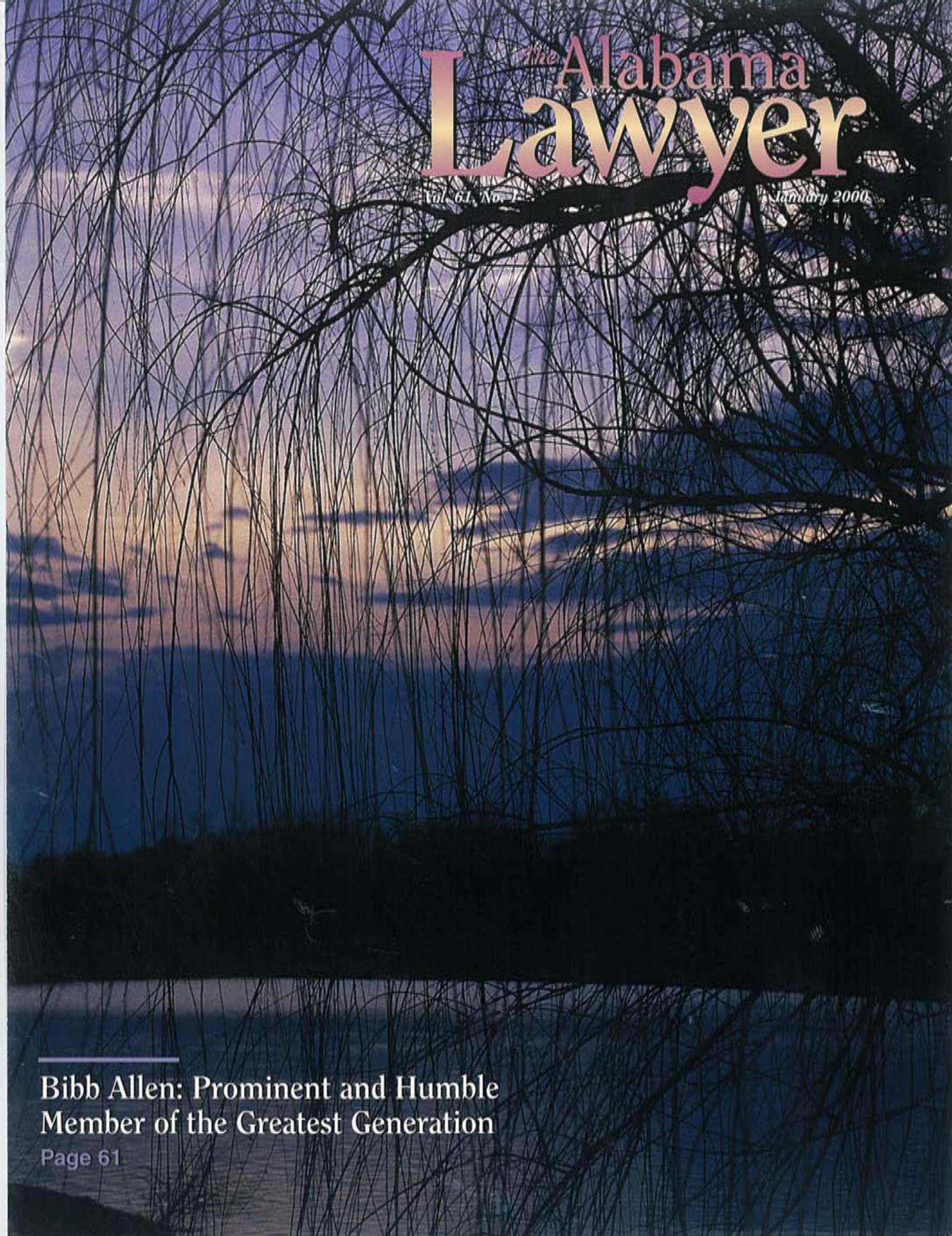


The Alabama Lawyer

Vol. 61, No. 1 January 2000

Bibb Allen: Prominent and Humble Member of the Greatest Generation

Page 61

Having trouble communicating with your commercial malpractice insurer?

Call AIM: We're willing to talk!

NEW ADDRESS!

Attorneys Insurance Mutual of Alabama, Inc.
200 Inverness Parkway
Birmingham, Alabama 35242-4813

Telephone (205) 980-0009
Toll Free (800) 526-1246
FAX (205) 980-9009

"A Mutual Insurance Company Organized By And For Alabama Attorneys"

www.attysinsmut.com

FirmSite™

Exclusively for attorneys – and so much more than a web site

FirmSite

- You can introduce your practice on the internet with attorney resumes and photos, articles, newsletters, winning cases, representative clients, and more
- Designed by experts with over 120 years of experience in the legal marketplace and decades of online experience
- Exclusively for your firm with your own domain name
- Custom-tailored to match the distinct identity of your firm
- Assured confidentiality with password-protected sections and secure e-mail
- Compelling graphics and persuasive content
- Targeted traffic from interested prospects
- Supported by the latest and best computer technology and a staff of computer experts
- Your **FirmSite** never closes – you're open for business 24 hours a day, seven days a week with e-mail links to your attorneys and staff
- Your **FirmSite** will link directly to West Legal Directory (wld.com), named:

"the best place to find a lawyer" by *PC World*

"one of the 50 most incredibly useful sites" by YAHOO! Internet Life

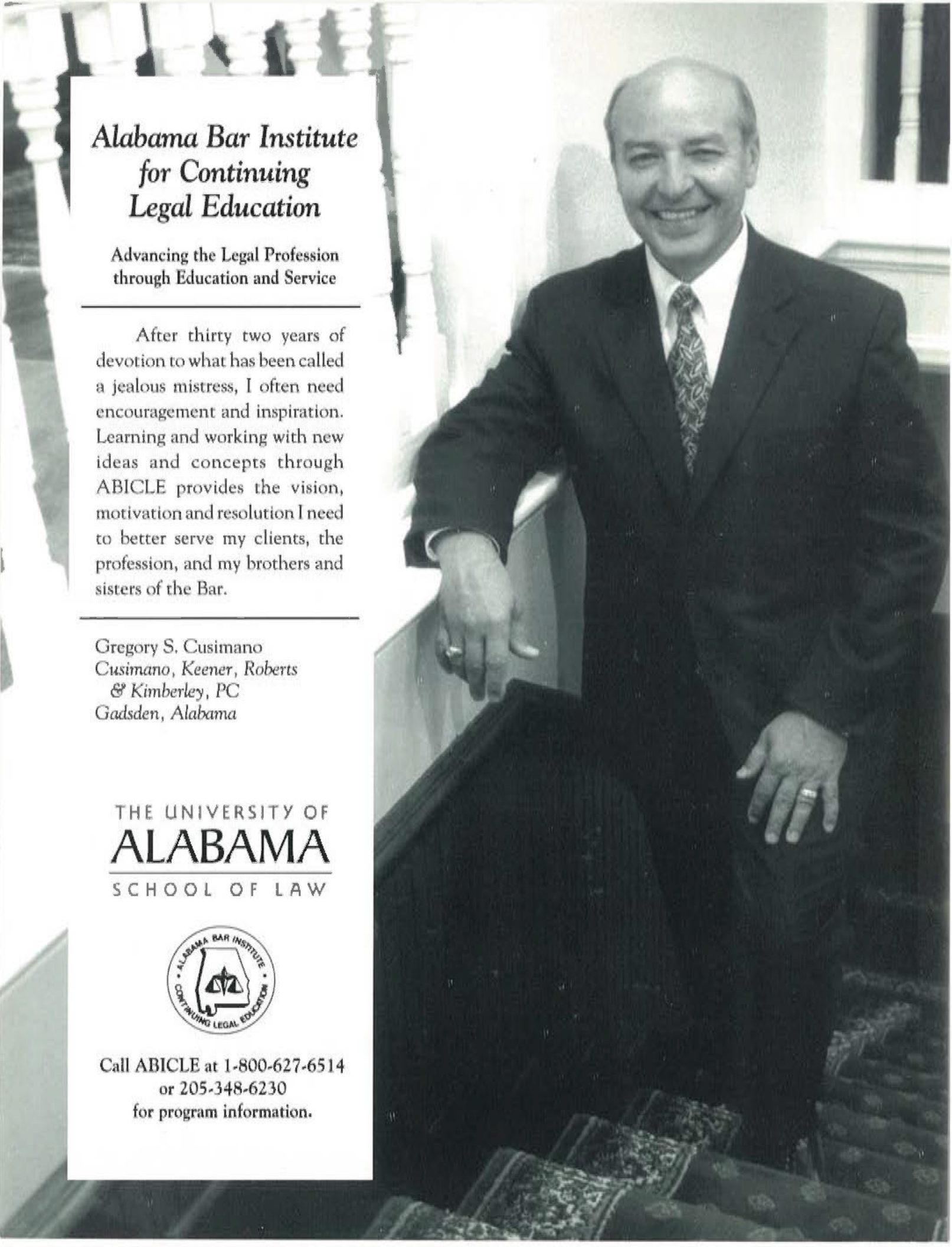
Call to schedule your free **FirmSite** consultation today.

1-800-762-5272

Lawoffice.com™
from West Legal Directory

WEST GROUP

© 1999 West Group 1-9848-2 994064



Alabama Bar Institute for Continuing Legal Education

Advancing the Legal Profession through Education and Service

After thirty two years of devotion to what has been called a jealous mistress, I often need encouragement and inspiration. Learning and working with new ideas and concepts through ABICLE provides the vision, motivation and resolution I need to better serve my clients, the profession, and my brothers and sisters of the Bar.

Gregory S. Cusimano
Cusimano, Keener, Roberts & Kimberley, PC
Gadsden, Alabama

THE UNIVERSITY OF
ALABAMA
SCHOOL OF LAW

ALABAMA BAR INSTITUTE • CONTINUING LEGAL EDUCATION •

Call ABICLE at 1-800-627-6514 or 205-348-6230 for program information.

The Alabama Lawyer

Vol. 61, No. 1 January 2000

On the Cover

Wintertime sunset and weeping willow tree at the Montgomery Museum of Fine Arts, part of the Wynton M. Blount Cultural Park, Montgomery, Alabama
—Photograph by Paul Crawford, JD, CLU

In This Issue

Alabama State Bar 1999 Fall Admittees 24

1999 Pro Bono Honor Roll 33

Book Review: *Sins of the Brother* 39

www.yourclient.com: Choosing Domain Names and Protecting Trademarks on the Internet 40

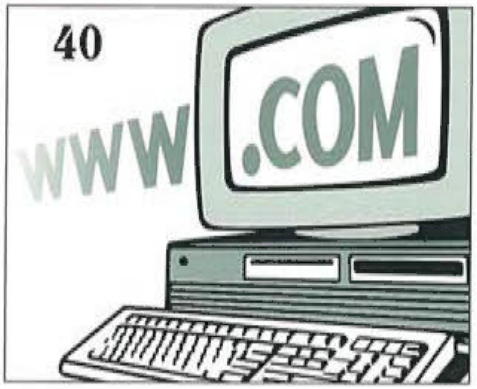
Historical Development of Alabama's Workers' Compensation Law 48

The Return-to-Work Statute Under the Alabama Workers' Compensation Act 54

Bibb Allen: Prominent and Humble Member of the Greatest Generation 61

EthixChex: Ethics Potpourri for $50– Fees, Gigabytes, Fellows and Files 64

(Continued on page 4)



ALABAMA STATE BAR

ONLINE

Check us out at . . .

www.alabar.org

The Alabama State Bar on the World Wide Web

What's New • Publications • On-Line Community • Alabama Bar Reporter • OGC Opinions • CLE Calendar

(Continued from page 3)

DEPARTMENTS

President's Page
6

Executive Director's Report
10

Memorials
14

About Members, Among Firms
16

Legislative Wrap-Up
20

Young Lawyers' Section
63

Disciplinary Notices
66

Recent Decisions
69

Classified Notices
74

Published seven times a year (the June issue is a bar directory edition) by the Alabama State Bar, P.O. Box 4156, Montgomery, Alabama 36101-4156. Phone (334) 269-1515 • www.alabar.org

Robert A. Huffaker.....Chair & Editor
Susan Shirock DePaola.....Vice-Chair & Associate Editor
David B. Champlin.....Vice-Chair, Finance
Susan H. Andres.....Staff Liaison & Communications Director
Margaret L. Murphy.....Staff Liaison & Managing Editor
Shannon Elliott.....Communications & Publications Assistant

Board of Editors
Robert R. Baugh, Birmingham • Wendell J. Chambliss, Birmingham • David B. Champlin, Birmingham • Glenda G. Cochran, Birmingham • M. Donald Davis, Jr., Mobile • Linda G. Flippo, Birmingham • Victoria J. Franklin-Sisson, Birmingham • William G. Gantt, Birmingham • Gerri V. Grant, Montgomery • Norman Jetmundsen, Jr., Birmingham • Michael A. Kirtland, Montgomery • Deborah S. Manasco, Montgomery • Joyce E. May, Mobile • Hon. Vanzetta P. McPherson, Montgomery • Gloria J. McPherson, Montgomery • Alan T. Rogers, Birmingham • Matthew A. Vega, Birmingham • Kevin Walding, Dothan • Robert M. Weinberg, Montgomery

Officers
Wade H. Baxley, Dothan.....President
Samuel A. Rumore, Jr., Birmingham.....President-Elect
Samuel H. Franklin, Birmingham.....Vice-President
Keith B. Norman, Montgomery.....Secretary

Board of Commissioners
1st Circuit, E. Mark Ezell, Butler. 2nd Circuit, Frank A. Hickman, Greenville. 3rd Circuit, William I. Grubb, II, Eufaula. 4th Circuit, Ralph N. Hobbs, Selma. 5th Circuit, Ernestine S. Sapp, Tuskegee. 6th Circuit, Place No. 1, W. Scott Donaldson, Tuscaloosa. 6th Circuit, Place No. 2, J. Douglas McElvy, Tuscaloosa. 7th Circuit, William H. Broome, Anniston. 8th Circuit, William E. Shinn, Jr., Decatur. 9th Circuit, W.N. Watson, Ft. Payne. 10th Circuit, Place No. 1, Samuel H. Franklin, Birmingham. 10th Circuit, Place No. 2, James W. Gewin, Birmingham. 10th Circuit, Place No. 3, J. Mark White, Birmingham. 10th Circuit, Place No. 4, Charles R. Johanson, III, Birmingham. 10th Circuit, Place No. 5, Edward P. Meyerson, Birmingham. 10th Circuit, Place No. 6, Mac B. Greaves, Birmingham. 10th Circuit, Place No. 7, Stephen A. Rowe, Birmingham. 10th Circuit, Place No. 8, Max C. Pope, Jr., Birmingham. 10th Circuit, Place No. 9, Carol H. Stewart, Birmingham. Bessemer Cut-off, George M. Higginbotham, Bessemer. 11th Circuit, Robert L. Gonce, Florence. 12th Circuit, Joseph E. Faulk, Troy. 13th Circuit, Place No. 1, Wesley Pipes, Mobile. 13th Circuit, Place No. 2, Billy C. Bedsole, Mobile. 13th Circuit, Place No. 3, Caine O'Rear, III, Mobile. 13th Circuit, Place No. 4, Celia J. Collins, Mobile. 14th Circuit, Philip P. Nelson, Jasper. 15th Circuit, Place No. 1, Robert D. Segall, Montgomery. 15th Circuit, Place No. 2, Wanda D. Devereaux, Montgomery. 15th Circuit, Place No. 3, James E. Williams, Montgomery. 15th Circuit, Place No. 4, Thomas J. Methvin, Montgomery. 15th Circuit, Place No. 5, David R. Boyd, Montgomery. 16th Circuit, George P. Ford, Gadsden. 17th Circuit, Taylor T. Perry, Jr., Demopolis. 18th Circuit, John E. Medaris, Pelham. 19th Circuit, John E. Enslen, Wetumpka. 20th Circuit, Rufus R. Smith, Jr., Dothan. 21st Circuit, Everette A. Price, Jr., Brewton. 22nd Circuit, Earl V. Johnson, Andalusia. 23rd Circuit, Place No. 1, Donna S. Pate, Huntsville. 23rd Circuit, Place No. 2, Patrick H. Graves, Jr., Huntsville. 24th Circuit, Charles A. Langley, Fayette. 25th Circuit, Oliver Frederick Wood, Hamilton. 26th Circuit, Homer W. Cornett, Jr., Phenix City. 27th Circuit, John C. Gullahorn, Albertville. 28th Circuit, E.E. Ball, Bay Minette. 29th Circuit, R. Blake Lazenby, Talladega. 30th Circuit, William J. Trussell, Pell City. 31st Circuit, William K. Hewlett, Tuscumbia. 32nd Circuit, Roy W. Williams, Jr., Cullman. 33rd Circuit, Henry F. Lee, III, Geneva. 34th Circuit, Luke E. Alexander, Russellville. 35th Circuit, John B. Barnett, III, Monroeville. 36th Circuit, Timothy D. Littrell, Moulton. 37th Circuit, J. Tutt Barrett, Opelika. 38th Circuit, Stephen M. Kennamer, Scottsboro. 39th Circuit, James M. Corder, Jr., Athens. 40th Circuit, John K. Johnson, Rockford

The Alabama Lawyer is published seven times a year for $20 per year in the United States and $25 per year outside the United States by the Alabama State Bar, 415 Dexter Avenue, Montgomery, Alabama 36104. Single issues are $5.00 for the journal and $25/$60 for the directory. Periodicals postage paid at Montgomery, Alabama, and additional mailing offices.

ALABAMA STATE BAR HEADQUARTERS STAFF

415 Dexter Avenue, Montgomery, AL 36104 (334) 269-1515 • FAX (334) 261-6310 • E-mail facts@alabar.org
Web site: www.alabar.org

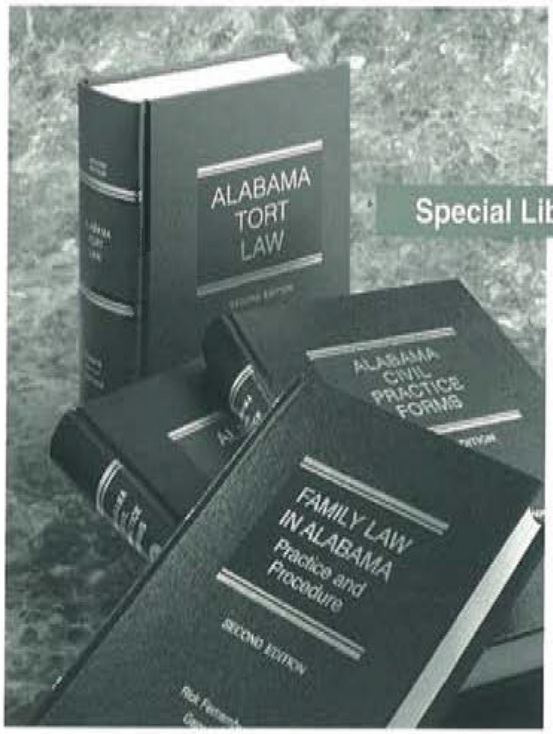
Executive Director.....Keith B. Norman
Executive Assistant.....Margaret Boone
Director of Programs.....Edward M. Patterson
Administrative Assistant for Programs.....Rita Gray
Lawyer Referral Secretary.....Carol Thornton
Mandatory Continuing Legal Education Director.....Kim Oliver Ward
CLE Administrative Assistant.....Angie Crowe
CLE Secretary.....Valerie Ross
Director of Communications & Public Information.....Susan H. Andres
Publications Director.....Margaret L. Murphy
Communications & Publications Administrative Assistant.....Shannon Elliott
Membership Services Director.....Diane Locke
Membership Administrative Assistant.....Myrna McHenry
Pro Hac Vice Administrative Assistant.....Mary Corbitt
Volunteer Lawyers Program Director.....Linda Lund
VLP Administrative Assistant.....Katherine L. Church
Director of Admissions.....Dorothy D. Johnson
Admissions Administrative Assistants.....Sonia Douglas, Heidi Alves
Alabama Law Foundation, Inc. Director.....Tracy Daniel
ALF Administrative Assistant.....Jennifer Bacchus
Bookkeeper.....Gale Skinner
ASB Foundation Assistant.....Ann Rittenour
Graphics Arts Director.....Maggie Stuller
Graphics Arts Assistant.....Roderick Palmer
Receptionist.....Stephanie Oglesby
Alabama Center for Dispute Resolution Director.....Judith M. Keegan (269-0409)
ADR Administrative Assistant.....Jackie Heartsill
Law Office Management Assistance Program Director.....Laura A. Calloway
Alabama Lawyer Assistance Program Director.....Jeanne Marie Leslie (834-7576)
LOMAP and ALAP Administrative Assistant.....Sandra Clements

ALABAMA STATE BAR CENTER FOR PROFESSIONAL RESPONSIBILITY STAFF

415 Dexter Avenue, Montgomery, AL 36104 (334) 269-1515 • FAX (334) 261-6311 • E-mail cpr@alabar.org

General Counsel.....J. Anthony McLain
Secretary to General Counsel.....Vivian Freeman
Assistant General Counsel.....L. Gilbert Kendrick
Assistant General Counsel.....Milton L. Moss
Assistant General Counsel.....Robert E. Lusk, Jr.
Complaints Intake Coordinator.....Kim Ellis
Client Security Fund Coordinator.....Bonnie Mainor
Paralegals/Investigators.....Peggy Garrett, Cheryl Rankin, Robin Henderson
Receptionist.....Melissa Burgess

The Alabama Lawyer, (ISSN 0002-4287), the official publication of the Alabama State Bar, is published seven times a year in the months of January, March, May, June (bar directory edition), July, September, November. Views and conclusions expressed in articles herein are those of the authors, not necessarily those of the board of editors, officers or board of commissioners of the Alabama State Bar. Subscriptions: Alabama State Bar members receive *The Alabama Lawyer* as part of their annual dues payment; $15 of this goes toward subscriptions for *The Alabama Lawyer*. Other subscribers do not receive the directory edition of the *Lawyer* as part of their subscription. Advertising rates will be furnished upon request. Advertising copy is carefully reviewed and must receive approval from the Office of General Counsel, but publication herein does not necessarily imply endorsement of any product or service offered. *The Alabama Lawyer* reserves the right to reject any advertisement. Copyright 2000. The Alabama State Bar. All rights reserved.



CORNERSTONES OF

Alabama General Practice

Special Cornerstones Series Price $280*

Save 20% Off the Original Cover Price!

ORDER TODAY and examine for 45 days without risk or obligation!

Updates issued within 90 days of purchase will be free of charge.

800/562-1215

www.lexis.com/bookstore

Please use code 2CR when ordering

*Plus sales tax, shipping and handling where applicable.

LEXIS, NEXIS and Martindale-Hubbell are registered trademarks, LEXIS Publishing and MICHIE are trademarks of Reed Elsevier Properties Inc., used under license. SHEPARD'S is a registered trademark of SHEPARD'S Company. Matthew Bender is a registered trademark of Matthew Bender Properties, Inc. Copyright 1999 Matthew Bender & Company, Inc. All rights reserved.

LEXIS Publishing™

LEXIS®-NEXIS®- MARTINDALE-HUBBELL®
MATTHEW BENDER®- MICHIE™- SHEPARD'S®

Special Library from the Publishers of *Michie's*™ Alabama Code

A money-saving set of comprehensive practice resources

Alabama Civil Practice Forms, Third Edition

Allen Windsor Howell

You'll have ready access to more than 400 up-to-date forms, covering a broad array of Alabama civil matters. **Alabama Civil Practice Forms** provides not only the most common forms, but also many that cannot be found in other sources. The forms include variations and optional alternate language for tailoring forms to client needs. This comprehensive practice tool is keyed to the *Michie's*™ Code of Alabama, and also contains case citations and helpful law notes to guide you in further research.

2 volumes, hardbound, with current supplement, ©1997
Stand-alone Price $160* item# 63010-11
Cost of most recent supplement is $40

Alabama Tort Law, Second Edition

Michael L. Roberts and Gregory S. Cusimano

This is the only true, comprehensive resource on tort law in Alabama. Includes detailed, up-to-date analyses of Alabama statutes and case holdings, and provides a thorough discussion of evidentiary issues. You'll have at your fingertips the information you need to determine if there is a case . . . and you'll be directed to the sources of authority needed to win it. Organized according to specific torts, areas of torts, and damages, **Alabama Tort Law** provides an easy reference source for active practitioners and includes the latest developments in Alabama tort law.

1601 pages, hardbound, with current supplement, ©1996
Stand-alone Price $105* item# 66645-11
Cost of most recent supplement is $45

Family Law in Alabama: Practice and Procedure, Second Edition

Rick Fernambucq and Gary Pate

You can turn to this manual for current domestic relations case law in Alabama and the most recent legislative amendments, as well as for the comprehensive authoritative analysis you need to prepare your case with confidence. **Family Law in Alabama** assembles a wide variety of tools for use in everyday family practice; statutes, case law, forms, and guidance on every aspect of handling the case. In addition, you'll have ready access to insightful commentary and practical recommendations for dealing with clients in crisis.

650 pages, hardbound, with current supplement, ©1996
Stand-alone Price $85* item# 61916-11
Cost of most recent supplement is $48

President's Page

By Wade Baxley

Please Mr. Custer, I Don't Wanna Go

Wade Baxley

For the past year or so, my office staff and my two sons have threatened to drag me kicking and screaming into the 21st century and the new millennium. As my friends, family and secretary know, I am not a person who readily or eagerly adapts to change. Advances in electronic technology during the past decade of the '90s have left me feeling somewhat inept and mentally challenged. My reluctant entry into the year 2000 reminds me of a ballad which I remember from the 1960s. In that ballad, which is a spoof version of "Custer's last stand," a soldier under General George Custer's command has a dream about the Indian attack the night before the actual battle. The soldier then proceeds to tell Custer about his dream and pleads with the general not to make him go on that fateful trip to Little Bighorn. In any event, the soldier in the ballad went on to his destiny and I have now, at least physically, entered the new century which, of course, beats the alternative.

There are a number of important issues facing the bench and bar as we begin this new year. I will attempt to review a small variety of issues/topics in which we, as lawyers, have more than a passing interest for the coming year.

Arbitration

It appears that at least half of the cases which have been reported out of the Alabama Supreme Court in recent terms have involved the rather volatile issue of arbitration. Based upon discussions and debates we have experienced in meetings of the Board of Bar Commissioners, I believe there is a rather general consensus among lawyers that consumer transactions involving the general public should not be subject to mandatory arbitration. However, business and insurance entities certainly do not seem to share this view due mainly to the fright of exorbitant and sometimes outrageous verdicts in certain venues of our state. The United States Supreme Court and the Alabama Supreme Court have ruled that mandatory arbitration clauses in agreements are constitutional and legally enforceable. Attorneys representing business clients, who may be subject to being sued in some of the more liberal verdict venues in Alabama, certainly will recommend that mandatory arbitration clauses be included in agreements and contracts entered into by their clients. I suspect that the issue of mandatory arbitration will become one of the primary campaign issues in the upcoming general election for the various appellate court races.

Due to the U. S. Supreme Court's decision in the *Keller* case, involving the use of bar dues for non-bar-related activities, and upon the advice of the general counsel's office, the Board of Bar Commissioners has concluded that the Alabama State Bar should not and cannot take a position on this issue. At the regular meeting of the board on January 22, 1999, after a somewhat lengthy debate, the commissioners authorized the Executive Council to draft a consensus statement regarding arbitration. This consensus statement is directed to the general public for educational purposes which, once drafted and approved, then would be sent by the Executive Council to the ASB Standing Committee on Alternative Dispute Resolution (ADR) for appropriate dissemination. A consensus statement with informative educational content, which is neither pro nor con on the issue of arbitration, has been drafted, approved and submitted to the ADR Committee. Informational pamphlets should be available soon for the dissemination to the general public.

Multidisciplinary Practice

You have probably been inundated in recent months with reports on the recommendation of the American Bar Association's Commission on Multidisciplinary Practice (MDP) that would permit lawyers to partner with non-lawyer professionals in other disciplines and allow the sharing of fees with non-lawyers. This report and recommendation to allow MDP was presented to the ABA House of Delegates at its annual meeting last August in Atlanta. In May 1999, the ASB Board of Bar Commissioners adopted a resolution urging Alabama members of the ABA House of Delegates to support an amended resolution proposed by The Florida Bar. After considerable debate, the House of Delegates approved this amended resolution which proposed that further study of the MDP issue be made in order to allow adequate time for state and local bar associations to carefully and deliberately review the report of the ABA's Commission on MDP and convey any comments and recommendations to their respective ABA delegates. Of course, any position taken by the ABA on this subject would have no effect on how we would treat MDP in the state of Alabama. MDP cannot be implemented in Alabama without significant changes to our Rules of Professional Conduct. Any such changes would have to be considered and approved by the ASB Board of Bar Commissioners and submitted to the Alabama Supreme Court for adoption. In conjunction with this issue, an MDP task force has been appointed by me composed of lawyers and lay persons and chaired by past President **Vic Lott** of Mobile, with its mission being to consider what impact MDP will have on the practice of law in Alabama or upon the access to legal services, as well as its impact upon the licensing and regulation of lawyers in Alabama. It is our understanding that the ABA House of Delegates will be reconsidering the Commission's recommendation to allow MDP at the annual meeting in July 2000 in New York City. It is hoped that our MDP Task Force will have thoroughly studied the matter and issued its report to the Board of Bar Commissioners before that date.

For an Expert Business Appraisal, Knowledge and Experience Make the Difference . . .

Russell Financial Consulting, Inc. is an independent certified professional firm specializing in business appraisals. **Deirdre Russell**, owner, has the experience and recognized industry credentials that provide the highest quality, expert valuations for businesses and professional practices. Her affiliation with the American Business Appraisers Network, a national coalition of independent business appraisers, expands her resources to offer a wide range of business appraisal services.

VALUATION SERVICE USES:
- LITIGATION SUPPORT SERVICES
- ESTATE PLANNING
- MERGERS AND ACQUISITIONS
- EMPLOYEE STOCK OWNERSHIP PLANS
- INVESTMENT AND FINANCING DECISIONS

Deirdre (Dee) Y. Russell, CFA, JD

RUSSELL FINANCIAL CONSULTING, INC.

POST OFFICE BOX 241672 · MONTGOMERY, ALABAMA 36124-1672
TELEPHONE 334·613·6044 · FAX 334·613·6029
Member American Business Appraisers National Network · ABA Offices Near Principal US Cities

Providing Access to Legal Services

For the past several years, the Alabama State Bar has taken more of a proactive role in attempting to assure that poor people have adequate access to legal services and the courts. The Board of Bar Commissioners has consistently passed resolutions each year urging the U. S. Congress to provide sufficient funding to Legal Services Corporation. Quite frankly, it is becoming more and more evident that Legal Services Corporation of Alabama (LSCA) is about the only avenue of access to legal services for a great majority of the poor and needy in Alabama who are in need of these services. The Volunteer Lawyers Program (VLP) has been established and funded by the Alabama State Bar with a full-time director. The VLP has been able to create a cooperative relationship and partnership with LSCA in a coordination of efforts to make counsel available to persons who qualify under LSCA guidelines for legal aid. The organized bar must continue to take an active leadership role in making sure that every citizen who is in need of legal services can find access thereto.

Pro Se Litigation

Recently, I was made aware of another problem on the horizon involving access to the legal system by *pro se* or self-represented litigants. **Chief Justice Perry Hooper** invited me to attend a national conference in Scottsdale, Arizona on *pro se* litigation as the Alabama State Bar representative. The conference was presented by the American Judicature Society with the American Bar Association Standing Committee on Delivery of Legal Services being a co-sponsor. Chief justices from all states were asked to organize state "teams" to attend this conference. Other members of our state team included **Frank Gregory**, administrative director of the AOC, **Lynda Flynt**, director of the legal division of the AOC, and **Gerald Topazi**, district judge in Jefferson County. We

found out that a number of states, including Florida, were experiencing increasing numbers of self-represented litigants who were demanding more access to the courts. It appeared that these litigants were mainly appearing in domestic relations cases and that some states, such as Arizona, had already established "self-help centers" with forms, guidebooks and staffing to aid and assist *pro se* litigants. We were told that this trend toward self help was also increasing as well in other professions and fields including medicine, accounting, plumbing, carpentry, etc. Sociologists have a term for this called "disintermediation," which, in effect, means that there is a trend toward doing-it-yourself as opposed to the employment of someone in a particular profession or field to do the job. Of course, we generally expect to see *pro se* litigants in the small claims courts of Alabama. However, this conference did not convince me that either the Alabama State Bar or the courts should encourage litigants to represent themselves *pro se* in court proceedings above the small claims level. This was also the general consensus among organized bar representatives from other states who were present at this conference and with whom I conferred during our break-out meetings. Our "team" unanimously agreed that we first needed to review and assess the statistics retained by the AOC on *pro se* litigants before taking any further action regarding this issue.

Technology

It is no secret that the technological aspect of practicing law has changed dramatically during the last ten to 15 years of the 20th century. For the record, I hate voice mail. I particularly despise secretarial voice mail. What technological advances can we expect in this new decade? Computers will continue to be obsolete by the time they can be produced and marketed for sale. The filing of paper pleadings in the clerk's office and in probate court will be replaced by electronic filings. This electronic filing technology is already utilized in some federal courts and especially in major class action cases. Courtrooms will become reservoirs of electronic equipment with video presentations and individual computer screens for jurors. Libraries in law offices will be converted to additional office space since all legal publications will be available on software and legal research will be conducted by computer. Depositions via telecommunication setup and equipment will become the rule instead of the exception and lawyers will not have to leave their offices to attend these depositions.

I am sure that I have only scratched the surface of changes and advances in law-related technology. It is hoped that these advances will aid and assist us in becoming better and more efficient lawyers in the administration of justice.

By the way, did I mention that I hate voice mail? ■

***Free* Report Reveals. . .**

"Why Some Alabama Lawyers Get Rich. . . While Others Struggle To Earn A Living"

California Lawyer Reveals His $300,000 Marketing Secret

RANCHO SANTA MARGARITA, CA— Why do some lawyers make a fortune while others struggle just to get by? The answer, according to California lawyer David Ward has nothing to do with talent, education, hard work, or even luck. "The lawyers who make the big money are not necessarily better lawyers," Ward says. "They have simply learned how to market their services."

Ward, a successful sole practitioner who at one time struggled to attract clients, credits his turnaround to a little-known marketing method he stumbled across six years ago. He tried it and almost immediately attracted a large number of referrals. "I went from dead broke and drowning in debt to earning $300,000 a year, practically overnight."

Ward points out that although most lawyers get the bulk of their business though referrals, not one in 100 has a referral *system*, which, he maintains, can increase referrals by as much as 1000%. Without a system, he notes, referrals are unpredictable. "You may get new business this month, you may not." A referral system, by contrast, can bring in a steady stream of new clients, month after month, year after year.

"It feels great to come to the office every day knowing the phone will ring and new business will be on the line," he says.

Ward, who has taught his referral system to almost two thousand lawyers throughout the US, says that most lawyers' marketing is, "somewhere between atrocious and non-existent." As a result, he says, the lawyer who learns even a few simple marketing techniques can stand out from the competition. "When that happens, getting clients is easy."

Ward has written a new report entitled, **"How To Get More Clients In A Month Than You Now Get All Year!"** which reveals how any lawyer can use this marketing system to get more clients and increase their income. To get a **FREE** copy, call **1-800-562-4627** for a 24-hour free recorded message.

J. Forrester DeBuys, III CLU

You establish goals for creating wealth. We help you meet your goals, while protecting your family and estate through insurance and financial products.

NEW YORK LIFE

The Company You Keep.®

2311 Highland Avenue South
Suite 100
Birmingham, AL 35205
205/933-0302

ALABAMA STATE BAR

ALABAMA STATE BAR MEMBERS
TAKE NOTE OF THIS FIRST CLASS OFFER

MAJOR MEDICAL INSURANCE

ISSUED ON A

GUARANTEED ACCEPTANCE BASIS

ISI provides quality benefits for members, employees, and eligible family members.

Administered by Insurance Specialists, Inc.

Underwritten by New York Life Insurance Company
51 Madison Avenue, NY, NY 10010
Policy Form GMR

EST. 1959

THIS COMPETITIVELY PRICED PLAN INCLUDES:

✦100 % coverage for In-Network provider office visits
($15 co-pay applies - max $200 per visit)
✦Co-pay prescription card with the $500 deductible plan
✦Deductible choices of $500 or $1,000 per calendar year
✦80/20 In-Network and 60/40 Out-of-Network PPO Plan
✦$3,000,000 per person maximum (some restrictions apply)
✦Maternity covered as any other condition
✦Endorsed by the Alabama State Bar Association

DON'T MISS OUT.....Call or fax your request for more information (including features, costs, eligibility, renewability, limitations and exclusions) **TODAY** to:

INSURANCE SPECIALISTS, INC.
33 Lenox Pointe, N.E. ◊Atlanta, GA 30324
(800) 241-7753 ◊ (404) 814-0232 ◊ Fax (404) 814-0782

Executive Director's Report

By Keith B. Norman

Looking Back On 60 Years of Alabama's Legal Profession, Part II: 1950s and 1960s[1]

Keith B. Norman

The Civil Rights movement was the focus of much attention throughout the 1950s and 1960s. During this same period, the legal profession in Alabama experienced many changes in both its outlook and attitude. This was especially true in the area of modernizing Alabama's legal institutions and laws.

The Alabama Lawyer reported in the first issue of 1950 that workers' compensation laws had been amended in 1949 to increase the maximum payments for temporary total disability from $18 to $21 per week. In an article reprinted in the *Lawyer* entitled, "Income of Lawyers, 1929-1948," the United States Department of Commerce found that the mean net income of all lawyers in the United States reached $8,315 in 1948; the median net income was $6,336. Alabama State Bar President Francis H. Hare of Birmingham wrote in the president's column that the annual state bar meeting was being augmented by adding an additional day–Thursday–to the usual day and one-half meeting format. He also suggested that the "President's Letter" to the bar be included in each issue of the *Lawyer*.

Professor M. Leigh Harrison became dean of the University of Alabama School of Law in February 1950. He succeeded Dean William Hepburn who resigned to become dean at Emory Law School. The graduating class at Jones Law School that year included 15 members. Lawrence F. Gerald, secretary of the bar since 1942, retired and John B. Scott of Montgomery was elected secretary, effective September 1. A city recorder for Montgomery, Judge Scott had previously served for 20 years on the Board of Bar Commissioners representing the 15th Judicial Circuit. In his annual report in 1950, President Hare recommended that the bar change its election rules so that the vice-president would be elected to succeed the president and that the office of secretary be full-time; he also proposed finding a permanent office for the bar. He also asked the Junior Bar to take the lead in setting up a statewide legal aid society.

In his annual report for *The Alabama Lawyer* for that year, Judge Walter B. Jones discussed the need and benefits of establishing an Alabama Law Institute modeled after the American Law Institute. He envisioned such an organization being composed of lawyers and judges interested in the continued study of law and devising ways to strengthen the administration of justice in Alabama.

In the spring of 1951, Jefferson County voters approved a constitutional amendment creating the Jefferson County Judicial Commission to fill midterm court vacancies. The article, "Women in the Law," written by Elizabeth Johnson Wilbanks, traced the history of women lawyers in Alabama. She reported that a total of 97 women had been admitted to practice since 1909. Justice J. Ed Livingston was appointed chief justice, replacing Chief Justice Lucien D. Gardner, who resigned after 37 years of service on the court. Benjamin Leader of Birmingham penned a prescient article entitled, "What Is to be Left of Your Practice in 1975?," noting the encroachments by other professions in areas that were once exclusively areas of legal practice. Legislation was introduced in 1951 to increase bar application fees ($25 for in-state residents admitted by diploma or by exam; $75 for out-of-state residents) and to change the bar's election procedures. The change in election proce-

dures would allow for the election of a first vice-president who would assume the presidency at the conclusion of the president's term. A second vice-president would be appointed by the Board of Bar Commissioners and serve in the event the president was unable to serve. Thirteen bar committees were appointed and operating in 1951.

In 1953, the Alabama Plaintiff Lawyers' Association (APLA), which had been chartered a year earlier, reported its activities. State bar President William H. Mitchell stressed in his report the need for the Alabama Supreme Court to have rulemaking authority. Bar secretary John Scott opined that many state bars had adopted minimum fee schedules and that maybe Alabama should because the average income of Alabama lawyers was the lowest in the nation. Tommy Greaves of Mobile served as a member of the National Executive Council of the Junior Bar conference of the American Bar Association. By 1954, legal aid clinics were operating in Mobile, Birmingham and Montgomery due largely to the efforts of the Junior Bar. Also in 1954, Judge Walter B. Jones assumed the office of state bar president. He emphasized the need for a permanent bar building, rule-making authority for the supreme court and a code of ethics for judges. Concerning CLE he wrote: "We must never forget the education of a lawyer is of necessity a continuing one."

The graduation ceremony for the 40th class of the Birmingham School of Law took place in May 1955. "Segregation in Public Education–A Study in Constitutional Law," "The Bus Desegregation Case" and "States' Rights Issues: Challenge to Federal Central Authority" were titles of some of the articles dealing with the desegregation of public facilities. Along with civil rights came a recognition of the expanding frontiers of space with an article entitled, "Remarks on Space Law," by Rear Admiral William R. Sheely, assistant judge advocate of the Navy and a native of Dadeville. Circuit Judge D.L. Roseneau, Jr. of Limestone County remarked in a 1957 article about Alabama divorces that recent celebrity divorces had drawn attention to the laxity of Alabama residency requirements. He stated that Alabama's present laws, unless changed, stood in danger of permitting Alabama to "'out-Reno' Reno." The *Code of Trial Conduct* adopted by the American College of Trial Lawyers to improve litigation proceedings and conduct of council was reprinted at length. Justice Hugh Maddox penned his first article for *The Alabama Lawyer* in 1957 while serving as law clerk to Judge Aubrey M. Cates of the court of appeals. The article was entitled, "Applicability of the Proposed Rules of Civil Procedure to the Courts of Alabama."

A small controversy arose in 1958 with the proposal to create a separate court of criminal appeals. The legislation permitting referendum on a constitutional amendment passed the legislature in 1957. The Alabama Supreme Court opposed the amendment because it would have given the proposed court "irreversible" appellate jurisdiction in all criminal matters. The bar's Committee on Jurisprudence and Law Reform, chaired by Sam Earle Hobbs, offered forth a proposed "Business Corporation Act" representing significant labor by the bar and the bar's first major law reform effort. J. M. McCullogh, commissioner of the Board of Corrections, stated in an appearance before the Alabama Circuit Judges Association that the state's prison population in 1958 stood at 5,400. He noted only eight states had more inmates and attributed the large prison population to less use of probation than other states; longer sentences for similar crimes than other states; and fewer prisoners released on parole than other states.

While the close of the decade saw articles relating to states' rights and the history of the Confederacy, there was a significant increase in articles explaining new or better techniques for handling different types of cases. The Montgomery County Bar Association was recognized by the American Bar Association for several programs, including its television program, "It's the Law," establishing a county public law library and its legal aid program. Mr. S. P. Gaillard of Mobile was recognized at

Case Load Overload???
Statute Running???
Can't Find Precedent in Your Favor???

AR

We can make the difficult . . .

EASIER FOR YOU!

- **Legal Research and Writing**
- **Litigation Support**
- **Practice Development Consulting**
- **Law Office Administration**
- **Placement Services**
- **Secretarial Support Services**

- No project too small or too large – a copy of a case to an entire brief.
- No minimum charges – rates starting at $25 per hour.
- Staffed by attorneys and legal professionals with over 25 years' experience in legal research, litigation support and the practice of law.

ATTORNEY RESOURCES LLC
Legal Research and Business Consultants
Phone: (256) 352-6272
Facsimile: (256) 352-6273
E-mail: econe@HiWaay.net

Mention this ad with your request and receive 5% off the charges for your first project.

The Alabama State Bar requires the following disclaimer: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

103 years of age as possibly the oldest practicing lawyer in America.

The 1960s opened with the bar's Committee on Jurisprudence and Law Reform reporting that its in-depth study of the state's court system indicated a clear need for a statewide court administrator. The committee report noted that an administrator could ensure that crowded dockets get relief from the circuits that were not as crowded. The occupational license fee was raised to $40. State Revenue Commissioner Harry Haden reported that Alabama's *per capita* personal income was $1,324, ranking the state 45th among all states. Douglas Lansford served as the first legal education coordinator of the Alabama Bar Institute located at the University of Alabama. Future state bar President J. Ed Thorton, who would become a frequent contributor to *The Alabama Lawyer*, was the author of an article entitled, "Rethinking the Corporate Franchise Tax." In 1961, there were 17 black lawyers in Alabama. They were: Drew Adams, Jr.; Oscar W. Adams, Jr.; Orzell Billingsley; Philander L. Butler; Peter A. Hall; Demetrius C. Newton; Arthur D. Shores and W. L. Williams, Jr. in Birmingham; J. L. Chestnut; Vernon Z. Crawford and Clarence E. Moses in Mobile; Charles C. Conley; Fred D. Gray; Charles D. Langford; Calvin Pryor and S. S. Seay, Jr. in Montgomery; and David Hood, Jr. in Bessemer.

"Products Liability–Legal Battleground of the 1960s" was the topic of a paper read at the 1961 annual meeting by Truman Hobbs of Montgomery, who later served as state bar president and was appointed as federal district judge. The Committee on Economics of Law Practice made its first report in 1962 and announced plans to conduct the first ever economic survey of Alabama lawyers. The United States Supreme Court had heard several right-to-counsel cases in the last decade before rendering its decision in *Gideon v. Wainright*. A year prior to the *Gideon* decision, then state bar President James J. Carter presented a scholarly paper to the Alabama Circuit Judges Association entitled, "Must Every Defendant Be Represented by Counsel?" Alabama joined 13 other states when the legislature, at the bar's urging, enacted the Professional Association Statute giving professionals the same tax advantage as corporate organizations without offending ethical prohibitions against incorportion.

In 1963, Rebecca Bowles Hawkins of Birmingham served as the only female in the American Bar Association House of Delegates as a delegate of the National Association of Women Lawyers. A new Partnership Act based on the Uniform Partnership Act was introduced in the 1963 session of the legislature. The campaign to raise the money for a state bar building got under way. State bar President J. Ed Thornton outlined the need for the creation of several new bar sections, including Criminal Law, Real Property, Probate and Trusts, and Practice and Procedure, to assist in law reform.

In January 1964, Richard W. Neal replaced the late Walter B. Jones who had died the previous August, as editor of the *Lawyer*. Bar secretary John Scott noted in his report that the bar was negotiating for new major medical coverage for the member insurance program, and that more bar examiners were needed because of the increased workload occasioned by the abolition of the diploma privilege. The board was increased not long thereafter from three to six members. Lawrence K. "Snag" Andrews was selected by the Board of Bar Commissioners to serve as the bar's first general counsel. Sam W. Pipes of Mobile headed up the fundraising committee for the new bar building. The fundraising committee, under future bar President Pipes, would raise $194,000 in contributions to pay for the building and furnishing of the new bar headquarters before it was completed. Memory Leake Robinson Law Building, housing the Cumberland School of Law, was dedicated. Cumberland had moved from Tennessee to Alabama in 1961.

The UCC was introduced and adopted in 1965. United States Senator Sam J. Ervin, Jr. of North Carolina gave the Law Day address at the University of Alabama Law School. His remarks were entitled, "The Role of the Supreme Court as the Interpreter of the Constitution." The article, "A Statistical Analysis of the Alabama Bar," by Alabama law professor John Payne found some 2,700 lawyers listed in *Martindale-Hubbell*. Of that number, 1,900 were in active practice. The article found 60 percent of the members to be under 50 years old. The article also noted that where firm practice was engaged in, the predominant pattern for the state was that of small partnerships. Full-time practitioners were divided equally between partners in law firms and solo practitioners. The five counties with the largest number of lawyers were: Jefferson (851); Mobile (319); Montgomery (311); Madison (128); and Tuscaloosa (118).

State bar President Howell T. Heflin of Tuscumbia, who would later be elected chief justice and to the United States Senate, appointed some 30 newly created committees during his term as president. The recommendation from one of the committees, the Committee on Feasibility of a Citizens' Judicial Conference, resulted in the First Citizens' Conference, which was held in December 1966. The bar's first general counsel, Snag Andrews, died in 1966 and William H. Morrow, Jr. was appointed general counsel. Justice Douglas Johnstone published an article in *The Alabama Lawyer* in 1966, entitled, "History of Provision for Administration of Equity in Alabama." Justice Johnstone was serving as a lieutenant in the United States Army at the time.

In 1967, Richard Neal died. He had not only served as editor of the *Lawyer*, but was marshall and librarian, as well as acting clerk, of the Alabama Supreme Court at the time of his death. J. O. Sentell was later appointed clerk of the Alabama Supreme Court. He also graciously assumed the chore of editor of the *Lawyer*. The Alabama Law Institute was created by an act passed in 1967 with the strong support of the bar. Alabama Law School Professor Harry Cohen's report, " The Adequacy of Rules Governing the Conduct of Attorneys in Alabama—A Report to the Committee on Revision of Cannons of Ethics," eventually lead to the adoption of the updated model Code of Professional Responsibility. State bar license fees increased from $40 to $50. ■

Endnotes

1. In Part I, I had mentioned that Part II would also include a review of the 1970s. Due to space limitations in this issue, Part III will include the 1970s as well as the 1980s and 1990s.

Most legal staffing firms can find you a legal professional.

The GLOBAL LEADER can find you 200 by tomorrow.

Special Counsel knows all about staffing large projects. After all, we helped pioneer the concept. With access to thousands of qualified attorneys, paralegals and support staff worldwide, our experienced staffing consultants are ready to staff your projects quickly and efficiently.

So the next time you need 2 legal professionals or 200, there's really just one place to call—the GLOBAL LEADER in legal staffing.

Special Counsel®

The Global Leader in Legal Services

2340 Woodcrest Place, Suite 210 • Birmingham, Alabama 35209
Telephone: (205) 870-3330 • Fax: (205) 870-3337

Offices Nationally & Internationally
(800) 737-3436
www.specialcounsel.com

MPS Listed NYSE

A Modis Professional Services Company

The GLOBAL LEADER in Legal Services

MEMORIALS

Jimmy E. Alexander

The Limestone County Bar Association honors the memory of Jimmy E. Alexander who departed this life on September 21, 1999.

We recognize his many contributions to our profession and pay tribute to him; therefore, be it remembered that Jimmy E. Alexander was born in Bear Creek, in Marion County, on August 8, 1939. He attended Bear Creek High School through the tenth grade and graduated from Russellville High School in 1957. He attended the University of Alabama where he received his undergraduate degree in 1960 and his law degree in 1963.

He moved to Athens following graduation from law school and joined the firm of Malone, Malone & Steele, later Malone, Steele & Alexander. He was senior partner of the firm of Alexander, Corder, Plunk, Baker, Shelley & Shipman, P.C. He was in private practice for 36 years serving as city attorney for Athens and Ardmore. He was a member of the city Board of Education for five years and was an Alabama State Bar Commissioner for the 39th Judicial Circuit for four years.

Early in his career, Jimmy developed an outstanding reputation as a criminal defense attorney and was in great demand for domestic relations cases. He later represented several of the largest industries, financial institutions and businesses in Alabama. He served the legal profession as a lecturer at continuing legal education conferences and was a contributor to numerous legal publications.

While he continued to counsel a number of businesses and commercial clients, for the past 15 years Jimmy primarily devoted his practice to championing the cause of the poor, physically injured, financially cheated, wrongfully killed, and others taken advantage of or mistreated.

In 1997, law partners and clients established the Jimmy E. Alexander Scholarship Fund recognizing his life service to his clients across the Tennessee Valley. The scholarship is awarded each year to a student from Limestone County attending the University of Alabama.

Jimmy is survived by his wife, Rose S. Alexander; two children, Eric and Tonya Alexander; two brothers, Joe Alexander and Arnold Edward Alexander; and two sisters, Dorothy Turberville and Frances Wilson.

Jimmy was a respected friend, a distinguished citizen of the community and a valued member of the Limestone County Bar Association. We convey to his family our condolences and offer this resolution as a record of our great loss and continuing admiration and affection.

–Kristi A. Valls, president
Limestone County Bar Association

Alexander, Jimmy Euel
Athens
Admitted: 1963
Died: September 21, 1999

Barineau, Richard Crook
Birmingham
Admitted: 1986
Died: August 26, 1999

Fraley, Robert Earl
Orlando, Florida
Admitted: 1979
Died: October 25, 1999

Greene, Louis G.
Montgomery
Admitted: 1951
Died: September 17, 1999

King, Rufus Middleton
Montgomery
Admitted: 1956
Died: October 10, 1999

Ledbetter, Ray Lee, Jr.
Birmingham
Admitted: 1969
Died: October 20, 1999

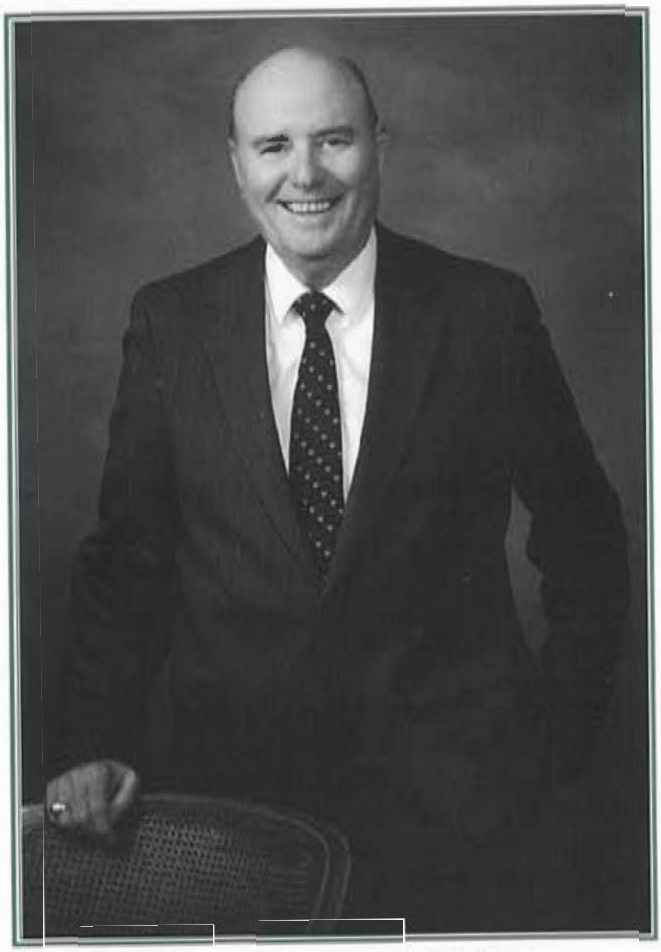
Mazzia, Valentino Don Bosca
New York
Admitted: 1984
Died: March 10, 1999

McDonald, Thomas Dennis
Huntsville
Admitted: 1948
Died: September 4, 1999

NeSmith, Carl D., Sr.
Oneonta
Admitted: 1949
Died: September 30, 1999

Thompson, Henry L.
Birmingham
Admitted: 1977
Died: August 25, 1999

Jack M. Nolen, Sr.



Whereas, Jack M. Nolen, a prominent attorney and member of the Fayette County Bar Association, departed this life on September 24, 1998 at his home in Fayette, Alabama at the age of 73; and

Whereas, the Fayette County Bar Association honors his name and recognizes his numerous contributions to the legal profession, his civic leadership and his business accomplishments in the city of Fayette and the state of Alabama; and now, therefore, be it remembered that Jack M. Nolen, Sr. was the son of Judge Wilbur and Kathleen Nolen of Ashland, Alabama. He graduated from Clay County High School in 1942 where he served as president of the student body his senior year.

Whereas, Jack M. Nolen performed his obligations as a citizen, as he entered the Navy in 1943 and served as an enlisted man in the Pacific Theater of Operations during World War II, participating in the battles of Siapan, Iwo Jima and Okinawa.

Whereas, Jack M. Nolen entered the University of Alabama following his tour of duty, and received his B.S. degree in 1950. He attended the University of Alabama School of Law and received his LL.B. degree in 1952. He served as the 1951–1952 president of the University of Alabama School of Law student body. Nolen married Bennie Cannon of Berry, Alabama on August 31, 1949 and returned to her hometown to practice law. In 1960 Nolen moved his law practice to Fayette, where he continued his role as one of northwest Alabama's most reputable attorneys. In addition to his private practice, he served as assistant district attorney for the 24th Judicial Circuit of Alabama from 1963 to 1987, when he retired from active practice.

Whereas, Jack M. Nolen is survived by his wife, Bennie; two sons, Theron W. Nolen and J. Merrell Nolen, Jr.; four daughters, Kathleen Nolen-Martin, Janet N. Rudolph, Pam N. Shipman and Laura N. Fulmer, along with ten grandchildren.

Whereas, Jack M. Nolen inspired his sons, Theron and Merrell, to follow him into the legal profession, and they now operate the law firm he established. He also was a mentor and an inspiration to all of the present members of this bar who sought his advice, guidance and insight as they grew in the law.

Whereas, Jack M. Nolen has met his obligation to God and his church, the Fayette First United Methodist Church, by faithful attendance, financial support and loyalty; he served as a Sunday school teacher for more than 35 years, and in other capacities, including lay leader, chairman of the official board, and delegate to the North Alabama Conference of the United Methodist Church. He was a former member of the Board of Superannuate Homes, North Alabama Conference of the UMC, and a former member of the Board of Trustees, Tuscaloosa District of the UMC.

Whereas, he was a member of professional legal bar associations at the county, state and national levels. Nolen's many civic activities included serving as a former member and chairman of the State of Alabama Mental Health Board; member and former president of the Fayette Area Chamber of Commerce; former member of the Board of Trustees of the Fayette schools and Berry schools; member and former president of the Fayette Exchange Club; former member and chairman of the Fayette Gas Board; member of the Fayette Planning Commission; and former member of the Town Council of Berry, Alabama.

Whereas, Jack M. Nolen was a valued and respected friend and distinguished citizen of this community; and it is in grateful memory and appreciation of his contributions to this community, to his profession and to this association that this resolution be adopted; and

Whereas, this association desires to convey to his family that we have also lost a member of our family, a brother; that we share their grief and loss; and that Jack's memory will last forever in our hearts and minds.

–Steven M. Nolen, president
Fayette County Bar Association

About Members, Among Firms

Due to the huge increase in notices for "About Members, Among Firms," *The Alabama Lawyer* will no longer publish address changes for firms or individual practices. *It will continue* to publish announcements of the formation of new firms or the opening of solo practices, as well as the addition of new associates or partners. Please continue to send in address changes to the membership department of the Alabama State Bar.

About Members

Jonathan S. Wesson announces the opening of his office at 212 Main Street, Warrior, 35180. Phone (205) 590-1128.

Thomas W. Holley announces the opening of his law office at 517 Energy Center Boulevard, Suite 1303, Northport, 35473. Phone (205) 345-1577.

Carole Coil Medley announces the opening of her new office at Keystone Business Centre, 205 S. Seminary Street, Suite 103, Florence, 35630. Phone (256) 740-8277.

Cheryl A. McGill announces the opening of her office at 183 Shelton Road, Madison, 35758. Phone (256) 464-9606.

Robert K. Jordan announces the opening of his office at 200 Alabama Avenue, Southwest, Fort Payne, 35968. Phone (256) 845-2423.

Among Firms

Richard G. Brock announces that he is now the director of attorney recruiting for **Acymtech, Inc.** Offices are located at 613 Bienville Lane, Birmingham, 35213. Phone (205) 877-8360.

Bennett L. Bearden announces that he is now the assistant general counsel for **Neurorecovery, Inc.** Offices are located in Tuscaloosa.

Nathan R. Norris announces that he has become the director of marketing and sales for **EBSCO Development Company, Inc.** Offices are located at 1181 Dunnavant Valley Road, Birmingham, 35242. Phone (205) 408-8696.

Christopher H. Griffith announces that he is now serving as the staff attorney for the **Rose Haven Center for Domestic Violence**. The mailing address is P.O. Box 1548, Gadsden, 35902. Phone (256) 543-8424.

Michael Wermuth recently joined **The RAND Corporation** as senior policy analyst in the Washington, D.C. office.

Gilbert & Sackman announces that **Jay Smith** and **Christopher E. Krafchak** have become principals of the firm. Offices are located at 6100 Wilshire Boulevard, Suite 700, Los Angeles, 90048. Phone (323) 938-3000.

Huie, Fernambucq & Stewart announces that **Lane Hines Woodke** and **Thomas O. Sinclair** have become associates. Offices are located at 800 Regions Bank Building, Birmingham, 35203. Phone (205) 251-1193.

Lloyd, Schreiber & Gray, P.C. announces that **Brock G. Murphy** and **Jeffrey N. Cotney** have become associated with the firm. Offices are located at Two Perimeter Park, South, Suite 100, Birmingham, 35243. Phone (205) 967-8822.

Rushton, Stakely, Johnston & Garrett, P.A. announces that **Alan T. Hargrove, Jr., R. Austin Huffaker, Jr., John Peter Crook McCall** and **Matthew Q. Tompkins** have become associated with the firm. Offices are located in Montgomery. Phone (334) 206-3100.

Gathings & Associates announces that **Mark Kennedy** and **Misha Y. Mullins** have joined the firm and the firm name has been changed to **Gathings, Kennedy & Associates.** Offices are located in Montgomery, Birmingham and St. Petersburg. Phone (877) 803-3006.

Leitman, Siegal & Payne, P.C. announces that **Jim H. Wilson** has become associated with the firm. Offices are located at 600 N. 20th Street, Suite 400, Birmingham, 35203. Phone (205) 251-5900.

Bond & Botes, P.C. announces that it has changed the firm name to **Bond, Botes, Reese & Shinn, P.C.** and that **Tina P. Wilks** has joined the firm as a partner. Offices are located at 600 University Park Place, Suite 310, Birmingham, 35209. Phone (205) 802-2200.

K. Rick Alvis and Thomas P. Willingham announce the formation of **Alvis & Willingham, L.L.P.** and that **Richard J. Riley** has joined the firm as an associate. Offices are located in Birmingham, Sheffield and Mobile.

Stone, Granade & Crosby, P.C. announces that **Shawn T. Alves** has become associated with the firm. Offices are located in Bay Minette, Daphne and Foley. Phone (334) 626-6696.

Moore & Wolfe announces that **J. Knox Boteler** has joined the firm as an associate. Offices are located at 1252 Dauphin Street, Mobile, 36604. Phone (334) 433-7766.

Maddox, Austill, Parmer & Lewis, P.C. announces that **Brenton K. Morris** has joined the firm as an associate. Offices are located at Lakeshore Park Plaza, Suite 215, 2204 Lakeshore Drive, Birmingham, 35209. Phone (205) 870-3767.

Cusimano, Keener, Roberts & Kimberley, P.C. announces that **Emily Patricia Hawk** has become an associate with the firm. She started serving as a law clerk to Judge Sue Bell Cobb of the Alabama Court of Criminal Appeals commencing in December 1999. She plans to return to private practice with

Legal matters should be left to the experts... document handling should be, too!

Does your law firm need quick cataloging and Bates stamping of case documents?

Do you need accurate, reliable and quick retrieval of your documents?

Would you like to have access to every document in your case whether you are in the office, at home, or traveling?

Would you like to make sure you never lose or misplace another document or file?

Would your time and that of your paralegal be better spent on case work rather than filing and searching for documents?

If you answered "yes" to any of these questions, our document storage and retrieval is for you. Century Document Imaging has an impeccable reputation. For 25 years we have specialized in document management. We are fast, accurate, reliable and confidential. Our past has been built on these qualities, and our future depends on them.

Century can scan all your case documents and put them on a CD, enabling you to retrieve them on your laptop computer anywhere you go. Carry the entire case documents, up to 15,000 pages on a single CD. You never lose or misplace a document or file because each one is instantly retrievable from the CD. You can even have duplicate CD's made for others working on the case. When you have to produce documents to the "other side", you can give them a duplicate CD, without privileged documents.

No matter where you are located, you may send your documents to Century for imaging, or we can arrange for pickup. If you prefer, we will even do the document imaging on site without ever removing a file from the premises.

Paper handling is a necessary part of any business, especially the legal profession. Let us save you and your staff time and headaches. ***Legal matters should be left to the experts; document handling should be, too!*** Call Century.

CENTURY DOCUMENT IMAGING

Call today and ask for ***"Litigation Support."***

Atlanta, GA	Birmingham, AL	Montgomery, AL
404-262-2300	205-591-7755	334-270-1755

the firm in January 2001. Offices are located at 153 S. 9th Street, Gadsden, 35901. Phone (256) 543-0400.

Tanner & Guin, L.L.C. announces that **Peter C. Bond** and **Thomas W. Scroggins** have become associated with the firm. Offices are located at 2711 University Boulevard, Tuscaloosa, 35403. Phone (205) 633-0200.

Chamblee & Furr, L.L.C. announces that **Hubert G. Taylor** has become associated with the firm. Offices are located at 5582 Apple Park Drive, Birmingham, 3522235. Phone (205) 856-9111.

Luther, Odenburg & Rainey, P.C. announces that **Kathryn Cigelske** has joined the firm as an associate. Offices are located on the 10th floor of the Riverview Plaza, Mobile, 36602. Phone (334) 433-8088.

McKay & Campbell announces that **George C. Douglas, Jr.** has become *of counsel* to the firm. Offices are located at 400 W. 3rd Street, Sylacauga, 35150. Phone (256) 245-5267.

Ulmer, Hillman & Ballard, P.C. announces that **Peggy R. Nikolakis** has joined the firm which will now be known as **Ulmer, Hillman, Ballard & Nikolakis, P.C.** Offices are located at 63 S. Royal Street, Suite 1107, Mobile, 36602. Phone (334) 694-0077.

Cabaniss, Johnston, Gardner, Dumas & O'Neal announces that **Anna F. Buckner** and **Phillip B. Walker** have become associated with the firm. Offices are located in Birmingham and Mobile.

Hill, Hill, Carter, Franco, Cole & Black, P.C. announces that **Paul A. Clark** has joined the firm as an associate. Offices are located at 425 S. Perry Street, Montgomery, 36104. Phone (334) 834-7600.

Thorington & Gregory announces that **Thomas F. Monk** has joined the firm as an associate. Offices are located at 504 S. Perry Street, Montgomery, 36104. Phone (334) 834-6222.

Zieman, Speegle, Jackson & Hoffman, L.L.C. announces that **Christopher L. Hawkins** has become associated with the firm. Offices are located at 107 Saint Francis Street, Suite 3200, Mobile, 36602. Phone (334) 694-1700.

Wisner, Adams, Walker & Line, P.C. announces that **David E. McGehee** has become a member of the firm. Offices are located at 100 Washington Street, Suite 200, Huntsville, 35801. Phone (256) 533-1445.

Notice of Election

Notice is given herewith pursuant to the Alabama State Bar Rules Governing Election of President-Elect and Commissioner.

President-Elect

The Alabama State Bar will elect a president-elect in 2000 to assume the presidency of the bar in July 2001. Any candidate must be a member in good standing on March 1, 2000. Petitions nominating a candidate must bear the signature of 25 members in good standing of the Alabama State Bar and be received by the secretary of the state bar on or before March 1, 2000. Any candidate for this office must also submit with the nominating petition a black and white photograph and biographical data to be published in the May 2000 *Alabama Lawyer.*

Ballots will be mailed between May 15 and June 1 and must be received at the state bar by 5 p.m. on the second Friday in June (June 9, 2000).

Commissioners

Bar commissioners will be elected by those lawyers with their principal offices in the following circuits: 2nd; 4th; 6th, place no. 2; 9th; 10th, places no. 1, 2, 5, 8, and 9; 12th; 13th, place no. 2; 15th, place no. 2; 16th; 20th; 23rd, place no. 2; 24th; 27th; 29th; 38th; and 39th. Additional commissioners will be elected in these circuits for each 300 members of the state bar with principal offices herein. The new commissioner positions will be determined by a census on March 1, 2000 and vacancies certified by the secretary no later than March 15, 2000.

All subsequent terms will be for three years.

Nominations may be made by petition bearing the signatures of five members in good standing with principal offices in the circuit in which the election will be held or by the candidate's written declaration of candidacy. Either must be received by the secretary no later than 5 p.m. on the last Friday in April (April 28, 2000).

Ballots will be prepared and mailed to members between May 1 and May 15, 2000. Ballots must be voted and returned by 5 p.m. on the last Friday in May (May 26, 2000) to the Alabama State Bar.

Abner R. Powell, III and **A. Riley Powell, IV** announce the formation of **The Powell Law Firm P.C.** Offices are located at 201 E. Troy Street, Andalusia, 36420. Phone (334) 222-4103.

Wallace D. Mills and **Christopher K. Whitehead** announce the formation of **Whitehead & Mills, L.L.C.** Offices are located at 1300 E. Main Street, Suite D, Prattville, 36066. Phone (334) 358-0057.

Anders, Boyett & Brady, P.C. announces that **Jason D. Smith** has become associated with the firm. Offices are located at 3800 Airport Boulevard, One Maison Building, Suite 203, Mobile, 36608.

Ables, Baxter, Parker & Hall, P.C. announces that **Johnathan W. Pippin** has become an associate. Offices are located at 315 Franklin Street, Huntsville, 35801. Phone (256) 533-3740.

Jack W. Tolbert, Jack Tolbert, Jr. and **Rebecca Walker** announce the formation of **Torbert, Torbert & Walker, L.L.C.** Offices are located at 1024 Forrest Avenue, Gadsden, 35901. Phone (356) 547-7551.

Forstman & Cutchen, L.L.P. announces that **Maxwell D. Carter** has become associated with the firm. Offices are located at 2001 Park Place, North, Suite 300, Park Place Tower, Birmingham, 35203. Phone (205) 328-7400.

John Lindsey Loftis and **John T. Fisher, Jr.** announce the formation of **Loftis & Fisher, P.C.** Offices are located at 1406 22nd Avenue, Tuscaloosa, 35401. Phone (205) 344-4414.

Sears, Van Dyke & Associates announces that **Larry G. Cooper, Jr.** has joined the firm as an associate. The firm name is now **Sears, Van Dyke & Cooper, L.L.P.** Offices are located at 2204-B Gateway Drive, Opelika, 36801. Phone (334) 741-0809.

Michael S. Speakman announces that **Steven T. Speakman** has joined him as a partner in the practice of law. The partnership will be known as **Speakman & Speakman.** Offices are located at 1702 Catherine Court, Suite 1-D, Auburn, 36830. Phone (334) 821-0091.

Don H. Bevill announces that his father, **Tom Bevill,** has joined his practice *of counsel*. Offices are located 1600 Alabama Avenue, Jasper, 35501. Phone (205) 221-4646.

Enzor & Enzor announces that **C. Richard Hill, Jr.** has become an associate with the firm. Offices are located at 208 Dunson Street, Andalusia, 36420. Phone (334) 222-8177.

Stephens, Millirons, Harrison & Gammons, P.C. announces that **Shelly D. Thornton** has joined the firm as an associate. Offices are located at 333 Franklin Street, Huntsville, 35801. Phone (256) 533-7711.

Balch & Bingham, L.L.P. announces that **Marc J. Ayers; Susannah L. Baker; Laura G. Black; D. Somerville Evans; P. Stephen Gidiere, III; Robert C. Khayat, Jr.; Krissie K. Kubiszyn; Alicia B. Medders; Craig A. Parker; Pamela A. Payne; Leslie C. Paulus; Edward J. Peterson, III; S. Chris Still; Mark E. Tindal;** and **Christopher L. Wiginton** have become associated with the firm, and that **Donna J. Bailey** has joined the practice *of counsel*. Offices are located in Birmingham, Huntsville, Montgomery and Washington, D.C. ■

NOW, BETTER THAN EVER!

BEST CASE® BANKRUPTCY

Form preparation software for attorneys.

NEW! *Import your common creditor information from Collier TopForm™ or West's Chap7..13*!*

NEW! *More keyboard shortcuts for quicker data entry!*

NEW! *More printing options: print blank forms, print "Amended" in form title, print "DRAFT" across forms, new options for electronic filing, and more!*

60-Day Money Back Guarantee!

Call ***1.800.492.8037*** *for more information, a free demo packet, and local references.*

www.bestcase.com

*TopForm is a trademark of Matthew Bender & Co., Inc. Chap 7..13 is published by West Group. Best Case Solutions is not affiliated with either Matthew Bender or West Group.

Best Case Solutions, Inc. P.O. Box 32 Evanston, IL 60204-0032

TIMBERLAND

Customized investment grade pine timberlands available as replacement properties for **SEC. 1031 TAX DEFERRED EXCHANGES** or as long-term investments.
Call Bob Lyle at (601) 948-8733.
Fax (601) 352-7463.

THE MOLPUS WOODLANDS GROUP

654 NORTH STATE STREET, JACKSON, MS 39202

Also located in Hattiesburg & Philadelphia, Mississippi and Lufkin, Texas.

LEGISLATIVE WRAP-UP

By Robert L. McCurley, Jr.

The Alabama Legislature convenes Tuesday, February 1, 2000 for its 2000 Regular Session. This legislature of 140 members of both the House and Senate has only 21 lawyers. Lawyers do comprise a great deal of the leadership, including **Lt. Governor Steve Windom**; **Speaker Pro tem of the House of Representatives Representative Demetrius Newton**; chairs of both judiciaries, **Representative Bill Fuller** and **Senator Rodger Smitherman**; and chairs of both the Democratic and Republican House caucuses, **Representative Ken Guin** and **Representative Mike Rogers**. Lawyers also chair ten other House and Senate committees. Thus, the work of the Alabama Law Institute is even more critical to produce technical legal revisions that can be relied on by all legislators.

Currently, the Institute has seven drafting committees composed of 112 lawyers who are donating their time and legal talent without receiving even travel expenses for attending drafting committee meetings. These lawyers are widely recognized as being experts in their fields. Alabama could not afford the quality of the expertise provided by the generosity of the committee members who give freely of their time to better the laws of this state.

The **Uniform Principal and Income Committee** is chaired by attorney **Leonard Wertheimer** of Birmingham. The committee is composed of **Douglas Bell**; **Robert L. Loftin**; **Lyman F. Holland, Jr.**; **Professor Tom Jones**; **Daniel Markstein, III**; **Melinda Mathews**; **J. Reese Murray, III**; **William A. Newman**; **Ralph Quarles**; **Alan Rothfeder**; **Irving Silver**; **Leonard Wertheimer, III**; and **Ralph Yeilding**. See December 1999 *Alabama Lawyer*. This committee has completed its draft after a review that began in November 1996. The revision will be presented to the 2000 Regular Session of the Legislature.

The **Business Entities Committee** is reviewing all eight forms of business organizations. The committee is looking to provide an understandable way for attorneys to use various forms of entities without being trapped by a nuance of one entity that is different from the others. The committee is looking for consistency in filing, organization, directors' meetings, mergers, etc. This committee began in November 1997 and has already produced a bill to simplify consolidations and mergers of all business entities. It will be presented again in the Regular Session. The committee is

(Continued on page 22)

We try harder

for Alabama State Bar members like you.

Running for your plane? With Avis Roving Rapid Return℠* you will have your rental receipt within a minute after you pull into our lot. It's one of the many ways we try harder at **Avis** to serve Alabama State Bar members better. And here's another way. Mention your **Avis** Worldwide Discount (AWD) number **A530100** when you call our toll-free number, to get special "members-only" rates not available to the general public. Use the coupon at right and you'll save even more. For reservations, call your travel consultant, **Avis** at **1-800-698-5685**, or reserve your car online at **www.avis.com**

Avis features GM cars.

© 1999 Avis Rent A Car System, Inc.

*Service available during peak periods at major U.S. airport locations.

Especially for Alabama State Bar Members Save $15 On a Weekly Rental!

Rent an Avis Intermediate through a Full Size four-door car. Then, present this coupon at a participating Avis location in the U.S. and receive **$15 off a weekly rental**. Subject to complete Terms and Conditions. For reservations, call your travel consultant or Avis at: **1-800-698-5685** and mention your Avis Worldwide Discount (AWD) number: **A530100**.

TERMS AND CONDITIONS
Coupon valid on an Intermediate (Group C) through a Full Size four-door (Group E) car. Dollars off applies to the cost of the total rental with a minimum of five days. Coupon must be surrendered at time of rental; one per rental. **An advance reservation is required.** May not be used in conjunction with any other coupon, promotion or offer. Coupon valid at participating Avis locations in the contiguous United States. Offer may not be available during holiday and other blackout periods. Offer may not be available on all rates at all times. Cars subject to availability. Taxes, local government surcharges, and optional items, such as LDW, additional driver fee and fuel service, are extra. Renter must meet Avis age, driver and credit requirements. Minimum age is 25, but may vary by location. Rental must begin by 6/30/2000.

Rental Sales Agent Instructions. At Checkout:
- In AWD, enter **A530100**.
- In CPN, enter **MUGK720**.
- Complete this information:
  RA#_____
  Rental Location_____
- Attach to COUPON tape.

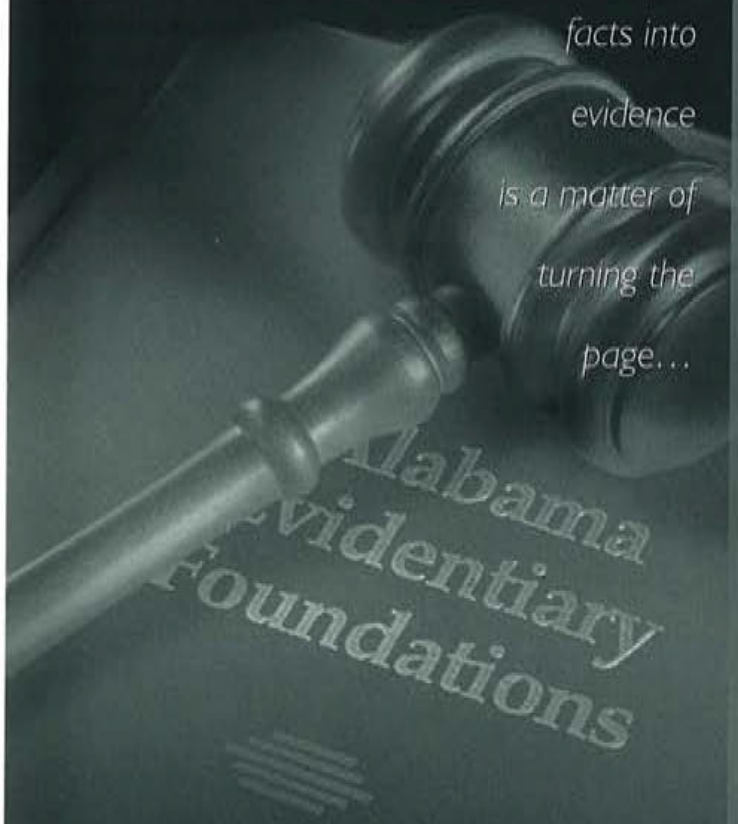
AVIS
We try harder: For You.

From LEXIS Publishing™

Alabama Evidentiary Foundations

Terry L. Butts, Charles W. Gamble, E. J. Imwinkelried

Turning your facts into evidence is a matter of turning the page...



Learn how to address and overcome evidentiary problems in Alabama courtrooms. Alabama Evidentiary Foundations brings Alabama evidence to life, showing you how to frame foundational questions to gain admission or exclusion of evidence. Specific lines of questioning are included, demonstrating courtroom-proven trial techniques applying Alabama evidence law.

Written by renowned authorities in evidence law, Alabama Evidentiary Foundations is a collaborative project of evidence experts, well-known in Alabama and around the country—

- *Terry L. Butts* is a former Alabama Supreme Court Associate Justice and former State Circuit Judge
- *Charles W. Gamble* is the Henry Upson Sims Professor of Law at the University of Alabama School of Law
- *Edward J. Imwinkelried* is Professor and Director of the Trial Advocacy Program at the University of California, Davis. He is the author of Evidentiary Foundations, Second Edition and many other books on evidence law.

$65*

Approx. 400 pages, hardbound
Item# 63001 ©1999

Order Today!

Examine for 45 days without risk or obligation! Updates issued within 90 days of purchase will be free of charge.

LEXIS Publishing™

LEXIS®-NEXIS® • MARTINDALE-HUBBELL®
MATTHEW BENDER® • MICHIE™ • SHEPARD'S®

800/562-1215

or visit our web site and order online at www.lexislawpublishing.com
Please use code 2ES when ordering.

*Plus sales tax, shipping and handling where applicable. Price subject to change. LEXIS, NEXIS and Martindale-Hubbell are registered trademarks, LEXIS Publishing and MICHIE are trademarks of Reed Elsevier Properties Inc., used under license. SHEPARD'S is a registered trademark of SHEPARD's Company. Matthew Bender is a registered trademark of GLS, Inc. ©1999 LEXIS Publishing, a division of Reed Elsevier Inc. All rights reserved.

chaired by **Jim Pruett**, a Gadsden attorney. The following attorneys serve on this committee: **James Bryce; Larry B. Childs; James R. Clifton; C. Fred Daniels; Robert P. Denniston; Peck Fox; James Hughey, Jr.; Gregory L. Leatherbury, Jr.; Curtis O. Liles, III; Mark D. Maloney; Thomas G. Mancuso; E. B. Peebles; James Pruett; F. Don Siegel; Henry E. Simpson; Bradley J. Sklar; Howard Walthall;** and **Robert Walthall.**

The **Rules of Criminal Procedure Committee** has been a continuing committee since January 1975. The Criminal Rules were adopted in May 1990 after a 15-year study. Since then the committee has continued to meet to keep the rules current with changing statutory and case law. It also clarifies issues raised by judges, district attorneys and lawyers. Most recently, Rule 11, "Competency and Mental Examinations," was revised due to statutory changes brought about by federal court rulings. The new Rule 11 was effective January 1, 2000. The committee endorsed a "Juror Questionnaire" for use in juror identifications in response to *Batson* challenges. Former **Judge Billy Burney**, of Moulton, currently chairs this committee, after having been a member for 25 years. The members of this committee are: **Genrge W. Andrews, III; Albert C. Bowen;** former **Judge William M. Bowen, Jr.; Roger A. Brown; Professor** (and former judge) **Joseph A. Colquitt; W. Lloyd Copeland; Stephen P. Feaga; Lynda L. Flynt; J. Doyle Fuller; Judge James S. Garrett; Thomas M. Goggans; Judge James H. Hard, IV; Richard S. Jaffee; Braxton Kittrell; Judge Francis Long, Sr.; Lane Mann, clerk of the Alabama Court of Criminal Appeals; Judge Deborah Passeur; Circuit Court Judge Daniel Reeves; Sandra J. Stewart;** and **John David Whetstone.**

The Institute has four additional committees, relating to Public Employee Retirement Systems, Eminent Domain Code, Guardianship and Protective Proceedings Act and UCC Article 9.

The **Public Employee Retirement Systems Committee** is reviewing a model act, in relation to existing small public retirement systems other than the State Retirement System.

The **Eminent Domain Code**, drafted in 1985, is being reviewed to determine if there are changes which should be made. The committee in charge of the review is chaired by **Gerald Colvin**, a Birmingham attorney.

The Institute is reviewing the **Guardianship and Protective Proceedings Act,** which was passed in 1987, to determine if any amendments should be made at this time.

Finally, there is a review of **UCC Article 9**. Alabama's revised Article 9 was passed in 1981. The Uniform Act was revised a second time in 1998. Seven states have already adopted the revision. Alabama is not expected to complete its study until the fall of 2000. This study is chaired by **Larry Vinson**, a Birmingham attorney.

The following bills are pending before the Legislature: Principal and Income Act, Consolidation and Mergers Act, and Determination of Death Act. Copies of the bills are on the Institute's home page (see address below).

The Institute has available *The Legislative Process, A Handbook for Legislators*, 7th Edition, and *Alabama Legislation, Cases and Statutes*, 4th Edition. Both books are available for purchase from the Institute office.

For more information about the Institute or any of its projects, contact Bob McCurley, director, at the Alabama Law Institute, P.O. Box 861425, Tuscaloosa 35486-0013; phone (205) 348-7411; fax (205) 348-8411; or through the Institute's home page, *www.law.ua.edu/ali.*

Robert L. McCurley, Jr.
Robert L. McCurley, Jr. is the director of the Alabama Law Institute at the University of Alabama. He received his undergraduate and law degrees from the University.

IMPORTANT!

Licenses/Special Membership Dues for 1999-2000

All licenses to practice law, as well as special memberships, are sold through the Alabama State Bar headquarters.

In mid-September, a dual invoice to be used by both annual license holders and special members was mailed to every lawyer currently in good standing with the bar.

If you are actively practicing or anticipate practicing law in Alabama between October 1, 1999 and September 30, 2000, please be sure that you purchase an occupational license. Licenses are $250 for the 1999-2000 bar year and payment must have been RECEIVED between October 1 and October 31 in order to avoid an automatic 15 percent penalty ($37.50). Second notices will NOT be sent!

An attorney not engaged in the private practice of law in Alabama may pay the special membership fee of $125 to be considered a member in good standing.

Upon receipt of payment, those who purchase a license will be mailed a license and a wallet-size license for identification purposes. Those electing special membership will be sent a wallet-size ID card for both identification and receipt purposes.

If you did not receive an invoice, please notify Diane Locke, membership services director, at 800-354-6154 (in-state WATS) or (334) 269-1515, ext. 136, IMMEDIATELY!

OBJECTION!

If you're not insured with the Attorneys' Advantage Professional Liability Insurance Program... you should object to your current insurer on the following grounds:

1. **You may be paying too much for your liability coverage.**
2. **You may not have the broad coverage you really need.**

Attorneys' Advantage Professional Liability Insurance offers broad coverage...up to $10 million in limits. Program benefits include:

- **First Dollar Defense**
- **Claims Expense in Addition to Liability Limits**
- **Risk Management Program**
- **Full Prior Acts Coverage Available**

Best of all, it's underwritten by TIG Insurance Company, A.M. Best rated "A" (Excellent), XI.

Don't delay! For more information, including a no-obligation quotation, call today. Plus you'll receive a free copy of *The Quarter Hour*, the newsletter for Attorneys' Advantage insureds that contains useful, practical information on ways to manage risk in your practice.

PLI *Professional Liability Insurance, Inc.*

Professional Liability Insurance, Inc.
300 Delaware Avenue • P.O. Box 2287
Wilmington, DE 19899

1-800-441-9385

Fax: 1-800-716-3411
www.zutz-pli.com/lawyers.html

TIG INSURANCE℠

Attorneys' Advantage®
Professional Liability Coverage On Favorable Terms

©1997 Attorneys' Advantage Insurance Agency, Inc.

ALABAMA STATE BAR

1999 Fall Admittees

STATISTICS OF INTEREST

Number sitting for exam	551
Number certified to Supreme Court of Alabama	348
Certification rate*	63.2 percent

Certification Percentages:

University of Alabama School of Law	82.6 percent
Birmingham School of Law	31.9 percent
Cumberland School of Law	84.0 percent
Jones School of Law	37.5 percent
Miles College of Law	11.8 percent

**Includes only those successfully passing bar exam and MPRE*

Alabama State Bar Fall 1999 Admittees

Abel, Christopher Fred
Adair, Jennifer Claire
Ahnert, Janell Massey
Allen, William Robert
Alves, Shawn Tavel
Alves, Margaret H. Tunnell
Arnold, Lutie Foster Cobbs
Avery, Daniel Patrick
Axon, James Wilson Jr.
Babb, Michael Douglas
Bailey, Robert Newell II
Bailey, Talitha Powers
Bailey, Joel Chandler II
Barnes, William Guthrie
Bartlett, Heidi Beyer
Beason, Roland Hollis
Bedsole, Gary Edwin
Beech, Ingrid Glo
Bennett, David Keith
Best, Kristine Marie McIntyre
Black, Laura Gautney
Bloomenstein, Adam Howard
Bolling, Frederic Allen
Bond, Peter Clark
Boteler, James Knox III
Bottoms, Charlie Andrew Jr.
Boucher, Kevin Lawrence
Bramlett, Jo Ann
Brandon, Stephen Alan
Brantley, Clotele Hardy
Bright, David Alexander
Brown, Gary Lamar
Brown, Robert Simpson III
Brown, Buddie Ralph Jr.
Brown, Scott Samuel
Browning, Charles Brandon
Bru, Gregory Paterson
Buckner, Anna Funderburk
Buettner, Jennifer Marie
Buffkin, Russell Crandle
Bullock, Susan Elizabeth Ware
Burkett, Todd Whitney
Butler, Thomas Julian
Cameron, Ashley Elizabeth
Camp, Nath Thompson Jr.
Carney, Annemarie
Carroll, Eric Vincent
Carroll, William Graham
Carroll, Jennifer Shea
Chapman, Jeffrey Madison
Christian, Jon Nelson
Christman, Andrew Wayne
Clanton, Barry Shane
Clark, Paul Anthony
Clark, Jennifer Paige
Clay, Calvin Carter
Clem, Robin Carter
Clemon, Addine Michelle
Clifford, William Patrick III
Cobb, Christopher Dale
Coker, Caroline Tiffany
Colley, Jere Folmar Jr.
Collier, Stephen Christopher
Collins, William Brian
Comer, Christian Michael
Comer, Sabrina LeAnne
Cook, Jeffrey Louis
Cooks, Roderick Twain
Cooper, Lisa M. Darnley
Cooper, Angelique M. Scheffler
Costello, Sean Patrick
Cotney, Jeffrey Neal
Couch, Richard William
Cowan, Amy Cooney
Crabtree, Jennifer Tuggle
Crane, Andrew Joseph
Crews, Roslyn
Cross, Kristen E. Simms
Dana, John Gibbs
Daughtrey, Clinton Mason
Davis, Charles Earl Jr.
Dean, Christine S. Bryan
DeArman, Jeffery Scott
Dehro, John Mark
Diamond, Catherine Elizabeth
Dillard, Eva Lovelace
Dodd, Brian Alan
Donsbach, John Andrew
Dorough, Christopher Edward
Duffee, Robert Thomas
Dumbuya, Peter Alpha
Dunagan, Erin LeGay
Dyer, Robert Lee
Elkins, Barry Gene
Elms, Lisa Renee'
Evans, Douglas Somerville
Evey, Kathleen Marie
Ezelle, Jay Michael
Ezzell, James William Jr.
Faulkner, Henry Wade Jr.
Fleming, Jacqueline
Flynn, Blair Elyse
Foster, Lizabeth Diann
Fry, Terry Charles Jr.
Gambino, Lucas Blake
Gamble, William Jordan Jr.
Gavin, Geoffrey Kirkland
Gay, Shonna Rene' Young
Gill, Patricia Anne
Gilmore, William Ivey II
Gilmore, Frank Clark III
Gish, Robert Charles Jr.
Gorham, Charles William Jr.
Graham, James Matthew
Grant, Walter Travis
Greene, Travis Shane
Griffin, Bethany Ray
Guillot, Joseph Charles
Guthrie, Clarence Terrell III
Hack, Bryan Michael
Hahn, William Patton
Hamilton, William Craig
Harden, Eleanor Robertson
Hargrove, Alan Thomas Jr.
Harper, James David
Harralson, Peter Hardin
Harrell, Brenda Lane
Harrell, Charles Andrew Jr.
Hawk, Emily Patricia
Hawkins, Christopher Lee
Helton, Troy Scott
Hemby, Elizabeth Swift Jones
Hickman, Stephen Scott
Hicks, Charles Andrew
Hill, Charles Richard Jr.
Hinkle, Christian Logan
Hoff, Richard Nelson
Holtsford, Ronald Alex
Hortberg, Katherine Charlotte
Horton, Leslie Jeanne
Houts, James Roy
Howard, Jennifer Leigh
Hoyem, Steven Scott
Huebner, Linda Lou
Huffaker, Robert Austin Jr.
Huffstutler, Ray Lynn
Hughes, Jon Melvin
Hutchinson, William Owens Lewis
Ingram, Sandra Marie
Irby, Jeffrey Brock Head
Ivey, Wyndall Anthony
Jackson, Frances Hunt
Jankiewicz, Stasia Denys
Jaye, Joy Arlene
Jernigan, Casey Leigh
Jobes, Jana Denise
Johnston, Jamie LeGrande A.
Jones, Mark Adam
Jones, David Anthony
Jordan, Margaret Karma
Jordan, Michael Charles
Karns, Laura Christine
Keller, Robert Clois
Kelly, Stewart Andrew
Khayat, Robert Conrad Jr.
King, John Ester Jr.
Kirby, Robert Ryan
Kirkland, Maceo Orlando
Knight, David Thomas
Kubiszyn, Kristina Kay
LaGrone, Jonathan Heath
Lawson, Shay Victoria
Lee, Alicia Marguerite
Lewis, Joseph Wayne
Lindon, Michael Wayne
Long, Louisa Frances
Love, Julie Lynn
Lusk, Jonathan Marion
Mackin, Jennifer Anne
Main, Catherine Wolter
Mallette, Greer Burdick
Mallette, Todd Cameron
Maples, Alice Miller
Marshall, Gary Scott
Martin, Craig Dennis
Materna, Karen Lynn Pettit
Maughan, Diane Babb
Maxwell, Carl Travis III
McAnnally, Garry Shannon
McBride, Richard Lee Jr.
McCall, John Peter Crook
McCarthy, Terrence William
McCormick, Jason Sage
McDonough, William Christopher III
McEwen, Angie Godwin
McGlaun, Leslie Denise Green
McGowin, Dana Wright
McKelvin, Jodi Lynn
McLemore, Grace Lauren
McMullen, Amy Elizabeth
McMullen, Sheri Renee
McWhorter, Cary G. Bankhead
Medders, Alicia Beth
Meek, Derek Firth

Alabama State Bar 1999 Fall Admittees

Melchiode, Stephan Clarke
Mellon, David Roy
Michalik, Christopher Michael
Milam, Adam Matthew
Miller, Matthew David
Miller, Jason Daniel
Mims, Christopher Max
Monk, Thomas Franklin II
Monteiro, Cherlina Pauline
Moorhouse, Stanley Allan
Murray, Diane Coe
Musgrove, William Thomas III
Myers, Frank Wilson Jr.
Norvell, Louis Clifton
O'Neal, Andrew Dodson
Olive, Terri Lynne
Osborne, Brandy Michelle Birk
Parks, William Jerome III
Pate, Chaya Bail
Patel, Manish Hasmukh
Payne, Pamela Ann
Peevy, Jason Markley
Peters, Mary Donne
Peterson, Thomas Gregory
Peterson, Edward James III
Phillips, Jill Parrish
Pitman, Nancy Catherine Smith
Poundstone, Robert Emmett IV
Powell, William Isaac
Preet-Ryatt, Prabhjote
Price, Shannon Eugene
Priest, Christopher Michael
Pringle, Loraine Williams
Purvis, Charlette Melanie
Quick, Amy Elizabeth
Ray, Jinny Lynn Mobley
Ray, George David
Reese, Wendy Allison
Reeves, Gabrielle Elaine
Reinking, Melissa Leigh
Renfro, Heather Leigh
Revera, Gregory Henry
Reynolds, Johanna Leigh
Riley, Kenneth Evan
Roberts, Kevin Raynord
Rodgers, Prechious Monica En
Rodgers, Daniel Owen
Rogers, Kristen Leigh Gartman
Roitman, Isaac
Rolison, Robin P. Francis
Rose, Geraldine
Rudenstine, Sonya Margaret
Ryan, Jenny Rebeka
Sanders, Trina Denise
Sansom, Kenneth Daniel
Sanspree, Christopher Eugene
Sapp, Jonathan Coleman
Scarbrough, Michelle Lokey
Schadt, Elizabeth Gibson
Scroggins, Thomas Wendell
Sears, Shane Thomas
Setzer, Angela Leigh
Shields, Angela Collier
Sievert, Mara-Lee Ann
Simpson, Susan Vail
Sinclair, Thomas O'Neal
Sledge, Christopher Michael
Smith, Jason Daniel
Smith, James Christopher
Smith, Kirk DeBardeleben
Smith, Gary Alan
Speakman, Steven Todd
Spence, Susan M.Ryan Thompson
Spencer, Charlanna White
Stallworth, Orrilyn L. Maxwell
Stark, Erin Elizabeth
Stewart, Hope Thai
Stewart, Chad Edward
Stewart, James Vann
Stockman, Norman Matt
Stone, Sheila Virginia
Strassburg, David Alan Jr.
Sylvester, Amy DeLoach
Talty, Thomas Francis
Tarleton, Jennifer Ann
Tatum, Christine Elizabeth
Taylor, Terry Allen
Taylor, Jeremy Patrick
Taylor, Hubert Glosser
Taylor, Brandon deMille Coleman
Tepley, Peter John
Terry, Lydia Kathryn
Thomason, Rebecca Shan
Thompson, Brett Jones
Thompson, Margie Bernice Jordan
Thornton, Shelly Dean
Thurman, Stacey Aline
Tilden, Samuel Joseph
Tipton, Robert Brian
Tompkins, Matthew Quinn
Totten, John Michael
Trew, Jerry Lorne
Trimm, Jackie Lynn Herald
Turner, Robert Henry Jr.
Tyson, Meredith Leigh
Van Petten, Chris
VanPelt, Lewanda Kathryn
Varner, Gregory Michael
Vercher, Michael Anthony
Vincent, India Elizabeth
Wade, Dawn Maria
Walker, George Halcott Jr.
Walker, Richard Stephen
Walker, Phillip Brittain
Walker, Susannah Rose
Wallis, John Richard
Walters, Chad Christian
Warren, Bureden Jones
Warwick, Brian William
Watkins, Ashley Danean
Watkins, Wallace Wayne
Watson, Todd Brandon
Webb, Jeffrey Todd Sr.
Weeks, Leslie Gail
Weinberg, Kenneth Paul
Weir, James Lowe Jr.
Wells, Mary Isabelle
Whatley, Thomas McKee
White, Brigitte Lynne Martin
Whiteley, Theresa Elaine G.
Whitt, Murry Scott
Wiginton, Christopher Lee
Williams, Gregory Michael
Williams, Miles Clayborn
Wills, David Brent
Wolfe, Kary Bryant
Wollitz, Jason Lamar
Wolter, Peter McFarland
Woodall, Thomas Benton
Woodrow, Henry Davidson III
Woolf, Benjamin Lee
Worthy, Thomas Floyd
Wright, Kenneth Elbert Jr.
Yeager, Vaughn Lee
Yearout, William Austin
Ziglar, Kimberly Leigh

Judicial Award of Merit Nominations Due

The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the state bar's Judicial Award of Merit through March 15, 2000. Nominations should be prepared and mailed to:

Keith B. Norman, Secretary • Board of Bar Commissioners • Alabama State Bar • P.O. Box 671 • Montgomery, AL 36101

The Judicial Award of Merit was established in 1987. The award is not necessarily an annual award. It must be presented to a judge who is not retired, whether state or federal court, trial or appellate, who is determined to have contributed significantly to the administration of justice in Alabama. The recipient is presented with a crystal gavel bearing the state bar seal and the year of presentation.

Nominations are considered by a three-member committee appointed by the president of the state bar, which then makes a recommendation to the board of bar commissioners with respect to a nominee or whether the award should be presented in any given year.

Nominations should include a detailed biographical profile of the nominee and a narrative outlining the significant contribution(s) the nominee has made to the administration of justice. Nominations may be supported with letters of endorsement.

Lawyers in the Family

James Vann Stewart (1999) and Joseph G. Stewart (1966)
admittee and father

Julie Lynn Love (1999), Huel M. Love (1949), Betty C. Love (1965), Huel M. Love, Jr. (1982), Fred F. Ledbetter (1997), and Leigh Love (1988)
admittee, father, mother, brother, brother, and sister

Robert Ryan Kirby (1999) and Robert E. Kirby, Jr. (1988)
admittee and father

Christine Dean (1999), Brenton Lawrence Dean (1998), Howard F. Bryan, III (1974) and Judge Howard F. Bryan (1972)
admittee, husband, grandfather and father

Kristen Cross (1999) and Jonathan Cross (1993)
admittee and husband

Jeff Webb (1999), Darryl Webb (1969) and Richard H. Ramsey, III (1957)
admittee, father and father-in-law

Charles Hicks (1999) and Sarah Hicks Stewart (1992)
admittee and sister

Jill Parrish Phillips (1999) and John W. Phillips, Jr. (1998)
admittee and father

Becky Thomason (1999) and Bill Thomason (1971)
admittee and father

Frank Wilson Myers, Jr. (1999) and F. Wilson Myers, Sr. (1985)
admittee and father

Lawyers in the Family

Robert Thomas Duffee (1999) and Charles R. Adair, Jr. (1948)
admittee and uncle

Angela Redmond Debro (1994) and John Mark Debro (1999)
wife and admittee

Ronald Alex Holtsford (1999) and Alex L. Holtsford, Jr. (1985)
admittee and brother

Robin Rolison (1999) and E.T. Rolison, Jr. (1976)
admittee and father

Thomas J. Butler (1999) and Julian D. Butler (1963)
admittee and father

Jenny Rebeka Ryan (1999) and Judge William A. Ryan (1982)
admittee and father

John Richard Wallis (1999) and Kenneth D. Wallis, Jr. (1968)
admittee and father

Roslyn Crews (1999) and Waymon Powell, III (1996)
admittee and cousin

Norman Stockman (1999) and Sam Stockman (1961)
admittee and father

Angela Collier Shields (1999) and Keith Melton Collier (1964)
admittee and father

Christopher E. Dorough (1999) and Lisa Hudson Dorough (1998)
admittee and wife

Benjamin Lee Woolf (1999) and Thomas M. Smith (1974)
admittee and father-in-law

Lawyers in the Family

Steven Todd Speakman (1999), Sandra Marie Ingram (1999) and Michael Sharp Speakman (1987)
fiancé/fiancee co-admittees and brother/(future) brother-in-law

Margaret H. Tunnell Alves (1999), Shawn T. Alves (1999) and J. Hodge Alves, III (1974)
wife and husband co-admittees and father-in-law/father

Gabrielle Elaine Reeves (1999) and W. Boyd Reeves (1960)
admittee and father

Jonathan M. Lusk (1999), Louis B. Lusk, Jr. (1995) and Louis B. Lusk (1956)
admittee, brother and father

Shane Thomas Sears (1999) and James D. Sears (1988)
admittee and father

Casey L. Jernigan (1999) and John L. Jernigan, III (1975)
admittee and father

Linda L. Huebner (1999) and Franklin W. Cordery (1998)
admittee and husband

Louisa F. Long (1999) and Thad G. Long (1963)
admittee and father

David Thomas Knight (1999) and Judge James E. Wilson (1949)
admittee and father-in-law

William Yearout (1999) and Gusty Yearout (1971)
admittee and father

Lawyers in the Family

William T. Musgrove, III (1999) and William T. Musgrove, Jr. (1964)
admittee and father

Heidi B. Bartlett (1999) and Jerry F. Bartlett (1967)
admittee and father

Jennifer Marie Buettner (1999) and Robert A. Buettner (1966)
admittee and father

William J. Gamble, Jr. (1999) and William J. Gamble (1967)
admittee and father

Grace McLemore (1999) and Lucie McLemore (1985)
admittee and mother

R. Austin Huffaker (1999) and Robert A. Huffaker (1968)
admittee and father

Phillip Walker (1999) and Susannah Walker (1999)
husband and wife co-admittees

Gregory M. Williams (1999) and Charles R. Stephens (1974)
admittee and father-in-law

Douglas Somerville Evans (1999), John Douglas Evans (1970) and John Gregory Evans (1996)
admittee, father and brother

Thomas F. Monk, II (1999), Woody Sanderson (1979), Judge Patrick Higginbotham (1961) and George Higginbotham (1961)
admittee, brother-in-law, uncle and father-in-law

CLE Reminder

ALL Continuing Legal Education credits must have been **earned** by December 31, 1999. All CLE transcripts must be **received** by January 31, 2000.

Southern Conference of Bar Presidents

"*Has* Elvis Left the Building?"

The Southern Conference of Bar Presidents held its annual meeting at the Peabody Hotel in Memphis. Representing the Alabama State Bar at the October meeting were **President Wade Baxley, President-Elect Sam Rumore** and **Executive Director Keith Norman**. The meeting was hosted by the Tennessee Bar Association.

A highlight of the event included a tour of the National Civil Rights Museum and an address by Dr. Benjamin L. Hooks. Dr. Hooks is a lawyer, minister and current chair of the National Civil Rights Museum. Another feature was a visit to Graceland, Elvis Presley's home. The group toured the various Presley museums and aircraft that were a part of the Graceland complex. ■

CLE Opportunities

The Alabama Mandatory CLE Commission continually evaluates and approves in-state, as well as nationwide, programs which are maintained in a computer database. All are identified by sponsor, location, date and specialty area. For a complete listing of current CLE opportunities or a calendar, contact the MCLE Commission office at (334) 269-1515, extension 117, 156 or 158, or you may view a complete listing of current programs at the state bar's Web site, *www.alabar.org*.

We hear what others don't.

Audio tape enhancement, digitally rendered.

Expert witness
Federal
Civil
and Criminal Courts
Depositions
Transcription of difficult tapes
Voice print analysis
26 years in business

Our name promises a lot...
Our reputation guarantees it.

SOUND OF BIRMINGHAM

3625 5th Avenue South . Birmingham, AL 35222
Phone 205-595-8497 Fax 205-595-0889
www.soundofbirmingham.com

ABICLE
ALABAMA BAR INSTITUTE FOR CONTINUING LEGAL EDUCATION

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW

The University of Alabama School of Law and ABICLE

2000 Spring Calendar

JANUARY	28	The False Claims Act	Birmingham
FEBRUARY	3	Civilizing Legal Writing: Basic Course (3 MCLE Hours)	Tuscaloosa
	4	Polishing Legal Writing: Advanced Course (3 MCLE Hours)	Tuscaloosa
	11	Commercial Real Estate Transactions: Beyond the Basics	Birmingham
	18	Appellate Practice in Alabama	Birmingham
	25	Century of Progress	Tuscaloosa
MARCH	3	Workers' Compensation	Birmingham
	10	Family Law: Update on Statutes	Birmingham
	17	Banking Law	Birmingham
APRIL	7	Employment Law	Birmingham
	14	Health Law	Birmingham
	27-29	Southeastern Corporate Law Institute	Point Clear
	28	Arbitration	Birmingham
MAY	5	Intellectual Property Law in Cyberspace	Birmingham
	12	City & County Governments	Gulf Shores
	19	Environmental Law	Gulf Shores
	26	Solo & Small Firm Practice	Tuscaloosa
JUNE	1-3	Tax Law Institute	Sandestin, FL

Questions? Call ABICLE at 800-627-6514 or 205-348-6230

1999 PRO BONO Honor Roll

By this Honor Roll, the Alabama State Bar recognizes the following lawyers for their participation in volunteer lawyers programs across the state. Their generous assistance, cooperation and dedication have enabled these programs to provide legal representation to hundreds of disadvantaged Alabamians.

Autauga County
Joseph T. Booth, IV
Clifford W. Cleveland
George H. Howell
S. Shawn Sibley
Andrew W. Tampling, Jr.
George P. Walthall, Jr.

Baldwin County
Edward A. Bailey
Eberhard E. Ball
Daniel T. Bankester
Thomas O. Bear
Vincent A. Bellucci
Bayless E. Biles, Jr.
Julian B. Brackin, Jr.
Jeffery B. Carr
R. Paul Cater
Allan R. Chason
John E. Chason
L. Brian Chunn
Samuel N. Crosby
Manley L. Cummins, III
James G. Curenton, Jr.
Michael A. Dasinger, III
Carl R. Davis
Kathryn D. Ferrell
J. Langford Floyd
James M. Gaines
Mark S. Gober
Fred K. Granade
Charles W. Ham
Jule R. Herbert, Jr.
Preston L. Hicks
George R. Irvine, III
Richard D. Jensen
Christopher Kern
Harold A. Koons, III
Oliver J. Latour, Jr.
James A. Lipscomb
P. David Matheny
Jessica M. McDill
Samuel G. McKerall
Leonard F. Mikul
T. Deven Moore
Mary E. Murchison
Narissa G. Nelson
Thomas B. Norton, Jr.
Allyson C. Pearce
S. Michelle Perry
William L. Pfeifer, Jr.
Wendy A. Pierce
Mark D. Ryan
William E. Scully, Jr.
David P. Shepherd
David P. Vaughn
Helen D. Walton
Eugene P. Whitt, Jr.
H. Darden Williams
Marion E. Wynne, Jr.

Barbour County
Robert L. Bowden
Paul W. Brunson, Jr.
Jimmy S. Calton, Sr.
Walter B. Calton
Sabrie G. Graves
William I. Grubb, II
John P. Hagood
Richard A. Harrison, III
Deborah W. Hicks
G. Thomas Jackson
Lynn R. Jackson
James L. Martin
Donald J. McKinnon
Courtney R. Potthoff
William H. Robertson
Joel P. Smith, Jr.
L. Bernard Smithart

Bibb County
John A. Hamilton, Jr.
Crystal K. Hartley
Anthony B. Johnson
William D. Owings

Blount County
William A. Ellis, III
Roy M. Johnson, III
William H. Roe
Alexander M. Smith

Bullock County
Bradley S. Braswell
Theresa J. Daniel
Lynn W. Jinks, III
Louis C. Rutland

Butler County
Timothy O. Craig
Lewis S. Hamilton
Forrest C. Rule, Jr.
C. Brandon Sellers, III

Calhoun County
Mannon G. Bankson, Jr.
William H. Broome
LeRoy A. Cobb
Howard W. East
David J. Forrester
Kenneth A. Hunt, Jr.
Fred Lawton, III
Stephen B. Levison
Donna B. Madison
Nathaniel D. Owens
Polly E. Russell
H. Bayne Smith
Charles G. Spradling, Jr.
Gary G. Stanko
Vaughn M. Stewart, II
Cleophus Thomas, Jr.

Chambers County
M. Calvin Milford, Jr.
Charles G. Reynolds, Jr.

Cherokee County
John C. Kelsey
Albert L. Shumaker

Chilton County
Robert L. Bowers, Sr.
David O. Gatch
Rhonda G. Jones-Hardesty
David B. Karn
Andrew T. Mayfield
Dale R. Waid

Choctaw County
E. Mark Ezell
Timothy C. Hutchinson
Wallace H. Lindsey, III
O. D'Wayne May
J. Lee McPhearson
J. Perry Newton
John W. Thompson, II
William L. Utsey

Clarke County
Ronnie E. Keahey
Larry W. Keel
Hardie B. Kimbrough
Phillip E. Mason
Joseph C. McCorquodale, III
Lee B. Williams

Coffee County
Edward S. Brown
Dwain D. Hartwick
S. Mark Jordan
Letitia L. Myers
Ronald W. Penn
Joseph E. Sawyer, Jr.
Richard E. Waldrop

Colbert County
Ouida Y. Brown
H. Thomas Heflin, Jr.
James D. Hughston
William T. Johnson, Jr.
Charles J. Kelley
Evelyn V. Mauldin
John C. McKelvey
Timmy W. Milam
Terry L. Mock
Shelia F. Morgan
Stanley E. Munsey, Sr.
Henry F. Sherrod, III

Conecuh County
H. Lomax Cassady, Jr.

Coosa County
Vanessa Leonard

Covington County
Benjamin M. Bowden
Donald F. Colquett
Michael L. Jones, Jr.
Benton H. Persons, Jr.
Gary L. Weaver

Crenshaw County
Wayne Carter
Jon M. Folmar

Cullman County
C. Wilson Blaylock
Stephen K. Griffin
James R Knight
John D. Knight
Gregory A. Nicholas
Robert A. Sapp, Jr.
Seth B. Thompson
Martha E. Williams

Dale County
Joseph W. Adams
Robert H. Brogden
Jack Corbitt
Donna C. Crooks
William H. Filmore
Joseph J. Gallo
Anne R. Parker
Kenneth W. Quattlebaum
J. David Robinson
Robert G. Robison
George H. Traywick
Everett M. Urech
Joe Walker

Dallas County
Katy S. Campbell
April A. England
Joseph L. Fitzpatrick, Jr.
Lynette K. Gayle
B. Kincey Green
J. Parke Keith
John E. Pilcher
Henry Sanders
Jan G. Thompson
Marvin W. Wiggins

DeKalb County
Sheri W. Carver
E. Allen Dodd
J. David Dodd
Gary B. Hartline
Robert K. Jordan
Robert T. Ray
William D. Scruggs
Patrick H. Tate
John U. Ufford
Winfred N. Watson

Elmore County
David C. Bibb
John I. Cottle, III
Regina B. Edwards
John E. Enslen
R. Scott Golden
Vinson W. Jaye
Deborah S. Manasco
Robert S. Milner
Roderick B. Perdue
Janet E. Schroeder-Grant

Escambia County
John L. Jernigan
Melinda L. Maddox
Robert H. Maxwell
Everette A. Price
William R. Stokes
Joe B. Thompson, Jr.
Jeffrey A. White

The Alabama State Bar and the four organized pro bono programs salute all private attorneys across the state who donate some portion of their time to providing free legal assistance to low-income persons.

Etowah County
Myron K. Allenstein
Willis H. Clay
H. Wayne Copeland
Bradley W. Cornett
Gregory S. Cusimano
Patricia H. Granger
Heidi P. Harp
Charles C. Hart
William D. Hudson
David A. Kimberley
Daniel B. King
James D. Pruett
Michael L. Roberts
John T. Robertson
James T. Sasser
David H. Webster
J. Curtis Wright

Fayette County
Charles A. Langley
Jerry D. Lawrence
Louis P. Moore

Franklin County
Luke E. Alexander
Roger H. Bedford, Jr.
Jerry C. Porch

Geneva County
Alfred J. Danner
Charles W. Fleming, Jr.
David F. Holmes
Joseph P. Hughes
John L. Knowles
David W. Rousseau

Hale County
Patrick S. Arrington
Cynthia M. Bockman

Henry County
Samuel C. Money
James D. Peterson

Houston County
Samuel L. Adams
Wade H. Baxley
Randy C. Brackin
W. Terry Bullard
W. Terry Bullard, Jr.
Nereida D. Bundy
Jon C. Capps
Lori S. Collier
J. Michael Conway
Bobbie S. Crook
William H. Feagin
D. Taylor Flowers
Arne M. Foss
Brent H. Gourley
Harry P. Hall, II
Jerry R. Herring
David K. Hogg
Gary A. Hudgins
Dow T. Huskey, Jr.
Clifford W. Jarrett
Daniel F. Johnson
A. Gary Jones
Richard R. Klemm
Matthew C. Lamere
Benjamin E. Meredith
Joseph A. Morris
Malcolm R. Newman
Joel M. Nomberg
James W. Parkman, III
David G. Poston
Joel W. Ramsey
Richard H. Ramsey, III
Richard H. Ramsey, IV
Tommy R. Scarborough
Jere C. Segrest
Rufus R. Smith, Jr.
Eugene P. Spencer, II
J. Farrest Taylor
J. Kevin Walding
Freddie L. White, II

Jackson County
Anna Blair
John H. Graham
Clifton W. Johnson
Stephen M. Kennamer
S. Jack Livingston
Kenneth H. Looney
Eileen R. Malcom
Pamela M. Parker
Gerald R. Paulk
Finis A. Royal
Patricia C. Stewart
William W. Tally
C. Rena Webb
R. Don Word, III

Jefferson County
Garry W. Abbott
John E. Acres
Janet M. Akers
Richardo Aparicio
E. L. Brobston
James M. Cash
John G. Dana
Angie F. Denton
V. Edward Freeman
George M. Higginbotham
Kaye K. Houser
Mariellen Morrison
Joan B. Singleton
David M. Smith
Marshall E. Smith
Ayn Taylor-Sadberry
Eugene R. Verin
Rhonda F. Wilson

Lamar County
Donald W. Lambert

Lauderdale County
Daniel E. Boone
Gregory K. Burdine
Robert L. Burdine, Jr.
Christopher E. Connolly
Edward W. Doggett
James R. Engelthaler
Michael F. Ford
James S. Glenn
Robert L. Gonce
James E. Hall
Roy Hassseltine
James M. Hivner
R. Willson Jenkins
Gary L. Joster
Kathryn A. King
Roy E. Long
J. Wilson Mitchell
Melissa A. Moreau
William T. Musgrove, Jr.
A. Stewart O'Bannon, Jr.
A. Stewart O'Bannon, III
C. David Odem
Peter L. Paine
Joe M. Patterson, Jr.
Conrad C. Pitts
Frank B. Potts
L. Mallette Richey
Cindy S. Schuessler
Hilda T. Smith
Donald G. Tipper
Randy D. Whitten
Douglas A. Wright
Joe H. Yates
Brant A. Young

Lawrence County
Roderick M. Alexander
Mark A. Dutton
Sean D. Masterson
Harold L. Speak
H. Jerome Thompson
Christie W. Wright

Lee County
Russell C. Balch
James T. Barrett
Beverlye N. Brady
Emily K. Briscoe
Margaret Y. Brown
Russell K. Bush
M. Joanne Camp
Nancy J. Davis
Joseph C. Denison
William D. Eddins
Frances C. French
Donna E. Henderson
Corinne T. Hurst
Thomas E. Jones
Floyd L. Likins, Jr.
Margaret A. Mayfield
Marrell J. McNeal
Robert T. Meadows, III
Gail S. Meeks
Phyllis F. Parker
Clifton B. Perry
Roger W. Pierce
William L. Ray
Wesley Schuessler, II
Mitzi L. Sears
James B. Sprayberry
Cecil M. Tipton, Jr.
Arnold W. Umbach, Jr.
Judith C. Van Dyke
Jacob A. Walker, III
Debra A. Wright

Limestone County
Robert M. Baker
Henry W. Blizzard, Jr
P. Michael Cole
James M. Corder, Jr.
Claire T. Jones
Byrd R. Latham
Winston V. Legge, Jr.
James D. Moffatt

Macon County
Fred D. Gray, Jr.
Linda H. Henderson
Ernestine S. Sapp

Madison County
Robert E. Long, Jr.
Reta A. McKennan

Marengo County
Thomas H. Boggs
Russell L. Burdett
William T. Coplin, Jr.
Woodford W. Dinning, Jr.
Gregory S. Griggers
Hubbard H. Harvey
Richard S. Manley
William S. Poole
Sebie G. Sellers
K. Scott Stapp

Marion County
William H. Atkinson
William B. Fite
Jackie O. Isom
A. Wade Leathers
Oliver F. Wood

Marshall County
Clyde D. Baker
George M. Barnett
Randy H. Beard
E. Will Beard
James R. Berry
Michael B. Bryan
R. Claud Burke
Liles C. Burke
Jimmy F. Carnes
T. J. Carnes
Bobbi J. Carr
Richard L. Fricks
L. Dale Fuller
John C. Gullahorn
Lisa M. Hancock
Charles R. Hare, Jr.
Mark T. Hopper
Louis B. Lusk
Robert C. Mann
Steve T. Marshall
Michael D. Mastin
Jeffrey R. McLaughlin
Terri W. Miholits
Joel S. Mitchell
E. Charles Ogden
Christopher A. Pankey
P. David Roadruck
Christi A. Roberts
Danny L. Smith
Stephen B. Smith
Byron N. Waldrop
James D. Walker
Daniel T. Warnes
Coleman K. Wilson
Wade K. Wright

Mobile County
Byron A. Lassiter
Brandy M. Osborne
Mary K. Steele
P. Dean Waite, Jr.

Monroe County
John B. Barnett, III
Nicholas S. Hare
M. Tarvis Holzborn
William R. McMillan
Philip J. Sanchez, IV
Mickey Womble

Montgomery County
Kimberly H. Adams
Allison L. Alford
J. Gregory Allen
Leslie M. Allen
Charles L. Anderson
J. Knox Argo
Jere L. Beasley
Julia A. Beasley
R. Joyce Bigbee
Anthony D. Birchfield, Jr.
William R. Blanchard
Donna A. Bland
Mitchel H. Boles
Britt S. Booth
Eric A. Bowen
John S. Bowman
David R. Boyd
Elizabeth K. Brannen
Richard E. Broughton
Shirley Z. Brown
E. Terry Brown
Kathleen A. Brown
Rhonda Brownstein
Ben E. Bruner
Joseph E. Burkhart
James A. Byram
Betty B. Byrne
David B. Byrne
Woodley C. Campbell
Boyd F. Campbell
W. Clark Campbell
Gregory A. Carr
Marcel Carroll
Teddi L. Carte-Turner
Florence M. Cauthen
Mark N. Chambless
Karen P. Chambless
William R. Chandler
Frances R. Clement
William P. Cobb
Carla R. Cole
Shawn J. Cole
William D. Coleman
Cedric B. Colvin
Paul R. Cooper
Paul W. Copeland
Lee H. Copeland
Scott W. Corscadden
Charles M. Crook
Gregory D. Crosslin
Michael J. Crow
Laura L. Crum
Sterling G. Culpepper, Jr.
Larry E. Darby
Patrick C. Davidson
Gregory L. Davis
James L. Day
Richard C. Dean
Wanda D. Devereaux
Cathy B. Donohoe
Jeffery C. Duffey
Peter A. Dumbuya

Charles W. Edmondson
Joana S. Ellis
J. Mark Englehart
Frederick T. Enslen
Paul D. Esco
Gregg B. Everett
David G. Flack
George D. Flowers
Douglas C. Freeman
Peter S. Fruin
H. Lewis Gill
Richard H. Gill
Pamela J. Gooden
C. Lance Gould
Timothy C. Halstrom
Eileen L. Harris
Anna R. Harrison
Ellen M. Hastings
Frank H. Hawthorne
J. Cliff Heard
Kenneth T. Hemphill
D. Mitchell Henry
Pamela R. Higgins
Truman M. Hobbs
Beverly J. Howard
J. Lister Hubbard
Robert A. Huffaker
Robert L. Humphries
Henry H. Hutchinson
Wendy H. Ingram
Angelina B. Jackson
Michael S. Jackson
Raymond L. Jackson
Jimmy D. Jacobs
Monica E. Jayroe
Michael R. Jeffries
Marci S. Johns
L. Scott Johnson
Wilbert Jones
Donald R. Jones
Richard L. Keith
Anita L. Kelly
L. Gill Kendrick
Susan E. Kennedy
Jessica D. Kirk-Hughes
T. Cowin Knowles
Thomas E. Kondrak
Thomas O. Kotouc
R. Edwin Lamberth
Charles D. Langford
Robin G. Laurie
Thomas S. Lawson
Barry C. Leavell
Timothy A. Lewis
Donald B. Little
William D. Little
Edwin K. Livingston
Harry A. Lyles
W. Keith Maddox
M. Mark Majors
Howard A. Mandell
Kyle D. Massengale
W. Troy Massey
John R. Matthews
Frederick B. Matthews
Tracey S. McCooey
W. Joseph McCorkle
Mickey J. G. McDermott
Richardson McKenzie
Sabrina L. McKinney
J. Anthony McLain
C. Knox McLaney
Gloria J. McPherson
Tyrone C. Means
William Z. Messer
Thomas J. Methvin
Renee D. Michael
Brian W. Moore
Kathleen B. Morris
Richard D. Morrison
F. Chadwick Morriss
K. Anderson Nelms
Stephen M. NeSmith
Deborah M. Nickson
Hugh C. Nickson
Keith B. Norman
Dorothy F. Norwood
Tabor R. Novak
Edward M. Patterson
Simeon F. Penton
Michael J. Petersen
A. Christopher G. Pettus
J. Scott Pierce
Henry W. Pirtle
Amardo W. Pitters
J. Cole Portis
Robert F. Powers
Alvin T. Prestwood
Rebecca W. Pritchett
Richard L. Pyper
Stacy J. Reed
Elna L. Reese
Marcus H. Reynolds
Robert D. Reynolds
Frank W. Riggs
Jim A. Rives
Mindi C. Robinson
Karen S. Rogers
Adler Rothschild
Robert J. Russell
Robert E. Sasser
Thomas J. Saunders
William P. Sawyer
Patrick L. W. Sefton
Robert D. Segall
William B. Sellers
L. Landis Sexton
William A. Shashy
C. Winston Sheehan
G. Griffin Sikes, Jr.
Launice P. Sills
Spencer A. Singleton
Clifton E. Slaten
Jerome D. Smith
C. Franklin Snowden
Marc A. Starrett
Charles A. Stewart, III
Micki B. Stiller
Nancy D. Stuart
Thomas C. Tankersley
Dana G. Taunton
Gary A. Tomlin
Cynthia H. Torbert
Wayne P. Turner
Judy B. Van Heest
C. Gibson Vance
Robert J. Varley
Charles H. Volz
George H. Wakefield
J. Dorman Walker
John R. Walker
Susan R. Walker
James N. Walter
Robert C. Ward
Brenda D. Watson
Milton J. Westry
Calvin M. Whitesell
David J. Wilder
Gary L. Willford, Jr.
James E. Williams
Jesse M. Williams
Paul C. Williams
E. Hamilton Wilson, Jr.
A. Kelli Wise
James L. Wright
D. Coleman Yarbrough
David B. Zimmerman

Morgan County
James G. Adams, Jr.
John R. Baggette, Jr.
Harold M. Belser, Jr.
Jeffery S. Brown
W. Clinton Brown, Jr.
Thomas A. Caddell
David B. Cauthen
D. Britnell Cauthen, Jr.
Neal P. Conner
Thomas M. DiGiulian
Bingham D. Edwards
James C. Francis
Amelia H. Griffith
Arthur H. Groover
Garland C. Hall, III
Stephen V. Hammond
Denise M. Hill
John R. Hutson
Jerry R. Knight
Mary Ellen Lamar
David W. Langston
Jenny L. McLeroy
Robert T. McWhorten, Jr.
George W. Miller
Phillip D. Mitchell, II
Rachel M. Morgan
Dan F. Nelson
Henry M. Nowlin, III
Arthur W. Orr
Gary A. Phillips
Joseph B. Powell
Sherman B. Powell, Jr.
Joseph W. Propst, II
Gregory A. Reeves
Nicholas B. Roth
Steven C. Sasser
Kenneth M. Schuppert, Jr.
Michael E. Sparkman
R. Eric Summerford
Kevin D. Teague
J. Glynn Tubb
Shelly S. Waters
Robert D. Weathers, Jr.
Brian M. White
Kenneth R. Widner
Alex A. Yarbrough

Perry County
James M. Barnes, Jr.
Kirtley W. Brown
Robert H. Turner

Pickens County
William D. King, IV
John E. Paluzzi
John A. Russell, III

Pike County
Brandon S. Coots
Robert C. Faircloth
Joseph E. Faulk
Larry C. Jarrell
James E. Johnston
William B. Key, III
W. Keith Watkins

Randolph County
John R. Gunn
Michael S. Jazwinski
S. Oliver Kitchens

Russell County
Michael J. Bellamy
L. Joel Collins
C. Kerry Curtis
Eric B. Funderburk
David L. Hirsch
John J. Howard
John David Jones
Gregory Kelly
Samuel E. Loftin, Jr.
Thomas F. Worthy

Shelby County
Brent L. Callihan
John W. Charles, III
Frank C. Ellis, Jr.
Bruce M. Green
Ronnie D. Marlow
John A. McBrayer
John E. Medaris
E. Farley Moody
Jo Ellen Mudd
Steven R. Sears

St. Clair County
A. Dwight Blair
Erskine R. Funderburg, Jr.
Donald R. Hamlin
Priscilla L. Kelley
Joseph R. Kemp
Elizabeth S. Parsons
Charles E. Robinson, Jr.
Fred W. Teague
William J. Trussell
Edwin M. Van Dall, Jr.
Tommie J. Wilson

Sumter County
William C. Brewer
I. Drayton Pruitt
Robert P. Upchurch

Talladega County
Thomas R. Bell
Sarah C. Bowers
L. Shaw Gaines
Michael A. Givens
Gregory S. Graham
Robert L. Gorham
Huel M. Love
James N. Montgomery, Jr.
Michael A. O'Brien
Tom R. Ogletree
William K. Rogers
William Thompson
Barry D. Vaughn

Tallapoosa County
Charles R. Adair, Jr.
M. Faye Edmondson
E. Paul Jones
Perry G. Myer, Jr.
John P. Oliver, II
Robin F. Reynolds
Mark A. Treadwell

Tuscaloosa County
James A. Abernathy, II
Cynthia L. Almond
M. Bradley Almond
David M. Anders
Albert C. Barrett
C. Park Barton
Dolores C. Burroughs
Frank M. Cauthen, Jr.
Randall M. Cheshire
Ginger D. Cockrell
L. Scott Coogler
Annette B. Crain
Silas G. Cross
Karen N. Dice
Nora E. Elder
Isaac P. Espy
Katie S. Ferguson
J. Noah Funderburg
Robbyn A. Gourdouze
Bert M. Guy
James A. Hall, Jr.
Ruth A. Hall
Holly Hamner
Kathryn M. Harwood
J. Marland Hayes
Hattie E. Kaufman
William H. Kennedy
Angela L. Kimbrough
Hugh M. Lee
John J. Lloyd
David P. Martin
T. Sheree Martin
Allen W. May
John P. McCulsky
J. Douglas McElvy
D. Tara Middleton
Edwina E. Miller
C. Delaine Mountain
Barbara W. Mountain
Barry L. Mullins
John A. Owens
W. Cameron Parsons
Laurie K. Pratt-Johns
Harry M. Renfroe
Barbara N. Rogers
William D. Ryan
Lynn M. Shaw
Donna W. Smalley
James D. Smith
Alyce M. Spruell
Dennis Steverson
C. Tod Strickland
Edgar C. Summerford
Christopher A. Thigpen
Sarah L. Thompson
James D. Turner
Al L. Vreeland
Raymond E. Ward

Organized pro bono programs make us keenly aware of the contribution and concern of many of our colleagues and remind us of our own need to serve our community through our profession. We hope that all lawyers will someday participate in organized pro bono programs so that we can recognize their contributions, too.

We also thank the dedicated lawyers of Legal Services Corporation of Alabama, Legal Services of Metro Birmingham and Legal Services of North Central Alabama. Their assistance and cooperation have enabled these programs to operate efficiently without a duplication of services.

Paula W. Watkins
G. Stephen Wiggins
Wayne L. Williams
Lauren Wilson-Carr

Walker County
James C. Brakefield
Robert O. Bryan
Gina T. Cross
Richard E. Fikes
Alton M. Hambric
Garve W. Ivey, Jr.
Phillip P. Nelson
Robert F. Richardson
Joel P. Robinson, Jr.
Allison Shelley
Charles C. Tatum, Jr.
Steven A. Thomas
Mark B. Turner
Robert T. Wilson, Jr.

Washington County
Harold L. Odom
A. Michael Onderdonk
E. Tatum Turner
Haltron W. Turner

Wilcox County
Brenda M. Pompey

Winston County
D. Russell Eason
Betsy M. Harrison
Jerry W. Jackson
Samuel L. Masdon, III

Birmingham Bar Association Volunteer Lawyers Program

Jefferson County
John E. Acres
Robert H. Adams
Craig A. Alexander
Roger Alexander
Suzanne Alldredge
Bibb Allen
Charles W. Allen
Mitchell G. Allen
Roger C. Allen
Russell Q. Allison
M. Clay Alspaugh
Wade S. Anderson
Donald K. Andress
Allan L. Armstrong
D. Leon Ashford
W. Michael Atchison
Lynn B. Ault
Kellie Avery-Tubb
Nolan E. Awbrey
Harmahinder S. Bagga
Michael S. Ballard
Shannon L. Barnhill
R. Bruce Barze, Jr.
LaVeeda M. Battle
J. Alan Baty
Robert R. Baugh
Michael K. Beard
Elizabeth G. Beaube
Elizabeth R. Beaver
Jay R. Bender
Steven A. Benefield
Jeffrey W. Bennitt
Yvonne N. Beshany
Michael E. Bevers
Ellis D. Bingham, III
Stephen F. Black
Calvin W. Blackburn
Ulyesa D. F. Blackmon
William S. Blair
P. Vaughn Blalock
Rebecca W. Block
John N. Bolus
C. Peter Bolvig
Mark W. Bond
William Booker
Lee W. Borden
Bradford W. Botes
Deloris M. Boykin
Rebecca S. Bozeman
Rita M. Briles
Thomas H. Brinkley
William H. Brooks
William L. Bross
Courtney B. Brown
Houston L. Brown
E.T. Brown, Jr.
Brannon J. Buck
Thomas W. H. Buck
Stephen J. Bumgarner
F. Tucker Burge
S. Greg Burge
Daniel L. Burgess
Warren Burke, Jr.
Charles A. Burkhart
Cynthia G. Burnside
John H. Burton, Jr.
Bruce A. Burttram
Jennifer M. Busby
William C. Byrd
Rocco Calamusa, Jr.
Jimmy R. Calvert
Colin A. Campbell
J. Russell Campbell
Mary L. Campisi
Lois B. Carlisle
Terry L. Carlisle
J. Suzanne Carlson
Richard P. Carmody
James T. Carr
Clay R. Carr
Phillip J. Carroll, III
D. Chris Carson
Kay L. Cason
C. Paul Cavender
Douglas J. Centeno
Cheryl D. Chapman
James S. Christie, Jr.
Myla C. Choy
Al V. Ciovacco
William N. Clark
Thomas C. Clark, III
Neil R. Clement
Kathleen A. Collier
C. Clark Collier
Gerald D. Colvin, Jr.
Patricia Y. Comer
Clen M. Connor
W. W. Conwell
Robert E. Cooper
N. Lee Cooper
Patrick N. Cooper
Ivan B. Cooper
T. Louis Coppedge
J. Timothy Coyle
Charles R. Crowder
Greg S. Curran
Henry C. Dailey
John G. Dana
Roy L. Dancybey
J. Patrick Darby
George N. Davies
Kelvin L. Davis
William A. Davis, III
William M. Dawson
Paul J. DeMarco
Damon P. Denney
Sandra M. Dettling
Patricia Diak
Timothy L. Dillard
Tammy L. Dobbs
David P. Donahue
Luther M. Dorr, Jr.
Matthew J. Dougherty
B. Boozer Downs
Helen K. Downs
Russell J. Drake
Mark L. Drew
Cheree M. Dudley
Cecil G. Duffee, III
John P. Dunlin, Jr.
Carolyn L. Duncan
W. Casey Duncan
Thomas E. Dutton
Valrey W. Early
John A. Earnhardt
Cameron T. Earnhardt
Robert D. Eckinger
Michael D. Ermert
David L. Faulkner, Jr.
Joseph A. Fawal
Daniel B. Feldman
James E. Ferguson, III
W. B. Fernambucq
Stanley E. Field
William S. Fishburne
Deborah P. Fisher
Linda A. Fiveash
Juliet S. Fleming
Charles A. Flowers
Samuel H. Franklin
Victoria J. Franklin-Sisson
John R. Frawley, Jr.
Michael D. Freeman
William J. Freeman
Michael B. French
Floyd D. Gaines
Robert T. Gardner
Anthony G. George
Beth H. Gerwin
Anna Lee Giattina
Tracey D. Gibson
James R. Gillis
Dennis E. Goldasich, Jr.
Carole A. Golinski
Stevan K. Goozee
Scott W. Gosnell
James L. Goyer, III
Michael G. Graffeo
Jeffrey M. Grantham
Robin H. Graves
Brendetta L. B. Green
Wilson F. Green
John E. Grenier
Rick E. Griffin
Janice P. Groce
James B. Gunther
John W. Haley
Jane G. Hall
John C. Hall
Todd N. Hamilton
Leigh H. Hancock
Christopher B. Harmon
Miriam G. Harris
Danita T. Haskins
Gregory H. Hawley
Robert J. Hayes
Susan S. Hayes
Kenneth D. Haynes
S. Frances Heidt
Jack E. Held
Hugh C. Henderson
Kathleen G. Henderson
Stephen D. Heninger
G. Steven Henry
Kenric W. Herren
Tosca M. Hieftje
Lisa J. Hill
Kelli J. Hogue-Mauro
Lee M. Hollis
Jeff E. Holmes
Peggy C. Hooker
James A. Hoover
E. Anne S. Hornsby
Richard F. Horsley
Edward A. Hosp
Kaye K. Houser
Charles L. Howard, III
James F. Hughey
Robert B. Huie
Melody L. Hurdle
J. Frederick Ingram
Glenn E. Ireland
H. Chervis Isom, Jr.
K. Stephen Jackson
Sarah B. Jackson
Stephen C. Jackson
Marshell R. Jackson
Alycia K. Jastrebski
Norman Jetmundsen, Jr.
Karen B. Johns
Carl Johnston
Joseph H. Johnson, Jr.
Elizabeth R. Jones
William D. Jones
Haskins W. Jones
Loring S. Jones, III
Alex W. Jones, Jr.
Joe A. Joseph
Richard Keller
Douglas L. Key
Frances E. King
William H. King
William H. King, III
Jack G. Kowalski
Robert R. Kracke
Kerry A. Lahey
Jayna P. Lamar
John M. Laney, Jr.
J. Earl Langner
Sarah Y. Larson
M. Kay Laumer
Stephen P. Leara
Rocco J. Leo
Thomas B. Leonard, III
Kathryn A. Lepper
William R. Lewis
J. Flint Liddon, III
Warren B. Lightfoot
Warren B. Lightfoot, Jr.
Nancy D. Lightsey
Paul A. Liles
Curtis O. Liles, III
Lorrie L. Lizak
William B. Lloyd
Don B. Long, Jr.
William L. Longshore, III
Charles J. Lorant
J. Kris Lowry
John G. Lowther
Timothy M. Lupinacci
George G. Lynn
Mark W. Macoy
Donna B. Madison
G. R. Mahmood
Patricia T. Mandt
Duncan Y. Manley
Reid S. Manley
Ted L. Mann
Alexander J. Marshall, III
Joseph W. Mathews, Jr.
Warren C. Matthews
Jeffrey P. Mauro
W. Randall May
Bradley C. Mayhew
Susan G. McAlister
Walter F. McArdle
Phillip W. McCallum
Kim S. McClain
Sondra K. McDaniel
Michael L. McKerley
S. David McKnight, III
Frank D. McPhillips
Douglas L. McWhorter
John E. Medaris
Richard A. Meelhein
G. Allen Meighen, Jr.
Kristin B. Metheny
Davis L. Middlemas
J. Eric Miles
Gerald L. Miller
Cellie W. Miller
William K. Mills
William E. Mitch
Anne W. Mitchell
Christopher M. Mitchell
Cathy C. Moore
Jamie L. Moore
Joe W. Morgan, Jr.
Mariellen Morrison
John G. Morrison
Eunice M. H. Morrow
Randall H. Morrow
William H. Morrow
Anne R. Moses
Charles H. Moses, Jr.
Eugenia H. Mullins
Robert A. Mullins
Michael D. Mulvaney
Amy K. Myers
F. Wilson Myers, Sr.
Patrick K. Nakamura
George M. Neal
Laura C. Nettles
Yolanda Nevett-Johnson

Neal C. Newell
James L. Noles
John E. Norris
D. Brian O'Dell
Madison W. O'Kelley, Jr.
Richard F. Ogle
Thomas L. Oliver
David F. Ovson
Marcie E. Paduda
Lewis W. Page, Jr.
Jeffrey W. Parmer
Bruce A. Parsons
James M. Patton
Kevin W. Patton
David T. Payne
Gary C. Pears
Henry L. Penick
Adam K. Perk
C. Jackson Perkins
Henry L. Perry
Drew W. Peterson
Alane A. Phillips
William M. Phillips, Jr.
Anthony J. Piazza
Charles C. Pinckney
James M. Pool
Anthony C. Portera
Andrew J. Potts
J. Bradley Powell
Harlan I. Prater
D. Mark Price
James L. Priester
William S. Pritchard, III
David W. Proctor
Laura W. Proctor
Carranza M. Pryor
Bennett L. Pugh
Kathryn O. Pugh
Michael C. Quillen
Charles M. Quinn
W. Larkin Radney
William A. Ratliff
James P. Rea
C. Lee Reeves
Edward E. Reynolds
M. Wade Richardson
George M. Ritchey
Ferris S. Ritchey, III
John T. Ritondo
Christian E. Roberson
Jerry D. Roberson
Kenneth J. Robinson
Robert B. Roden
William H. Roe
J. Douglas Rogers
Alan T. Rogers
J. William Rose, Jr.
Steve Rowe
Richard W. Rowell
N. John Rudd
Frank J. Russo
Ayn T. Sadberry
S. Shay Samples
Charles V. Sams
D. M. Samsil
J. Michael Savage
Matt P. Scalici
David C. Schwartz
Gary R. Seale
Thomas L. Selden
Sara J. Senesac
Kirby Sevier
J. Banks Sewell, III
Michael M. Shabani
Jackson R. Sharman
Carolyn Shields Rankins
Wynn M. Shuford
Wilbur G. Silberman
Henry E. Simpson
James E. Simpson
Marjorie P. Slaughter
Clarence M. Small
Phil K. Smartt
Alfred F. Smith, Jr.
Carol A. Smith
Daniel B. Smith
David M. Smith
Gary C. Smith
Jane C. Smith
Jennifer R. Smith
John W. Smith T
Robert M. Smith
W. Gregory Smith
William F. Smith, II
William W. Smith
Jacqueline C. Smoke
David S. Snoddy
John Q. Somerville
Paul L. Spain
Herbert B. Sparks, Jr.
J. Callen Sparrow
Clifford M. Spencer, Jr.
Robert H. Sprain, Jr.
David W. Spurlock
Stephen W. Stallcup
James C. Stanley, II
William S. Starnes
Mark A. Stephens
Cynthia F. Stephenson
Marvin L. Stewart, Jr.
William B. Stewart
Edward S. Stoffrengen, III
Herbert W. Stone
Garrick L. Stotser
Charlene I. Stovall
C. Mark Strength
J. Theodore Stuckenschneider
Amy L. Stuedeman
Eugene B. Stutts
John W. Sudderth
William R. Sylvester
Robert W. Tapscott
Jarred O. Taylor, II
James J. Thompson
Jack R. Thompson, Jr.
Dana L. Thrasher
W. Lee Thuston
Kimberly K. Till
Mark E. Tindal
Mark A. Treadwell, III
Rachel B. Tripp
J. Alan Truitt
Jerome Tucker
Michael E. Turner
Anita T. Tye
L. Griffin Tyndall
Arnold W. Umbach, III
William K. Upshaw
William C. Veal
J. Scott Vowell
Susan G. Wagner
Macbeth Wagnon, Jr.
William B. Wahlheim
Cary T. Wahlheim
W. Ronald Waldrop
Marion F. Walker
Alison Wallace
James F. Walsh
David B. Walston
Hardwick C. Walthall
Carrie P. Walthall
James S. Ward
Gordon H. Warren
Lisa J. Wathey
Ashley E. Watkins
Leila H. Watson
Cynthia D. Watson
William L. Waudby
Katherine A. Weber
Julia J. Weller
H. Thomas Wells
Leonard Wertheimer, III
James H. Wettermark
Joe R. Whatley, Jr.
John F. Whitaker
J. Mark White
James H. White
Jere F. White
Bryant A. Whitmire, Jr.
John P. Whittington
Gregory O. Wiggins
Donald F. Wiginton
David T. Wiley
S. Douglas Williams, Jr.
Doris H. Williford
David M. Wilson
K. Joe Wilson, Jr.
Harlan F. Winn
William D. Wise
Stephanie K. Womack
J. Fred Wood, Jr.
Lisa L. Woods
Peter M. Wright
Terrell Wynn
Sarah G. Yates
Suzanne O. Yayman
Ralph H. Yeilding
Lee H. Zell

Madison County Volunteer Lawyers Program

Madison County

Doug A. Baymiller
Vicki A. Bell
Jeffery G. Blackwell
J.R. Brooks
Susan C. Conlon
Patrick H. Graves, Jr.
Elissa H. Green
D. Milburn Gross, Jr.
Joel R. Hamner
Kenneth D. Hampton
James R. Hinson
Ralph W. Hornsby, Jr.
Ralph W. Hornsby, Sr.
Gary C. Huckaby
Patrick M. Lamar
G.R. Mahmood
Robert H. McCaleb
David McDowell
Jeffery W. McKinney
Burt W. Newsome
Brent L. Parker
Thomas E. Parker, Jr.
Ernest L. Potter, Jr.
S. Dagnal Rowe
L. Thomas Ryan, Jr.
Bradley P. Ryder
Teresa N. Ryder
Robert S. Smith
Don T. Terrell
Richard W. Tingle
H. Carey Walker, III
June Wang
S.A. Watson, Jr.
Theresa W. Williamson
Robert E. Willison
Stephen M. Wilson
R. Wayne Wolfe

Mobile Bar Association Pro Bono Program

Mobile County

Geoffrey D. Alexander
Helen J. Alford
Gary P. Alidor
J. Hodge Alves, III
Orrin K. Ames, III
Ferrell S. Anders
Frank Anderson
Tristan R. Armer
Gordon G. Armstrong, III
G. Wayne Ashbee
Grover Ernst Asmus, II
Daryl A. Atchison
James E. Atchison
Bruce L. Aune
Joseph P.H. Babington
Michael E. Ballard
J. Daniel Barlar, Jr.
Eaton G. Barnard
David L. Barnett
Joe E. Basenberg
D. A. Bass-Frazier
P. Kent Baxley
Robert A. Beckerle
Richard M. Beckish, Jr.
Billy C. Bedsole
John T. Bender
Jaime W. Betbeze
Windy Cockrell Bitzer
Donna Ward Black
Wesley H. Blacksher
Edward C. Blount, Jr.
Thomas R. Boller
R. Preston Bolt, Jr.
John Wayne Boone
Edward G. Bowron
Marc E. Bradley
Louis E. Braswell
Henry H. Brewster
David A. Bright
Donald M. Briskman
G. Porter Brock, Jr.
James D. Brooks
David P. Broome
Douglas L. Brown
Paul D. Brown
Melvin W. Brunson
Donald E. Brutkiewicz, Jr.
John C. Brutkiewicz
Gregory C. Buffalow
Russell C. Buffkin
Peter F. Burns
Bradley R. Byrne
Henry H. Caddell
Kimberly J. Calametti
Henry A. Callaway, III
Robert C. Campbell, III
Kenneth Paul Carbo, Jr.
Karen H. Carr
Jerome C. Carter
J. Gregory Carwie
William J. Casey
K. W. Michael Chambers
C.S. Chiepalich
Bryan N. Cigelske
Andrew T Citrin
Robert E. Clute, Jr.
Harwell E. Coale, Jr.
Wanda J. Cochran
John W. Coleman
F. Luke Coley, Jr.
Danny J. Collier, Jr.
Celia J. Collins
Patrick B. Collins
Gregory S. Combs
Walter M. Cook, Jr.
Angela M. Cooper
J. P. Courtney, III
J. Randall Crane
Stephen G. Crawford
John T. Crowder
Aurelius Evans Crowe
John J. Crowley, Jr.
Blane H. Crutchfield
Manley L. Cummins, III
William M. Cunningham, Jr.
James G. Curenton, Jr.
Edwin J. Curran, Jr.
M. Stephen Dampier
Glenn L. Davidson
M. Donald Davis, Jr.
Ronald P. Davis
Edward A. Dean
T. Jefferson Deen, III
Robert P. Denniston
Scott E. Denson
Ross M. Diamond, III
Hallie S Dixon
Charles H. Dodson, Jr.
William A. Donaldson
Richard T. Dorman
Thomas P. Doyle
William M. Doyle
B. Vaughan Drinkard, Jr.
Bryan G. Duhe'
Leon G. Duke, Jr.
John T. Dukes
Barre C. Dumas
Douglas K. Dunning
Robert S. Edington
Grady R. Edmondson
William Thomas Eiland
Mylan R. Engel
C. Mark Erwin
Tamela E. Esham
Cheryl D. Eubanks
Jim H. Fernandez
Gary W. Fillingim

Justice for all is more than just a cliché. It is a time-honored ideal to which all lawyers and all Americans aspire. By volunteering your time and skill to provide legal services to those who cannot normally obtain them, you are making a significant contribution toward making that ideal a reality.

This Honor Roll reflects our efforts to gather the names of those who participate in organized pro bono programs. If we have omitted the name of any attorney who participates in an organized pro bono program, please send that name and address to:

Alabama State Bar Volunteer Lawyers Program, P. O. Box 671, Montgomery, AL 36101.

J. Michael Fincher
Douglas W. Fink
George W. Finkbohner, III
George W. Finkbohner, Jr.
Charles Fleming
Paul M. Foerster, Jr.
Henry B. Fonde
Gilbert L. Fontenot
Keith B. Franklin
Donald A. Friedlander
Gregory M. Friedlander
Barry A. Friedman
Sarah S. Frierson
Richard M. Gaal
Michael E. Gabel
Ginger P. Gaddy
Thomas O. Gaillard, III
Jeffry N. Gale
Norman J. Gale, Jr.
Robert M. Galloway
Jonathan P. Gardberg
J. Marshall Gardner
Ian F. Gaston
John D. Gibbons
W. Michael Gillion
Walter T. Gilmer, Jr.
William B. Givhan
Julie Christie Glover
Catherine F. Golden
John S. Gonas, Jr.
J. W. Goodloe, Jr.
Allen E. Graham
Duane A. Graham
Jon A. Green
Edward C. Greene
J. David Greene
Theodore L. Greenspan
Irvin Grodsky
Timothy M. Grogan
Roger C. Guilian
Virginia W. Haas
Jason K. Hagmaier
Patricia W. Hall
Theodore L. Hall
W. Perry Hall
Lawrence J. Hallett, Jr.
David A. Hamby Jr.
William Craig Hamilton
Neil L. Hanley
Daniel A. Hannan
Michael J. Harbin
Sidney M. Harrell, Jr.
Alvin F. Harris, Sr.
Michelle M. Hart
J. Stephen Harvey
Tony N. Hatcher
Edward G. Hawkins
Robert J. Hedge
Frederick G. Helmsing
Frederick G. Helmsing, Jr.
Warren C. Herlong, Jr.
Brenda D. Hetrick
Charles A. Hicks
Charles H. Hillman
Caroline W. Hinds
Lyman F. Holland, Jr.
Broox G. Holmes, Jr.
Broox G. Holmes, Sr.
Richard H. Holston
D. Charles Holtz
Richard D. Horne
J. Gordon House, Jr.
Stewart L. Howard
W. Eugene Howard, III
Michael G. Huey
W. Gregory Hughes
Christopher G. Hume, III
John Michael Hunter
Willie J. Huntley, Jr.
Herndon Inge, III
Herndon Inge, Jr.
J. Walton Jackson
Sidney W. Jackson, III
William B. Jackson, II
Jack F. Janecky
James D. Jeffries, Jr.
Linda Collins Jensen
Candace D. Johnson
Donald E. Johnson
James C. Johnston
Neil C. Johnston
Vivian G. Johnston, III
Vivian G. Johnston, Jr.
Andrew M. Jones
Gregory R. Jones
Joe Carl Jordan
Colin E. Kemmerly
Christopher Kern
Florence A. Kessler
Benjamin H. Kilborn, Jr.
Fred W. Killion, III
Fred W. Killion, Jr.
James E. Kimbrough, Jr.
William A. Kimbrough, Jr.
Richard M. Kirkpatrick
Stephen L. Klimjack
Michael D. Knight
Sam David Knight
Dennis J. Knizley
Frank H. Kruse
Joseph O. Kulakowski
Banks C. Ladd
Leah P. Ladd
Gilbert B. Laden
Paul V. Lagarde
William R. Lancaster
Johnny Lane
Alex F. Lankford, III
Alex F. Lankford, IV
Oliver J. Latour, Jr.
Forrest S. Latta
John N. Leach, Jr.
Goodman G. Ledyard
John V. Lee
Gregory W. Leffard
J. Stephen Legg
Francis E. Leon, Jr.
Y. D. Lott, Jr.
Stuart Y. Luckie
Darlett Lucy-Dawson
Merceria L. Ludgood
William M. Lyon, Jr.
Peter S. Mackey
Arthur J. Madden, III
Beth Marietta-Lyons
Michael E. Mark
L. A. Marsal
Steven A. Martino
R. Edward Massey, III
R. Edward Massey, Jr.
Kevin F. Masterson
Dominick J. Matranga
Joseph M. Matranga
Thomas R. McAlpine
Gregory B. McAtee
Brian P. McCarthy
Daniel L. McCleave
Jacqueline M. McConaha
Douglas L. McCoy
Marcus E. McCrory
James H. McDonald, Jr.
Matthew C. McDonald
Edward B. McDonough, Jr.
Marcus E. McDowell
Stova F. McFadden
William S. McFadden
Lester L. McIntyre
Charles N. McKnight
Robert B. McLaughlin
Michael S. McNair
Kent Dyer McPhail
Rose A. McPhillips
Douglass Alan McSwain
Coleman F. Meador
Augustine Meaher, III
Bill C. Messick
Charles L. Miller, Jr.
Christopher R. Miller
M. Kathleen Miller
Brooks P. Milling
James David Mills
Pamela K. Millsaps
L. Daniel Mims
Michael A. Montgomery
Stephen C. Moore
Terry Alan Moore
Larry C. Moorer
Jack W. Morgan
W. Kyle Morris
Henry T. Morrissette
Gypsy L. Morrow
J. Daniel Morrow
W. Alexander Moseley
Robert H. Mudd, Jr.
Michael T. Murphy
Paul Bradley Murray
P. Russell Myles
Paul D. Myrick
Mark A. Newell
James B. Newman
Frances R. Niccolai
Steven L Nicholas
John R. Nix
Caine O'Rea, III
Larry C. Odom
Rudene C. Oldenburg
Thomas P. Ollinger, Jr.
Herman D. Padgett
Peter J. Palughi, Jr.
John R. Parker
Harold D. Parkman
Donald C. Partridge
David R. Peeler
R. Jeffrey Perloff
John R. Perry
Christopher E. Peters
Kathryn W. Petersen
Abram L. Philips, Jr.
Will G. Phillips
Brenda J. Pierce
J. Jerry Pilgrim
J. Casey Pipes
S. Wesley Pipes, V
Leigh L. Pipkin
William E. Pipkin, Jr.
Craig S. Pittman
James B. Pittman
Patricia J. Ponder
Charles J. Potts
Arthur T. Powell, III
Jean M. Powers
Barry C. Prine
Caroline T. Pryor
David R. Quittmeyer
Bratton L. Rainey, III
A. Clay Rankin, III
Royce A. Ray, III
James Rebarchak
F. Grey Redditt, Jr.
Mark L. Redditt
William H. Reece
W. Boyd Reeves
Elizabeth D. Rehm
T. Dwight Reid
Eric B. Reuss
Harry H. Riddick
Kenneth J. Riemer
J. Burruss Riis
James V. Roberts, Jr.
Edward Luckett Robinson, II
Thomas M. Rockwell
M. Lloyd Roebuck
William C. Roedder, Jr.
Jannea S. Rogers
Jay M. Ross
James B. Rossler
Cecily K. Rothrock
Beth M. Rouse
Robert H. Rouse
Edward P. Rowan
Benjamen T. Rowe
Andrew J. Rutens
Elias J. Saad
William H. Saliba
Harry V. Satterwhite
Richard S. Sawyer
Ellsworth P. Scales, III
James D. Sears
John W. Sharbrough, III
Clifford C. Sharpe
Kirk C. Shaw
Barber Sherling, Jr.
Michael D. Sherman
Richard E. Shields
Jonathan E. Sholtis
Vanessa Arnold Shoots
Franklin L. Shuford, Jr.
Larry U. Sims
Patrick H. Sims
William H. Sisson
Edward L. D. Smith
Frankie Fields Smith
James H. Smith
Robert H. Smith
Selma L.D. Smith
Susan Gunnells Smith
Scott W. Soutullo
Mark E. Spear
Jon M. Spechalske
John Ronald Spencer
Chandler K. Stanard
Joseph D. Steadman
Gregory B. Stein
T. Jeff Stein
Donald J. Stewart
Sarah H. Stewart
Norman M. Stockman
Samuel L. Stockman
Benjamin F. Stokes, III
Margaret A. Stone
Sheila V. Stone
Roderick P. Stout
Todd S. Strohmeyer
Philip A. Stroud
Carroll H Sullivan
Joseph R. Sullivan
James W. Tarlton, III
Ann E. Taylor
Jeremy P. Taylor
Richard H. Taylor
R. Stevens Terry
Steven L. Terry
Bryan A. Thames
Joseph D. Thetford
Richard L. Thiry
C. Greg Thomas
Barry L. Thompson
John P. Thompson
Ray M. Thompson
Cooper C. Thurber
Edward R. Tibbetts
William C. Tidwell, III
Misty C. Till
Desmond V. Tobias
George A. Tonsmeire
J. Robert Turnipseed
John M. Tyson, Sr.
G. Hamp Uzzelle, III
Pete J. Vallas
Mona A. Vivar
Lawrence B. Voit
Richard W. Vollmer, III
George M. Walker
Harold William Wasden
Slade G. Watson
William W. Watts, III
Lawrence M Wettermark
A. Holmes Whiddon, Jr.
Don O. White
Jarrod J. White
John L. White
J. George Whitfield, Jr.
C. Richard Wilkins
George K. Williams, Jr.
Richard R. Williams
Ronnie L. Williams
Adam T. Williamson
Charles S. Willoughby
J. Elizabeth Wilson
Michael P. Windom
Stephen R. Windom
Michael A. Wing
Mark C. Wolfe
James A. Yance
Richard D. Yelverton
Jay A. York
Michael A. Youngpeter
James William Zeigler
Alex W. Zoghby
George M. Zoghby

BOOK REVIEW

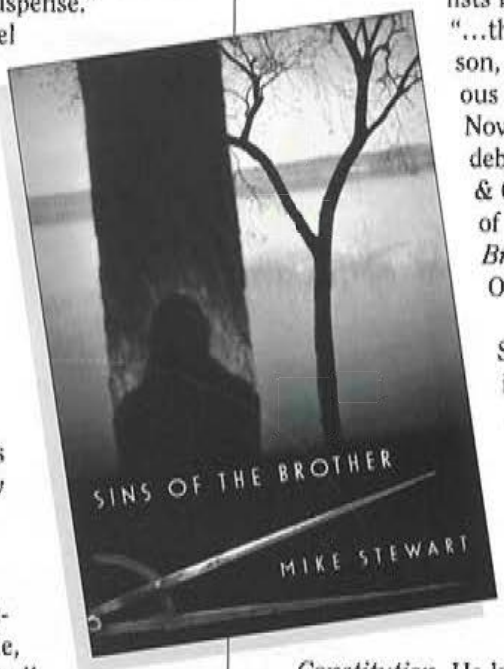
Sins of the Brother

A novel by Mike Stewart • Hardcover • G. P. Putnam's Sons • October 1998

Reviewed by Joe E. Cook

Sins of the Brother, the new murder mystery by Alabama attorney Mike Stewart, has garnered wide critical acclaim even before its October 4 publication date. *Kirkus Reviews*, a leading literary journal, has labeled Stewart's first novel "a brilliantly plotted curve of rising suspense."

True to his Southern roots, Stewart's novel is set in the fictional Alabama sawmill town of Coopers Bend with pivotal scenes in Birmingham, Mobile and New Orleans. Unlike books by most attorney/authors, however, this riveting novel is not a courtroom drama even though its protagonist is a lawyer. Rather, it is a taut murder mystery with intriguing characters and rapid-fire plot twists that continue long after the identity of the murderer is revealed.



The novel begins just six months after Tom McInnes opted out of the billable-hours marathon at an upscale Mobile, Alabama law firm. His private practice isn't exactly flourishing, but his spirits are–at least compared with how they fared when he was under the thumb of Higgins & Thompson's senior partners. However, Tom's peaceful, if unprofitable, semi-retirement is shattered by a telephone call informing him of the death of his younger brother, Hall.

Upon his return to Coopers Bend, Tom learns that Hall's death was not accidental. The problem is, no one knows the identity of the killer, and worse, only Tom seems interested in finding out who the killer is. As Tom begins to retrace the last few weeks of his brother's life, he learns more about Hall's life than he ever wanted to–Hall appears to have been supporting himself by selling drugs. The closer Tom comes to finding Hall's killer, the more at peril he places his own life–so much so, that he must attempt to forge a shaky truce with the head of Alabama's underworld, Mike Gerrard. Even after the identity of the killer is revealed, Tom must rely on every bit of skill and cunning he can muster to keep himself and his closest friends alive.

The first novel in a mystery series for G. P. Putnam's Sons, *Sins of the Brother* starts fast and continues non-stop until the very last sentence. Stewart's writing is clear, crisp and fast-paced. The dialog is pitch-perfect and the characters are so real they are almost recognizable, with flashbacks to childhood that paint a picture of Hall that makes him a sympathetic character (even though he is murdered in the opening paragraphs).

Early reviews of the novel are impressive. *Kirkus Reviews* lists it as a book of special note, calling it "...the most accomplished debut of the season, an obvious Edgar contender, and a serious threat for the title of Compleat Suspense Novel." *Booklist* calls it "[a]n impressive debut for a promising sleuth." And Partners & Crime, the landmark mystery bookstore of Manhattan, has chosen *Sins of the Brother* as the "Partners' Pick" for October 1999.

Like the fictional Tom McInnes, Stewart grew up in a small sawmill town in Wilcox County. Working summers as a forest technician, a cowboy and a farm hand, Stewart received his undergraduate degree from Auburn University. After college graduation and prior to deciding to go to law school, he worked briefly in the timber business before leaving to work as a copy editor for the *Atlanta Journal-Constitution*. He later worked to help a family friend, former Alabama Speaker of the House Joe McCorquodale, in a bid for governor.

After receiving his law degree from Cumberland School of Law in 1988, he practiced as a corporate lawyer and litigator at Berkowitz, Lefkovits, Isom & Kushner and later with the Birmingham office of Constangy, Brooks & Smith. Stewart recently left his position as general counsel of United Health Care of the South to pursue a writing career. He lives in Birmingham with his wife, Amy (also an attorney), and their two daughters. He is currently completing his second Tom McInnes novel, which is expected to be published in 2000. ■

Joe E. Cook
Joe E. Cook is vice-president of legal and land for Energen Resources Corporation. He is a graduate of the University of Alabama and the Birmingham School of law.

www.yourclient.com

Choosing Domain Names and Protecting Trademarks on the Internet

By Michael S. Denniston and Margaret Smith Kubiszyn

The president of your client, ABC Widget Company, has decided that it is time for the company to "go online." After consulting with his marketing people, he comes to you for advice on ABC's plan for establishing a presence on the Internet.

The ABC Plan

The plan will include the following:

- ABC will develop an interactive Web site featuring its most popular widgets.
- The ABC Web site home page will be accessible at the URLs: http://www.abc.com and http://www.abcwidget.com.
- ABC also would like to register the domain name "widgmatazz.com" for a Web site promoting its most popular product, the Widgematazz Widget. (ABC has federal trademark registrations on the Principal Register of the United States Patent and Trademark Office for the marks ABC, ABC WIDGETS, and WIDGEMATAZZ.)
- One page of the ABC Web site will be devoted to downplaying the features of the Widgerator Widget, the premier product of XYZ Corporation, ABC's top competitor, and will be located at the path: http://www.abc.com/widgerator.
- Another page of the ABC Web site will contain a link to widgetsonline.com, a one-stop online widget shop run by a company unrelated to ABC. The link from the ABC Web site will not go to the home page of the Widgets online site, but, instead, will link directly to the page featuring the Widgematazz Widget.

In your initial research, you discover:

- Al's Baking Company of Cleveland, Ohio has registered the domain name "abc.com." Al's is a family business, has operated under the ABC mark for several years, and has a baking Web site identified by this domain name. Al's has no federal registration for the ABC mark.
- Mark Widge has registered the domain name "widgematazz.com." He owns a federally-registered trademark in the WIDGEMATAZZ mark for his online magic store.
- The domain name "abcwidget.com" is available, but the domain name "abcwidgets.com" has been registered by We Sell Domains, Inc., a company with no legitimate claim to the name. The marketing manager at We Sell Domains recently contacted ABC and offered to sell that domain name to ABC for $1,500.

- In a search for "ABC Widgets" on your favorite Internet search engine, the first search result is the home page of ABC's biggest competitor, XYZ Corporation, found at www.xyz.com.

Introduction

Most companies view their trademarks as extremely valuable resources. Their trademarks are their "identity." Therefore, protection of those marks from unwanted use, either through consumer confusion or through dilution, is a high priority for trademark owners. The Internet, particularly the subset of the Internet known as the World Wide Web (the "Web"), not only allows companies to promote their identity to a greater number of potential customers than ever before, but also exposes them to attacks on their identity.

The late 1990s saw explosive growth in Internet use by businesses and individuals. The use of the Internet to disseminate and gather information has evolved into an indispensable tool for businesses. A business's home page on the World Wide Web can provide information about the business and the goods and services it provides to a virtually unlimited audience at a relatively low cost. Along with the advantages that the Internet provides, there also are pitfalls and liability issues that companies must consider before "going online." Even if a business does not establish an online presence, it cannot ignore the existence of the Internet. A business must be vigilant in protecting its trademarks online. The proliferation of Internet use has brought with it a host of lawsuits alleging trademark infringement and dilution from the use of a party's trademarks in domain names, metatags and links. Such lawsuits have posed a challenge to courts in fitting the suits into the analytical framework established by case law in "traditional" trademark infringement suits.

Technical Basics–The Internet and the Domain Name Registry

The Internet

The Internet is the world's largest computer network. A network is a system of two or more computers linked together that allows its participants to exchange information electronically. The Internet is a global network of independent computers, essentially a network of networks, which had its origins in the 1950s. At that time, the United States Department of Defense undertook a project to construct a computer network that would be decentralized so that it could not be taken out of service by one or several attacks. The precursor to the Internet was the implementation of that network project, called the ARPANET.

In the mid- and late 1990s, because of a number of factors, including the rise of user-friendly nature of software programs using graphic user interfaces (GUIs) and "point and click" technology, the Internet made a transition from the exclusive domain of the government and universities into the living rooms of everyday people.

Domain Names

Each computer connected to the Internet is identified by an address that consists of a numeric code. These codes, known as "Internet Protocol"or "IP" addresses, which are hardly memorable, are matched with user-friendly mnemonics. Rather than remembering numeric codes, Internet users type in mnemonic names that automatically are converted into the numeric addresses of the host sites. These mnemonic names are called domain names.

Web sites typically are identified by an address called a uniform resource locator ("URL"), which is a special type of IP address that consists of the type of "protocol" the computer must use to find the resource, which is coupled with the designation "www" (indicating that the resource is on the World Wide Web), followed by a domain name (called a "host" on the Web).

The domain name is made up of several levels. The "top-level" domain indicates the type of entity or country that operates the address. The most well known top-level domain is ".com," which is used by commercial organizations. Other top-level domains used in the United States are: ".org," for organizations; ".net," for network servers; ".edu," for educational organizations; ".gov," for nonmilitary governmental organizations; and ".mil," for U.S. military sites. Other countries have their own top-level domains, for example ".fr," for France, ".uk," for the United Kingdom, and ".tv," for Tuvalu. To solve current problems with "crowding" in the domain name fields, organizations have proposed the use of several new top-level domains, including ".arts," ".firm," ".info," ".nom," ".rec," ".shop," and ".web."

The "second level" domain is chosen by the user or operator, and usually is a memorable word or the company's tradename or trademark. Thus, in the URL: http://www.abc.com, "http" is the protocol, "www" indicates that the site is on the Web, "abc" is the user-chosen second-level domain, and ".com" is the top-level domain. Taken together, these parts create a unique address on the Internet. No two users can have identical top- and second-level domain names.

A domain name serves as the primary identifier of a source of information, products or services on the Internet. A memorable domain name can mean thousands of additional visitors to a site daily. It is becoming increasingly difficult to register a popular word as a domain name. A *Wired News* investigation in April 1999 found that the ".com" versions of nearly all popular words have been taken. Of 25,500 standard dictionary words, only 1,760 were free.[1] The value of using popular words as domain names is underscored by recent transactions, including the sale of "wallstreet.com" for over $1 million.[2] Many businesses wish to exploit their established identity on the Internet, and the obvious way to do so is by obtaining a domain name that incorporates its trademark. The value of being able to use one's trademark as a domain name cannot be overstated. "Domain names are relevant, because consumers often perceive them as performing, in electronic commerce, much the same role as trademarks and trade

names historically have played in more traditional modes of business."[3] As one court has noted, a company's "domain name is more than a mere Internet address. It also identifies the Internet site to those who reach it, much like, . . . a company's name identifies a specific company."[4]

The Domain Name Registry

The central registry for domain names in the United States was created pursuant to a grant from the National Science Foundation. From 1993, Network Solutions, Inc., (NSI) served as the exclusive administrator of the Domain Name Registry. NSI's government-granted monopoly over the registry has been a point of contention in the Internet community. The Internet Corporation for Assigned Names & Numbers (ICANN) was created in response to a June 1998 White Paper written by the U.S. Department of Commerce. The White Paper called for the formation of a new non-profit corporation by private sector Internet stakeholders to administer policy for the domain name system. In April 1999, a test program was implemented by the ICANN to allow for competition among multiple registrars for the ".com," ".net" and ".org" top level domains. As a result, NSI is no longer the exclusive registrar of these top level domains.[5] In September 1999, ICANN, NSI and the Commerce Department reached an accord in which NSI recognized ICANN's authority over the domain name system. Under the agreement, NSI will retain the contract for administering the domain name registry for four years, and will offer domain names to competing registrars at a wholesale price.[6]

In 1996, Network Solutions first adopted a Domain Name Dispute Resolution Policy.[7] Since the introduction of competition by ICANN, the majority of competing registrars have adopted dispute resolution policies similar to NSI's. Under the current NSI policy, if a domain name is *identical* to a registered trademark, then the complainant (trademark owner) must prove written notice of the conflict to the domain name holder and provide satisfactory evidence of trademark ownership to NSI. If the complainant provides evidence of trademark registration that predates the creation of the domain name and the domain name holder is not able to show trademark ownership, NSI will transfer the name to the complainant. Under this policy, NSI agrees to abide by any court order in a civil action relating to a domain name. From a trademark owner's perspective, the dispute resolution policy adopted by NSI and most competing registrars is quite limited. For example, if the disputed domain name is not *identical* to the registered mark, the trademark owner has no recourse through NSI. A trademark owner's only recourse lies in the courts.

Trademark Law– The Legal Framework

Trademark law has been fertile ground for lawsuits relating to activities on the Internet. Unfortunately, the Internet makes trademark infringement or trademark dilution possible on a previously unknown scale. This fact exposes a company to risks that it may infringe another's mark, or that its own marks may be infringed. "Traditional" trademark law, as discussed below, provides the framework for these suits.

A trademark is a word, name, symbol, slogan, logo, or device used to identify a product as emanating from a single source. Although trademarks can be registered at the federal and the state level, registration of a mark is not a prerequisite to obtaining rights in the mark. One acquires common law rights through the use of a distinctive mark in a manner that allows consumers to associate the mark with goods or services.

Notice of Amendments to the Rules of the United States Court of Appeals for the Eleventh Circuit

Following receipt and consideration of comments to the proposed amendments to the Rules of the United States Court of Appeals for the Eleventh Circuit, the Court has adopted the proposed amendments, with modifications, effective January 1, 2000.

Please note, the Court adopted new procedures for requesting extensions of time to file briefs and record excerpts in civil appeals THAT ARE MORE STRINGENT. The revised rules distinguish between a party's *first* request for an extension of time of *seven calendar days or less*, a party's *first* request for an extension of time of *more than seven calendar days*, and a party's *second* request for an extension of time. *See* 11th Cir. R. 31-2. **PRACTICE NOTE:** Standards for granting a second request are higher than the standards for granting a first request. Parties are well advised to properly plan and make the first request appropriate and accurate.

The Court also adopted *MORE STRINGENT* rules that provide for **DISMISSAL WITHOUT FURTHER NOTICE** in civil appeals when appellant fails to file or correct a brief or record excerpts within the time permitted, and that establish *MORE STRINGENT* procedures for requesting **reinstatement** of a civil appeal thus dismissed. *See* 11th Cir. R. 42-2 and 42-3.

The Court also determined to make additional minor revisions to the following Rules and Internal Operating Procedures (IOP) of the Court: IOP 1 (p. 57); 11th Cir. R. 31-2; and IOP 2 (p. 85). Pursuant to 28 U.S.C. § 2071(e), these additional amendments also take effect on January 1, 2000, at the same time as the other amendments to the Rules.

The circuit rules, including amendments thereto, may be found at the Eleventh Circuit's Web site at *www.call.uscourts.gov.*

Trademark infringement of a federally-registered trademark occurs when, without the consent of the registrant, one uses in commerce "any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake or to deceive."[8] In addition, section 43(a) of the Lanham Act imposes liability for infringement of a mark that is not federally registered.[9] The traditional standard for trademark infringement of both registered and unregistered marks rests upon proof of a likelihood of confusion between the mark of the senior user and the mark of the junior user.

Any trademark, famous or not, may be infringed. The law affords protection whenever confusion is likely, regardless of whether the mark is well-established or famous, and regardless of whether the mark is federally registered or based on common law. However, the likelihood-of-confusion test has its limitations. In the absence of likelihood of confusion, trademark infringement cannot arise, and, consequently, no remedy is available.

The Federal Trademark Dilution Act of 1995, as codified at Section 43(c) of the Lanham Act, provides an additional protective scheme for "famous" marks that does not require proof of a likelihood of confusion. The federal dilution statute provides that "[t]he owner of a famous mark shall be entitled . . . to an injunction against another person's use in commerce of a mark or trade name, if such use begins after the mark has become famous and causes dilution of the distinctive quality of the mark. . . ."[10]

The goal of trademark law traditionally has been the prevention of consumer confusion as to the source of goods or services. Protection of goodwill earned by the trademark owner is largely a collateral effect of the primary goal. Dilution law emphasizes the reputation aspect of trademark law, without having consumer protection as its first priority.

While the Act does not require federal registration of the mark, it does require that the injury result from a "commercial use" and that the mark be "famous." The Act provides that only famous marks are capable of being diluted. The Act contemplates that courts should find fame if the mark has been used over a long period of time, taking into account the degree of mark recognition in the relevant markets, the extent of promotional efforts made, the relative uniqueness of the mark, and several other factors.[11]

Prior to enactment of the federal dilution statute, state courts recognized two forms of dilution: dilution by "blurring" and dilution by "tarnishment." Dilution by blurring is the lessening of the distinctive quality of the mark. Blurring occurs when the mark is used on dissimilar goods such that it may cease to become a distinctive identifier of the owner's goods.[12] Because the blurring theory essentially creates a right of the owner of a well-known mark to stop almost any other use, courts are reluctant to brand as unlawful uses that dilute only by blurring.[13]

Dilution by tarnishment or disparagement involves: (a) the unauthorized use of a trademark with goods of a poor quality, or (b) the unauthorized association of a trademark with a disparaging, negative or unwholesome message. Derogatory use of a mark may defeat the owner's promotional efforts and the dilution by tarnishment concept is thus designed to protect the advertising value of a mark.[14]

Domain Name Disputes

The "first-come, first-served" system of registration of domain names has spawned a host of disputes, ranging from traditional trademark infringement and dilution disputes to disputes with a new breed of infringer–the "cybersquatter." A "cybersquatter" or "cyberpirate" registers domain names in an attempt to extort money from the trademark holder for transfer of the domain name. In one of the first cases to address cybersquatting, *Panavision International, LP v. Toeppen*,[15] the defendant, Toeppen, had registered the domain names "panavision.com" and "panaflex.com," and then attempted to charge Panavision, the owner of the federally registered trademarks PANAVISION and PANAFLEX, for the right to use these domain names. Toeppen had registered over 200 domain names using the trademarks and tradenames of famous companies. The *Panavision* court found that Toeppen's use of Panavision's trademarks in these domain names lessened the capacity of the marks to distinguish the plaintiff's goods and services. The court ordered Toeppen to relinquish the domain names under a theory of trademark dilution by blurring.[16]

Trademark issues also can arise from others who attempt to trade off of the goodwill of the trademark owner. In *Hasbro, Inc. v. Internet Entertainment Group, Ltd.*,[17] the court found that the use of the domain name "candyland.com" for a pornographic Internet site diluted by tarnishment the federally registered mark CANDYLAND owned by Hasbro for a children's board game. Also, when Adam Curry, a former MTV "VJ", registered "mtv.com," MTV prevailed in a trademark dilution suit to enjoin the use of the domain name by Curry.[18] The cases of domain "piracy" and intentional trading off of goodwill of the trademark owner show that the federal dilution statute is a powerful tool for the trademark owner on the Internet, as these cases generally do not have a likelihood of confusion such that the owner can establish a case for trademark infringement.

There are limits, however, to the potential liability for use of a registered trademark in a domain name. In *Academy of Motion Picture Arts and Sciences v. Network Solutions Inc.*,[19] the court held that the Academy was not entitled to a preliminary injunction prohibiting NSI from providing domain names using the marks ACADEMY AWARDS and OSCARS. The court rejected the Academy's dilution theory, noting that there was no showing that merely registering the domain names for third parties was "commercial use" under the federal dilution statute. Moreover, courts are becoming less willing to classify marks as "famous" for dilution purposes.

On November 29, 1999, the President signed into law the Intellectual Property and Communications Omnibus Reform Act of 1999.[20] The Omnibus Act contains the Anticybersquatting Consumer Protection Act, which amends the Trademark Act to prohibit the bad faith registration of, trafficking in, or use of, a domain name that (1) is a registered trademark; (2) is identical or confusingly similar to a distinctive mark; or (3) is identical to, confusingly similar to, or dilutive of a famous mark. While this new law has not yet been tested, it should prove to be a useful tool in combating bad faith domain name piracy.

Actions for trademark infringement have been most successful in instances where a competitor of the trademark holder registers the trademark as a domain name. In

Actmedia, Inc. v. Active Media International, Inc.,[21] the court found that the use of the domain name "actmedia.com" by Active Media, a Web design provider, caused a likelihood of confusion as to the source of similar services with Act Media, registrant of the federally registered trademark for Actmedia. The court ordered Active Media to transfer the domain name to Actmedia.

In *Green Products Co. v. Independence Corn Byproducts Co.*,[22] the court entered a preliminary injunction based upon the traditional trademark infringement theory of likelihood of confusion. There, the owner of the trademark Green Products sued a competitor to enjoin the competitor's use of the domain name "greenproducts.com." The court held there was a likelihood that the owner would prevail because it was likely customers would think that they were accessing the owner's Web site.

Likewise, in *Planned Parent Federation v. Bucci*,[23] the defendant operated a Web site located at the domain name "plannedparenthood.com," on which he promoted anti-birth control and anti-abortion positions. Planned Parenthood sued to enjoin the defendant's use of the domain name on the grounds that it infringed and diluted plaintiff's federally registered service mark Planned Parenthood. The court found that plaintiff was entitled to a preliminary injunction on its trademark infringement claim. The court noted that the manner of the defendant's use of plaintiff's mark in connection with his Web site–both as a domain name and at the top of the Web site in the greeting message "Welcome to the Planned Parenthood Home Page!"–increased the likelihood that consumers searching for plaintiff's Web site would incorrectly believe that the defendant's Web site was the plaintiff's.

Exposure to trademark infringement also can arise from good faith users who want to use their business name in their domain name, but the domain name conflicts with a previously federally-registered trademark.[24]

Dilution and infringement issues are not limited to use of trademarks in second level domain names. In *Patmont Motor Werks v. Gateway Marine, Inc.*,[25] the defendant was not using plaintiff's GO-PED trademark as part of the domain name, but as part of the post domain path identifying a particular page on defendant's Web site that evaluated the GO-PED product, namely "www.idiosync.com/goped." The court found that the defendant's use of the trademark in this manner was not a trademark violation, noting this use identified the particular brand of scooter manufactured by plaintiff, the use was a fair use of the trademark, and that it was not likely to cause confusion as to source.

Where two parties have both registered a trademark, and one registers the mark as a domain name, the second trademark owner will have little chance of recourse in a trademark infringement or dilution lawsuit. In this instance, the trademark owners could agree to have a "shared domain," where the first page of the Web site directs the user with links to the two parties. The owners could also effect a sale of the domain name. In an illustrative situation, Compaq, the owner of the AltaVista search engine, purchased "altavista.com" in 1998 from AltaVista Technology for $3.35 million.[26]

Entities that want to use their business name or one or more of their trademarks as part of a domain name can take several protective steps to ensure that they can use their mark in a domain name without unexpected difficulties. NSI places a premium on federal registration of trademarks, allowing a prior federal registration to trump a domain name registration. Thus, federal registration of an entity's important marks is an important first step. Prior to registering a domain name, a potential user should perform a domain name search to determine if any already-registered domain names are similar to the one the entity wants to register. If the mark the entity wants to register as a domain name is not a registered mark, then, at the very least, the entity should perform a search to determine if any other registered marks are identical to the mark the entity wishes to use in the domain name. If the trademark search reveals potentially conflicting registered marks, then the entity may consider a new mark. Even if the user decides that both marks may be able to peacefully coexist in the marketplace without likelihood of confusion, the entity still may want to choose a different domain name because under the current NSI dispute resolution policies, the prior federally-registered mark will carry the day if a domain name dispute erupts.

Other Internet Trademark Disputes–Hyperlinking, Framing and Metatagging

Hyperlinking

One of the applications of the Internet that has spurred its popularity lies in the capabilities of the standard Web programming language, Hypertext Markup Language ("HTML"). HTML allows the programmer to highlight words or icons in the text that appears on the Web page so users can click on those words or icons. By clicking on the highlighted text or icon, the program takes the user to a different Web site or to a different page within the same Web site. This functionality that permits the jumping back and forth between various Web pages is known as "hyperlinking" or "linking."

Most users would argue that hyperlinking is not only a benefit of the Web that allows ease of access and the maximum interactive environment, but a functionality that is vital to the infrastructure of the Internet. The Internet itself is, essentially, one large collection of hyperlinks. In part due to the independent nature of the Web and Internet users (the self-styled "Netizens"), few programmers give thought to obtaining permission before hyperlinking to another site. However, recent activities have called this free-wheeling practice into question.

In 1997, Ticketmaster Corp. filed *Ticketmaster Corp. v. Microsoft Corp.*,[27] a trademark infringement, dilution and unfair competition case. Ticketmaster alleged that Microsoft unlawfully infringed and diluted its marks by including hyperlinks to the Ticketmaster Web page in

Microsoft's Seattle city guide and entertainment page, "sidewalk.com." The links to Ticketmaster's site were not links to the home page, but rather "deep" links to specific pages within the site. This manner of linking allowed the user to bypass Ticketmaster's home page and all of Ticketmaster's proprietary information notices and advertising. Ticketmaster accused Microsoft of "electronic piracy" because Microsoft made possible "accessing of Ticketmaster's live event information and services without Ticketmaster's approval, and by prominently offering it as a service to their users, Microsoft is feathering its own nest at Ticketmaster's expense."

The case settled in January 1999 with Microsoft's agreement to link only to the Ticketmaster home page, and not to use "deep" links into the interior pages of the Web site.[28] Essentially, the settlement agreement functions as a Web-linking agreement. While still a new concept, Web-linking agreements are gaining importance as commercial Web sites form online alliances.[29]

Framing

As the name implies, a "frame" is a bordered area of a Web page that acts as an independent browser window which "frames" the content in the window. When a Web site is "framed" within another Web site, its URL or domain name is not displayed, and the Web site is displayed within another site's frame that may contain the other party's logo and advertising. This manner of framing intent may lead to confusion by suggesting that the "framer" is the actual provider of the content.

TotalNews is a news "metasite" with links to other news organizations. TotalNews would frame content from major news organizations within a frame displaying the TotalNews logo and advertising. Major news organizations sued TotalNews, alleging trademark infringement and dilution. In a June 1997 settlement agreement, TotalNews agreed to cease framing the plaintiffs' websites or linking in a way that would suggest endorsement or sponsorship.[30]

Metatags

One of the most subtle forms of potentially unlawful trademark usage on the Internet involves the use of "metatags." A metatag is a "key word or description written into a Web page's HTML code as a means for Internet search engines to categorize the content of the Web site."[31] If a keyword is implanted as a metatag in the HTML code of a Web page, then a search engine looking for that keyword will find that Web page. Metatags are not visible to the user without viewing the source code of the page. *In Playboy Enterprises, Inc. v. Calvin Designer Label*,[32] Playboy obtained a temporary restraining order prohibiting not only the defendant's use of the domain names "playboyxxx.com" and "playmatelive.com", but also its use of "Playboy" as a metatag.

In *Niton Corp. v. Radiation Monitoring Devices, Inc.*,[33] Niton and RMD manufactured similar products and were engaged in litigation over a false advertising claim. During the course of litigation, Niton discovered that RMD was using the metatag "The Home Page of Niton Corporation, makers of the finest lead, radon, and multi-element detectors" in several of its Web pages so that consumers searching for the home page of Niton would be likely to access RMD's Web site. The court issued a preliminary injunction, enjoining the defendant from using its Web site in a manner likely to suggest that the parties are affiliated or that the defendant manufactured or distributed products marketed by the plaintiff.

Conclusion–Advice for ABC

ABC will face significant obstacles in implementing its plan for establishing a presence on the Internet. Most notably, it will have problems obtaining the domain names that it needs to establish its trade identity online.

"abc.com"–Although Al's Baking Company has exercised common law trademark rights in its geographic area over the ABC mark for several years, ABC owns a federal registration for the identical mark that predates Al's registration of the domain name. Under the NSI Domain Name Dispute Resolution Policy, therefore, ABC should be able to effect a transfer of the domain name to ABC. ABC should send a letter to Al's Baking Company advising Al's of ABC's rights in the mark, and send sufficient proof of ownership of the mark to NSI.

"widgematazz.com"–Although this domain name is identical to ABC's registered trademark WIDGEMATAZZ, Mr. Widge also will be able to prove his federal registration for the mark for different services. As such, NSI will not intervene. In this situation, ABC could write to Widge, informing him of ABC's

concurrent rights in the mark, and propose that the two companies use the domain name as a "shared domain," so that the user pointing his Web browser to "www.widgematazz.com" would access a shared site with information about both companies and links to their respective Web sites.[34] ABC could also attempt to purchase the name outright from Mr. Widge.

"abcwidgets.com"–ABC does not own a federal registration for the *identical* mark; therefore, once again, it has no recourse through NSI. In light of the *Panavision* case and other cybersquatter cases, ABC has a good chance of prevailing in a suit for dilution against We Sell Domains, if ABC can show that its mark is "famous." ABC also could sue under the new anti-cybersquatting provisions of the Trademark Act. However, litigation can be costly and ABC must make the business judgment whether to proceed with litigation or simply pay the cybersquatter $1,500 for transfer of the name.

The Widgerator Page–In light of the *Patmont Motor Works* case, ABC's use of the WIDGERATOR mark in a post-domain path is likely to be a fair use. ABC intends to use the name only to indicate the organizational structure of the Web site. ABC, however, should be careful that it does not unlawfully disparage the products offered under the WIDGERATOR mark, as that would lead to "traditional" claims for unfair competition or trade libel.

Metatags–It is likely that XYZ Corporation is using ABC's trademarks in its metatags in order to drive more consumers to the XYZ site. ABC has a strong case for dilution and infringement against XYZ, and, in line with the *Niton* case, would be likely to prevail in securing an injunction against XYZ's use of ABC trademarks in metatags.

Linking–In light of the *Ticketmaster* case, ABC should be very cautious about linking to the widgetsonline Web site. ABC should work with widgetsonline to negotiate a Web-linking agreement, or, at the very least, should only link to the home page of widgetsonline, and avoid using "deep links."

Whether in cyberspace or in traditional applications, trademarks are a valuable resource to businesses and must be protected from potential infringement or dilution in order to protect the business's identity. The growth of the Internet has provided businesses with unlimited potential to market their goods and services, but exposes them to a much higher risk of attack on their identity. As such, businesses must be able to effectively monitor and protect their trademarks in the rapidly emerging market of the Internet. ■

Endnotes

1. See "Domain Name List is Dwindling" at www.wired.com/news/technology/story/19117.html.
2. See www.com-broker.com/wallstreet.htm.
3. See "The Intersection of Trademarks and Domain Names" – INTA "White Paper," 87 Trademark L. Rep.668, 675 (1997).
4. *Cardservice Int'l, Inc. v. McGee*, 950 F. Supp. 727 (E.D. Va. 1997).
5. See www.icann.org.
6. See "NetSol, ICANN Reach Accord," www.wired.com/news/politics/story/21997.html.
7. www.networksolutions.com/legal/dispute-policy.html.
8. 15 U.S.C. § 1114.
9. See 15 U.S.C. § 1125(a).
10. 15 U.S.C. § 1125(c).
11. *See* 15 U.S.C. § 1125(c).
12. *See Tiffany & Co. v. Boston Club, Inc.*, 231 F.Supp. 836 (D. Mass. 1964)(use of TIFFANY mark on a Boston restaurant).
13. *See, e.g., Mead Data Inc. v. Toyota Motor Sales*, 875 F.2d 1026 (2d Cir. 1989).
14. *See, e.g., Pillsbury Co. v. Milky Way Prods.*, 215 USPQ 124 (N.D. Ga. 1981)(dilution by tarnishment found where plaintiff's character mark was depicted in sexual intercourse in defendant's cartoon)
15. 945 F. Supp. 1296 (C.D. Cal. 1996), affirmed, 141 F. 3d 1316 (9th Cir. 1998).
16. *Panavision* 945 F. Supp. 1296; *See also Intermatic v. Toeppen*, 947 F. Supp. 1227 (N.D. Ill. 1996).
17. 40 USPQ2d 1479 (W.D. Wash. 1996).
18. See *MTV Networks v. Curry*, 867 F. Supp. 202 (S.D.N.Y. 1994).
19. 989 F.Supp. 1276 (C.D.Cal.).
20. S. 1948 (Nov. 29, 1999). Bill text can be found at www.thomas.loc.gov.
21. 1996 U.S. Dist. Lexis 20814 (N.D. Ill. July 17, 1996). www.jmls.edu/cyber/cases/actmedia.html.
22. 1997 WL 836372 (N.D. Iowa 1997).
23. 42 USPQ2d 1430 (S.D.N.Y. 1997), affirmed, 152 F. 3d 920 (2d Cir. 1998).
24. *See, e.g. Comp Examiner Agency, Inc. v. Juris, Inc.*, 1996 WL 376600 (C.D. Cal. April 4, 1996, and amended May 22, 1996) (use of domain name "juris.com" likely to infringe on registered mark JURIS by causing confusion); *TeleTech Customer Care Management (California) v. Tele-Tech Company, Inc.*, 42 USPQ2d 1913 (C.D. Cal. 1997) (owner of registered mark TELETECH obtained preliminary injunction against use of "teletech.com").
25. 1997 U.S. Dist. LEXIS 20877 (N.D. Cal. Dec. 17, 1997).
26. See www.techweb.com/wire/story/TWB1998072950021.
27. No. 97-3055 DDP (C.D. Cal. 1997).
28. For information on the settlement, go to www3.sjmercury.com/business/microsoft/docs/068638.htm
29. *See generally* Web-Linking Agreements: Contracting Strategies and Model Provisions, ABA Business Law Section, Committee on the Law of Commerce in Cyberspace (2d Ed. 1999). For information: www.abanet.org/buslaw/cyber.
30. *See Washington Post Co. v. TotalNews, Inc.*, No. 97 Civ. 1190 (S.D.N.Y. filed Feb. 20, 1997)(www.jmls.edu/cyber/cases/total1.html)
31. Steven M. Weinberg, "Cyberjinks: Trademark Hijinks in Cyberspace Through Hyperlinking and Metatags," 87 *Trademark L. Rep.* 576, 588 (1997).
32. 985 F. Supp. 1220 (N.D. Cal. 1997).
33. 27 F. Supp. 2d 102 (D. Mass.1998).
34. See, e.g., www.disc.com and www.playtex.com.

Michael S. Denniston
Michael S. Denniston is a partner at Bradley Arant Rose & White LLP. He is a frequent lecturer and received his B.A. and J.D. from the University of Virginia.

Margaret Smith Kubiszyn
Margaret Smith Kubiszyn is an associate at Bradley Arant Rose & White LLP. Ms. Kubizyn clerked for Judge Edward S. Smith of the United States Court of Appeals for the Federal Circuit, and is registered to practice before the United States Patent and Trademark Office. She received her B.E.E. from Auburn University and her J.D. from Cumberland School of Law.

Introducing... alacourt.com

The easy-to-use browser that brings the Court System to your desk.

Instant access to Alabama Trial Court Records from all 67 Alabama Counties including data from:

- **Civil Cases**
- **Criminal Cases**
- **Domestic Relations and Child Support**
- **Traffic Cases**
- **Outstanding Alias Warrants**
- **Trial Court Dockets**
- **Attorney Case Information**

All active cases and disposed cases are maintained in the system, some counties going back as far as 1970.

Two services to meet the demands of attorneys and businesses...

RealTime Access

Easy-to-use browser with 5 different button searches to access the Alabama Judicial Information System instantaneously...

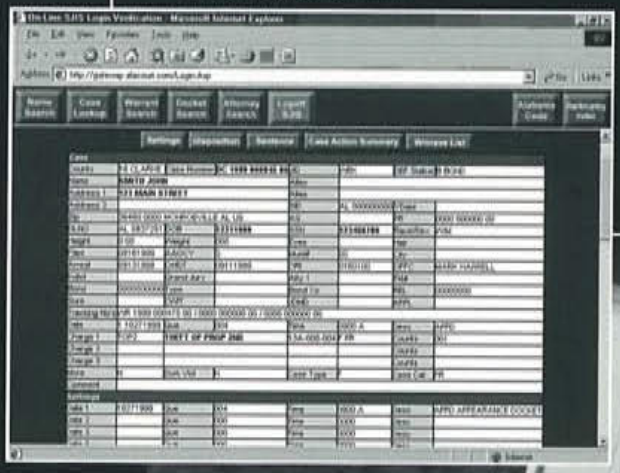
- **Name searches**
- **Case number lookups**
- **Warrant searches**
- **Dockets**
- **Attorney searches**

Tracking & Monitoring Services

Choose the services you need, anytime you need them, and turn your computer into a direct channel to the Court System!

Attorney Setting Notification
Track all pending cases and receive email notifications and reminders of any court activity and critical dates.

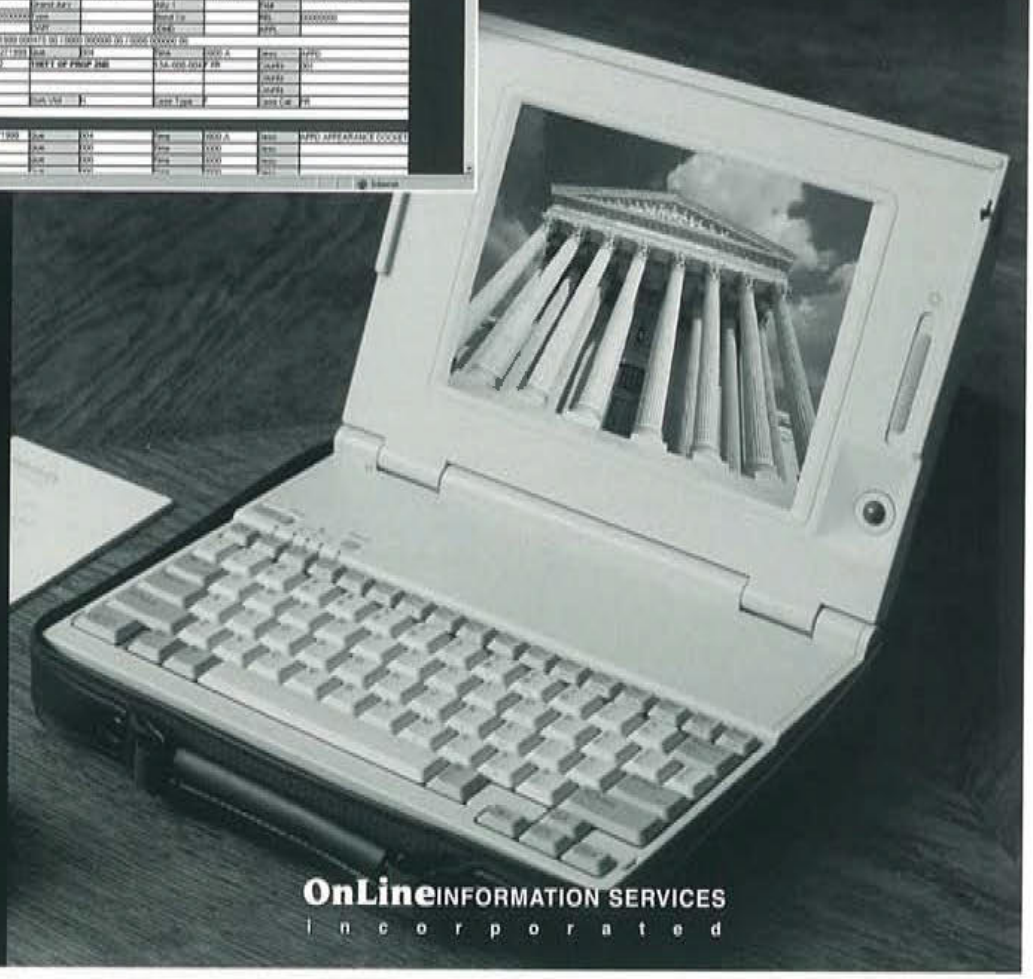
Case/Name Monitoring
Track any case number or name and receive email notifications of any change on service dates, answer dates, trial settings , etc.



If you want to know how ***alacourt.com*** *can help your business, contact us.*

sales & support 334-633-5484
admin 334-344-3333
PO Box 8173 Mobile, AL 36689-0173
sales info@alacourt.com
customer support
support@alacourt.com

click on
alacourt.com
or call toll free
877-799-9898



OnLine INFORMATION SERVICES
incorporated

Historical Development of Alabama's Workers' Compensation Law

Remedies Existing Prior to Workers' Compensation Legislation

By Steven W. Ford and James A. Abernathy, II

Before the advent of no-fault workers' compensation systems, workers who were injured on the job found themselves in one of three situations: they had to prove that their injury was the fault of their employer via a tort claim, be at the mercy of their employer's benevolence in caring for them beyond what the law required, or their families became stigmatized with poverty. The tort system was laden with so many obstacles that injured workers had extremely poor success in getting any recovery. This section will examine these tort claims and the problems that 19th-century workers commonly encountered when asserting them.

Although workers' compensation legislation has displaced most tort liability against employers, the significance of this section is not exclusively historical. That is, most workers' compensation statutes, including Alabama's, exclude certain kinds of employees from coverage. When injury occurs to one of these non-covered employees, the provisions of this section still apply.

Common-law Tort Claims

Of course, if an employer willfully and/or intentionally injures an employee, the law has always been, and continues to be, that the employee can recover for the willful and/or intentional torts of the employer.

For the most part, an injured employee's claim would be based upon the employer's negligence. Therefore, the employee would have to prove the elements of common-law negligence: duty, breach of duty, causation and damage. The employer's duty consisted of an obligation to provide a reasonably safe workplace, tools and machinery.[1] Included in this obligation was the duty to hire competent employees and to employ a sufficient number of workers to safely complete a job.[2] Because it was often difficult to prove that the employer breached his fairly minimal duty of care, negligence on the part of the employer was often difficult to prove.

Proving negligence on the part of the employer was a difficult hurdle for disabled workers to overcome, but the common-law defenses presented three barriers to recovery that together were nearly insurmountable: the fellow servant doctrine, assumption of the risk and contributory negligence.

The Fellow Servant Doctrine

Almost at the beginning of Alabama's statehood, the fellow servant doctrine became entrenched as a rule of law.[3] According to the doctrine, an employer cannot be held liable to an employee for the negligence of another employee. This is true even when the negligent employee is a supervisor, foreman or other superior,[4] and it is true even when the negligent employee does not even work in the same location as the injured employee.[5] The only instances by which an employer could remain liable to the injured employee is where the negligence of the officers, directors or shareholders of the business caused the injury or where the injury was caused by the negligence of a co-employee who was performing a non-delegable duty of the employer.[6]

The Alabama Supreme Court squarely faced the fellow servant doctrine in *Mobile & Ohio R.R. Co. v. Thomas*, 42 Ala. 672 (1868). The plaintiff had been employed as a fireman on a train engine. While going downhill and around a curve, the train engine derailed. The plaintiff's right arm was injured so severely that it was amputated, and his body was bruised, mangled and badly scalded. The plaintiff sued his employer for $40,000.

At trial, the plaintiff presented evidence that an off-duty engineer had observed the engine when it went around the first curve on a down grade. He noticed that the wheels of the engine bound over the outside of the curve and did not curve well. He even saw sparks fly from the contact between the wheel and the rails. He twice reported these things to the engineer in charge and told him that he thought that the engine was dangerous. The on-duty engineer declined to stop the train. Furthermore, there was evidence that some months before the accident, the train engine had been taken out of service because it was unfit for use.

Subsequently, it was overhauled by the railroad's chief machinist and placed back in service. There was no evidence showing that the plaintiff knew or should have known anything about any of these problems. The jury returned a verdict in favor of the plaintiff in the amount of $16,000. In reversing the trial court's judgment, the Alabama Supreme Court cited the fellow servant doctrine, stating:

> After the employer has furnished competent and fit employees, the prevention of negligence on the part of any one of them is certainly as much within the power of the others as in that of the employer. Why, then, should the employer be responsible to one for the negligence of the other?

Besides, there is a principle of public policy which underlies the rule. The tendency of the rule is to quicken the zeal and vigilance of servants, to prevent the negligence of their fellow servants, and to avoid the consequences of it. The doctrine of *respondeat superior* rests upon principles of public policy which have no application here. Indeed, the rule of policy is reversed. The safety of the public, which must trust the employees of railroads, is best consulted by impressing upon each that his own interest is inseparably blended with the safety of the passengers, and he is best stimulated to the utmost effort to prevent negligence in others, and obviate their destructive consequences by the knowledge that, for injury sustained, he has no redress save against the wrongdoer. He would be an unwise guardian of the public weal who would relinquish any guarantee, however slight, of the fidelity and diligence of those agents, who, beyond the sight of their employers, guide the perilous and powerful machinery of railroad transportation. It is impossible for those who represent the legal personality of a corporation to otherwise secure complete and safe repairs of engines than through the agency of competent and proper mechanics. If it has employed the agency of such mechanics in that duty, and no personal blame attaches to it, it will not be responsible if a defect not remedied in consequence of the negligence of such mechanic shall have caused an injury to another servant.[7]

Assumption of the Risk

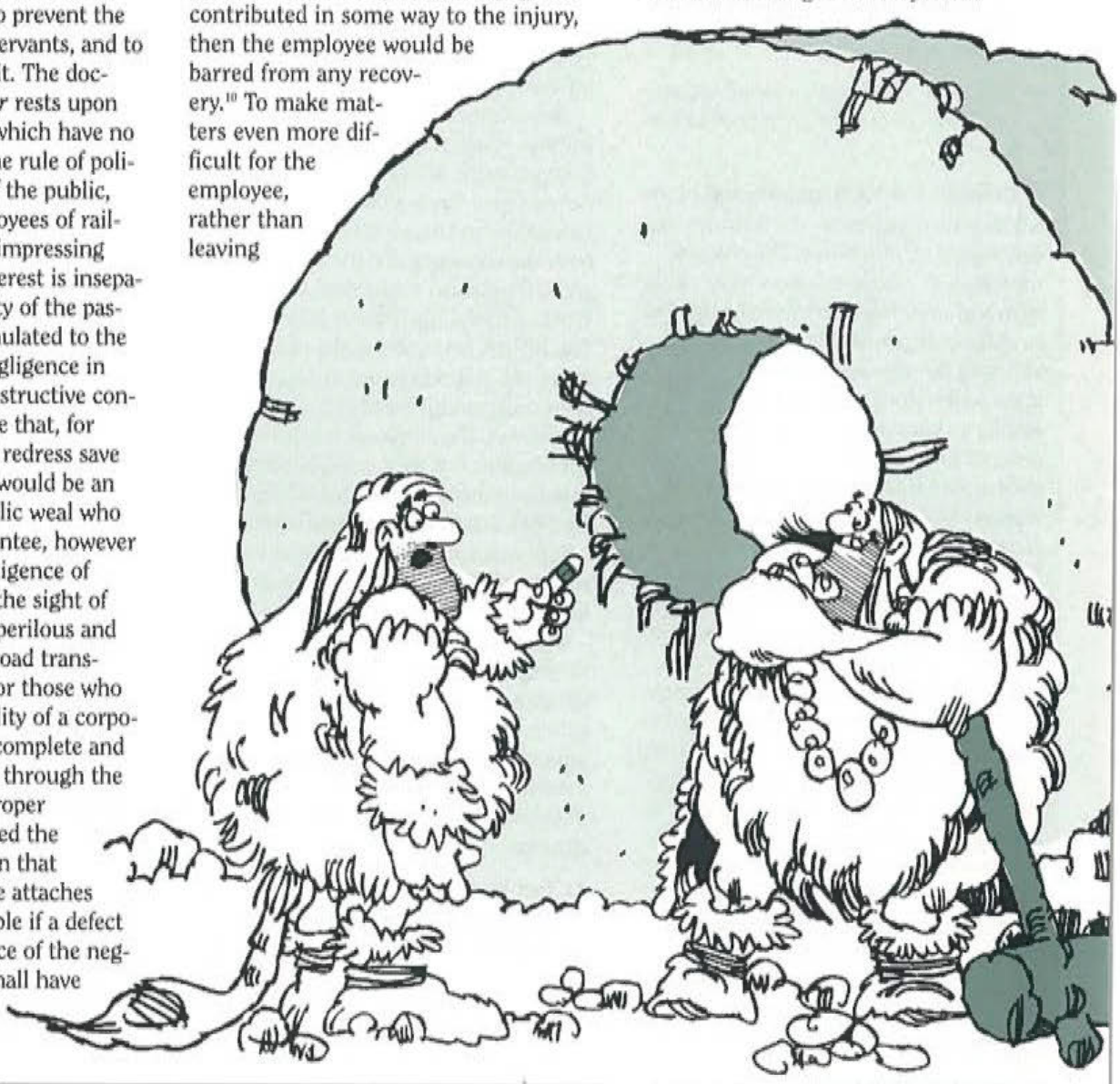
At common law, a portion of every worker's wage impliedly included payment for the risks associated with the job. Accordingly, when a worker agreed to accept employment, that worker was also held to have assumed the risks associated with that employment.[8] When a worker would become injured by a dangerous machine, for example, the employee would be denied relief because hazardous machinery was a risk incidental to his employment, and that risk was assumed when the employee undertook the job.[9]

Contributory Negligence

To recover against the employer for its negligence, the employee had to be completely free of negligence himself. Therefore, if the employer could show 1) the employee was in some way negligent and 2) the employee's negligence contributed in some way to the injury, then the employee would be barred from any recovery.[10] To make matters even more difficult for the employee, rather than leaving the issue of contributory negligence for the jury to decide, courts were deciding it as a matter of law and were directing defense verdicts on that basis. For example, if an employee was injured by defective equipment he was assigned to use, and if the employer could show that the employee should have noticed the defect and should have acted differently to protect himself, then the employer escaped liability.[11]

The Employer's Liability Act

The harshness of the common-law defenses was softened somewhat with the inclusion of the Employer's Liability Act in the *Code of Alabama* of 1886. The original Act abrogated much of the fellow servant doctrine and altered the assumption of the risk defense. No longer could an employer escape liability simply by deflecting blame to one of its employees who was in charge of the injurious



premises or machine. Moreover, if the employer wanted to plead assumption of the risk, it had to prove that the employee knew and appreciated the danger and proceeded in the face of it.[12] After the passage of the Act, the bases for liability of the employer included:

- Where the injury is caused by the negligence of a supervisor and the supervisor was acting in his supervisory capacity;
- Where the injury was caused by the negligence of a co-employee whose orders the injured employee was required to obey, so long as the injured employee did, in fact, obey orders;
- When the negligent act or omission of a co-employee is performed or omitted in obedience to rules or orders of the employer;
- Where the injury is caused by reason of a defect in the employer's premises or machinery; and
- When the negligent co-employee was in charge of certain aspects of a railway.[13]

Although the Act largely abrogated the fellow servant doctrine, the common-law defenses of assumption of the risk and contributory negligence were very much alive and well.[14] Workers were being held as contributorily negligent or having assumed the risk associated with following a supervisor's negligent order, if the employee knew that he was being ordered to do something dangerous.[15] In adhering to this rule, the courts placed workers in the unfortunate position of electing either to obey a dangerous order from their boss, thereby risking life and limb without any legal redress, or to defy that order and almost certainly be fired for insubordination.

The Act was amended in 1911 to provide that an employee cannot be held as having assumed any risk or having been contributorily negligent by continuing his employment after knowledge of the dangerous conditions, unless it was the employee's job to cure the dangerous condition.[16] Prior to this amendment, an employee was held to assume the risks of dangerous conditions that he was aware of and continued to expose himself to those conditions.[17] Even after the amendment, the assumption of the risk defense and the contributory negligence defense continued to thrive.[18]

Development of Workers' Compensation Legislation

When the Industrial Revolution came into full swing in the 19th century, there was a sharp rise in the number of on-the-job injuries, not just in the United States, but in all industrialized countries. At the same time, the legal remedies available for injured workers became increasingly restricted.[19] The combination of these two factors caused a drastic increase in the number of society's destitute families. The social burden of this large number of people who had become poverty stricken by their employment created political pressure for the law to provide for the disabled.

The compensation movement began in Europe, starting with the German Compensation Act of 1884. The German Act provided for compensation through mandatory insurance contributions from both the employee and the employer. In 1897, the British Parliament adopted the Workmen's Compensation Act of 1897. The British Act is the model most American states followed in constructing their compensation statutes. Under the British Act, the employer funded all of the benefits, but they could purchase private insurance to cover their obligations. By 1908 almost every industrialized country except the United States had some sort of compensation system in place.

In 1910 the New York Employers Liability Commission issued a report stating that tort litigation as a remedy for workplace injuries was beneficial neither to industry nor to workers. The commission published three main conclusions:

1. Tort litigation produced grossly inadequate financial support for disabled workers and their families.
2. Tort litigation was very expensive for industry and produced little corresponding benefit to injured workers.
3. The long delay between the injury and any ultimately favorable judgment in court forced employees to choose between doing without needed medical care and immediate support for themselves and their families or else accepting a "low ball" settlement in order to meet these immediate needs.[20]

Thus began the workers' compensation movement in the United States.

At first, several states passed workers' compensation statues, but these were invalidated by successful constitutional challenges.[21] In 1913 New York became the first state to enact a compensation act that passed judicial scrutiny.[22]

Alabama passed its Act in 1919.[23] With only slight modification, the Alabama Legislature adopted Minnesota's workers' compensation statute.[24] Alabama enacted its workers' compensation statute to solve some of the same problems identified by the 1910 New York Employers Liability Commission. The beneficent purposes of the Alabama Act are:

- To provide certain relief to workers who had become unable to work because of their employment-related injuries;[25]
- To avoid the delay of relief associated with taking a tort claim to trial;[26] and
- To shift the burden of industrial injuries onto the industry that caused the injury.[27]

The bedrock principles of workers' compensation law–that the Act is to be

liberally construed in favor of the employee[28] and that all reasonable doubts are to be resolved in favor of the employee[29]–are aimed at accomplishing these beneficent purposes.

Constitutionality of Workers' Compensation Legislation

The workers' compensation statutes were attacked on many theories,[30] but the first major constitutional challenge occurred in New York. The opponents of the statute argued that the no-fault compensation system deprived the employer of his property without due process of law and that it denied the employer equal protection of the law, in violation of the Fourteenth Amendment to the United States Constitution.[31] The United States Supreme Court upheld the New York statute by holding that no one has a right to prevent laws from being changed and there is a rational basis for drawing a distinction between an employer's liability to its employees and its liability to a stranger.[32]

Once workers' compensation statutes were upheld against federal constitutional challenges, the battleground shifted to the state constitutions. In Alabama, the compensation statute was first upheld in 1921, when the Alabama Supreme Court ruled that the, "Defendant, employer, had the option of avoiding the compensation Act, but, having elected to accept the same, is bound by its provisions and waived the right to invoke constitutional objections to same." [33] The Alabama statute has been challenged several times since then,[34] most recently in 1991.[35] For the most part, the Act is challenged on the basis that it violates Section 13 of the Alabama Constitution of 1901 which states "[t]hat all Courts shall be open; and that every person for any injury done him, in his lands, goods, person, or reputation shall have a remedy by due process of law."[36] While at times it has stricken down certain aspects of Alabama's Workers' Compensation statute,[37] the Alabama Supreme Court has consistently held that because the Alabama statute is elective rather than compulsory, then the parties have impliedly contracted themselves into the compensation system.[38] Therefore, the court has reasoned, constitutional challenges are waived.[39]

The conclusion that the Alabama Workers' Compensation Act remains elective, vital as it may be to the current constitutional analysis, seems logically unfounded. When the Act was amended in 1973,[40] the method for opting out was repealed. Therefore it is currently impossible for an employer who is otherwise subject to the Act to elect to forego coverage. The court insists that the 1973 amendments merely removed the procedure for opting out, but did not alter the elective nature of the Act.[41] However, without some sort of procedure for opting out, it is impossible for an employer or an employee to do so. For all practical purposes at least, the Alabama Act is now compulsory.

Comparison Between Workers' Compensation and Previous Remedies

The Workers' Compensation system is a completely distinct body of law, having almost no commonalities with the tort remedies predating it. However, in Alabama there is a similarity that is almost unique to this state. While most states have an administrative agency that decides disputes between employers and employees over benefits, Alabama has conferred jurisdiction of these disputes upon its judiciary.[42] Therefore, workers' compensation claims and tort claims are decided in the same courts.

In a workers' compensation case, however, the employee has given up certain rights available under the tort system in exchange for the certainty and immediacy of a limited award. Therefore, liability issues, available remedies and the judicial view of the evidence in a workers' compensation

Make a
Quick Case
with
Uncontested Divorce
software designed by lawyers for lawyers

Now you can easily complete all of the required paperwork for uncontested divorces in just minutes. Then just print and file at court!

Quick Case's Uncontested Divorce software has everything you need to work smarter not harder and save time and money!

Software for Windows

Create:
Complaint
Answer & Waivers
Statement of Non Represent Party
Testimony of Petitioner
Separation Agreement
Final Decree of Divorce
Child Support Information
CS-41
CS-42
CS-43
Custody Affidavit
Wage Withholding Order

PLUS:
Calculates child support using Rule 32 of the Alabama Rules of Judicial Administration to the nearest dollar in seconds!

Order YOUR copy TODAY!
1-800-752-1140
Special Introductory Offer!
$595.00
until March 15, 2000

@PSI
www.at-psi.com
Performance Support, Inc.
The trusted name in software since 1985!
We accept
VISA

A CaR Software, LLC Product
Performance Support, Incorporated
5950 Carmichael Place, Suite 100
Montgomery, AL 36117
Phone 334-244-9797 • Fax 334-244-9787
Toll Free 1-800-752-1140

case are completely dissimilar from these in a tort claim.

In proving liability in a workers' compensation claim, fault is almost completely irrelevant.[43] All that a plaintiff must prove is that he was injured by an accident arising out of and in the course of his employment with the defendant, and the appropriate notice was given to the employer. In a tort claim, even a "strict liability" claim, fault always comes into play, at least to some extent.[44]

In a tort claim, all damages that can be proven can be awarded (i.e. pain and suffering, actual lost wages, lost earning capacity, punitive damages, loss of consortium, disfigurement, loss of enjoyment of life, medical bills, etc.).[45] However, in a workers' compensation claim in Alabama, three benefits are available: lifetime medical coverage for all reasonable and necessary medical expenses that are related to the on-the-job injury and provided by the authorized doctor; compensation based upon injuries to scheduled members of the body, or upon loss-of-earning capacity; and payment of vocational rehabilitation expenses, if appropriate.[46]

When deciding a case in a tort claim, the court or jury has no guidance as to how to resolve doubts, except that the burden of proof is upon the plaintiff to prove by a preponderance of the evidence each and every element of his claim.[47] When weighing the evidence in a workers' compensation claim, the employee is to be given the benefit of all reasonable doubts and the law is to be liberally construed in favor of the employee, because of the remedial nature of the Act.[48]

The workers' compensation system represents a trade-off between employers and employees. The employees give up their rights to be ultimately "made whole" under the tort system by foregoing all the damages available in a tort claim. Instead, employees are only eligible for the benefits available under the Act, which are very limited and very restricted. In exchange, employees receive immediate and certain medical care, and immediate and certain limited compensation for disability. It is for this reason–to better ensure that the employees' limited workers' compensation benefits are, in fact, immediate and certain–that employees are to be given the benefit of every reasonable doubt and the Act is to be liberally construed in favor of the employee. Employers, on the other hand, have liability determined without regard to fault. Consequently, employers give up all defenses that are based upon fault, including the common-law defenses of contributory negligence, fellow servant doctrine and assumption of risk. In exchange, employers receive the protections of the exclusivity provisions of the Act and avoid the possibility of general damages. Thus, the extent of the employer's liability in any one case is limited. ■

Endnotes

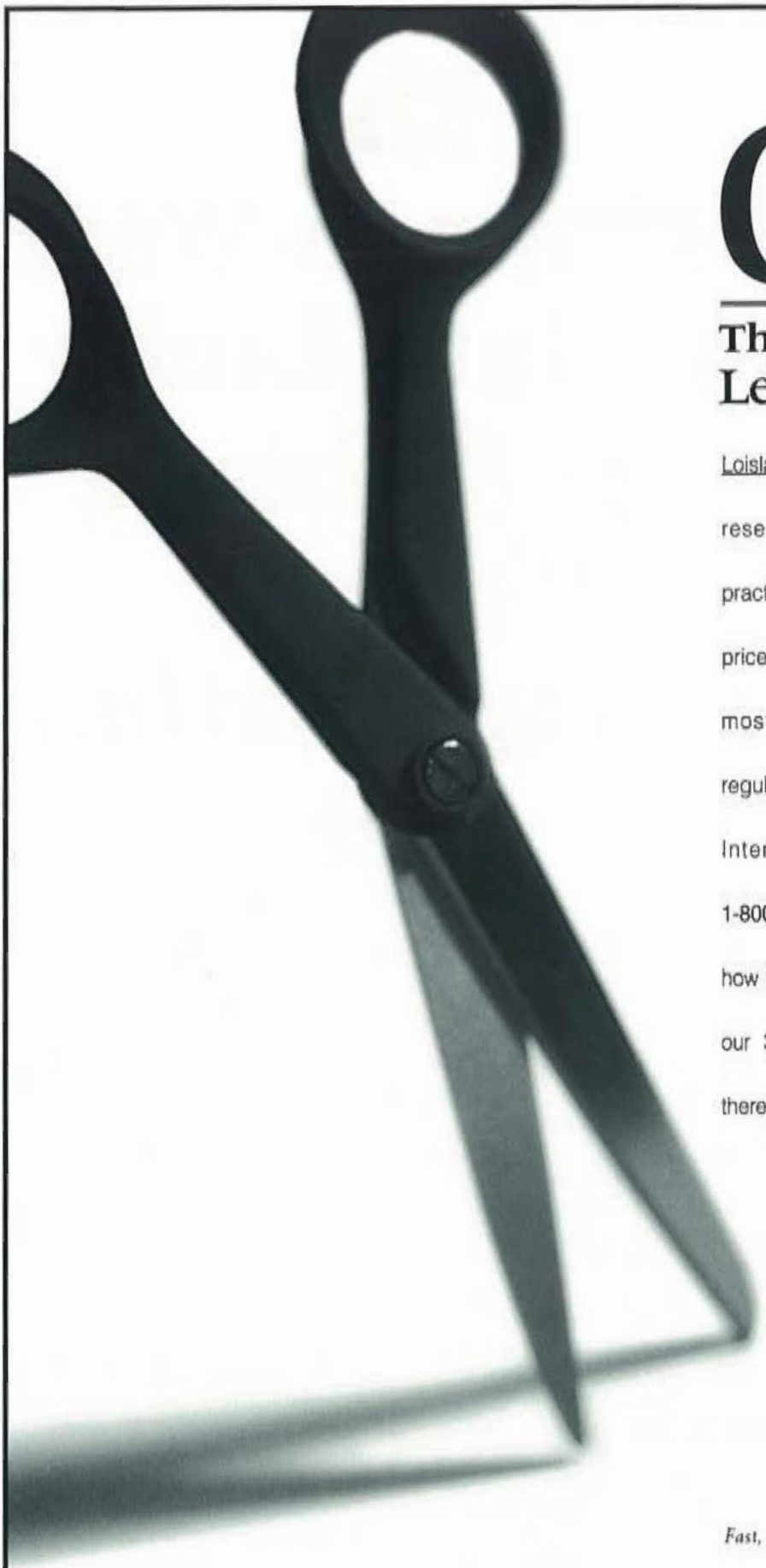
1. See *infra*, note 8.
2. See *infra*, note 8.
3. *Priestley v. Fowler*, 3 M & W 1, 150 Eng. Rep. 1030 (1837); *Walker v. Bolling*, 22 Ala. 294 (1853)
4. *Mobile & Ohio R.R. Co. v. Thomas*, 42 Ala. 672, 723 (1868).
5. *Mobile & Ohio R.R. Co.*, 42 Ala. at 723.
6. *Tyson v. South & North Alabama R.R. Co.*, 61 Ala. 554. (Ala. 1878). *Foreman v. Dorsey Trailers*, 256 Ala. 253, 256-57 (Ala. 1951).
7. *Mobile & Ohio R.R. Co.*, 42 Ala. at 724-25.
8. *Mobile & Ohio R.R. Co.*, 42 Ala. at 724. *Smoot v. Mobile & Montgomery Ry. Co.*, 67 Ala. 13, 17-18 (1880).
9. *Id.*
10. *Woodward Iron Co. v. Jones*, 80 Ala. 123 (1885).
11. See *Smoot*, *supra*, note 8.
12. See *infra*, note 14.
13. *Code of Alabama* 1975 § 25-6-1 *et seq.*
14. *Briggs v. Tennessee Coal, Iron & Railroad Co.*, 163 Ala. 237, 239-40 (1909). *George v. Mobile & Ohio R.R. Co.*, 109 Ala. 245, 256-58 (1895); *Coosa Mf'g Co. v. Williams*, 133 Ala. 606 (1901).
15. *Id.*
16. *Acts of Alabama*, No. 455, p. 485 (1911)
17. *Southern Cotton Oil Co. v. Walker*, 164 Ala. 33, 49-53 (1909).
18. *Orr v. Decatur Box & Basket Co.*, 205 Ala. 317 (1920).
19. See, *supra*, Section 1.1.
20. Walter F. Dodd, *Administration of Workmen's Compensation*, 19-26 (1936).
21. For a discussion of these cases, see Boyd, *Compensation for Injuries to Workmen*, 153-204 (1913).
22. *New York Central R.R. Co. v. White*, 243 U.S. 188 (1917).
23. *Acts of Alabama*, No. 245, pp 200-39 (1919).
24. *Brunson Milling Co. v. Grimes*, 267 Ala. 395 (1958). *Pow v. Southern Const. Co.*, 235 Ala. 580 (1938).
25. *Alabama By-Products Co. v. Landgraff*, 32 Ala. App. 343, aff'd, 248 Ala. 253 (1946).
26. *Semmes Nurseries, Inc. v. McVay*, 279 Ala. 42 (Ala. 1965).
27. *Pow*, *supra*, note 24.
28. *Ex Parte Majestic Coal Co.*, 208 Ala. 86 (Ala. 1922); *Sloss-Sheffield Steel and Iron Co. v. Nations*, 236 Ala. 571 (Ala. 1938).
29. *National Cast Iron Pipe Co. v. Higginbotham*, 216 Ala. 129 (1927).
30. See, *supra*, note 21.
31. *New York Central R.R. Co. v. White*, *supra*, note 22.
32. *Id.*
33. *Woodward Iron Co. v. Bradford*, 206 Ala. 447 (1921).
34. *Chapman v. Railway Fuel Co.*, 212 Ala. 106 (1924). *Grantham v. Denke*, 359 So.2d 785 (Ala. 1978). *Pipkin v. Southern Elec. & Pipe Fitting Co.*, 358 So. 2d 1015 (Ala. 1978). *Smith v. West Point-Pepperell, Inc.*, 431 So. 2d 1268 (Ala. Civ. App. 1983). *Reed v. Brunson*, 527 So.2d 102 (Ala. 1988).
35. *Murdock v. Steel Processing Services, Inc.*, 581 So.2d 846 (Ala. 1991).
36. Alabama Constitution 1901, Sec. 13.
37. *Eg., Grantham* and *Pipkin*. See, *supra*, note 34.
38. *Id.*
39. *Id.*
40. See *infra*, Chapter 2.
41. *Pipkin*, 358 So. 2d at 1016.
42. *Ala. Code* § 25-5-88.
43. Fault comes into play if the injured employee engages in "willful misconduct," *Ala. Code* § 25-5-51.
44. Arthur Larson, *The Law of Workmen's Compensation*, §§ 2.00–2.70 (1992).
45. See Charles W. Gamble, *Alabama Law of Damages*, 3rd ed. (1994).
46. For a more detailed discussion of these benefits, see chapters 10, 11 and 12, *infra*.
47. *Alabama Pattern Jury Instructions*, 2nd ed., § 8.00 (1993) and cases cited therein.
48. See *supra*, notes 28 and 29.

Steven W. Ford

Steven W. Ford is a native of Tuscaloosa and is a founding partner of McElvy & Ford, P.C. He is a graduate of the University of Alabama and the University of Alabama School of Law. He has served as president of the Tuscaloosa County Bar Association and is a co-founder and past chairperson of the ASB Workers' Compensation Law Section. Ford is a past recipient of the state bar's Award of Merit and Award of Achievement. He is a member of many professional associations, and co-authored *Alabama Workers' Compensation Law and Handbook*.

James A. Abernathy, II

James A. Abernathy, II is a native of Tuscaloosa, where he practices with the firm of McElvy & Ford, P.C. He received a Bachelor of Arts degree from the University of Alabama and his law degree from the University of Alabama School of Law. In addition to the Alabama State Bar, he is a member of the Alabama Trial Lawyers Association and the National Organization for Social Security Claimants' Representatives. He has previously written an article on Social Security disability law for the *Alabama Trial Lawyers Journal*.



CUT

The High Cost Of Legal Research

Loislaw.com, Inc. can cut your cost of research with a flat rate every practitioner can afford. For one low price, you get unlimited access to the most current cases, statutes, regulations and more through the Internet. So don't wait. Call 1-800-364-2512 today and find out how to save using Loislaw.com. With our 30-day money-back guarantee, there's nothing to lose.

Loislaw.com

1-800-364-2512

www.loislaw.com

Fast, Accurate, Affordable Legal Research™

The Return-to-Work Statute Under the Alabama Workers' Compensation Act

The Alabama Workers' Compensation Act is a tropical forest filled with savory fruits, exotic flowers and sundry uncommon species. The purpose of this article is to briefly address the history and current status of one of the forest's most misidentified and misunderstood species: the return-to-work statute. In order to understand the significance of the statute's application, a brief deviation into general workers' compensation law is necessary.

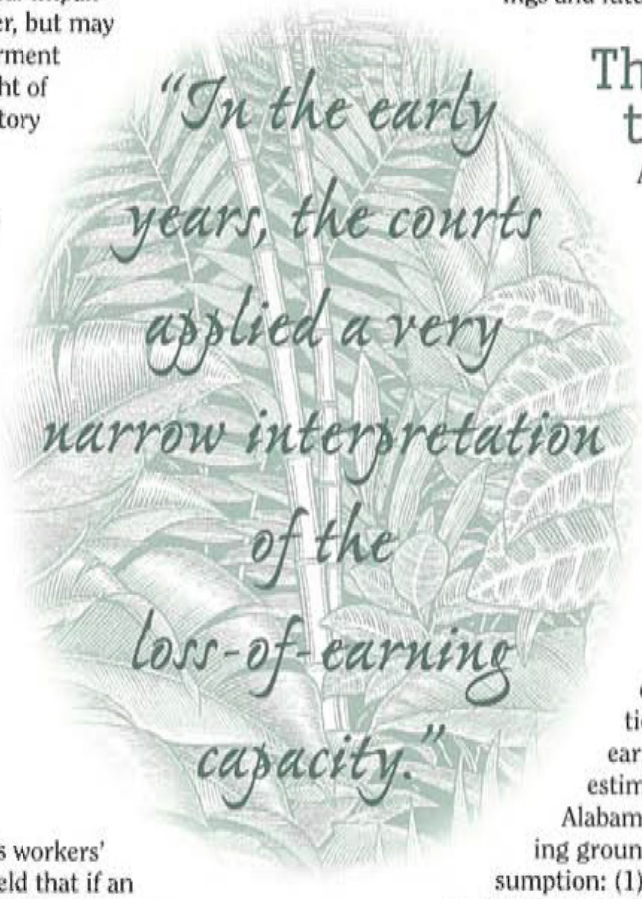
By Valerie J. Acoff and Edward J. Berry

Very generally speaking, if an employee of an employer suffers a personal injury from an accident arising out of and in the course of his or her employment, the employee is entitled to reasonably necessary medical expenses, reimbursement mileage and compensation.[1] Compensation refers to actual monetary benefits.[2] Generally, from the time of the on-the-job injury until the date the employee reaches Maximum Medical Improvement ("MMI"),[3] the employee is entitled to compensation in the amount of 66 2/3 percent of the employee's Average Weekly Earnings. Once the employee reaches MMI, a determination must be made as to whether the employee will suffer any permanent physical or mental impairment as a result of the on-the-job injury. Only if the employee suffers a permanent physical or mental impairment will the employee be entitled to the compensation the Workers' Compensation Act provides for those employees who suffer permanent disability after reaching MMI.[4]

Alabama courts have recognized several separate forms of permanent impairment. They include medical impairment, physical impairment and vocational impairment.[5] The difference between these forms of impairment will be explained later. No matter which impairment rating is applicable, it is usually expressed as a percentage. This percentage is inserted into a formula to determine the amount of compensation to which the employee is entitled. The applicable formula will depend upon whether the permanent

disability is categorized as a permanent partial scheduled injury, permanent partial non-scheduled injury or a permanent total injury. The differences between these categories of permanent injuries will also be discussed later.

Generally, an employee's medical and physical impairment is usually lower than the employee's vocational impairment (loss-of-earning capacity). For example, a typical manual laborer may suffer a 7 percent medical impairment for the loss of the tip of a finger, but may suffer a 60 percent vocational impairment due to the loss of the fingertip in light of the employee's past employment history and educational background. Logically, the lower the percentage plugged into the applicable formula, the lower the award of compensation to the employee. Because the return-to-work statute generally precludes the use of a vocational impairment rating if the employee returns to work earning equal to or more than the employee's pre-injury wages, determining its applicability becomes very important to both sides of a workers' compensation case.



History of the Return-to-Work Issue[6]

During the early years of Alabama's workers' compensation law, Alabama courts held that if an employee returned to work after an on-the-job injury making equal to or more than the employee's pre-injury wages, the employee could not introduce evidence of vocational disability.[7] In the early years, the courts applied a very narrow interpretation of loss-of-earning capacity. If the court concluded, upon review of the employee's pre-injury wages and the post-injury wages, that the two were identical or if the post-injury wages were greater than the pre-injury wages, the court would assume that the employee suffered no loss-of-earning capacity. This approach can best be described as an "actual wage loss" analysis. However, this form of determining loss-of-earning capacity was flawed. First, it was flawed because employers could manipulate post-injury earnings to purposefully avoid creating a loss of earning capacity.[8] For example, an employer could pay the employee the same or greater wages despite the fact that the returning employee could not satisfactorily perform the job because of physical limitations the employee incurred as a result of the on-the-job injury. If the employer continued to pay equal or greater post-injury wages until the expiration of the statute of limitations, the employee's claim for loss-of-earning capacity was simply lost. Under an actual wage loss analysis, the employee would have no loss-of-earning capacity despite the fact that the employee's capacity to obtain employment in the open market would be diminished if the employer decided to fire the employee. Secondly, the actual wage loss analysis was flawed because it simply failed to recognize the theoretical difference between current earnings and future earning potential.

The Courts See the Light

After years of using a strict actual wage loss analysis for determining loss-of-earning capacity, the courts began to recognize the problems inherent in such an analysis. The courts compensated for the problems outlined above by adopting a "presumption analysis."[9] Under this analysis, a presumption arose that an employee suffered no loss-of-earning capacity if the employer could establish that the employee's post-injury wages were the same or higher than his or her pre-injury wages. However, under the presumption analysis, an employee could rebut the presumption by showing that the post-injury earnings were an unreliable basis for estimating loss-of-earning capacity. Alabama courts often accepted the following grounds as sufficient to rebut the presumption: (1) post-injury wages were higher than pre-injury wages because the employer only continued plaintiff's employment out of sympathy or a desire to create a false impression of no loss-of-earning capacity;[10] (2) post-injury wages were not reliable because they were temporary and unpredictable;[11] (3) post-injury wages were unreliable because general wage levels had increased since the time of the accident;[12] and (4) post-injury wages were not reliable because the increase in wages was due to the employee's increase in training, age or hours worked.[13]

The ability of the employee to rebut the presumption of no loss-of-earning capacity that arose from equal or higher post-injury wages allowed an employee the opportunity to show what logic suggests that just because an employee returns to work making equal to or more than his or her pre-injury wage does not mean that the employee will always make these wages. Further, the fact that an employee returns to work making equal to or more than his or her pre-injury wage does not mean that the employee's ability to get a job in the future will not be adversely affected by the injury sustained as a result of the on-the-job accident.

The Return-to-Work Statute

In 1992, the Alabama legislature changed the presumption analysis by enacting the statute known today as the "return to work statute." The statute, codified as *Ala. Code* § 25-5-57(a)(3)(i)(1975), states:

> Return to work–If, on or after the date of maximum medical improvement, except for scheduled injuries as provided in Section 25-5-57(a)(3), an injured worker returns to work at a wage equal to or greater than the worker's pre-injury wage, the worker's permanent partial disability rating shall be equal to his or her physical impairment and the court shall not consider any evidence of vocational disability. Notwithstanding the foregoing, if the employee has lost his or her employment under circumstances other than any of the following within a period of time not to exceed 300 weeks from the date of the injury, an employee may petition a court within two years thereof for reconsideration of his or her permanent partial disability rating:
>
> (I) The loss of employment is due to a labor dispute still in active progress in the establishment in which he or she is or was last employed. For the purposes of this section only, the term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. This definition shall not relate to a dispute between an individual worker and his or her employer.
>
> (II) The loss of employment is voluntary, without good cause connected with such work.
>
> (III) The loss of employment is for a dishonest or criminal act committed in connection with his or her work, for sabotage, or an act endangering the safety of others.
>
> (IV) The loss of employment is for actual or threatened misconduct committed in connection with his or her work after previous warnings to the employee.
>
> (V) The loss of employment is because a license, certificate, permit, bond, or surety, which is necessary for the performance of such employment and which he or she is responsible to supply, has been revoked, suspended, or otherwise become lost to him or her for a cause.
>
> The burden of proof is on the employer to prove, by clear and convincing evidence, that an employee's loss of employment was due to one of the causes (i) through (v) above. At the hearing, the court may consider evidence as to the earnings the employee is or may be able to earn in his or her partially disabled condition, and may consider any evidence of vocational disability. The fact the employee had returned to work prior to his or her loss of employment shall not constitute a presumption of no vocational impairment. In making this evaluation, the court shall consider the permanent restriction, if any, imposed by the treating physician under Section 25-5-77, as well as all available reasonable accommodations that would enable the employee in his or her condition following the accident or onset of occupational disease to perform jobs that he or she in that condition otherwise would be unable to perform, and shall treat an employee able to perform with such accommodation as though he or she could perform without the accommodation. Nothing contained in this section shall be construed as having any effect upon any evidentiary issues or claims made in third-party actions pursuant to Section 25-5-11.

"The burden of proof is on the employer to prove, by clear and convincing evidence, that an employee's loss of employment was due to one of the causes [codified as Ala. Code Section 25-5-56 (a) (3) (i) (1975)]."

In summary, the return-to-work statute states that if the employee enjoys post-injury earnings equal to or greater than his or her pre-injury earnings, the court must use the employee's physical impairment rating to determine the employee's compensation benefits at the time of trial. Evidence of vocational impairment is not admissible. This portion of the statute is very similar to the actual wage loss theory described above. However, the statute does allow an extremely limited rebuttal which is a remnant from the

court's presumption approach. If the employee loses his or her job within 300 weeks from the date of injury for any reason other than one of the five reasons outlined in the statute, the employee may petition the court within two years from the date of termination for a hearing to address vocational disability.

The Elements of the Return-to-Work Statute

Based upon *Ala. Code* § 25-5-57(a)(3)(i) (1975) and cases interpreting the statute, the following elements must be shown to establish the statute's applicability: (1) the employee suffered a non-scheduled, permanent partial disability, (2) returned to work, and (3) at a wage equal to or greater than the worker's pre-injury wage. Each element has its own meaning and problems. Consequently, each element warrants a separate discussion.

Non-Scheduled, Permanent Partial Injury

The return-to-work statute is only applicable to non-scheduled, permanent partial disabilities. As stated earlier, once the employee reaches MMI, a determination must be made as to whether the employee has suffered any residual permanent impairment as a result of his or her injuries and if so, to what degree. Once a permanent impairment is established, the injury sustained must be categorized as a permanent total disability, a permanent partial scheduled injury, or a permanent partial non-scheduled injury. A permanent total disability refers to an employee's inability to return to gainful employment or be retrained.[14] This category of disability is probably the most uncommon type. The return-to-work statute does not apply to injuries that fall within the parameters of permanent total disability.[15] Further, the return-to-work statute does not apply to a scheduled injury.[16] A permanent partial scheduled injury is an injury to one of the members of the body outlined in *Ala. Code* § 25-5-57(a)(3) (1975). These members include thumbs, fingers, toes, hands, feet, legs, eyes, and ears.

The return-to-work statute is only applicable to a permanent partial non-scheduled injury.[17] A non-scheduled injury is an injury to a portion of the body not enumerated in the schedule or an injury to an enumerated member that extends beyond the injured member to affect other parts of the body.[18]

Return to Work

In order to establish the applicability of the return-to-work statute, the employer must also establish that the employee returned to work. Although neither the statute nor any cases specifically define what "return to work" means under the new statute, some sources provide a good explanation of what it probably means or should mean. Terry Moore, author of *Alabama Workers' Compensation*,[19] states that the definition of "return to work," consistent with cases interpreting the phrase under the old law, should encompass an employee's return to work with the employee's old employer or a new employer doing an old job or a new job. The courts have indirectly approved this statement of what the law is or should be. In *Compass Bank v. Glidewell*[20], a grade 16 bank manager, who was injured on the job, returned to work with his employer as a grade 14 operations analyst. The court noted that, "since the plaintiff still works for the defendant and is making the same or more than his pre-injury wage, the court, under 25-5-57(i) of the Code, is prohibited from considering any evidence of vocational disability."[21] The *Glidewell* court indirectly accepted that the employee was considered to

THE HIGHEST QUALITY IN COURT REPORTING

ESTABLISHED 1974

Condensed & Indexed Transcripts
Discovery ZX, ASCII & Word Perfect Diskettes
Realtime & Daily Copy Available Upon Request
Expedited Delivery
Videotape • Timestamping
Electronic Transcript Delivery
Deposition Suite

Tyler Eaton Morgan Nichols & Pritchett COURT REPORTERS

1975 SouthTrust Tower • 420 20th Street North
Birmingham, Alabama 35203
205-252-9152 • WATS: 1-800-458-6031
FAX: 205-252-0196

Do You Need a Tree Expert?

* Tree Valuations
* Pesticide Damages
* Tree Care
* Registered Foresters
* Tree Protection
* Timber Trespass
* Tree Assessments
* Certified Arborists

Southern Urban Forestry Associates
205-333-2477
P. O. Box 1403, Northport, AL 35476

have returned to work when returning to his old employer performing a new job. An employee's return to work with his or her old employer doing an old job should clearly fall within the definition of return to work. The court has applied the return-to-work statute in such a scenario.[22] Morever, in *Kiracofe v. BE & K Construction Co.*,[23] an injured construction worker did not return to work with the company at which he was injured; instead, he returned to work with several other companies. Although the court did not specifically address whether working solely for another employer satisfied the return-to-work prong of the statute, the court did apply the statute. Logic suggests that returning to work for a different employer should satisfy the return-to-work prong as it creates an even stronger presumption of no loss-of-earning capacity than returning to one's old employer. Accordingly, courts will likely hold that returning to work for another employer, whether performing an equivalent or a non-equivalent job, will satisfy the return-to-work prong of the statute.

Note, however, that if an employee fails to return to any job, for whatever reason, the return-to-work prong of the statute is not satisfied. For instance, in *Avondale Mills, Inc. v. Weldon*,[24] an employee was diagnosed as suffering from obstructive lung disease as a result of being exposed to cotton dust on the job. Because the employer would not accommodate the employee's restrictions from exposure to dusty environments, the employee simply did not return to his old job. In addition, the employee did not return to work with any other employer. The court held that the return-to-work statute was not applicable.[25] The *Avondale* court's ruling on this issue could suggest to some plaintiffs that the return-to-work statute could be avoided by simply not returning to any job until after the trial. However, the *Avondale* court did recognize the possible application of the "refusal to accept suitable employment statute" under such circumstances. *Ala. Code* § 25-5-57(a)(3)(e) (1975) states in pertinent part: If an injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation at any time during the continuance of the refusal.

Thus, if an employee attempts to avoid the application of the return-to-work statute by simply failing to return to a job, an employer may invoke this provision to bar all compensation. The discontinuance of benefits is only available when the employee refuses *suitable* employment offered by the employer. If the offered employment is not suitable, then the provision will not apply.[26]

Equal or Greater Wages

In order to establish the applicability of the return-to-work statute, the employer must establish that the employee's post-injury wages are equal to or greater than his or her pre-injury wages. Determining whether the pre-injury wages are equal to or greater than the post-injury wages requires a comparison between pre-injury and post-injury wages. Logically, to make an accurate comparison, one must identify what com-

www.alabar.org

Want the latest in ASB programs and resources?

Need to find a colleague's phone number quickly?

How about reading the latest news releases from the bar?

Or sending an e-mail to an ASB staff member?

Many of your ASB questions can be answered quickly and easily on the bar's Web site. Go to **www.alabar.org** now. Tell 'em we sent you. All the information you need is ready and waiting.

prises the pre-injury wages and the post-injury wages. Failing to correctly and accurately define both the pre- and post-injury wages can be a very costly mistake.

The term "wages" for purposes of the return-to-work statute, means "average weekly earnings" as that term is defined in *Ala. Code* § 25-5-1 (1975).[27] An employee's "average weekly earnings" includes not only the wages that the employee receives, but also the economic value of "fringe benefits" that the employer provided before the injury, but subsequently ceased providing after the injury.[28] "Fringe benefits" include the employer's portion of health, life and disability insurance premiums.[29] In addition, "fringe benefits" can include contributions to retirement plans,[30] vacation and holiday pay,[31] and meals and travel costs, [32] as well as any other benefit for which the employee derives a real economic gain. A practitioner's diligence regarding the identification of fringe benefits can go a long way in actually determining whether an employee really earns equivalent or greater post-injury wages.

Second, the pre-injury and post-injury comparison shall be based upon the employee's weekly earnings, not an employee's hourly wage.[33] Often times, an employee will return to work making a greater hourly wage, but a lower weekly wage for some reason or another. If the employee earns a lower weekly wage upon return to work, the statute is not applicable, despite the fact that the employee earns equal or greater hourly wages. For instance, in *3-M Company, Inc. v. Myers*,[34] an injured employee returned to work after an on-the-job injury making the same hourly wage, but her average weekly earnings decreased because she could not work overtime due to her injuries. The court held that the return-to-work statute did not apply under these circumstances.[35] Similarly, in *American Cast Iron Pipe Co. v. Uptain*,[36] the injured worker returned to work with the employer earning a greater hourly wage, but lower weekly earnings due to an inability to work overtime hours. The court held that the return-to-work statute did not apply.[37]

Finally, the practitioner must note that if an employee returns to work with his employer and works a second job, the wages the employee makes at the second job will not be counted for purposes of post-injury wages. In *American Cast Iron Pipe Co. v. Uptain*,[38] an injured employee returned to work with his employer. Despite the fact that the employee returned at a greater hourly rate, he earned less weekly earnings working with his employer because he worked less hours. The employee had a second job in which he worked for himself. The court suggests that had the wages earned at the second job been considered, the employee's post-injury wages would have exceeded his pre-injury wages. The court did not consider the wages the employee earned in his second job. The court apparently based its ruling upon the fact that the employee could no longer work the long hours he had previously worked with his employer because of the injuries, and thus he had to get a second job to support himself. The employer argued that the employee voluntarily declined to work long hours because he could make more money working for himself.[39] Apparently, the court did not accept this argument. The court held that the return-to-work statute was not applicable.[40]

So What If the Return-to-Work Statute Applies?

The Short-Term Effect

The short-term effect of the applicability of the return-to-work statute is that the court will base the compensation calculation upon the employee's physical impairment rating. The court will not entertain any testimony regarding vocational impairment. Note, a physical impairment rating is not the same as the medical impairment rating.[41] A medical impairment rating is a doctor's estimate of impairment.[42] A physical impairment rating, on the other hand, is simply the judge's assessment of the employee's impairment.[43] Although the court may consider the doctor's medical impairment rating when determining the percentage of physical impairment, the court is not bound by the doctor's assessment.[44] The court can decide the impairment rating, even if the court's assigned physical impairment rating is in conflict with the medical impairment.[45] For example, in *Glidewell*, the court assigned the employee a 34 percent physical impairment rating despite the fact that the employee's doctor assigned a 27 percent medical impairment rating. In *Glidewell*, the court concluded that the injured employee's physical impairment rating was greater than the doctor's medical impairment rating.[46] The court may also grant a physical impairment rating that is lower than the doctor's medical impairment rating.[47] In determining the employee's degree of impairment, the court can consider not only the doctor's medical impairment rating, but also lay witness testimony and any other relevant testimony.[48]

The Long-Term Effect

If the employee (1) loses his or her job, (2) within 300 weeks from the date of injury, (3) for an impermissible reason (for a reason other than the five reasons outlined in the statute), (4) petitions the court, (5) within two years from the date of termination, the court will conduct a hearing to assess the employee's permanent impairment. At this hearing, the court is now allowed to consider evidence of loss of earning capacity (i.e. vocational impairment). This approach would appear to be based upon the assumption that no employer would continue to pay an employee equal or greater post-injury wages beyond six years (300 weeks) if the employee was not capable of delivering 100 percent. To the extent that this economic maxim is true, the statute conservatively addresses the concerns regarding situations wherein the employer pays an employer equivalent or greater post-injury wages: (1) out of sympathy, (2) in an effort to create a false impression of no loss-of-earning capacity, or (3) simply pays the equivalent or greater post-injury wages temporarily. In all three situations, an employer is not likely to pay unmerited wages for over 300 weeks. Thus, the employee will likely be terminated within 300 weeks, and consequently will get an opportunity to petition the court for a hearing regarding loss-of-earning capacity. Under this scenario, the court will consider vocational disability; however, the employee may have already experienced

six years of loss-of-earning capacity at the time of the hearing. The statute does not mention whether the employee will be compensated for the time he or she experienced loss-of-earning capacity before the hearing.

Additionally, because the employee's right to rebut is only triggered by the loss of his or her job, the statute does not adequately address those situations wherein equivalent or greater post-injury wages are due to a general increase in wage levels, training or age. These situations are those in which the employee is not likely to quit or lose his or her job for injury-related reasons. Consequently, where these scenarios are applicable, the employee will not have an opportunity to petition the court under the return-to-work statute. However, as explained earlier, during the presumption analysis years, Alabama courts considered these scenarios as adequate means to rebut the presumption of no loss-of-earning capacity. Under the return-to-work statute, these concepts likely will not be considered.

Conclusion

Clearly, the return-to-work statute will continue to be a matter of controversy between employees, employers, counsel and insurers. Knowledge of its history and current application will enable all parties to better evaluate workers' compensation claims. It is hoped this article will be helpful in that regard. ■

Endnotes

1. *Ala. Code* § 25-5-51 (1975); *Ala. Code* § 25-5-77(a) & (b) (Supp.1998). If several other elements are met, the employee may also be entitled to vocational rehabilitation. *Ala. Code* § 25-5-77(c) (Supp. 1998).
2. *Ala. Code* § 25-5-1(1) (1975).
3. The date of Maximum Medical Improvement is simply a date designated by a physician or the court that identifies when an injured employee has recovered as much as medically possibly and the physician or court can make an estimate as to the extent of any permanent disability.
4. *See Shaw v. Cannon Sline, Inc.*, 678 So. 2d 193 (Ala. Civ. App. 1996).
5. *Fuller v. BAMSI, Inc.*, 669 So. 2d 128, 130 (Ala. Civ. App. 1996); *Dunlop Tire Corp. v. Nail*, 668 So. 2d 798 (Ala. Civ. App. 1995).
6. For a very thorough review of the history of the return-to-work rule, *see* Terry A. Moore, *Alabama Workers' Compensation Volume 2*, (Alan A. Johnson & Cathleen L. Owens eds.) at 566-82 (1998). Moore's treatise was invaluable in aiding the organization and content of this article.
7. *Ex Parte American Blakeslee Mfg.*, 19 Ala. App. 547, 98 So. 817 (1924).
8. *Nashville Bridge v. Honeycutt*, 20 So. 2d 591 (Ala. 1945).
9. *Goodyear Tire & Rubber Co. of Ala. v. Downey*, 266 Ala. 344, 96 So. 2d 278 (1957).
10. *Lehigh Portland Cement Co. v. Yeager*, 648 So. 2d 602 (Ala. Civ. App. 1994).
11. *Ogden Allied Eastern States Maintenance Corp. v. Hughes*, 623 So. 2d 307 (Ala. Civ. App. 1993).
12. *Harbison Walker Refractories v. McKaig*, 567 So. 2d 324 (Ala. Civ. App. 1990).
13. *United States Steel Mining Co. Inc. v. Riddle*, 627 So. 2d 455 (Ala. Civ. App. 1993).
14. *Red Mountain Constr. Co. v. Neely*, 627 So. 2d 931 (Ala. Civ. App. 1992).
15. *Keen v. Showell Farms, Inc.*, 668 So. 2d 783 (Ala. Civ. App. 1995).
16. *Dunlop Tire Corp. v. Nail*, 668 So. 2d at 799.
17. *See Keen v. Showell Farms, Inc.*, 668 So. 2d at 786; *Dunlop Tire Corp. v. Nail*, 668 So. 2d 799.
18. *Bell v. Driskell*, 282 Ala. 640 (Ala. 1968).
19. Terry A. Moore, *Alabama Workers' Compensation Volume 2*, (Alan A. Johnson & Cathleen L. Owens eds.) at 566-7 (1998).
20. *Compass Bank v. Glidewell*, 685 So. 2d 739 (Ala. Civ. App. 1996).
21. *Glidewell*, 685 So. 2d at 741.
22. *Fuller*, 669 So. 2d at 129.
23. 695 So. 2d 62 (Ala. Civ. App. 1997).
24. *Avondale Mills, Inc. v. Weldon*, 680 So. 2d 364 (Ala. Civ. App. 1996).
25. *Avondale*, 680 So. 2d at 367.
26. *Id.*
27. *American Cast Iron Pipe Co. v. Uptain*, 680 So. 2d 378, 379 (Ala. Civ. App. 1996).
28. *Ala. Code* § 25-5-57(b) (1975); 25-5-1(6) (1975).
29. *Ala. Code* § 25-5-1(6) (1975).
30. *Goodyear Tire & Rubber Co. v. Gilbert*, 521 So. 2d 991 (Ala. Civ. App. 1987).
31. *Shields v. GTI Corp.*, 607 So. 2d 253 (Ala. Civ. App. 1992).
32. *Lewis G. Reed & Sons, Inc. v. Wimbley*, 533 So. 2d 626 (Ala. Civ. App. 1988).
33. *Uptain*, 680 So. 2d at 379.
34. *3-M Co. v. Myers*, 692 So. 2d 134 (Ala. Civ. App. 1997).
35. *Myers*, 692 So. 2d at 139.
36. *Uptain*, 680 So. 2d at 376.
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. *See Glidewell*, 685 So. 2d at 741.
42. *Fuller*, 669 So. 2d at 131.
43. *Id.*
44. *Id.*
45. *Glidewell*, 685 So. 2d at 741.; *Fuller*, 669 So. 2d at 131.
46. *Glidewell*, 685 So. 2d 739 at 741.
47. *Kiracofe v. B E & K Constr.*, 695 So. 2d 62 (Ala. Civ. App. 1997) (Where injured employee was assigned a 5 percent permanent impairment from his treating physician, court rejected the plaintiff's argument that the trial court must base compensation upon the 5 percent impairment. Court held that it has discretion in such matters.)
48. *Fuller*, 669 So. 2d at 129.

Valerie J. Acoff
Valerie J. Acoff is an associate in the Birmingham office of Thomas, Means, Gillis, Devlin, Robinson & Seay, P.C. She received her law degree from Cumberland School of Law.

Edward J. Berry
Edward J. Berry is an associate in the Birmingham office of Thomas, Means, Gillis, Devlin, Robinson & Seay, P.C. He received his law degree from Cumberland School of Law.

Bibb Allen:
Prominent and Humble Member of the Greatest Generation

By David P. Condon

Journalist Tom Brokaw recently authored a best-selling book entitled *The Greatest Generation*. The book begins with Brokaw describing the "life-changing experience" he underwent while visiting Ohama Beach in Normandy, France. He was there to prepare an NBC documentary on the 40th anniversary of D-Day, the massive Allied invasion of Europe that marked the beginning of the end of Adolf Hitler's Third Reich. Brokaw explains, "I walked the beaches with the American veterans who had landed there and now returned for this anniversary, men in their sixties and seventies, and listened to their stories in the cafes and inns, I was deeply moved and profoundly grateful for all they had done." When Brokaw returned to Omaha Beach ten years later to cover the 50th anniversary of D-Day, he was asked his thoughts on what the reporters were witnessing. As he looked over the assembled crowd of veterans, which included everyone from Cabinet officers and captains of industry to retired schoolteachers and machinists, he said, "I think this is the greatest generation any society has ever produced." Brokaw's book pays tribute to "those men and women who have given us the lives we have today." Each of the book's chapters is a short biography on a different member of the greatest generation and details the member's military service and post-war achievements. If Tom Brokaw knew Bibb Allen, I am sure he would have included a chapter on Bibb in his book.

Bibb Allen grew up in Birmingham, Alabama, the youngest of Edgar and Mary Francis Allen's four children. Edgar was an attorney in Birmingham in solo practice and Bibb was the only one of his children to join his father's profession.

After graduating from Ramsay High School in 1939, Bibb enrolled at Birmingham Southern College. It was at Birmingham Southern that he first met the former Louise Irving, his beautiful wife of 54 years. Following his sophomore year at Birmingham Southern, Bibb withdrew from college to enlist in the United States Air Force.

Bibb certainly would never admit it, but he was a hero in the World War II. He was a fighter pilot, flying P-47 fighters in over 100 missions all through Europe and the Aleutian Islands during his three years in the Air Force. Bibb contributed significantly to the Allied's successful invasion of Omaha Beach, flying a mission in the June 6, 1944 attack. Over the next 12 days, Bibb flew an additional 14 missions in France.

Twice during the war, it appeared as though Bibb would never return to the United States. His plane was shot down on two separate occasions in enemy territory. On one occasion, after his plane went down, Bibb was declared "missing and presumed dead" by the U.S. government. However, Bibb had made an emergency landing in a field, unable to employ the landing gear as it had been incapacitated by enemy fire. After several hours behind enemy lines, Bibb made his way back to an Allied camp.

Bibb never talks about his military service, not because it was an unpleasant experience that he would like to forget, but simply because he is so humble. If you ask Bibb about his service as a fighter pilot, he won't provide any details or stories of his bravery. Instead, he will tell you that he often was scared, and was truly fortunate to serve his country in such a small way.

Following his graduation from the University of Alabama School of Law in 1950, Bibb joined the Birmingham firm of London & Yancey, which later became London, Yancey, Clark & Allen. To say Bibb's legal career has been distinguished and highly accomplished does not scratch the surface. Bibb is a trial lawyer, first and foremost, having tried an estimated 500 jury trials. Bibb has spent much of his 50-year legal career defending insurance companies and their insureds.

Stories about Bibb's unique trial tactics and strategies are still told frequently by younger lawyers throughout the state. These amusing and entertaining stories might normally appear embellished over the passage of time, but with the colorful Bibb as the center of the story, they certainly appear nothing but genuine.

At the age of 77, Bibb still maintains an active trial practice with the firm of Rives & Peterson. And, he remains one of the most recognized and respected members of the Alabama State Bar. He is certainly respected because of his highly effective advocacy skills and his accomplished record. But that is not the main reason. He is respected because, he, in the words of Tom Brokaw, has "stayed true to his values of personal responsibility, duty, honor, and faith." Bibb treats everyone–judges, lawyers, secretaries, custodians, spouses–with nothing but respect and compassion.

If you ask Bibb what he is most proud of in his lengthy legal career he won't cite any particular accomplishment or milestone. Instead, he will sincerely tell you, "I'm most proud of the relationships I've been fortunate to have with lawyers of the highest reputations and standards who can be trusted and who are interested in the law and its results."

If you ask Bibb what advice he would give a young lawyer beginning practice today, he quickly tells you, "The best advice is the Lord's advice found in the Book of Micah, chapter six, verse eight: 'Do justice, love kindness and walk humbly with your God.'" Bibb recognizes that lawyers are often in influential positions and should use these positions as opportunities to do good outside of the profession. Bibb has certainly done so himself.

Bibb has taught Sunday School at the First Methodist Church of Birmingham for the past 40 years. He has also taught Torts and Civil Procedure at the Birmingham School of Law for the past 30 years. When asked why he has taught law school all these years at night in the midst of a heavy workload, Bibb responds, "Lawyers ought to give something back to their profession." Bibb has also provided leadership to his peers, having served as president of both the Alabama State Bar and the Birmingham Bar Association.

While many lawyers his age have either retired or cut back substantially on their work, Bibb continues to make significant contributions to this profession he loves. Specifically, two years ago, Bibb, somewhere between his law practice, teaching law school and Sunday school, and spending time with his grandchildren, found time to write a 21-chapter, 700-page comprehensive book entitled *Alabama Liability Insurance Handbook* which serves as a fixture on many lawyers' desks across the state.

This book certainly will not be Bibb's last contribution to the practice of law. He will always have much to contribute and daily he selflessly continues to pass on his knowledge to lucky younger attorneys. ■

David P. Condon
David P. Condon practices in Birmingham with the firm of Rives & Peterson. He is a graduate of Cumberland School of Law, Samford University, and is a 1994 admittee to the Alabama State Bar.

United States Postal Service
Statement of Ownership, Management, and Circulation

1. Publication Title	2. Publication Number	3. Filing Date
The Alabama Lawyer	0 0 0 2 - 4 2 8 7	October 20, 1999
4. Issue Frequency	5. Number of Issues Published Annually	6. Annual Subscription Price
Bimonthly: January, March, May, July, September, November, w/special directory edition in June	7 (seven)	$15: state bar members $20: all others

7. Complete Mailing Address of Known Office of Publication (Not printer) (Street, city, county, state, and ZIP+4): Alabama State Bar, 415 Dexter Avenue, Montgomery, AL 36104 — Contact Person: Margaret Murphy; Telephone: (334) 269-1515

8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer): Alabama State Bar, 415 Dexter Avenue, Montgomery, AL 36104

9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Do not leave blank)
Publisher (Name and complete mailing address): Alabama State Bar, 415 Dexter Avenue, Montgomery, AL 36104
Editor (Name and complete mailing address): Robert A. Huffaker, 184 Commerce Street, Montgomery, AL 36104
Managing Editor (Name and complete mailing address): Margaret L. Murphy, 415 Dexter Avenue, Montgomery, AL 36104

10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)

Full Name	Complete Mailing Address
Alabama State Bar	415 Dexter Avenue, Montgomery, AL 36104

11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box → ☐ None

Full Name	Complete Mailing Address

12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) (Check one)
The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes:
☒ Has Not Changed During Preceding 12 Months
☐ Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)

PS Form 3526, September 1998 (See Instructions on Reverse)

15. Extent and Nature of Circulation			Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)			12,800	13,330
b. Paid and/or Requested Circulation	(1)	Paid/Requested Outside-County Mail Subscriptions Stated on Form 3541. (Include advertiser's proof and exchange copies)	12,300	12,685
	(2)	Paid In-County Subscriptions (Include advertiser's proof and exchange copies)	-0-	-0-
	(3)	Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS	-0-	-0-
	(4)	Other Classes Mailed Through the USPS	-0-	-0-
c. Total Paid and/or Requested Circulation (Sum of 15b. (1), (2),(3),and (4))			12,300	12,685
d. Free Distribution by Mail (Samples, complimentary, and other free)	(1)	Outside-County as Stated on Form 3541	-0-	-0-
	(2)	In-County as Stated on Form 3541	-0-	-0-
	(3)	Other Classes Mailed Through the USPS	75	50
e. Free Distribution Outside the Mail (Carriers or other means)			75	70
f. Total Free Distribution (Sum of 15d. and 15e.)			150	120
g. Total Distribution (Sum of 15c. and 15f)			12,450	12,805
h. Copies not Distributed			350	525
i. Total (Sum of 15g. and h.)			12,800	13,330
j. Percent Paid and/or Requested Circulation (15c. divided by 15g. times 100)			98%	99%

16. Publication of Statement of Ownership
☒ Publication required. Will be printed in the November 1999 issue of this publication. ☐ Publication not required.

17. Signature and Title of Editor, Publisher, Business Manager, or Owner: Margaret L. Murphy — Date: 10-20-99

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

Instructions to Publishers

1. Complete and file one copy of this form with your postmaster annually on or before October 1. Keep a copy of the completed form for your records.
2. In cases where the stockholder or security holder is a trustee, include in items 10 and 11 the name of the person or corporation for whom the trustee is acting. Also include the names and addresses of individuals who are stockholders who own or hold 1 percent or more of the total amount of bonds, mortgages, or other securities of the publishing corporation. In item 11, if none, check the box. Use blank sheets if more space is required.
3. Be sure to furnish all circulation information called for in item 15. Free circulation must be shown in items 15d, e, and f.
4. Item 15h., Copies not Distributed, must include (1) newsstand copies originally stated on Form 3541, and returned to the publisher, (2) estimated returns from news agents, and (3), copies for office use, leftovers, spoiled, and all other copies not distributed.
5. If the publication had Periodicals authorization as a general or requester publication, this Statement of Ownership, Management, and Circulation must be published; it must be printed in any issue in October or, if the publication is not published during October, the first issue printed after October.
6. In item 16, indicate the date of the issue in which this Statement of Ownership will be published.
7. Item 17 must be signed.

Failure to file or publish a statement of ownership may lead to suspension of Periodicals authorization.

PS Form 3526, September 1998 (Reverse)

YOUNG LAWYERS' SECTION

By Thomas B. Albritton, YLS president

Youth Judicial Program a Success

Thomas B. Albritton

This year the Alabama State Bar Young Lawyers' Section again helped sponsor the Youth Judicial Program, a joint project between the YMCA Youth in Government Judicial Program and the YLS. The purpose of this program is to provide high school students in Alabama with "hands-on" experience in our judicial system by giving them an opportunity to prepare and try cases during the State Mock Trial Competition.

Because of ever-increasing participation, we established regional competitions this year. The winners of those competitions then competed in the final Mock Trial competition held in Montgomery October 30–November 1, 1999 at the Montgomery County Courthouse. Over 325 students participated this year. Winners of the Mock Trial competition will compete at the National Competition in South Carolina in May 2000.

The YLS expresses appreciation to **Corey Long** who has worked tirelessly to make this project a success, as well as the many other young and not so. . . well, those other lawyers who technically do not meet the arbitrary definition of young lawyer which our by-laws impose, but without whose efforts the project would not be a success.

If you are interested in being a coach for one of the teams, or if you are interested in helping our section in any other way with this project, please contact either me or one of the other members of our Executive Committee. The members of our Executive Committee for 1999-2000 are:

Reed Bates, Birmingham

LaBarron Boone, Montgomery

Ben Bowden, Andalusia

Brannon Buck, Birmingham

Kimberly Calametti, Mobile

Stoney Chavers, Mobile

Suzanne Dorsett, Huntsville

Kevin Gray, Huntsville

Bryan Horsley, Birmingham

Stuart Luckie, Mobile

Steve Marshall, Guntersville

Patrick McCalman, Andalusia

Michael Mulvaney, Birmingham

Apple Owens Millsaps, Tuscaloosa

Nancy Rainer, Montgomery

Ed Rowan, Mobile

Elizabeth Smithart, Union Springs

Sarah Stewart, Mobile

Lisa Van Wagner, Montgomery

Harlan Winn, Birmingham ■

ETHIXCHEX

By J. Anthony McLain

Ethics Potpourri for $50:

Fees, Gigabytes, Fellows and Files

In the present scheme of things, the legal profession struggles against a tide of public criticism, ridicule and downright condemnation. While the majority of lawyers recognize the problems incidental to this negative perception, what are we as a profession doing to refute this with our daily actions?

This column usually presents a formal opinion of the Disciplinary Commission, which opinion is often requested by lawyers in Alabama from the Office of General Counsel. However, due to recent inquiries of bar leaders and members, I felt the need to deal with certain areas which continue to be fraught with confusion and misunderstanding by lawyers in Alabama, as well as by the general public.

Fees—Right, Fight or Fantasy?

A primary motivation behind many bar grievances is an attempt by a client to receive a fee refund or reduction. The threat of the (former) client is that the lawyer must refund all or a portion of a fee or "I'll report you to the bar!" Call it leverage, threat or extortion, but several complaints reviewed by the Disciplinary Commission are nothing more than fee disputes between the lawyer and client. And most involve the "smaller" fee-generating cases, thereby forcing the lawyer to decide whether it is worth his or her time and effort to fight the dispute, or just refund per the client's demands.

Thankfully, the Alabama State Bar now has a statewide fee dispute committee which diverts what would otherwise be a disciplinary investigation to a committee member who attempts to mediate and resolve the dispute. The work of this committee mirrors the efforts of established fee dispute committees of certain local bar associations. The results have been very positive for both the client and the lawyer, and probably the profession as a whole.

The Disciplinary Commission has rendered opinions establishing that there is no such thing in Alabama as a "non-refundable" retainer, and that child support arrearage cases should be handled on a contingency fee basis in only the most extraordinary situations, with significant, knowing consent being required of the client in those extraordinary situations.

However, complaints are still received by the Disciplinary Commission where "creative" lawyers attempt to circumvent these proscriptions with complex contract language, all of this at the cost of the public's perception of "greedy lawyers." The actions of the few again indict the profession as a whole.

J. Anthony McLain

Surf's Up! Ride the Internet!

The concept of advertising permeates the legal profession as it does most other professions and avocations. The numbers continue to reflect a general distaste by the public for any advertising, be it the newest laxative or bargain basement legal services. Why do you think they invented the remote control?

The United States Supreme Court has said that lawyer advertising is permissible, but may be regulated. But what does regulation have to do with taste? And it appears that the general public, while obviously responsive to advertising of all types, can be just as easily offended by certain attempts to "get" them as clients.

The Board of Bar Commissioners of the Alabama State Bar responded to certain complaints from the public by seeking from the Alabama Supreme Court a rule change which placed a 30-day moratorium on contact by lawyers with potential personal injury or wrongful death clients. The supreme court forthwith adopted just such a rule.

Yet certain lawyers continue to argue that their permissible letters of solicitation are not "covered" by the rule, or that they do not have to comply with other requirements of the advertising rules as they are too "burdensome" or "vague." The concern for the profession and its image again takes a back seat to an individual lawyer's personal motives.

Then comes the Internet, and with the exponential advancements in technology the public is now being bombarded with e-mails and advertising schemes which are most difficult to police, and even more difficult to regulate. Again, does the public really want to be "spammed" by lawyers and other e-commerce? Are late evening "courtesy calls" the next step for hawking legal services?

Further, the legal profession is now advancing "specialists" in certain areas of the law. While the statistics maintained by the bar do not reflect a huge surge of lawyers seeking specialist status or certification, some lawyers play loosely with other accolades or accomplishments when having their letterhead and business cards printed. Rule 7.5, *Alabama Rules of Professional Conduct*, states that a lawyer shall not use a firm name, letterhead or other professional designation which implies a connection with a government agency or with a public or charitable organization. The rule further requires that a firm with lawyers not licensed to practice in Alabama must, if such lawyer's name appears on the firm's letterhead, state that the lawyer is ***not*** licensed to practice in Alabama. And before you use "fellow," "charter member," "knight" or other moniker in connection with any academy, inn, union or congregation, please make sure such is an approved certifying organization consistent with Rule 7.4, *A.R.P.C.* Otherwise, including such listing on letterhead, business cards or beverage holders could constitute a violation of the rule.

Flight, Files and Fights

An increasing number of calls are being received by the Office of General Counsel from clients whose lawyer is leaving his or her firm, to relocate to another firm or "go solo." The anxious client is concerned as to who will be his lawyer, where his file will end up, and what is going to happen to his case.

The opinions of the Disciplinary Commission state that absent a valid attorney's lien, the file belongs to the client and shall go/stay where the client wants it to go/stay. However, some lawyers allow their representation of the client to be overshadowed by their contractual dispute with their "former" firm, and thus hinder the advancing of the client's case–not wise, not prudent.

In ABA Formal Opinion 99-414, the ethical obligations of a lawyer upon withdrawal from one firm to join another were addressed, concluding that the lawyer's obligations include: (1) disclosing her pending departure in a timely fashion to clients for whose active matters she currently is responsible or plays a principal role in the current delivery of legal services; (2) assuring that client matters to be transferred with the lawyer to her new law firm do not create conflicts of interest in the new firm and can be competently managed there; (3) protecting client files and property and assuring that, to the extent reasonably practicable, no client matters are adversely affected as a result of her withdrawal; (4) avoiding conduct involving dishonesty, fraud, deceit, or misrepresentation in connection with her planned withdrawal; and (5) maintaining confidentiality and avoiding conflicts of interest in her new affiliation respecting client matters remaining in the lawyer's former firm.

The opinion goes on to say that notification to current clients is required, and does not constitute impermissible solicitation. However, such notice must fairly describe the client's alternatives and should provide the client with information sufficient to allow the client to make an informed decision with regard to future representation. Obviously, the better method of notification to the client would be a joint communication by the lawyer and the firm. When other issues prevent such joint notification, the obligations listed above are *de minimis* and are in addition to those of a fiduciary. And under no circumstances should personal or contractual disputes between the lawyer and the firm impede the timely and adequate provision of legal services to the client.

Let's Be Careful Out There

The rules and their interpretations were never designed to make the practice of law burdensome. Remember, these are rules of ethics, not rules of prohibition. As lawyers, we owe the public and other members of this profession conduct which not only comports with the rules, but which also demonstrates civility and professionalism.

If nothing else is remembered about this commentary, remember this—I have yet to receive a complaint against a lawyer for being ***too*** ethical. Try to be the first. ■

DISCIPLINARY NOTICES

Notices

- **John Archie Acker, Jr.,** whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of January 15, 2000, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB Nos. 97-157(A) and 96-279(A) before the Disciplinary Board of the Alabama State Bar.
- **Frank Dreaper Cunningham,** whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of January 15, 2000, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB Nos. 96-047(A) and 95-238 (A) before the Disciplinary Board of the Alabama State Bar.
- **John Merrill Gray, II,** whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of January 15, 2000, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB No. 97-323(A) before the Disciplinary Board of the Alabama State Bar.
- **Vinson Wilson Jaye**, whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of January 15, 2000, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB No. 99-37(A) before the Disciplinary Board of the Alabama State Bar.
- **Cecil Barlow Monroe**, whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of January 15, 2000, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB No. 92-141(A) before the Disciplinary Board of the Alabama State Bar.
- **James Bridges Morton, II,** whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of January 15, 2000, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB Nos. 92-298(A), 93-321(A) and 94-358(A) before the Disciplinary Board of the Alabama State Bar.
- **Harry Searing Pond, IV,** whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of January 15, 2000, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB Nos. 96-223(A), 96-319(A) and 97-164(A) before the Disciplinary Board of the Alabama State Bar.
- **Roger Shayne Roland,** whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of January 15, 2000, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB Nos. 97-009(A), 97-021(A), 97-026(A), 97-027(A), 97-049(A), 97-071(A), 97-094(A), 97-166(A), 97-167(A), 97-222(A), 96-145(A), 96-195(A), 96-275(A), 96-312(A), 96-317(A), 96-344(A), 96-364(A), 96-365(A), 96-373(A), and 95-125(A) before the Disciplinary Board of the Alabama State Bar.
- **Dennis Michael Sawyer,** whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of January 15, 2000, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB Nos. 93-043(A), 93-267(A), 93-350(A) and 93-350(A) before the Disciplinary Board of the Alabama State Bar.
- **Karla Ann Shivers,** whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of January 15, 2000, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against her in ASB Nos. 96-084(A), 96-110(A), 96-182(A), 96-183(A), 96-193(A), 96-216(A), 96-217(A), 96-218(A), 96-237(A), and 96-245(A) before the Disciplinary Board of the Alabama State Bar.
- **James Arthur Tucker, Jr.,** whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of January 15, 2000, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB Nos. 97-323(A) and 95-350(A) before the Disciplinary Board of the Alabama State Bar.
- **Edward Michael Young,** whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of January 15, 2000, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline imposed against him in ASB Nos. 98-256(A) and 98-257(A) before the Disciplinary Board of the Alabama State Bar. ■

Disbarment

- Florence attorney **William Lee Hanbery** consented to disbarment after pleading guilty to a felony theft charge in the Circuit Court of Lauderdale County. On November 9, 1999 the Alabama Supreme Court affirmed the Disciplinary Board's order of disbarment.

  Hanbery had formerly served as the executive director of the Tennessee Valley Juvenile Detention Center. Between 1993 and the time Hanbery fled the state in October 1998, the center suffered a financial loss of $582,000. Seven Alabama counties contributed to operational funds for the center. Hanbery diverted a substantial amount of that money to his own use. He was indicted for theft in the first degree on May 10, 1999. He entered a guilty plea on September 10, 1999 and was sentenced to 13 years in the penitentiary. [Rule 23(a), ASB Pet. No. 99-002]

Suspensions

- Hoover attorney **William Kevin DelGrosso** was interimly suspended from the practice of law in the State of Alabama effective October 1, 1999, by order of the Disciplinary Commission of the Alabama State Bar. DelGrosso's interim suspension was based upon his failure to comply with orders of the Alabama Court of Criminal Appeals, his failure to respond to repeated requests for information from a disciplinary authority and his failure to cooperate with the Office of General Counsel of the Alabama State Bar during disciplinary proceedings. [Rule 20(a); ASB Pet. No. 99-06]
- **William Lyle Shumway**, whose whereabouts are unknown, was suspended from the practice of law in the State of Alabama for a period of two years by order of the Disciplinary Board of the Alabama State Bar effective September 23, 1999. The respondent attorney was found guilty of engaging in the unauthorized practice of law in the United States Bankruptcy Court, District of Arizona, a violation of Rule 5.5(a), *Alabama Rules of Professional Conduct*. During the course of the bankruptcy proceedings, the respondent attorney forged a client's signature on an amended bankruptcy petition, a violation of Rule 8.4(c), *A.R.P.C.* The respondent attorney was also found guilty of violating Rules 8.4(a), 8.4(d) and 8.4(g), *A.R.P.C.* The respondent attorney failed to answer the formal charges within the time allowed by Rule 12, *Alabama Rules of Disciplinary Procedure*, and, therefore, the charges were deemed admitted. [ASB No. 98-172]

Public Reprimands

- Cullman attorney **Michael Allen Stewart, Sr.** received a public reprimand with general publication from the Disciplinary Board of the Alabama State Bar on October 29, 1999. The board found that Stewart failed to respond to numerous phone calls from his client and from the father of his client, and otherwise failed to communicate with the client concerning the status of the representation. The board further found that Stewart failed or refused to respond to the Alabama State Bar concerning the complaint, which was filed against him, or to provide information requested by the bar. Stewart's conduct violated Rules 1.4(a) and 8.1(b) of the *Rules of Professional Conduct*. Stewart was also ordered to refund one-half of the fee paid by the client and to spend a minimum of four hours in consultation with the director of the Law Office Management Assistance

EVERYTHING YOU NEED

to RUN YOUR PRACTICE

- Completely furnished offices and suites
- Part-time office plans with full-time services available
- Fully equipped conference rooms for meetings and depositions
- Word Processing, transcriptions, dictation, notary public
- State-of-the-art technology
- High-speed copiers, courier and delivery services
- Access to over 200 locations worldwide

Southbridge
205.414.7000
2100 Southbridge Parkway
Suite 650
Birmingham, AL 35209

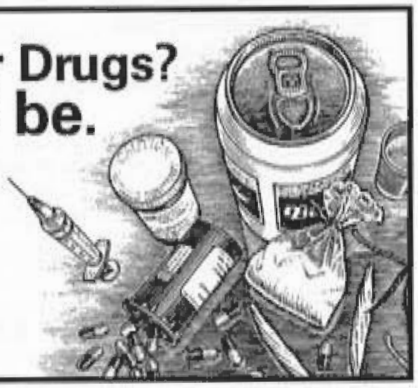
Perimeter Park
205.970.6000
One Perimeter Park South
Suite 100N
Birmingham, AL 35243

LEGAL-11/99

VANTAS
OFFICING SOLUTIONS WORLDWIDE

Hooked on Alcohol or Drugs? You don't have to be.

The Alabama Lawyer Assistance Program can help. Calls are strictly confidential.
Phone (334) 834-7576 or
(334) 395-0807 (24-hour pager).
Jeanne Marie Leslie, program director



Program and to promptly implement any recommendations made by the director. [ASB No. 99-014(A)]

- On July 14, 1999, Huntsville attorney **Robert Norris Payne** received a public reprimand without general publication. Payne represented a client in an automobile accident case. The accident occurred on September 24, 1996, and Payne was hired on July 17, 1997. While he was negotiating with the responsible party's insurance company, the statute of limitations ran. There had been a settlement offer of $4,000 at one point. After the statute ran, the insurance company stopped negotiating on the case. Payne notified his client, and accepted responsibility for allowing the statute to expire. He agreed to accept the discipline and made arrangements with the client to pay her $6,000. [ASB No. 98-335(A)]
- On September 17, 1999, Daphne lawyer **Elizabeth Cobb Campbell** received a public reprimand without general publication for violating Rules 1.3 and 1.4(a) of the *Rules of Professional Conduct.*

On March 1, 1996, Ms. Emma Blackwell was terminated from the United States Postal Service. Blackwell hired Campbell to represent her. The Postal Service sent a "Notice of Final Interview" to Campbell by certified mail. This notice informed that Blackwell had 15 days within which to file an EEOC discrimination complaint with the Postal Service. Campbell signed for this letter on April 8, 1996. The EEOC complaint was filed on May 1, 1996 and it was dismissed as being untimely. Campbell then appealed the dismissal, but it was affirmed by the EEOC. On May 12, 1997 Campbell filed suit in federal court under Title VII for racial discrimination and sexual harassment. On August 25, 1998, the U.S. District Court granted a motion to dismiss for the defendants because of the plaintiff's failure to exhaust administrative remedies. Campbell did not respond to the motion, nor did she make Blackwell aware of it. Blackwell did not learn of the federal court's decision until she herself called the clerk's office. No prior discipline was considered. [ASB No. 98-301(A)]

- On September 17, 1999, Sylacauga lawyer **Michael Anthony Givens** received a public reprimand without general publication. He had previously reimbursed a former client the sum of $3,524.47. The complaint arose out of Givens' neglect of a divorce case he was handling for the defendant/husband. Givens failed to file an answer, and the opposing side took a default.

Givens failed to appear at the hearing and default testimony was taken and a judgment was entered against the husband for back child support, medical bills and other expenses. Because Givens felt responsible for the default judgment, he agreed to pay $150 per month to the Department of Human Resources on the client's behalf. Givens signed an agreement to that effect but he never made payment. The client filed a grievance with the bar. Givens made the restitution after the bar filed formal charges against him on September 10, 1998. The public reprimand was given as a result of Givens' guilty plea to a violation of Rule 1.3 of the *Rules of Professional Conduct* (willful neglect of a legal matter). Givens had one prior public reprimand. [ASB No. 97-057(A)]

Disability

- Montgomery attorney **Ranah Leigh Stapleton** was transferred to disability inactive status pursuant to Rule 27(c), *Alabama Rules of Disciplinary Procedure*, effective October 1, 1999. [Rule 27(c); ASB Pet. No. 99-05] ■

Computer Management Solutions

"The personal commitment by the staff of Mitchell-Wayne Corportation has given our firm an unlimited degree of confidence in their knowledge and services.

By providing computer products, services and solutions, MWC is truly able to provide a long-term level of security which will carry our firm into the next millennium."

J. Paul Clinton, Partner with the law firm of Stokes, Clinton, Fleming & Sherling, Mobile

The Mitchell Wayne Corporation
3936 Montclair Road
Birmingham, AL 35213

"We could not ask for better support from anyone we work with. One call to the Mitchell-Wayne Corporation and our I T problems are solved. They have assisted our practice with our entire computer system including web page access and our E-mail solutions."

Ben L. Zarzuar, Sr., Zarzuar & Schwartz P.C. Birmingham

For more information call 205-879-3936, FAX 205-879-3934 or you can visit us at www.mwsys.com

Authorized representative

COMPAQ Microsoft Certified Solution Provider Authorized Agent of BellSouth Telecommunications BELLSOUTH

CLE Reminder

ALL Continuing Legal Education credits must have been **earned** by December 31, 1999. All CLE transcripts must be **received** by January 31, 2000.

RECENT DECISIONS

By David B. Byrne, Jr., Wilbur G. Silberman and Rachel Sanders-Cochran

Recent Decisions of the United States Supreme Court–Criminal

Confrontation Clause–Out-of-Court Accomplice Testimony Is Inadmissible

***Lilly v. Virginia*, Case No. 98-5881, 527 U.S. __, 119 S.Ct. 1887, 144 L.Ed.2d 117 (1999).** A criminal defendant's Sixth Amendment right to confront all adverse witnesses is violated when trial evidence includes out-of-court statements by an alleged accomplice unavailable to testify at trial and those statements admit some wrongdoing, but place primary blame on the defendant.

This case involves the admission of a co-accomplice's 50-page police confession which incriminated, at a higher level of culpability, his brother at a separate trial. A plurality of four justices, Stevens, Souter, Ginsburg and Breyer, found a violation of *Ohio v. Roberts*, 448 U.S. 56 (1980). Justice Scalia found the error to be a paradigmatic Confrontation Clause violation which requires remand for a harmless error analysis. Justice Thomas adhered to his view that the Confrontation Clause extends to any witness who actually testifies at trial and is implicated by extra-judicial statements only insofar as they are contained in formalized testimonial material, such as affidavits, depositions, prior testimony or confessions. See *White v. Illinois*, 502 U.S. 346, 365 (1992). Justice Thomas agreed with Chief Justice Rehnquist that the clause does not impose a blanket ban on the use of accomplice statements that incriminate a co-defendant and that since the lower courts did not analyze the confession under the second prong of the *Roberts* inquiry, the plurality should not address that issue.

In this case, the accomplice confessed to participating in a burglary, but stated that the defendant was the one who shot and killed a person whose car they had stolen during their crime spree. The fact that portions of the confessions were "against penal interest" does not place the non-self-inculpatory portions incriminating the co-defendant brother within a firmly rooted exception to the hearsay rule. The later portions were presumptively unreliable.

The Supreme Court remanded the case to the Virginia courts to determine whether the violation of the defendant's Confrontation Clause rights was harmless error beyond a reasonable doubt. Ultimately, the Supreme Court's ruling held that the confession could not be considered "sufficiently reliable as to be admissible without allowing the defendant to cross-examine him."

Materiality Must Be Proved In Mail, Wire and Bank Fraud Cases

***Neder v. United States*, Case No. 97-1985, 527 U.S. __, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999).** In federal cases which allege bank fraud, wire fraud or mail fraud, prosecutors must prove that an allegedly fraudulent act affected the outcome of a transaction.

David B. Byrne, Jr.
David B. Byrne, Jr., is a graduate of the University of Alabama, where he received both his undergraduate and law degrees. He is a member of the Montgomery firm of Robison & Belser and covers the criminal decisions.

"REMEMBER WHEN YOU BELIEVED IN JUSTICE FOR ALL?"

Chief Justice Rehnquist, writing for the Court, held that "materiality is an element of the federal mail fraud, wire fraud and bank fraud statutes." The Court reasoned: "Materiality of the falsehood is an element of a scheme or artifice to defraud under the federal mail fraud, wire fraud, and bank fraud statutes." Under a natural reading of the statutory text itself, materiality would not be an element of the fraud statutes. However, where Congress uses terms that have accumulated a settled meaning under the common law, a court must infer, unless the statute dictates otherwise, that Congress intended to incorporate the established meaning. The well-settled meaning of "fraud" requires a misrepresentation or concealment of a material fact. Nothing in the text of the fraud statutes dictates a different conclusion, so it is presumed that Congress intended to incorporate materiality as an element.

The Court split six-to-three on whether to send the case back to the United States Court of Appeals for the Eleventh Circuit to determine if the trial judge's failure to submit materiality to the jury was harmless error under the circumstances.

Justice Scalia wrote a partial dissent in which he was joined by Justice Souter and Justice Ginsburg holding that such an error can never be harmless.

COLLECTIONS SOFTWARE
COLLECT MAX™
DEBTOR MANAGEMENT SOFTWARE UNIQUELY DESIGNED FOR COLLECTIONS ATTORNEYS. PRICES START AT JUST $1700.
JST
FREE DEMONSTRATION VIDEO
1.800.827.1457
JS TECHNOLOGIES, INC.
1516 WILLOW LAWN DRIVE
RICHMOND, VA 23230
www.jstec.com
"THE SIMPLE SOLUTION"
ONE-TIME DATA ENTRY • WORDPERFECT/WORD INTERFACE
INTEGRATED TICKLER SYSTEM • AUTOMATIC FEE CALCULATION

Fourth Amendment–Automobile Search Exception

***Maryland v. Dyson*, ___ U.S. __, 119 S.Ct. 2013, ___ L.Ed.2d ___ (1999).** The Fourth Amendment does not require the police to obtain a search warrant before searching an automobile that they have probable cause to believe contains illegal drugs. Under established precedent, the *"automobile exception" to the warrant requirement has no separate exigency requirement*. In 1982, the United States Supreme Court, in *United States v. Ross*, held that the search of an automobile is not unreasonable, even though a warrant has not been obtained, if the search is based on facts that would support a warrant. Justice Breyer filed a dissenting opinion.

Fifth Amendment–Breadth of Self-Incrimination Concept

***Mitchell v. United States*, 526 U.S. 314, 119 S.Ct. 1307, 143 L.Ed.2d 424 (1999).** In a five-to-four decision, the Supreme Court held that a sentencing judge had violated Mitchell's Fifth Amendment rights by drawing adverse inferences from her refusal to testify at sentencing. The defendant had pled guilty to cocaine distribution, but reserved the right to challenge the drug quantity used to determine her sentence.

At sentencing, Mitchell did not testify although the government offered the testimony of three co-conspirators regarding Mitchell's involvement in particular drug deals and the quantities involved. Based in part on Mitchell's refusal to rebut this testimony, the district judge determined the amount of drugs involved made Mitchell eligible for the ten-year mandatory minimum sentence.

In reversing the decision of the Third Circuit which had held that Mitchell had waived her right to remain silent by pleading guilty, the Supreme Court held that the right against self-incrimination is not waived until after sentencing and that a sentencing court, therefore, cannot draw adverse inferences from a defendant's refusal to testify at a sentencing hearing. The Supreme Court, however, carefully reserved ruling on whether the defendant's silence could be used in determining lack of remorse or acceptance of responsibility under the United States Sentencing Guidelines. *Inter alia*, the Supreme Court reasoned that a guilty plea, by itself, plainly is not a waiver of the privilege against self-incrimination at sentencing. It is simply an admission of guilt and the waiver of rights it includes is a waiver at trial only. Likewise, the Court easily rejected the Government's argument that the colloquy required by Rule 11 and the acceptance of a plea of guilty constituted a waiver under the general rule of *Rogers v. United States*, 340 U.S. 367 (1951). A witness may not voluntarily testify about some matters, but then refuse under the privilege to testify about related matters (waiver doctrine).

Finally, the Supreme Court also rejected the Government's invitation to hold that at sentencing, as generally in civil litigation, even if the privilege applies, it is permissible to draw an adverse inference from the defendant's or party's silence.

Justice Scalia and Justice Thomas wrote separate dissenting opinions urging the reconsideration of *Griffin v. California*, 380 U.S. 609 (1965) and *Carter v. Kentucky*, 450 U.S. 288 (1981).

Recent Bankruptcy Decisions

(To Include Recommended Rule Changes)

Employee claims under WARN and LMRA, advocated as lien claims under state law, are preempted by federal law, and lose to prior secured creditors

In re *Bluffton Casting Corp.* 186

F3d.887 (7th Cir. Aug. 24, 1999). Bluffton Casting filed chapter 11 January 27, 1997. At that time, the employees had claims for unpaid wages, vacation pay, health care expense, pension contributions, disability, and claims under the WARN Act and under their unions collective bargaining contract, both predicated upon the early plant closing. Mechanic and employee liens, as provided for under the *Indiana Code*, were filed to secure their claim. Adversary proceedings were then filed by the employees for determination of priority of their liens with relation to prior filed secured claims of Norwest Business Credit and of Besway of Indiana. Norwest filed for judgment on the pleadings, contending that the LMRA (Labor Management Relations Act), the WARN Act and ERISA preempted the lien claims. The bankruptcy court granted the motion, finding that the state lien remedies were based on these substantive claims, and, thus, preempted.

On appeal, the Seventh Circuit first observed that under the WARN Act, failure of the employer to give 60-day notice of a plant closing or massive layoff makes the employer liable for damages of back pay, lost benefits, costs and attorney fees. Further, although the remedies are the exclusive remedy for any violation under the Act, such rights and remedies are in addition to and not in lieu of other contracated or statutory rights and remedies, and are not intended to alter or affect such other rights and remedies. The employees argued that because of this last clause, the state code liens were also available in their action. The Seventh Circuit rejected the employees' argument, stating that the employees' interpretation is inconsistent with the plain language of the WARN Act and that as the remedies under it are exclusive, the Act could not be interpreted to allow a state court lien for violation of the WARN Act.

The Court then discussed whether a violation of the collective bargaining agreement could be a basis for allowance of the state law lien. Norwest had contended that such a claim would be preempted by LMRA which provides for federal court jurisdiction for violations where interstate commerce is involved. The Norwest argument was accepted. The Court distinguished *Lingle v. Norge* 108 S.Ct 1877 (1988), which held, *inter alia*, that "an application of state law is preempted by §301 of the Labor Management Relations Act of 1947 only if such application requires the interpretation of a collective-bargaining agreement." The employees contended further that there is not preemption because the claims for liens are based on Indiana law independent of the federal statute. These arguments were rejected by the Court for the reason that as these claims are founded on the collective bargaining agreement, they are preempted whether or not they require an analysis of the terms of the collaborative bargaining agreement.

Comment: This case could have been decided for the employee claimants under *Lingle* but the Seventh Circuit chose to distinguish such case and found for the secured creditors. This holding appears to be that of the majority of the circuits.

Proposed Amendments to Bankruptcy Rules

The Administrative Office of the United States Courts has published proposed amendments to the Rules on Bankruptcy Procedure and Federal Rules of Civil Procedure. Hearings are set for this January 18 in Washington, D.C. on the proposed Bankruptcy Rules Amendments, and January 20 on the Civil Rules Amendments. Comments should be furnished, whether favorable or unfavorable, to the Secretary of the Judicial Conference Advisory Committee on Bankruptcy and Civil Rules no later than February 15, 2000. The proposed Bankruptcy Amendments are summarized in the following:

Rule 1007: To require notice to representatives of a creditor infant or creditor incompetent

Rule 2002 (c): To give notice to parties (entitled to same) of any injunction included in a plan of reorganization that is not otherwise enjoined by operation of the Bankruptcy Code

Rule 2002 (g): Clarifies mailing addresses for notices, including those for representatives of infants and incompetent persons

Rule 3016: Requires adequate notice of proposed injunctions when not otherwise enjoined by operation of the Bankruptcy Code. It requires specific and conspicuous language in the plan and disclosure statement and to identify all affected entities.

Rule 3017: Applies to providing service of the plan and disclosure statement to parties affected by a proposed injunction (as related in prior amendment) to describe in detail all acts and parties subject to the injunction

Rule 3020: Provides that the order on a plan containing an injunction describe in detail all acts and parties subject to the injunction

Rule 9006(e): This amendment expands the three-day rule to apply to any kind of service including electronic means, which under proposed Civil Rule 5(b), are to be authorized for ser-

Wilbur G. Silberman
Wilbur G. Silberman, of the Birmingham firm of Gordon, Silberman, Wiggins & Childs, attended Samford University and the University of Alabama and earned his law degree from the University's School of Law. He covers the bankruptcy decisions.

"IT'S STILL POSSIBLE."

JOIN US–ALABAMA STATE BAR VOLUNTEER LAWYERS PROGRAM

vice other than by personal delivery.

Rule 9020: The amendment to this rule removes the ten-day delay before a contempt order issued by a bankruptcy judge becomes effective, and also deletes the *de novo* review by the district court. Additionally, it provides that a motion for an order of contempt made by a party in interest shall be heard under Rule 9014 as a contested matter. The rule does not apply to a contempt charge brought by a judge.

Rule 9022 (a): The amendment to this rule allows the clerk to serve notice of the entry of a judgment or order in the same manner as provided under the proposed new civil rule 5(b), to include electronic process.

Legislation

At the time of this submission, various amendments to the bankruptcy law are being debated in Congress. When you read this column, the amendments may have been enacted. If so, I will bring you the changes in the next issue.

Recent Decisions of the Supreme Court of Alabama–Civil

Engineering firm responsible for integrating components into unified foundry system held not a "manufacturer" or "seller" for purposes of claim asserted under Alabama Extended Manufacturer's Liability Doctrine

Hicks et al. v. Vulcan Engineering Co., ___ So. 2d ___, Ms. 1971855 (Alabama, Oct. 29, 1999).

In this wrongful death action out of Jefferson County, the Alabama Supreme Court affirmed a judgment as a matter of law in favor of an engineering firm responsible for integrating a machine into a foundry system, finding that the engineering firm was neither a "manufacturer" nor a "seller" of the machine or of the foundry for purposes of the Alabama Extended Manufacturer's Liability Doctrine ("AEMLD"). The plaintiff, an employee of the foundry, was killed while performing maintenance on a machine purchased by the foundry directly from the machine's manufacturer, BMM Weston, and installed into the foundry system under the supervision of BMM Weston. The plaintiff's widow sued BMM Weston, the foundry, and Vulcan Engineering, asserting claims based on the AEMLD, breach of implied warranty, and intentional removal of, or failure to install, safety devices. At the close of plaintiff's case, the trial court granted Vulcan's motion for judgment as a matter of law on plaintiffs' AEMLD claim.

On appeal, plaintiff argued that her AEMLD claim against Vulcan was improperly dismissed. Plaintiff relied upon the court's previous decision in *Foremost Insurance Co. v. Indies House, Inc.*, in which the court held that Indies House, a mobile home manufacturer, could be liable under the AEMLD for damages caused by a defective refrigerator installed into the mobile home by Indies House. The *Foremost* court held that:

> [w]hen Indies House combined a finished product with other materials to create a mobile home, it was the manufacturer of the mobile home, *in toto*. This is true even though the refrigerator incorporated therein was structurally unaltered. Indies House did not distribute an unaltered refrigerator. Indies House manufactured a mobile home, a component of which was an unaltered refrigerator.

Relying on the result in *Foremost*, the *Hicks* plaintiff argued that Vulcan was responsible for the ultimate product, which the plaintiff characterized as a complete, working foundry; that the product was unreasonably dangerous as delivered by Vulcan and; that Vulcan created the unreasonable risk of harm inherent in the foundry.

The *Hicks* court distinguished *Foremost*, finding that the mobile home manufacturer purchased the materials and component parts (including the refrigerator) it needed to manufacture a mobile home. "As far as Indies House was concerned, the refrigerator was a piece of a finished product —a mobile home—that Indies House placed in the 'stream of commerce.' " However, the *Hicks* court noted that the foundry purchased the BMM Weston machine, which was delivered to the foundry as a finished product. Thus, Vulcan could not be said to have placed the machine into the stream of commerce. The evidence indicated that Vulcan made no modifications to the machine, or to the procedures specified by the manufacturer for installation or integration of the machine into the foundry system, or to its operations once installed. Furthermore, BMM Weston was responsible for loading the control program for the machine into the foundry's computerized logic controller, the only possible defect found in the machine. "[U]nder these circumstances, to hold that Vulcan Engineering is a manufacturer would be an unsupported expansion of AEMLD liability."

Federal Arbitration Act held inapplicable without evidence of substantial involvement or effect on interstate commerce

Rogers Foundation Repair, Inc. v. Powell, ___ So. 2d ___, Ms. 1980717 (Ala., November 1, 1999).

Plaintiffs Mr. and Mrs. Powell instituted this action in Washington County against their contractor for damages sustained while the contractor was attempting to repair a chimney at the plaintiffs' residence. The contractor sought to compel arbitration based upon the written agreement between Mr. Powell and the contractor, which provided that "[i]t is acknowledged by Owner and Contractor that the work performed pursuant to this Contract involves or affects interstate commerce." Mrs. Powell was not a signatory to the contract. The trial court ordered Mr. Powell to arbitrate his claims against the contractor but refused to compel Mrs. Powell to arbitrate.

On appeal, the Alabama Supreme Court noted that the plaintiffs as well as the defendant were Alabama residents and citizens, as were the defendant's

employees who performed work on the plaintiffs' chimney. The only equipment used by the defendant in its efforts to repair the chimney was a shovel; no other materials were used. "The record contains no evidence that the shovel or anything else pertaining to this case traveled in interstate commerce." Based on these factors, the court determined there was no evidence to establish *any* involvement of or effect in interstate commerce, much less a *substantial* effect on interstate commerce or the generation of goods or services therein. The court rejected the contractor's argument that the parties' express agreement that interstate commerce was involved or affected was sufficient to invoke the Federal Arbitration Act. "Because the record contains no proof that the contract or transaction in this case involved or affected interstate commerce *substantially* so as to satisfy the interstate-commerce criterion for the applicability of the Federal Arbitration Act, that Act does not apply to this contract or transaction." Because the Federal Arbitration Act was inapplicable, Alabama law, including Alabama's prohibition against specific enforcement of pre-dispute arbitration agreements, applied. The court held that the agreement to arbitrate was thus unenforceable as to both plaintiffs.

Arbitration; agreement to arbitrate contained in partially executed contract held unenforceable; unless evidence is clear and unmistakable that parties have agreed to submit question of arbitrability to arbitration, issue is for court to decide under presumption against arbitration

Premiere Chevrolet, Inc. et al. v. Headrick, ____ So. 2d ___, Ms. 1972001 (Ala., November 12, 1999). Plaintiff sued the defendant car dealership in Jefferson County alleging fraud in connection with her lease of a vehicle. Defendant moved to compel arbitration of plaintiff's claims, based upon an arbitration provision contained in the buyer's order, one of two documents executed by plaintiff in the transaction. Only the buyer's order contained an arbitration agreement; moreover, this document provided that "this [buyer's] order is not valid unless signed and accepted by Premiere Chevrolet, Inc." Premiere Chevrolet failed to execute the buyer's order. The trial court denied Premiere's motion to compel arbitration of plaintiff's claims and Premiere appealed.

The Alabama Supreme Court affirmed the trial court's action, finding no enforceable agreement to arbitrate. The court rejected Premiere's argument that by delivering the vehicle to plaintiff, it had ratified and confirmed the buyer's order, thereby manifesting its assent to the terms of that document. Because Premiere was the drafter of the buyer's order, the court strictly construed the language of that agreement against Premiere; that agreement specifically required both acceptance *and* a signature in order to be valid. Additionally, the court noted that the buyer's order did not require any active performance by Premiere, thus, delivery of the vehicle by Premiere constituted performance only of the terms of the lease agreement. For these reasons, the court held that the doctrine of performance as a manifestation of assent did not create a binding contract as to the buyer's order.

Finally, the court rejected Premiere's argument that the validity and enforceability of the buyer's order should have been determined by an arbitrator rather than by the trial court. Citing authority from the United States Supreme Court, the Alabama Supreme Court noted that a presumption exists against arbitration on the issue of arbitrability unless the evidence clearly and unmistakably establishes that the parties so agreed. Because the evidence before it was not clear and unmistakable that the parties had agreed to submit the question of arbitrability to an arbitrator, the court concluded that the issue was not to be decided by an arbitrator and that the trial court had properly decided the issue. The court thus affirmed the trial court's order denying Premiere's motion to compel arbitration. ■

Rachel Sanders-Cochran
Rachel Sanders-Cochran attended Cumberland Law School, where she graduated *cum laude* and was a member of the *Cumberland Law Review* and Curia Honoris. She practices with the Montgomery firm of Rushton, Stakely, Johnston & Garrett, P.A. She covers the civil decisions.

ALABAMA STATE BAR VOLUNTEER LAWYERS PROGRAM
ENROLLMENT FORM

NAME _____

PHONE NUMBER _____

ADDRESS _____

☐ ADOPTION/LEGITIMATIONS
☐ CONSUMER (TO INCLUDE UTILITY, CREDIT PROBLEMS, DEFENSE OF CONTRACT ACTIONS)
☐ PROPERTY (TO INCLUDE DEEDS, MORTGAGE FORECLOSURES, EVICTIONS)
☐ HOUSING (TO INCLUDE PRIVATE LANDLORD/TENANT, FAIR HOUSING DISPUTES)
☐ GUARDIANSHIPS, CONSERVATORSHIPS
☐ OTHER _____
☐ BANKRUPTCY
☐ FAMILY LAW (CATEGORY INCLUDES DIVORCE ALIMONY CHILD SUPPORT, CUSTODY, SEPARATION AND POST DIVORCE PROCEEDINGS)
☐ DIVORCE (INVOLVING ABUSE)
☐ PROBATE (SIMPLE WILLS, SMALL ESTATES)

COMPLETE AND FAX TO (334) 261-6310

CLASSIFIED NOTICES

Rates: Members: Two free listings of 50 words or less per bar member per calendar year EXCEPT for "position wanted" or "position offered" listings–$35 per insertion of 50 words or less, $.50 per additional word;

Nonmembers: $35 per insertion of 50 words or less, $.50 per additional word. Classified copy and payment must be received according to the following publishing schedule:

January 2000 issue—deadline November 15, 1999; March 2000 issue—deadline January 15, 2000. No deadline extensions will be made.

Send classified copy and payment, payable to *The Alabama Lawyer*, to: *Alabama Lawyer* Classifieds, c/o Shannon Elliott, P.O. Box 4156, Montgomery, Alabama 36101.

SERVICES

- **TRAFFIC ACCIDENT RECONSTRUCTION:** Evaluation of highway design. This engineer has reconstructed over 3,000 accidents in 20 states on highways, streets, railroads and highway construction zones involving trucks, vans, cars, pedestrians, and farm implements. Computer animation and CAD drawings prepared to illustrate his opinions. Over 42 years' engineering experience. Registered professional engineer and full ACTAR certification. Contact John T. Bates, P.E., toll-free (800) 299-5950.

- **FORENSIC DOCUMENT EXAMINATIONS:** Seventeen years' forensic document examinations; 27 years' total forensic experience. Retired senior documents examiner and discipline coordinator, Alabama Department of Forensic Sciences. Member, Questioned Document Section–American Academy of Forensic Sciences; Southeastern Association of Forensic Document Examiners; Southern Association of Forensic Scientists; Alabama State Association of Forensic Sciences (past president). Contact Richard A. Roper, Ph.D., 7956 Vaughn Road, #141, Montgomery 36116. Phone (334) 260-2552. Fax (334) 260-7929. E-mail: *richroper@aol.com*.

- **ARBITRATOR/MEDIATOR:** Quick, cost-effective methods of settling claims, disputes or litigation. Certified mediator and arbitrator, member of the

WANTED
TAX SPECIALIST

- LLM IN TAXATION PREFERRED
- MINIMUM 2 YEARS EXPERIENCE NO MAXIMUM
- ALL INQUIRIES HELD IN STRICT CONFIDENCE

ROSEN, COOK, SLEDGE, DAVIS, CADE & SHATTUCK, P.A.
2117 JACK WARNER PARKWAY
TUSCALOOSA, ALABAMA 35401
PHONE: 205-344-5000

CONTACT: JIM SLEDGE OR SYDNEY COOK

Christian Legal Society of Alabama

Statement of Faith

Trusting in Jesus Christ as my, Savior, I believe in:

- The Bible as the inspired Word of God.
- The deity of our Lord, Jesus Christ, God's Son.
- The vicarious death of Jesus Christ for our sins, his bodily resurrection and his personal return.
- The presence and power of the Holy Spirit in the work of regeneration.

Purposes

The purposes of CLSA are the mutual support and encouragement, fellowship and spiritual growth of lawyers, judges, law professors and law students who identify themselves as followers of Jesus Christ, in order to more faithfully live out that commitment in their personal and professional lives.

For Membership Information
Christian Legal Society
4208 Evergreen Lane, Suite 222
Annandale, VA 22003-3264
Phone: 703-642-1070
Fax: 703-642-1075
Email: clshq@clsnet.org
Web Site: www.clsnet.org

Doing Justice with the Love of God℠

Sponsored by CLS of Alabama, P.O. Box 4562, Montgomery, AL 36103

Alabama State Bar since 1986. Any type of dispute, including contract, personal injury, labor/employment, commercial, products liability, property damage, and domestic relations. Call John B. Baugh at (256) 764-4011. *No representation is made that the quality of legal services to be performed is greater than the quality of legal services to be performed by other lawyers.*

- **LEGAL RESEARCH AND WRITING:** Lorelei A. Lein, licensed Alabama attorney. Also licensed in New Mexico and Colorado. Quality work from an experienced researcher and writer. All projects welcomed including brief writing and trial memoranda. Affordable rates. Call (334) 265-1336 or (334) 270-0020. *No representation is made that the quality of legal services to be performed is greater than the quality of legal services to be performed by other lawyers.*

- **LEGAL RESEARCH AND WRITING:** Experienced Alabama attorney (former law clerk to federal judge and law review copy editor) providing research and writing services at reasonable rates. Emergency service available. Homewood, Alabama. Call (205) 879-8595. *No representation is made that the quality of legal services to be performed is greater than the quality of legal services to be performed by other lawyers.*

- **DUI/DRE EXPERT WITNESS:** Expert witness in the following areas–driving under the influence, drug recognition and standard field sobriety tests. Operation and maintenance of breath-testing devices by a former police officer (retired) and a national instructor for the National Highway Safety Traffic Administration. Also an instructor for breath-testing devices. Charles E. Smith (C.E.S. Consulting, Inc.). Phone (561) 286-5761. Fax (561) 286-6732 or e-mail: *DUICONSUL@aol.com*. C/V and fees sent upon request.

- **INSURANCE EXPERT WITNESS:** Fee-only expert witness. Twenty years' experience in risk management insurance consulting. Pre-filing evaluation, deposition and trial. Policy coverage, captives, excess, deductibles, self insurance, agency operations, direct writers, property loss preparation. Member S.R.M.C. Contact Douglas F. Miller, Employers' Risk Management. Phone (205) 995-0002, Birmingham or WATS (800) 462-5602.

- **DOCUMENT EXAMINER:** Examination of questioned documents. Certified forensic handwriting and document examiner. Thirty-three years' experience in all forensic document problems. Formerly, chief questioned document analyst, USA Criminal Investigation Laboratories. Diplomate (certified)–ABFDE. Member: ASQDE; IAI; SADFE; NACDL. Resume and fee schedule on request. Hans Mayer Gidion, 218 Merrymont Drive, Augusta, Georgia 30907. Phone (706) 860-4267.

- **ECONOMIC EXPERT WITNESS:** Personal injury; business loss; agricultural loss; workers' compensation; bankruptcy feasibility plans; etc. Twenty-seven years' experience as university faculty member, 14 years' experience as economic expert witness. Member of the Alabama State Bar. William E. Hardy, Jr., Ph.D., J.D.; phone (334) 821-0855; fax (334) 844-3519; e-mail: *whardy@acesag.auburn.edu.*

- **SKIP TRACING–LOCATOR:** Need to locate someone? Locate defendants/heirs/debtors/witnesses/clients/spouses/child support evaders/etc. Will locate the person or no charge/no minimum fee for basic locate. 97% success rate. Nationwide/Confidential. Many attorney-needed information services. Tell us what you need. VERIFY USA. (888)2-Verify.

- **EEO/HR/EMPLOYMENT EXPERT WITNESS:** Credentials–HR Ph.D., MBA, BBA-Accounting (*magna cum laude*), two certificates, over 50 pd. seminars. Experience: 21 years of diverse professional management/HR experience, including teaching EEO/HR at AU and CU, federal and circuit court testimony. Numerous publications in EEO/HR, focus employment law. Reasonable fees for employer/employee reference checks, expert discovery, literature review, preliminary formal opinion, deposition, expert testimony. Call Dr. Laplante, voice mail/fax: (334) 214-4511 for fees and resume.

POSITIONS OFFERED

- **FREE REFERRALS:** Legal Club of America seeks attorneys to receive new clients. Must be licensed and maintain professional liability insurance. There is no cost to participate;

Do You Have More Work Than Time?

If you don't have the time necessary to research your opponent's arguments or write your brief, *then*

I CAN HELP!

As an attorney with eighteen years of experience in research and writing I have the time necessary for the sustained, uninterrupted research so often needed to win a case. When your case is fully researched you can represent your client with more confidence and be better prepared in court. I am available for short research questions or lengthier briefs. My rate is $35.00 per hour.

Katherine S. Weed
P. O. Box 590104
Birmingham, AL 35259
(205) 941-1496
Ksweed@aol.com

No representation is made that the quality of the legal services to be performed is greater than the legal services performed by other lawyers

Puzzled about ways to serve your community while building your practice too?

The solution to this puzzle is the Lawyer Referral Service of the Alabama State Bar.

Many Alabama citizens don't know where to go when it comes to legal problems. They may not have needed a lawyer in the past. They may not even know a lawyer — or which type of lawyer to call for their specific situation. Fortunately, there is the LRS — bringing together citizens and lawyers to solve legal problems.

A statewide toll-free number reaches the LRS directly and confidentially. Callers are referred to a lawyer in their area who has experience in the particular area of law that relates to their problem.

The LRS is designed to serve anyone who can afford the services of a lawyer. Lawyers participating in the LRS are referred to clients for initial consultations. All members of the LRS are licensed in Alabama and members in good standing of the Alabama State Bar. Become an LRS member today — it benefits you and your community.

Putting the right pieces together.

ALABAMA STATE BAR

To Serve The Profession

however, attorneys must follow a discounted fee schedule. All law areas needed. Not an insurance program. Call (800) 305-6816, e-mail *carmen@legalclub.com* or visit *www.legalclub.com* for more info.

- **ASSOCIATE ATTORNEY:** Established mid-sized Birmingham law firm is seeking an associate with two to five years' experience in employment law. Excellent benefits and long-term career opportunity. All replies will be kept strictly confidential. Interested attorneys may apply by sending a resume to Human Resources Director, P.O. Box 10581, Birmingham, Alabama 35202.

- **ATTORNEY JOBS:** The nation's #1 job-hunting bulletin for attorneys is now online at *AttorneyJobsOnline.com*. Subscribe online or call us at 1-800-296-9611. Extensive Web site presents thousands of attorney and law-related jobs nationwide and abroad at all levels of experience in public (federal, state and local) and private sectors. Sponsored by West Group.

- **ATTORNEY POSITIONS:** Established, growing law firm with corporate client base seeking attorneys with three to six years' experience in litigation or corporate law. Good benefits, excellent long-term career opportunity. Confidential inquiries should be directed to Hiring Manager, P.O. Box 830, Montgomery, Alabama.

- **ASSOCIATE ATTORNEY:** Established mid-sized law firm is seeking an associate with two to five years' experience in civil defense litigation. Excellent benefits and long-term career opportunity. All replies will be kept completely confidential. Interested attorneys may apply by sending resume to Human Resources Director, P.O. Box 10581, Birmingham, Alabama, 35202.

- **ATTORNEY POSITIONS:** Firms in Birmingham, Mobile, Montgomery, Atlanta, Nashville, Memphis, and other cities across the South are seeking good lawyers with experience in the following areas: litigation, corporate transactions, real estate, tax, and employment law. All inquiries are strictly confidential. Please contact Richard G. Brock, esq. Phone (205) 871-3223. E-mail *richard@acymtech.com*.

- **ATTORNEY POSITIONS:** Leitman, Siegal & Payne, P.C. is seeking attorneys in the fields of estate planning, corporate, intellectual property, tax, and commercial real estate. Three to 30 years' experience is desired. Send resume to the firm in care of Hiring Partner, 600 N. 20th Street, Suite 400, Birmingham, Alabama, 35203. Compensation based on experience.

- **ASSOCIATE ATTORNEY:** Established mid-sized law firm is seeking an associate with two to five years' experience in bankruptcy practice. Excellent benefits and long-term career opportunity. All replies will be kept confidential. Interested attorneys may apply by sending resume to Human Resources Director, P.O. Box 10581, Birmingham, Alabama, 35202.

FOR SALE

- **LAW BOOKS:** William S. Hein Company–More than 70 years later, still your #1 source for buying/selling law books. 50-70% savings on major sets, international law, rare/antiquarian law. Appraisal services available. Phone 1-800-496-4346. Fax (716) 883-5595. Web site: *www.wshein.com/used-books*.

FOR RENT

- **SOUTHSIDE OFFICE:** Five Points, Southside law office available for solo attorney(s), 1117 22nd Street, South, Birmingham. From $425 for a window office. "Virtual" office or "corporate image" also available for those needing limited conference room time. Receptionist and other ancillary services provided. Call Tom Plouff, esq., at (205) 939-0000.

- **CONFERENCE AREA AND LIBRARY:** Professional setting; downtown Homewood, Alabama. Law office renting conference room and library for client meetings, conferences, depositions, document inspection, etc. Rate: $6.95/hr. Great for solo practices/home businesses. On-site professional copier and phone also available. Phone (205) 879-8595. ■

Your clients didn't retain *"just any attorney"* to represent their legal interests.

Don't retain *"just any valuation firm"* to advise and assist *you.*

IN COURT OR OUT, LITIGATION SUPPORT OR ESTATE PLANNING, YOU SHOULD ALWAYS BE ARMED WITH A RELIABLE BUSINESS VALUATION FOR YOUR CLIENT.

FOR SWIFT RESPONSE AND STRICT ADHERENCE TO THE PROFESSION'S HIGHEST STANDARDS, RELY ON WILLIAMS, TAYLOR & ASSOCIATES.
WE ARE A NATIONALLY RECOGNIZED ACCOUNTING, VALUATION AND CONSULTING FIRM WITH THE STRONGEST CREDENTIALED PROFESSIONALS IN ALABAMA.

WILLIAMS, TAYLOR & ASSOCIATES - SERIOUS ABOUT YOUR BUSINESS.

JAMES L. WILLIAMS,
CPA/ABV, CVA, CBA

ROBIN E. TAYLOR,
CPA/ABV, CVA, CBA

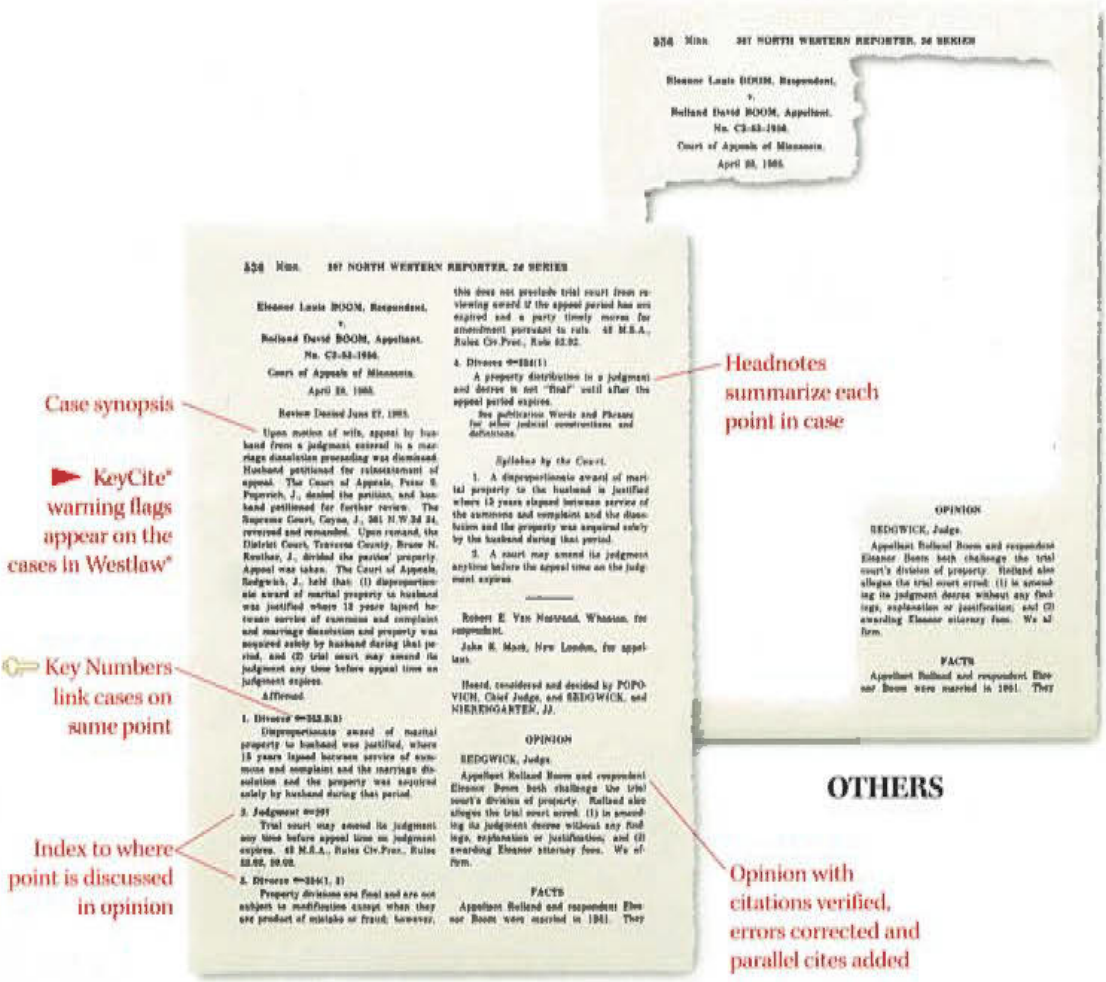
WILLIAM K. NICROSI II,
CPA, CVA

TIMOTHY W. YORK,
CPA/ABV, CVA

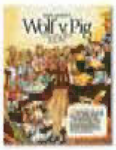
WILLIAMS, TAYLOR & ASSOCIATES
ACCOUNTANTS • CONSULTANTS

2140 ELEVENTH AVENUE SOUTH, SUITE 400 • THE PARK BUILDING • BIRMINGHAM, ALABAMA 35205
(205) 930-9111 • (800) 874-8552 • FACSIMILE (205) 930-9177 • WEBSITE www.wtaepa.com

Difference of opinion.



The difference in case-finding efficiency is dramatic. Only from West Group - in any research format you prefer. See the difference for yourself. Call 1-800-757-9378 or visit westgroup.com.



FREE BOOK! For a lighthearted look at West editorial extras, ask for *Wolf v. Pig.*

WEST GROUP

YES! 2K

Bancroft-Whitney • Clark Boardman Callaghan • Lawyers Cooperative Publishing • Westlaw® • West Publishing

© 1999 West Group 1-9852-1/4-99 986975 The trademarks shown within are used under license.

**********CAR-RT SORT**B-007
MS. LAURA ANN CALLOWAY
ALABAMA STATE BAR
PO BOX 671
MONTGOMERY AL 36101-0671