



AlaFile E-Notice

03-CV-2019-900283.00

Judge: JAMES H ANDERSON

To: DAVID ALAN LUDDER
court.notices@enviro-lawyer.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ANTHONY KEITH ET AL V. LANCE R. LEFLEUR, DIR., ADEM ET AL
03-CV-2019-900283.00

The following matter was FILED on 7/20/2021 7:05:59 AM

[Filer: LUDDER DAVID ALAN]

Notice Date: 7/20/2021 7:05:59 AM

GINA J. ISHMAN
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL, 36104

334-832-1260



ELECTRONICALLY FILED
7/20/2021 7:05 AM
03-CV-2019-900283.00
CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

State of Alabama
Unified Judicial System

Form ARAP-1 Rev. 10/2019

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

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

Civil Action Number:
03-CV-2019-900283.00

APPELLANT(S):

ANTHONY KEITH, RONALD C. SMITH, WILLIAM T. GIPSON, and LATONYA GIPSON

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

V. APPELLEE(S):

LANCE R. LEFLEUR, in his official capacity as Director of the Alabama Department of Environmental Management; and, **MARILYN G. ELLIOTT**, in her official capacity as Deputy Director and Nondiscrimination Coordinator of the Alabama Department of Environmental Management

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

TRIAL JUDGE:

HON. JAMES H. ANDERSON

DATE OF JUDGMENT:

JUNE 11, 2021

DATE OF POST-JUDGMENT ORDER:

N/A

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

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

SUPREME COURT OF ALABAMA

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

ALABAMA COURT OF CIVIL APPEALS

- Summary judgment amount claimed \$50,000 or less
 Judgment amount \$50,000 or less
 Amount sought in trial court \$50,000 or less, judgment for defendant
 Workers' compensation
 Domestic relations
 Other: **Appeal from administrative agency**

APPELLANT FILES WITH THIS NOTICE OF APPEAL:

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

Filed _____
(Date)

CERTIFIED AS A TRUE COPY

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

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

David A. Ludder (LUD)

(Name of Attorney for Appellant)

9150 MDougal Ct.

(Address of Attorney for Appellant)

Tallahassee, FL 32312

(City) (State) (Zip)

(850) 386-5671

(Telephone Number)

davidaludder@enviro-lawyer.com

(E-mail Address)

s/ David A. Ludder

(Signature of Attorney for Appellant)

Form ARAP 1 (back)
Rev. 10/2019

Notice of Appeal to the Supreme Court of Alabama Alabama Court of Civil Appeals

SECURITY FOR COSTS*

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

20th day of July, 20 21.

(Day) (Month) (Year)

Date Filed and Approved: _____

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

s/ David A. Ludder

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

(Signature of David A. Ludder)
(Printed Name)

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

(Signature of _____)
Surety (Printed Name)

DESIGNATION OF THE RECORD ON APPEAL

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

- Complaint
- Answer
- Counterclaim
- Cross-claim
- Third-party complaint
- Third-party answer
- Motion to dismiss
- Pretrial order
- Entire record (less items set forth in Rule 10(a), Alabama Rules of Appellate Procedure)
- Motion for summary judgment
- Opposition to motion for summary judgment
- Final judgment/order
- Motion for new trial
- Ruling on motion for new trial
- Others: Docs. 2, 13, 133, 159, 164, 167, 173
- Exhibit numbers: _____

TRANSCRIPT STATUS

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

Name and address of court reporter(s): _____

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

CERTIFICATE OF FILING AND OF SERVICE

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

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

Name	Method of Service (AlaFile, U.S. Mail, Hand Delivery, etc.)	Service Address [‡]
S. Shawn Sibley	Electronic Mail	ssibley@adem.alabama.gov
Paul Christian Sasser, Jr.	Electronic Mail	pcsasser@adem.alabama.gov
Assistant Attorneys General		

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

Done on this 20th day of July, 20 2021.

(Day) (Month) (Year)

s/ David A. Ludder

David A. Ludder (LUD)

(Signature of Appellant or Attorney for Appellant)

(Printed Name)

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



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03-CV-2019-900283.00
CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

State of Alabama
Unified Judicial System
Form ARAP-25 (front) 10/2019

DOCKETING STATEMENT
Appeal to the Alabama Court of
Civil Appeals

NOTE: COMPLETED CIVIL CASE COVER SHEET MUST BE ATTACHED

COUNTY MONTGOMERY	CIVIL ACTION NUMBER 03-CV-2019-900283.00	TRIAL JUDGE HON. JAMES H. ANDERSON
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PARTY FILING APPEAL (Appellant) :

ANTHONY KEITH, RONALD C. SMITH, WILLIAM T. GIPSON, and LATONYA GIPSON

v. PARTY APPEALED AGAINST (Appellee)

LANCE R. LEFLEUR, in his official capacity as Director of the Alabama Department of Environmental Management; and, **MARILYN G. ELLIOTT**, in her official capacity as Deputy Director and Nondiscrimination Coordinator of the Alabama Department of Environmental Management

APPELLANT'S ATTORNEY:

Email: **davidaludder@enviro-lawyer.com**

Telephone Number

(850) 386-5671

Address

9150 McDougal Ct.

City

Tallahassee

State

FL

Zip Code

36312

APPELLEE'S ATTORNEY:

Email: **ssibley@adem.alabama.gov; pcsasser@adem.alabama.gov**

Telephone Number

(334) 271-7855

Address

P.O. Box 301463

City

Montgomery

State

AL

Zip Code

36130

TYPE OF APPEAL:

Appeal

Cross-Appeal

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

- A** Summary Judgment, amount claimed equal to or less than \$ 50,000 **E** Workmen's Compensation
B Judgment Amount equal to or less than \$ 50,000 **F** Administrative Agency
C Amount Sought in trial court \$ 50,000 or less, judgment for defendant **G** Juvenile
D Domestic Relations **H** Other _____

JURISDICTION (FINALITY): Date of entry of judgment appealed from: June 11, 2021
Month Day Year

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

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

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

Form ARAP-25 (back) 10/2019 **DOCKETING STATEMENT Appeal to the Court of Civil Appeals**

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

NATURE OF CASE ON APPEAL: In the left column of boxes preceding the categories listed below, check the box (check only one) that best describes or categorizes the basis or theory of the primary issue on appeal. In the right column of boxes, check any secondary theories that are applicable to the suit. These topics need to be checked only if the issues on appeal vary from the information supplied in the same columns on the civil case "cover sheet" filed in the trial court.

<p>TORTS – Personal Injury</p> <p>A <input type="checkbox"/> Bad Faith</p> <p>B <input type="checkbox"/> Fraud</p> <p>C <input type="checkbox"/> Legal Malpractice</p> <p>D <input type="checkbox"/> Med. Malpractice</p> <p>E <input type="checkbox"/> Other Malpractice</p> <p>F <input type="checkbox"/> Products/AEMLD</p> <p>G <input type="checkbox"/> Gen. Negligence</p> <p>H <input type="checkbox"/> Vehicular Negligence</p> <p>I <input type="checkbox"/> Other _____</p>	<p>TORTS – Property Damage</p> <p>J <input type="checkbox"/> Personalty</p> <p>K <input type="checkbox"/> Realty</p> <p>CONTRACTS</p> <p>L <input type="checkbox"/> Commercial</p> <p>M <input type="checkbox"/> Personal</p> <p>N <input type="checkbox"/> Pension</p> <p>O <input type="checkbox"/> Insurance</p> <p>P <input type="checkbox"/> Employment</p> <p>Q <input type="checkbox"/> Other _____</p>	<p>R <input type="checkbox"/> REAL PROPERTY</p> <p>S <input type="checkbox"/> CIV RTS: Prisoner</p> <p>T <input type="checkbox"/> CIV RTS: Other</p> <p>U <input type="checkbox"/> Other _____</p> <p>EQUITY/Non-Damages Action</p> <p>V <input type="checkbox"/> Domestic Relations</p> <p>W <input type="checkbox"/> Declar. Judgment</p> <p>X <input type="checkbox"/> Injunc. Commercial</p> <p>Y <input type="checkbox"/> Injunc. Employment</p>	<p>Z <input type="checkbox"/> Injunc. Other</p> <p>1 <input type="checkbox"/> Extrord. Writ</p> <p>2 <input type="checkbox"/> Other _____</p> <p>STATUTES/RULES</p> <p>3 <input checked="" type="checkbox"/> Admin. Agency</p> <p>4 <input type="checkbox"/> Term. Parental Rts.</p> <p>5 <input type="checkbox"/> Workmen's Comp.</p> <p>6 <input type="checkbox"/> Wrongful Death</p> <p>7 <input type="checkbox"/> Other: _____</p>
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IF THE CASE WENT TO TRIAL, HOW MANY DAYS DID THE TRIAL TAKE? N/A

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

Whether the trial court erred in dismissing the case on the ground that Plaintiffs failed to prove standing to challenge ADEM's "Non-discrimination Grievance Investigation Procedures?"

Whether Defendant exceeded his and ADEM's statutory authority in adopting the "Non-discrimination Grievance Investigation Procedures?"

Whether Defendant violated the notice and comment requirements of the Alabama Administrative Procedure Act and Alabama Environmental Management Act in adopting the "Non-discrimination Grievance Investigation Procedures?"

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

ADEM Director LeFleur adopted "Non-discrimination Grievance Investigation Procedures" to review and resolve complaints filed by persons alleging that ADEM actions result in discriminatory effects. ADEM Deputy Director and Non-discrimination Coordinator Elliott implements portions of the Procedures. Appellants have suffered discriminatory effects as a result of ADEM actions. Appellants allege that the Procedures are invalid because Director LeFleur exceeded his and ADEM's statutory authority and violated the notice and comment requirements of the Alabama Administrative Procedure Act and Alabama Environmental Management Act. The invalidity of the Procedures preclude Appellants from obtaining valid resolutions of any complaints alleging that ADEM actions resulted in discriminatory effects.

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

Explain: Appellees insist that the "Non-discrimination Grievance Investigation Procedures" are valid

Date of Filing of the Notice of Appeal: July 20, 2021

July 20, 2021 s/ David A. Ludder (LUD)

Date Signature of Attorney

Certificate of Service

I certify I have this date filed electronically with the clerk of the trial court the foregoing docketing statement through the trial court electronic-filing system or that I have this date hand-filed the original and _____ (number) copies of the foregoing docketing statement. A true or electronic copy of the docketing statement will be served by the clerk of the trial court or by the trial court's electronic-filing system on each of the following: (1) the clerk of the appellate court; (2) the court reporter; and (3) attorney for each appellee or the appellee if no attorney as follows (provide names and addresses): _____

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

Name of Party	Method of Service (US Mail, AlaFile, etc.)	Service Address
<u>S. Shawn Sibley</u>	<u>Electronic Mail</u>	<u>ssibley@adem.alabama.gov</u>
<u>Paul Christian Sasser, Jr.</u>	<u>Electronic Mail</u>	<u>pcsasser@adem.alabama.gov</u>
<u>Assistant Attorneys General</u>	_____	_____
_____	_____	_____
_____	_____	_____

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

s/ David A. Ludder David A. Ludder (LUD) Date: July 20, 2021

(Signature of Attorney for Appellant) (Printed Name)