

## NEWS & INSIGHTS

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### TERRY MCCARTHY PUBLISHES AMERICAN JOURNAL OF TRIAL ADVOCACY ARTICLE ON ALABAMA'S PSYCHOTHERAPIST-PATIENT PRIVILEGE

April 4, 2022

Lightfoot Franklin & White LLC partner **Terry McCarthy** co-authored **an article for the American Journal of Trial Advocacy** on how Alabama courts apply the psychotherapist-patient privilege in cases involving mental anguish damages. Many jurisdictions across the country have grappled with whether plaintiffs asserting mental anguish damages waive their psychotherapist-patient privilege.

In the article, McCarthy explains that the mere act of filing a civil lawsuit seeking mental anguish damages is not sufficient to waive the psychotherapist-patient privilege in Alabama. However, he adds that Alabama courts do balance the interests of both plaintiffs and defendants in making this assessment.

"Alabama courts have found that the balance tips in favor of disclosure in certain cases, typically where an overriding interest is at play," McCarthy writes. "For example, the mental condition of a parent in a child custody dispute, a defendant's mental state in an involuntary commitment proceeding, or when the plaintiff has waived her right to claim the privilege."

The article discusses the background, general scope and parameters of Alabama's psychotherapist-patient privilege. It also discusses various scenarios through which plaintiffs can waive the privilege. To help illustrate these scenarios, McCarthy walks readers through five situations that may arise in a civil lawsuit and discuss how courts may analyze psychotherapist-patient privilege claims.

McCarthy is a member of the firm's appellate and insurance law practices and is a leading authority on Alabama state evidence law. He served as co-author on *Gamble's Alabama Rules of Evidence* and the Seventh Edition of *McElroy's Alabama Evidence*. Thousands of judicial opinions, motions, briefs and articles have cited McCarthy's contributions to both of these treatises. McCarthy also serves on the Alabama Supreme Court Advisory Committee to the Rules of Evidence and lectures on state evidence issues through various CLE courses.