REL: July 23, 2021

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

1200002

David Roberson

v.

Balch & Bingham, LLP

Appeal from Jefferson Circuit Court
(CV-19-901210)

PER CURIAM.

David Roberson appeals from a judgment of the Jefferson Circuit Court, which was certified as final pursuant to Rule 54(b), Ala. R. Civ. P.,

dismissing his claims against Balch & Bingham, LLP ("Balch"), on the basis that those claims were barred by the limitations periods contained in the Alabama Legal Services Liability Act ("the ALSLA"), § 6-5-570 et seq., Ala. Code 1975. We affirm the judgment of the circuit court, although we do so on a different basis.

I. Facts

David Roberson filed his initial complaint on March 15, 2019, against Balch and his former employer, Drummond Company, Inc. ("Drummond").[1] The operative complaint for purposes of this appeal is Roberson's third amended complaint, and the facts alleged in that complaint, primarily as they relate to Balch, were as follows:

> "1. At all times relevant to this case, Joel Gilbert ('Gilbert') was a registered lobbyist and the agent of Defendant Balch & Bingham, LLP ('Balch'), and his acts and omissions

[1]Anna Roberson, David's wife, was listed as an appellant on the notice of appeal. She was named as a plaintiff for the first time in the third amended complaint. Anna was included as a party only with respect to Count XII -- the last count listed in the complaint -- which asserted a claim of promissory fraud. The promissory-fraud claim was pleaded against only Drummond. Therefore, we treat David Roberson as the sole appellant for purposes of this appeal, and we have restyled the appeal accordingly.

described herein were committed pursuant to and in the course of that agency relationship, or Balch has ratified, approved, and adopted his acts. ...

"2. At all times relevant to this case, Defendant Balch was the agent of Defendant Drummond Company, Inc. ('Drummond'), and its acts and omissions described herein were committed pursuant to and in the course of that agency relationship, or Drummond has ratified, approved, and adopted Balch's acts. ...

"3. At all times relevant to this case, Blake Andrews ('Andrews' or 'General Counsel') was the General Counsel and agent of Defendant Drummond ....

"4. At all times relevant to this case, Mike Tracy ('Tracy') was the CEO and agent of Defendant Drummond ....

"5. At all times relevant to this case until February 7, 2019, David Roberson ... was a Vice-President with Drummond. Roberson was subordinate to Andrews and Tracy, and he was required to perform duties and responsibilities assigned to him by Andrews and Tracy. [Roberson] is not a lawyer and has no legal training concerning the matters described herein.

"....

"7. In late 2013 the Environmental Protection Agency ('EPA') proposed placing a particular site in Jefferson County, Alabama on a National Priorities List ('NPL'); this was a prelude to designating Drummond as a [Potentially] Responsible Party [('PRP')] for the cleanup costs at the site. The cleanup costs were estimated at over $100 million ....

"8. Joel Gilbert was a registered lobbyist employed by Balch & Bingham, LLP, and Drummond hired Balch & Bingham to create and implement a public-relations campaign that would prevent the placement of the site on the National Priorities List and the designation of Drummond as a Responsible Party. Balch & Bingham never functioned as Roberson's attorney nor was Roberson or Drummond ever a legal services client of Balch & Bingham for or concerning the acts and omissions on which [Roberson's] claims are based. ... Finally, Balch & Bingham was not functioning as Drummond's legal counsel for or concerning the acts and omissions on which [Roberson's] claims are based.

"9. Balch, as Drummond's agent, devised a public relations plan ('the Plan') to employ a seemingly-legitimate local foundation, the Oliver Robinson Foundation ('the Foundation'), to conduct a seemingly-innocent campaign directed toward the community, the State of Alabama, and the EPA. Oliver Robinson was a respected state legislator, and he controlled the Foundation.

"10. Under the Plan, Oliver Robinson and the Foundation would (a) seek to convince the residents of North Birmingham not to have their property tested for toxins, such as lead and arsenic, and (b) Trey Glenn and Scott Phillips would seek by lobbying ADEM to prevent the State of Alabama from giving the legally required assurances to the EPA that the state would cover the required 10% of the cleanup costs that could not be recovered from PRPs.

"11. In November 2014, before implementation of the Plan, [Roberson] asked Gilbert if he had inquired with the ethics lawyers at Balch & Bingham whether the Plan was legal and ethical. Gilbert represented to [Roberson] that Balch's

> in-house ethics attorneys had reviewed the Plan and determined that it was legal.
>
> "12. On or about February 12, 2015, Gilbert and Balch prepared a contract between Balch and the Foundation. [Roberson] did not participate in preparing the contract, and he did not see the contract until the summer of 2018 -- during his criminal trial.
>
> "13. Balch thereafter made payments to the Foundation under the contract and submitted invoices to Drummond for reimbursement.
>
> "14. Blake Andrews, General Counsel for Drummond ..., represented to [Roberson] that he was 'confused' by having to process the Balch invoices for the Foundation as well as other Balch invoices. Consequently, he asked and directed [Roberson] to process Balch's invoices for payments to the Foundation.
>
> "15. [Roberson], having been assured by Gilbert that Balch's in-house ethics attorneys had reviewed the Plan and determined that it was legal and ethical, did not know that the payments were illegal. Consequently, he performed his duties for Drummond exactly as instructed by Drummond's General Counsel, and he approved reimbursements to Balch for payments to the Foundation."

(Emphasis added.) In Count VII of the third amended complaint, Roberson specifically alleged:

> "66. In June 2016, after the conviction of State Representative [Mike] Hubbard for ethics violations, [Roberson] again asked Gilbert if Balch's in-house ethics attorneys had any 'problem'

> with the Plan or his association with it since [Roberson] is also a registered lobbyist.
>
> "67. Gilbert again represented to [Roberson] that he had checked with [Balch ethics attorneys] Greg Butrus and Chad Pilcher and there was no problem with what they were doing.
>
> "68. Gilbert's representations were false, and he made the misrepresentations willfully to deceive, recklessly without knowledge, or by mistake, but with the intent that [Roberson] act on the representations."

Continuing with the general factual allegations in the third amended complaint, Roberson asserted:

> "16. During Balch's implementation of the Plan, Balch's in-house ethic's attorneys [in February 2017] had informed Gilbert that, in fact, Robinson had and was acting illegally in performing duties under the Plan. Both Balch and Drummond failed to notify [Roberson] of these facts or take any remedial or corrective action. ...
>
> "17. On September 27, 2017, Balch attorney Gilbert and [Roberson] were indicted for violating 18 U.S.C. §§ 371, 666(a), 1343, 1346, and 1956(h), but neither Drummond Corporation nor Balch & Bingham, LLP, was indicted.
>
> "18. The indictment charged that the payments to the Foundation were bribes, and it charged that [Roberson] was guilty of criminal conduct because he had 'caused Drummond Company to pay' Balch's invoices for payments to the Foundation -- as instructed by Drummond's General Counsel.

"19. The case against [Roberson] and Gilbert was tried in the United States District Court in Birmingham in June-July 2018. As was his constitutional right, [Roberson] elected not to testify at trial.

"20. During the trial, the prosecution read in evidence the following sentence from a summary of [Roberson's] statement to the FBI: 'After the Hubbard trial, Roberson considered what they were doing, i.e., contracting with a state representative, in light of the ethics law but determined that the area targeted by the campaign was not in Robinson's district.'

"21. [Roberson] then sought to introduce the balance of the summary, which included the following: Roberson stated that they (Drummond) have always been very careful, and he (Roberson) has a reputation to maintain. Roberson had a conversation with Gilbert about ethics considerations. Roberson wanted to know if it was a problem for him (Roberson) to be associated with the effort because he was a lobbyist. Gilbert later told Roberson that he had checked with Greg Butrus and Chad Pilcher at Balch and there was no problem with what they were doing.

"22. The indicted Balch attorneys blocked admission of this evidence, arguing that it violated their Fifth and Sixth Amendment rights. Exclusion of this evidence allowed the U.S. Attorney to falsely argue at closing that [Roberson] had never asked Joel Gilbert at Balch & Bingham whether the Plan to pay the Foundation was legal.

"23. On July 20, 2018, the jury convicted [Roberson] and Gilbert on all counts."

On May 27, 2021, the United States Court of Appeals for the Eleventh Circuit affirmed Roberson's convictions on all counts. See United States v. Roberson, 998 F.3d 1237 (11th Cir. 2021).

As already noted, on March 15, 2019, Roberson commenced an action against Balch and Drummond in the Jefferson Circuit Court. In his initial complaint, Roberson asserted claims of negligence, fraud, suppression, and "implied indemnity" against Balch and Drummond. On April 18, 2019, Balch filed a motion to dismiss the complaint in which it argued that Roberson's claims were barred by the statute of limitations and the rule of repose contained in the ALSLA, that Roberson's action was prohibited under the rule first enunciated in Hinkle v. Railway Express Agency, 242 Ala. 374, 6 So. 2d 417 (1942),[2] that Roberson was collaterally estopped from arguing that he had relied upon the advice of counsel because that issue allegedly had been resolved in Roberson's federal

[2]This Court has explained: "We interpret the rule in Hinkle to bar any action seeking damages based on injuries that were a direct result of the injured party's knowing and intentional participation in a crime involving moral turpitude." Oden v. Pepsi Cola Bottling Co. of Decatur, 621 So. 2d 953, 955 (Ala. 1993).

criminal trial, and that Balch had owed no duty to Roberson because Drummond, not Roberson, was Balch's client. Balch attached some exhibits to its motion to dismiss, including transcript excerpts of witness testimony from Roberson's criminal trial. Drummond also filed a motion to dismiss the complaint, and it attached as exhibits to its motion a copy of Roberson's appellate brief to the Eleventh Circuit Court of Appeals in the federal criminal case and transcript excerpts from the criminal trial.

Roberson amended his initial complaint twice, expanding upon the factual allegations and retooling the assertion of his claims against each defendant. Balch filed motions to dismiss each of those complaints, repeating the arguments from its original motion to dismiss, and attaching more exhibits from Roberson's federal criminal trial.

On November 11, 2019, Roberson filed the operative third amended complaint. With respect to Balch, Roberson repeated claims of misrepresentation and concealment he had first asserted in his earlier amended complaints. Specifically, Roberson asserted a claim of misrepresentation and a claim of concealment based on his allegation that in November 2014 he had asked Joel Gilbert, an attorney employed by

Balch, whether Gilbert had asked Balch's in-house ethics attorneys if the scheme described in Roberson's third amended complaint ("the plan") was legal and that Gilbert allegedly had lied by responding that he had checked and that the plan was legal. Similarly, Roberson asserted a claim of misrepresentation and a claim of concealment based on his allegation that he had asked Gilbert the same question in June 2016 and Gilbert allegedly had replied with the same response. Finally, Roberson asserted another claim of concealment based on his allegation that Gilbert had learned from a Balch ethics attorney in February 2017 that at least one action taken by state representative Oliver Robinson was illegal but had failed to inform Roberson of that information. The third amended complaint also contained two new concealment claims. Count X alleged concealment by Balch:

> "88. As part of its public relations campaign to defeat the EPA in North Birmingham and at the request of Joel Gilbert of Balch Bingham, David Roberson, on behalf of Drummond Company, wrote a $5,000.00 check to be used to purchase 100 fifty dollar gift cards to Burlington Coat Factory to be used to purchase winter coats for kids in North Birmingham.
>
> "89. Unbeknownst to Plaintiff Roberson as Joel Gilbert concealed this information from [Roberson], Balch and Oliver

> Robinson had agreed for [Robinson] to keep $2,500.00 out of the $5,000.00. [Roberson] did not learn of this hidden fact until his criminal trial in July of 2018. [Roberson] suffered damages as a result of Balch's concealment of it allowing [Robinson] to keep half of the $5,000.00 as the prosecution in Roberson's criminal trial used this $2,500.00 payment to Oliver Robinson as damaging evidence against Roberson in his criminal trial to help it obtain a conviction against him. Roberson did not even know that Robinson had kept half of the coat money per his agreement with Balch attorney Gilbert until this came out at the criminal trial."

Count XI alleged concealment by Balch and Drummond:

> "90. Balch & Bingham, LLP contracted with Trey Glenn (who invoiced Balch under the company name of Southeast Engineering & Consulting, LLC and directed the payments to Scott Phillips) to lobby the Alabama Department of Environmental Management (or 'ADEM') to oppose the EPA in listing the North Birmingham site on the National Priorities List. The Balch invoices to Drummond seeking reimbursement for the payments to Trey Glenn and Scott Phillips were paid by Drummond General Counsel Blake Andrews and approved by Drummond CEO Mike Tracy. At the time that Scott Phillips and Trey Glenn were receiving money from Balch via Drummond to lobby ADEM on a policy matter involving the listing of North Birmingham as a Superfund site, Scott Phillips was on the Alabama Environmental Management Commission (or 'AEMC'). The AEMC is the entity that oversees ADEM.
>
> "91. Neither Glenn nor Phillips, while they were lobbying ADEM about it opposing the EPA's listing of North Birmingham as a Superfund site, disclosed to ADEM the

> existence of their contract with Balch & Bingham or that they were indirectly being paid by Drummond Company.
>
> "92. Balch and Drummond Company concealed from Roberson that Drummond was paying Phillips (who was on the AEMC), pursuant to a contract with Balch, to lobby the entity in which the AEMC supervises (ADEM). Roberson suffered damages as a result of Balch and Drummond's concealment of their payments to Glenn and Phillips as their testimony that Drummond was paying Phillips to lobby ADEM when he was on the commission that supervises ADEM was very damaging to Roberson at his criminal trial and was used in part by the prosecution to convict Roberson even though he had no knowledge of this scheme and even though Glenn's and Phillips' invoices were being paid by Balch and reimbursed by Blake Andrews and Mike Tracy."

The third amended complaint also specifically alleged that Gilbert was a registered lobbyist, that he had acted in that capacity in carrying out Balch's responsibilities for the plan, that neither Roberson nor Drummond was a legal-services client of Balch, and that Balch was not performing legal services in carrying out its contract with Drummond concerning the plan.

On November 22, 2019, Balch filed a motion to dismiss the third amended complaint in which it repeated all the arguments it had presented in its previous motions to dismiss. The motion relied on

exhibits submitted in support of previously-filed motions to dismiss, and Balch also submitted new exhibits. On November 25, 2019, Roberson filed a motion to strike the exhibits Balch had filed in support of its motion to dismiss the third amended complaint. On the same date, Roberson filed his response in opposition to Balch's motion to dismiss the third amended complaint. Similarly, Drummond filed a motion to dismiss the third amended complaint, and Roberson filed a response in opposition and a motion to strike the exhibits submitted in support of that motion to dismiss.

On August 25, 2020, the circuit court entered an order ruling on all outstanding motions except the defendants' motions to dismiss the third amended complaint. In doing so, the circuit court concluded that the third amended complaint properly replaced Roberson's previous complaints, and the circuit court therefore determined that the defendants' motions to dismiss the previous complaints were moot and that Drummond's motion to strike the third amended complaint was due to be denied. The circuit court also expressly ruled that "any matters presented to the Court outside the pleadings are EXCLUDED for purposes of the Defendants'

Motions to Dismiss." (Capitalization in original.) It therefore granted Roberson's motions to strike exhibits submitted by Balch and Drummond in support of their motions to dismiss. On August 27, 2020, the circuit court held a hearing on the motions to dismiss.

On September 14, 2020, the circuit court entered a judgment granting Balch's motion to dismiss all claims asserted against it in Roberson's third amended complaint. The circuit court began its analysis by observing that Roberson's

> "complaint contains factual allegations and conclusory statements, and the Court's analysis must necessarily include whether the Alabama Legal Services Liability Act ('ALSLA') applies to and governs the factual allegations ... and whether [Roberson's] evolved classification of Gilbert's role, and Defendant Balch's, was that of providing public-relations work instead of and to the exclusion of legal work to Defendant Drummond and its employee [Roberson]."

The circuit court noted that Roberson had conceded that Balch was, in fact, a legal-services provider and that his complaint "refers to the ethics attorneys at Defendant Balch, from whom [Roberson] wanted Gilbert to inquire about the legality of the Plan." The circuit court therefore concluded that "[w]hile [Roberson,] in his Third Amended Complaint,

attempts to re-characterize the role of Joel Gilbert as that of a lobbyist, rather than an attorney," Roberson

> "by inquiring of Gilbert and Defendant Balch's ethics' attorneys, via Gilbert, believed that he was consulting a lawyer(s) [Gilbert and Balch's ethics' lawyers] in their capacity as lawyers, and [Roberson], at that time, manifested his intention to seek professional legal advice. The Court FINDS that the herein alleged claims against Defendant Balch are classified collectively as a legal service liability action, pursuant to ALSLA, as defined in Section 6-5-572, and Section 6-5-573 ...."

(Capitalization in original.) The circuit court then applied the statute of limitations relevant to "legal service liability actions" contained in § 6-5-574(a), Ala. Code 1975,[3] to Roberson's claims against Balch:

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[3]Section 6-5-574(a) provides:

> "(a) All legal service liability actions against a legal service provider must be commenced within two years after the act or omission or failure giving rise to the claim, and not afterwards; provided, that if the cause of action is not discovered and could not reasonably have been discovered within such period, then the action may be commenced within six months from the date of such discovery or the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier; provided, further, that in no event may the action be commenced more than four years after such act or omission or failure; except, that an act or omission or failure giving rise to a claim which occurred before

> "The Court FINDS that the act or omission or failure giving rise to the [Roberson's] claims against Defendant Balch occurred in November 2014. The Court FINDS that, at the latest, [Roberson] should have reasonably discovered the facts giving rise to the alleged claims herein against Defendant Balch at the time of [Roberson's] and Gilbert's indictments, to wit: September 27, 2017. The Court FINDS that the herein Complaint had to have been filed no later than March 27, 2018, to fall within the statute of limitations, pursuant to ALSLA, Section 6-5-574. [Roberson's] original Complaint was filed March 15, 2019."

(Capitalization in original.) Concerning the rule of repose contained in § 6-5-574(a), the circuit court also added that "certainly the herein claim[s] could not have been commenced, in any event, later than November 30, 2018 (the Court uses the date November 30, since no specific day in November [2014] was asserted)." Because the circuit court determined that all of Roberson's claims against Balch were barred by the limitations periods provided in the ALSLA, it dismissed all of Roberson's claims against Balch. The circuit court also certified the judgment as a final judgment pursuant to Rule 54(b), Ala. R. Civ. P., finding that the

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> August 1, 1987, shall not in any event be barred until the expiration of one year from such date."

judgment disposed of all the claims against Balch and that there was no just reason for delay in entering a final judgment.

II. Standard of Review

As we noted in the rendition of facts, Balch filed, and the circuit court granted, a motion to dismiss all the claims against Balch based on the limitations periods in the ALSLA.

> "The standard of review applicable to motions to dismiss is well settled:
>
> > " 'It is a well-established principle of law in this state that a complaint, like all other pleadings, should be liberally construed, Rule 8(f), Ala. R. Civ. P., and that a dismissal for failure to state a claim is properly granted only when it appears beyond a doubt that the plaintiff can prove no set of facts entitling him to relief. Winn-Dixie Montgomery, Inc. v. Henderson, 371 So. 2d 899 (Ala. 1979). Stated another way, if under a provable set of facts, upon any cognizable theory of law, a complaint states a claim upon which relief could be granted, the complaint should not be dismissed. Childs v. Mississippi Valley Title Insurance Co., 359 So. 2d 1146 (Ala. 1978).
> >
> > " 'Where a [Rule] 12(b)(6)[, Ala. R. Civ. P.,] motion has been granted and this Court is called upon to review the dismissal of the complaint, we must examine the allegations contained therein and construe them so as to resolve all doubts

> concerning the sufficiency of the complaint in favor of the plaintiff. First National Bank v. Gilbert Imported Hardwoods, Inc., 398 So. 2d 258 (Ala. 1981). In so doing, this Court does not consider whether the plaintiff will ultimately prevail, only whether he has stated a claim under which he may possibly prevail. Karagan v. City of Mobile, 420 So. 2d 57 (Ala. 1982).'

"Fontenot v. Bramlett, 470 So. 2d 669, 671 (Ala. 1985)."

Pearce v. Schrimsher, 583 So. 2d 253, 253-54 (Ala. 1991).

In noting our standard of review for this appeal, we observe that in its appellate brief Balch repeatedly urges this Court to consider the exhibits that were attached to motions to dismiss filed in the circuit court. We reject Balch's invitation to consider any of those exhibits given that the circuit court expressly stated in its August 25, 2020, order that it was excluding all materials outside of the pleadings in deciding the motions to dismiss. Because the circuit court in its discretion elected not to consider the exhibits, we will not do so in reviewing the circuit court's judgment. See, e.g., Ex parte Price, 244 So. 3d 949, 955 (Ala. 2017).

On a related note, after briefing was completed in this appeal, Balch filed with this Court what it styled as a "Letter of Supplemental

Authority," invoking Rule 28B., Ala. R. App. P., as a basis for the filing. That rule allows for a party to "promptly advise the clerk of the appellate court in which the proceeding is pending by letter" if "pertinent and significant authority comes to a party's attention after the party's brief has been filed." Roberson has filed a motion to strike Balch's letter because, he says, Balch does not present any new authority; rather, Roberson asserts, Balch seeks to contend that a misquotation of a case in Balch's appellate brief[4] that Roberson highlighted in his reply brief[5] was an "accidental and unintentional ... mistake" rather than a deliberate misquotation, even though Balch had employed the same misquotation in its circuit court filings and Roberson had drawn attention to it at that time as well. We agree with Roberson that Balch's letter is not a "notice of supplemental authority" as allowed by Rule 28B., and Balch offers no other authority for what actually appears to be, as Roberson says, an attempt by Balch "to get the last word on issues argued in the [Roberson's]

[4]The opinion that is misquoted is San Francisco Residence Club, Inc. v. Baswell-Guthrie, 897 F. Supp. 2d 1122, 1179 (N.D. Ala. 2012). See Balch's brief, p. 39.

[5]See Roberson's reply brief, p. 14.

reply brief." Accordingly, we grant Roberson's motion to strike Balch's letter filing.

We also observe that we do not believe that the circuit court's certification of its judgment as final under Rule 54(b) was improper. It is undeniable that Roberson's claims against Balch and Drummond are substantially interrelated. This Court has noted:

> "In considering whether a trial court has exceeded its discretion in determining that there is no just reason for delay in entering a judgment, this Court has considered whether 'the issues in the claim being certified and a claim that will remain pending in the trial court " 'are so closely intertwined that separate adjudication would pose an unreasonable risk of inconsistent results.' " ' Schlarb[v. Lee], 955 So. 2d [418] at 419-20 [(Ala. 2006)] (quoting Clarke-Mobile Counties Gas Dist. v. Prior Energy Corp., 834 So. 2d 88, 95 (Ala. 2002), quoting in turn Branch v. SouthTrust Bank of Dothan, N.A., 514 So. 2d 1373, 1374 (Ala. 1987)."

Lighting Fair, Inc. v. Rosenberg, 63 So. 3d 1256, 1263 (Ala. 2010). In this instance, the circuit court's dismissal of all the claims against Balch was based on the applicability of the ALSLA's limitations periods, a conclusion that was, in turn, based on facts pertinent only to Balch, i.e., its status as a legal-service provider and its alleged provision of legal advice to Roberson. It is true that Drummond also argued in its motion to dismiss

the third amended complaint that some claims against it were due to be dismissed based on the applicability of the ALSLA's limitations periods, but Drummond's arguments regarding the applicability of those limitations periods were based on its own alleged actions, not those of Balch. Thus, there is no risk of inconsistent results in this case because the basis for the dismissal of the claims against Balch was truly independent of the claims asserted against Drummond.

III. Analysis

Roberson contends that the circuit court made three fundamental errors in dismissing his claims against Balch. First, he argues that the circuit court erred by concluding that his claims were subject to the ALSLA. Second, he argues that, even if the ALSLA applies to his claims, the circuit court erred by concluding that the triggering date for the running of ALSLA's limitations periods was the date of Gilbert's alleged misrepresentation to Roberson in November 2014, rather than the date Roberson sustained an injury from Balch's actions, which Roberson contends was the date he was indicted on federal criminal charges. Third, Roberson argues that, even if the triggering date for claims under the

ALSLA is the date of the alleged act or omission of the legal-service provider rather than the date of the plaintiff's injury, "each misrepresentation or concealment creates a separate claim -- even if the misrepresentation or concealment is identical to a prior misrepresentation or concealment that is barred by the statute of limitations." Roberson's brief, p. 21. If Roberson is correct, some of Balch's alleged misconduct occurred within the ALSLA's statute-of-limitations period. However, we consider it necessary to address only Roberson's first argument.

Roberson contends that, to invoke the ALSLA, a defendant must demonstrate: (1) that it is a "legal service provider"; (2) that the plaintiff is a "client" of the "legal service provider"; (3) that the "legal service provider" provided "legal services" to the plaintiff; and (4) that the plaintiff's claims "arise from" those services. Roberson concedes that Balch is a "legal service provider," but he disputes that he was a "client" of Balch or that Balch provided "legal services" to him.

The ALSLA defines a "legal service provider," in part, as "[a]nyone licensed to practice law by the State of Alabama or engaged in the practice of law in the State of Alabama." § 6-5-572(2), Ala. Code 1975. As the

circuit court noted in its September 14, 2020, judgment of dismissal, Balch is a law firm and Gilbert -- as well as Balch's in-house ethics attorneys -- were licensed to practice law in the State of Alabama.

The ALSLA defines a "legal service liability action" as:

> "Any action against a legal service provider in which it is alleged that some injury or damage was caused in whole or in part by the legal service provider's violation of the standard of care applicable to a legal service provider. A legal service liability action embraces all claims for injuries or damages or wrongful death whether in contract or in tort and whether based on an intentional or unintentional act or omission. A legal services liability action embraces any form of action in which a litigant may seek legal redress for a wrong or an injury and every legal theory of recovery, whether common law or statutory, available to a litigant in a court in the State of Alabama now or in the future."

§ 6-5-572(1).

Thus, if a plaintiff alleges that the plaintiff's injuries are the result of the provision of substandard legal services, the plaintiff's action is a "legal service liability action" governed by the ALSLA. Indeed, our cases have repeatedly remarked that an ALSLA action is one that concerns the provision and receipt of legal services. See, e.g., Line v. Ventura, 38 So. 3d 1, 11 (Ala. 2009) ("[T]he ALSLA applies only to claims against

legal-service providers arising out of the provision of legal services."); Fogarty v. Parker, Poe, Adams & Bernstein, L.L.P., 961 So. 2d 784, 788 (Ala. 2006) ("The ALSLA applies only to allegations of legal malpractice, i.e., claims against legal-service providers that arise from the performance of legal services ...."); Valentine v. Watters, 896 So. 2d 385, 390 (Ala. 2004) ("[T]he ALSLA ... does not apply to all actions filed against legal-service providers by someone whose claim does not arise out of the receipt of legal services."); Sessions v. Espy, 854 So. 2d 515, 522 (Ala. 2002) ("[T]he ALSLA applies to all actions against 'legal service providers' alleging a breach of their duties in providing legal services."); Cunningham v. Langston, Frazer, Sweet & Freese, P.A., 727 So. 2d 800, 803 (Ala. 1999) ("The language of the ALSLA makes it clear that that Act refers to actions against 'legal service providers' alleging breaches of their duties in providing legal services. Conversely, from a plaintiff's perspective, the ALSLA applies to any claim originating from his receipt of legal services."). Accordingly, to determine whether the ALSLA governs Roberson's claims against Balch, we first must address Roberson's contention that Balch did not provide "legal services" to him.

The circuit court concluded that Roberson was seeking legal advice when he asked Gilbert if he had checked with Balch's in-house ethics attorneys about whether the plan was legal. As Roberson notes, the ALSLA does not specifically define the term "legal services," but Roberson does not dispute that providing legal advice is a legal service.[6] Instead, Roberson argues that he was not seeking, and that Gilbert did not provide, legal advice. In making this argument, Roberson looks to Rule 2.1, Ala. R. Pro. Cond., which provides, in part: "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice." Roberson contends that he "did not ask Gilbert for 'judgment' or 'advice.' He asked to recall a historical event: whether 'he had inquired [past tense] with the ethics lawyers ... whether the Plan was legal and ethical.' Historical reminiscences are not 'legal services'; they

[6]Section 34-3-6, Ala. Code 1975, which concerns the unauthorized practice of law, provides, in part, that "[w]hoever ... [f]or a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect, advises or counsels another as to secular law ... is practicing law." § 34-3-6(b)(2).

do not require 'professional judgment,' and they are not 'candid advice.' " Roberson's brief, p. 32 (quoting the third amended complaint).

This argument is meritless. Under the facts provided in Roberson's third amended complaint, the obvious motive for Roberson's question to Gilbert was to obtain from Balch attorneys an assessment of the legality of the plan, whether directly from Gilbert or indirectly from Balch's ethics attorneys, so that Roberson could decide whether he would feel comfortable participating in the plan. Roberson specifically noted in his third amended complaint that he "is not a lawyer and has no legal training concerning the matters described herein," and he alleged that, "having been assured by Gilbert that Balch's in-house ethics attorneys had reviewed the Plan and determined that it was legal and ethical, [Roberson] did not know that the payments were illegal. Consequently, [Roberson] approved reimbursements to Balch for payments to the Foundation." In other words, the gravamen of Roberson's claims against Balch was that he had acted on the legal advice he believed Gilbert had provided when Gilbert told Roberson that Balch's ethics attorneys had concluded that the plan was legal. Thus, Roberson was not seeking

"historical" information; he was seeking from Balch attorneys an assessment of the legality of the plan.

The reality that Roberson was seeking legal advice becomes even more apparent from the specific allegations of his concealment claim based events that allegedly occurred in February 2017. In count IX of his third amended complaint, Roberson alleged:

> "79. In February 2017, Gilbert asked [ethics attorney] Chad Pilcher of Balch whether he saw any 'issues' or problems with the Plan or the relationship with Oliver Robinson and the Foundation.
>
> "80. As part his review, Pilcher discovered that Robinson had written a letter on his House of Representatives letterhead, and he advised Gilbert that Robinson's use of his official letterhead in performing work under the contract was illegal.
>
> "81. The government later charged in [Roberson's] indictment that Robinson committed this act in furtherance of the alleged criminal conspiracy, for which [Roberson] was convicted.
>
> "82. Gilbert and Balch withheld, concealed, and failed to disclose to [Roberson] that Gilbert himself was questioning the legality of the Plan and the relationship with Robinson and his foundation and that Pilcher had determined that Robinson had acted illegally.

> "83. Gilbert and Balch had a duty to disclose this information to [Roberson] based on a confidential relationship between the parties, the particular facts of the case, [Roberson's] specific questions to Gilbert, and Gilbert's continuing representations that the Plan was 'legal and ethical' and that there were no 'problems' with the Plan.
>
> "84. [Roberson] reasonably relied on Balch and Gilbert to disclose information about the legality of the Plan and its relationship with Robinson.
>
> "85. This failure to disclose by Gilbert and Balch denied [Roberson] an opportunity to employ independent counsel to evaluate his potential responsibility for Robinson's conduct and to avoid criminal prosecution based on Robinson's conduct. As a proximate result of this failure to disclose, [Roberson] was indicted, prosecuted, and suffered the other damages described above."

(Emphasis added.) Thus, under Roberson's own allegations, Roberson was seeking advice from Balch attorneys about the legality of the plan, he believed that Gilbert and Balch had a duty to inform him of any such assessment of legality performed by Balch, in part because of the existence of "a confidential relationship between the parties," and he "reasonably relied" on Balch "to disclose information about the legality of the Plan."

Roberson also contends that Gilbert did not provide legal advice because, Roberson says, Gilbert actually lied to him. According to the third amended complaint, Gilbert did not, in fact, ask Balch's ethics attorneys about the legality of the plan in either November 2014 or June 2016 when Roberson had questioned Gilbert; instead, Roberson contends, those ethics attorneys were not asked to assess the legality of the plan -- and they did not determine any portion of the plan to be illegal -- until February 2017. Thus, Roberson argues that Gilbert did not "exercise independent professional judgment" or provide "advice" to Roberson. See Rule 2.1, Ala. R. Pro. Cond.

However, this argument is simply a commentary on the accuracy or quality of the advice Gilbert gave to Roberson; the fact that Gilbert may have uttered an intentional misrepresentation in the course of providing legal services to Roberson does not take Roberson's claims outside the ambit of the ALSLA. The ALSLA specifically provides that "[t]here shall be only one form and cause of action against legal service providers in courts in the State of Alabama and it shall be known as the legal service liability action and shall have the meaning as defined herein." § 6-5-573,

Ala. Code 1975 (emphasis added). It further explains that "[a] legal service liability action embraces all claims for injuries or damages or wrongful death whether in contract or in tort and whether based on an intentional or unintentional act or omission." § 6-5-572(1) (emphasis added). A "legal service liability action" subsumes "[a]ny action against a legal service provider in which it is alleged that some injury or damage was caused in whole or in part by the legal service provider's violation of the standard of care applicable to a legal service provider." Id. (emphasis added). Roberson alleges that he suffered injuries -- namely indictment and criminal conviction -- because of the actions he took after receiving legal advice from Balch attorneys. Therefore, Roberson's claims are governed by the ALSLA, regardless of whether the provision of the allegedly faulty legal advice was intentional or negligent. See Bryant v. Robledo, 938 So. 2d 413, 418 (Ala. Civ. App. 2005) (noting that the Alabama Supreme Court has "interpreted the Alabama Legal Services Liability Act ... to apply to all actions against legal-service providers that allege a breach of their duties in providing legal services; both common-law and statutory claims such as breach of a duty, negligence,

misrepresentation, and the like are all subsumed into a single cause of action under the ALSLA" (second emphasis added)).[7]

Roberson also argues that the circuit court erred by concluding that he was a Balch "client." He notes that, in its motions to dismiss below, Balch stated that Roberson was not a Balch client because Balch had a contractual relationship with Drummond, not with Roberson. Indeed, in its appellate brief, Balch repeats that Roberson was not its client, but it

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[7]The fact that an ALSLA action is an all-encompassing one for claims against legal-service providers concerning a breach of the standard of care applicable to such providers also explains why the claims Roberson added in his third amended complaint -- counts X and XI -- are subsumed under the ALSLA even though the allegations in those counts involve the concealment of bribes, not the direct provision of legal services. A "legal service liability action" includes "[a]ny action against a legal service provider in which it is alleged that some injury or damage was caused in whole or in part by the legal service provider's violation of the standard of care applicable to a legal service provider," and such an action "embraces all claims for injuries or damages ...." § 6-5-572(1), Ala. Code 1975. Thus, because the gravamen of Roberson's action against Balch is that Gilbert's misrepresentations about the legality of the plan caused Roberson to commit the acts that led to his indictment and subsequent conviction on federal criminal charges, counts X and XI are included in this "legal service liability action." See Mississippi Valley Title Ins. Co. v. Hooper, 707 So. 2d 209, 213 n.4 (Ala. 1997) ("Because the substance of the claims against Hooper involves the provision of legal services 'in whole or in part,' the limitations provisions of the ALSLA would apply.").

argues that "[c]laims regarding the provision of legal services by a legal service provider are governed by the ALSLA regardless of whether the plaintiff had an attorney-client relationship with the defendant lawyer or law firm." Balch's brief, p. 37. Roberson contends that it was error for the circuit court to ignore both Balch's admission and the allegations in the third amended complaint that Roberson was not a client of Balch. Roberson adds that this Court has stated that being a "client" is an essential element of an ALSLA action. See, e.g., Ex parte Daniels, 264 So. 3d 865, 869 (Ala. 2018) (" 'An attorney-client relationship is an essential element of a claim under the [ALSLA]. ' " (quoting Brackin v. Trimmier Law Firm, 897 So. 2d 207, 229 (Ala. 2004))); Line, 38 So. 3d at 10 (" '[T]he ALSLA applies only to lawsuits based on the relationship between "legal service providers" and those who have received legal services ....' " (quoting Cunningham, 727 So. 2d at 805 (emphasis added))). Roberson argues that, because he was not Balch's client, Balch could not demonstrate that an indispensable element of an ALSLA action existed and that, therefore, the circuit court erred in applying the ALSLA to his claims against Balch.

Roberson is correct that, to the extent that the circuit court concluded that Roberson had established an attorney-client relationship with Balch merely by his having asked Gilbert whether he had checked with Balch's ethics attorneys about the legality of the plan, the circuit court mistakenly interpreted the facts before it. However, Roberson misunderstands the import of cases such as Brackin upon his claims against Balch. With respect to whether an action is a "legal services liability action," Brackin contained facts very similar to the facts in this case. In part, Brackin involved an appeal by Karen Brackin concerning a trial court's summary judgment disposing of her claim against the Trimmier Law Firm. "Brackin was the manager of lending, marketing, and human resources at FSCU [Family Security Credit Union], second in command only to Ron Fields, the president at FSCU." 897 So. 2d at 210. "In April 1999, an audit of FSCU identified apparent improprieties in the files at FSCU related to a former employee of FSCU, Mitchell Smith." Id. at 209. The Alabama Credit Union Administration ("the ACUA") ordered FSCU to " 'engage an outside firm' " to review the "potential lending violations and other improprieties by Smith" and to submit the findings

of the outside firm to the ACUA and the National Credit Union Administration. Id. "FSCU retained Steve Trimmier, the senior partner with the Trimmer Law Firm, to conduct the investigation. The Trimmier Law Firm was FSCU's legal counsel." Id. The investigation by the Trimmier Law Firm indicated that Brackin potentially could have been involved in some of the improprieties tied to Smith. FSCU eventually discharged Brackin, and Brackin sued FSCU and other entities and individuals. "Brackin later added the Trimmier Law Firm as a defendant, alleging that the law firm had violated the Legal Services Liability Act, § 6-5-570 et seq., Ala. Code 1975, by failing to properly and adequately conduct the investigation at FSCU (count V)." 897 So. 2d at 215-16. This Court affirmed the trial court's summary judgment disposing of Brackin's ALSLA claim against the Trimmier Law Firm, explaining:

> "The only claim allowed by the trial court against the Trimmier Law Firm was the alleged violation of the Legal Services Liability Act. An attorney-client relationship is an essential element of a claim under the Legal Services Liability Act, and in support of its motion for a summary judgment, the Trimmier Law Firm submitted undisputed evidence that it had never entered into an attorney-client relationship with Brackin. See Sessions v. Espy, 854 So. 2d 515 (Ala. 2002) (recognizing that claims against a lawyer that are alleged to

> have arisen out of the attorney-client relationship are all subsumed under the Alabama Legal Services Liability Act); Peterson v. Anderson, 719 So. 2d 216 (Ala. Civ. App. 1997) (because the plaintiffs were not clients of the testator's attorney, the plaintiffs lacked standing to pursue an action against the attorney under the Alabama Legal Services Liability Act).
>
> "Therefore, the trial court had before it ample evidence to properly dispose of Brackin's claim on the Trimmier Law Firm's motion for a summary judgment; no amount of discovery would have supported a different result. The trial court did not err in refusing to continue the hearing on the summary-judgment motions in order to allow Brackin to complete discovery related to her pending claim against the Trimmier Law Firm."

Id. at 229. In short, the Brackin Court concluded that, even though the Trimmier Law Firm clearly had provided legal services to FSCU -- and hence that Brackin was asserting an ALSLA action -- Brackin's lack of an attorney-client relationship with the Trimmier Law Firm meant that she could not maintain her claim against the law firm based on that provision of legal services.

This Court has emphasized the foregoing point in several other cases. Robinson v. Benton, 842 So. 2d 631 (Ala. 2002), concerned a scenario similar to the one presented in Brackin. In Robinson, the devisee

of a will, Wallace Robinson, commenced what Robinson labeled as an ALSLA action against the attorney who drafted the will, asserting that the attorney had failed to destroy a will as directed by the testatrix, resulting in Robinson's having to share his inheritance with stepchildren the testatrix allegedly had wanted to disinherit. Robinson consciously sought a change in the rule of law that " 'an intended beneficiary cannot bring a civil action against the attorney unless the duty arises from a gratuitous undertaking by the attorney.' " 842 So. 2d at 634 (quoting the appellant's brief). This Court "decline[d] to change the rule of law in this state that bars an action for legal malpractice against a lawyer by a plaintiff for whom the lawyer has not undertaken a duty, either by contract or gratuitously," 842 So. 2d at 637, and, thus, affirmed the dismissal of Robinson's action against the attorney. Robinson's action clearly alleged that the attorney had provided legal services that had harmed him -- thus his action was governed by the ALSLA -- but his claims were barred because the attorney-client relationship existed between the testatrix and the attorney, not between Robinson and the attorney. See also Shows v. NCNB Nat'l Bank of North Carolina, 585

So. 2d 880, 882 (Ala. 1991) (affirming the dismissal of the plaintiff defaulting mortgagors' ALSLA claims against an attorney for negligently preparing a deed of conveyance between the mortgagee and the purchasers of the property at the foreclosure sale because "[a] person authorized to practice law owes no duty except that arising from contract or from a gratuitous undertaking").

In contrast to the situations in Brackin, Robinson, and Shows, in Line v. Ventura, 38 So. 3d 1 (Ala. 2009), the Court upheld a judgment in an action against an attorney because, it determined, the action was outside the confines of the ALSLA. The primary plaintiff in Line, Ryan Ventura, had been the conservatee of a conservatorship set up for his benefit when he was 14 years old by his mother, Patricia Dutton, with proceeds from the award in a wrongful-death action arising from the death of Ventura's father. Dutton had engaged an Alabama attorney, Billie B. Line, to establish the conservatorship. However, along with Dutton as conservator, Line became the cosignatory on the conservatorship account. Dutton had obtained a surety bond on the conservatorship account from Hartford Fire Insurance Company ("Hartford"), which required all checks

drawn from the account to be cosigned by a representative it designated, and Line became that representative. Hartford eventually became a coplaintiff in Ventura's action against Line. By the time Ventura reached the age of majority, the funds in the conservatorship account had been exhausted due to financial decisions by Dutton that were approved by Line. Ventura then commenced an action against Line. Before the case was submitted to the jury, Line filed a motion for a judgment as a matter of law in which he argued that the ALSLA was the plaintiffs' only avenue of relief.

> "[T]he trial court accepted Line's argument that Ventura was not Line's client and that Line had not performed legal services for Ventura so that Ventura had no standing to assert a legal-malpractice claim under the ALSLA. The claims presented to the jury were Ventura's claims of negligence, wantonness, and breach of fiduciary duty, and Hartford's breach-of-fiduciary-duty and common-law indemnity claims ...."

38 So. 3d at 3-4. A jury awarded Ventura and Hartford compensatory and punitive damages. Line appealed, arguing that, "under the circumstances of this case, the ALSLA provides the only means for the plaintiffs to assert claims against him" because, "even though neither Ventura nor Hartford

was his client, their claims are related to the fact that he provided legal services to Dutton in creating the conservatorship." 38 So. 3d at 4, 8. In rejecting Line's argument, the Court reviewed the decisions in Fogarty and Cunningham, and it concluded that "those cases hold that the ALSLA applies only to claims against legal-service providers arising out of the provision of legal services," and Ventura's claims based on Line's legal malpractice had been struck by the trial court before the case had been submitted to the jury. Id. at 11. The Court then concluded that "the evidence is effectively uncontroverted that neither Ventura nor Hartford was Line's client, and Line provided legal services to neither. Accordingly, the ALSLA has no application to Ventura's and Hartford's claims against Line." Id. In support of this conclusion, the Court noted that "the record strongly supports the inference that Line undertook an entirely separate fiduciary obligation to Ventura and Hartford by explicitly agreeing to participate in the conservatorship by cosigning checks and being 'actively involved' with the conservatorship funds." Id. Thus, in Line the plaintiffs' surviving claims did not involve the provision of legal services, and so the plaintiffs' lack of an attorney-client relationship with Line did not

foreclose bringing claims on a basis other than the ALSLA. See, e.g., Ex parte Daniels, 264 So. 3d 865, 869 (Ala. 2018) (holding that "it is undisputed that the Morris defendants did not provide legal services to Daniels. Accordingly, his claims against the Morris defendants are not governed by the ALSLA."); Fogarty, 961 So. 2d 789 (concluding that the plaintiff's claims did "not allege tortious conduct resulting from the receipt of legal services by the Fogartys from [the law firm] Parker Poe" and that, "[t]herefore, it appears that the ALSLA does not apply to the Fogartys' claims; thus, it cannot be, as Parker Poe asserts, their exclusive remedy"); Cunningham, 727 So. 2d at 805 (concluding in a fee-splitting dispute between attorneys that, because the plaintiff's claims did not involve the provision of legal services, the claims were not subsumed under the ALSLA).

The underlying theme from all of the foregoing cases is that if the gravamen of a plaintiff's action against a legal-service provider concerns the provision of legal services, the action is governed by the ALSLA, but to state a cognizable ALSLA claim an attorney-client relationship must exist between the plaintiff and the defendant because there must be a

duty owed by the defendant attorney or law firm to the plaintiff that can be assessed "by the legal service provider's violation of the standard of care applicable to a legal service provider."[8] § 6-5-572(1), Ala. Code 1975.

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[8]Roberson cites one case, Kinney v. Williams, 886 So. 2d 753 (Ala. 2003), that on the surface appears not to fit this pattern. In Kinney, the Court reversed a summary judgment with respect to fraud claims asserted by two of the four plaintiffs against an attorney and his law firm involving the attorney's representation that a road adjacent to property the plaintiffs purchased was "private" when, in fact, the road was a public one. The plaintiff couple whose claims the Court addressed, Earl and Beverly Adair, were family relations of the plaintiff couple that had hired the attorney, Anthony and Nadine Kinney, and the attorney made the representation about the private character of the road directly to both couples. The Court permitted the Adairs' fraud claims against the attorney and his law firm, even though the Adairs were not his clients, on the basis of a general principle stated in Potter v. First Real Estate Co., 844 So. 2d 540, 553 (Ala. 2002), that " ' "[i]t is not necessary to an action for misrepresentation that there be a contractual relationship between the representor and the person deceived." ' " (Quoting Doss v. Serra Chevrolet, Inc., 781 So. 2d 973, 976 (Ala. Civ. App. 2000), quoting in turn Mid-State Homes, Inc. v. Startley, 366 So. 2d 734, 735-36 (Ala. Civ. App. 1979).)

The Kinney opinion did not even mention, much less discuss, the effect the ALSLA might have had on the Adairs' fraud claims. This is, perhaps, because, before the Court addressed the Adairs' fraud claims, it expressly noted that it was affirming the trial court's summary judgment in favor of the attorney and his law firm "on all claims by the Kinneys and on the legal malpractice claims by the Adairs" because "the summary judgments on these specified claims are supported by well-established law." Kinney, 886 So. 2d at 754. There is no indication in the Kinney

We have already concluded that the gravamen of Roberson's claims against Balch involved the provision of legal services. However, both Roberson and Balch assert that Roberson was not Balch's client, and those assertions are borne out in the third amended complaint, which indicates that Balch was engaged by Drummond, not personally by Roberson. Therefore, just as, in Brackin, former FSCU employee Brackin's ALSLA claim against FSCU's law firm was barred because Brackin was not the Trimmier Law Firm's client, here, former Drummond employee Roberson's claims against the law firm Drummond engaged, Balch, are barred by the ALSLA because Roberson cannot meet an essential element of an ALSLA claim -- namely, he was not Balch's client -- and thus Balch owed no duty

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opinion that any argument was presented that the Adairs' fraud claims should have been subsumed by the ALSLA. Moreover, Potter, the case on which the Kinney Court relied, was a fraud action brought by home purchasers against a real-estate agent and his agency, and so it did not involve claims against a legal-service provider for the receipt of legal services. We therefore find Kinney distinguishable from the cases discussed in this opinion, all of which expressly applied the ALSLA.

to Roberson.[9] Accordingly, we conclude that the circuit court's dismissal of Roberson's claims against Balch is due to be affirmed.

We recognize that our basis for affirming the circuit court's judgment differs from the circuit court's rationale, which was based on the applicability of the ALSLA's limitations periods. However, it is well established that this Court may "affirm the trial court on any valid legal ground presented by the record, regardless of whether that ground was considered, or even if it was rejected, by the trial court." Liberty Nat'l Life Ins. Co. v. University of Alabama Health Servs. Found., P.C., 881 So. 2d 1013, 1020 (Ala. 2003). This rule is, of course, subject to certain due-

[9]We acknowledge that in such cases as Bonner v. Lyons, Pipes & Cook, P.C., 26 So. 3d 1115, 1120 (Ala. 2009), Line, 38 So. 3d at 3, Robinson, 842 So. 2d at 634, Bryant v. Robledo, 938 So. 2d 413, 418 (Ala. Civ. App. 2005), and Peterson v. Anderson, 719 So. 2d 216, 218 (Ala. Civ. App. 1997), our courts have labeled the above-described deficiency of an ALSLA claim as a lack of "standing" by the plaintiff. However, in a series of cases that began with Wyeth, Inc. v. Blue Cross & Blue Shield of Alabama, 42 So. 3d 1216 (Ala. 2010), this Court has explained that "standing" is not a necessary or cognizable concept in private-law civil actions and that the actual issue being raised is often, as in this case, that of a failure to state a claim upon which relief can be granted.

process constraints,[10] but those constraints are not applicable here. Indeed, in its motion to dismiss the third amended complaint, Balch pointed out the issue on which we affirm the judgment of dismissal:

> "On the one hand, Roberson alleges that he relied upon, and was damaged by, Gilbert's legal advice. ... On the other hand, Roberson alleges that the ALSLA does not apply to his claims because he was not Balch's client, ... under either theory, Roberson loses. If he relied on the allegedly bad legal advice, the ALSLA applies, and his claims are time-barred. If he was a non-client, Balch owed him no duty and he has failed to establish a claim under the exclusive ALSLA statute. In any event, Roberson's common law fraud and suppression claims fail because the ALSLA is the exclusive cause of action against legal services providers based on allegedly deficient provision of legal services. See Ala. Code § 6-5-572(1)."

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[10]This Court will not affirm a trial court's judgment when

> "due-process constraints require some notice at the trial level, which was omitted, of the basis that would otherwise support an affirmance, such as when a totally omitted affirmative defense might, if available for consideration, suffice to affirm a judgment, ... or where a summary-judgment movant has not asserted before the trial court a failure of the nonmovant's evidence on an element of a claim or defense and therefore has not shifted the burden of producing substantial evidence in support of that element ...."

Liberty Nat'l Life Ins. Co., 881 So. 2d at 1020.

(Emphasis added.) Thus, in the circuit court Roberson was not unaware of the deficiency of his ALSLA claims against Balch.

Finally, we note that Roberson seems to be under the impression that if he cannot state a cognizable claim under the ALSLA for the injuries he allegedly sustained due to Balch's conduct, then he must be afforded another remedy for his injuries. See Roberson's reply brief, p. 16 ("[I]f the ALSLA does not provide a remedy for a corporate employee, such as Roberson, then it cannot be his 'exclusive remedy,' as Balch argues."). However, the foregoing survey of our cases clearly indicates otherwise, and the reason behind the limitations placed on such actions is the legislature's design of a "legal service liability action." The legislature, in expressing its intent concerning the purpose of the ALSLA, stated, in part:

> "It is the declared intent of this Legislature to insure that quality legal services continue to be available at reasonable costs to the citizens of the State of Alabama. This Legislature finds and declares that the increasing threat of legal actions against legal service providers contributes to an increase in the cost of legal services and places a heavy burden upon those who can least afford such cost and that the threat of such legal actions contributes to the expense of providing legal services to be performed by legal service providers which otherwise would not be considered necessary, and that the spiraling costs and decreasing availability of essential legal services caused

> by the threat of such litigation constitutes a danger to the welfare of the citizens of this state, and that [the ALSLA] should be given effect immediately to help control the spiraling cost of legal services and to insure the continued availability of vital legal services. ... It is the intent of the Legislature to establish a comprehensive system governing all legal actions against legal service providers. The Legislature finds that in order to protect the rights and welfare of all Alabama citizens and in order to provide for the fair, orderly, and efficient administration of legal actions against legal service providers in the courts of this state, [the ALSLA] provides a complete and unified approach to legal actions against legal service providers and creates a new and single form of action and cause of action exclusively governing the liability of legal service providers known as a legal service liability action and provides for the time in which a legal service liability action may be brought and maintained is required."

§ 6-5-570, Ala. Code 1975 (emphasis added). Roberson's claims against Balch concern the provision of legal advice, and so the claims fall within the ALSLA's "comprehensive system governing all legal actions against legal service providers." § 6-5-570. However, Roberson lacked the element of an attorney-client relationship necessary to assert cognizable ALSLA claims. Therefore, Roberson's claims against Balch were properly dismissed by the circuit court.

IV. Conclusion

Roberson failed to state cognizable ALSLA claims upon which relief could be granted. Accordingly, the circuit court's judgment dismissing Roberson's claims against Balch is affirmed.

MOTION TO STRIKE "LETTER OF SUPPLEMENTAL AUTHORITY" GRANTED; AFFIRMED.

Parker, C.J., and Mendheim and Stewart, JJ., and Baschab,* Special Justice, concur.

Lyons,* Main,* and Welch,* Special Justices, concur in part and dissent in part.

Bolin, Shaw, Wise, Bryan, Sellers, and Mitchell, JJ., recuse themselves.

*Retired Associate Justice Champ Lyons, Jr., Retired Associate Justice James Allen Main, Retired Judge Samuel Henry Welch, and Retired Judge Pamela Willis Baschab were appointed to serve as Special Justices in regard to this appeal.

LYONS, Special Justice (concurring in part and dissenting in part).

I concur to grant the motion to strike the "letter of supplemental authority" filed by Balch & Bingham, LLP ("Balch"). I also agree with the main opinion to the extent that it determines that, because David Roberson was not a client of Balch, the Alabama Legal Services Liability Act ("the ALSLA"), § 6-5-570 et seq., Ala. Code 1975, is inapplicable to this proceeding. I respectfully dissent from the affirmance of the trial court's judgment dismissing Roberson's claims against Balch on a ground not relied upon by the trial court. Although the main opinion recognizes that due-process concerns can override the general rule that this Court can affirm a judgment on any valid legal ground presented by the record, it expressly holds that that constraint is inapplicable. I disagree. My due-process concern stems from the main opinion's attempt to distinguish a case that I believe we must expressly overrule in order to affirm the trial court's judgment on the alternative ground relied upon in the main opinion. Balch has not asked us to overrule any precedent. We have heretofore held such request to be essential. See, e.g., American Bankers Ins. Co. of Florida v. Tellis, 192 So. 3d 386, 392 n.3 (Ala. 2015) (noting

that the Court follows "'controlling precedent'" unless "'invited to'" overrule it (citations omitted)). I would reverse the trial court's judgment and remand the cause to the trial court for further proceedings on the question whether Roberson has a remedy for common-law fraud outside the ALSLA. What follows is a discussion that supports my conclusion that further proceedings below on the issue resolved by the main opinion in favor of Balch is appropriate. I express no opinion as to what conclusion should be reached in such further proceedings.

This appeal arises from a judgment granting Balch's motion to dismiss. In considering whether a complaint is sufficient to withstand a motion to dismiss under Rule 12(b)(6), Ala. R. Civ. P., a court "must accept the allegations of the complaint as true." Creola Land Dev., Inc. v. Bentbrooke Hous., L.L.C., 828 So. 2d 285, 288 (Ala. 2002). See also Smith v. National Sec. Ins. Co., 860 So. 2d 343, 345 (Ala. 2003). "'The appropriate standard of review under Rule 12(b)(6)[, Ala. R. Civ. P.,] is whether, when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle [it] to relief.'" Smith v. National Sec.

Ins. Co., 860 So. 2d 343, 345 (Ala. 2003) (quoting Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993)).

For the purposes of this appeal, the following facts must be taken as true:

(1) Roberson is not a client of Balch.

(2) Roberson never asked Joel Gilbert, an attorney employed by Balch, for an opinion on the legality of his conduct.

(3) Roberson asked Gilbert if certain attorneys employed by Balch had rendered an opinion on the legality of his conduct.

(4) Balch never rendered an opinion on the legality of Roberson's conduct.

(5) Gilbert lied about the existence of a favorable opinion having been reached by such attorneys.

(6) Gilbert accepted a check for $5,000 from Roberson's employer, Drummond Company, Inc., which Roberson approved and which was payable to Balch, for the purpose of a fund-raising campaign to purchase "winter coats for kids," and Gilbert, without the knowledge of Roberson,

had agreed that Oliver Robinson, a member of the Alabama Legislature, could keep half the proceeds of the check.

A majority of this Court, by affirming the judgment of the trial court on the alternative ground that Roberson, as a nonclient, has no remedy against Balch outside the ALSLA, relies upon cases disallowing a remedy under the ALSLA when the plaintiff had not sought a remedy outside the ALSLA. See Brackin v. Trimmier Law Firm, 897 So. 2d 207 (2004), Robinson v. Benton, 842 So. 2d 631 (Ala. 2002), and Shows v. NCNB Nat'l Bank of North Carolina, 585 So. 2d 880, 882 (Ala. 1991). Of course, here, Roberson does not pursue a remedy under the ALSLA. In his principal brief, Roberson argues:

> "Although Balch is a 'legal service provider,' the complaint does not show that Roberson was Balch's 'client,' that Balch provided 'legal services' to Roberson, or that Roberson's claims 'arise from' Balch's legal services. Balch thus failed to show that Roberson's claims are subject to the ALSLA. Consequently, Judge Johnson erred in granting Balch's motion to dismiss."

Roberson's brief, p. 22. In response, Balch argues:

> "Roberson's allegation that Balch was somehow not providing legal advice or legal services is a legal conclusion

> masquerading as a factual allegation that the trial court did not accept as true, and neither should this Court."

Balch's brief, p. 26.

The main opinion then discuses cases in which this Court held that the plaintiff could proceed outside the ALSLA because the plaintiff was a nonclient who had not received legal services. See Line v. Ventura, 38 So. 3d 1 (Ala. 2009) (holding that nonclient's claim against attorney his mother had hired to manage his conservatorship was not subject to the ALSLA); Ex parte Daniels, 264 So. 3d 865, 867 (Ala. 2018) (holding that nonclient's fraud claims against attorney who had misrepresented that " 'a lawsuit brought on [his] behalf would not be economically feasible' " was not subject to the ALSLA); Fogarty v. Parker, Poe, Adams & Bernstein, 961 So. 2d 784 (Ala. 2006) (holding that nonclient's fraud claim against opposing attorney was not subject to the ALSLA); and Cunningham v. Langston, Frazer, Sweet & Freese, P.A., 727 So. 2d 800 (Ala. 1999) (holding that attorney's claim against another attorney for breach of a fee-sharing agreement was not subject to the ALSLA).

Did Gilbert's conduct as alleged in the complaint constitute delivery of legal services by Gilbert on behalf of Balch to Roberson, within the meaning of the ALSLA? If so, does Roberson's status as a nonclient deny him any right of action for fraud outside the ALSLA?

Section 6-5-572(1), Ala. Code 1975, defines a "legal service liability action" as an action alleging that some injury or damage was caused in whole or in part by the legal-service provider's "violation of the standard of care applicable to a legal service provider." Section 6-5-572(3)a. states that the standard of care applicable to a legal-service provider is "that level of such reasonable care, skill, and diligence as other similarly situated legal service providers in the same general line of practice in the same general locality ordinarily have and exercise in a like case." Does practice in "a like case" apply to an attorney's dealings with persons other than clients? To answer this question in the affirmative, do we necessarily hold that an attorney who has dealings with a nonclient is practicing law and therefore is rendering legal services?

This Court in Ex parte Daniels, supra, discussed the rendition of legal services as a prerequisite to the applicability of the ALSLA. The Court, in an opinion authored by Justice Main, held:

> "Specifically, Daniels contends that the circuit court incorrectly applied § 6-5-579(a)[, Ala. Code 1975,] to his claims against the Morris defendants because (1) the Morris defendants did not render legal services to him, and, thus, he says, the ALSLA is not applicable, and (2) his claims against Johnson are not an 'underlying action' as defined by the ALSLA. We agree.
>
> "In Cunningham v. Langston, Frazer, Sweet & Freese, P.A., 727 So. 2d 800 (Ala. 1999), this Court reviewed the language and purpose of the ALSLA and concluded that 'the ALSLA does not apply to an action filed against a "legal service provider" by someone whose claim does not arise out of the receipt of legal services.' 727 So. 2d at 804. Stated another way, 'the ALSLA applies only to lawsuits based on the relationship between "legal service providers" and those who have received legal services.' 727 So. 2d at 805. See also Brackin v. Trimmier Law Firm, 897 So. 2d 207, 229 (Ala. 2004) ('An attorney-client relationship is an essential element of a claim under the [ALSLA].'); Robinson v. Benton, 842 So. 2d 631 (Ala. 2002). Here, it is undisputed that the Morris defendants did not provide legal services to Daniels. Accordingly, his claims against the Morris defendants are not governed by the ALSLA."

264 So. 3d at 869 (emphasis added). I am not prepared to say at this point that the facts alleged in Roberson's complaint undisputedly establish the

rendition of legal services. Absent such a determination, the exclusivity of the ALSLA as a remedy is not triggered.

The main opinion, in note 8, recognizes that this Court's decision in Kinney v. Williams, 886 So. 2d 753, 755 (Ala. 2003), is problematic. In Kinney an attorney was sued by his clients and the next-door neighbors of the clients based on his misrepresentation that a road was private.

The Court in Kinney stated:

> "The Adairs [the nonclients] do not base their standing on any client-attorney relationship with Williams [the attorney]. Rather, the Adairs rely on Potter v. First Real Estate Co., 844 So. 2d 540 (Ala. 2002), which bases a plaintiff's standing to sue for fraud on the defendant's knowledge of the plaintiff's interest in the matter misrepresented or concealed and on the plaintiff's exposure to and reliance on the fraudulent conduct."

886 So. 2d at 775.

After discussing Potter v. First Real Estate Co., 844 So. 2d 540 (Ala. 2002), including its reference to a contractual relationship not being necessary to maintain an action for fraud, the Court in Kinney held:

> "The Adairs in the case before us have the same kind of standing. Although Williams was not their attorney, he knew their interest in the property and in the private status of the road, and he directed his misrepresentations to the Adairs as

> well as to his clients the Kinneys. Therefore, the trial court erred in entering a summary judgment in favor of Williams on the Adairs' fraud claims."

Id. at 756.

This Court in Kinney allowed the nonclient's fraud claims to proceed. Inherent in that conclusion is the determination that the attorney's description of the status of the road was not the rendition of legal services to a client. In its discussion of Kinney, the main opinion states: "There is no indication in the Kinney opinion that any argument was presented that the Adairs' fraud claims should have been subsumed by the ALSLA." ___ So. 3d at ___ n.8 (emphasis in original).

The exclusivity of the ALSLA as a remedy was argued by Williams, the attorney in Kinney, at pages 27-29 of his appellate brief:

> "In their Appellants' Brief at pages 33-35, Plaintiffs urge this Court to abandon long standing precedent with regard to the requirement that in order for a plaintiff to have standing to bring a cause of action against an attorney for legal malpractice, he/she must have been represented by the attorney at the time of the alleged breach of the standard of care. In support of this request Plaintiffs cite and discuss Potter v. First Real Estate Company, Inc., [844 So. 2d 540] (Ala. Sept. 6, 2002). However, to the extent Potter can be considered precedential authority prior to its publication, it is nevertheless, clearly materially distinguishable from the

present action and cannot provide persuasive authority for overturning the well-established precedent noted by the Plaintiffs or for undermining the clear authority of the ALSLA.

"Most significantly, Potter did not involve an action against an attorney. Therefore, the ALSLA was not applicable to that action. However, Plaintiffs' claims in this action are clearly brought pursuant to the ALSLA under which claims against attorneys are limited to those arising from the receipt of legal services. As herein discussed, Earl Adair testified that he had not sought legal services from Williams and had no contract of representation with him, although he 'assumed' Williams was representing him. This is simply not a reasonable assumption under the circumstances.

"In Robinson v. Benton, [842 So. 2d 631] (Ala. May 24, 2002), this Court recently declined to change Alabama's rule of law that bars an action for legal malpractice against a lawyer by a plaintiff for whom the lawyer has not undertaken a duty, either by contract or gratuitously. In Robinson, as here, the plaintiffs argued for a change in this long-standing principal so as to allow alleged third party beneficiaries to bring actions against attorneys for malpractice. However, the Court noted that such a change as advocated in Robinson implies the result that 'attorneys would be subject to almost unlimited liability.' Robinson, [842 So. 2d at 637], quoting Barcelo v. Elliott, 923 S.W.2d 575, 577 (Tex. 1996). Therefore, the Court declined to recognize such an abrogation of the ALSLA or to adopt such a change in Alabama law.

"The same policy concerns and considerations, as noted in Robinson, are clearly applicable in this action. Plaintiffs have not shown any authority or sufficient reason for the abrogation of the rule of privity established under the ALSLA and authorities discussed above. Therefore, because Williams

> did not represent the Adairs at any time relevant and did not provide legal services for them, they lack standing to bring this legal services liability action against him and the trial court did not err in so ruling."[11]

(Emphasis added.)

As is abundantly clear from the foregoing excerpt from the attorney's brief, the Court in Kinney was specifically asked to treat Potter as distinguishable. As previously noted, the Court in Kinney applied Potter, notwithstanding the attorney's argument that it was distinguishable.

The main opinion states:

> "Moreover, Potter, the case on which the Kinney Court relied, was a fraud action brought by home purchasers against a real-estate agent and his agency, and so it did not involve claims against a legal-service provider for the receipt of legal services. We therefore find Kinney distinguishable from the cases discussed in this opinion, all of which expressly applied the ALSLA."

___ So. 3d at ___ n.8 (emphasis added). In essence, the main opinion distinguishes Kinney because it applied a precedent, Potter, which the

[11]"[T]his Court may take judicial notice of its own records in another proceeding when a party refers to the proceeding." Kennedy v. Boles Invs., Inc., 53 So. 3d 60, 66 n.2 (Ala. 2010).

main opinion deems inapplicable, an argument that was rejected in Kinney.

The attorney's brief in Kinney also cited Robinson v. Benton, 842 So. 2d 631 (Ala. 2002), in which this Court, in an opinion authored by Justice Harwood, recognized the exclusivity of the ALSLA as a remedy when the plaintiff claimed to be a third-party beneficiary of an attorney-client relationship. I concurred in Kinney, as did Justice Harwood. I am not prepared to say we simply overlooked the exclusivity issue in Kinney. It is more likely we deemed the nonclient plaintiffs' theory of recovery for fraud in Kinney sufficiently different from the plaintiff's claimed status as a third-party beneficiary of an attorney-client relationship in Robinson. I therefore do not see how we can affirm the judgment in this proceeding on the basis of distinguishing Kinney, a case which I conclude would have to be overruled, rather than distinguished. As previously noted, we have not been asked to do so.

The main opinion emasculates the rule that this Court does not overrule precedent unless asked to do so. We now can simply "distinguish" an earlier case when this Court is deemed to have applied a precedent

that the prior Court should have found to be distinguishable. Such activity in a prior case used to be treated as error.

Article I, § 13, Ala. Const. 1901 (Off. Recomp.), provides that the courts shall always be open and that for every wrong there shall be a remedy. In the wake of the main opinion, an individual without a law license can deceive another individual with whom he or she has no contractual relationship and be liable for damages. However, an individual who happens to have a law license can deceive another individual with whom he or she has no contractual relationship and be immune from liability for damages because of the exclusivity of the ALSLA as a remedy. Left unaddressed is the question whether such construction of the ALSLA conflicts with the rule that, to the extent possible without doing violence to the terms of a statute, this Court must construe the statute in a manner consistent with the Alabama Constitution. Magee v. Boyd, 175 So. 3d 79, 107 (Ala. 2015). If it cannot be so construed, the statute must be struck down. Had the issue been ripe for discussion in the parties' principal appellate briefs, one might assume

that Roberson would have challenged the conclusion in the main opinion on constitutional grounds.

Although I agree that Roberson's status as a nonclient renders the ALSLA inapplicable to his claims against Balch, I respectfully dissent from the main opinion insofar as it affirms the trial court's judgment of dismissal. I consider the better course to be, consistent with the respect owed the due-process rights of Roberson, to reverse the judgment and to remand the cause for further proceedings, noting the exclusivity issue yet to be resolved.

Main and Welch, Special Justices, concur.