ 12-16-214 through 12-16-226 (1975). Ala. Code § 36-15-13 (1975), authorizes the Attorney General to appear before any grand jury in Alabama.

Also, Heard's request for grand jury records could potentially be for Federal Grand Jury Records, since the Certificate of Service in Document 2 of the record mentions the Federal Grand Jury and Heard used a federal subpoena form for proof of service. (*See* C. 16 & 19). Federal Grand Jury Records also cannot be obtained pursuant to Ala. Code § 36-12-40 (1975).

Finally, because there are inconsistencies between the complaint and the request, the complaint also fails the standard under notice pleading:

Although the Alabama Rules of Civil Procedure have established notice pleading, *see Rule 8, a pleading must give fair notice of the claim against which the defendant is called to defend.*" (Emphasis added.) Moreover, "[i]t is not the duty of the courts to create a claim which the plaintiff has not spelled out in the pleadings.

Ex parte Burr & Forman, LLP, 5 So. 3d 557, 566 (Ala. 2008) (citing *McCullough v. Alabama By-Prods. Corp.*, 343 So. 2d 508, 510 (Ala. 1977) (emphasis original)). For these reasons, Heard's complaint was legally insufficient and failed to state a cause of action for which relief could be granted. Therefore, this Court should affirm the lower court's dismissal of this case for failure to state a cognizable ground for relief.

CONCLUSION

For the above stated reasons, Appellee, Ashley Rich, in her official capacity as District Attorney of Mobile County, Alabama respectfully requests that the judgment entered by the Circuit Court of Mobile County dismissing this case be affirmed.

Respectfully submitted,

/s/Benjamin H. Albritton
Benjamin H. Albritton
Assistant Attorney General
Counsel for District Attorney
Ashley Rich

OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, AL 36130
(334) 242-7300
(334) 242-2433 (fax)
Ben.Albritton@AlabamaAG.gov

CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that foregoing Appellee's Brief complies with Ala. R. App. P. 28 and Ala. R. App. P. 32 in that it has been prepared in a proportionally spaced typeface (14-point Century Schoolbook) using Microsoft Word and contains no more than 14,000 words. This Brief, beginning with the section entitled "Statement of the Case" and concluding with the section entitled "Conclusion" contains 3,039 words.

/s/ Benjamin H. Albritton
Benjamin H. Albritton
Assistant Attorney General
Counsel for District Attorney
Ashley Rich

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2022, I filed the foregoing with the Clerk of the Court using the electronic filing system. I have further served a copy of the foregoing via United States First Class Mail to the following:

Freddie Heard #272097
Easterling Correctional Facility
200 Wallace Dr.
Clio, AL 36017

/s/ Benjamin H. Albritton
Benjamin H. Albritton
Assistant Attorney General

The Alabama Court of Civil Appeals



NATHAN P. WILSON
CLERK

300 DEXTER AVENUE
MONTGOMERY, ALABAMA 36104-3741
TELEPHONE 334-229-0733

LYNN DEVAUGHN
ASSISTANT CLERK

August 5, 2022

CL-2022-0608

Freddie Heard v. Ashley Rich (Appeal from Mobile Circuit Court: CV-22-900283)

NOTICE

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals:

Submitted on Brief(s).

A handwritten signature in black ink that reads "Nathan P. Wilson".

Nathan P. Wilson, Clerk

No. CL-2022-0608

In The Court of Civil Appeals of Alabama

**Freddie Heard,
Plaintiff-Appellant**

v.

**Ashley Rich,
Defendant-Appellee.**

**On Appeal From The Circuit Court of Mobile County
CV-22-900283**

Reply Brief of Appellant

Freddie Heard
272097
E. C. F.
200 Wallace Dr.
Clio, Ala. 36017

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STATEMENT OF THE CASE

Plaintiff-Appellant did not request 'grand jury records'. Plaintiff-Appellant merely sought whatever records there were explaining how to *access* the Alabama grand jury.

The Circuit Court granted the Defendant-Appellee's Motion to Dismiss with neither a statement of facts nor conclusions of law.

STATEMENT OF THE ISSUES

I. Heard waived nothing. The lower court never addressed the issue of service of process .

II. The Circuit Court properly dismissed nothing. There was no statement of facts nor conclusion of law.

III. Plaintiff-Appellant had cognizable grounds for relief.

STATEMENT OF THE FACTS

Defendant-Appellant's version is substantially correct.

STANDARD OF REVIEW

What the Standard of Review should be:

SECTION 13 ALABAMA CONSTITUTION

Courts to be open; remedies for all injuries; impartiality of justice.

That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay.

What it is in actuality:

“A judge may decide almost any question any way and still be supported by an array of cases.”

John H. Wigmore, *A Treatise on the System of Evidence in Trials at Common Law*. I:IX (1904).

SUMMARY OF THE ARGUMENT

The Plaintiff-Appellant’s argument addressed the fact that the lower court gave *no reason* for his ruling.

Alabama Code 36-12-40 does not so much as mention Alabama grand jury records.

Defendant-Appellee has stretched the meaning of Alabama Code 12-16-214 as well:

The Legislature hereby finds, declares and determines that it is essential to the fair and impartial administration of justice that all grand jury proceedings be secret and that the secrecy of such proceedings remain inviolate. The provisions of this division are to be construed for the accomplishment of this purpose and to promote the following:

(1) That grand juries have the utmost freedom in their discussions, deliberations, considerations, debates, opinions and votes without fear or apprehension that the same may be subsequently disclosed, or that they may be subject to outside pressure or influence or injury in their person or property as a result thereof.

(2) That those persons who have information or knowledge with respect to the commission of crimes or criminal acts be encouraged to testify

freely and truthfully before an appropriate grand jury without fear or apprehension that their testimony may be subsequently disclosed, or that they may be subject to injury in their person or property as a result thereof.

(3) That those persons who have committed criminal acts or whose indictment may be contemplated not escape or flee from the due administration of justice.

(4) That those persons falsely accused of criminal acts are not subject to public scrutiny or display and their otherwise good names and reputations are left intact.

Plaintiff-Appellant was not asking to access a grand jury proceeding (other than his own, eventually).

ARGUMENT

Heard waived nothing.

The Alabama Supreme Court adheres to the principle that the grant of a preliminary injunction will not be reversed on appeal absent an abuse of discretion. This abuse must be of such a nature as to constitute or manifest injustice unless rectified on appeal. *Alabama Education Association v. Board of Trustees*, 374 So.2d 258 (Ala.1977).

There is another legal principle to be applied as well.

"The capable-of-repetition-but-evading-review exception has been applied in contexts that generally involve a significant issue that cannot be addressed by a reviewing court because of some intervening factual circumstance, most often that the issue will be resolved by the passage of a relatively brief period of time. See,

e.g., ... *Moore v. Ogilvie*, 394 U.S. 814, 89 S. Ct. 1493, 23 L.Ed.2d 1 (1969) (involving challenges to election procedures after the completion of the election); and [State ex rel.] *Kernells [v. Ezell]*, 291 Ala. 440, 282 So. 2d 266 (1973)] (same)."...

Plaintiff-Appellant was not seeking 'impermissible legal advice' or 'statutorily exempt information' (*what statute?*) p. 10, Brief of Appellee.

Page 11 can underscores another problem. How is a citizen supposed to identify the records sought when he (or she) does not know if such records exist or not?

Page 12 appears to adroitly sidestep the issue. How do citizens get to access the Alabama grand jury? Case law on this is quite plain.

The grand jury is an integral part of our legal system, whose function it is to make investigations of all crimes committed within its jurisdiction. Public policy demands that the citizen, without hazard to himself, may freely bring before the grand jury the fact that a crime has been committed, request an investigation, and furnish such information as he had in aid of the investigation. In this the citizen is not a prosecutor. It is not essential that he have probable cause to believe any individual to be the guilty party. He is merely performing a duty in aid of the tribunal set up to ascertain whether there is probable cause to believe a crime has been committed, and if so, who is there probable cause to believe to be the guilty party. *American Surety Co. v. Pryor*, 217 Ala. 244, 115 So. 176; *Smith v. Dollar*, 223 Ala. 661, 138 So. 277; 38 C.J. p. 385, § 2. (Emphasis added.)...

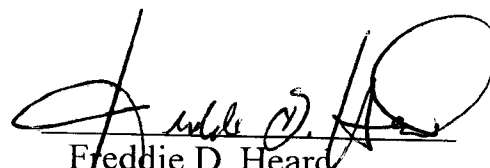
Alabama Power Co. v. Neighbors, 402 So.2d 958 (Ala. 1981)

Contradicted by pp 13-14, Brief of Appellee.

CONCLUSION

This action should be reversed and remanded in order for the lower court to explain itself and give reasons for its ruling, the alternative is simply another lawsuit.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Freddie D. Heard", written over a horizontal line.

Freddie D. Heard
#272097
E.C.F.
#200 Wallace Dr.
Clio, Al. 36017

Certificate of Service

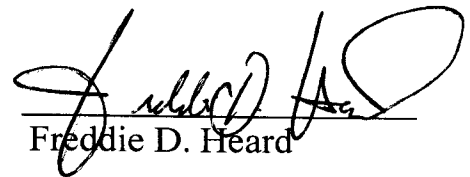
This certifies that I have on this 25th day of August, 2022 placed a true and exact copy of my:

REPLY BRIEF OF APPELLANT

in the U.S. Mails, first-class postage prepaid, addressed to:

Office of the Attorney General
501 Washington Ave.
Montgomery, Al. 36130

Mobile County District Attorney Office
Ashley Rich District Attorney
Government Plaza
205 Government St., Ste C701
Mobile, Al. 36644


Freddie D. Heard

Certified Mail No. _____

The Alabama Court of Civil Appeals



NATHAN P. WILSON
CLERK

300 DEXTER AVENUE
MONTGOMERY, ALABAMA 36104-3741
TELEPHONE 334-229-0733

LYNN DEVAUGHN
ASSISTANT CLERK

September 6, 2022

CL-2022-0608

Freddie Heard v. Ashley Rich (Appeal from Mobile Circuit Court: CV-22-900283)

NOTICE

You are hereby notified that the following action was taken in the above cause:

The appellant's reply brief filed on August 25, 2022, is stricken as having been untimely filed.

A handwritten signature in cursive script that reads "Nathan P. Wilson".

Nathan P. Wilson, Clerk

IN THE COURT OF CIVIL APPEALS OF ALABAMA

Freddie Demond Heard, Sr.,
Plaintiff-Appellant,

V.

Case No.: CL-2-22-0608

Ashley Rich
Defendant-Appellee.

MOTION FOR RECONSIDERATION OF THE TIMELINESS IN PLAINTIFF-APPELLANT
FILING REPLY BRIEF

COMES NOW, Freddie demond Heard Sr., [hereinafter "Plaintiff-Appellant"] and moves this court pursuant to the First, Fifth and Fourteenth Amendments of the United States Constitution, and Article I, §§6 and 13 of the Alabama Constitution in the above styled cause to reconsider the decision made by the clerk of this court to strike Plaintiff-Appellants brief as untimely filed in response to the brief of Appellee, District Attorney Ashley Rich [hereinafter "Defendant-Appellee"]. Plaintiff-Appellant shows this court the due diligence and good cause as to why reconsideration should be GRANTED and would show in support that:

STATEMENT OF FACTS

1. On April 22, 2022, Plaintiff-Appellant filed NOTICE of appeal from Mobile County Circuit Court's ORDER dismissing Plaintiff-Appellants complaint on

March 18, 2022. See (Doc.17)

2. On May 27, 2022, Plaintiff-Appellant moved this court for an Enlargement of Time to file a brief, in which was GRANTED by this court.

3. On June 8, 2022, Plaintiff-Appellant's brief was timely filed within the extended time GRANTED by this court.

4. On June 22, 2022, Plaintiff-Appellant received a letter directed to this courts clerk, Mr. Wilson in RE: Freddie Heard v. Ashley Rich stating:

"Dear Mr. Wilson:

This letter serves to confirm that the Appellee, Ashley Rich, has been granted a 7-day extension of time to file their brief making the Appellee's brief due Friday, July 8, 2022. If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely

Benjamin H. Albritton

Assistant Attorney General"

5. On July 6, 2022 the Appellees brief was E-Filed to this court and Plaintiff-Appellant received the Appellees brief at 1:00 p.m. on July 8, 2022 during legal mail call.

6. Thereafter on July 11, 2022 when the law library reopened on this Monday

and Tuesday, Plaintiff-Appellant began the preparation of replying to the Defendant-Appellees brief.

7. On July 13, 2022, through August 11, 2022, Easterling Correctional Facility was on quarantine due to several COV-19 outbreaks. While on this quarantine Plaintiff-Appellant received a letter from the clerk of this court on August 8, 2022 during legal mail call giving Plaintiff-Appellant NOTICE:

"You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals."

Submitted on Brief(s).

Nathan P. Wilson, Clerk"

8. Therafter August 11, 2022 coming off the quarantine lockdown, Easterling Correctional Facility had serveral stabbings, illegal drug drops and a shortage of staff causing the law library to be closed or either open for only a couple of hours for 1400 inmates.

9. Plaintiff-Appellant declares and claims he is working diligently and in good faith to meet any and all deadlines Ordered by this court or by the rules of court. Due to the conditions of Alabama Department of Corrections understaffing, illegal drugs smugglings, the violence and the only outlet... the law library having only three (3) typewriters, two (2) research computers and a very limited books, to none, for over fourteen-hundred (1400) inmates is just the top layer of the reason why. Just to add emphasis to the

issue(s)....the law library is not open on Saturday or Sunday...at all! Plaintiff-Appellant did manage to finish the reply brief and have it submitted to this court at the earliest time available of August 25, 2022 including the mailing time.

10. On September 6, 2022 this court gave NOTICE stating that:

The appellant's reply brief filed August 25, 2022, is stricken as having been untimely filed.

Nathan P. Wilson, Clerk''

11. Plaintiff-Appellant claims these circumstances are beyond his control when it comes to medical issues and security issues.

ARGUMENT

12. Plaintiff-Appellant contends that the circumstances were out of his control and continued to access the court and successfully delivered his Reply Brief through the due diligence afforded in the window of a major pandemic issue (COV-19) and the security measures implemented by this facility.

13. Plaintiff-Appellant further contends that the clerk of this courts decision to strike Plaintiff-Appellant may have caused irreparable harm and would be detrimental to Plaintiff-Appellant's guaranteed fundamental rights found in the First, Fifth and Fourteenth Amendments of the United States Constitution and to include Article I, §§ 6 and 13 of the Alabama Constitution

from the access to any court, the right to create a record for appeals purpose(s) and the entitlement of redressing Plaintiff-Appellant's grievances to this court or any court if not reconsidered to become a part of this record for the addressing of the merits herein.

RELIEF

Plaintiff-Appellant prays this court will:

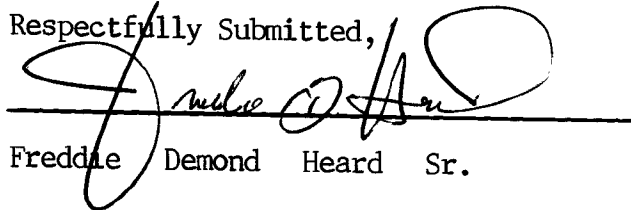
14. Reconsider the September NOTICE striking the brief as untimely, to re-evaluate the time for Plaintiff-Appellant Reply Brief to be filed and un-strike the Reply Brief making it a part of the record;

15. Reissue any NOTICE to all parties of any action taken in the above cause as to whether this appeal will continue to be Submitted on Brief(s), after the unstriking of Plaintiff-Appellants Reply Brief.;

16. Or GRANT any other relief this court deems proper and just.

WHEREFORE the premises declared and stated herein, Plaintiff-appellant prays this court will GRANT the necessary relief to protect all rights claimed herein. DONE THIS 12th day of September , 2022.

Respectfully Submitted,



Freddie Demond Heard Sr.

AIS# 272097

CERTIFICATE OF SERVICE

I, Freddie Demond Heard, Sr., AIS# 272097 do verify that I have served a copy of the foregoing:

MOTION FOR RECONSIDERATION OF THE TIMELINESS IN
PLAINTIFF-APPELLANT FILING REPLY BRIEF

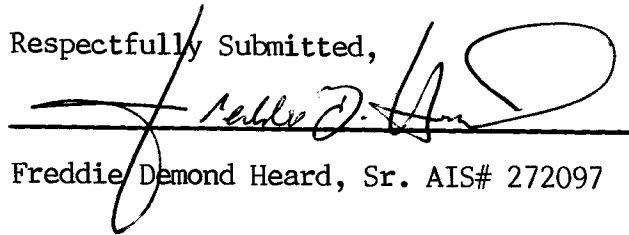
by placing the same in the legal mail box here at Easterling Correctional Facility at 200 Wallace Dr., Clio, Alabama 36017 to the following individuals on this 12th day of September 2022.

Alabama Court of Civil Appeals
300 Dexter Avenue
Montgomery, AL. 36104

Office of Att'y Gen. of Alabama
501 Dexter Avenue
Montgomery, AL. 36130

Mobile County District Attorney Office
Ashley Rich, District Attorney
Government Plaza
205 Government St. Ste. C701
Mobile, AL. 36644

Respectfully Submitted,



Freddie Demond Heard, Sr. AIS# 272097

The Alabama Court of Civil Appeals



NATHAN P. WILSON
CLERK

300 DEXTER AVENUE
MONTGOMERY, ALABAMA 36104-3741
TELEPHONE 334-229-0733

LYNN DEVAUGHN
ASSISTANT CLERK

September 13, 2022

CL-2022-0608

Freddie Heard v. Ashley Rich (Appeal from Mobile Circuit Court: CV-22-900283)

TRANSFER ORDER

You are hereby notified that the following action was taken in the above cause:

Appeal transferred to the Supreme Court of Alabama for lack of this court's appellate jurisdiction.

A handwritten signature in black ink that reads "Nathan P. Wilson".

Nathan P. Wilson, Clerk

The Alabama Court of Civil Appeals



NATHAN P. WILSON
CLERK

300 DEXTER AVENUE
MONTGOMERY, ALABAMA 36104-3741
TELEPHONE 334-229-0733

LYNN DEVAUGHN
ASSISTANT CLERK

October 18, 2022

CL-2022-0608

Freddie Heard v. Ashley Rich (Appeal from Mobile Circuit Court: CV-22-900283)

CERTIFICATE OF JUDGMENT

The appeal in this cause having been duly submitted, IT IS CONSIDERED, ORDERED, AND ADJUDGED that the judgment of the court below was affirmed on September 30, 2022.

IT IS FURTHER ORDERED that the costs of the appeal are taxed against the appellant(s) and sureties as provided by Rule 35, Ala. R. App. P.

A handwritten signature in black ink that reads "Nathan P. Wilson".

Nathan P. Wilson, Clerk

IN THE COURT OF CIVIL APPEALS OF ALABAMA

FREDDIE HEARD,)
)
 Appellant,)
 v.) Civil Appeals No.:cl-2022-0608
)
 ASHLEY RICH,) Circuit Court of Mobile
) County No. CV2008-494
 Appellee.)
)

**ON APPEAL FROM THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA**

**MOTION REQUESTING STATEMENT OF FACTS AND
CONCLUSIONS OF LAW and/or MOTION TO RECALL THE MANDATE**

Freddie Heard
272097
E. C. F.
200 Wallace Dr.
Clio, Ala. 36017

Comes the Appellant in the above-entitled action, Freddie Heard, and moves this Court to:

1. Furnish the Appellant with a Statement of Facts and Conclusion of Law and/or
2. Recall the Mandate issued in this case.

I

Alabama law is quite clear, though Appellant could not avail himself of a certiorari petition in the time allowed, in large part due to all the 'road blocks' erected by the Alabama prison system.

However, some of those principles apply.

Alabama Rules of Appellate Procedure
Rule 39.

Petitions for writ of certiorari; review of decisions of courts of appeal.

(a) Considerations governing certiorari review; grounds. Certiorari review is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons for the issuance of the writ.

(1) CIVIL CASES AND NON-DEATH-PENALTY CRIMINAL CASES. In all civil cases and in all criminal cases other than cases in which the death penalty is imposed, petitions for writs of certiorari will be considered only:

(A) From decisions initially holding valid or invalid a city ordinance, a state statute, or a federal statute or treaty, or initially construing a controlling provision of the Alabama Constitution or the United States Constitution;

(B) From decisions that affect a class of constitutional, state, or county officers;

(C) From decisions where a material question requiring decision is one of first impression for the Supreme Court of Alabama;

(D) From decisions in conflict with prior decisions of the Supreme Court of the United States, the Supreme Court of Alabama, the Alabama Court of Criminal Appeals, or the Alabama Court of Civil Appeals; provided that:

1. When subparagraph (a)(1)(D) is the basis of the petition, the petition must quote that part of the opinion of the court of appeals and that part of the prior decision the petitioner alleges are in conflict; or

Rule 39 (a)(1)(D)(1) obviously applies:

The grand jury is an integral part of our legal system, whose function it is to make investigations of all crimes committed within its jurisdiction. Public policy demands that the citizen, without hazard to himself, may freely bring before the grand jury the fact that a crime has been committed, request an investigation, and furnish such information as he had in aid of the investigation. In this the citizen is not a prosecutor. It is not essential that he have probable cause to believe any individual to be the guilty party. He is merely performing a duty in aid of the tribunal set up to ascertain whether there is probable cause to believe a crime has been committed, and if so, who is there probable cause to believe to be the guilty party. *American Surety Co. v. Pryor*, 217 Ala. 244, 115 So. 176; *Smith v. Dollar*, 223 Ala. 661, 138 So. 277; 38 C.J. p. 385, § 2. (Emphasis added.)...

Alabama Power Co. v. Neighbors, 402 So.2d 958 (Ala. 1981)

"Alabama courts have consistently held that even when a trial court adopts verbatim a party's proposed order, the findings of fact and conclusions of law are those of the trial court and they may be reversed only if they are clearly erroneous."

McGahee v. State, 885 So. 2d 191, 229–30 (Ala. Crim. App. 2003). "

The orders in this case, both of the circuit court level and the appellate level,

were clearly erroneous, as the Appellate Brief points out.

II

Appellant finds it strange that he can be denied the most basic meaningful access to the courts while the Alabama Supreme Court can engage in what can most charitably be described as a 'strain at a gnat and swallow a camel' line of reasoning, to wit:

HARRY J. WILTERS, JR., Special Justice (concurring specially).

I concur fully with the opinion of the Court. I write specially to add some personal observations.

The evidence received and considered by the Court of the Judiciary confirmed that Chief Justice Moore failed to obey an order of the federal district court. The Chief Justice never said whether, after he had exhausted all of his legal remedies, he would move the monument back into the rotunda of the Judicial Building.

Chief Justice Moore offered both legal and biblical arguments for his failure to comply with the federal court's order. Even if the biblical arguments could be considered, the Bible also tells us:

"Every person must submit to the supreme authorities. There is no authority but by act of God, and the existing authorities are instituted by him; consequently anyone who rebels against authority is resisting a divine institution, and those who so resist have themselves to thank for the punishment they will receive. For government, a terror to crime, has no terrors for good behavior. You wish to have no fear of the authorities? Then continue to do right and you will have their approval, for they are God's agents working for your good. But if you are doing wrong, then you will have cause to fear them; it is not for nothing that they hold the power of the sword, for they are God's agents of punishment, for retribution on the offender. That is why you are obliged to submit. It is an obligation imposed not merely by fear of retribution but by conscience. That is also why you pay taxes. The authorities are in God's service and to these duties they devote their energies. Discharge

your obligations to all men; pay tax and toll, reverence and respect, to those to whom they are due."⁸

"Submit yourselves to every human institution for the sake of the Lord."²

"In him everything in heaven and on earth was created, not only things visible but also the invisible orders of thrones, sovereignties, authorities, and powers."¹⁰

"Remind them to be submissive to the government and the authorities, to obey them, and to be ready for any honorable form of work; to slander no one, not to pick quarrels, to show forbearance and a gentle disposition towards all men."¹¹

"He said to them, 'Then pay Caesar what is due to Caesar, and pay to God what is due to God.'"¹²

"Do as the king commands you, and if you have to swear by God, do not be precipitate. Leave the king's presence and do not persist in a thing which displeases him; he does what he chooses. For the king's word carries authority. Who can question what he does? Whoever obeys a command will come to no harm. A wise man knows in his heart the right time and method for action. There is a time and a method for every enterprise."¹³

Moore v. Judicial Inquiry Comm'n of State,
891 So.2d 848 (Ala. 2004)

8. Romans 13:1-7, The New English Bible 9. I Peter 2:13, The New English Bible.
10. Colossians 1:16, The New English Bible 11. Titus 3:1-2, The New English Bible
12. Matthew 22:21, The New English Bible 13. Ecclesiastes 8:3-6, The New English Bible.

When it comes to teaching Scripture, Justice Wiltens, Jr. should probably not quit his day job.

(12) Article VI of the Constitution of the United States provides that the Constitution is "the supreme Law of the Land ... and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any

State to the Contrary notwithstanding." The justices of this Court are bound by solemn oath to follow the law, whether they agree or disagree with it, because: "All of the officers of the government, from the highest to the lowest are creatures of the law, and are bound to obey it." *United States v. Lee*, 106 U.S. 196, 220 (1882).

In Matter of Compliance with Writ of Injunction "Order No. 03-01 (Ala. 2003)

This, of course, depends on what the Constitution means in the hands of the judges administering it at a particular time and place.

I don't want to know what the law is, I want to know who the judge is.

Roy M. Cohn, quoted in *New York Times Book Review*, 3 Apr. 1988, at 24.

For intending to establish three departments, coordinate and independent, that they might check and balance one another, it has given, according to this opinion, to one of them alone the right to prescribe rules for the government of the others, and to that one, too, which is unelected by and independent of the nation. For experience has already shown that the impeachment it has provided is not even a scare-crow... The Constitution on this hypothesis is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.

--Thomas Jefferson letter to Spencer Roane, 1819. ME 15:212

The Bible does not appear to wholly agree with Justice Willets, Jr.:

Ephesians 6:12 ESV: For we do not wrestle against flesh and blood, but against the rulers, against the authorities, against the cosmic powers over this present darkness, against the spiritual forces of evil in the heavenly places.

Ephesians 6:12 KJV: For we wrestle not against flesh and blood, but

against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places.

Lest the meaning of Ephesians 6:12 be unclear:

Strong's Concordance, Greek Dictionary for King James Bible

Beginning, corner, magistrate, power, *principality*, principle, rule, (properly abstract) a commencement or (concrete) chief (in various applications of order time place or rank)

I.e., principality is a synonym for magistrate.

In at least one aspect of religious practice the Carthaginians were more conservative than the people of Tyre. They continued the ghastly Moloch sacrifices of infants which were killed and burned in honour of Ba'al, Hammon and his consort Tanit, a practice which had been abandoned at Tyre by the time Carthage was established.

Adrian Goldsworthy, *The Fall of Carthage*, pp. 26(2006).

Does the Bible mandate obedience to such legal monstrosities? Hardly. The practice of infant sacrifice was so widespread in Carthage it caused Hannibal to lose the Second Punic War. He ran out of men.

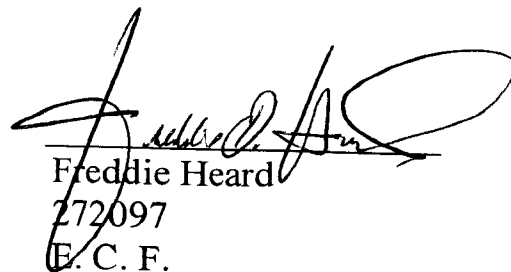
Has *Roe v. Wade* put us in the same position? Will we ever win another war?

CONCLUSION

The individuals denying Appellant relief need to recognize their true positions. They are not gods, rulers, or leaders. They are public servants and should act accordingly.

WHEREFORE, the relief requested must be granted.

Respectfully Submitted,



Freddie Heard
272097
E. C. F.
200 Wallace Dr.
Clio, Ala. 36017

Certificate of Service

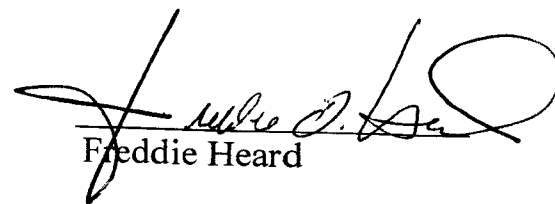
This certifies that I have on this 2nd day of December, 2022 placed a true and exact copy of my:

MOTION REQUESTING STATEMENT OF FACTS AND CONCLUSIONS OF LAW and/or MOTION TO RECALL THE MANDATE

in the U.S. Mails, first-class postage prepaid, addressed to:

Office of the Attorney General
501 Washington Ave.
Montgomery, Al. 36130

Mobile County District Attorney Office
Ashley Rich District Attorney
Government Plaza
205 Government St., Ste C701
Mobile, Al. 36644



Freddie Heard

The Alabama Court of Civil Appeals



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LYNN DEVAUGHN
ASSISTANT CLERK

December 19, 2022

CL-2022-0608

Freddie Heard v. Ashley Rich (Appeal from Mobile Circuit Court: CV-22-900283).

NOTICE

You are hereby notified that the following action was taken in the above cause:

The appellant's motion requesting a statement of facts and conclusions of law or for this court to recall the mandate is construed to be a motion seeking to recall the certificate of judgment, and, as so construed, the motion is denied.

A handwritten signature in black ink that reads "Nathan P. Wilson".

Nathan P. Wilson, Clerk