

Bailey Successfully Argues for Lifting of TR0 Constituting Prior Restraint Against Newspaper

Dennis R. Bailey and Bethany L. Bolger obtained an order dissolving a temporary restraining order against The Montgomery Advertiser in a prior restraint case filed by Alabama Gas Company in the Circuit Court of Jefferson County. The company obtained an ex parte TR0 prohibiting the newspaper from publishing “non-public” information contained in Alagasco’s Distribution Integrity Management Plan (DIMP) which the newspaper had received as part of a records request to the Alabama Public Service Commission. The utility argued that the DIMP contained matters of national security, was unlawfully obtained and constituted their property. After oral argument on a motion to dissolve the TR0, in which Bailey and Bolger argued for the newspaper, Judge Robert Vance of Birmingham ordered that the TR0 was improvidently issued and lifted the TR0 on constitutional grounds holding that the utility failed to establish that publication of the DIMP would result in inevitable, direct and immediate harm to national security. It was the first case in the history of the 143 year history of the Alabama Press Association where a member newspaper had been subject to an order not to publish. The order issued by Judge Vance will be important and helpful to newspapers and media organizations for years to come.