

10-1-2021

History of the Probate Court in Alabama

Frank Barger

Follow this and additional works at: <https://louis.uah.edu/huntsville-historical-review>



Part of the [United States History Commons](#)

Recommended Citation

Barger, Frank (2021) "History of the Probate Court in Alabama," *Huntsville Historical Review*. Vol. 46: No. 2, Article 3.

Available at: <https://louis.uah.edu/huntsville-historical-review/vol46/iss2/3>

This Article is brought to you for free and open access by LOUIS. It has been accepted for inclusion in Huntsville Historical Review by an authorized editor of LOUIS.

History of the Probate Court in Alabama

By Frank Barger Madison County Probate Judge

Madison County was formed in 1808 by the governor of the Mississippi territory who named it after President James Madison (1751-1836). The governing body of the county, an elected board, was developed from an administrative court, established by laws in 1821, shortly after Alabama's admission into the Union (1819). The act of 1821 provided for the election of four commissioners of roads and revenue, to serve one-year terms. Any two of the commissioners, together along with the judge of the county court, constituted a "court" to levy the county tax, establish, maintain and discontinue county roads, bridges, ferries and the management of public buildings. Terms of office were later expanded to four years and the county governing body designated as the "county commission". No other significant changes were made to the county court until mid-century.



The Probate Court was established in each county of Alabama by Act No. 3 of the 1849-1850 Session of the Alabama Legislature which passed on February 11, 1850. The positions of clerk and judge of the county court were consolidated into the office of the judge of probate. Unlike the county judge who was appointed for a six-year term, the judge of probate was to be popularly elected for a term of six years. Jurisdiction of the old county court was for the most part simply transferred to the new probate court. The judge of probate was given the authority formerly exercised by the county judge and the clerk of the county court, with authority to appoint his own clerk.

Like his predecessor, the Judge of Probate was made a member of the Court of County Commissioners. Currently, only thirteen of Alabama's sixty-seven probate court judges are the acting head of the county commission.

Since 1850 there have been several important changes in the legal framework of the office of the judge of probate. Most of the early changes that were made added new duties to those already assigned or expanded existing areas of responsibility. Additional responsibilities in election administration, licensing and records are good examples of the expansion. The most important addition was made in 1866 when the judge of probate was designated as *ex officio* judge of the county court. Exceptions to this law were made in several counties between 1866 and 1915. In 1915 the judge of probate was re-established as *ex officio* judge of the county court in all counties with a population less than 50,000. At one time, the Judge of Probate had jurisdiction over juvenile, welfare, desertion and non-support cases and matters. As time progressed, these duties and responsibilities were transferred to other courts and governmental entities.

As Madison County grew, the duties and responsibilities of the court changed. The Judge of Probate ceased serving as a member of the county commission and the jurisdiction of the Judge of Probate was expanded to enable the Court to hear and rule upon some of the more administrative judicial matters being heard by the judges of the Circuit Court.

Along with the judicial duties of the Probate Court, one of the responsibilities of the Judge of Probate is to protect the written history of the Madison County Court System (1809-present) and provide public access of this rich history to the citizens of Madison

County. The court strictly adheres to the guidelines outlined in the 1975 Code of Alabama, § 36-12-5 and follows the archiving guidelines developed by the Alabama Department of History and Archives.

The Roster of Madison County Probate Judges

Hon. John W. Otey 1850 - 1853	Hon. Morgan S. Stewart 1896 - 1904
Hon. William Echols 1853	Hon. W.T. Lawler 1904 - 1916
Hon. Ferdinand Hammond 1853 - 1859	Hon. Archibald McDonnell 1916 - 1917
Hon. James H. Scruggs 1859 - 1863	Hon. Thomas W. Jones 1917 - 1935
Hon. Robert D. Wilson 1863 - 1866	Hon. W.E. Butler 1935 - 1941
Hon. James H. Scruggs 1866 - 1868	Hon. Thomas W. Jones 1941 - 1953
Hon. Lewis M. Douglass 1868 - 1874	Hon. Ashford Todd 1953 - 1971
Hon. Robert Stith Spragins 1874 - 1875	Hon. Myrtle Green 1971 - 1983
Hon. William Richardson 1875 - 1886	Hon. Frank H. Riddick 1983 - 2001
Hon. Thomas Jones Taylor 1886 - 1894	Hon. Tommy Ragland 2001 - 2019
Hon. Dr. Francisco Rice 1894 - 1896	Hon. Frank Barger 2019 - Present

Other Judicial responsibilities include: adoptions, involuntary commitment of the mentally ill, issues of Eminent Domain, guardianship (protection of seniors and children) and conservatorship proceedings, wills and administrations, and name changes.

The Office of the Probate Judge records and archives records, notary, marriage and passports. The Office is also responsible to ensure elections are conducted efficiently, safely, and fair. The Office oversees court operations and communicates to the public and administrators the changes necessary based upon law or administrative process.

Historians are particularly interested in the records archived by the Office to support their research on various people, events, and topics of interest. There are always discoveries in the archives that stimulate imagination and awe i.e., for many years there was a gap in the written history of the probate court records. As early as the 1950's thousands of pages of Huntsville's history mysteriously vanished from within the walls of our library; many of the documents from Huntsville's early territorial days, including Civil War era records appeared to be lost to time.

In June of 2011, the descendants of James William Bragg, Sr. delivered 20 boxes of missing documents to the Madison County Records Center. According to family members, Mr. Bragg checked out 38 record books, some dating back to 1813, with permission from the sitting probate judge, to begin work on his master's thesis. The collection itself was very valuable, because they represent the earliest days of Alabama, when Madison County was the first area open to settlement. Mr. Bragg's master's thesis, *"Frontier Entrepreneurs of Madison County, Alabama: The Bell Factory Enterprise, 1819 - 1842"*, can now be found among the very historical probate court records that he relied upon to write his thesis. Mr. Bragg's work details the

first cotton mill chartered in Alabama in 1832 on the Flint River. Mr. Bragg Sr. worked on his thesis from 1952 to 1958. The family traced back the time the materials were borrowed to 1953, when Hon. Thomas Jones was probate judge then replaced by Hon. Ashford Todd in 1954.

Mr. Bragg, an avid historian himself, had, thankfully, stored these documents in an air-controlled storage area at his Adams Street home until the death of Nell Bragg after which Ben and Steve Bragg, grandsons of Jim Bragg, along with their cousin, David Frost, decided the collection should be returned to the Courthouse.

Another interesting story is the murder of Judge W. T. Lawler and haunted Ditto Landing. During his twelve years as Probate Judge W. T. Lawler's work in court had become incidental as he accrued a bulging patronage portfolio. He oversaw disposition of estates and wills and he also handled deeds and mortgages. His position gave him the chairmanship of the local board of commissioners, and he had authority over county road maintenance, including the awarding of contracts. Each month, a fortune in fees and payments passed through Judge Lawler's hands. It was assumed that a percentage stuck there. The judge was occasionally accused of losing track of a thousand or two, but in those instances the missing cash magically reappeared.

In 1916, Lawler, 52, faced formidable opposition in the Democratic primary. His opponents were Mr. Zack Drake, a prosecutor with a square reputation, and Mr. David Overton, a former court clerk and police chief regarded as the second-most powerful Democrat in town, after Lawler. Alabama had gone dry in 1915, before the rest of the country, so the state got a head start on the financial windfall Prohibition brought to corrupt officials. Huntsville police, for example, were the chief importers of illegal liquor, using taxicabs to ferry hooch into town, with cops

riding shotgun. The city was well-positioned for interstate rum-running being 20 miles from the Tennessee border and less than 100 miles from both Georgia and Mississippi.

Citizens of Madison County whispered that Overton was a booze importer. It became an election issue when wholesale-sized stashes of alcohol were found first in Overton's barn and then in Judge Lawler's, each claiming to have been framed by the other.

On May 9, after a dirty campaign with extravagant spending, the incumbent prevailed over Overton by 300 votes, with Drake a distant third. On June 14, five weeks after the election, Judge Lawler was summoned to an evening rendezvous with unknown parties. His car was found abandoned near the county courthouse, and his spectacles lay in the street nearby. Curiously, David Overton vanished that same night.

A few days later, Sheriff Robert Philips announced that an informant had suggested that the judge had grappled at the Tennessee River outside of Huntsville with an unknown individual. The search turned up Lawler's badly beaten, cut and shot body at the Hambric Slough Bridge on Aldridge Creek by a ferryman identified as Percy Brooks. Lawler's body had been weighted by heavy pieces of iron, later identified as coming from the Madison County Jail. Mr. Brooks accused C.N. Nails, the Madison County Clerk, and David Overton, a former police chief that was running for Probate Judge. A week after the body was found, Mr. Shelby Pleasants, a prominent Huntsville attorney and friend of Overton, committed suicide, leaving a vague note in which he said he feared that he would be implicated in Lawler's murder. Two days later, Sheriff Philips shot himself. His note, equally vague, implied that Overton had "fooled him." The sitting Chief of Police and a patrolman also resigned their positions.

After two months on the rum, Overton was arrested in Tennessee and returned to Huntsville. He gave a far-fetched story of the slaying, explaining that he met Lawler at the river to negotiate a truce and fend off indictments over election fraud. The judge attacked him, Overton said,

and he cut and shot him in self-defense. At trial, a jury rejected Overton's version and condemned him to hang. Overton was jailed in Birmingham while his attorneys appealed.

But the story doesn't end on that note. On March 20, 1917, four months after trial, Overton and six other convicts escaped the Birmingham jail and fled in a car conveniently waiting outside the jail. A few hours later, a posse pinned them down outside the city. One of the convicts hiding in the thicket is said to have fired a shot towards the lawmen, and at least six deputies emptied their revolvers in that direction. A newspaperman who witnessed the assault called it "general firing." Two of the escapees were killed. One of them being Mr. David Overton. To this day, visitors to Ditto Landing have reported seeing the figure of a man hanging over the bridge then falling into the Aldridge Creek below.

There are also many significant documents in the Archives such as the original deed – dated 1797 – from Joseph Fenwick to William Fenwick in Franklin County, Kentucky left in Madison County as Joseph Fenwick was a land speculator and had dealings not only in Kentucky but also in Madison County/North Alabama and Louisiana in the late 1790s and 1800s.

Another historical artifact is the will of Major John Hutchings, friend and business partner of Andrew Jackson. Jackson was named as one of the executors and Rachel Jackson's signature is affixed as one of the witnesses. And the Free Papers of Thomas Harris, 'a man of color' born in Sussex County, Virginia and recorded in Madison County in March of 1860 by Probate Judge James H. Scruggs.



Meet the Author: Probate Judge Frank Barger is a proud son of North Alabama. The maternal side of his family goes back eight generations in Madison County. He was elected to serve as Probate

Judge of the County beginning in January 2019. Previously he served on the staff of the previous Probate Judge and as Madison County's Elections Administrator. He has served on more than a dozen boards of directors focused on health and human services, leadership development, education, and the arts.

His principle focus is on the mental health crisis, implementing procedures to protect our seniors and children, and safeguarding secure and transparent elections.