

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

ALYSSON MILLS, IN HER CAPACITY
AS RECEIVER FOR ARTHUR LAMAR
ADAMS AND MADISON TIMBER
PROPERTIES, LLC,

Plaintiff,

v.

BUTLER SNOW LLP et al.,

Defendants.

Case No. 3:18-cv-00866-CWR-BWR

Hon. Carlton W. Reeves

**BAKER DONELSON’S MEMORANDUM OF LAW IN RESPONSE TO
THE MOTION TO EXCLUDE THE TESTIMONY OF JUDGE ROBERT L. GIBBS**

The Receiver’s Motion to exclude the expert testimony of former Circuit Judge Robert L. Gibbs—a distinguished Jackson lawyer with a wealth of experience on “standard notarial practice in this state” (Mot. Ex. 1 (Gibbs Rpt.) at 1, 4)—should be denied.

First, the Motion ignores and misstates Judge Gibbs’ *actual* qualifications, beginning with its assertion he served only “three months as a Circuit Judge” (in fact, he served *seven years* and three months), and continuing with its statement “Gibbs has no specialized expertise in this area.” Mot. at 1, 3. The Motion simply ignores Judge Gibbs’ credentials—set forth in his expert report—showing he is more than qualified to opine on standard notarial practices, including his having personally performed notarial acts and his supervising a staff of four notaries. Contrary to her position here, the Receiver has offered similar opinions on notaries by expert witness Luke Dove, whose only qualification is that he is a lawyer.

Second, the Motion ignores Judge Gibbs’ *actual* opinions so it can attack “straw man” opinions. For example, it uses incomplete quotations and misleading paraphrases to cast Judge Gibbs’ opinions as “inadmissible legal conclusions,” Mot. at 11–12, when his report and

deposition make clear he will testify about *the standard of care for notaries*, Mot. Ex. 1 (Gibbs Rpt.) at 4; Mot. Ex. 2 (Gibbs Tr.) 42:20–43:8, 53:18–54:12. Judge Gibbs will explain “*what does a Mississippi notary do*” when acting with reasonable care—i.e., “*standard notarial practices* in this state”—and will not offer “legal conclusions.” Mot. Ex. 1 (Gibbs Rpt.) at 4.

The Motion further depends on the erroneous premise that the severity, significance, and effects of the notaries’ negligence are “not in dispute.” Mot. at 1. In fact, the Receiver has never agreed with Baker Donelson’s position that negligence on the part of the notaries and their employers: (a) was sufficiently pervasive and unforeseeable that Baker Donelson could not be the proximate cause of the Receiver’s alleged damages and (b) warrants a jury’s apportioning zero (or nearly zero) comparative fault to Baker Donelson on the verdict form. If either of these matters were truly undisputed, then the Receiver would have voluntarily dismissed her claims against Baker Donelson years ago. Furthermore, the Motion ignores that, under the Federal Rules of Evidence, a party ordinarily “may not stipulate or admit his way out of the full evidentiary force of the case as [the other side] chooses to present it.” *Old Chief v. United States*, 519 U.S. 172, 186–87 (1997).

Third, after the Motion tells the Court that Judge Gibbs lacks the “specialized expertise” to offer opinions on notarial practices (Mot. at 1), it flip-flops to argue that the standard practices of Mississippi notaries are “lay matters” and “common sense” for which no expert testimony is allowed (*id.* at 12, 14). As shown below, they are anything but, as the Receiver herself repeatedly has conceded, including by offering her own expert on exactly these matters.

I. JUDGE GIBBS IS QUALIFIED.

“Experts qualified by ‘knowledge, skill, experience, training[,] or education’ may present opinion testimony to the jury.” *Huss v. Gayden*, 571 F.3d 442, 452 (5th Cir. 2009) (citing Fed. R. Evid. 702). Federal Rule of Evidence 702 “does not mandate that an expert be highly

qualified in order to testify about a given issue.” *Huss*, 571 F.3d at 452. Instead, an expert is qualified if the proposed expert’s training or experience are “sufficiently related to the issues and evidence before the trier of fact that the witness’s proposed testimony will help the trier of fact.” *United States v. Wen Chyu Liu*, 716 F.3d 159, 167 (5th Cir. 2013) (citation omitted).

The Receiver says Judge Gibbs is not qualified “because he does not have experience in the relevant field.” Mot. at 6. This simply ignores Judge Gibbs’ qualifications, which include personally acting as a notary public, employing and supervising four Mississippi notaries public, participating in countless “signature witnessings,” and studying the Notary Regulations, not to mention a legal and judicial career spanning 45 years:

EXPERT REPORT OF ROBERT L. GIBBS

Robert L. Gibbs
Email: rgibbs@bhorvick.com
Telephone: 601.487.2631
Facsimile: 601.366.4295
July 23, 2025
EXPERT REPORT OF ROBERT L. GIBBS
I, Robert L. Gibbs, have been retained by counsel for Baker, Donelson, Brennan, Caldwell & Horowitz, PC, as an expert witness to provide testimony on the use of notarial officers

Throughout my decades of work as a judge and practicing lawyer in Mississippi, I have had many occasions to consider: evidence of notarial acts having been performed in Mississippi; the requirements that govern Mississippi notaries’ performance of notarial acts, including at “signature witnessings”; and the significance to lawyers, businesses, and others of a Mississippi notary’s having certified to witnessing the signing of a document. I have participated as a signatory in numerous signature witnessings by Mississippi notaries, and I am familiar with the process and notaries’ practices in signature witnessings. I have reviewed the statutes and rules governing notaries and signature witnessings. While a judge, I was a notary public *ex officio* and “possess[ed] all the powers and discharge[d] ... the duties belonging to the office of notary public,” Miss. Code § 25-33-17 (pre-2021), and I administered oaths and notarized documents. At my law firm, I employ and supervise four Mississippi notaries public. Thus, I am qualified to provide an expert opinion on the matters in this report.

Mot. Ex. 1 (Gibbs Rpt.) at 1. The Motion is simply wrong that Judge Gibbs “does not have experience in the relevant field.” Mot. at 6.

Contrary to her arguments here, the Receiver in a related case disclosed the expert opinion of attorney Luke Dove that these same defendant notaries “acted negligently.” *See Mills v. UPS Store et al.*, 3:19-cv-364, ECF No. 505-1 (Luke Dove Rpt.) at 1, 3. According to the Receiver, Mr. Dove is qualified to offer that expert opinion because he has “experience as an

attorney.” *Id.* at 1. By offering Mr. Dove as an expert, the Receiver effectively conceded Judge Gibbs—whose credentials go far beyond Mr. Dove’s—more than satisfies the standard for admissibility. Regardless, quibbles about Judge Gibbs’ expertise go, at most, to the “weight to be assigned to the testimony by the trier of fact,” *Huss*, 571 F.3d at 452, “not the nuclear option of exclusion.” *Williams v. Manitowoc Cranes, L.L.C.*, 898 F.3d 607, 624 (5th Cir. 2018) (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 595–96 (1993)).

II. THE MOTION DEPENDS ON MISSTATING (1) JUDGE GIBBS’ OPINIONS AND (2) WHAT ISSUES ARE IN DISPUTE.

The Motion ignores Judge Gibbs’ actual opinions so it can attack straw-man “legal conclusions” to which he will not actually testify. And it depends on an incorrect premise about what is in dispute.

A. Judge Gibbs Will Not Offer “Legal Conclusions.”

The Motion ignores the actual language of Judge Gibbs’ expert report to contend he would testify to “inadmissible legal conclusions.” Mot. at 1. To the contrary, Judge Gibbs will testify about the *standard of care for notaries*. Mot. Ex. 1 (Gibbs Rpt.) at 4. As set forth in his expert report, Judge Gibbs was asked: “***WHAT DOES A MISSISSIPPI NOTARY DO IN A ‘SIGNATURE WITNESSING’?***” *Id.* In response, Judge Gibbs described “*standard notarial practices in this state*,” including:

- “Mississippi signature witnessings occur in-person,” *e.g.*, not over Zoom or otherwise (*id.*);
- “Mississippi notaries in the ordinary course ... verify the identities of the persons whose signatures the notaries witness and certify, nearly always (in the case of persons not known to the notary) by checking the signer’s government-issued photographic identification card” (*id.* at 5);
- “the notary assesses the signor’s demeanor and whether the person is acting under confusion or duress” (*id.* at 4);

- “Notaries ... confirm the presence of, and pay careful attention to the language of, the ‘[n]otarial certificate’” (*id.* at 5);
- “a Mississippi notary verifies and certifies that each ‘Principal’ ... has signed the document in the notary’s physical presence and is, in fact, the person whose signature is added” (*id.* at 4);
- “a notary presented with an unacceptable certificate will ‘refuse[] to notarize’” (*id.* at 5);
- a notary will not notarize a signature on a “‘blank or incomplete document’” (*id.*);
- “During a ‘signature witnessing,’ the notary puts the notary’s ‘official seal’ ... on the document” (*id.*);
- “Mississippi notaries are careful to protect the physical stamps or devices they use to imprint documents with their official seals” (*id.*);
- “Mississippi notaries also keep and update a physical ‘notarial journal,’ which is typically in the form of a paginated notebook” (*id.* at 6); and
- “Mississippi notaries acting properly, and in accordance with standard notarial practices, are careful to perform their notarial acts with due care” (*id.*).

In view of these standard practices, Judge Gibbs opines:

lawyers, judges, businesses, investors, and others routinely and reasonably rely on notaries’ certifications and seals to be assured that the person who signed a notarized document actually exists; that the person’s identity was verified by the notary at the time of signature; that the person signed the document in the physical presence of the notary; and that the person’s demeanor did not suggest that he or she was confused or acting under duress at the time of the signature.

Id. at 7. In preparing his expert report, Judge Gibbs studied *scores* of notarized timber deeds (not “a handful” as the Motion wrongly states (Mot. at 4)), and opines “the recipients of those timber deeds” such as Messrs. Alexander and Seawright and other Madison Timber investors—“should have been assured of each of the foregoing facts based on the certifications and the appearance of the timber deeds.” Mot. Ex. 1 (Gibbs Rpt.) at 7. He also opines “[t]he notaries breached their professional obligations and deviated from standard notarial practices in Mississippi if they signed and affixed their official seals ... if the purported landowners/grantors did not sign the

timber deeds in the physical presence of the notaries and have their identities verified at that time.” *Id.*

To be sure, Judge Gibbs’ report cites the Notary Regulations and related legal authorities, but not because he offers legal opinions. To the contrary, he writes that these authorities are additional context and support for his standard-of-care opinions: “Notaries acting in accordance with standard notarial practices in this state conform their conduct to the Mississippi Notary Rules, which are set forth in the Mississippi Administrative Code.” Mot. Ex. 1 (Gibbs Rpt.) at 4. An expert “may quote and refer to ... regulations as this testimony will assist the jury in understanding the standard of care.” *Van Winkle v. Rogers*, 2022 WL 4231013, at *4 (W.D. La. Sept. 13, 2022), *aff’d*, 82 F.4th 370 (5th Cir. 2023). The Motion ignores not only this basic principle, but also that the Receiver’s own expert witness, attorney Luke Dove, squarely opines “[t]he Notaries acted negligently in failing to follow the Notary Rules,” and “violated several provisions” of those regulations. *Mills v. UPS Store*, 3:19-cv-364, ECF No. 505-1, Ex. 1 (Dove Rpt.) at 3–4. And the Receiver’s expert witness Marta-Ann Schnabel cites to the Mississippi Rules of Professional Conduct. *See* BD MSJ Ex. 30 (Schnabel Rpt.), ECF No. 223-30.

The Receiver finally cites an unrelated case in which Judge Gibbs *was asked to give a legal opinion*. In that case, he was asked to opine “*about what the law requires* or what other juries did in distinct race-discrimination cases.” *Smith as Trustee for Sanders v. Koch Foods, Inc.*, 2022 WL 1817333, at *2 (S.D. Miss. June 2, 2022) (emphasis added). Here, nobody asked Judge Gibbs to give a legal opinion, nor has he done so. Instead, he was asked: “WHAT DOES A MISSISSIPPI NOTARY DO IN A ‘SIGNATURE WITNESSING’”? Mot. Ex. 1 (Gibbs Rpt.) at 4. Standards of professional practice are obviously a proper subject of expert testimony.

B. Judge Gibbs’ Opinions Are Relevant to Disputed Issues.

The Motion wrongly asserts Judge Gibbs “opines on issues that are simply not in dispute.” Mot. at 7. That ignores Judge Gibbs’ opinions are relevant to disputed issues of (1) proximate causation and (2) comparative fault.

On proximate causation, Baker Donelson is entitled to show the jury that negligence on the part of the notaries and their employers—*rather than any error or omission by Baker*

Donelson—proximately caused the Receiver’s alleged damages. Under Mississippi law,

to be a proximate cause, the negligence of [Baker Donelson] must be a substantial factor in producing plaintiff’s injury. If the plaintiff would have been injured even if [Baker Donelson] had not been negligent, [Baker Donelson]’s negligence is not a substantial factor and not a proximate cause.

Miss. Prac. Model Jury Instr. Civil § 14:4 (2d ed.). In addition, Baker Donelson “is not liable for damages ... which result from a remote, improbable or extraordinary occurrence.” *Id.* § 14:2.

Judge Gibbs’ opinions tend to prove that, relative to the fault of the notaries and their employers, Baker Donelson’s alleged negligence was not “a substantial factor,” and the notaries’ and their employers’ fault was “remote, improbable or extraordinary.” If these matters were undisputed, this case would be over: the Receiver would have voluntarily dismissed her claims against Baker Donelson years ago.

On comparative fault, the Motion ignores Baker Donelson’s defense that the negligence of the notaries and their employers dwarfs any alleged fault of Baker Donelson, and a jury on the verdict form should attribute a high degree of fault to the notaries and their employers, and no fault (or a far lower percentage of the fault) to Baker Donelson. Currently, the Receiver is settling her negligence claims against the notaries and their employers, so presumably the Receiver will *not* concede what Judge Gibbs’ opinions tend to show: that the notaries and their employers bear an enormous portion of the blame.

Even if the Receiver wished to stipulate to the correctness of all of Judge Gibbs' opinions—something she has never offered to do—it remains “the familiar, standard rule,” under the Federal Rules of Evidence, that a party “is entitled to prove its case by evidence of its own choice.” *Old Chief*, 519 U.S. at 186–87. The other party “may not stipulate or admit his way out of the full evidentiary force of the case as [the other side] chooses to present it.” *Id.*

Generally, where a party's evidence is not needlessly cumulative and its introduction will not be unduly prejudicial or cause undue delay or otherwise be wasteful of the jury's time, the party may present his or her case, and the basis for it, regardless of the opposing party's decision not to contest some part of that evidence.

Smith v. Summers, 334 F. Supp. 3d 339, 345 n.6 (D.D.C. 2018) (citing *Parr v. United States*, 255 F.2d 86, 88 (5th Cir. 1958)).

At bottom, the Motion seeks to exclude Judge Gibbs' opinions because the Receiver does not want the jury to hear about the negligent contributions of the notaries and their employers. Put differently, the Motion seeks to exclude Judge Gibbs' opinions precisely ***because they are relevant*** and because they contradict her attempt to blame Baker Donelson for the Ponzi scheme.

III. JUDGE GIBBS DOES NOT OPINE ON LAY MATTERS.

After claiming Judge Gibbs lacks the “specialized expertise” to offer opinions on notarial practices (Mot. at 1), the Motion reverses course to argue notaries' practices are “lay matters” and “common sense” (*id.* at 12, 14) as to which no expert may testify.

To the contrary, lay jurors cannot be expected to know: notarizations under Mississippi law must occur in person (and not over Zoom or otherwise); notaries assess the signor's demeanor and whether the person is acting under confusion or duress; in which circumstances a signor must present proof of identity; the keeping of a “notarial log”; the safekeeping of notarial stamps; the prohibition on notarizing blank or incomplete documents; notaries read carefully the

“notarial certificate” portion of any document; or the other standard notarial practices Judge Gibbs explains. Mot. Ex. 1 (Gibbs Rpt.) at 4–7.

Mississippi law recognizes that notarial requirements are *not* commonly known: a person is not eligible to become a notary unless and until he or she becomes familiar with the Notary Regulations and takes an oath to “faithfully discharge” those duties. Miss. Form 11NP001; Miss. Const. art. 14 § 268. Indeed, the Receiver in a related proceeding faulted The UPS Store for “neglect[ing] to train” subordinates on the “mandates governing notarial services.” *Mills v. UPS Store et al.*, 3:19-cv-364, ECF No. 488 at 4. If notarial practices were already known to all laymen, then there would have been no need to train people on them, and no claim by the Receiver against The UPS Store for failing to train them. Finally, the Receiver’s argument that notarial practices are not a proper subject for expert testimony is contradicted by her designation of attorney Luke Dove to testify as an expert witness on exactly that topic.

CONCLUSION

Baker Donelson respectfully requests that the Court deny the Receiver’s Motion.

Respectfully submitted,

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ PC**

/s/ Craig D. Singer

Craig D. Singer (*pro hac vice*)

Charles Davant (*pro hac vice*)

Benjamin W. Graham (*pro hac vice*)

Hope E. Daily (*pro hac vice*)

William M. Schmidt (*pro hac vice*)

C. Mark Aneke (*pro hac vice*)

WILLIAMS & CONNOLLY LLP

680 Maine Avenue, S.W.

Washington, DC 20024

Tel.: (202) 434-5000

Fax: (202) 434-5029

Email: csinger@wc.com

Email: hdaily@wc.com

James J. Crongeyer, Jr. (MSB #10536)
James M. Tyrone (MSB #102381)
WATKINS & EAGER PLLC
400 East Capitol Street, Suite 300 (39201)
Post Office Box 650
Jackson, MS 39205
Tel.: (601) 965-1900
Fax: (601) 965-1901
Email: jcrongeyer@watkinseager.com

*Counsel for Defendant Baker, Donelson,
Bearman, Caldwell & Berkowitz PC*

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Craig D. Singer
Craig D. Singer