



**ALABAMA HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**

**JACK SHARMAN**  
**SPECIAL COUNSEL**  
**LIGHTFOOT, FRANKLIN & WHITE LLC**  
**400 20TH STREET NORTH**  
**BIRMINGHAM, ALABAMA 35203**

August 1, 2016

**Via Electronic Mail**

Thomas S. Hale, Esq.  
Hale Sides LLC  
600 Financial Center  
505 20<sup>th</sup> Street North  
Birmingham, Alabama 35203

Re: Impeachment Investigation of Governor Robert Bentley

Dear Tom:

Transmitted herewith is a subpoena directed to Dianne Bentley. I understand that you are accepting service on her behalf or will cause her to be served.

Thanks for your help.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink that reads "Jack Sharman".

Jack Sharman

**COMMITTEE**  
**EXHIBIT**

6-A



## ALABAMA HOUSE OF REPRESENTATIVES

### JUDICIARY COMMITTEE

**JACK SHARMAN**  
**SPECIAL COUNSEL**  
**LIGHTFOOT, FRANKLIN & WHITE LLC**  
**400 20TH STREET NORTH**  
**BIRMINGHAM, ALABAMA 35203**

August 1, 2016

Dianne Bentley

Re: Impeachment Investigation of Governor Robert Bentley

Dear Mrs. Bentley:

As Special Counsel to the Alabama House of Representatives Judiciary Committee, and pursuant to House Resolution 334, House Rule 79.1, and the Rules of the House Judiciary Committee for the Impeachment Investigation of Governor Robert Bentley, I am responsible for collecting evidence and information in connection with the Articles of Impeachment against Governor Bentley, House Resolution 367.

Transmitted herewith is a subpoena issued on behalf of the Committee. It directs you to produce certain documents and things no later than by 5:00 p.m. on Friday, August 5, 2016.

If you have any questions, please do not hesitate to contact me (or to have your counsel contact me, if you have retained counsel).

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "J. Sharman".

Jack Sharman

BEFORE THE HOUSE JUDICIARY COMMITTEE  
OF THE ALABAMA HOUSE OF REPRESENTATIVES

TO: Dianne Bentley



SUBPOENA

PURSUANT TO THE COMMITTEE RULES OF THE HOUSE JUDICIARY COMMITTEE FOR THE IMPEACHMENT OF GOVERNOR ROBERT BENTLEY, THE HOUSE JUDICIARY COMMITTEE OF THE ALABAMA HOUSE OF REPRESENTATIVES ("THE COMMITTEE") HEREBY COMMANDS YOU:

To appear before the Committee and be questioned at the place, date, and time specified below:

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

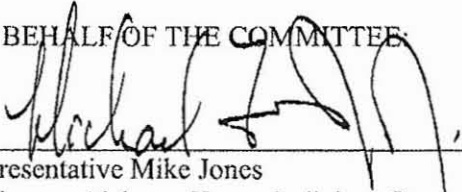
To produce the materials, identified in the attached Exhibit A, to the Committee at the place, date, and time specified below:

Place: 400 20th Street North, Birmingham, Alabama 35203

Date: Friday, August 5, 2016

Time: By no later than 5:00 p.m.

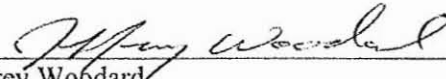
ON BEHALF OF THE COMMITTEE:



Representative Mike Jones  
Chairman, Alabama House Judiciary Committee

Date: 7/31/16

ISSUED BY:



Jeffrey Wobdard  
Clerk, Alabama House of Representatives

Date: 7/31/16

Any questions pertaining to this Subpoena should be directed to the Special Counsel for the Committee:

Jackson R. Sharman III  
400 20th Street North  
Birmingham, Alabama 35203  
Telephone: (205) 581-0700  
Email: [jsharman@lightfootlaw.com](mailto:jsharman@lightfootlaw.com)

**BEFORE THE HOUSE JUDICIARY COMMITTEE  
OF THE ALABAMA HOUSE OF REPRESENTATIVES**

**TO: Dianne Bentley**

[REDACTED]  
[REDACTED]

**SUBPOENA  
EXHIBIT A**

1. Any and all audio recordings of telephone or other conversations between Robert Bentley and Rebekah Caldwell Mason.
2. Any and all documents or electronic records reflecting or relating to any communications, including, but expressly not limited to, text messages and emails, between Robert Bentley and Rebekah Caldwell Mason.
3. Any and all electronic devices that were used by you or by any other person to record or capture the recordings, identified in Request One, and upon which such recordings are preserved.
4. Any and all notes, diaries, or other records, kept by you from 2011 to the present, relating to the activities or conduct of Robert Bentley.
5. Any and all documents or other things pertaining to any relationship, professional or otherwise, between Robert Bentley and Rebekah Caldwell Mason.
6. Any and all documents or other things that you believe are relevant, in any way, to the investigation of the House Judiciary Committee, in general, or to the Articles of Impeachment pertaining to Robert Bentley, in particular.



**From:** Jackson R. Sharman III  
**Sent:** Monday, August 08, 2016 10:36 AM  
**To:** Tommy Spina  
**Cc:** Joe McLean  
**Subject:** RE: Seth Hammett

Tommy: thanks. We'll be in touch.

Good luck with the trial.

Jack

-----Original Message-----

From: Tommy Spina [<mailto:tommy@tommyspina.com>]  
Sent: Monday, August 08, 2016 9:04 AM  
To: Jackson R. Sharman III  
Cc: Joe McLean  
Subject: Seth Hammett

Hey Jack,

I, along with Joe McLean have represented Seth for a number of years. He is in receipt of your July 25th letter.

Please contact me when you are ready to move forward. I am in trial in Federal Court in Gulfport for going on 4 weeks, so email is best way to respond for now.

Thank you and look forward to working with you.

Tommy Spina  
1330 21st Way South  
Suite 200  
Birmingham, AL 35205  
205. 939. 1330. (o)  
205. 933. 0101. (fax)  
tommy@tommyspina.com  
tommyspina.com



Ross H. Garber  
Susan S. Murphy  
Shipman & Goodwin LLP  
1875 K. St, NW  
Washington, D.C. 20006  
202-469-7798  
rgarber@goodwin.com  
smurphy2@goodwin.com  
*Counsel for the Office of the  
Governor and Governor Bentley  
in his Official Capacity*

David B. Byrne  
Carrie Ellis McCollum  
Office of the Governor  
State Capitol  
Montgomery, Alabama 36130  
David.Byrne@governor.alabama.gov  
Carrie.McCollum@governor.alabama.gov  
*Counsel for the Office of the Governor and  
Governor Bentley in his Official Capacity*

Joseph Espy, III  
William Espy  
Melton, Espy & Williams, P.C.  
P.O. Drawer 5130  
Montgomery, AL 36103  
(334) 263-6621  
jespy@mewlegal.com  
[wespy@mewlegal.com](mailto:wespy@mewlegal.com)  
*Counsel for Governor Bentley in  
his Personal Capacity*

August 17, 2016

By Electronic Mail

Jack Sharman, Esq.  
Special Counsel  
Lightfoot, Franklin & White LLC  
400 20<sup>th</sup> Street North  
Birmingham, AL 35203

Re: Requests for Documents to Governor Robert Bentley and the Office of  
the Governor of the State of Alabama

Dear Mr. Sharman:

We write with respect to the document requests dated last Friday directed to both the Office of the Governor and the Governor in his personal capacity. The purpose of this letter is to put you on notice of the Governor and the Office of the Governor's objections to those requests in a good faith effort to communicate with you openly about the issues that we have identified as affecting the Governor's and the Office of the Governor's ability to produce documents at this time, while preserving those parties' objections to the document requests and protecting those parties' rights. As set forth below, the Committee's requests are, at a minimum, premature in the light of the renewed Motion to Suspend Proceedings and Motion for Recusal, which are awaiting substantive consideration and decision by the Judiciary Committee. Moreover, while the Governor and the Office of the Governor are unable to fully assess the requests without an appropriately specific charging document in this matter, the requests are on their face fatally overbroad and unduly burdensome. In fact, those incredibly broad and expansive requests -- six single-spaced pages seeking 46 categories of documents (several with subcategories) from the Office of the Governor alone -- highlights the constitutional deficiencies in the charging document in this matter and further support the Governor's pending Motion to Suspend.

As noted in the Motion to Suspend, the Alabama Supreme Court has made it abundantly clear that a public official who is the subject of impeachment

**COMMITTEE  
EXHIBIT**

6-C

proceedings is entitled to the full panoply of due process rights, analogous to those afforded defendants in criminal cases. Any public official faced with removal from office is similarly entitled to due process protections. This investigation by the House of Representatives is both an impeachment proceeding and a proceeding to remove the Governor from office. As such, the Governor must be afforded due process. House Rule 79.1 has acknowledged and mandated this fact and has ratified these due process rights. It is beyond dispute that a bedrock principle of due process is the right to be apprised of allegations with particularity.

As explained in the Motion to Suspend Proceedings, and evidenced by the document requests served by you, the present impeachment resolution is impermissibly vague and impermissibly broad. It does not sufficiently apprise the Governor of the charges that are being investigated, does not give the Governor the ability to defend himself, and does not provide the Judiciary Committee with clear or even constitutionally cognizable parameters for its investigation.

The document requests served on behalf of the Committee prove this point. First, without an understanding of the charges that have been brought, and the basis for those charges, it is impossible for the Governor and the Office of the Governor to fully and fairly assess their rights or objections in connection with the document requests. Moreover, those requests seek voluminous documents, concerning information that is nowhere alluded to in the impeachment resolution.<sup>1</sup> In fact, the requests encompass a multitude of subject matters, addressing issues that go far beyond the scope of the proper subject matter of impeachment, which is properly reserved to conduct occurring during the Governor's current term that amounts to grave crimes or other similarly egregious misconduct, which seriously cripples the administration of justice in all its departments. *See The Constitutional Standard for Impeachment of a Governor of Alabama*, at p.3 (August, 2016).<sup>2</sup> Until such time as there is a sufficiently particular charging document voted on and passed by the full House of Representatives, any request for documents is premature.

In addition, not only are the requests premature, and objectionable for that reason alone, they are also grossly overbroad, unduly burdensome and harassing. Compliance with the requests would likely take months to complete and, with respect to those directed to the Office of the Governor, come at significant taxpayer

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<sup>1</sup> For example, you seek copies of *all* of the Governor's personal checking, savings and investment account statements since January 2011, nearly six years of information about every aspect of the Bentley family's financial life for a constitutional officer who has not drawn a salary during his term of office.

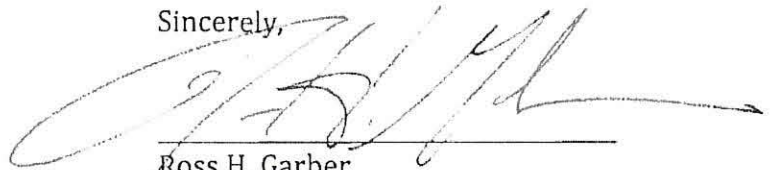
<sup>2</sup> Notably, your request specifically seeks information outside the Governor's current term, which the Alabama Supreme Court has held may not under any circumstances be a basis for impeachment. *See, e.g., Lewis v. State ex rel. Evans*, 387 So.2d 795, 807 (Ala. 1980); *Parker v. State*, 333 So.2d 806, 808 (Ala. 1976).

Jack Sharman, Esq.  
Page 3 of 3  
August 17, 2016

expense. Moreover, the Constitution simply does not permit the Committee to engage in what here amounts to an unfettered fishing expedition into the Governor and the Office of the Governor, unbounded by time or subject-matter.

Based on the foregoing, the Governor and the Office of the Governor object to the requests received from the Committee. Respectfully, we will await the Judiciary Committee's substantive decision on our pending motions and a constitutionally firm charging document, at which time the Governor and the Office of the Governor will be in a position to fully assess and provide specific objections and responses to any appropriate requests served by the Committee. The Governor and the Office of the Governor reserve all of their rights, including the right to object to these or any other requests served by the Committee once they have been fully apprised of the charges in this matter.

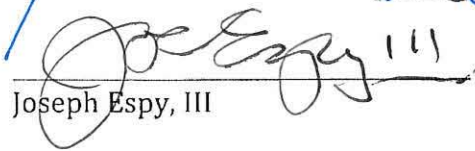
Sincerely,



Ross H. Garber



David B. Byrne



Joseph Espy, III

August 23, 2016

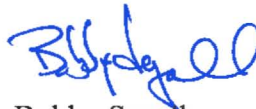
Honorable Jack Sharman  
Lightfoot Franklin & White, LLC  
400 20th Street North  
Birmingham, AL 35203-3202

Re: Request for Documents from Rebekah Mason in connection with  
Governor Bentley Impeachment Proceedings.

Dear Jack:

I am representing Rebekah Mason who has received your request for production of documents. On behalf of Ms. Mason, I respectfully decline to produce any documents.

Sincerely,



Bobby Segall

COMMITTEE  
EXHIBIT  
6-D





**ALABAMA HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**

**JACK SHARMAN**  
**SPECIAL COUNSEL**  
**LIGHTFOOT, FRANKLIN & WHITE LLC**  
**400 20TH STREET NORTH**  
**BIRMINGHAM, ALABAMA 35203**

August 25, 2016

**Via Electronic Mail and U.S. Mail**

Robert D. Segall, Esq.  
Copeland, Franco, Screws & Gill  
P.O. Box 347  
Montgomery, Alabama 36101

Re: Impeachment Investigation of Governor Robert Bentley

Dear Bobby:

I have received your letter dated August 23 concerning Mrs. Mason's refusal to produce documents to the Committee.

I hope that your client will reconsider her decision not to cooperate with the Committee's investigation.

To conduct a prompt, fair and fact-based investigation, the Committee needs documents as well as testimony. Full, voluntary compliance with information demands to current and former public officials and public employees is an expedient and reasonable way to aid the Committee in fulfilling its constitutional obligations.

Your letter does not set out a basis for Mrs. Mason's refusal to cooperate, and I am not aware of one. If by your letter Mrs. Mason intends to invoke her rights under the Fifth Amendment to the United States Constitution or Section 6 of the Alabama Constitution, please advise, although the Committee does not concede that production of documents to the Committee would, in fact, qualify for those protections.

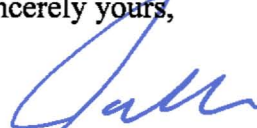
**COMMITTEE  
EXHIBIT**

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Robert D. Segall, Esq.  
August 25, 2016  
Page 2

With best wishes, I am

Sincerely yours,



Jack Sharman

cc: The Honorable Mike Jones, Chairman, Alabama House Judiciary Committee



**ALABAMA HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**

**JACK SHARMAN**  
**SPECIAL COUNSEL**  
**LIGHTFOOT, FRANKLIN & WHITE LLC**  
**400 20TH STREET NORTH**  
**BIRMINGHAM, ALABAMA 35203**

August 25, 2016

**Via Electronic and U.S. Mail**

Joseph C. Espy, III, Esq.  
Melton, Espy & Williams, P.C.  
255 Dexter Avenue  
Montgomery, Alabama 36104  
[jespy@mewlegal.com](mailto:jespy@mewlegal.com)

Ross H. Garber, Esq.  
Susan S. Murphy, Esq.  
Shipman & Goodwin LLP  
1875 K Street NW, Suite 600  
Washington, DC 20006-1251  
[rgarber@goodwin.com](mailto:rgarber@goodwin.com)  
[smurphy2@goodwin.com](mailto:smurphy2@goodwin.com)

David Byrne, Esq.  
Chief Legal Advisor  
Carrie Ellis McCollum, Esq.  
Office of the Governor of Alabama  
State Capitol  
600 Dexter Avenue  
Montgomery, Alabama 36130  
[dbyrne@alabama.gov](mailto:dbyrne@alabama.gov)  
[carrie.mccollum@governor.alabama.gov](mailto:carrie.mccollum@governor.alabama.gov)

**Re: Impeachment Investigation of Governor Robert Bentley**

Dear Counselors:

Thank you for your letter of August 17, 2016 and also for Mr. Garber's telephone call. We all appreciate the seriousness of the impeachment investigation started by House Resolution 367. In these circumstances, it is certainly wise to keep our lines of communication open. Both the Committee and I appreciate that effort on your part.

With regard to the renewed Motion to Suspend Proceedings and the renewed Motion for Recusal, the Committee has those under advisement.

In the meantime, several points bear clarification.

**COMMITTEE  
EXHIBIT**

6-F

### **The Governor Will Have Due Process**

First, the Governor's concerns about "due process" are ill founded and show some misunderstanding of the stage of proceedings.<sup>1</sup> We are in the investigation stage. In an actual impeachment proceeding, the Governor will be provided process. Of course, we might dispute the amount of "process" that is "due," but neither I nor the Committee have any reason to doubt that a sufficient procedural system will apply to the impeachment proceedings – if any occur.

### **The Committee's Investigation Is Undertaken To Discharge The Committee's Duties to the House**

Second, we are conducting an investigation on behalf of and at the instruction of the Committee, as contemplated by House Resolution 367. The Committee takes its delegated authority and instructions from the House very seriously. We are seeking documents and interviewing or taking testimony from witnesses. An impeachment investigation, like the impeachment process as a whole, is not neatly analogous to any other legal, political or constitutional structure. Indeed, it partakes of all of those characteristics. Perhaps a pertinent analogy at the moment is to a grand jury investigation: serious issues have been raised but an investigation is required to ascertain their gravity (or lack of gravity).

As accomplished white-collar defense and government-investigations lawyers, you know that the rights and remedies of a subject of a grand jury investigation are severely limited. Such an investigation is not a "joint" investigation with counsel for the subject of the investigation, nor will this one be. Rather, I intend to do as I was charged by the Committee – conduct a factual investigation, make a recommendation and report to the Committee, and assist the Committee in any impeachment proceedings that it sees fit to recommend to the House.

### **An Impeachment Proceeding Is Not A Criminal Proceeding**

Third, an impeachment proceeding – and much less, an impeachment investigation – is not a criminal proceeding. This letter is not the appropriate forum for a full discussion of those issues, but there is ample law and scholarly opinion that, whatever an impeachment is, it is not a criminal proceeding. The criminal standard of proof ("beyond a reasonable doubt") does not apply. Impeachable offenses may include but are not limited to "crimes." There is no legislative equivalent to a grand jury's secrecy: indeed, documents and testimony obtained in our investigation will eventually be public record.

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<sup>1</sup> For convenience, I will use the terms "Governor" or "Governor Bentley" for both the Office of the Governor and Governor Bentley in his personal capacity, unless the context requires greater specificity.

As a leading impeachment scholar notes, “the starting point . . . is that impeachment is ‘a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the state against gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity,’ that is it disqualifies him to hold office.”<sup>2</sup>

Even at the federal level, where the Constitution provides that a President may be impeached for “high Crimes and Misdemeanors,” U.S.Const. Art. II §4, the overwhelming authority is that impeachment is not limited to “crimes” in our common, modern, statutory understanding of that term. *See generally* Constitutional Grounds for Presidential Impeachment, Report by the Staff of the Impeachment Inquiry, 2<sup>nd</sup> Sess., 93<sup>rd</sup> Cong., House Committee Print (the “Rodino Report”) at 22-25 (February 22, 1974).<sup>3</sup> This “non-criminal” understanding is confirmed in the text of the provisions of the Alabama Constitution that address the grounds for impeachment of a governor.<sup>4</sup> Thus, the rules of the House are the rules that govern, rather than cognates to the federal or Alabama Rules of Criminal Procedure. Should the Governor be menaced with state or federal prosecution, of course, the full array of federal and state criminal law standards – constitutional, procedural and substantive – would kick in. A legislative impeachment investigation – indeed, any legislative investigation – has a constitutional and legal mandate different from that of the criminal justice system.

### **Failure to Cooperate With The Committee’s Investigation Can Be Additional Grounds For Impeachment**

Fourth, I note the Governor’s long-standing position that he intends to be transparent and to cooperate with the Committee in order to put these matters behind him.<sup>5</sup> Similarly, the Committee intends to conduct a swift, unhindered investigation that starts with the collection of documents, most of which are public records. In that light, it is disappointing to receive “general objections” and reservations of rights amounting to a refusal to respond to the Committee’s investigatory efforts. As I mentioned to Ross in our recent telephone call, I am certainly happy to listen to questions about specific requests or to proposals on how to narrow them. The

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<sup>2</sup> Raoul Berger, *Impeachment: The Constitutional Problems* (Cambridge: Harvard Univ. Press, 1973) at 79 (quoting Joseph Story, *Commentaries On The Constitution of the United States*, 5<sup>th</sup> ed. 2 vols. (Boston: Little, Brown, 1905) §803).

<sup>3</sup> The Rodino Report, named for the late Peter Rodino (D-NJ), was prepared by the staff of the House Judiciary Committee as the Committee conducted its inquiry into the impeachment of President Nixon.

<sup>4</sup> “The governor . . . may be removed from office for willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties, or for any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith . . .” Ala. Const. § 173.

<sup>5</sup> “We’re going to be very cooperative with the legislature,” Bentley said. “We have nothing to hide. We have no charges against us at all. We have nothing to hide. The truth always has a sound. And I can tell you, we tell the truth and we’ve done nothing wrong. We’ll work with them and it’s really not a problem. They are trying to feel their way through this process so we’ll let them do that.” Paul Gattis, *Gov. Robert Bentley: People of Alabama ‘not interested in impeachment,’* [http://www.al.com/news/huntsville/index.ssf/2016/06/gov\\_robert\\_bentley\\_people\\_of\\_a.html](http://www.al.com/news/huntsville/index.ssf/2016/06/gov_robert_bentley_people_of_a.html) (last visited August 24, 2016).



Governor does not have standing, however, to “object” to the Committee’s information requests or to decline to cooperate in the investigation.

Indeed, although I trust that matters will not come to this point, the Governor’s failure to cooperate with the Committee’s investigation can itself be grounds for impeachment.

**The Constitutional Standard for Impeachment  
Is Distinct From the Scope of the Committee’s Investigation**

Fifth, your letter refers to the document you previously submitted to the Committee addressing, among other things, what you understand to be the “constitutional standard” for the impeachment of a governor in Alabama. As I mentioned to Ross, that is indeed an important question and will likely be part of our final report and recommendation, either as an integral part of the report or as a free-standing submission to the Committee. What constitutional or evidentiary standard an individual member of the House might ultimately apply to articles of impeachment has minimal bearing on facts to be gathered and information to be obtained: “As the factual investigation progresses, it will become possible to state more specifically the constitutional, legal and conceptual framework within which the staff and the Committee work.” (Rodino Report at 2). In addition, “impeachable offenses cannot be defined in advance of full investigation of the facts.” Investigatory Powers of the Committee in the Judiciary With Respect to Its Impeachment Inquiry, Report, Together With Additional and Dissenting Views, 2<sup>nd</sup> Sess., 105<sup>th</sup> Cong., House Committee Print (October 7, 1998) (the “Hyde Report”).<sup>6</sup> In other words, as in any investigation, what is relevant to the Committee’s investigation is of greater scope than what may be pertinent, once a particular legal standard is settled upon, to the Committee’s decision.

**The Governor Is Not Impeached But Is Rather  
The Subject of an Impeachment Investigation**

Sixth, in your correspondence and submissions to the Committee, as well as in my phone call with Ross, you have frequently referred to the fact that, if there is an impeachment of a governor in Alabama, the Constitution calls for the governor to be removed from office pending trial in the Senate. That is true. That is also a reason why we should all understand that the Committee is conducting an impeachment *investigation* and that the impeachment *decision* has not actually been made. Had it been made, Governor Bentley would not currently be in office. House Resolution 367 and revised Rule 79.1 contemplate an investigation; a report and recommendation to the Committee; the Committee’s consideration of the report and recommendation; a referral (or not) by the Committee to the full House; and then a vote by the

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<sup>6</sup> The Hyde Report, named for the late Henry Hyde (R-IL), was prepared by the House Judiciary Committee as the Committee conducted its inquiry into the impeachment of President Clinton.

House. Only if all those things happen will the Governor be “impeached.” To draw upon my earlier analogy to the grand jury, we are not in a “post-indictment” situation.

**The Articles Govern The Investigation**

Seventh, the Governor at several points complains of the vagueness and brevity of the Articles. The subject of an investigation always appreciates more detail and elaboration. The House has spoken, however. We will work with the Articles as drafted. In addition, I know that you have been paying close attention to the series of events that led to this investigation. The underlying main concerns that have driven these legislative inquiries are well-publicized and are not so unascertainable as to not allow the Governor to prepare or to respond fully to the Committee’s demands for information. In addition, in our document requests, we have been quite specific as to date ranges, names, offices and events. (For your easy reference, a copy of those document demands is provided herewith as “Attachment A”).

\* \* \* \*

I hope this letter has been helpful to you. The Committee looks forward to the Governor’s full cooperation in its investigation, beginning with production to the Committee of documents necessary for its investigation.

With best wishes, I am

Sincerely yours,



Jack Sharman

cc: The Honorable Mike Jones, Chairman, Alabama House Judiciary Committee

# **Attachment A**

**BEFORE THE HOUSE JUDICIARY COMMITTEE  
OF THE ALABAMA HOUSE OF REPRESENTATIVES**

**In Re: The Impeachment Investigation of  
Governor Robert Bentley**

**DOCUMENT REQUEST TO THE OFFICE OF THE GOVERNOR**

**TO: Governor Robert Bentley  
Office of the Governor of Alabama  
c/o Ross H. Garber, Esq.  
SHIPMAN & GOODWIN LLP  
1875 K. St., NW  
Washington, D.C. 20006**

**David B. Byrne, Jr., Esq.  
Chief Legal Advisor  
Office of the Governor of Alabama  
State Capitol  
600 Dexter Avenue  
Montgomery, Alabama 36130**

**Definitions and Instructions**

- A. The term "Office of the Governor" as used herein refers to Governor Robert Bentley in his official capacity and all current or former members of Governor Robert Bentley's Staff, including but expressly not limited to those assigned to the following offices: Executive Office, Chief of Staff and Deputy Chief of Staff, Legal Office, Communications Office, Legislative Office, Constituent Services Office, Scheduling Office, Appointments Office, Policy Office, Administration Office, Office of the First Lady, and Governor's Mansion. These requests are directed to the Office of the Governor as defined herein and shall be construed to include all documents or things in the possession, custody, or control of any and all persons encompassed by that term.
- B. Unless otherwise specified, all Requests shall encompass the period of time beginning January 17, 2011 to the present.
- C. Documents responsive to any Request shall be produced together, in electronic or paper file folders or with other enclosures that separate the files by Request number. If a document is responsive to more than one Request, it shall be produced in response to the Request to which it is primarily responsive.

## Documents and Things Requested

1. All State employment policies applicable to the Office of the Governor.
2. Current and previous staff lists, directories, and organizational charts and diagrams for the Office of the Governor.
3. For all current and former members of the Office of the Governor, a list of their work telephone(s) and State-issued cellular telephone(s) and mobile device(s).
4. The complete calendar of Governor Robert Bentley in native electronic format, including any and all electronic data and information evidencing or reflecting any changes made at any time thereto.
5. The complete calendar of Rebekah Mason in native electronic format, including any and all electronic data and information evidencing or reflecting any changes made at any time thereto.
6. For the period of time beginning January 1, 2013 to present, daily and weekly schedules of Governor Robert Bentley, including any and all documents evidencing or relating to any changes made at any time thereto.
7. Any and all documents, electronic data, and information evidencing or relating to the use of State aircraft by, or at the direction of, the Office of the Governor, including but expressly not limited to, all requests for travel, flight plans, flight logs, and flight manifests.
8. Any and all documents, electronic data, and information evidencing or relating to ground transportation of or for Rebekah Mason, including but expressly not limited to all requests to any State agency, route plans, and vehicle manifests.
9. Any and all documents, electronic data, and information evidencing or relating to any and all visits by Rebekah Mason to the Governor's Mansion and its appurtenant facilities.
10. Any and all documents, electronic data, and information evidencing or relating to any and all visits by Rebekah Mason to Wynfield Estate and its appurtenant facilities.
11. Any and all documents, electronic data, and information evidencing or relating to leasing or chartering aircraft for travel by Governor Robert Bentley or Rebekah Mason.
12. Any and all documents, electronic data, and information evidencing or relating to any requests for reimbursement from State funds, including all supporting documentation, submitted by or on behalf of Governor Robert Bentley from January 1, 2013 to the present.
13. Any and all documents, electronic data, and information evidencing or relating to any requests for reimbursement from State funds, including all supporting documentation, submitted by or on behalf of Rebekah Mason from January 1, 2013 to the present.



14. Any and all documents, electronic data, and information evidencing or relating to any requests for reimbursement, including all supporting documentation, submitted to the National Governors Association from January 1, 2013 to the present.

15. Any and all documents, electronic data, and information evidencing or relating to any requests for reimbursement, including all supporting documentation, submitted to the Republican Governors Association from January 1, 2013 to the present.

16. Any and all documents, electronic data, and information evidencing or relating to any requests for reimbursement, including all supporting documentation, submitted to Bentley for Governor, Inc. from January 1, 2013 to the present.

17. Any and all documents, electronic data, and information evidencing or relating to any requests for reimbursement from State funds, including all supporting documentation, for any expense relating to Rebekah Mason submitted by or on behalf of the Office of the Governor from January 1, 2013 to the present.

18. Any and all documents, electronic data, and information evidencing or relating to any and all work, services, or goods performed or provided by Rebekah Mason, RCM Communications, Inc., Jon Mason, or JRM Enterprises, Inc. for or to the State of Alabama, Governor Robert Bentley, the Office of the Governor, the University of Alabama, Alabama Council for Excellent Government, or Bentley for Governor, Inc.

19. Any and all documents, electronic data, and information evidencing or relating to any and all compensation, reimbursements, expenses, and payments of any kind to Rebekah Mason, RCM Communications, Inc., Jon Mason, or JRM Enterprises, Inc.

20. Any and all documents, electronic data, and information evidencing or relating to any nondisclosure or confidentiality agreements signed by or proffered to any person by or on behalf of the Office of the Governor.

21. Any and all documents, electronic data, and information evidencing or relating to any and all temporary or permanent removals, reassignments, replacements, or terminations of any persons in the Office of the Governor.

22. Any and all documents, electronic data, and information evidencing or relating to any and all temporary or permanent removals, reassignments, replacements, or terminations of any officers or employees of the Alabama Law Enforcement Agency or any of its subordinate agencies, departments, or divisions from January 1, 2014 to present.

23. Any and all documents, electronic data, and information evidencing or relating to any formal or informal files maintained, whether electronically or otherwise, by or within the Office of the Governor related to any of the following:

- a. Spencer Collier;
- b. Rebekah Mason;

- c. Jon Mason;
- d. Dianne Bentley;
- e. Bentley for Governor, Inc.;
- f. Alabama Council for Excellent Government;
- g. RCM Communications, Inc.;
- h. JRM Enterprises, Inc.;
- i. Matt Hart, Mike Duffy, or any other person involved in the investigation, indictment, prosecution, or trial of former Alabama Speaker of the House Mike Hubbard.
- j. the investigation, indictment, prosecution, or trial of former Alabama Speaker of the House Mike Hubbard.

24. Any and all documents, electronic data, and information evidencing or relating to the job titles, duties, or performance of Rebekah Mason.

25. Rebekah Mason's personnel file.

26. A list of any and all email accounts used by Governor Robert Bentley.

27. A list of any and all email accounts used by Rebekah Mason.

28. An electronic copy in native format of any and all email accounts assigned to or used by Rebekah Mason.

29. A complete list of any and all cellular phones or mobile devices issued to or used by Governor Robert Bentley, including for each phone or device the telephone number, account number, the name of the carrier, and dates of use or service.

30. All bills and usage histories for any cellular phone or mobile device listed in response to the previous Request.

31. A complete list of any and all cellular phones or mobile devices issued to or used by Rebekah Mason, including for each phone or device the telephone number, account number, the name of the carrier, and dates of use or service.

32. All bills and usage histories for any cellular phone or mobile device listed in response to the previous Request.

33. Any and all documents, electronic data, and information evidencing or relating to any communications, including but expressly not limited to letters, notes, emails, text messages, and voice messages, between Governor Robert Bentley and Rebekah Mason, including any attorney or other person acting for or on behalf of either of them.

34. Any and all documents, electronic data, and information evidencing or relating to any communications, including but expressly not limited to letters, notes, emails, text messages, and voice messages, between Governor Robert Bentley and Jon Mason, including any attorney or other person acting for or on behalf of either of them.

35. Any and all audio or video recordings of any part of any telephone or other conversations between Governor Robert Bentley and Rebekah Mason.

36. Any and all documents, electronic data, and information evidencing or relating to any meetings at which both Governor Robert Bentley and Spencer Collier were present from January 1, 2014 to the present.

37. Any and all documents, electronic data, and information evidencing or relating to any meetings at which both Governor Robert Bentley and Rebekah Mason were present.

38. Any and all documents, electronic data, and information evidencing or relating to any communications, including but expressly not limited to letters, notes, emails, text messages, and voice messages, between the Office of the Governor and Spencer Collier, including any attorney or other person acting for or on behalf of either of them, from January 1, 2014 to present.

39. Any and all documents, electronic data, and information evidencing or relating to any communications, including but expressly not limited to letters, notes, emails, text messages, and voice messages, between the Office of the Governor and Stan Stabler, including any attorney or other person acting for or on behalf of either of them, from January 1, 2014 to present.

40. Any and all documents, electronic data, and information evidencing or relating to any communications, including but expressly not limited to letters, notes, emails, text messages, and voice messages, between the Office of the Governor and Ray Lewis, including any attorney or other person acting for or on behalf of either of them, from January 1, 2014 to present.

41. Any and all documents, electronic data, and information evidencing or relating in any way to the substance of the press release by the Office of the Governor on March 22, 2016 (which is attached hereto as **Attachment 1**), including but expressly not limited to:

- a. placing Spencer Collier on medical leave;
- b. internal review of the Alabama Law Enforcement Agency or any of its subordinate agencies, departments or divisions;
- c. misuse of State funds by the Alabama Law Enforcement Agency or any of its subordinate agencies departments or divisions;
- d. termination of Spencer Collier.

42. Any and all documents, electronic data, and information evidencing or relating to the Alabama Council for Excellent Government.

43. Any and all documents, electronic data, and information evidencing or relating to the investigation, indictment, prosecution, or trial of former Alabama Speaker of the House Mike Hubbard.

44. Any and all documents, electronic data, and information evidencing or relating to the 2014 gubernatorial campaign, including but expressly not limited to Bentley for Governor, Inc.

45. Any and all documents, electronic data, and information evidencing or relating to Statements of Economic Interests filed by the Office of the Governor with the Alabama Ethics Commission.

46. Any and all documents, electronic data, and information evidencing or relating to any communications, including but expressly not limited to letters, notes, emails, text messages, and voice messages, sent to or received by the Office of the Governor concerning:

- a. Rebekah Mason;
- b. Alabama Council for Excellent Government;
- c. RCM Communications, Inc.;
- d. JRM Enterprises, Inc.;
- e. Bentley for Governor, Inc.

**BEFORE THE HOUSE JUDICIARY COMMITTEE  
OF THE ALABAMA HOUSE OF REPRESENTATIVES**

**In Re: The Impeachment Investigation of  
Governor Robert Bentley**

**DOCUMENT REQUEST TO GOVERNOR ROBERT BENTLEY**

**TO: The Honorable Robert Bentley  
Governor of Alabama  
c/o Joseph C. Espy III, Esq.  
MELTON, ESPY & WILLIAMS, P.C.  
255 Dexter Avenue  
Montgomery, Alabama 36104**

**Definitions and Instructions**

- A. The term “you” or “your” as used herein refers to Governor Robert Bentley in his personal capacity.
- B. Unless otherwise specified, all Requests shall encompass the time from January 17, 2011 to the present.
- C. Documents responsive to any Request shall be produced together, in file folders or with other enclosures that segregate the files by Request number. If a document is responsive to more than one Request, it shall be produced in response to the Request to which it is primarily responsive.

**Documents and Things Requested**

- 1. All statements for any checking, savings, or investment account in your name, jointly or individually.
- 2. All federal and state income tax returns, including all schedules, attachments, and W-2s.
- 3. Any and all documents, electronic data, and information evidencing or relating to any and all work, services, or goods performed for or provided to the State of Alabama, Bentley for Governor, Inc. or you by Rebekah Mason, RCM Communications, Inc., Jon Mason, or JRM Enterprises, Inc.
- 4. Any and all documents, electronic data, and information evidencing or relating to any and all compensation, reimbursements, expenses, and payments of any kind made by the State of Alabama, Bentley for Governor, Inc. or you or on your behalf to Rebekah Mason, RCM Communications, Inc., Jon Mason, JRM Enterprises, Inc., Alabama Council for Excellent Government, or Bentley for Governor, Inc.



5. Any and all documents, electronic data, and information evidencing or relating to your daily and weekly schedule.

6. A complete list of any and all cellular phones or mobile devices owned or used by you, including for each phone or device the telephone number, account number, the name of the carrier, and the dates of use or service.

7. All bills and usage histories for any cellular phone or mobile device listed in response to the previous Request.

8. A complete list of any and all email accounts and social media accounts owned or used by you.

9. Any and all audio or video recordings of any part of any telephone or other conversations between you and Rebekah Mason.

10. Any and all documents, electronic data, and information evidencing or relating to any communications, including but expressly not limited to letters, notes, emails, text messages, and voice messages, between you and any of the following persons, including any attorney or other person acting for or on behalf of either you or them:

- a. Rebekah Mason;
- b. Jon Mason;
- c. Spencer Collier;
- d. Stan Stabler;
- e. Ray Lewis;
- f. Cooper Shattuck.

11. Any and all documents, electronic data, and information evidencing or relating to any communications, including but expressly not limited to letters, notes, emails, text messages, and voice messages, sent to or received by you concerning:

- a. Spencer Collier;
- b. Rebekah Mason;
- c. Jon Mason;
- d. Alabama Council for Excellent Government;
- e. RCM Communications, Inc.;
- f. JRM Enterprises, Inc.;

g. Matt Hart, Mike Duffy, or any other person involved in the investigation, indictment, prosecution, or trial of former Alabama Speaker of the House Mike Hubbard;

h. The investigation, indictment, prosecution, or trial of former Alabama Speaker of the House Mike Hubbard.

12. Any and all documents, electronic data, and information evidencing or relating to any meetings at which both you and Spencer Collier were present from January 1, 2014 to the present.

13. Any and all documents, electronic data, and information evidencing or relating to any meetings at which both you and Rebekah Mason were present.

14. Any and all documents, electronic data, and information evidencing or relating to any of the following:

- a. Rebekah Mason;
- b. Jon Mason;
- c. RCM Communications, Inc.;
- d. JRM Enterprises, Inc.;
- e. reimbursements to you by or from the State of Alabama, the National Governors Association, the Republican Governors Association, or Bentley for Governor, Inc.;
- f. Alabama Council for Excellent Government.

15. Any and all documents, electronic data, and information evidencing or relating to any and all work, services, or goods performed or provided by Rebekah Mason, RCM Communications, Inc., Jon Mason, or JRM Enterprises, Inc. for or to the State of Alabama, Governor Robert Bentley, the Office of the Governor, the University of Alabama, Alabama Council for Excellent Government, or Bentley for Governor, Inc.

16. Any and all documents, electronic data, and information evidencing or relating to Statements of Economic Interests filed by you with the Alabama Ethics Commission.

August 29, 2016

Honorable Jack Sharman  
Lightfoot Franklin & White, LLC  
400 20th Street North  
Birmingham, AL 35203-3202

Re: Request for Documents from RCM Communications, Inc. in connection with  
Governor Bentley Impeachment Proceedings.

Dear Jack:

I am representing RCM Communications, Inc. ("RCM"), who, by allowing me to accept service, has received your request for production of documents. On behalf of RCM, I respectfully decline to produce any documents.

Sincerely,

  
Bobby Segall

COMMITTEE  
EXHIBIT  
6-G

J&M

JEMISON & MENDELSON, P.C.

Attorneys at Law

Kenneth J. Mendelsohn

Mays R. Jemison (1949-2015)

Of Counsel: A. Lee Miller

1772 Platt Place

Montgomery, Alabama 36117

Telephone 334.213.2323

Fax 334.213.5663

www.jmfirm.com

August 30, 2016

Jack Sharman  
Special Counsel  
Lightfoot, Franklin & White LLC  
400 20<sup>th</sup> Street North  
Birmingham, Alabama 35203

RE: Impeachment Investigation of Governor Robert Bentley

Dear Jack:

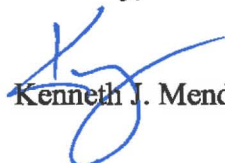
I called your office a week or so ago to talk with you about your document request to Spencer Collier. Since I have not yet heard back from you, I wanted to follow up with this letter to request more information about this process.

I have done my best to research the impeachment process, but have not found anything related to how Spencer is required to respond. If there is any authority, I would appreciate you sending it to me. Let me assure that Spencer will cooperate with you, the Committee and the Legislature. However, there are many things Spencer cannot produce because he no longer has access to ALEA documents. There are some things that I do not believe he should be required to produce, at least at this stage.

With respect to any information and documents Spencer does produce, please let me know who all will have access to the information. With respect to any disagreement you and I might have, I need to know if there is a person or group of people who have the authority to compel responses and what laws they will follow.

Thank you for your cooperation.

Sincerely,

  
Kenneth J. Mendelsohn

COMMITTEE  
EXHIBIT

6-H

**WILMER & LEE, P.A.**  
A Professional Association  
Attorneys at Law

John A. Wilmer  
S. Dagnal Rowe  
Michael K. Wisner  
Benjamin R. Rice  
P. Michael Cole  
Frederick L. Fohrell  
Lawrence C. Weaver  
Robert V. Wood, Jr.  
Joseph A. Jimmerson  
Jerome S. Gabig  
Walter A. Kelley  
Robert C. Lockwood  
D. Ashley Jones  
Samuel H. Givhan  
Richard J.R. Raleigh, Jr.  
Earl T. Forbes  
T. Mark Maclin  
Chad W. Ayres  
Suzanne Dorsett Currie  
Matthew T. Duker

Katie G. Mooty  
Andrew D. Dill  
Kimberly K. Rucker  
S. Dagnal Rowe, Jr.  
Christopher L. Lockwood  
Amy H. Nation  
Laura P. Hiller  
Katherine E. Amos  
Britni T. Garcia  
Elena G. Moats

OF COUNSEL:  
Patricia Mandt Prather

RETIRED:  
L. Tennent Lee, III  
Winston V. Legge, Jr.

September 6, 2016

**Via U.S. Mail**

Jack Sharman  
Lightfoot, Franklin & White  
400 20<sup>th</sup> Street North  
Birmingham, AL 35203

**Re: Impeachment Investigation of Governor Robert Bentley;  
Response to Document Request to the Alabama Council for Excellent  
Government.**

Dear Mr. Sharman:

I am in receipt of your August 23, 2016 letter and the House Judiciary Committee's request for documents to the Alabama Council for Excellent Government ("ACEGOV"). While I represent ACEGOV in the *Collier v. Bentley, et al.* matter, I do not represent ACEGOV for all purposes. However, I do respond for ACEGOV regarding to the document request of the Judiciary Committee.

As an initial matter, I note that the Judiciary Committee's request for documents is designated as a "request" (not a subpoena). It is my understanding that the Committee does not possess subpoena power, and I am not aware of any legal authority by which the Committee could compel a private entity such as ACEGOV to provide documents for an impeachment investigation. See H.B. No. 557, April 19, 2016 ("Existing law does not provide for a comprehensive method for legislative committees to subpoena witnesses and documents."). If you are aware of any legal authority to the contrary, please let me know.

**COMMITTEE  
EXHIBIT  
6-I**

Nevertheless, in the spirit of cooperation, and without waiving any objection to the lack of authority for the request or the vagueness of the allegations in the articles of impeachment, ACEGOV is willing to provide a copy of (1) its certificate of formation, and (2) its 2015 tax return (excluding Form 990 Schedule B, which is not releasable).

Otherwise, with respect to the documents requested, it is currently my understanding that (1) there is no correspondence between ACEGOV and any public official (other than the tax authorities); (2) there were no payments made by ACEGOV to or on behalf of any public official; (3) there were no funds received by ACEGOV from or on behalf of any public official; (4) ACEGOV did no business with the State of Alabama and received no state funds; and (5) ACEGOV has no documents relevant to the impeachment of Governor Bentley.

If you contend that ACEGOV has a legal obligation to provide additional information or documents in response to the Committee's request, please explain the basis for that position so that my client may consider it.

Very truly yours,

**Wilmer & Lee, P.A.**

By: \_\_\_\_\_

  
Richard J.R. Raleigh, Jr.



September 6, 2016

Honorable Jack Sharman  
Lightfoot Franklin & White, LLC  
400 20th Street North  
Birmingham, AL 35203-3202

Re: Request for Documents from Jon Mason in connection with  
Governor Bentley Impeachment Proceedings.

Dear Jack:

I am representing Jon Mason who has received your request for production of documents.  
On behalf of Mr. Mason, I respectfully decline to produce any documents.

Sincerely,



Bobby Segall

COMMITTEE  
EXHIBIT

6-J

COPELAND, FRANCO, SCREWS & GILL, P.A.

444 South Perry St. Montgomery, AL 36104 • P.O. Box 347 Montgomery, AL 36101-0347

334.834.1180 Fax 334.834.3172 copelandfranco.com

September 6, 2016

Honorable Jack Sharman  
Lightfoot Franklin & White, LLC  
400 20th Street North  
Birmingham, AL 35203-3202

Re: Request for Documents from JRM Enterprises, Inc. in connection with  
Governor Bentley Impeachment Proceedings.

Dear Jack:

I am representing JRM Enterprises, Inc. ("JRM"), who has received your request for production of documents. On behalf of JRM, I respectfully decline to produce any documents.

Sincerely,

  
Bobby Segall

COMMITTEE  
EXHIBIT  
6-K

J&M

JEMISON & MENDELSON, P.C.

Attorneys at Law  
Kenneth J. Mendelsohn  
Mays R. Jemison (1949-2015)  
Of Counsel: A. Lee Miller

1772 Platt Place  
Montgomery, Alabama 36117  
Telephone 334.213.2323  
Fax 334.213.5663  
www.jmfirm.com

September 7, 2016

Jack Sharman  
Special Counsel  
Lightfoot, Franklin & White LLC  
400 20<sup>th</sup> Street North  
Birmingham, Alabama 35203

RE: Impeachment Investigation of Governor Robert Bentley

Dear Jack:

I have still have not received a response to my phone call or letter regarding your request for documents from my client, Spencer Collier. Let me stress again that Spencer is willing to cooperate with you and the Legislature in the Impeachment Investigation and is willing to be interviewed by you. However, until I am provided information regarding the procedures related to your request, I will not file a formal response.

If you have any questions, please let me know.

Sincerely,

  
Kenneth J. Mendelsohn

COMMITTEE  
EXHIBIT

6-L

**From:** David Perry <dperry78@gmail.com>  
**Sent:** Thursday, September 08, 2016 6:11 PM  
**To:** Leslie D. Haynes; Wes Gilchrist; Jackson R. Sharman III  
**Subject:** Re: Impeachment Investigation of Governor Robert Bentley

Received. Thank you.

Jack and Wes,

Hope y'all are doing well. As a taxpayer, I appreciate you accepting this case on a reduced rate basis and am glad the House Judiciary Committee selected such good lawyers and good people to help them try to get to the bottom of the issues. I'm not currently represented and don't anticipate being represented by counsel in this matter. At first glance, I'm inclined to respond to request #15 but not to the rest, as I believe they are overly broad, unduly burdensome and would be a waste of my time to review and collect, your time to review, and the state's money to pay for that time. #15 in my opinion is the only request that seems necessary to achieve the objective of gathering evidence directly relevant to the impeachment articles. I understand that you likely disagree with my opinion on that. My intent in telling you this now is to be transparent with you so you'll know what to expect from me. I'll reflect further on this and send you a formal response by Sept. 29, as requested. If you'd like to discuss at any point, feel free to give me a call.

Thanks,  
David

On Thu, Sep 8, 2016 at 5:03 PM, Leslie D. Haynes <[lhaynes@lightfootlaw.com](mailto:lhaynes@lightfootlaw.com)> wrote:

Attached please find correspondence of today's date from Jack Sharman in the above-referenced matter.

Thank you.

**Leslie D. Haynes**

Assist. for J. Gorman Houston, William H. Brooks,  
Jackson R. Sharman III, Tenley E. Armstrong, and Jeffrey P. Doss

**Direct Dial: 205-581-5814**  
[lhaynes@lightfootlaw.com](mailto:lhaynes@lightfootlaw.com)

**vCard | Firm | Confidentiality Notice**



The Clark Building  
400 20th Street North  
Birmingham, Alabama 35203-3200



GORDON ROSEN (1921 – 2014)  
R. BERNARD HARWOOD, JR.  
JAMES J. SLEDGE  
ROBERT M. SPENCE  
\*\*\*BLAKE A. MADISON  
†♦W. BRADFORD ROANE, JR.  
\*\*JEFFREY C. SMITH  
DAVID E. RAINS  
FOSTER C. ARNOLD  
††MATTHEW Q. TOMPKINS  
♦THOMAS W. SCROGGINS  
††JANE L. CALAMUSA  
KRISTOFOR D. SODERGREN  
††♦♦CHAD L. HOBBS  
†BROOKE M. NIXON  
††ROBIN E. PATE



MARY BETH WEAR CAVERT  
JENNIFER T. CRABTREE  
ANN L. REARDON  
††LORI M. CREEL  
KEREN E. MCELVY  
JILLIAN L. GUIN WHITE  
NICOLE B. HAMPTON

OF COUNSEL:  
ALYCE M. SPRUELL  
ROBERT A. MORGAN

\*\*Board Certified - Civil Trial Advocacy -  
National Board of Trial Advocacy

\*\*\*Certified Information Privacy Professional

†Also admitted in Florida

††Also admitted in Mississippi

♦Also admitted in Georgia

♦♦Also admitted in Tennessee

Writer's Email Address:  
[bharwood@rosenharwood.com](mailto:bharwood@rosenharwood.com)

September 9, 2016

Jack Sharman  
Special Counsel to the House Judiciary Committee  
Alabama House of Representatives  
Lightfoot, Franklin & White, LLC  
400 20<sup>th</sup> Street North  
Birmingham, AL 35203

Dear Mr. Sharman:

My long-time friend and personal accountant, Mike Echols, has consulted me about your letter to him of August 30<sup>th</sup>, a copy of which I enclose for your ease of reference. Mr. Echols, as a CPA, is bound to comply with the provisions of the professional codes of ethics of his profession relating to confidentiality of client information. The recently revised Code of Professional Conduct of The American Institute of CPAs, and the Rules of Professional Conduct of Alabama State Board of Public Accountancy, both address client confidentiality. AICPA Section 1.700 "Confidential Information" starts off with subsection 1.700.001 which declares that "A member in public practice shall not disclose any confidential client information without the specific consent of the client." Subsection 1.700.100 allows disclosure in compliance with "a validly issued and enforceable subpoena or summons. . . ." Alabama State Board of Public Accountancy Rule 30-X-6-.04 (1) likewise prohibits disclosure of "any confidential information obtained in the course of a professional engagement except with the consent of the client," but with an exception for "compliance with a validly issued subpoena or summons enforceable by order of a court." Short of receiving such an enforceable subpoena or summons, Mr. Echols feels obliged to decline your request for the document production. If you would like to discuss this further, I'll be happy to do so.

Best regards,

A handwritten signature in blue ink that reads 'Bernard Harwood'.

Bernard Harwood

BH:cd  
Enclosure  
i:\h\bh corresp - misc\09-09-16 ltr to sharman.doc

COMMITTEE  
EXHIBIT

6-N

LAW OFFICES  
**MELTON, ESPY & WILLIAMS, P.C.**

255 DEXTER AVENUE  
MONTGOMERY AL 36104

OAKLEY W. MELTON, JR.  
(1927-2013)

JOSEPH C. ESPY, III  
JAMES E. WILLIAMS  
J. FLYNN MOZINGO  
C. MARK BAIN  
BENJAMIN J. ESPY\*  
WILLIAM M. ESPY

\* ALSO ADMITTED IN MISSISSIPPI

September 12, 2016  
VIA EMAIL TRANSMISSION  
with hard copy to follow via regular mail

MAILING ADDRESS:  
P. O. DRAWER 5130  
MONTGOMERY, AL 36103-5130  
TELEPHONE (334) 263-8621  
FAX (334) 263-7252

Jackson R. Sharman, III  
Special Counsel  
Lightfoot Franklin & White, LLC  
400 20th St. N.  
Birmingham, AL 35203-3202

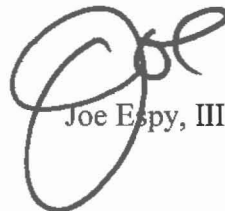
Re: Impeachment Investigation of Governor Robert Bentley  
(Requests to Bentley for Governor, Inc.)

Dear Jack:

We acknowledge receipt of your letter dated August 23, 2016 along with the requests to Bentley for Governor, Inc. (Campaign). The Campaign has complied with the Alabama Fair Campaign Practices Act and therefore all of its filings through December 31, 2015 are a matter of public record. In January of 2017, the Campaign will make its 2016 public filings. In a spirit of cooperation, the Campaign would be willing at this point to go ahead and provide to you those filings which would be made public in 2017 if this will satisfy the Committee in regard to the requests to the Campaign.

We look forward to hearing further from you and with highest regards, I am

Sincerely,



Joe Espy, III

JEIII/clh

**COMMITTEE  
EXHIBIT**

6-0



LAW OFFICES  
**JOHN D. SAXON, P.C.**  
A PROFESSIONAL CORPORATION  
2119 3RD AVENUE NORTH  
BIRMINGHAM, AL 35203

JOHN D. SAXON  
DONNA S. CUDE\*  
SANDRA KOSLIN REMINGTON+

TELEPHONE (205) 324-0223  
FACSIMILE (205) 323-1583

FIRM ADMINISTRATOR  
MICHELLE PEOPLES

\*ALSO ADMITTED IN  
TEXAS

+ALSO ADMITTED IN  
FLORIDA

September 14, 2016

HAND DELIVERY

Jack Sharman, Esq.  
Special Counsel  
ALABAMA HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE  
LIGHTFOOT, FRANKLIN & WHITE, LLC  
400 20<sup>th</sup> Street North  
Birmingham, Alabama 35203

Re: Impeachment investigation of Governor Robert Bentley

Dear Jack:

Enclosed you will find a copy of the DayTimer provided me by my client, Ray Lewis, which is a partial response to your Document Request to Wendall Ray Lewis. I hope you can find this useful. It is reasonably legible, but at some point you may need to ask Mr. Lewis to decipher certain entries.

I have him looking for other documents, although he has relatively few. Because of the nature of the DayTimer, I wanted you to go ahead and have it, which fact I have communicated both to you and Wes Gilchrist.

I look forward to working with you on this important matter.

Very truly yours,



John D. Saxon

JDS/erl

Enclosure as stated

cc: Paul W. Patterson, Esq.  
W. Ray Lewis

**COMMITTEE  
EXHIBIT**

6-P





**ALABAMA HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**

**JACK SHARMAN**  
**SPECIAL COUNSEL**  
**LIGHTFOOT, FRANKLIN & WHITE LLC**  
**400 20TH STREET NORTH**  
**BIRMINGHAM, ALABAMA 35203**

September 14, 2016

**Via Electronic and U.S. Mail**

Ross H. Garber, Esq.  
Susan S. Murphy, Esq.  
Shipman & Goodwin LLP  
1875 K Street NW, Suite 600  
Washington, DC 20006-1251  
[rgarber@goodwin.com](mailto:rgarber@goodwin.com)  
[smurphy2@goodwin.com](mailto:smurphy2@goodwin.com)

David Byrne, Esq.  
Chief Legal Advisor  
Carrie Ellis McCollum, Esq.  
Office of the Governor of Alabama  
State Capitol  
600 Dexter Avenue  
Montgomery, Alabama 36130  
[dbyrne@alabama.gov](mailto:dbyrne@alabama.gov)  
[carrie.mccollum@governor.alabama.gov](mailto:carrie.mccollum@governor.alabama.gov)

**Re: Impeachment Investigation of Governor Robert Bentley**

Dear Counselors:

Based upon our discussions about the request for documents to the Office of the Governor on August 12, 2016, I am providing you with a list of subject matter topics to aid you in your response. This list is not exhaustive and is provided solely for the purpose of facilitating the Office of the Governor's cooperation with the Committee. It does not in any way alter or supplant the document requests, which are now one month past due.

**COMMITTEE  
EXHIBIT**

6-Q

After reviewing this list, please identify by September 21, 2016, any specific objections to the individual document requests and the basis for each of those objections. Otherwise, please produce responsive documents by September 30, 2016. If you intend to produce documents on a rolling basis, please contact me to discuss the appropriate order of priority.

TOPICS

1. Governor Bentley's relationship with Rebekah Mason;
2. Rebekah Mason's compensation for her services, from any source;
3. The establishment, purpose, funding, and operations of the Alabama Council for Excellent Government;
4. Any use of State property, equipment, funds, or other assets (including State aircraft), whether directly or indirectly, for the benefit of Rebekah Mason;
5. Any use of State property, equipment, funds, or other assets (including State aircraft), whether directly or indirectly, in the furtherance of any personal relationship between Governor Bentley and Rebekah Mason;
6. Any changes to State records or in recordkeeping procedures related to any personal relationship between Governor Bentley and Rebekah Mason;
7. Any use of campaign property, equipment, funds, or other assets, whether directly or indirectly, for the benefit of Rebekah Mason;
8. Any use of campaign property, equipment, or funds in the furtherance of any personal relationship between Governor Bentley and Rebekah Mason;
9. Any personnel decisions or actions taken by the Office of the Governor, including but not limited to any temporary or permanent removals, reassignments, replacements, or terminations, that were influenced in any way, whether directly or indirectly, by Rebekah Mason or the relationship between Governor Bentley and Rebekah Mason;
10. Communications between the Office of the Governor and officials or employees of the Alabama Law Enforcement Agency (ALEA), and any other State personnel, regarding the relationship between Governor Bentley and Rebekah Mason;
11. The request by the Attorney General's office for an affidavit(s) concerning ALEA's investigation into the release of Hubbard grand jury testimony, Spencer Collier's and other ALEA personnel's response thereto (including any draft affidavits reviewed or edited by the Office of the Governor), the instruction to Spencer Collier and other ALEA personnel not to submit an affidavit, and any meetings related to the foregoing;
12. Governor Bentley's placement of Spencer Collier on medical leave and his later termination of Spencer Collier as Secretary of Law Enforcement;

13. The removal, reassignment, or termination of any other ALEA employees in connection with, or around the time of, Spencer Collier's leave and termination;
14. Any investigations into ALEA or Spencer Collier while Secretary of Law Enforcement;
15. Any undertakings by Governor Bentley or the Office of the Governor to conceal information related to the above topics from public disclosure.

\* \* \* \*

The Committee looks forward to the Governor's full cooperation in its investigation, beginning with production to the Committee of documents necessary for its investigation.

With best wishes, I am

Sincerely yours,



Jack Sharman

cc: The Honorable Mike Jones, Chairman, Alabama House Judiciary Committee

**NAJJAR**  
**DENABURG, P.C.**  
Attorneys at Law

**L. STEPHEN WRIGHT, JR.**  
Direct Dial (205) 250-8463  
Facsimile (205) 326-0590

2125 Morris Avenue  
Birmingham, Alabama 35203  
Telephone (205) 250-8400  
www.najjar.com

September 15, 2016

Benjamin S. Willson, Esq.  
By email: [bwillson@lightfootlaw.com](mailto:bwillson@lightfootlaw.com)  
The Clark building  
400 20<sup>th</sup> Street North  
Birmingham, Al 35203

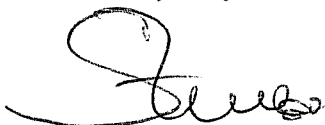
***Re: Dianne Bentley***

Dear Ben:

In accord with our telephone conversation of yesterday, I am formally requesting full substantive information from you about the issuance of an enforceable subpoena by the Sub-Committee on Impeachment.

My client will, of course, respond to a lawful subpoena issued by the Sub-Committee.

Yours very truly,



L. Stephen Wright, Jr.

LSWJR/JW

**COMMITTEE  
EXHIBIT**  
6-R

OFFICE OF THE GOVERNOR

ROBERT BENTLEY  
GOVERNOR



STATE CAPITOL  
MONTGOMERY, ALABAMA 36130

(334) 242-7100  
FAX: (334) 242-3282

## STATE OF ALABAMA

September 29, 2016

*Via Email*

Mike Jones, Chairman  
House Judiciary Committee  
Alabama State House  
11 South Union Street  
Montgomery, Alabama 36104

Jack Sharman, Esquire  
Special Counsel  
Lightfoot, Franklin & White LLC  
400 20<sup>th</sup> Street North  
Birmingham, AL 35203

Dear Chairman Jones and Mr. Sharman:

On September 29, 2016, the Governor's Press Secretary received a formal request from Kim Chandler, AP Reporter, to produce all of the documents (1688 pages) provided to you on Tuesday morning, September 27, 2016.

The purpose of this letter is to give each of you notice that we have evaluated her request legally, and do not see a blanket exception to providing these documents. We intend to produce these records by close of business today.

Sincerely,



David B. Byrne, Jr.  
Chief Legal Advisor

DBBjr/pac

cc: Ross Garber  
Sue Murphy  
Jon Barganier  
Othni Lathram  
Yasamie August

**COMMITTEE  
EXHIBIT**

6-S



OFFICE OF THE GOVERNOR

ROBERT BENTLEY  
GOVERNOR



STATE CAPITOL  
MONTGOMERY, ALABAMA 36130

(334) 242-7100  
FAX: (334) 242-0937

STATE OF ALABAMA

October 10, 2016

By Federal Express

Jack Sharman, Esq.  
Lightfoot, Franklin & White LLC  
400 20<sup>th</sup> Street North  
Birmingham, AL 35203

COMMITTEE  
EXHIBIT

6-T

Re: Impeachment of Robert Bentley, Governor of Alabama

Dear Mr. Sharman:

In a continuing effort to cooperate with the efforts of the Judiciary Committee, we are producing today additional documents, Bates numbered OTG001689 - OTG012448. These materials, which comprise 10,759 pages, are those that could be gathered with relative efficiency and that appear to come within your enormously broad document requests and the terms of the purported subpoena. This is not to say that we concede that this information is relevant to any potentially legitimate ground for impeachment or that the Office of the Governor is obligated to produce the information. To the contrary, we maintain our previously asserted objections to the Committee's process and procedure and also those we make in the Objection To "Subpoena," Or In the Alternative, Motion To Quash "Subpoena," we are filing with the Committee today.

We also continue to urge the Committee to act in a lawful manner that complies with the Alabama Constitution, Supreme Court authority, and House Rules, and that is respectful of the taxpayers of Alabama. In good faith, we are preserving an immense amount of electronically stored information of personnel of the Office of the Governor. That information comprises over 128 gigabytes of data, which likely will consist of in excess of one million emails and attachments. As we have noted, the cost to the taxpayers of Alabama to process, search and review this data for the overly broad categories identified in your prior letters and in the "subpoena" would be in the hundreds of thousands of dollars. We remain open to discussing additional reasonable ways in which the Office of the Governor can cooperate with the Committee.

Jack Sharman, Esq.  
October 10, 2016  
Page 2 of 2

Sincerely,

/s/Ross H. Garber  
Ross H. Garber

-and-

David B. Byrne



**ALABAMA HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**

**JACK SHARMAN**  
**SPECIAL COUNSEL**  
**LIGHTFOOT, FRANKLIN & WHITE LLC**  
**400 20TH STREET NORTH**  
**BIRMINGHAM, ALABAMA 35203**

October 10, 2016

L. Stephen Wright, Jr., Esq.  
NAJJAR DENABURG, P.C.  
2125 Morris Avenue  
Birmingham, Alabama 35203

Re: Impeachment Investigation of Governor Robert Bentley

Dear Mr. Wright:

Thank you for your letter of September 15, 2016 requesting information about the subpoena that was served on Mrs. Bentley on August 1, 2016. That subpoena was issued by the Judiciary Committee of the Alabama House of Representatives (the "Committee") pursuant to its authority under Sections 53 and 173 of the Alabama Constitution, House Rule 79.1, and the Amended Rules of the House Judiciary Committee for the Impeachment Investigation of Governor Robert Bentley as amended and adopted by the Committee on September 27, 2016. I have enclosed photocopies of each of these documents for your reference.

On August 29, 2016 Mrs. Bentley provided documents in partial response to the subpoena. We have identified to you items of the subpoena to which Mrs. Bentley has provided no response to date. Please respond to those identified items by **Thursday, October 20, 2016**, or confirm in writing that there are no other documents or things responsive to the subpoena.

With reasonable cooperation, we expect that we will be able to resolve this issue quickly and without undue burden upon Mrs. Bentley. Please feel free to contact me with any questions.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Jack Sharman".

Jack Sharman

Enclosures

cc: The Honorable Mike Jones, Chairman, Alabama House Judiciary Committee

### **SECTION 53**

**Rules of proceedings of both houses; punishment for contempt or disorderly behavior; enforcement of process; protection of members from violence, bribes, etc.; expulsion of members.**

Each house shall have power to determine the rules of its proceedings and to punish its members and other persons, for contempt or disorderly behavior in its presence; to enforce obedience to its processes; to protect its members against violence, or offers of bribes or corrupt solicitation; and with the concurrence of two-thirds of the house, to expel a member, but not a second time for the same offense; and the two houses shall have all the powers necessary for the legislature of a free state.

## **SECTION 173**

### **Governor, lieutenant-governor, attorney-general, state auditor, secretary of state, state treasurer, superintendent of education, commissioner of agriculture and industries and justices of supreme court.**

The governor, lieutenant-governor, attorney-general, state auditor, secretary of state, state treasurer, superintendent of education, commissioner of agriculture and industries, and justices of the supreme court may be removed from office for willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties, or for any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith, by the senate sitting as a court of impeachment, under oath or affirmation, on articles or charges preferred by the house of representatives. When the governor or lieutenant-governor is impeached, the chief justice, or if he be absent or disqualified, then one of the associate justices of the supreme court, to be selected by it, shall preside over the senate when sitting as a court of impeachment. If at any time when the legislature is not in session, a majority of all the members elected to the house of representatives shall certify in writing to the secretary of state their desire to meet to consider the impeachment of the governor, lieutenant-governor, or other officer administering the office of governor, it shall be the duty of the secretary of state immediately to notify the speaker of the house, who shall, within ten days after receipt of such notice, summon the members of the house, by publication in some newspaper published at the capitol, to assemble at the capitol on a day to be fixed by the speaker, not later than fifteen days after the receipt of the notice to him from the secretary of state, to consider the impeachment of the governor, lieutenant-governor, or other officer administering the office of governor. If the house of representatives prefer articles of impeachment, the speaker of the house shall forthwith notify the lieutenant-governor, unless he be the officer impeached, in which event he shall notify the secretary of state, who shall summon, in the manner herein above provided for, the members of the senate to assemble at the capitol on a day to be named in said summons, not later than ten days after receipt of the notice from the speaker of the house, for the purpose of organizing as a court of impeachment. The senate, when thus organized, shall hear and try such articles of impeachment against the governor, lieutenant-governor, or other officer administering the office of governor, as may be preferred by the house of representatives.

1 HR334  
2 177183-6  
3 By Representatives Fridy, Ledbetter, Ball, Williams (P),  
4 Weaver, Hill (M), Hanes, Farley, Henry, Whorton (I), Mooney,  
5 Butler, Williams (JW), Ainsworth, Gaston, Pringle, Holmes (M),  
6 Brown, Fincher and Rowe  
7 RFD:  
8 First Read: 26-APR-16



1  
2 ENGROSSED

3  
4 AMENDING HOUSE RULES TO PROVIDE FOR IMPEACHMENT  
5 PROCEDURES.

6  
7 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF  
8 THE LEGISLATURE OF ALABAMA, That the House Rules be amended by  
9 adding the following new rule:

10 Rule 79.1.

11 (a) Articles of impeachment, as provided in Section  
12 173 of the Constitution of Alabama of 1901, shall be filed in  
13 the form of a House resolution. Upon the filing of articles of  
14 impeachment co-sponsored by at least ~~10~~ 21 members, or if the  
15 House is not in session, upon petition of ~~10~~ 21 members to the  
16 ~~Speaker of the House, the House Judiciary Committee shall be~~  
17 ~~convened for the following purposes:~~ Speaker of the House, the  
18 articles shall be referred to the House Judiciary Committee  
19 for the following purposes:

20 ~~(1) To investigate allegations of misfeasance,~~  
21 ~~malfeasance, nonfeasance, or other misconduct of the official~~  
22 ~~subject to impeachment.~~

23 (1) To investigate the allegations asserted in the  
24 Articles of Impeachment, as provided in Section 173 of the  
25 Constitution of Alabama of 1901.

26 (2) To make a recommendation to the body as to  
27 whether cause exists to impeach the official.

1           (b) All meetings of the committee for the purposes  
2 provided in subsection (a) shall be open to the public and  
3 advance notice shall be given to the public for all meetings  
4 consistent with notice requirements of other House committee  
5 meetings and shall include publication of the agenda for the  
6 meeting.

7           (c) The committee shall adopt rules to govern the  
8 proceedings before it in order to ensure due process,  
9 fundamental fairness, and a thorough investigation, provided  
10 that the rules are not inconsistent with this rule.

11           (d) The committee shall gather information and may  
12 hear testimony relating to the question of whether cause  
13 exists to impeach the official. The gathering of information  
14 or the hearing of testimony may occur at any location within  
15 this state designated by the chair of the committee.

16           (e) The Clerk of the House shall assign staff to  
17 assist the committee as required. The Alabama Law Institute,  
18 Legislative Fiscal Office, and Legislative Reference Service  
19 shall provide assistance to the committee as requested.

20           (f) Upon the conclusion of its investigation, the  
21 committee shall submit its report and recommendation regarding  
22 impeachment to the Clerk of the House for consideration by the  
23 body. The Clerk of the House shall provide a copy of the  
24 report to all members of the House within three days after  
25 submission of the report. As part of its report and  
26 recommendation, the committee, by majority vote, may offer  
27 amendments to the impeachment resolution. If the

1 recommendation of the committee is not unanimous, the members  
2 in opposition to the recommendation shall submit a  
3 consolidated report outlining the recommendation of the  
4 members opposed to the majority recommendation.

5 (g) (1) If the House is in session when the committee  
6 submits its report and recommendation, the impeachment  
7 resolution, along with any committee amendments, shall be  
8 considered by the House on the third legislative day following  
9 its submission if 63 members of the House vote in favor of  
10 consideration. Consideration of the Articles of Impeachment  
11 shall be during the introduction of bills and resolutions  
12 pursuant to Rule 6(7) and shall be in resolution form and  
13 offered by one of the resolution's sponsors.

14 (2) If the House is not in session when the  
15 committee submits its report and recommendation, or if the  
16 House adjourns prior to consideration of the report and  
17 recommendation submitted under subdivision (1), the House may  
18 convene as provided in Section 173 of the Constitution of  
19 Alabama of 1901, to consider the report and recommendation.

20 (3) Passage of the resolution shall require a  
21 majority vote of the House membership.

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House of Representatives

Introduced..... . . . . 26-APR-16  
Read for the third time and adopted  
as amended..... . . . . 26-APR-16  
Yeas 78, Nays 14, Abstains 6

Jeff Woodard  
Clerk

1 AMENDED COMMITTEE RULES  
2 OF THE HOUSE JUDICIARY COMMITTEE FOR  
3 THE IMPEACHMENT INVESTIGATION OF GOVERNOR ROBERT BENTLEY

4 These rules adopted by the House Judiciary Committee  
5 apply only to the investigation pursuant to House Rule 79.1  
6 initiated by the filing of HR367, preferring Articles of  
7 Impeachment against Governor Robert Bentley. Pursuant to Rule  
8 79.1, this Committee shall investigate the allegations  
9 contained in HR367 and make a recommendation to the full House  
10 of Representatives as to whether cause exists to impeach the  
11 Governor. These proceedings shall be quasi-judicial in nature  
12 and shall be conducted in a manner consistent with that tenor.  
13

14 Rule 1. Committee Procedure. (a) The Chair of the  
15 Committee has the authority to call meetings of the Committee,  
16 call the Committee to order, designate the order of business,  
17 and generally supervise the affairs of the Committee. No  
18 action shall be taken by the Committee unless a quorum is  
19 present.

20 (b) The Committee may make use of subcommittees to  
21 perform any work that would be beneficial or make the  
22 proceedings more efficient. The Chair shall appoint the  
23 membership of any subcommittees in a manner to ensure the  
24 participation of the minority party.

25 Rule 2. Hearings. (a) Hearings shall be scheduled  
26 and presided over by the Chair and conducted in accordance

1 with House Rules, unless specifically provided for by these  
2 rules.

3 (b) Each member of the Committee and Governor Robert  
4 Bentley shall be given at least 24 hours notice of any  
5 hearing; provided, however, no action taken at a hearing shall  
6 be deemed invalid solely because notice was not provided in  
7 accordance with this rule. Notice to Governor Bentley shall be  
8 provided via delivery to his office in the Capitol.

9 (c) All hearings of the Committee shall be public.  
10 The Chair, with the guidance of Special Counsel, shall  
11 supervise the examination of witnesses, the length of any  
12 examination of witnesses, and all other proceedings.

13 (d) Public access to these public hearings shall be  
14 governed by the Public Access Guidelines adopted by the  
15 Committee and attached as Exhibit A to these rules. Conduct of  
16 the press shall be governed by the News Media Guidelines  
17 adopted by the Committee and attached as Exhibit B to these  
18 rules.

19 (e) At any public hearing, when a witness is to be  
20 called before the Committee to give testimony, Governor  
21 Bentley, Governor Bentley's counsel, and counsel for the  
22 Office of the Governor, or all three, may attend that portion  
23 of the public hearing, but may participate in the hearing only  
24 as allowed by these rules.

25 (f) A witness testifying at a public hearing may be  
26 represented by legal counsel of his or her choosing and may  
27 confer with his or her legal counsel to determine whether the  
28 answer to a particular question implicates a recognized



1 privilege, Rule of the House, or Rule of the Committee. The  
2 witness or his or her counsel must state on the record any  
3 objections based on a recognized privilege, Rule of the House,  
4 or Rule of the Committee. No other objections shall be  
5 permitted. The Chair shall rule on objections. If the Chair  
6 overrules the objection, the witness shall answer the  
7 question. Except for the limited purpose of stating a  
8 permitted objection, a witness's legal counsel may not examine  
9 the witness, raise objections, or address the Committee.

10 (g) Unless otherwise designated by the Chair, the  
11 Committee's Special Counsel or a member of his staff shall  
12 begin the questioning of each witness and may, if authorized  
13 by the Chair, question a witness at any point during the  
14 appearance of the witness. Thereafter, Governor Bentley,  
15 Governor Bentley's counsel, and counsel for the Office of the  
16 Governor may examine or cross-examine the witness, followed by  
17 re-examination of the witness by the Special Counsel or his  
18 staff. Thereafter, the witness may be examined by any member  
19 of the committee, if authorized by the Chair.

20 (h) At any public hearing when documentary evidence  
21 is to be offered through witnesses, or presented by Special  
22 Counsel, the Committee shall provide at the hearing copies of  
23 the documentary evidence to each Committee member and to  
24 counsel for Governor Bentley and the Office of the Governor.

25 (i) Special Counsel shall advise the Committee when  
26 the evidence assembled by him has been fully presented to the  
27 Committee. Following that presentation, the Committee shall

1 determine whether it desires additional evidence, after  
2 opportunity for the following has been provided:

3 (1) Any member may bring additional evidence to the  
4 Committee's attention.

5 (2) Counsel for Governor Bentley and for the Office  
6 of the Governor shall be invited to respond to the  
7 presentation, orally or in writing, as shall be determined by  
8 the Committee.

9 (3) Should counsel for Governor Bentley or for the  
10 Office of the Governor wish the Committee to receive  
11 additional testimony or other evidence, counsel for Governor  
12 Bentley or for the Office of the Governor may, as determined  
13 by the Committee, be invited to submit written requests and  
14 precise summaries of what counsel would propose to show, and,  
15 in the case of a witness, precisely and in detail what it is  
16 expected the testimony of the witness would be, if called. On  
17 the basis of such requests and summaries and of the record  
18 then before it, the Committee shall determine whether the  
19 suggested evidence is necessary or desirable to a full and  
20 fair record in the inquiry, and, if so, whether the summaries  
21 shall be accepted or not as part of the record or additional  
22 testimony or evidence in some other form shall be received.

23 Rule 3. Subpoenas. (a) The Chair may direct the  
24 Clerk of the House to issue subpoenas in the name of the  
25 Committee requiring a person or persons to appear before the  
26 Committee, or at a transcribed interview under oath by Special

1 Counsel or his staff, and be questioned regarding any matter  
2 at issue in this proceeding.

3 (b) The Chair may direct the Clerk of the House to  
4 issue subpoenas duces tecum in the name of the Committee  
5 requiring a person to appear before the Committee or Special  
6 Counsel and bring with him or her any materials, including,  
7 but not limited to, books, records, papers, documents,  
8 electronic data, electronic mail, videotapes, video  
9 recordings, audio recordings, still photographs, and other  
10 materials.

11 (c) Subpoenas shall be issued upon the  
12 recommendation of a subcommittee appointed for that purpose  
13 after consideration of any information submitted by committee  
14 members.

15 (d) Special Counsel and members of his staff are  
16 vested with the authority to cause subpoenas to be served in a  
17 manner consistent with Alabama rules for service of process  
18 and to cause such subpoenas to be enforced, including to  
19 initiate contempt proceedings either before the Committee or  
20 in a court of competent jurisdiction.

21 Rule 4. Right to Counsel. Each witness at a hearing  
22 or at a transcribed interview under oath may be accompanied by  
23 counsel of his or her own choosing who may advise the witness  
24 as to his or her rights. Nothing in these rules, however,  
25 shall be construed to create a right to counsel at public  
26 expense for witnesses testifying before the Committee or at a  
27 transcribed interview under oath.

1                   Rule 5. Testimony. (a) The Committee shall record  
2 all proceedings in which testimony or other evidence is  
3 presented.

4                   (b) All testimony given at a hearing shall be under  
5 oath administered by the Chair along with instruction that if  
6 a witness fails to tell the truth, the recording of his or her  
7 testimony shall be referred to the appropriate law enforcement  
8 entity for investigation and possible prosecution and advise  
9 the witness that he or she is subject to the penalties of  
10 perjury.

11                   (c) Any witness, or his or her counsel, may file  
12 with the Committee a sworn written statement, subject to the  
13 penalties of perjury, relevant to the purpose, subject matter,  
14 or scope of the Committee's proceeding. Copies of all  
15 statements filed shall be provided to Special Counsel, to all  
16 Committee members, and to Governor Bentley and the Office of  
17 the Governor through their counsel.

18                   Rule 6. Transcribed Interviews of Witnesses Under  
19 Oath. (a) Special Counsel and members of his staff are  
20 authorized to conduct interviews of witnesses under oath and  
21 pursuant to subpoena if a subpoena is required to compel the  
22 witness's attendance. Special Counsel shall ensure that  
23 interviews under oath are transcribed and, if necessary, audio  
24 recorded, video recorded, or both. Until submission of the  
25 Final Report contemplated by House Rule 79.1 and by these  
26 rules, Special Counsel shall be the custodian of such  
27 transcripts and recordings.

1           (b) Attendance at such interviews is limited to the  
2 following persons: Special Counsel and/or members of his  
3 staff, the witness, the witness's legal counsel, a  
4 stenographer and videographer, and the Chair of the Committee,  
5 or his or her designee.

6           (c) A witness may be represented by legal counsel of  
7 his or her choosing at the transcribed interview under oath  
8 and may confer with his or her legal counsel to determine  
9 whether the answer to a particular question implicates a  
10 recognized privilege. The witness or his or her counsel must  
11 state on the record any objections based on a recognized  
12 privilege. No other objections shall be permitted. Except for  
13 the limited purpose of stating a permitted objection, legal  
14 counsel for a witness may not speak on the record. The Chair  
15 shall rule on any such objections either during or after the  
16 interview. If the Chair overrules an objection, the witness  
17 shall answer the question.

18           (d) A witness and his or her counsel may review at  
19 the offices of the Special Counsel the final transcript and/or  
20 videotape of the witness's testimony. The witness or the  
21 witness's counsel may read the transcript and review the  
22 videotape, and take handwritten notes. The witness or  
23 witness's counsel may not dictate, transcribe, type, or  
24 photograph any of the material reviewed. At the election of  
25 Special Counsel, a member of his staff may be present in the  
26 room during the review so as to ensure compliance with these

1 rules. The timing of such review is committed to the  
2 discretion of Special Counsel and his staff.

3 (e) No later than the submission of Special  
4 Counsel's report contemplated by House Rule 79.1 and Rule 14  
5 of these rules, Special Counsel shall provide copies of final  
6 transcripts and/or videotapes to counsel for Governor Bentley  
7 and the Office of the Governor.

8 Rule 7. Evidentiary Questions. All procedural  
9 questions regarding the conduct of the hearings and of the  
10 transcribed interviews under oath, including the relevance and  
11 admissibility of evidence, shall be determined by the Chair  
12 with the advice of Special Counsel. Any member may move to  
13 overrule a ruling of the Chair. The Chair shall be sustained  
14 unless at least 8 members of the Committee vote to overrule.

15 Rule 8. Committee Record. Any and all materials  
16 created by or submitted to the Committee during the course of  
17 the investigation shall be inventoried and stored with the  
18 Clerk of the House as the Committee Record.

19 Rule 9. Obtaining Evidence or Information. Nothing  
20 contained in these rules shall be construed to limit or  
21 prohibit the acquisition of evidence or information by the  
22 Committee or by Special Counsel by any other lawful means.

23 Rule 10. Ex Parte Communications. Members should  
24 avoid communicating with Governor Bentley, his counsel, or his  
25 staff concerning any matters pending regarding his impeachment  
26 or the investigation of this Committee, except to provide  
27 notice of the proceedings, for the duration of the impeachment

1 process and any trial by the Senate, if necessary. Members  
2 should not feel any restraint from communicating with Governor  
3 Bentley or his staff regarding any other matters necessary in  
4 the ordinary course of representing their constituents.

5 Rule 11. Amendment. Proposed amendments to these  
6 rules shall be submitted in writing by one or more members of  
7 the Committee to the Chair and shall take effect upon adoption  
8 by the affirmative vote of 8 members of the Committee.

9 Rule 12. Communications with the Press. Members  
10 should avoid communicating with the press about the substance  
11 of any of the hearings or proceedings before this Committee for  
12 the duration of the impeachment process and any trial by the  
13 Senate, if necessary. All inquiries by the press regarding  
14 these proceedings shall be referred to the Public Information  
15 Officer of the House.

16 Rule 13. Special Counsel. (a) An attorney shall be  
17 recommended by a subcommittee appointed for that purpose and  
18 hired by a vote of the Committee to assist in the process of  
19 investigating grounds for impeachment and shall be known as  
20 Special Counsel to the Committee. Special Counsel may be  
21 replaced by an affirmative vote of 8 members of the Committee.

22 (b) Special Counsel and his staff shall conduct the  
23 investigation, shall assist the Chair in the conducting of  
24 hearings as required, and shall draft the report required from  
25 the Committee pursuant to House Rule 79.1 (the "Final Report").

26 (c) Members of the Special Counsel's staff shall be  
27 designated as "Assistant Special Counsel" or "Investigator," as



1 appropriate, and are vested with the Special Counsel's  
2 authority.

3 Rule 14. Final Report. The Final Report of Special  
4 Counsel shall conform to the requirements of House Rule 79.1  
5 and these rules. The Final Report shall contain a summary of  
6 the pertinent evidence and applicable law and may contain  
7 recommendations and proposed conclusions of fact and law.  
8 Special Counsel shall provide a copy of the Final Report to  
9 counsel for Governor Bentley and counsel for the Office of the  
10 Governor who may be invited, in the sole discretion of the  
11 Chair, to submit written comments.

**From:** Benjamin S. Willson  
**Sent:** Tuesday, October 11, 2016 3:32 PM  
**To:** '[michael.robinson@alea.gov](mailto:michael.robinson@alea.gov)'  
**Cc:** Brandon K. Essig  
**Subject:** Impeachment Investigation of Governor Robert Bentley

Micheal,

Thanks for your time on the phone today. As we discussed, we are available to meet with you between Tuesday, October 25 and Friday, October 28, depending upon your availability and the availability of the witnesses listed below (in alphabetical order), who we believe to be employed by ALEA. Please let us know if any of those on the list are no longer employed by ALEA. Please let us know which day(s) are best for these interviews, and feel free to call with any questions, or to discuss. Also, please confirm receipt of this email.

Thank you,

Ben Willson

April Bickhaus

Nance Bishop

Michael Culliver

Jennifer Frost

Stan Stabler

Cynthia Hardy

Reggie Harkins

Christopher Hines

Jack Wilson

**COMMITTEE  
EXHIBIT**  
6-V

**Benjamin S. Willson**  
Direct Dial: 205-581-1507  
[bwillson@lightfootlaw.com](mailto:bwillson@lightfootlaw.com)

[Bio](#) | [vCard](#) | [Firm](#) | [Confidentiality Notice](#)

---



The Clark Building  
400 20th Street North  
Birmingham, Alabama 35203-3200

October 20, 2016

*Via U.S. Mail and Email*

Wes Gilchrist  
Lightfoot, Franklin & White  
400 20th Street N.  
Birmingham, AL 35203

*Re: Proposed Interviews*

Dear Mr. Gilchrist:

As you will recall, since we first spoke about this matter on September 13, 2016, I have made every attempt to accommodate you and your impeachment probe while protecting the best interests of the private citizens I represent.

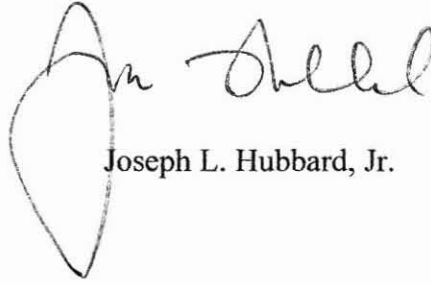
In our lengthy telephone conversation of September 14, I detailed the conflict of interest your probe creates for my clients, both of whom have professions that depend on their ability to work with the legislative and executive branches of government in Alabama. You are asking them to take an active and public role in a political fishing expedition that could jeopardize their ability to work with one or both branches of government. In short, you are putting their professional livelihoods at risk by placing them center-stage in a media circus orchestrated for political gamesmanship, without guaranteeing them the protections afforded similarly situated witnesses in a criminal investigation.

In our conversation on September 14, and again on September 27 in Chairman Mike Jones's office, you assured me that Special Counsel Jack Sharman would call me to discuss these concerns. It was my hope, then, that we could work together to make changes to the Committee Rules to address those concerns. Rather than return my calls and work together collaboratively, Sharman has pushed for broader authority and near-unchecked power, at the expense of the rights of private citizens like my clients.

Because I do not believe the authority granted you in the Revised Rules is authorized by the Alabama Constitution of 1901 or any section of the Alabama Code, any participation by my clients in your impeachment probe would have to be voluntary. At this time, they do not wish to volunteer their participation.

If I may be of any other help, do not hesitate to have Jack Sharman contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Joe Hubbard", written over a large, faint, vertically-oriented oval shape.

Joseph L. Hubbard, Jr.

JLH/ahs

cc:

Jack Sharman  
Lightfoot, Franklin & White  
400 20th Street N.  
Birmingham, AL 35203



COMMITTEE  
EXHIBIT  
6-X

**ALABAMA HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**

**JACK SHARMAN**  
**SPECIAL COUNSEL**  
**LIGHTFOOT, FRANKLIN & WHITE LLC**  
**400 20TH STREET NORTH**  
**BIRMINGHAM, ALABAMA 35203**

October 24, 2016

**Via Electronic and U.S. Mail**

Ross H. Garber, Esq.  
Shipman & Goodwin LLP  
1875 K Street NW, Suite 600  
Washington, DC 20006-1251  
[rgarber@goodwin.com](mailto:rgarber@goodwin.com)

David Byrne, Esq.  
Chief Legal Advisor  
Office of the Governor of Alabama  
State Capitol  
600 Dexter Avenue  
Montgomery, Alabama 36130  
[dbyrne@alabama.gov](mailto:dbyrne@alabama.gov)

**Re: Impeachment Investigation of Governor Robert Bentley**

Gentlemen:

On behalf of the Alabama House Judiciary Committee, we have reviewed and thank you for the documents produced by the Office of the Governor in response to the Committee's Subpoena. We have also reviewed the Governor's objections to the Committee's requests.

Unfortunately, the modest amount of responsive material in the Governor's production, coupled with his sweeping objections, leave us with the inescapable conclusion that the Governor simply intends to continue to refuse to cooperate with the House as it carries out its constitutionally-required duties.

This non-cooperation is surprising and unfortunate. Governor Bentley assured the people of Alabama that he would cooperate with the Committee: "It is my intention to fully work with the House Judiciary Committee during this procedure . . . I will be cooperative throughout this

Ross H. Garber, Esq.  
David Byrne, Esq.  
October 24, 2016  
Page 2

process . . .”<sup>1</sup> Mr. Garber also assured cooperation: “I look forward to working collaboratively with the members and staff of the House Judiciary Committee.”<sup>2</sup>

In expectation of the Governor’s promised cooperation, the Committee has extended every courtesy to the Office of the Governor. Two weeks after the Governor’s first deadline to produce documents had passed, we provided, at your request, a list of subject matter topics to help you refine your search for responsive documents. We also asked that the Governor identify specific responses and objections to individual document requests, so that we could narrow our differences. The Governor is apparently unwilling or unable to do so.

Moreover, the Committee extended to you both the courtesy of hearing you at length at the September 27, 2016 hearing. One of your principal concerns was that the Governor’s counsel be allowed to cross-examine witnesses at subsequent hearings before the Committee. The Committee listened to and approved the Governor’s request. It is now clear that, for all of the Governor’s complaints of being denied due process by the Committee, the Governor refuses to participate in any process except on terms to his liking.

Instead of cooperating and proceeding in good faith, the Governor has responded with continuing public broadsides against the legitimacy of this constitutional process, wholesale objections encompassing every one of the Committee’s requests, and coordinated document dumps of self-serving or non-responsive material meant to create the illusion of cooperation.

Although the Committee has received 12,448 pages of miscellaneous documents from the Office of the Governor, that amount appears to be less than half of the 30,000 pages of material that the Governor provided to the Alabama Ethics Commission in apparently related matters.

The Governor also has provided no written response indicating which of the Committee’s requests the Governor has (and has not) responded to. Instead, he submitted another “motion” restating his defiance of the Committee’s authority and objecting wholesale to every item of the Committee’s Subpoena. Interestingly, the only request to which the Governor has actually confirmed a response is the request related to the termination of Spencer Collier. The production of the “Case Report” from ALEA’s Integrity Unit—which was not completed until five months after former Secretary Collier’s termination—was self-serving. Because the Governor has given the Committee no way of knowing whether and to what extent he has withheld responsive documents to the remaining 45 requests, the Committee is left to assume that the Governor has produced only select documents that suit his political purposes. This

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<sup>1</sup> Press Release, The Office of Alabama Governor, *The Office of the Governor Retains Experienced Attorney to Assist Legal Team* (July 15, 2016).

<sup>2</sup> *Ibid.*



selectivity in production is even more troubling after the Attorney General's recent announcement of the outcome of a grand jury's investigation of former Secretary Collier.<sup>3</sup>

We urge the Governor to change these tactics and to cooperate with the Committee as he has promised. To that end, although it is nearly impossible to provide a comprehensive list of all deficiencies, I have identified the following items for which the Committee requires additional production or clarification from the Governor:

\* \* \* \* \*

As best we can tell from our review, the Governor has produced no documents that are even arguably responsive to the following requests of the Subpoena: 1, 2, 3, 4, 5, 9, 10, 20, 23, 25, 26, 27, 28, 29, 30, 31, 32, 35, 39, 40.

- **Electronic Calendar.** Item 4, for example, is a request for the Governor's calendar in native electronic format. The Governor has ignored this request, and has produced instead photocopies of scanned calendar documents that were printed days after the date reflected on them. The Office of the Governor has the requested documents, and must produce them.
- **NDA's.** Similarly, Item 20 is a request for documents related to nondisclosure agreements that members of the Governor's staff were asked to sign. The existence of this agreement, and of the requirement that staff members sign it, is a well-known fact. The Office of the Governor has documents responsive to this request, and has a duty to produce them.
- **Stabler and Lewis Emails.** Items 39 and 40 call for communications including emails to or from Stan Stabler and Ray Lewis—two key witnesses in the Committee's investigation. The Office of the Governor has these documents and must produce them.

**If the Governor Does Not Possess a Document, Please Just Say So.** The Governor objects frequently in his Motion that various items "see[k] the production of information that is outside the possession, custody or control of the Office of the Governor." If in fact the Office of the Governor is not in possession of any documents responsive to any of the items of the Subpoena, please state so directly. Otherwise, please (1) provide the Committee with a reasonable response in writing to each of these requests and (2) produce any responsive documents that are in the possession, custody or control of the Office of the Governor.

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<sup>3</sup> See Statement Of Attorney General Luther Strange Regarding Former ALEA Secretary Spencer Collier (October 20, 2016), found at <http://www.ago.state.al.us/News-936>.

**The Governor Cannot Hide Behind Claims of Privilege.** The Governor claims in his Motion that the Subpoena “attempts to subvert the attorney client privilege.” As Mr. Garber has counseled elsewhere, “public sector lawyers should keep in mind that they might someday be subpoenaed to testify about the substance of conversations with their clients.”<sup>4</sup> Looking to the federal courts for guidance, you will recall that, in disputes arising from the Whitewater matter involving President and Mrs. Clinton, government lawyers were obliged to produce what might otherwise be reasonably construed as material protected by the attorney-client privilege. *See In re Lindsey*, 158 F.3d 1263 (D.C.), *cert. denied*, 525 U.S. 996 (1998); *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910 (8th Cir.), *cert. denied*, 521 U.S. 1105 (1997).

Leaving aside for the moment the question of the applicability of that privilege as asserted by a Governor against a co-equal branch of State government in an impeachment investigation, the Governor certainly must produce all *non-privileged* documents responsive to the Committee’s request. As you know, it is the burden of the subpoenaed party to support specific claims of privilege by describing the nature of the documents withheld.<sup>5</sup>

In addition, the lessons of Whitewater also warn of the dangers of mixing the chief executive’s personal lawyers with counsel to his office. As you may recall, for example, a meeting on November 5, 1993, was held at the law offices of Williams & Connolly, which had recently been retained by the President and Mrs. Clinton to act as their personal counsel for Whitewater-related matters. Seven persons attended the meeting, three lawyers in private practice and four White House officials.<sup>6</sup> Eventually, the notes of the Associate Counsel to the President were produced to the Senate Committee.

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<sup>4</sup> *See, e.g.*, Ross H. Garber and Shana-Tara Regon, *A Privileged Relationship? Public Lawyers, Take Heed*, ABA Public Lawyer, Number 2, Volume 13 (Summer 2005), found at <http://www.shipmangoodwin.com/a-privileged-relationship-public-lawyers-take-heed>.

<sup>5</sup> *See, e.g.*, Ala. R. Civ. P. 45(d)(2) (“When information subject to a subpoena is withheld on a claim that it is privileged . . . , the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.”).

<sup>6</sup> The attendees were David Kendall, a partner at the Washington, D.C. law firm of Williams & Connolly and private counsel to the President and Mrs. Clinton on the Whitewater matter; Stephen Engstrom, a partner at the Little Rock law firm of Wilson, Engstrom, Corum, Dudley & Coulter, who also had been retained by the President and Mrs. Clinton to provide personal legal advice on the Whitewater matter; James Lyons, a lawyer in private practice in Colorado, who had provided legal advice to then-Governor and Mrs. Clinton on the Whitewater matter during the 1992 presidential campaign; then-Counsel to the President Bernard Nussbaum; then-Associate Counsel to the President William Kennedy, who while a partner at the Rose Law Firm provided some legal services to the Clintons in 1990-92 in connection with their investment in Whitewater; then-Associate Counsel to the President Neil Eggleston; and then-Director of White House Personnel Bruce Lindsey. *See generally* S. Rept. 104-191, Refusal Of William H. Kennedy, III, To Produce Notes Subpoenaed By The Special Committee To Investigate Whitewater Development Corporation And Related Matters, 104th Congress (1995-1996), found at <https://www.congress.gov/104/crpt/srpt191/CRPT-104srpt191.pdf>.

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David Byrne, Esq.  
October 24, 2016  
Page 5

Given the fact that lawyers have advised the Governor personally and the Office of the Governor upon this investigation, and the fact that it is alleged that lawyers were involved in significant matters (such as the termination of Secretary Collier), the Committee has a duty to inspect any claim of privilege. Please provide the Committee with a detailed log of all documents withheld based upon a claim of attorney client privilege, and produce all other responsive documents.

**Blacked-Out Pages Belie the Governor's Claims of Transparency.** Governor Bentley has heavily "redacted" --- blacked out --- large portions of key documents without providing any justification for doing so.

For example, the document labeled OTG00188-00200 is a "Timeline Re: Spencer Collier" that was authored by Rebekah Mason and edited by Governor Bentley (as evidenced by the email labeled OTG005004). This document is heavily and arbitrarily blacked out. Likewise, the documents labeled OTG009349 *et seq.*, which appear to contain text messages between Governor Bentley and persons related to the formation the Alabama Council for Excellent Government ("ACEGov"), are almost entirely blacked out. The same is true with certain email communications with the press regarding Rebekah Mason's compensation as a member of the Governor's Staff (OTG002139-002142) and between the press and Cooper Shattuck concerning the individuals and entities paid by the ACEGov (OTG005290-005291). (Mr. Shattuck is the Governor's former Chief Legal Adviser and is the current General Counsel of the University of Alabama System). Similarly, a text message from Governor Bentley to Rebekah Mason at OTG009339 is redacted in its entirety. Please provide the Committee with a detailed log of all redactions made to documents produced, and the justifications therefor.

**Cell Phones, State Phones and "Burner" Phones.** Governor Bentley has provided no documents responsive to the Committee's request for a list of his cell phones or mobile devices (Item 29). He objects in the Motion that the request "seeks information outside of the possession, custody or control of the Office of the Governor." If you are drawing a distinction between an "Office of the Governor" cell or burner phone and a "Robert J. Bentley" cell or burner phone, please so state. In any event, the document labeled OTG009338 is a cover page for a selection of text messages from a phone that is referred to as "Governor state phone." The Governor's "state phone" certainly is in the possession, custody or control of the Office of the Governor. If it is not, please explain.

**Mrs. Mason Had A State Email Account, and Responsive Email Should Be Produced.** Governor Bentley has similarly claimed that the Committee's request for a copy of Rebekah Mason's email account (Item 28) "seeks production of information that is outside of the possession, custody or control of the Office of the Governor." However, the documents he has produced to the Committee indicate that Rebekah Mason was in fact assigned a State email account. The document labeled OTG012362 shows a February 2016 email from Rebekah Mason to a staff member in which she requests:

Can we please list my name on the Governor's website under Staff? Please list me under the Executive

Ross H. Garber, Esq.  
David Byrne, Esq.  
October 24, 2016  
Page 6

Office similar to how we list Zach. Please list me as Rebekah Mason Senior Political Advisor. If an email address is needed, please use:  
rebekah.mason@governor.alabama.gov.

Rebekah Mason's State email account certainly is in the possession, custody or control of the Office of the Governor. Please produce responsive documents.

**The Governor's Email Accounts Should Be Identified, and Responsive Email Produced.** The Committee requested information related to the email accounts used by Governor Bentley (Item 26). Again, Governor Bentley notes in his Motion that the request "seeks information outside the possession, custody or control of the Office of the Governor." He continues: "As has been reported in the press, the Governor does not maintain a State of Alabama email address."

The Governor's statement appears to be inconsistent with emails that were included in the documents produced. Those emails show that Governor Bentley routinely used his comcast.net email address to send and receive official State communications, including emails marked "Law Enforcement Sensitive." This portion of the investigation is relevant to the Committee's inquiry. As you know from the recent FBI investigation of former Secretary of State Clinton, the use by senior executive branch officials of private or undisclosed email accounts for official or sensitive information can raise significant concerns.<sup>7</sup> Please produce all documents withheld on the basis of this objection.

**Visitor Logs to the Governor's Mansion Are Searchable.** The Committee requested information related to Rebekah Mason's visits to the Governor's Mansion or to Wynfield Estates (Items 9, 10). Governor Bentley objected that this request is "overly broad, unduly burdensome and harassing." However, a simple electronic search of the access logs for those facilities would easily yield the requested documents and information. Please provide the Committee with a reasonable response in writing to this request.

**Mrs. Mason's Compensation Information Should Be Produced.** The Committee requested documents related to compensation paid to Rebekah Mason or RCM Communications, Inc. (Item 19). The Governor provided invoices from RCM Communications, Inc. to Bentley for Governor, Inc. for only three months: December 2015, January 2016, and March 2016. Public records show that Bentley for Governor, Inc. paid Mrs. Mason throughout 2015, after the campaign was over. In addition, Mrs. Mason has stated publicly that she was paid by ACEGov in 2015.<sup>8</sup> The House and the Committee, not to mention the citizens of Alabama, have a right to

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<sup>7</sup> See Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal E-Mail System (July 5, 2016), found at <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>.

<sup>8</sup> See Tim Lockette, *Mason claims getting \$15,000 from governor's nonprofit* (March 25, 2016), found at [http://www.annistonstar.com/news/mason-claims-getting-from-governor-s-nonprofit/article\\_70faab00-f2d2-11e5-bb30-abe8a84b962c.html](http://www.annistonstar.com/news/mason-claims-getting-from-governor-s-nonprofit/article_70faab00-f2d2-11e5-bb30-abe8a84b962c.html).



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David Byrne, Esq.  
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Page 7

know who was paying the Governor's senior political advisor. Please provide (1) the complete set of invoices for the period of time requested and (2) all other documents related to Mrs. Mason's compensation.

**Unedited State Aircraft Records Should Be Produced.** The Committee requested documents related to the use of State aircraft (Item 7). Governor Bentley has produced the publicly available "State Aircraft Usage" documents for January 2015 through August 2016. However, he has also produced a chain of internal emails labeled OTG005615-005620 that indicates that members of the Governor's staff routinely review and amend "flight log records" before they are "post[ed] to the Governor's website." In fact the documents labeled OTG005667-005672 show after-the-fact red-line edits that were made to the State Aircraft Usage document for the Fourth Quarter of 2015 before it was made public. Such documents and communications are clearly comprehended by the Committee's request. Please respond fully to this request.

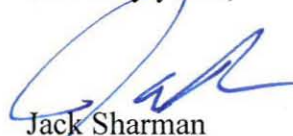
\* \* \* \* \*

Finally, you have stated that the Office of the Governor has preserved many gigabytes of emails and electronic data and information. To facilitate reviewing this information for responsiveness to our requests, we propose searches with the following terms and limited to January 1, 2014 to present: ACEGov, National Governors Association or NGA, Republican Governors Association or RGA, Michael Echols, Ray Lewis, Franklin Haney, Heather Hannah, Cooper Shattuck, Gulf State Park, RCM Communications or RCM, and JRM Enterprises or JRM.

Please provide the Office of the Governor's complete document production before November 1, 2016. The Committee continues to anticipate Governor Bentley's full cooperation in this constitutional process.

With best wishes, I am

Sincerely yours,



Jack Sharman

cc: The Honorable Mike Jones, Chairman, Alabama House Judiciary Committee



**ALABAMA HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**

**JACK SHARMAN**  
**SPECIAL COUNSEL**  
**LIGHTFOOT, FRANKLIN & WHITE LLC**  
**400 20TH STREET NORTH**  
**BIRMINGHAM, ALABAMA 35203**

October 24, 2016

**Via Hand Delivery**

Max Pulliam, Esq.  
301 19th Street North, Suite 519  
Birmingham, AL 35203

Re: Impeachment Investigation of Governor Robert Bentley

Dear Max:

Enclosed with this letter is a request for documents directed to your client, R.B. Walker, on behalf of the Alabama House Judiciary Committee. Please produce all documents and things requested by no later than **5:00 p.m. on Monday, November 7, 2016**. After receipt of Mr. Walker's documents, we will follow up with you to schedule his interview.

Although you are not required to treat this request as confidential, I ask that you and Mr. Walker do so in order to preserve the integrity of this investigation. If you have any questions, please do not hesitate to contact me.

With best wishes, I am

Sincerely yours,

A handwritten signature in blue ink that reads "Jack Sharman".

Jack Sharman

cc: The Honorable Mike Jones, Chairman, Alabama House Judiciary Committee  
Enclosure

**COMMITTEE  
EXHIBIT**

6-Y

**BEFORE THE HOUSE JUDICIARY COMMITTEE  
OF THE ALABAMA HOUSE OF REPRESENTATIVES**

**In Re: The Impeachment Investigation of  
Governor Robert Bentley**

**DOCUMENT REQUEST TO R.B. WALKER**

**TO: R.B. Walker  
c/o Max Pulliam, Esq.  
301 19th Street North, Suite 519  
Birmingham, AL 35203**

**Definitions and Instructions**

- A. The term “Office of the Governor” as used herein refers to Governor Robert Bentley in his official capacity and all current or former members of Governor Robert Bentley’s Staff, including but expressly not limited to those assigned to the following offices: Executive Office, Chief of Staff and Deputy Chief of Staff, Legal Office, Communications Office, Legislative Office, Constituent Services Office, Scheduling Office, Appointments Office, Policy Office, Administration Office, Office of the First Lady, and Governor’s Mansion.
- B. Unless otherwise specified, all Requests shall encompass the period of time beginning January 17, 2011 to the present.
- C. Documents responsive to any Request shall be produced together, in electronic or paper file folders or with other enclosures that separate the files by Request number. If a document is responsive to more than one Request, it shall be produced in response to the Request to which it is primarily responsive.
- D. Produce all documents and things requested no later than by **5:00 p.m. on Monday, November 7, 2016.**

**Documents and Things Requested**

1. Any and all communications (of any type, such as letters, notes, emails, and text messages) between you and any of the following persons:
  - a. Governor Robert Bentley;
  - b. Rebekah Mason;
  - c. Jon Mason;
  - d. any director, officer, employee, agent, or representative of the Alabama Council for Excellent Government (“ACEGov”);



- e. any director, officer, employee, agent, or representative of Bentley for Governor, Inc.;
- f. any director, officer, employee, agent, or representative of RCM Communications, Inc.;
- g. any director, officer, employee, agent, or representative of JRM Enterprises, Inc.

2. Any and all documents, electronic data, and information, including communications of any type, evidencing or relating to any of the following:

- a. Rebekah Mason;
- b. RCM Communications, Inc.;
- c. Jon Mason
- d. JRM Enterprises, Inc.;
- e. Compensation paid or other funds provided by ACEGov to Rebekah Mason, RCM Communications, Inc., Jon Mason, or JRM Enterprises, Inc. at any time;
- f. Bentley for Governor, Inc.

3. Any and all documents, electronic data, and information, including communications of any type, evidencing or relating to ACEGov's efforts to comply with the Alabama Ethics Law.

4. Any and all documents, electronic data, and information, including communications of any type, evidencing or relating to ACEGov's corporate functions, such as formation, minutes or agendas of director meetings, and tax returns.

5. Any and all documents, electronic data, information, or other things that you believe are relevant, in any way, to the proposed Articles of Impeachment Against Governor Bentley, a copy of which is enclosed as Attachment 1, or the investigation pertaining thereto.



**ALABAMA HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**

**JACK SHARMAN**  
**SPECIAL COUNSEL**  
**LIGHTFOOT, FRANKLIN & WHITE LLC**  
**400 20TH STREET NORTH**  
**BIRMINGHAM, ALABAMA 35203**

October 24, 2016

**Via Electronic Mail**

Ross H. Garber, Esq.  
SHIPMAN & GOODWIN LLP  
1875 K Street NW, Suite 600  
Washington, D.C. 20006-1251

David B. Byrne, Jr., Esq.  
Chief Legal Advisor  
The Office of the Governor of Alabama  
600 Dexter Avenue  
Montgomery, Alabama 36130

Re: Impeachment Investigation of Governor Robert Bentley

Gentlemen:

Pursuant to Rule 6 of the Amended Committee Rules of the House Judiciary Committee for the Impeachment Investigation of Governor Robert Bentley, we need to schedule the transcribed interviews under oath of the following persons: Governor Robert J. Bentley, David Byrne, Wesley Helton, and Zach Lee.

These witnesses are busy people, and the Governor especially so. We are willing to work with their schedules and can take their testimony on a weekend day, if that is more convenient.

I enclose notices for all of these witnesses. The dates are "placeholder" dates only and subject to the agreement of the parties.

With best wishes, I am

Sincerely yours,

  
Jack Sharman

**COMMITTEE  
EXHIBIT**

6-Z

Ross H. Garber, Esq.  
David B. Byrne, Jr., Esq.  
October 24, 2016  
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Enclosures

cc: The Honorable Mike Jones, Chairman, Alabama House Judiciary Committee  
(w/encl.)

OFFICE OF THE GOVERNOR

ROBERT BENTLEY  
GOVERNOR



STATE CAPITOL  
MONTGOMERY, ALABAMA 36130

(334) 242-7100  
FAX: (334) 242-3282

## STATE OF ALABAMA

October 27, 2016

The Honorable Mac McCutcheon  
Speaker of the House  
726 Madison Avenue  
Huntsville, Alabama 35806

Dear Speaker McCutcheon:

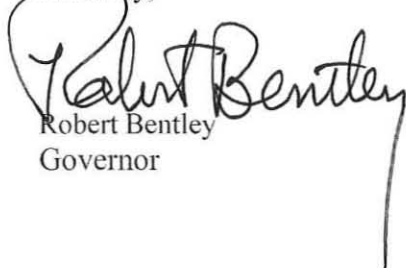
As an elected official assigned to the Alabama House of Representatives Judiciary Committee, you have been placed in a historic situation that requires you to use great discernment and impartial judgement related to the current investigation you have been tasked with conducting. As you know, my lawyers have said that the actions of the Committee's lawyer violate the Constitution and the House Rules. I have confidence that the Committee and the lawyers will deal with these issues. In the meantime, I believe it is time for you to hear directly from me, and I am respectfully inviting you to a meeting in my office, pursuant to § 36-25A-2(6)(b)(2), Code of Alabama, at 10:00 a.m., Thursday, November 10, 2016.

It is at this meeting that I will brief you and your fellow committee members on the last six years I have served as Governor and allow you to ask any and all questions you may have for me. It is important to me that you as an elected Representative and Judiciary Committee member have the opportunity to talk directly with me about the issue of impeachment. It is you that will ultimately make the decision. The people of our State did not elect private attorneys to represent them.

For this reason, there must be just a few ground rules for this meeting. First, I will not invite my attorneys or your counsel, Mr. Jack Sharman, to the meeting. I want to answer your questions in a direct, non-adversarial way, and I also don't think the State needs to pay for lawyers to attend this meeting. Second, I ask that no electronic recording devices are brought into the meeting. It is my intention to have an open and frank discussion with you and your colleagues. I will open myself up to every thought or question you may have for me. I will, to the best of my ability, answer all the questions posed to me.

In closing, I want to remind you that it is the committee that will vote and decide the fate of this situation, not the attorneys. I respect each of you for the service you provide to our state and your role and dedication to this historic process. I look forward to seeing you on November 10<sup>th</sup>.

Sincerely,

  
Robert Bentley  
Governor

**COMMITTEE  
EXHIBIT**  
6-AA



**ALABAMA HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**

**JACK SHARMAN**  
**SPECIAL COUNSEL**  
**LIGHTFOOT, FRANKLIN & WHITE LLC**  
**400 20TH STREET NORTH**  
**BIRMINGHAM, ALABAMA 35203**

November 1, 2016

**Via Electronic and U.S. Mail**

Ross H. Garber, Esq.  
Shipman & Goodwin LLP  
1875 K Street NW, Suite 600  
Washington, DC 20006-1251  
*rgarber@goodwin.com*

David Byrne, Esq.  
Chief Legal Advisor  
Office of the Governor of Alabama  
State Capitol  
600 Dexter Avenue  
Montgomery, Alabama 36130  
*dbyrne@alabama.gov*

**Re: Impeachment Investigation of Governor Robert Bentley**

Gentlemen:

On behalf of the Alabama House Judiciary Committee, this letter follows up on the notices previously served for the transcribed testimony under oath of Governor Bentley and Messrs. Byrne, Helton and Lee.

Please let us know your position and whether or not these witnesses will take this opportunity to provide testimony.

In addition, I follow up on my letter of October 24 identifying certain deficiencies in the Governor's response to the Committee's document subpoena. (For reference, a copy of that letter is provided as Attachment 1). We requested that the Governor address these deficiencies and produce responsive documents by today. Please let us know if responsive documents will be forthcoming and, if so, when.

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Ross H. Garber, Esq.  
David Byrne, Esq.  
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With best wishes, I am

Sincerely yours,



Jack Sharman

cc: The Honorable Mike Jones, Chairman, Alabama House Judiciary Committee

# **Attachment 1**





## ALABAMA HOUSE OF REPRESENTATIVES

### JUDICIARY COMMITTEE

**JACK SHARMAN**  
SPECIAL COUNSEL  
LIGHTFOOT, FRANKLIN & WHITE LLC  
400 20TH STREET NORTH  
BIRMINGHAM, ALABAMA 35203

October 24, 2016

*Via Electronic and U.S. Mail*

Ross H. Garber, Esq.  
Shipman & Goodwin LLP  
1875 K Street NW, Suite 600  
Washington, DC 20006-1251  
[rgarber@goodwin.com](mailto:rgarber@goodwin.com)

David Byrne, Esq.  
Chief Legal Advisor  
Office of the Governor of Alabama  
State Capitol  
600 Dexter Avenue  
Montgomery, Alabama 36130  
[dbyrne@alabama.gov](mailto:dbyrne@alabama.gov)

**Re: Impeachment Investigation of Governor Robert Bentley**

Gentlemen:

On behalf of the Alabama House Judiciary Committee, we have reviewed and thank you for the documents produced by the Office of the Governor in response to the Committee's Subpoena. We have also reviewed the Governor's objections to the Committee's requests.

Unfortunately, the modest amount of responsive material in the Governor's production, coupled with his sweeping objections, leave us with the inescapable conclusion that the Governor simply intends to continue to refuse to cooperate with the House as it carries out its constitutionally-required duties.

This non-cooperation is surprising and unfortunate. Governor Bentley assured the people of Alabama that he would cooperate with the Committee: "It is my intention to fully work with the House Judiciary Committee during this procedure . . . I will be cooperative throughout this

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process . . . .”<sup>1</sup> Mr. Garber also assured cooperation: “I look forward to working collaboratively with the members and staff of the House Judiciary Committee.”<sup>2</sup>

In expectation of the Governor’s promised cooperation, the Committee has extended every courtesy to the Office of the Governor. Two weeks after the Governor’s first deadline to produce documents had passed, we provided, at your request, a list of subject matter topics to help you refine your search for responsive documents. We also asked that the Governor identify specific responses and objections to individual document requests, so that we could narrow our differences. The Governor is apparently unwilling or unable to do so.

Moreover, the Committee extended to you both the courtesy of hearing you at length at the September 27, 2016 hearing. One of your principal concerns was that the Governor’s counsel be allowed to cross-examine witnesses at subsequent hearings before the Committee. The Committee listened to and approved the Governor’s request. It is now clear that, for all of the Governor’s complaints of being denied due process by the Committee, the Governor refuses to participate in any process except on terms to his liking.

Instead of cooperating and proceeding in good faith, the Governor has responded with continuing public broadsides against the legitimacy of this constitutional process, wholesale objections encompassing every one of the Committee’s requests, and coordinated document dumps of self-serving or non-responsive material meant to create the illusion of cooperation.

Although the Committee has received 12,448 pages of miscellaneous documents from the Office of the Governor, that amount appears to be less than half of the 30,000 pages of material that the Governor provided to the Alabama Ethics Commission in apparently related matters.

The Governor also has provided no written response indicating which of the Committee’s requests the Governor has (and has not) responded to. Instead, he submitted another “motion” restating his defiance of the Committee’s authority and objecting wholesale to every item of the Committee’s Subpoena. Interestingly, the only request to which the Governor has actually confirmed a response is the request related to the termination of Spencer Collier. The production of the “Case Report” from ALEA’s Integrity Unit—which was not completed until five months after former Secretary Collier’s termination—was self-serving. Because the Governor has given the Committee no way of knowing whether and to what extent he has withheld responsive documents to the remaining 45 requests, the Committee is left to assume that the Governor has produced only select documents that suit his political purposes. This

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<sup>1</sup> Press Release, The Office of Alabama Governor, *The Office of the Governor Retains Experienced Attorney to Assist Legal Team* (July 15, 2016).

<sup>2</sup> *Ibid.*

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selectivity in production is even more troubling after the Attorney General's recent announcement of the outcome of a grand jury's investigation of former Secretary Collier.<sup>3</sup>

We urge the Governor to change these tactics and to cooperate with the Committee as he has promised. To that end, although it is nearly impossible to provide a comprehensive list of all deficiencies, I have identified the following items for which the Committee requires additional production or clarification from the Governor:

\* \* \* \* \*

As best we can tell from our review, the Governor has produced no documents that are even arguably responsive to the following requests of the Subpoena: 1, 2, 3, 4, 5, 9, 10, 20, 23, 25, 26, 27, 28, 29, 30, 31, 32, 35, 39, 40.

- **Electronic Calendar.** Item 4, for example, is a request for the Governor's calendar in native electronic format. The Governor has ignored this request, and has produced instead photocopies of scanned calendar documents that were printed days after the date reflected on them. The Office of the Governor has the requested documents, and must produce them.
- **NDA's.** Similarly, Item 20 is a request for documents related to nondisclosure agreements that members of the Governor's staff were asked to sign. The existence of this agreement, and of the requirement that staff members sign it, is a well-known fact. The Office of the Governor has documents responsive to this request, and has a duty to produce them.
- **Stabler and Lewis Emails.** Items 39 and 40 call for communications including emails to or from Stan Stabler and Ray Lewis—two key witnesses in the Committee's investigation. The Office of the Governor has these documents and must produce them.

**If the Governor Does Not Possess a Document, Please Just Say So.** The Governor objects frequently in his Motion that various items "see[k] the production of information that is outside the possession, custody or control of the Office of the Governor." If in fact the Office of the Governor is not in possession of any documents responsive to any of the items of the Subpoena, please state so directly. Otherwise, please (1) provide the Committee with a reasonable response in writing to each of these requests and (2) produce any responsive documents that are in the possession, custody or control of the Office of the Governor.

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<sup>3</sup> See Statement Of Attorney General Luther Strange Regarding Former ALEA Secretary Spencer Collier (October 20, 2016), found at <http://www.ago.state.al.us/News-936>.

**The Governor Cannot Hide Behind Claims of Privilege.** The Governor claims in his Motion that the Subpoena “attempts to subvert the attorney client privilege.” As Mr. Garber has counseled elsewhere, “public sector lawyers should keep in mind that they might someday be subpoenaed to testify about the substance of conversations with their clients.”<sup>4</sup> Looking to the federal courts for guidance, you will recall that, in disputes arising from the Whitewater matter involving President and Mrs. Clinton, government lawyers were obliged to produce what might otherwise be reasonably construed as material protected by the attorney-client privilege. *See In re Lindsey*, 158 F.3d 1263 (D.C.), *cert. denied*, 525 U.S. 996 (1998); *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910 (8th Cir.), *cert. denied*, 521 U.S. 1105 (1997).

Leaving aside for the moment the question of the applicability of that privilege as asserted by a Governor against a co-equal branch of State government in an impeachment investigation, the Governor certainly must produce all *non-privileged* documents responsive to the Committee’s request. As you know, it is the burden of the subpoenaed party to support specific claims of privilege by describing the nature of the documents withheld.<sup>5</sup>

In addition, the lessons of Whitewater also warn of the dangers of mixing the chief executive’s personal lawyers with counsel to his office. As you may recall, for example, a meeting on November 5, 1993, was held at the law offices of Williams & Connolly, which had recently been retained by the President and Mrs. Clinton to act as their personal counsel for Whitewater-related matters. Seven persons attended the meeting, three lawyers in private practice and four White House officials.<sup>6</sup> Eventually, the notes of the Associate Counsel to the President were produced to the Senate Committee.

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<sup>4</sup> *See, e.g.*, Ross H. Garber and Shana-Tara Regon, *A Privileged Relationship? Public Lawyers, Take Heed*, ABA Public Lawyer, Number 2, Volume 13 (Summer 2005), found at <http://www.shipmangoodwin.com/a-privileged-relationship-public-lawyers-take-heed>.

<sup>5</sup> *See, e.g.*, Ala. R. Civ. P. 45(d)(2) (“When information subject to a subpoena is withheld on a claim that it is privileged . . . , the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.”).

<sup>6</sup> The attendees were David Kendall, a partner at the Washington, D.C. law firm of Williams & Connolly and private counsel to the President and Mrs. Clinton on the Whitewater matter; Stephen Engstrom, a partner at the Little Rock law firm of Wilson, Engstrom, Corum, Dudley & Coulter, who also had been retained by the President and Mrs. Clinton to provide personal legal advice on the Whitewater matter; James Lyons, a lawyer in private practice in Colorado, who had provided legal advice to then-Governor and Mrs. Clinton on the Whitewater matter during the 1992 presidential campaign; then-Counsel to the President Bernard Nussbaum; then-Associate Counsel to the President William Kennedy, who while a partner at the Rose Law Firm provided some legal services to the Clintons in 1990-92 in connection with their investment in Whitewater; then-Associate Counsel to the President Neil Eggleston; and then-Director of White House Personnel Bruce Lindsey. *See generally* S. Rept. 104-191, Refusal Of William H. Kennedy, III, To Produce Notes Subpoenaed By The Special Committee To Investigate Whitewater Development Corporation And Related Matters, 104th Congress (1995-1996), found at <https://www.congress.gov/104/crpt/srpt191/CRPT-104srpt191.pdf>.



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David Byrne, Esq.  
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Given the fact that lawyers have advised the Governor personally and the Office of the Governor upon this investigation, and the fact that it is alleged that lawyers were involved in significant matters (such as the termination of Secretary Collier), the Committee has a duty to inspect any claim of privilege. Please provide the Committee with a detailed log of all documents withheld based upon a claim of attorney client privilege, and produce all other responsive documents.

**Blacked-Out Pages Belie the Governor's Claims of Transparency.** Governor Bentley has heavily "redacted" --- blacked out --- large portions of key documents without providing any justification for doing so.

For example, the document labeled OTG00188-00200 is a "Timeline Re: Spencer Collier" that was authored by Rebekah Mason and edited by Governor Bentley (as evidenced by the email labeled OTG005004). This document is heavily and arbitrarily blacked out. Likewise, the documents labeled OTG009349 *et seq.*, which appear to contain text messages between Governor Bentley and persons related to the formation the Alabama Council for Excellent Government ("ACEGov"), are almost entirely blacked out. The same is true with certain email communications with the press regarding Rebekah Mason's compensation as a member of the Governor's Staff (OTG002139-002142) and between the press and Cooper Shattuck concerning the individuals and entities paid by the ACEGov (OTG005290-005291). (Mr. Shattuck is the Governor's former Chief Legal Adviser and is the current General Counsel of the University of Alabama System). Similarly, a text message from Governor Bentley to Rebekah Mason at OTG009339 is redacted in its entirety. Please provide the Committee with a detailed log of all redactions made to documents produced, and the justifications therefor.

**Cell Phones, State Phones and "Burner" Phones.** Governor Bentley has provided no documents responsive to the Committee's request for a list of his cell phones or mobile devices (Item 29). He objects in the Motion that the request "seeks information outside of the possession, custody or control of the Office of the Governor." If you are drawing a distinction between an "Office of the Governor" cell or burner phone and a "Robert J. Bentley" cell or burner phone, please so state. In any event, the document labeled OTG009338 is a cover page for a selection of text messages from a phone that is referred to as "Governor state phone." The Governor's "state phone" certainly is in the possession, custody or control of the Office of the Governor. If it is not, please explain.

**Mrs. Mason Had A State Email Account, and Responsive Email Should Be Produced.** Governor Bentley has similarly claimed that the Committee's request for a copy of Rebekah Mason's email account (Item 28) "seeks production of information that is outside of the possession, custody or control of the Office of the Governor." However, the documents he has produced to the Committee indicate that Rebekah Mason was in fact assigned a State email account. The document labeled OTG012362 shows a February 2016 email from Rebekah Mason to a staff member in which she requests:

Can we please list my name on the Governor's website under Staff? Please list me under the Executive

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Office similar to how we list Zach. Please list me as Rebekah Mason Senior Political Advisor. If an email address is needed, please use:  
rebekah.mason@governor.alabama.gov.

Rebekah Mason's State email account certainly is in the possession, custody or control of the Office of the Governor. Please produce responsive documents.

**The Governor's Email Accounts Should Be Identified, and Responsive Email Produced.** The Committee requested information related to the email accounts used by Governor Bentley (Item 26). Again, Governor Bentley notes in his Motion that the request "seeks information outside the possession, custody or control of the Office of the Governor." He continues: "As has been reported in the press, the Governor does not maintain a State of Alabama email address."

The Governor's statement appears to be inconsistent with emails that were included in the documents produced. Those emails show that Governor Bentley routinely used his comcast.net email address to send and receive official State communications, including emails marked "Law Enforcement Sensitive." This portion of the investigation is relevant to the Committee's inquiry. As you know from the recent FBI investigation of former Secretary of State Clinton, the use by senior executive branch officials of private or undisclosed email accounts for official or sensitive information can raise significant concerns.<sup>7</sup> Please produce all documents withheld on the basis of this objection.

**Visitor Logs to the Governor's Mansion Are Searchable.** The Committee requested information related to Rebekah Mason's visits to the Governor's Mansion or to Wynfield Estates (Items 9, 10). Governor Bentley objected that this request is "overly broad, unduly burdensome and harassing." However, a simple electronic search of the access logs for those facilities would easily yield the requested documents and information. Please provide the Committee with a reasonable response in writing to this request.

**Mrs. Mason's Compensation Information Should Be Produced.** The Committee requested documents related to compensation paid to Rebekah Mason or RCM Communications, Inc. (Item 19). The Governor provided invoices from RCM Communications, Inc. to Bentley for Governor, Inc. for only three months: December 2015, January 2016, and March 2016. Public records show that Bentley for Governor, Inc. paid Mrs. Mason throughout 2015, after the campaign was over. In addition, Mrs. Mason has stated publicly that she was paid by ACEGov in 2015.<sup>8</sup> The House and the Committee, not to mention the citizens of Alabama, have a right to

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<sup>7</sup> See Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal E-Mail System (July 5, 2016), found at <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>.

<sup>8</sup> See Tim Lockette, *Mason claims getting \$15,000 from governor's nonprofit* (March 25, 2016), found at [http://www.annistonstar.com/news/mason-claims-getting-from-governor-s-nonprofit/article\\_70faab00-f2d2-11e5-bb30-abe8a84b962c.html](http://www.annistonstar.com/news/mason-claims-getting-from-governor-s-nonprofit/article_70faab00-f2d2-11e5-bb30-abe8a84b962c.html).

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know who was paying the Governor's senior political advisor. Please provide (1) the complete set of invoices for the period of time requested and (2) all other documents related to Mrs. Mason's compensation.

**Unedited State Aircraft Records Should Be Produced.** The Committee requested documents related to the use of State aircraft (Item 7). Governor Bentley has produced the publicly available "State Aircraft Usage" documents for January 2015 through August 2016. However, he has also produced a chain of internal emails labeled OTG005615-005620 that indicates that members of the Governor's staff routinely review and amend "flight log records" before they are "post[ed] to the Governor's website." In fact the documents labeled OTG005667-005672 show after-the-fact red-line edits that were made to the State Aircraft Usage document for the Fourth Quarter of 2015 before it was made public. Such documents and communications are clearly comprehended by the Committee's request. Please respond fully to this request.

\* \* \* \* \*

Finally, you have stated that the Office of the Governor has preserved many gigabytes of emails and electronic data and information. To facilitate reviewing this information for responsiveness to our requests, we propose searches with the following terms and limited to January 1, 2014 to present: ACEGov, National Governors Association or NGA, Republican Governors Association or RGA, Michael Echols, Ray Lewis, Franklin Haney, Heather Hannah, Cooper Shattuck, Gulf State Park, RCM Communications or RCM, and JRM Enterprises or JRM.

Please provide the Office of the Governor's complete document production before November 1, 2016. The Committee continues to anticipate Governor Bentley's full cooperation in this constitutional process.

With best wishes, I am

Sincerely yours,



Jack Sharman

cc: The Honorable Mike Jones, Chairman, Alabama House Judiciary Committee



OFFICE OF THE GOVERNOR

ROBERT BENTLEY  
GOVERNOR



STATE CAPITOL  
MONTGOMERY, ALABAMA 36130

(334) 242-7100  
FAX: (334) 242-3282

## STATE OF ALABAMA

November 1, 2016

COMMITTEE  
EXHIBIT  
6-CC

Jack Sharman, Esquire  
Lightfoot, Franklin & White LLC  
400 20th Street North  
Birmingham, Alabama 35203

Re: Impeachment of Robert Bentley, Governor of Alabama

Dear Jack:

First, we are surprised by the tone of your letter. The Executive Branch of government, particularly the Office of the Governor, has been respectful of the House's impeachment authority and cooperative with the Judiciary Committee's activities. This includes voluntarily providing over twelve thousand pages of documents and offering to provide additional material. We cannot, however, ignore that you have repeatedly violated the Governor's fundamental due process rights, which are guaranteed by the Constitution and House Rule 79.1 or that you have issued subpoenas when the Committee lacks authority to do so. While we will continue to cooperate with the Committee's lawful exercise of its authority, we will also continue to respectfully provide the Committee with our research on significant legal issues and insist that the Committee follow the law. We hope that the members of the Committee appreciate the information we provide and recognize that the Governor and the Executive Branch of government have a constitutional responsibility to ask the Legislative Branch to comport with the Constitution, statutes and other legal requirements.

In any event, it remains our hope to find ways to work with the Judiciary Committee constructively in connection with the Committee's efforts to discharge its duties pursuant to the Articles of Impeachment and House Rule 79.1. It is in that spirit that we offer the following in response to the specific items you raise in your letter.

1. Electronic Calendar

As you note, the Governor's calendar has been produced to you. We do not understand, therefore, what need you have for the same calendar in electronic

format or *all* metadata associated with that calendar. Among other things, an electronic version of the Governor's calendar would, as I am sure you understand, include many personal details (such as telephone numbers) that have no bearing on the Committee's investigation and could not readily be redacted from a document produced in native format. Moreover, as indicated in our objection to the "Subpoena," you have articulated no basis for any claim that metadata associated with the Governor's calendar would have any bearing on the impeachment investigation.

If you would like to discuss specific calendar entries or timeframes for which you claim to require additional information and the basis for any such claim, we would be pleased to discuss the production of such additional information with you.

2. NDA's

While we do not agree that they have any relevance to the Committee's inquiry, and without waiver of any of the Governor's Office's objections to the request in the "Subpoena," in the spirit of cooperation, without waiver of the Office of the Governor's Objections we will produce NDA's from the Governor's current term.

3. All Stabler and Lewis Emails

You seek *all* communications between the Office of the Governor and Stan Stabler, who is currently the head of the Alabama Law Enforcement Agency and had been a member of the Governor's security detail. You also seek *all* communications between the Office of the Governor and Raymond Lewis, the former head of the Governor's security detail.

These requests continue to be grossly overbroad and seem to have no discernible relation to the charges in the Articles of Impeachment. Moreover, given the custodians at issue, the production of *all* such communications, without any meaningful limitation in subject-matter, could very likely disclose sensitive information that could compromise law enforcement activities, particularly with respect to communications with Secretary Stabler. With respect to both Messrs. Stabler and Lewis, we are concerned that disclosing all communications would reveal sensitive information related to means and measures taken by the Governor's security detail to protect the Governor's safety.

We would be pleased to discuss with you reasonable search terms that would limit the subject-matter of the materials sought in a way that will provide you with information relevant to the Articles of Impeachment while addressing the safety and security concerns discussed above.

#### 4. Privileged Communications

We are confused by your discussion of the attorney-client privilege as it seems that you are taking the position that the privilege does not apply in this legislative investigation. Please let us know immediately if this is the case. To be sure, we know of no authority for such a proposition.<sup>1</sup>

#### 5. Redacted information

We disagree with your characterization of the redactions to the production to date. Only a very few documents of the over 12,000 pages have been redacted in a good faith effort to protect information immune from disclosure pursuant to the attorney-client privilege and sensitive personal information (social security numbers, personal phone number and the like). As to the so-called “key” documents to which you refer -- a “timeline” produced at OTG00188-00200, this document was neither heavily nor arbitrary redacted. Rather it was selectively redacted to remove only privileged and confidential information from a meeting with counsel. As with all of these issues, if you have any questions or would like to discuss this matter further, we would be pleased to do so.

#### 6. Phones

We are aware of no list of all official, home, and personal phone numbers in possession of the Governor’s Office. Please let us know if you do not have the Governor’s official phone number.

#### 7. Rebekah Mason’s State Email Account

We have identified and preserved information contained on the official government server reflecting communications with Ms. Mason’s government email account. With respect to this account, without waiver of the Office of the Governor’s objections, we will run the search terms you identify in your letter against any emails in that account from the Governor’s current term and produce reasonably relevant and responsive documents. With respect to any personal email account maintained by Ms. Mason, the Governor’s Office does not maintain this information. It has produced such emails that it had in its possession, custody or control from the Governor’s current term.

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<sup>1</sup> The cases you cite are non-binding authority from federal courts outside this Circuit that, by their terms, are limited to federal criminal investigations. And, even in that context, there is contrary authority. *In re Grand Jury Investigation*, 399 F.3d 527 (2d Cir. 2005). In any event, as a lawyer who is now representing a public agency (the Judiciary Committee), we would be surprised if you took the position on behalf of your client that there is no attorney-client privilege between a public agency and its government lawyers.

8. Governor Bentley's Emails

Governor Bentley's personal email account is not within the possession, custody or control of the Office of the Governor. Emails from the Governor's current term that were in the possession, custody or control of the Office of the Governor have been voluntarily produced to you already. In a good faith effort to be cooperative with the Committee, we will also ask the Governor to run the search terms you identified against his personal email account.

9. Visitor Logs to the Governor's Mansion

Your hyperbole concerning the "simple electronic search that would easily yield the requested documents and information" is misplaced. These documents are not in the possession of the Office of the Governor.

10. Ms. Mason's Compensation Information

The Office of the Governor is not the entity that would have compensated Ms. Mason whether she was a state employee or not. As your letter recognizes, your requests should be directed to Bentley for Governor, Inc. and ACEGov.

11. Unedited State Aircraft Records

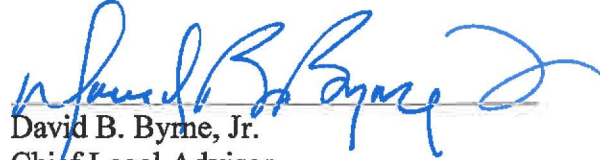
We are baffled as to what you are requesting here. The final aircraft logs, which are publicly available, were voluntarily produced to you already, as was correspondence concerning the routine review and drafting of those logs. It is not clear to us what basis you have for claiming that the response to this request is incomplete. We will, however, look into whether there are any additional documents from the Governor's current term that can be found after a reasonable investigation. If there are, they will be produced, subject to and without waiver of the Office of the Governor's objections.

12. Email Searches

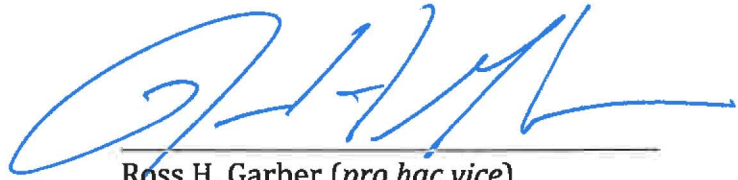
As we have previously indicated, we have preserved an enormous amount of data from the Governor's Office server and have been awaiting any indication from you of how would propose that we approach searching that data in such a way as to minimize the expense to the taxpayers of Alabama. You have, just now in your October 24, 2016 letter, proposed possible search terms. You have not, however, indicated what custodians you believe would be in possession of relevant information. If we can identify a manageable number of custodians we can run the searches you propose, keeping in mind that such email searches likely necessitate the services of an outside vendor, causing significant expense. We therefore request that you propose a list of custodians whom you would like us to search.

We are hopeful that we can go forward in a more collegial and cooperative way than is expressed in your letter. We look forward to working with you to find a cost effective and reasonable way to get you the information that you request.

Sincerely,



David B. Byrne, Jr.  
Chief Legal Advisor  
Office of the Governor  
Alabama State Capitol, Room NB-05  
600 Dexter Avenue  
Montgomery, Alabama 36130  
334-242-7120  
[David.Byrne@governor.alabama.gov](mailto:David.Byrne@governor.alabama.gov)



Ross H. Garber (*pro hac vice*)  
Shipman & Goodwin LLP  
1875 K. St, NW  
Washington, D.C. 20006  
202-469-7798  
[rgarber@goodwin.com](mailto:rgarber@goodwin.com)



OFFICE OF THE GOVERNOR

ROBERT BENTLEY  
GOVERNOR



STATE CAPITOL  
MONTGOMERY, ALABAMA 36130

(334) 242-7100  
FAX: (334) 242-3282

## STATE OF ALABAMA

November 1, 2016

COMMITTEE  
EXHIBIT  
6-DD

Jack Sharman, Esq.  
Lightfoot, Franklin & White LLC  
400 20<sup>th</sup> Street North  
Birmingham, AL 35203

Re: Impeachment of Robert Bentley, Governor of Alabama

Dear Mr. Sharman:

On October 24, 2016, I received a notice from you, as the Judiciary Committee's Special Counsel, to take my transcribed statement under oath on Tuesday, November 8, 2016, beginning at 9:00 a.m. at your office.

As you are aware, I have served as the Chief Legal Counsel for the Office of the Governor since January 14, 2013. I have filed an appearance in the impeachment proceedings against Robert Bentley, Governor of Alabama, as counsel of record on behalf of the Office of the Governor.

While the Alabama Rules of Civil Procedure and the Federal Rules of Civil Procedure do not explicitly prohibit the deposition of opposing counsel, federal courts have repeatedly emphasized that the practice is strongly disfavored. *Nguyen v. Excel Corp.*, 197 F. 3d 200, 209 (5<sup>th</sup> Cir. 1999) ("Depositions of opposing counsel are disfavored generally and should be permitted in only limited circumstances.")

A sworn statement under oath does not carry the protections available under the Alabama and Federal Rules of Civil Procedure, and provides you with a unique opportunity for harassment. It disrupts opposing counsel's preparation for the impeachment hearing before the Committee, and could ultimately lead to my disqualification if I am called as a trial witness.

In *Shelton v. Am. Motors Corp.*, 805 F. 2d 1323 (8<sup>th</sup> Cir. 1986), the Eighth Circuit held that a deposition of opposing counsel should be permitted only where the party seeking to take the deposition can establish that: (1) no other means exist to obtain the information; (2) the information sought is relevant and non-privileged;

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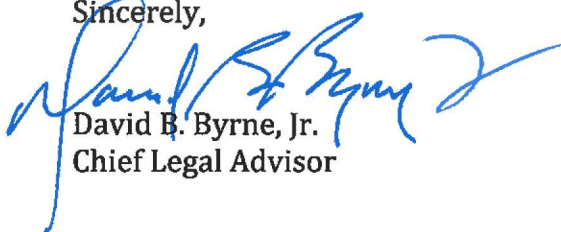
and (3) the information is crucial to the preparation of the case. *Shelton*, 805 F. 2d at 1327.

The Second Circuit is the only federal circuit to have explicitly adopted an alternative test. Under this test, courts balance the following factors: (1) the need to depose the lawyer; (2) the lawyer's role in connection with the matter on which discovery is sought and pending litigation; (3) the risk of encountering privilege and work-product related issues; and (4) the extent of discovery already conducted. *See, In Re Subpoena to Dennis Friedman*, 250 F. 3d 65 (2<sup>nd</sup> Cir. 2003). The requirements are embodied in Rule 26(b)(4) of the Alabama Rules of Civil Procedure.

With regard to your notice to take my transcribed statement under oath, there has been no attempt at limiting the nature of an inquiry in light of my intention to assert attorney-client privilege, deliberative privilege, and work product doctrine to questions that might be posed. Moreover, your notice fails to address the tests enunciated by the Eighth Circuit, Second Circuit, or the Alabama Rules of Civil Procedure.

For these reasons, I respectfully decline to appear in response to your invitation.

Sincerely,



David B. Byrne, Jr.  
Chief Legal Advisor

DBBjr/pac  
cc: Ross Garber  
Jason Paulk



OFFICE OF THE GOVERNOR

ROBERT BENTLEY  
GOVERNOR



STATE CAPITOL  
MONTGOMERY, ALABAMA 36130

(334) 242-7100  
FAX: (334) 242-3282

## STATE OF ALABAMA

November 1, 2016

Jack Sharman, Esquire  
Lightfoot, Franklin & White LLC  
400 20<sup>th</sup> Street North  
Birmingham, Alabama 35203

Re: Impeachment of Robert Bentley, Governor of Alabama

Dear Jack:

We are in receipt of your October 24, 2016 Notices of Transcribed Statement Under Oath directed to Governor Bentley, Attorney Byrne and Messrs. Helton and Lee. The Office of the Governor objects to your request to take secret testimony of the named individuals in the manner contemplated by those Notices and the Amended Judiciary Committee Rules. We therefore respectfully decline your invitation to schedule the requested testimony.

First, the Office of the Governor objects to the prospect of your taking secret testimony, particularly where it is taken under circumstances in which you continue to deprive the Governor of the due process rights guaranteed him under Constitution, as recognized by the Supreme Court, House Rule 79.1 and the Judiciary Committee itself. (*See Attachment A, which is the legal opinion of the Judiciary Committee on these issues*).

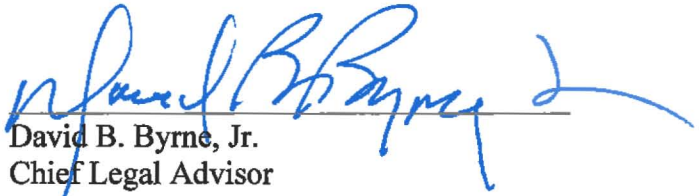
Second, and respectfully, the House of Representatives has charged the members of the Judiciary Committee -- not you as a private lawyer -- with conducting the impeachment investigation. That investigation necessarily includes weighing the credibility of witnesses. Accordingly, the Office of the Governor objects to testimony being taken outside of the presence of the Judiciary Committee.

Finally, with respect to your request that the Governor's Chief Legal Advisor testify, such testimony would be covered by the attorney-client privilege, and the Office of the Governor objects on that basis.

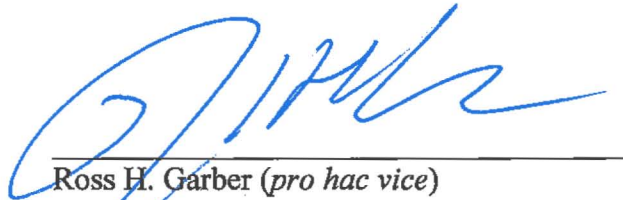
The Office of the Governor reiterates its pledge to cooperate with the legitimate and important work of the Judiciary Committee. That you persist in refusing to conduct your work in a lawful and fair manner is inexplicable. I urge you to reconsider your tactics.

COMMITTEE  
EXHIBIT  
6-EE

I invite you to call to discuss this matter further.



David B. Byrne, Jr.  
Chief Legal Advisor  
Office of the Governor  
Alabama State Capitol, Room NB-05  
600 Dexter Avenue  
Montgomery, Alabama 36130  
334-242-7120  
[David.Byrne@governor.alabama.gov](mailto:David.Byrne@governor.alabama.gov)



Ross H. Garber (*pro hac vice*)  
Shipman & Goodwin LLP  
1875 K. St, NW  
Washington, D.C. 20006  
202-469-7798  
[rgarber@goodwin.com](mailto:rgarber@goodwin.com)



MAXWELL H. PULLIAM

301 NORTH 19TH STREET  
THE KRESS BUILDING, SUITE 519  
BIRMINGHAM, ALABAMA 35203  
T (205) 314-0620 . F (205) 314-0621  
max@mpulliam.com . www.mpulliam.com

March 15, 2017

VIA HAND DELIVERY  
Wesley B. Gilchrist, Esq.  
Lightfoot, Franklin & White, LLC  
The Clark Building  
400 20<sup>th</sup> Street North  
Birmingham, Alabama 35203-3200

Re: House Judiciary Committee Investigation

Dear Wes:

Thank you for meeting with R.B. Walker and me on Monday afternoon. Enclosed are copies of the documents which you identified from those maintained by Mr. Walker.

Mr. Walker and I appreciate your courtesy during the interview and if you need anything further, please give me a call.

Sincerely,

Maxwell H. Pulliam

MHP/drp

Enclosures

COMMITTEE  
EXHIBIT  
6-FF



## ALABAMA HOUSE OF REPRESENTATIVES

### JUDICIARY COMMITTEE

**JACK SHARMAN**  
SPECIAL COUNSEL  
LIGHTFOOT, FRANKLIN & WHITE LLC  
400 20TH STREET NORTH  
BIRMINGHAM, ALABAMA 35203

March 17, 2017

#### *Via Electronic Mail*

Ross H. Garber, Esq.  
Shipman & Goodwin LLP  
1875 K Street NW, Suite 600  
Washington, DC 20006-1251  
[rgarber@goodwin.com](mailto:rgarber@goodwin.com)

David Byrne, Esq.  
Chief Legal Advisor  
Office of the Governor of Alabama  
State Capitol  
600 Dexter Avenue  
Montgomery, Alabama 36130  
[dbyrne@alabama.gov](mailto:dbyrne@alabama.gov)  
[carrie.mccollum@governor.alabama.gov](mailto:carrie.mccollum@governor.alabama.gov)

**Re: Impeachment Investigation of Governor Robert Bentley**

Gentlemen:

The Judiciary Committee of the House of Representatives has instructed me to resume the impeachment investigation of Governor Robert Bentley.

To do so, and in order to be prepared for any proceedings that the Committee may contemplate, I wish to follow up on the previously served and still-pending document requests, subsequently detailed by "topic" in my letter to you on September 14, 2016. That list of subject matter topics was to aid you in your response; was not exhaustive; and was provided solely for the purpose of facilitating the Office of the Governor's cooperation with the Committee. It does not alter or supplant the document requests.

**COMMITTEE  
EXHIBIT  
6-GG**

Governor Bentley Counsel  
March 17, 2017  
Page 2

The Committee would also appreciate a substantive response to the Committee's document subpoena. (See my letter of October 24, 2016 for a description of deficiencies in the Governor's response).


Finally, on October 24, 2016, we sent notices, pursuant to Rule 6 of the Amended Committee Rules of the House Judiciary Committee for the Impeachment Investigation of Governor Robert Bentley, for the transcribed interviews under oath of the following persons: Governor Robert J. Bentley, David Byrne, Wesley Helton and Zach Lee.

Given that we have been instructed by the Committee to resume the investigation, and that the Committee may need to move forward seasonably, I would appreciate receiving no later than 5:00 p.m. on Wednesday, March 22 any additional documents. (If the Office of the Governor does not intend to produce any further documents to the Committee, please so confirm.) For the same reason, should you wish to reconsider your position concerning transcribed interviews under oath, please let me know right away, because we will need to complete those interviews no later than Wednesday, March 29.

The Committee looks forward to the Governor's full cooperation in its investigation.

With best wishes, I am

Sincerely yours,



Jack Sharman

cc: The Honorable Mike Jones, Chairman, Alabama House Judiciary Committee



OFFICE OF THE GOVERNOR

ROBERT BENTLEY  
GOVERNOR



STATE CAPITOL  
MONTGOMERY, ALABAMA 36130

(334) 242-7100  
FAX: (334) 242-3282

STATE OF ALABAMA

March 20, 2017

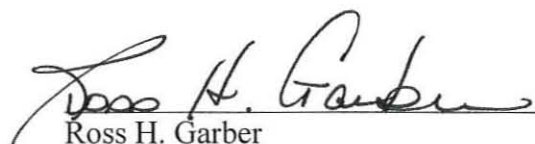
*Via Email*

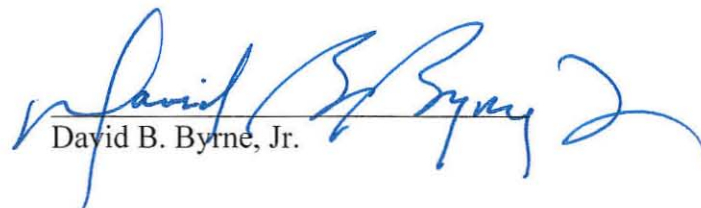
The Honorable Mike Jones, Chair  
House Judiciary Committee  
468 Sutton Road  
Andalusia, Alabama 36420

Dear Rep. Jones:

Please find enclosed a white paper entitled "Due Process in Impeachment Proceedings Before the Alabama House of Representatives" prepared on behalf of the Office of the Governor of Alabama. In the future, we would like to discuss these principles with you as Mr. Sharman's investigative efforts move forward.

Sincerely,

  
Ross H. Garber

  
David B. Byrne, Jr.

cc: Jackson R. Sharman, III  
Othni Lathram

COMMITTEE  
EXHIBIT  
6-HH



**DUE PROCESS IN IMPEACHMENT  
PROCEEDINGS BEFORE THE ALABAMA HOUSE OF REPRESENTATIVES**

March 2017

Prepared on behalf of the Office of the Governor of Alabama

Ross H. Garber (*pro hac vice*)  
Susan S. Murphy (*pro hac vice*)  
Shipman & Goodwin LLP  
1875 K. St, NW  
Washington, D.C. 20006  
202-469-7798  
rgarber@goodwin.com

David B. Byrne, Chief Legal Advisor  
Jason Paulk, Deputy Legal Advisor  
Office of the Governor  
State Capitol  
Montgomery, Alabama 36130

**DUE PROCESS IN IMPEACHMENT  
PROCEEDINGS BEFORE THE ALABAMA HOUSE OF REPRESENTATIVES**

**March 2017**

**EXECUTIVE SUMMARY**

Questions have arisen about whether the Alabama House of Representatives and the House Judiciary Committee must provide the Governor with due process in connection with its proceedings. It has been suggested that the House need not provide the Governor with due process, and that instead he is entitled to due process only in proceedings before the Senate. Putting aside issues of fundamental fairness, there is simply no legal or historical basis for the House to conduct impeachment proceedings that deprive the Governor of due process.

The full House seemed to recognize as much when it passed Rule 79.1, which authorized the Judiciary Committee to conduct an impeachment inquiry. In this Rule, the House specifically required the Judiciary Committee to “ensure due process.”

There was good reason for this mandate. As this paper explains:

- Well-established principles of constitutional law recognize that because the Judiciary Committee’s role has been designed to be “accusatory” and “adjudicatory,” it must meet strict standards of due process. The role of the full House of Representatives in impeachments is certainly “adjudicatory,” and it plainly must provide the Governor with due process.
- The Alabama Supreme Court has held that officials subject to impeachment must be provided the highest levels of due process. The Supreme Court has said this clearly, repeatedly and recently. To be sure, these holdings have been in the context of impeachment of lower-level state officers pursuant to Section 174 of the Constitution, as opposed to an impeachment of a Governor pursuant to Section 173. But Alabama has never impeached a Governor, and there is no rational basis for believing the Supreme Court would afford the state’s Governor less due process than these other officials. It should be noted that a federal court has ruled that Alabama legislators may not be expelled without due process.
- The elements of due process would not be onerous for the Judiciary Committee to provide the Governor. They include notice of the potential charges against him; a procedure that gives him adequate time and opportunity to prepare a case (for example, by providing him with exhibits and a list of witnesses); disclosure of exculpatory information; the right to hear and cross examine all witnesses; the application of reasonable Rules of Evidence; the presumption of innocence; and, ultimately, the consideration of all of the evidence by the full House of Representatives.

- The courts have jurisdiction to mandate that officials (including the Governor) be afforded due process in impeachment proceedings and to enjoin proceedings that do not comport with constitutional standards.

## **I. THE ROLE OF THE ALABAMA HOUSE OF REPRESENTATIVES IN IMPEACHMENT PROCEEDINGS REQUIRES THAT IT AFFORD THE GOVERNOR DUE PROCESS OF LAW**

### **A. The Adjudicatory and Accusatory Nature of the Proceedings Before the House Requires Due Process Protections for Governor Bentley.**

Two United States Supreme Court cases established the framework for determining when due process is required - *Hannah v. Larche* and *Jenkins v. McKeithen*.<sup>1</sup> Whether due process is necessary in a particular proceeding depends on whether the proceeding is investigatory or adjudicatory and, if the proceeding is investigatory, whether it is accusatory.<sup>2</sup> Thus, it is necessary at the outset of any consideration of due process to determine both the nature and function of the proceedings that will take place.<sup>3</sup>

*Hannah* establishes that, in determining whether a proceeding is solely investigatory rather than adjudicatory, the Court should consider if its function “is purely investigative and fact-finding.”<sup>4</sup> The relevant question is whether the tribunal can or does “take any affirmative action which will affect an individual’s legal rights.”<sup>5</sup> If so, the proceedings are adjudicatory and must provide due process.<sup>6</sup>

In *Jenkins* the Supreme Court held that even purely investigatory proceedings require due process of law where they are accusatory in nature.<sup>7</sup> A purely investigatory but accusatory proceeding may require due process whether as a result of the tribunal’s rules or as a result of the practical effect of its proceedings.<sup>8</sup> Where a tribunal is “exercising an accusatory function,” where its duty is to find the accused responsible for some violation of law and to advertise that finding or “to serve as part of the process of criminal prosecution, the rigorous protections relevant to criminal prosecutions might well be the starting point for assessing” the procedural protections necessary before that tribunal.<sup>9</sup>

In impeachment proceedings pursuant to Article VII, § 174 of the Alabama Constitution, the House of Representatives’ function is both adjudicatory and accusatory.

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<sup>1</sup> *Hannah v. Larche*, 363 U.S. 420, 442 (1960); *Jenkins v. McKeithen*, 395 U.S. 411 (1969); see also *Hunt v. Anderson*, 794 F. Supp. 1557, 1565 (M.D. Ala.), *aff’d*, 976 F.2d 744 (11th Cir. 1992).

<sup>2</sup> *Hannah*, 363 U.S. at 440; *Jenkins*, 395 U.S. at 427.

<sup>3</sup> *Hannah*, 363 U.S. at 440.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 440-41.

<sup>7</sup> *Jenkins*, 395 U.S. at 427.

<sup>8</sup> *Hunt*, 794 F. Supp. at 1565 (what would otherwise be a purely investigatory matter was violative of due process where, in practice, the proceedings were rendered accusatory by public release of probable cause findings and public statements were made by the executive director providing his opinion of the accused’s guilt) .

<sup>9</sup> *Hannah*, 363 U.S. at 488; *Jenkins*, 395 U.S. at 427; *Hunt*, 794 F. Supp. at 1565.

**B. The House of Representative and Its Judiciary Committee Function as Adjudicatory Bodies in Impeachment Proceedings under Article VII, § 173 of the Alabama Constitution.**

The Alabama House of Representatives is the governmental body constitutionally authorized to consider and prefer articles of impeachment against a sitting Governor. Pursuant to Article VII, § 173 of the Alabama Constitution:

The governor ... may be removed from office for [certain enumerated causes] by the senate sitting as a court of impeachment, under oath or affirmation, on articles or charges preferred by the house of representatives.... If at any time when the legislature is not in session, a majority of all the members elected to the house of representatives shall certify in writing to the secretary of state their desire to meet to consider the impeachment of the governor ... it shall be the duty of the secretary of state immediately to notify the speaker of the house, who shall, within ten days after receipt of such notice, summon the members of the house, by publication in some newspaper published at the capitol, to assemble at the capitol on a day to be fixed by the speaker, not later than fifteen days after the receipt of the notice to him from the secretary of state, to consider the impeachment of the governor .... If the house of representatives prefer articles of impeachment, the speaker of the house shall forthwith notify the lieutenant-governor ... who shall summon, in the manner herein above provided for, the members of the senate to assemble at the capitol on a day to be named in said summons, not later than ten days after receipt of the notice from the speaker of the house, for the purpose of organizing as a court of impeachment. The senate, when thus organized, shall hear and try such articles of impeachment against the governor, lieutenant-governor, or other officer administering the office of governor, as may be preferred by the house of representatives.

The impeachment of a Governor by the House of Representatives does not simply refer the matter to the Senate for a full trial, however. Article V, § 127 of the Alabama Constitution provides that “[i]n case of the impeachment of the governor, ... the power and authority of the office shall, until the governor is acquitted, ... devolve in the order herein named, upon the lieutenant governor, president pro tem. of the senate, speaker of the house of representatives, attorney-general, state auditor, secretary of state, and state treasurer.” Accordingly, impeachment by the House would itself remove a sitting governor from office. Because the decision of the House of Representatives would “affect an individual’s legal rights,”<sup>10</sup> its function is adjudicatory, not merely investigatory.

The adjudicatory nature of the House proceedings and concomitant need for due process was recognized both by the full House and by the House Judiciary Committee to which the House delegated the role of investigating and rendering a recommendation on impeachment.

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<sup>10</sup> *Hannah*, 363 U.S. at 488.

House Rule 79.1, which was passed in reaction to the first impeachment resolution concerning Governor Robert Bentley, delegated to the House Judiciary Committee the role of investigating and rendering a recommendation concerning the impeachment of Governor Bentley. In delegating those responsibilities to the Committee, the House expressly instructed that the Committee “shall adopt rules to govern the proceedings before it *in order to ensure due process, fundamental fairness*, and a thorough investigation, provided that the rules are not inconsistent with this rule.”<sup>11</sup> In conformance with the dictates of House Rule 79.1, the House Judiciary Committee, in drafting its initial procedural rules, stated:

**While the general thought would be that the House Judiciary Committee’s process would be akin to that of a grand jury, that notion must be modified in light of the adoption of House Rule 79.1’s requirement that the Judiciary Committee process ensure due process. The notion of due process requires that the accused be given an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel.** In the criminal setting, while due process is required before depriving a person of life of liberty, it is not required in the grand jury setting standing alone. Because of this key distinction and in light of Rule 79.1, there are elements to these proposed rules that protect the rights of the Governor that go well beyond what would be allowed in [a] grand jury setting.<sup>12</sup>

Thus, both the full House and the Judiciary Committee recognized the adjudicatory nature of the impeachment proceedings before them and the related need for due process. Even in the Committee’s action of hastily adopting amended Rules to further diminish the Governor’s due process rights, the Committee clearly acknowledged the adjudicatory nature of its work. The amended Rules call the Committee’s work “quasi-judicial” in nature and purport to empower the Committee, either itself or through its Chair or Special Counsel, to hold evidentiary hearings at which witnesses and evidence are presented to the Committee, rule on matters of procedure and evidence, issue and enforce subpoenas, compel the attendance of witnesses and the production of documents and permit or deny participation by the Governor in the proceedings and in defending against the recommendations made by the Committee or its Special Counsel.<sup>13</sup> These functions are not purely investigative and fact-finding under the guidelines set forth in *Hannah*.<sup>14</sup> Through those Amended Rules, the Committee empowers itself to adjudicate matters, holds trial-like hearings, determine liability, issue orders and hold individuals in contempt. The House of Representatives and its Judiciary Committee therefore clearly serve an adjudicatory function in considering and preferring articles of impeachment.<sup>15</sup>

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<sup>11</sup> House Rule 79.1(c) (emphasis added).

<sup>12</sup> Background on House Judiciary Impeachment Rules (emphasis added).

<sup>13</sup> Amended Committee Rules of the House Judiciary Committee for the Impeachment Investigation of Governor Robert Bentley.

<sup>14</sup> *Hannah*, 363 U.S. at 440 (relevant factors include whether the tribunal adjudicates, holds trials or determine anyone’s civil or criminal liability, issues orders, indicts, punishes or imposes any legal sanctions, and whether it makes determinations depriving anyone of his life, liberty, or property).

<sup>15</sup> See also *State ex rel. King v. Morton*, 955 So. 2d 1012, 1022 n.12 (Ala. 2006) (See, J., concurring) (“[T]he legislature is a tribunal for impeachment hearings, a judicial function. § 173 Ala. Const. 1901.”).



Accordingly, due process must be afforded to Governor Bentley in the House impeachment proceedings, including those before the Judiciary Committee.

**C. The Impeachment Proceedings Before the House and Its Judiciary Committee are Accusatory in Nature so as to Require That Due Process be Afforded to Governor Bentley.**

In addition to being adjudicatory in nature, it is clear from the Judiciary Committee's Amended Rules, the nature of the proceedings before the House, and the conduct of the members of the House of Representatives that the House impeachment proceedings are accusatory in nature.

Impeachment proceedings before the House concern whether a Governor should be impeached for one of several grounds enumerated in Article VII, § 173 of the Alabama Constitution. Those grounds are:

willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties, or for any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith ....

It is well settled in Alabama that these charges "all tend, more or less, to reflect upon the dignity of office, to generate disrespect for the law, through the want of worth, moral or intellectual, in the officer, to create dissatisfaction among the people with their government, and to thus seriously cripple the administration of justice in all its departments."<sup>16</sup>

In the case of Governor Bentley, the Articles of Impeachment charge the Governor with willful neglect of duty and corruption in office.<sup>17</sup> The Alabama Supreme Court has made clear that:

[N]eglect of official duties, to be willful, to authorize forfeiture of office, must be characterized by a certain moral or intellectual quality different from that implied in the mere intentional doing, or failing to do, an act. The implication is of a different and more enduring status of the mental or moral faculties. There seems to be required such a determined, perverse, and obstinate neglect of official duty as will authorize and an inference and finding that defendant is so morally or intellectually constituted as to be unfit for the duties of a public office.<sup>18</sup>

Thus, in order for an alleged "willful neglect of duty" to warrant the solemn invocation of impeachment, such willful neglect must be "more than the merely intentional omission of an

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<sup>16</sup> *Nelson v. State*, 182 Ala. 449, 460-61 (1913) (1913); *State ex rel. Brickell v. Martin*, 180 Ala. 458, 471 (1913).

<sup>17</sup> See HR 367.

<sup>18</sup> *Nelson*, 182 Ala. at 461.

act of public duty; that, to justify removal from office, it must appear that the incumbent is morally or mentally unfit ....”<sup>19</sup>

The Supreme Court of Alabama has also very recently undertaken to define the term “corruption in office,” also known as “official misconduct,” as: “[a] public officer’s corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance.”<sup>20</sup> That Court previously held that in order to establish “corruption in office” sufficient to meet the constitutional impeachment standard there must be a showing of “corrupt intent or motive.... That is the act must be done with evil motive, in bad faith or not honestly.”<sup>21</sup>

It simply cannot be the case that public hearings at which Special Counsel argues and the House of Representatives, either itself or through its Judiciary Committee, makes findings on or recommendations concerning whether the Governor is “morally or mentally unfit” to continue in office or that he acted with a “corrupt intent or motive” and engaged in “official misconduct” could be anything less than accusatory.<sup>22</sup> The same is true of any report or written recommendation drafted by the Judiciary Committee or its Special Counsel.

Moreover, the conduct of the House members in introducing the impeachment resolutions against the Governor and throughout the impeachment proceedings demonstrates clearly that the proceedings before the House are, at a minimum, accusatory in nature.

The initial impeachment resolution was announced by Representative Ed Henry, who called a press conference to announce his opinion that, among other things, Governor Bentley “betrayed the trust of the people of Alabama through actions and lies that have caused us to have some doubt about his leadership” and that the “only course of action” is to impeach the Governor.<sup>23</sup> Representative Mike Ball made public his opinion that there is a “crisis of confidence” in Governor Bentley,<sup>24</sup> and Representative Farley has made no secret of his opinions concerning the Governor, claiming that “We’ve bottomed out ... now we’ve got a governor who’s using his office for God knows what” and “It’s totally humiliating”; “This man has got to understand that every day he’s in the governor’s office, this circus will go on.”<sup>25</sup> In fact, Representative Farley has stated outright that “Governor Bentley should not be sitting in the governor’s office” and “He’s the state of Alabama’s spokesperson, our

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<sup>19</sup> *Id.* at 462; *Lewis v. State ex rel. Evans*, 387 So. 2d 795, 803 (Ala. 1980).

<sup>20</sup> *State ex rel. Strange v. Clark*, No. 1151021, 2016 WL 4044903, at \*3 (Ala. July 27, 2016).

<sup>21</sup> *State ex rel. Harlow v. Chandler*, 360 So. 2d 957, 960 (Ala. 1978).

<sup>22</sup> *Jenkins*, 395 U.S. at 427; *Hunt*, 794 F. Supp. at 1566 (publicizing of findings of probable cause of violation and statements made by executive director saying he believed accused was guilty of criminal misconduct made otherwise purely investigatory proceedings violative of due process).

<sup>23</sup> See Lawmakers Start Impeachment Process Against Bentley, Birmingham Business Journal, *available at* [www.bizjournals.com](http://www.bizjournals.com) (April 5, 2016).

<sup>24</sup> See Alabama Governor Refuses to Talk About Sex Scandal, Impeachment, *available at* [www.cnn.com](http://www.cnn.com) (April 7, 2016).

<sup>25</sup> Governor of Alabama, Robert Bentley, Says He Won’t Quit, The New York Times, *available at* [www.nytimes.com](http://www.nytimes.com) (March 30, 2016).

representative .... And this is someone I want negotiating on behalf of the state? I don't think so."<sup>26</sup>

More recently, Representative Corey Harbison and Randall Shedd both posted to their Facebook accounts soliciting comments concerning the Governor. Representative Harbison posted:

I am troubled that the Governor would think that it's okay to fly to Washington, D.C. to President Trump's inauguration with the very people that this controversy has been centered around.

I believe that the U.S. Senate appointment made this state look very bad. Luther Strange would have been a good pick in normal circumstances. We are not facing normal circumstances. I don't know the inner workings of this appointment but from the outside looking in, it appears a deal was cut. This brought negative, national attention.

The Governor's attorney did admit that an expenditure was made from the Governor's campaign account for a person other than the Governors legal fees. Birmingham news reports say that the ethics commission ruled this type expense illegal and a felony.

How do you feel about these things? Do you feel it's in the best interest of the state to let it be or should the legislature step up the process of impeachment?

Representative Shedd stated:

Remember, I have not "bashed" Governor Bentley, and I take no pleasure in his difficulties.

I don't know what happened behind the scenes with the Governor's actions, but at least the appearance of potential problems exist when the Attorney General lets everyone in Alabama know he is investigating Governor Bentley then it looks like he tried to unring the bell and even stopped House impeachment proceedings, and after doing so lands a coveted appointment to the U.S. Senate by the Governor that he stopped impeachment.

If nothing else is wrong, it looks bad.

In all my speeches across my district, I've been saying we have to restore the public's confidence in state government. This action is going in the opposite direction.

Public confidence in state government is at a serious level.<sup>27</sup>

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<sup>26</sup> Alabama Is No Stranger to Sex Scandals. It Just Never Expected One From This Guy, The Washington Post, *available at* [www.washingtonpost.com](http://www.washingtonpost.com) (April 17, 2016).

<sup>27</sup> Shedd, Harbison want to know what you think of Gov. Bentley, *available at* <http://cullmansense.com/articles/2017/02/12/shedd-harbison-want-know-what-you-think-gov-bentley> (February 12, 2017).

A few days later, those Representatives stated in the press that the Governor's appointment of Luther Strange to the United States Senate "looks like quid pro quo" and sought to introduce a third impeachment resolution against the Governor with Representative Harbison stating: "I'm not doing this for me. I don't like the stink," and "The problem is that we have a Judiciary Committee that is on hold due to a request from an attorney general that is no longer in office that was appointed to the United State Senate by the Governor. It just sounds terrible."<sup>28</sup> Representative Harbison went on to opine that:

- "We can't continue on the way we are in this State. We've become a national embarrassment at this point, and we need to do something."
- "I'm not sure we can continue to function as a state under this cloud. No one trusts the Governor on anything."
- "You can't get anything straight from them [the Office of the Governor] and no one trusts them. That's a problem."<sup>29</sup>

The very public criticism of the Governor by House members and public statements concerning members' perception that the Governor is guilty or should be impeached manifestly establish the accusatory nature of the impeachment proceedings before the House.<sup>30</sup>

Because the impeachment proceedings before the House are both adjudicatory and accusatory in nature, due process must be afforded to Governor Bentley in those proceedings.

## **II. ALABAMA SUPREME COURT AUTHORITY REQUIRES DUE PROCESS IN THE IMPEACHMENT PROCEEDINGS BEFORE THE ALABAMA HOUSE OF REPRESENTATIVES**

Clear authority of the Alabama Supreme Court further dictates the need for due process during the impeachment proceedings before the House.

No governor of Alabama has ever been impeached, and the House of Representatives has had no cause to investigate articles of impeachment concerning any governor of Alabama.<sup>31</sup> Prior to 1875, all office holders in Alabama were subject to impeachment under a single constitutional provision, which provided that:

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<sup>28</sup> Some Legislators are considering an alternate route to impeach the Governor, Alabama Political Reporter, *available at* <http://www.alreporter.com/2017/02/15/legislators-considering-alternate-route-impeach-governor/> (February 15, 2017).

<sup>29</sup> House to hear new push for Bentley impeachment, Alabama Political Reporter, *available at*, <http://www.alreporter.com/2017/02/14/house-hear-new-push-bentley-impeachment/> (February 14, 2017).

<sup>30</sup> *Hunt*, 794 F. Supp. at 1566 (otherwise purely investigatory matter rendered accusatory where public comments were made by executive director regarding his belief that the accused was guilty).

<sup>31</sup> The House has only once been called upon to prefer articles of impeachment pursuant to Article VII, § 173, in 1915, relating to charges against the Secretary of State, John Purifoy, for moral turpitude and willful neglect of duty. *See* Report of Judiciary Committee of the House to Which Committee Was Referred the Duty of Investigating on the Matter of the Impeachment of John Purifoy, Secretary of State (August 14, 1915).

All State officers may be impeached for any misdemeanor in office, but judgment shall not extend further than removal from office, and disqualification to hold office, under the authority of this State. The party impeached, whether convicted or not, shall be liable to indictment, trial and judgment, according to law.<sup>32</sup>

Under that framework, all impeachment proceedings were initiated in the House of Representatives. Section 24 of the Alabama Constitution of 1868 provided that:

The House of Representatives shall have the sole power of preferring impeachment. All impeachments shall be tried by the Senate; the Senators, when sitting for that purpose, shall be on oath or affirmation; and no person shall be convicted under an impeachment without the concurrence of two-thirds of the Senators present.<sup>33</sup>

In 1875, the legislature altered this framework to adopt a procedure materially identical to the procedure that applies today, whereby certain enumerated office holders are tried by the Alabama Supreme Court or the Circuit Court while others, including the Governor, are tried by the Senate following impeachment by the House.<sup>34</sup> As a result of this amendment, the Alabama Supreme Court has had before it numerous impeachments of officers of Alabama and, accordingly, has had cause to issue numerous opinions concerning impeachments in Alabama.

In addressing those impeachments, which arose under Article IV, § 174, the Supreme Court has made it patently clear that “[d]ue process of law is essential to impeachment.”<sup>35</sup> It is well settled in Alabama that “impeachment under our Constitution is a criminal prosecution.”<sup>36</sup> Accordingly, impeachments are “governed by rules of law applicable to criminal prosecutions.”<sup>37</sup> “The defendant in such cases is entitled to certain constitutional and statutory protections accorded to defendants in exclusively criminal cases.”<sup>38</sup> Moreover, “[c]onstitutional and statutory provisions in such cases are to receive strict construction in favor of the accused.”<sup>39</sup> The fact that these decisions were issued in connection with impeachments under § 174 does not, perforce, render them inapplicable to impeachment proceedings under § 173.<sup>40</sup> To the contrary, the rationale behind those cases establishes, irrefutably, that the Governor is entitled to due process in any impeachment proceedings before the House.

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<sup>32</sup> Art. IV, § 23, Ala. Const. of 1868.

<sup>33</sup> Art. IV, § 24, Ala. Const. of 1868.

<sup>34</sup> See Art. VII, §§ 1-4, Ala. Const. of 1875; Art. VII, § § 173-176, Ala. Const. of 1901.

<sup>35</sup> *State v. Blake*, 225 Ala. 124, 126 (1932).

<sup>36</sup> *State v. Buckley*, 54 Ala. 599, 620 (1875); see also *Clark*, 2016 WL 4044903, at \*3; *Evans*, 387 So.2d at 800.

<sup>37</sup> *State v. Hasty*, 184 Ala. 121, 124 (1913).

<sup>38</sup> *Evans*, 387 So.2d at 801.

<sup>39</sup> *Parker v. State*, 333 So.2d 806, 808 (Ala. 1976).

<sup>40</sup> See, e.g., *Opinion of the Justices*, 359 So.2d 1155 (1978) (applying *Blake*, 225 Ala. at 124, which concerned impeachments under § 174, and *Stone v. State ex rel. Freeland*, 213 Ala. 130 (1925), which concerned impeachment under § 175, to a question involving impeachments under § 173).

The first Supreme Court case to consider impeachment procedure under the revised constitutional provisions of 1875, *State v. Buckley*, concerned the changes to that procedure and adoption of procedural rules to govern impeachment before the Supreme and Circuit Courts.<sup>41</sup> The *Buckley* Court noted that, regardless of the new distinction in the forums for deciding an impeachment for various office holders “[u]nder . . . article 7, section 4 [of the 1875 Constitution] penalties in cases of impeachment ‘shall not extend beyond removal from office, and disqualification from holding office . . .’” That provision was equally applicable to each of the three impeachment provisions in the 1875 Constitution, whether calling for a trial before the Circuit Court, Supreme Court, or as in the case of an impeachment of a governor, the Senate. Examining federal and English authorities on impeachment, the *Buckley* Court concluded that “[t]he authorities above hold that *removal from office, and disqualification to hold office, are criminal punishment*. But the doctrine has been carried much further.”<sup>42</sup> Examining authority from other states, the Court concluded that because an impeachment results in removal “[w]e feel constrained to hold that impeachment under our Constitution, is a criminal prosecution.”<sup>43</sup> As such, the Court concluded that certain due process rights are guaranteed in an impeachment (such as the right to confrontation) and the regulations adopted concerning the new classes of impeachment were for that reason unconstitutional.<sup>44</sup> Thus, the determinative factor in the *Buckley* Court’s decision that impeachments were criminal in nature and thus deserving of due process protections for the accused was the fact that the impeachment would result in removal -- a result that would adhere today regardless of whether the official was impeached under § 173 or § 174. Removal is the result that the Governor would face in the event that the House of Representatives voted to impeach.

Similarly, the concurrence in *State ex rel. Brickell v. Martin* made no distinction between impeachment proceedings in the legislature and court impeachment proceedings in discussing the need for “a definitely understood, well-defined charge” for impeachment.<sup>45</sup> Judge McClellan concluded that “the Constitution establishes definite, particular causes, for which only those officers may be impeached. There may be a measure of difficulty in arriving at a sound interpretation or construction of what these causes comprehend; but, notwithstanding, this furnishes no basis warrant for an assumption that any one of the causes for impeachment laid down in the Constitution is complete or may be supplemented or modified by recourse to individual judicial judgment, whether in the Senate sitting as a court of impeachment or in the Supreme Court sitting as a court of impeachment. The highest officers of the state, including the executive and members of the Supreme Court, are made, by section 173, subject to removal from office for the causes there set down.”<sup>46</sup>

Relying on *State v. Buckley*, the Supreme Court in *Nelson v. State* reiterated that “Impeachment proceedings are highly penal in their nature, and are governed by the rules of law applicable to criminal causes. Constitutional and statutory provisions on the subject of the

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<sup>41</sup> *Buckley*, 54 Ala. at 599.

<sup>42</sup> *Id.* at 619 (emphasis added).

<sup>43</sup> *Id.* at 620.

<sup>44</sup> *Id.* at 620-21.

<sup>45</sup> *Martin*, 180 Ala. at 460 (McClellan J., concurring).

<sup>46</sup> *Id.* at 460-61.



procedure in such cases are to receive strict construction in favor of the accused.”<sup>47</sup> That Court made no distinction between impeachments under § 173 and those under § 174. Again, it is the ultimate result of the proceedings -- removal of the office holder -- that dictates the need for due process of law.

In *State ex rel. Attorney General v. Hasty*, the Court discussed impeachments generally as follows:

While ours is a popular form of government, under which nearly all officials are elected by the people, yet public office has been ever regarded as a public trust, and our lawmakers, while not contemplating or requiring infallibility, have expected a faithful and intelligent discharge of duty by those who are selected to fill positions of trust and responsibility. This expectation has been emphasized, not only by statutes covering nearly all derelictions and providing a punishment for same, but by our organic law, which provides for the impeachment and removal from office of nearly all public officials for any of the causes therein enumerated, but which said impeachment does not exclude the right of the state to indict and is in its nature cumulative and is intended to relieve the public of an unfit official until the people have another chance to pass upon his qualification. While this extraordinary remedy by impeachment does not prevent an indictment and conviction thereunder, and does not extend beyond removal from office and a disqualification to hold office under the state, during the term for which the officer was elected or appointed, it is, in its nature, highly penal and is governed by rules of law applicable to criminal prosecutions.<sup>48</sup>

Again, the conclusion that an impeachment is penal in nature was based wholly upon the fact that an impeachment results in the removal of a public officer from office, which is true of impeachments under either § 173 and § 174 and is true upon the impeachment of a Governor by the House of Representatives.<sup>49</sup>

Again relying on the result of the impeachment, the Court, in *State v. Blake*, stated, without reference to any distinction between impeachments under § 173 and § 174 that “[i]mpeachment proceedings are for the removal of public officers for malfeasance while lawfully holding the office upon grounds prescribed by section 173 of the Constitution. *Due process of law is essential to impeachment.*”<sup>50</sup>

The Supreme Court, in *Parker v. State* was asked to decide “whether an office holder may be impeached for an offense involving moral turpitude which occurred prior to his assumption of office.”<sup>51</sup> While the petitioner before the Court was the Treasurer of Jefferson County, subject to impeachment under § 174 of the Constitution, the Court drew no distinction

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<sup>47</sup> *Nelson v. State*, 182 Ala. 449 (1913).

<sup>48</sup> *Hasty*, 184 Ala. at 121.

<sup>49</sup> Art. V, § 127, Ala. Const. of 1901; *Hasty*, 184 Ala. at 124-25 (discussing consequence of impeachment under § 176 of Article VII, applicable to either § 173 or § 174).

<sup>50</sup> *Blake*, 225 Ala. at 126 (emphasis added).

<sup>51</sup> *Parker*, 333 So.2d at 806.

between proceedings under that section or section 173. Relying on *State v. Buckley*, the Court found that “[a]n impeachment proceeding under our Constitution is a criminal prosecution.”<sup>52</sup> That court went on to recognize that “[c]onstitutional and statutory provisions in such cases are to receive strict construction.”<sup>53</sup>

The Court in *State ex rel. Mullis v. Matthews* stated that “[a]n impeachment under section 174 of the Constitution is a criminal prosecution.”<sup>54</sup> That court did not, however, say that proceedings under § 173 are not criminal in nature,<sup>55</sup> nor could it, given its reliance on *State v. Buckley*. Similarly, the Court in *State ex rel. Strange v. Clark* noted that “Alabama caselaw is well settled that a proceeding brought pursuant to Art. VII, § 174, Ala. Const. 1901, is criminal in nature.”<sup>56</sup> While the Court did not explicitly address proceedings under § 173,<sup>57</sup> it expressly relied on *State v. Buckley*.<sup>58</sup>

As is clear from the foregoing, the Alabama Supreme Court has determined that impeachment proceedings in Alabama are criminal in nature *because they result in removal of a public official from office*. This occurs whether as a result of a proceeding in the Circuit Court pursuant to § 175 of the Constitution, as a result of a proceeding in the Supreme Court pursuant to § 174 of the Constitution, as a result of a proceeding in the Senate pursuant to § 173 of the Constitution, or as a result of a proceeding in the House of Representatives pursuant to §§ 173 and 127 of the Constitution. The penalty suffered by the accused determines the accused’s rights. And the penalty of removal mandates due process protections. Accordingly, the impeachment proceedings before the House must be conducted in accordance with due process.

### **III. A GOVERNOR FACING IMPEACHMENT IS ENTITLED TO NO LESS DUE PROCESS THAN A STATE LEGISLATOR FACING EXPULSION FROM OFFICE**

Consistent with the authority concerning impeachments discussed above, the Alabama Supreme Court has concluded that the authority to remove a state senator is constrained by due process. In considering the legislature’s power “to expel a member by a two-thirds vote,” the Alabama Supreme Court concluded that the legislature’s power was “seemingly unrestricted,” but nevertheless recognized that “the legislature must afford a member the minimum procedural due process requirements of the federal constitution.”<sup>59</sup> Tellingly, that Court further

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* (concluding, in reliance on *State v. Hasty*, that the law does not provide for impeachment for “acts which occurred prior to the commencement of [an officer’s] term and prior to the actual assumption of his duties.”).

<sup>54</sup> *State ex rel. Mullis v. Matthews*, 259 Ala. 125 (1953)

<sup>55</sup> *Id.*

<sup>56</sup> *Clark*, 2016 WL 4044903, at \*3.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *State ex rel. James v. Reed*, 364 So.2d 303, 307 & n.3 (Ala. 1978).

recognized that “[t]he power of the Legislature to remove one of its members for criminal misconduct is analogous to the power of impeachment.”<sup>60</sup>

Similarly, in *McCarley v. Sanders*,<sup>61</sup> the United States District Court for the Middle District of Alabama concluded that “a person may not be discharged or expelled from a state public office upon a ground involving criminal guilt, infamy, disgrace or other grave injury to the individual until after such notice and hearing as is requisite to due process of law.”<sup>62</sup> That Court concluded that “[w]henver a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with due process of law.”<sup>63</sup> Thus, in *McCarley*, the expulsion of a Senator from office by vote of the Senate was held to violate due process where, among other things, that vote was based on the recommendation of a Senate investigation committee without a hearing before the full Senate and “without according [the expelled senator] an opportunity to defend himself and without themselves [the full Senate] hearing any evidence.”<sup>64</sup>

Here, the House of Representatives is considering whether to impeach the Governor on the basis of the charges of willful neglect of duty and corruption in office against the Governor. As discussed previously, those charges require a finding that the Governor is “morally or mentally unfit” to continue in office or acted with a “corrupt intent or motive” and engaged in “official misconduct.”<sup>65</sup> The grounds without question “involve[e] criminal guilt, infamy, disgrace or other grave injury to the individual.”<sup>66</sup> Moreover, a vote in favor of impeaching the Governor by the House of Representatives would, pursuant to § 127 of the Constitution, result in the removal of the Governor from office. Thus, the due process clauses of both the Alabama Constitution and the United States Constitution require that the Governor be afforded due process protections in the impeachment proceedings before the Alabama House of Representatives.

#### **IV. DUE PROCESS REQUIRES A FAIR HEARING BEFORE THE ALABAMA HOUSE OF REPRESENTATIVES**

Having established that the Governor is entitled to due process of law in impeachment proceedings before the House of Representatives, the question then becomes what process is due to the Governor in such proceedings. “The phrase ‘due process of law,’ although incapable of a precise definition, in its most basic sense encompasses the observation of that degree of

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<sup>60</sup> *Id.* at 308.

<sup>61</sup> *McCarley v. Sanders*, 309 F. Supp. 8 (M.D. Ala. 1970).

<sup>62</sup> *Id.* at 11.

<sup>63</sup> *Id.* (quotation marks omitted).

<sup>64</sup> *Id.* at 11-12.

<sup>65</sup> *Nelson*, 182 Ala. at 461; *Evans*, 387 So. 2d at 803; *Clark*, 2016 WL 4044903, at \*3; *Chandler*, 360 So. 2d at 960.

<sup>66</sup> *McCarley*, 309 F. Supp. at 11-12.

fundamental fairness that is essential to our concept of justice.”<sup>67</sup> The “goal of fundamental fairness ... is the essence of due process.”<sup>68</sup> In particular:

Procedural due process in this respect requires at a minimum an orderly proceeding appropriate to the case or adapted to its nature, just to the parties affected, and adapted to the ends to be attained; one in which a person has an opportunity to be heard, and to defend, enforce, and protect his rights before a competent and impartial tribunal legally constituted to determine the right involved; representation by counsel; procedure at the hearing consistent with the essentials of a fair trial according to established rules which do not violate fundamental rights, and in conformity to statutes and rules, conducted in such a way that there will be opportunity for a court to determine whether the applicable rules of law and procedure were observed; revelation of the evidence on which a disputed order is based and opportunity to explore that evidence, and a conclusion based on the evidence and reason.<sup>69</sup>

Thus, “[d]ue process requires that the accused shall be advised of the charges, and have a reasonable opportunity to meet them. This includes the assistance of counsel if requested, the right to call witnesses, to give testimony, relevant either to the issues of complete exculpation or extenuation of the offense and in mitigation of the penalty imposed.”<sup>70</sup> “Under Article 1, Section 6 [of the Alabama Constitution], the right of the accused to demand the nature and cause of the accusation is a fundamental component of the right to due process; the defendant must fully and intelligently understand the charge to adequately prepare a defense.”<sup>71</sup> The right to notice of the specific charge is “the first and most universally recognized requirement of due process.”<sup>72</sup> It is a “fundamental” right that is “essential” to due process.<sup>73</sup>

Also among the fundamental elements of due process that must be afforded a governor in impeachment proceedings is that the full House of Representatives act as the tribunal in evaluating whether to adopt articles of impeachment. Due process requires that *all* of the members of a tribunal *equally* consider the evidence without preconception or bias.<sup>74</sup> The

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<sup>67</sup> See *Ex parte Fountain*, 842 So. 2d 726, 730 (Ala. 2001) (“Both the Alabama and United States Constitutions protect a citizen of this state from being deprived of life or liberty without ‘due process of law.’”).

<sup>68</sup> *Id.*; *Pike v. S. Bell Tel. & Tel. Co.*, 263 Ala. 59, 71 (1955) (“Procedural due process, broadly speaking, contemplates the rudimentary requirements of fair play ....”) (quotation marks omitted).

<sup>69</sup> *Med. Servs. Admin. v. Duke*, 378 So. 2d 685, 686 (Ala. 1979) (quotation marks omitted) (emphasis added).

<sup>70</sup> *Ex parte Seymore*, 264 Ala. 689, 692 (1956); *Hunter v. State*, 251 Ala. 11, 14 (1948) (same).

<sup>71</sup> *Newberry v. State*, 493 So.2d 995, 997 (Ala. 1986); *Gayden v. State*, 262 Ala. 468, 469 (1955); *Nelson*, 50 Ala. App. at 288 (same); *Young v. State*, 348 So.2d 544, 546 (Ala. Crim. App. 1977).

<sup>72</sup> *Young*, 348 So.2d at 546 (quotation marks omitted); *Gayden*, 262 Ala. at 469.

<sup>73</sup> *Nelson*, 50 Ala. App. at 287; *Ex parte Seymore*, 264 Ala. at 692; *Martin*, 180 Ala. at 458 (stating, with regard to one who is subject to impeachment, “[h]is guilt or innocence cannot be adjudged without a definite judicial conception of what acts or omissions or official fitness or qualifications these charges expressed the fundamental law comprehend -- what is requisite to constitute willful neglect of duty or incompetency. Weight cannot be taken nor measure made without a standard therefor. So guilt or innocence cannot be pronounced without a definitely understood, well-defined charge--to which the judicial mind may apply the evidence to determine guilt or innocence.”).

<sup>74</sup> See, e.g., *Med. Servs. Admin.*, 378 So. 2d at 686.

Alabama Supreme Court has concluded that “[a]n unbiased and impartial decision-maker is one of the most, if not the most, fundamental of requirements of fairness and due process.”<sup>75</sup> This requirement is violated where there is an “intolerably high risk of bias.”<sup>76</sup> Such an “intolerably high risk” exists, for example, where it is demonstrated that the decision maker had made up his or her mind before the petitioner had an opportunity to be heard or where the same person serves as both accuser and adjudicator in a case.<sup>77</sup>

In addition, due process requires that the Governor be afforded with a presumption of innocence and that the Houses’ findings on the ultimate issue of impeachment be made under the standard of beyond a reasonable doubt.<sup>78</sup>

Due process also requires that any procedural rules adopted by the House must provide for the production to the Governor of, at a minimum, all exculpatory evidence discovered by the House of Representatives pursuant to the Fifth and Sixth Amendments to the United States Constitution as well as *Brady v. Maryland* and its progeny.<sup>79</sup>

Due process affords the Governor the constitutional right “to be heard by himself and counsel, or either....”<sup>80</sup> Due process also requires that the Governor be afforded notice and a hearing prior to the tribunal’s ruling, the ability to confront the witnesses against him, the ability to present a defense to the full House, the right to have compulsory process for obtaining witnesses in his favor, and the right to testify on his own behalf, if he elects to do so.<sup>81</sup> An “accused has a constitutional right of confrontation and cross-examination which is an essential and fundamental requirement of a fair trial. The right to confront one’s accusers is also guaranteed by our state constitution. The right to confront one’s accusers as prescribed by the sixth amendment guarantees the right to “face-to-face encounter[s] between witness and accused.”<sup>82</sup>

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<sup>75</sup> *State Tenure Comm'n v. Page*, 777 So.2d 126, 131 (Ala. Civ. App. 2000) (quoting *Stallworth v. City of Evergreen*, 680 So.2d 229, 233 (Ala. 1996) (quotation marks omitted)); *Buck v. C.H. Highland, LLC*, No. 2150220, 2016 WL 3221095, at \*6 (Ala. Civ. App. June 10, 2016) (same).

<sup>76</sup> *Buck*, 2016 WL 3221095, at \*6; *Page*, 777 So.2d at 131.

<sup>77</sup> *Buck*, 2016 WL 3221095, at \*6; *Page*, 777 So.2d at 131; *Williams v. Pennsylvania*, 136 S.Ct. 1899, 1905-06 (2016); see also *In re Murchison*, 349 U.S. 133, 134, 137 (1955) (judge may not act as “one-man judge-grand jury” and “Having been a part of [the accusatory] process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of the accused.”).

<sup>78</sup> Ala. Const. Art. I, § 6; *Thomas*, 283 Ala. at 227 (“This impeachment proceeding is in the nature of a criminal prosecution, hence the defendant came into this Court with a presumption of innocence. The burden was upon the prosecution to adduce evidence sufficient to establish the defendant’s guilt beyond a reasonable doubt and to a moral certainty.”); see also *Clark*, 2016 WL 4044903, at \*3 (“The State must prove the charges on which the proceeding is based beyond a reasonable doubt.”); *State v. Lovejoy*, 135 Ala. 64, 65 (1902); *Hasty*, 184 Ala. at 129.

<sup>79</sup> *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *United States v. Agurs*, 427 U.S. 97 (1976); *United States v. Bagley*, 473 U.S. 667 (1985); and *Kyle v. Whitley*, 514 U.S. 419 (1995).

<sup>80</sup> Ala. Const. Art. I, § 6; *Med. Servs. Admin.*, 378 So. 2d at 686 (due process requires “an orderly proceeding ... in which a person has an opportunity to be heard ....”).

<sup>81</sup> Ala. Const. Art. I, § 6.

<sup>82</sup> *Williams v. State*, 627 So. 2d 985, 989-90 (Ala. Crim. App. 1991), *aff'd sub nom. Ex parte Williams*, 627 So. 2d 999 (Ala. 1993); *Holman v. Washington*, 364 F.2d 618, 623-24 (5th Cir. 1966) (“The constitutional

## V. THE COURTS HAVE JURISDICTION OVER ANY VIOLATION OF THE GOVERNOR’S DUE PROCESS RIGHTS BY THE ALABAMA HOUSE OF REPRESENTATIVES

The Supreme Court of Alabama has concluded that, where an office holder cannot be removed except through impeachment, the “courts of equity will protect by injunctive process the incumbent of an office, who shows a prima facie right to continue in office, from the intrusion of adverse claimants who are without right or title to the office.”<sup>83</sup> This principle that a court may protect the constitutional rights of an official subject to impeachment has been applied to the impeachment of a governor.

In *Office of the Governor v. Select Committee of Inquiry*,<sup>84</sup> the Connecticut Supreme Court, in considering whether to quash a subpoena to a sitting Governor in connection with an impeachment proceeding before the House of Representative of Connecticut, found the dispute justiciable. In taking jurisdiction over the dispute between the Governor and a committee of the House of Representatives, the Court found particularly compelling the fact that, under the Connecticut Constitution (as is also the case in Alabama), the governor is treated uniquely in that he or she is removed from office “upon presentment of articles of impeachment by the House of Representatives.”<sup>85</sup> That Court stated:

Under our constitutional scheme, the governor is the only official removed, albeit temporarily, upon the presentment of articles of impeachment by the House of Representatives and during the pendency of the Senate trial. For all other officials, removal from office takes place only after a trial in the Senate and conviction by that body. This distinction means that the initial impairment of the capacity to execute the duties of the office of governor take place in the impeachment process one critical step *before* the point at which all other executive and judicial officials are impaired in the performance of their duties by means of removal from office, namely, at the point of formal *accusation* by the House, as opposed to the point of conviction by the Senate.<sup>86</sup>

Although impairment does remain contingent upon presentment of articles of impeachment by the House of Representatives, the proximity and severity of this harm as compared to the potential impairment for all other executive and judicial officials suggests that, in order to be afforded a meaningful opportunity to challenge legislative conduct related to gubernatorial impeachment proceedings, the office of a sitting governor should be allowed to raise its constitutional challenges under a somewhat more lenient standard than might apply to other officers who are subject to

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right of confrontation and cross-examination to the extent guaranteed by the Sixth and Fourteenth Amendments cannot be sidestepped because it happens to be convenient for one of the parties. The importance of this right is emphatically demonstrated by the existence of the numerous safeguards designed for its protection. In addition to the Sixth Amendment of the United States Constitution, the right is also guaranteed by the Constitution of the State of Alabama, Article \*624 I, Section 6, Constitution of Alabama, 1901.”); Ala. Const. Art. I, § 6.

<sup>83</sup> *Day v. Andrews*, 279 Ala. 563 (1966).

<sup>84</sup> *Office of the Governor v. Select Committee of Inquiry*, 271 Conn. 540 (2004).

<sup>85</sup> *Id.* at 554-55.

<sup>86</sup> *Id.* at 556.



impeachment. Affording the office of a sitting governor the opportunity to bring a meaningful challenge to impeachment proceedings is especially critical because the presentment of articles of impeachment to the Senate has the immediate, and irreparable effect of removing a duly elected official from office and depriving the people of the state, for a time, of the services of the governor whom they chose to fill that high office in the previous election. These consequences demonstrate the necessity that the plaintiff be afforded a reasonable opportunity to raise a meaningful constitutional challenge while the matter is before the defendant, whose task is vital to the ultimate decision as to whether articles of impeachment will be presented.<sup>87</sup>

The Court further noted that “the appropriate standard by which to determine whether judicial review of the legislative exercise of the impeachment authority in connection with a sitting governor is warranted is whether the plaintiff has asserted, in good faith, a colorable claim of a constitutional violation.”<sup>88</sup>

The *Select Committee of Inquiry* Court also found that the speech or debate clause of the Connecticut Constitution did not bar judicial review of a claim that the legislature had violated the constitution. The Court reaffirmed its prior holding (which involved a due process challenge) that “[i]f the legislature [should] attempt to encroach upon constitutional restrictions, it will become the solemn duty of the court to declare such an attempt illegal and the act void.”<sup>89</sup> Because a claim of constitutional violation by the legislature is a claim that the legislature’s conduct was “not within the sphere of legitimate legislative activity,” the Speech or Debate clause did not immunize the legislature from suit and did not “categorically bar the plaintiff’s action, nor [did] that clause preclude [the Court’s] consideration of the plaintiff’s claims on the merits.”<sup>90</sup>

Finally, the *Select Committee of Inquiry* Court rejected the claim that the constitutional challenge to the legislature’s conduct in the gubernatorial impeachment proceedings was a non-justiciable political question.<sup>91</sup> In so deciding, the Court first found that “[a]lthough the text of our state constitution confers impeachment authority on the legislature, that authority is not unbounded and legislative encroachment upon other constitutional principles may, in an appropriate case, be subject to judicial review. Accordingly, there has been no constitutional commitment of the impeachment authority to the legislature such that judicial review of the plaintiff’s challenge is rendered inappropriate.”<sup>92</sup> The Court further concluded that there “are discoverable and manageable judicial standards for determining the merits of the plaintiff’s

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<sup>87</sup> *Id.* at 556.

<sup>88</sup> *Id.* at 558.

<sup>89</sup> *Id.* at 565 (quotation marks omitted) (alteration in original). Indeed, the illegality of the act of a House of Representatives in infringing a chief executive’s constitutional rights and exceeding the scope of its authority granted to it under the impeachment provisions of the state constitution raises significant separation of powers concerns.

<sup>90</sup> *Id.* at 568.

<sup>91</sup> *Id.* at 573-577. In so deciding, the Connecticut Supreme Court applied the same factors as would be considered by the Alabama Supreme Court. *See Reed*, 364 So.2d at 305.

<sup>92</sup> *Select Committee of Inquiry*, 271 Conn. at 574.

claim.”<sup>93</sup> Third, the Court found that “in deciding the merits of the plaintiff’s constitutional claim, we would not be reviewing a policy determination of a clearly nonjudicial, discretionary nature.”<sup>94</sup> Fourth, the Court found that “consideration of the merits of the plaintiff’s claim would not convey a lack of due respect to a coequal branch of government.”<sup>95</sup> Fifth, the Court found that “this matter does not present an unusual need for unquestioning adherence to a preexisting political decision.”<sup>96</sup> Lastly, the Court found that “there is no potential embarrassment resulting from multifarious pronouncements by various governmental departments on one question.”<sup>97</sup>

Based on the foregoing, it is clear that a claim by the Governor that the House of Representatives has violated his due process rights would present a justiciable question appropriate for consideration by a court in Alabama *prior to* his removal from office by virtue of impeachment by the House of Representatives.<sup>98</sup>

### CONCLUSION

Because impeachment proceedings before the Alabama House of Representatives is both an adjudicatory and accusatory proceeding, because impeachment by the House of Representatives would result in removal of the Governor duly elected by the people of Alabama and, therefore, that proceeding is criminal in nature pursuant to clear Supreme Court authority, and because removal of a sitting governor on grounds such as those advanced here requires it, the House of Representative must afford the Governor with due process of law in its proceedings such that the requirements of fundamental fairness are met. Any violation of the Governor’s due process rights would be in derogation of the constitutional mandate of the House of Representatives and subject to judicial review.

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 575.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 576.

<sup>97</sup> *Id.*

<sup>98</sup> Such a claim would also raise significant separation of powers concerns that would be justiciable under the rubric of the *Select Committee of Inquiry* case.

OFFICE OF THE GOVERNOR

ROBERT BENTLEY  
GOVERNOR



STATE CAPITOL  
MONTGOMERY, ALABAMA 36130

(334) 242-7100  
FAX: (334) 242-3282

STATE OF ALABAMA

March 21, 2017

*Via Email*

Jack Sharman, Esq.  
Lightfoot, Franklin & White LLC  
400 20<sup>th</sup> Street North  
Birmingham, AL 35203

Re: Impeachment of Robert Bentley, Governor of Alabama

Dear Mr. Sharman:

We received your letter of Friday, March 17, 2017 concerning the resumption of the Judiciary Committee's investigation relating to Governor Bentley. As previously indicated, the Office of the Governor intends to cooperate fully with all appropriate investigative work by the Committee and with such work by you on the Committee's behalf. To that end, we have already produced more than 12,000 pages of documents to the Committee pursuant to your requests. In addition, we wrote to you on November 1, 2016, offering to discuss additional document productions, but did not hear back from you or the Committee (the Committee suspended its investigation shortly thereafter). We also wrote to you on November 1 of last year regarding testimony of Governor's office personnel. Once the Committee sets a schedule and procedures for public hearings we should discuss whether you will want any personnel from the Governor's Office to testify.

I suggest we have a telephone call to discuss additional document production and next steps. Please let me know your availability.

Sincerely,

A handwritten signature in blue ink that reads "Ross H. Garber".

Ross H. Garber

A handwritten signature in blue ink that reads "David B. Byrne, Jr.".

David B. Byrne, Jr.

COMMITTEE  
EXHIBIT

6-II



**ALABAMA HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**

**JACK SHARMAN**  
**SPECIAL COUNSEL**  
**LIGHTFOOT, FRANKLIN & WHITE LLC**  
**400 20TH STREET NORTH**  
**BIRMINGHAM, ALABAMA 35203**

March 23, 2017

**Via Electronic Mail**

Ross H. Garber, Esq.  
Shipman & Goodwin LLP  
1875 K Street NW, Suite 600  
Washington, DC 20006-1251  
[rgarber@goodwin.com](mailto:rgarber@goodwin.com)

David Byrne, Esq.  
Chief Legal Advisor  
Office of the Governor of Alabama  
State Capitol  
600 Dexter Avenue  
Montgomery, Alabama 36130  
[dbyrne@alabama.gov](mailto:dbyrne@alabama.gov)

**Re: Impeachment Investigation of Governor Robert Bentley**

Gentlemen:

For your convenience, and to aid in everyone's planning, the House Judiciary Committee (the "Committee") has asked me to convey a tentative schedule, set out below, concerning potential impeachment proceedings regarding Governor Robert Bentley. I copy Bill Athanas and Ellen Brooks.

I emphasize the word "tentative." There are a number of variables, internal and external, that could have an impact on this schedule. In addition, you have indicated that the Office of the Governor, Governor Bentley personally, or both, may file a lawsuit. Obviously, litigation could change any schedule.

**COMMITTEE  
EXHIBIT**  
6-JJ

DATE	EVENT	NOTE
April 7	Report of Investigation	Special Counsel's written report of investigation will be provided to the Committee and to Counsel for the Governor by 5:00 p.m. It will be made available to the public.
April 10	Committee Hearing Day One	Presentation by the Committee's Special Counsel and offer of witnesses, if any. [House Rule 79.1 (d); Amended Committee Rule 2(i) and Rule 13(b)]
April 11	Committee Hearing Day Two	Presentation by counsel for the Office of the Governor and for the Governor and offer of witnesses, if any. [House Rule 79.1 (d); Amended Committee Rule 2(i)(2)-(3)]
April 12	Committee Hearing Day Three	Special Counsel response. [House Rule 79.1 (d); Amended Committee Rule 2(i) and Rule 13(b) ]
April 13	Committee Hearing Day Four or Recess	Conclusion (or recess if concluded on April 12)
April 14	Committee Meeting	<p>Summation by counsel for the Office of the Governor; by counsel for the Governor; and by Special Counsel. [House Rule 79.1 (d); Amended Committee Rule 2(i)(2)-(3); Amended Committee Rule 2(i) and Rule 13(b)]</p> <p>Motion(s)</p> <p>Debate</p> <p>Vote on motion(s) and charge to Special Counsel as to preparation of Committee Report (including any revised Articles)</p>

<b>April 21</b>	Committee Report	To be provided to the Committee and to counsel of the Office of the Governor and counsel for the Governor by 5:00 p.m. [Amended Committee Rule 14]
<b>April 28</b>	Governor Bentley Written Response	To be provided to the Committee and to Special Counsel by 5:00 p.m. [Amended Committee Rule 14]
<b>May 1</b>	Committee Meeting	Motion(s), debate and vote on proposed Committee Report and Articles (if any).
<b>May 4</b>	Report to the House	Transmission of Committee Report and Minority Report (if any) to the Clerk for consideration by the full House. [House Rule 79.1(a)(2), (f)].
<b>May 9</b>	House Consideration of Committee Report	[House Rule 79.1 (g)]

**Questions to Witnesses and Notice of Rights**

The Committee is sensitive to the fact that there are multiple investigations involving Governor Bentley. I share that sensitivity. Neither I nor the Committee, of course, is privy to whether the Governor intends to be a witness at any impeachment hearings. He will be welcome to be a witness. Like all witnesses appearing before the Committee, the Governor may submit a sworn written statement to the Committee pursuant to Amended Committee Rule 5(c). Note, however, that like all witnesses appearing before the Committee he will be subject to questions from the Members and from Special Counsel. (See Amended Rule 2(g)).

As in any situation of potential liability on multiple fronts, the Chairman, the Committee and I want to make sure that we have discharged our duties with regard to any witness appearing before the Committee.

For that reason, I attach an exemplar notice-of-rights form. The notice contains language that will likely be familiar to you from other engagements.

David, Ross and Bill: if the Governor intends to testify, the Committee will ask him to execute the notice and return it by email to me. Should he decline to do so, the Chairman will make the same inquiry of him orally before he testifies.



**Evidence That The Governor or Other Witnesses Have Refused to Provide to the Committee Pursuant to Its Investigation**

The presentation by the Governor is guided by Amended Committee Rule 2(i)(2)-(3). Please note that no party or witness (including the Governor) will be allowed to offer evidence that the Committee or its Special Counsel has sought by informal request, formal subpoena or otherwise and that has not been produced pursuant to those requests. In addition, where the Committee or its Special Counsel has sought an informal interview or a formal transcribed interview under oath and the witness has refused to cooperate, that witness will not be allowed to testify.

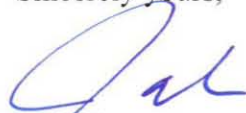
The Governor is an exception to the immediately foregoing note concerning testimony. He has declined to submit to an interview under oath but, in light of the fact that he is the subject of the hearing, he can certainly testify.

**Exhibits**

All exhibits must be submitted to the Committee Reporter, and then to the Committee Clerk, no later than the close of the hearing. The Reporter and Clerk prefer that exhibits be pre-marked.

With best wishes, I am

Sincerely yours,



Jack Sharman

cc: The Honorable Mike Jones, Chairman, Alabama House Judiciary Committee  
William C. Athanas, Esq.  
Ellen Brooks, Esq.

[COMMITTEE LETTERHEAD]

## NOTICE TO WITNESSES

Testimony and other information you give to the Committee may be used against you in any federal or state administrative, civil or criminal proceeding. It may be that there are such proceedings ongoing or contemplated related to the subject matter of the Committee's hearing and to the subject matter of your testimony before the Committee. You may refuse, in accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States and Section 6 of the Alabama Constitution, to give any information that may tend to incriminate you. You also have the right to have an attorney with you during your testimony, at your own expense, and you may consult with your attorney at any time during your appearance before the Committee.

Further, pursuant to Rule 5(b) of the Amended Committee Rules of the House Judiciary Committee for the Impeachment Investigation of Governor Robert Bentley (the "Amended Rules"), a copy of which has been provided you, "[a]ll testimony given at a hearing shall be under oath administered by the Chair along with instruction that if a witness fails to tell the truth, the recording of his or her testimony shall be referred to the appropriate law enforcement entity for investigation and possible prosecution and advise the witness that he or she is subject to the penalties of perjury."

By signing below, you and your counsel acknowledge your understanding of the contents of this notice and that you have conferred with counsel about this notice.

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_, 2017

\_\_\_\_\_  
(Signature of counsel)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_, 2017

OFFICE OF THE GOVERNOR

ROBERT BENTLEY  
GOVERNOR



STATE CAPITOL  
MONTGOMERY, ALABAMA 36130

(334) 242-7100  
FAX: (334) 242-3282

## STATE OF ALABAMA

March 27, 2017

**COMMITTEE  
EXHIBIT  
6-KK**

Jackson R. Sharman, Esquire  
Lightfoot, Franklin & White LLC  
400 20<sup>th</sup> Street North  
Birmingham, Alabama 35203

Re: Impeachment of Robert Bentley, Governor of Alabama

Dear Mr. Sharman:

We received your letter of March 23, 2017 in which you purport to speak for the House Judiciary Committee in setting a process and procedure for the Committee's performance of its duties pursuant to House Rule 79.1, notably its adjudication of whether Governor Bentley should be impeached. Your letter is inconsistent with the Committee's directives to you, with the directives of the House pursuant to Rule 79.1, and with the mandates of the Alabama and United States Supreme Courts. In light of the very serious issues your letter presents, we request your response to the following:

1. Your letter indicates that the Committee has adopted the process and procedure you set forth. I am not aware of any meeting of the Judiciary Committee in which these matters were addressed. Please let me know whether the Committee met and adopted these procedures and, if not, the basis for your authority to promulgate procedural rules on the Committee's behalf without the approval of the members.
2. Your letter indicates that you will provide the Committee a written report, but that you may decide not to call any witnesses. This means that you would have the Committee rely on what you represent the witnesses told you (or, more likely, what you represent that they told other lawyers in your firm), but that the members of the Committee would not themselves be able to evaluate the credibility of these witnesses. In addition to this being an unreliable way to determine the truth, your proposed process would deprive the Governor of the most basic and well-established due process protections: the right to confront and cross-examine one's accusers. We are unaware of

any authority to support the notion that your proposed procedure is consistent with the requirements of due process mandated by the Alabama Supreme Court, House Rule 79.1 (which specifically requires that the Committee provide the governor "due process"), and the legal rationale adopted by the Committee itself (see attached). Please provide us with any authority or basis for your apparent belief that your proposed process is constitutionally sound. Even putting aside the legal requirements of due process, this procedure, while no doubt expedient and easier for you, is patently inconsistent with principles of fairness to which most of the members of the Committee have indicated they wish to adhere.

3. On March 20, 2017 we provided the Committee and you with a thorough and well-reasoned white paper on the due process requirements applicable to these proceedings (the "White Paper"). Do you believe it is not necessary for the Committee and the House to provide due process?<sup>1</sup>

4. Your letter indicates that the Governor would have two business days from the receipt of your report until he must put on a "presentation" to the Committee and offer witnesses. This time frame is completely unreasonable and insufficient for the Governor to prepare a defense. Please indicate your reasoning for this schedule. And please indicate when you will provide the Governor with a list of witnesses you intend to call (or whose testimony you intend to offer in any form) and the exhibits you intend to introduce. And please provide the required discovery requested in our letter to you of October 27, 2016.

5. In light of the resumption of your investigation, we sent you a letter last week seeking a response to our detailed letter of last November offering to produce additional documents to you. You did not respond to our letter of last November and you have not responded to our more recent letter. Given your intended timetable for hearings, we would ask you to respond to our letter promptly or confirm that you are no longer seeking the documents discussed therein.<sup>2</sup>


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<sup>1</sup> I have seen a few legislators quoted in the press suggesting that the House need not provide the Governor with due process or fairness because he could receive those considerations in any Senate proceeding. For the reasons explained in our White Paper this is simply inaccurate, particularly given that upon impeachment **by the House**, a popularly elected Governor would be required to step down immediately unless and until acquitted by the Senate. This notion – that the House need not be fair – might also result in a remarkable waste of resources by the Senate, which might have been avoided had the House done its work properly.

<sup>2</sup> We certainly object to the notion that the evidence the Governor can provide to the Committee is limited to documents we previously provided to you. The Committee is entitled to consider all relevant evidence, and the Governor has a

We continue to have faith that the members of the Judiciary Committee and of the House of Representatives as a whole will follow the law and, more importantly, treat the Governor with fairness. For this reason, we are copying the members of the Committee and the Speaker of the House on this letter. We look forward to a response.

Sincerely,

  
Ross H. Garber

  
David B. Byrne, Jr.

cc: Mac McCutcheon, Speaker of the House  
House Judiciary Committee Members

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due process right to provide the Committee with information in his own defense. Moreover, you have not yet indicated the subject matter of the hearings, the nature of any proposed charges or the evidence you intend to introduce, so the Governor cannot possibly yet evaluate what information he may wish to introduce.



## **Background on House Judiciary Impeachment Rules**

These rules were largely drafted with two fundamental goals in mind. The first is that consistent with all Alabama law on the subject, the impeachment process is a criminal proceeding in nature. *See, e.g. Parker v. State*, 333 So.2d 806 (Ala. 1976) and *Nelson v. State*, 62 So. 189 (Ala. 1913). As such, the House Impeachment Investigation should be viewed as a proceeding akin to a grand jury. The second was to draw as much as possible from existing sources where impeachment proceedings had occurred and the process went smoothly. After review of congressional rules and those used by a number of states, the Illinois rules were used as the primary source we drew from.

In addition to the two goals above, the rules were drafted in an attempt to be consistent with House Rule 79.1 which was adopted during the 2016 Regular Session. Rule 79.1 has certain specific requirements that inform these rules: (1) the committee must make a recommendation; (2) all meetings must be open to the public and noticed with the same requirements of the House rules; (3) committee rules must be adopted to ensure due process; and (4) if there is a minority position, the members supporting it must also make a report.

While the general thought would be that the House Judiciary Committee's process would be akin to that of a grand jury, that notion must be modified in light of the adoption of House Rule 79.1's requirement that the Judiciary Committee process ensure due process. The notion of due process requires that the accused be given an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel. In the criminal setting, while due process is required before depriving a person of life or liberty, it is not required in the grand jury setting standing alone. Because of this key distinction and in light of Rule 79.1, there are elements to these proposed rules that protect the rights of the Governor that go well beyond what would be allowed in grand jury setting.

Rule 1(b) is in all practical substance identical to the equivalent Illinois rule. The differences are the Illinois rule required approval of the Speaker to meet and allowed the Chair to name a person to preside in his or her absence.

Subsection (b) was added to allow the Committee to make use of subcommittees when beneficial.

Rule 2 is in all practical substance identical to the equivalent Illinois rule. The 24 hour notice provision is contained in Rule 73 of the House Rules. In most instances notice can and will be provided further out, but the rule was drafted to allow the greatest amount of flexibility allowed under the House Rules in case that was needed in extenuating circumstances.

Rule 3 is in all practical substance identical to the equivalent Illinois rule. The exception is that the Speaker in Illinois issues the subpoenas and the addition that a subcommittee would be utilized to determine the subpoena list after any consideration of any information submitted by committee members.

Rule 4 is simply the implementation method of Rule 3.

Rule 5(a) is very similar to the Illinois rule. In Illinois, the rule gives the power to supervise the questioning to the Chair. This allows the greatest opportunity to ensure that the hearings are conducted efficiently and without redundancy.

Subsection (b) was drafted to include by reference Exhibits A and B that were guidelines drafted by the Clerk of the House and the House and Senate Security Officers after consultation with their peers in Illinois.

Rule 6 is consistent with the notion under Alabama law that impeachment is criminal in nature. Given this background it seems critical that the right to counsel for the accused and witnesses be preserved especially given the likelihood that parallel investigations are ongoing.

Rule 7 is in all practical substance identical to the equivalent Illinois rule. Illinois also allowed witnesses to submit proposed questions to the committee which did not seem like a helpful notion. The references to perjury were added to give notice that these hearings will require testimony under oath and that such proceedings are covered by the definition of Perjury in the First Degree pursuant to Section 13A-10-101, Code of Alabama 1975.

Rule 8 is in all practical substance identical to the equivalent Illinois rule. The override requirement of 8 votes, a majority of the Committee members, is also consistent with the Illinois rule.

Rule 9 is in all practical substance identical to the equivalent Illinois rule.

Rule 10 is in all practical substance identical to the equivalent Illinois rule.

Rule 11 is modeled after the Illinois rule. The Illinois rule allowed conversations between committee members and the Governor or his staff about ministerial or administrative matters. Rule 11 is written to allow for "ordinary course" type conversations to continue to occur in order to keep the business of the state ongoing and to provide that the recommended prohibition regarding communications ceases upon the end of the impeachment process and trial by the Senate, if necessary.

Rule 12 is in all practical substance identical to the equivalent Illinois rule. The amendment requirement of 8 votes, a majority of the Committee members, is also consistent with the Illinois rule.



Rule 13 is similar to a rule adopted by the Illinois Senate and is consistent with the fact that this proceeding is similar to a grand jury proceeding. This rule ceases its field of operation upon the finality of the impeachment process including any trial by the Senate, if necessary.

Rule 14 was drafted with a recognition that hiring a lawyer by committee would be cumbersome and difficult. The use of a subcommittee to make a recommendation to the Committee might be a more efficient method to utilize.



# ALABAMA LAW ENFORCEMENT AGENCY

201 SOUTH UNION STREET, SUITE 300 / P.O. BOX 304115 / MONTGOMERY, AL 36130-4115  
PHONE 334.517.2800 / ALEA.GOV

ROBERT BENTLEY

GOVERNOR

Stan Stabler

Secretary

Kevin Wright

Deputy Secretary

April 4, 2017

Brandon K. Essig, Esq.  
Lightfoot, Franklin, White, LLC  
The Clark Building  
400 20<sup>th</sup> Street, North  
Birmingham, Alabama 35203

RE: Requested Documents from  
Internal Investigation

Dear Brandon:

Enclosed is a .pdf file containing all the publicly available documents we could provide in response to your requests concerning the internal investigation of the Office of the Secretary of Law Enforcement. As we discussed previously, this file contains information that is publicly available for disclosure. As you are aware, confidentiality laws specifically exclude criminal investigations from public disclosure without a court order from a court of competent jurisdiction. However, in the interests of the public, the Department is disclosing that information it is legally allowed to disclose.

Thank you for allowing us to assist in your review. If you should have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "F. Tim McCollum".

F. Tim McCollum  
Assistant Attorney General

FTMcC/ttf

Enclosure

c: Michael Robinson

COMMITTEE  
EXHIBIT

6-LL