



**Terrence W. McCarthy**  
Partner

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## Terry McCarthy is one of the preeminent authorities on evidence issues in the state of Alabama.

Terry has served as lead counsel and appellate counsel in a variety of matters in more than 25 states. While he enjoys his diverse practice, his first love is evidence. Clients, attorneys, judges and law students seek Terry's advice on evidence issues every day, and he loves helping them solve their problems.

Terry serves as co-author (along with Charles Gamble and Robert Goodwin) of the Seventh Edition of McElroy's Alabama Evidence and Gamble's Alabama Rules of Evidence, the two leading treatises on Alabama evidence. *McElroy's* has been referred to as the "Bible" of Alabama Evidence law, and these "must-reads" for any Alabama practitioner have been cited in thousands of judicial opinions, motions, briefs and articles. Terry also serves on the Alabama Supreme Court Advisory Committee to the Alabama Rules of Evidence and teaches several CLEs each year on evidence issues.

A substantial amount of Terry's practice is devoted to appellate work, which often involves him attending the trial to preserve the trial record and to consult on and argue evidence issues. Recent examples of his appellate work include:

- Served as embedded appellate counsel for multiple product liability trials in Alabama state court that resulted in defense verdicts that the plaintiff did not appeal.
- Served as embedded appellate counsel for employment case in Alabama federal court. Motion for judgment as a matter of law was granted in part, and the jury returned a defense verdict for the remaining issues.
- Served as embedded appellate counsel for Alabama personal injury case. Drafted and argued multiple motions in limine that were all granted, immediately after which the case settled on favorable terms.

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## PRACTICE AREAS

Appellate  
Automotive  
Commercial Litigation  
Construction  
Consumer Fraud & Bad Faith  
Employment Law  
Media & Communications Law  
Product Liability  
White-Collar Criminal Defense & Corporate Investigations

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## EDUCATION

University of Alabama School of Law (J.D., *summa cum laude*)  
University of Alabama (Ed. D., *Highest Honors*)  
University of Montevallo (M.Ed., *Highest Honors*)  
Auburn University (B.S.)

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## BAR ADMISSIONS

Alabama  
United States Supreme Court

- Served as embedded appellate counsel for Mississippi personal injury case. Drafted and argued multiple motions in limine, and a favorable settlement was reached before trial after the motions in limine were granted.
- Served as embedded appellate counsel for another Mississippi personal injury case. Just like the other one, drafted and argued multiple motions in limine, and a favorable settlement was reached before trial after the motions in limine were granted.
- Served as appellate counsel for a dispute under the Real Estate Settlement Procedures Act, and prevailed at both the Eleventh Circuit Court of Appeals and the United States Supreme Court.

He also has deep experience in insurance law, having defended hundreds of bad faith, fraud and breach of contract cases across the country. He is also experienced in employment law, including defending corporations against charges made to the Equal Employment Opportunity Commission, Title VII lawsuits, facilities compliance under the Americans with Disabilities Act, noncompete agreements and more.

As a former university administrator with master's and doctorate degrees in education, Terry is also active in the field of education. He has taught (and continues to teach) evidence and procedural courses at the University of Alabama School of Law, Birmingham School of Law, and Cumberland School of Law. Terry also serves on the firm's Associate Training Committee.

Outside of his legal and teaching careers, Terry is an active member of his church, and he supports many charities and educational organizations, including the Greater Birmingham Humane Society, Adopt a Golden Birmingham, Firehouse Ministries, Jimmie Hale Mission and John Carroll Catholic High School as well as serving on the Advisory Council to Alex's Lemonade Stand Foundation.



## AWARDS

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University of Alabama School of Law, Order of the Coif

Auburn University, Spades Honor Society

*The Best Lawyers in America*® by BL Rankings — Appellate Practice, Commercial Litigation, Insurance Litigation (2020-24)

*Birmingham Business Journal*, “Best of the Bar” (2023)

CLE Alabama, “The Walter P. Gewin Award” (2016)

Cumberland School of Law, “Friend of Cumberland School of Law Award” (2018)

Cumberland School of Law, “Outstanding Adjunct Professor Award” (2017-18)

*Mid-South Super Lawyers* by Thomson Reuters — Litigation Defense (2012-20)

## PRESENTATIONS AND PUBLICATIONS

### BOOKS AND BOOK SUPPLEMENTS

Co-author (with Charles W. Gamble & Robert J. Goodwin), *McElroy's Alabama Evidence* (7th ed. 2020)

Co-author (with Charles W. Gamble & Robert J. Goodwin), *Gamble's Alabama Rules of Evidence* (3d. ed., 2014)

Co-author (with Charles W. Gamble & Robert J. Goodwin), supplements to *Gamble's Alabama Rules of Evidence* (2013-20)

Co-author (with Charles W. Gamble & Robert J. Goodwin), supplements to *McElroy's Alabama Evidence* (2013-17)

### ARTICLES

Co-author (with Tyler E. Yarbrough), “An Overview of the 2023 Amendments to the Alabama Rules of Evidence,” *The Alabama Lawyer* – 84 Ala. Law. 277 (2023).

Co-author (with Logan T. Matthews), “Claiming the Psychotherapist-Patient Privilege Under Alabama Law When a Plaintiff in a Civil Case Seeks Mental Anguish Damages,” *American Journal of Trial Advocacy* (45th ed. 2021)

Co-author (with Allison R. Bendall), “A Brief History of Alabama Evidence Law and a Few Tips for the Alabama Lawyer,” *The Alabama Lawyer* – 82 Ala. Law. 23 (2021)

Co-author (with Charles W. Gamble and Robert J. Goodwin), “An Overview of the 2020 Amendments to the Alabama Rules of Evidence,” *The Alabama Lawyer* -- 81 Ala. Law. 350 (2020)

Author, “Should an Alabama Plaintiff Be Allowed to Introduce Evidence of the Retail Costs of Medical Care When the Bills Have Been Satisfied by Insurance for a Reduced Amount?” 50 *Cumb. Law. Rev.* 27 (2020)

Author, “The Racial Bias Exception to the General Rule that Precludes Jurors from Offering Testimony to Impeach Their Own Verdict,” 42 *Am. J. Trial Advoc.* 1 (2019)

Author, "The Admissibility of Social Media/Electronic Evidence in Alabama," Prepared for the Birmingham Bar Association (2019)

Co-author (with Brooke G. Malcom), "Alabama's Daubert Amendment: An Overview of the Current State of the Law and Resources for the Practitioner," *The Alabama Lawyer* – 79 Ala. Law. 254 (2018)

Co-author (with Callie D. Brister), "The Newly-Created Racial Bias Exception to the General Rule that Precludes Jurors from Offering Testimony to Impeach Their Own Verdict," *The Alabama Lawyer* – 78 Ala. Law. 284 (2017)

Co-author (with Allison Nichols-Gault), "The Admissibility of Social Media/Electronic Evidence in Alabama," *The Alabama Lawyer* - 75 Ala. Law. 42 (2014)

Author, "A Guide to Impeachment in Federal and Alabama State Courts," *The Alabama Lawyer* - 70 Ala. Law. 44 (2009)

Co-author (with Donald D. Gehring), Update to "Alcohol on Campus" (1999)

Author, "The Use of Unilateral Stipulation as a Trial Tactic in Alabama after Old Chief," 50 *Alabama Law Review* 237 (1998)

#### **SELECT SPEECHES AND PRESENTATIONS**

Presenter, "Three Stories," Commencement Address to Cumberland School of Law (2016)

Presenter, "Evidence in Capital Litigation," Alabama Criminal Defense Lawyers Association Death Penalty Seminar (2024)

Presenter, "Evidence Update," Alabama District Attorneys' Association Winter Meeting (2024)

Presenter, "Key Differences Between the Alabama and Federal Rules of Evidence," CLE Alabama Trial Skills Seminar (2023)

Presenter (with Kevin Clark), "Evidence Tips for Trial Attorneys," Toy Drive CLE (2023)

Presenter, "Alabama Evidence Update," Lee County Bar Association Fall Meeting (2023)

Presenter, "Random Evidence Tips for Family Law Attorneys," Divorce on the Beach (Family Law Section of Alabama Bar) (2023)

Presenter (with Stephanie Monplaisir), "An Overview of the Rule 30(b)(6) Deposition," CLE Alabama Tort Law Seminar (2022)

Presenter, "2022 Evidence Law Update," CLE Alabama Trial Skills Seminar (2022)

Presenter (with The Hon. Tamara Harris-Johnson and Celeste Armstrong), "Evidence Essentials," Birmingham Bar Association (2022)

Presenter, "Alabama Evidence Update," Women Lawyer's Section of Birmingham Bar Association (2022)

Presenter, "Evidence Update for Prosecutors," Alabama District Attorneys Association Winter Training (2022).

Presenter, "2021 Evidence Law Update," CLE Alabama Trial Skills Seminar (2021)

Presenter, "Alabama Evidence Update," Lee County Bar Association Meeting (2021)

Presenter, "Alabama Evidence Update," Walker County Bar Association Educational Meeting (2021)

Presenter, "Alabama Evidence Update, Hearsay, and the Confrontation Clause," Madison County Bar Association, Criminal Defense Section (2021)

Presenter (with The Hon. Scott Donaldson), "Evidence Update for Judges," 2021 Alabama Judges Mid-Winter Webinar (2021)

Presenter, "Confrontation Clause and Hearsay," Alabama Criminal Defense Lawyers Death Penalty Seminar (2021)

Presenter, "Using and Combating Rule 404(b) Evidence," Alabama Criminal Defense Lawyers Death Penalty Seminar (2020)

Presenter, "Alabama Evidence Law Update," CLE Alabama Trial Skills Seminar (2020)

Presenter, "Alabama Evidence Update," Alabama Municipal Law Conference for Judges and Prosecutors (2019)

Presenter, "Daubert and Evidence Issues for Expert Witnesses," Death Penalty Seminar for Alabama Criminal Defense Lawyers Association (2019)

Presenter, "Alabama Evidence Law Update," CLE Alabama Trial Skills Seminar (2019)

Presenter, "Special Issues in Evidence Law," Tuscaloosa County Bar Association Annual Meeting (2018)

Presenter, "Evidence Issues for Trial Attorneys," Lauderdale County Bar Association Annual Meeting (2018)

Numerous evidence presentations to local bar associations and law firms

Presenter, "Alabama Evidence Law Update," Alabama Tort Law Conference for Alabama Attorneys (2018)

Presenter, "Alabama Evidence Law Update," CLE Alabama Trial Skills Seminar (2018)

Presenter, "Practical Evidence Tips," Alabama District Attorney's Association Winter Conference (2017)

Presenter, "Alabama Evidence Law Update," CLE Alabama Trial Skills Seminar (2017)

Presenter, "Practical Evidence Tips," CLE Alabama Trial Skills Seminar (2016)

Presenter, "Practical Evidence Tips," Alabama District Attorney's Association Summer Conference (2016)

Presenter, "Practical Evidence Tips," Alabama District Attorney's Association Winter Conference (2016)

Presenter, "Practical Evidence Tips," CLE Alabama Trial Skills Seminar (2015)

Presenter, "Practical Evidence Tips," Alabama Association for Justice  
Workers' Compensation Seminar (2015)

Presenter, "Practical Evidence Tips," Tort Law Conference for Alabama  
Attorneys (2015)

Presenter, "Practical Evidence Tips," ADLA Bibb Allen Memorial Trial  
Academy (2015)

Presenter, "Practical Evidence Tips," CLE Trial Skills Seminar (2014)

Presenter, "Practical Evidence Tips," Divorce on the Beach (Family Law  
Section of Alabama Bar) (2014)