



AlaFile E-Notice

01-CV-2026-902889.00

Judge: TAMARA HARRIS JOHNSON

To: KENNETH MARK PARNELL
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ROBERT SANSOME ET AL V. HOAR CONSTRUCTION, LLC ET AL
01-CV-2026-902889.00

The following matter was FILED on 7/3/2026 9:46:42 AM

C001 SANSOME ROBERT

C002 HILLEY JOHN

PLAINTIFFS' EMERGENCY MOTION FOR EXPEDITED REASSIGNMENT AND TO COMPLETE THE
PRELIMINARY-INJUNCTION

[Filer: PARNELL KENNETH MARK]

Notice Date: 7/3/2026 9:46:42 AM

JACQUELINE ANDERSON SMITH
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
716 RICHARD ARRINGTON, JR BLVD
BIRMINGHAM, AL, 35203

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7/3/2026 9:46 AM
01-CV-2026-902889.00
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
JACQUELINE ANDERSON SMITH, CLERK

STATE OF ALABAMA

Revised 3/5/08

Cas

Unified Judicial System

01-JEFFERSON

District Court Circuit Court

CV2

ROBERT SANSOME ET AL V. HOAR
CONSTRUCTION, LLC ET AL

CIVIL MOTION COVER SHEET

Name of Filing Party: C001 - SANSOME ROBERT
C002 - HILLEY JOHN

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

KENNETH MARK PARNELL
200 Office Park Drive, Suite 328
BIRMINGHAM, AL 35223
Attorney Bar No.: PAR039

Oral Arguments Requested

TYPE OF MOTION

Motions Requiring Fee

- Default Judgment (\$50.00)
Joinder in Other Party's Dispositive Motion
(i.e. Summary Judgment, Judgment on the Pleadings,
or other Dispositive Motion not pursuant to Rule 12(b))
(\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative
Summary Judgment (\$50.00)
Renewed Dispositive Motion (Summary
Judgment, Judgment on the Pleadings, or other
Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56 (\$50.00)
- Motion to Intervene (\$297.00)
- Other _____
pursuant to Rule _____ (\$50.00)

*Motion fees are enumerated in §12-19-71(a). Fees
pursuant to Local Act are not included. Please contact the
Clerk of the Court regarding applicable local fees.

Local Court Costs \$ 0 _____

Motions Not Requiring Fee

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw

Other PLAINIFFS' EMERGENCY MOTION
FOR EXPEDITED REASSIGNMENT
AND TO COMPLETE THE
PRELIMINARY-INJUNCTION

pursuant to Rule Rule 63 (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees)

Date:
7/3/2026 9:46:05 AM

Signature of Attorney or Party
/s/ KENNETH MARK PARNELL

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.
**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
 BIRMINGHAM DIVISION**

ROBERT B. SANSOME and)	
JOHN BENJAMIN HILLEY,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 01-CV-2026-902889.00
)	
HOAR CONSTRUCTION, LLC;)	
LAKESHORE DATA CENTER, LLC;)	
NEBIUS, INC.; NEBIUS GROUP N.V.;)	
ALABAMA ADC HOLDINGS, LLC;)	
THE CITY OF BIRMINGHAM; and)	
THE ZONING BOARD OF ADJUSTMENT)	
OF THE CITY OF BIRMINGHAM,)	
)	
Defendants.)	

**PLAINTIFFS' EMERGENCY MOTION FOR EXPEDITED REASSIGNMENT AND TO
 COMPLETE THE PRELIMINARY-INJUNCTION HEARING ON THE EXISTING
 RECORD PURSUANT TO RULE 63, ALA. R. CIV. P.**

Plaintiffs Robert B. Sansome and John Benjamin Hilley respectfully move this Court, on an emergency basis, for (1) expedited reassignment of this action to a successor judge and (2) an order that, upon assignment, the successor judge complete the pending preliminary-injunction hearing on the existing record pursuant to Rule 63, Ala. R. Civ. P., rather than requiring the parties to begin the hearing anew. Two full days of evidence have already been taken. Plaintiffs presented their case and rested. The interruption occurred not in plaintiffs' case but in the midst of the defendants' own case-in-chief, during the examination of their first witness. The presiding judge's recusal—on grounds wholly extrinsic to the merits and to the evidence received—does not nullify that record. Rule 63 exists precisely to permit a successor judge to complete a hearing already commenced, without prejudice, and to spare the parties the needless delay and expense of a restart.

And because the recusal came at the defendants' own insistence—after the Court represented that it could be fair and impartial and offered to withdraw only if a defendant so requested—and because it was the defendants' own witness whose examination was interrupted, the natural and minimally-disruptive point of resumption is the completion of the defendants' case, not the re-trial of the case plaintiffs have already presented and rested. In support, plaintiffs state as follows:

I. PROCEDURAL BACKGROUND

1. Plaintiffs' application for a preliminary injunction came on for an evidentiary hearing before the Honorable Tamara Harris Johnson. The hearing was conducted over two hearing days.

2. Plaintiffs presented their evidence and rested. Plaintiffs' substantive grounds for injunctive relief rest upon matters of law and written record—the text of the Birmingham Zoning Ordinance, the recorded instruments of conveyance, the unappealed decisions of the Zoning Board of Adjustment, and the record of the June 9, 2026 text amendment. Those witnesses were examined in full, and they remain available.

3. The defendants then began their case-in-chief. When the events described below occurred, the defendants had called their first witness—the City's Director of Planning, the very official whose asserted administrative authority to authorize the challenged use is a central legal question in this case. That witness's testimony had not been completed. Numerous exhibits had been offered and admitted, and all proceedings were recorded and transcribed by the official court reporter.

4. Before the defendants' first witness had completed her testimony, and before any ruling on the preliminary injunction, the Court, *sua sponte*, recused on July 2, 2026. In doing so, the Court disclosed that, more than twenty-five years ago, it and undersigned counsel had been fellow employees at the same law firm, and that, more than twenty years ago, it had served as a the City

Attorney for the City of Birmingham. The record further reflects that, during the Court's entire tenure on the bench, undersigned counsel has appeared before it on only one prior occasion—in *Black Contractors' Ass'n of Alabama v. Birmingham Jefferson Civic Center Authority*, No. 01-CV-2024-902155 (Jefferson Cnty. Cir. Ct.), and that counsel and the Court had no communication of any kind between that matter and this one.

5. The recusal was elective, and it came at the defendants' insistence. As reflected in the record, the Court disclosed the associations described above, stated that it had been and could be fair and impartial, and offered to recuse only if any defendant requested that it do so. The Court then recessed to permit the defendants to consult with their clients. Upon resuming, counsel for the Nebius defendants stated, on the record, that his client had directed him to insist upon the Court's recusal, and the Court recused accordingly.

6. As of the filing of this motion, no successor judge has been assigned; reassignment is expected on or after Monday, July 6, 2026. The preliminary-injunction hearing therefore stands partially completed and undecided—in the midst of the defendants' case—and plaintiffs' application for emergency injunctive relief remains pending.

7. The conduct plaintiffs seek to enjoin is ongoing. Construction at the subject site continues, so that each day of delay compounds the very harm the preliminary injunction is intended to arrest.

II. RULE 63 GOVERNS AND AUTHORIZES COMPLETION OF THE HEARING ON THE EXISTING RECORD

8. Rule 63, Ala. R. Civ. P., titled "Inability of a Judge to Proceed," provides in full:

If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a

hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

9. The Rule squarely governs. A partially completed, nonjury preliminary-injunction hearing is a “trial or hearing [that] has been commenced,” and the recusal of the presiding judge renders that judge “unable to proceed.” The Committee Comments to the October 1, 1995 amendment confirm that the current Rule reaches recusal specifically: the amended Rule “addresses disability, disqualification, or other reasons for withdrawal,” and “permits the successor judge to act at an earlier stage in the proceedings,” rather than only after verdict or findings. A mid-hearing recusal is the paradigm the current Rule was written to address.

10. The Rule’s operative command is that the successor “may proceed ... upon certifying familiarity with the record and determining that the proceedings ... may be completed without prejudice to the parties.” Nothing in the Rule voids testimony already taken or compels a fresh evidentiary hearing. Alabama courts construe the Rule to invest a successor judge who has reviewed the transcript with authority to complete the matter. *See Baldwin v. Baldwin*, 204 So. 3rd 866 (Ala. Civ. App. 2015) (current Rule 63 “remains worded broadly enough” to permit a successor judge to proceed on the record, and confirming the successor’s broad discretion); *Birmingham Retail Ctr. Assocs., Ltd. v. Eastwood Festival Assocs.*, 608 So. 2d 340, 343–44 (Ala. 1992) (successor judge who has reviewed the transcript is empowered to complete the proceedings).

III. THE HEARING CAN BE COMPLETED WITHOUT PREJUDICE, AND THE NATURAL POINT OF RESUMPTION IS THE DEFENDANTS’ INTERRUPTED CASE

11. **Plaintiffs’ case is complete and rests on law and written records.** The dispositive questions—whether the challenged use is authorized—turn upon the text of the Zoning Ordinance,

the recorded instruments of conveyance, the unappealed decisions of the Zoning Board of Adjustment, and the record of the June 9, 2026 text amendment. A successor judge can fully and fairly resolve those questions from the transcript and the admitted exhibits; they do not depend on the demeanor or credibility of any witness. Should the successor judge wish to hear any of it firsthand—those witnesses remain available and plaintiffs consent to their recall.

12. The interruption fell within the defendants’ case, and the natural point of resumption lies there. When the Court recused, the defendants had just started their case. The ordinary and minimally-disruptive course is for the defendants to re-present the direct examination of that witness before the successor judge, subject to plaintiffs’ cross-examination. That is not a “restart” of the hearing; it is the routine consequence of an examination cut short, and it places any incremental burden where the interruption occurred—on the defendants’ case, not on the plaintiffs’ completed presentation.

13. Rule 63’s recall provision fully protects any contested testimony. In a nonjury hearing, the successor judge “shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden.” The safeguard is confined by three conjunctive conditions—material *and* disputed *and* reasonably available. Plaintiffs affirmatively consent to the recall of any witness meeting that standard, including their own. That tailored recall—not a wholesale re-trial—is the remedy the Rule prescribes.

14. Written closings will complete the hearing, and only the plaintiffs would be prejudiced by a restart. Plaintiffs request that the successor judge set a schedule for the completion of the defendants’ remaining testimony and for simultaneous written closing arguments citing the transcript and exhibits. The “without prejudice” inquiry under Rule 63 measures prejudice to the parties’ fair adjudication—not the mere inconvenience of proceeding

upon a record already made. The only party who would be prejudiced by a restart is the plaintiffs, who face continuing, irreparable harm while construction proceeds. A restart is therefore both unnecessary under the Rule and contrary to its purpose.

IV. THE RECUSAL WAS NOT REQUIRED, AND THE DEFENDANTS MAY NOT CONVERT A DISRUPTION OF THEIR OWN MAKING INTO A WHOLESALE RESTART

15. Recusal in Alabama is governed by an objective standard. Under Canon 3.C.(1), Alabama Canons of Judicial Ethics—which has the force and effect of law—a judge is disqualified only where the judge’s “impartiality might reasonably be questioned.” The test is “whether a reasonable person knowing everything that the judge knows would have a ‘reasonable basis for questioning the judge’s impartiality.’” *Ex parte Cotton*, 638 So. 2d 870, 872 (Ala. 1994). All judges are presumed impartial, and the burden of establishing a ground for recusal rests on the party seeking it. *Ex parte Cotton*, 638 So. 2d at 872.

16. Measured against that standard, recusal was not required—as the Court itself recognized. The Court expressly represented, on the record, that it had been and could be fair and impartial, and it offered to withdraw not because the objective standard compelled it, but only if a defendant asked. The disclosed grounds confirm the point: the Court stated that, more than twenty-five years ago, it and undersigned counsel were fellow employees at the same law firm—not partners, and with no supervisory, financial, or shared-client relationship—and that, more than twenty years ago, it had served as Birmingham City Attorney. Associations that remote and that attenuated would not lead a reasonable person to question the Court’s impartiality in this 2026 litigation; a shared place of employment a quarter-century in the past, long since ended, is not a “reasonable basis for questioning the judge’s impartiality.” Indeed, the record reflects that, across

the Court's entire tenure on the bench, undersigned counsel has appeared before it exactly once with no communication between counsel and the Court since; a single professional encounter, years in the past, supplies no reasonable basis to question the Court's impartiality. The recusal was therefore not compelled. It was elective, and it was made at the defendants' election.

17. That the recusal was elective, not compelled, matters here for a specific, limited reason. Plaintiffs do not ask this Court to reinstate the recused judge, and they acknowledge that a judge may withdraw from an abundance of caution even where withdrawal is not compelled. But because the disclosed grounds are wholly extrinsic to the merits and to the evidence—they concern decades-old professional history, not any disputed fact, any party's conduct, or any exhibit or witness—they furnish no reason whatever to discard the record. Testimony and exhibits taken over two days remain exactly as reliable in the hands of a successor judge as when they were received. A remote, extrinsic association taints not a single question, answer, or exhibit.

18. The equities forbid the restart the defendants may seek, because the defendants themselves procured the recusal. After the Court represented that it could be fair and offered to withdraw only at a defendant's request, counsel for the Nebius defendants stated on the record that his client had directed him to insist upon the Court's recusal, and the Court recused accordingly. Having deliberately and expressly demanded the recusal, the Nebius defendants cannot now wield it as a sword—forcing plaintiffs to re-try a case they have already presented and rested, while construction proceeds and plaintiffs' injury deepens by the day. A litigant may not procure a result and then profit from it: the party that insists upon a judge's recusal takes the case as it then stands and bears whatever burden attends resuming it. That burden, in any event, falls naturally where the interruption occurred—within the defendants' own case, during their own first witness—not upon the plaintiffs, who long since rested.

V. EXPEDITED REASSIGNMENT AND AN EXPEDITED SETTING ARE WARRANTED

19. Because a partially heard application for emergency injunctive relief is pending and the conduct at issue is ongoing, plaintiffs respectfully request that reassignment be expedited and that, immediately upon assignment, the successor judge set an expedited status and scheduling conference to implement the Rule 63 procedure described above.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court:

- (a) Expedite the reassignment of this action to a successor judge;
- (b) Order that, upon assignment, this motion be presented to the successor judge, and that the successor judge exercise the authority conferred by Rule 63, Ala. R. Civ. P., to certify familiarity with the record and to complete the pending preliminary-injunction hearing on the existing transcript and admitted exhibits, without requiring the evidentiary hearing to begin anew;
- (c) Direct that the hearing resume at the point of interruption—that is, with re-presentation of the direct examination of the defendants’ first witness, the City’s Director of Planning, subject to plaintiffs’ cross-examination—and permit the recall, under Rule 63, of any witness whose testimony is material, disputed, and available, including plaintiffs’ irreparable-harm witnesses should the successor judge wish to hear them;
- (d) Set an expedited schedule for the completion of testimony and for simultaneous written closing arguments citing the transcript and exhibits;
- (e) Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 3rd day of July, 2026.

Respectfully,

/s/ K. Mark Parnell
K. Mark Parnell (PAR039)
parnell@ptlawllc.com
Counsel for the Plaintiffs

OF COUNSEL:
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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July 2026, a copy of the foregoing has been served on all counsel of record through the AlaFile Electronic Filing System.

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