

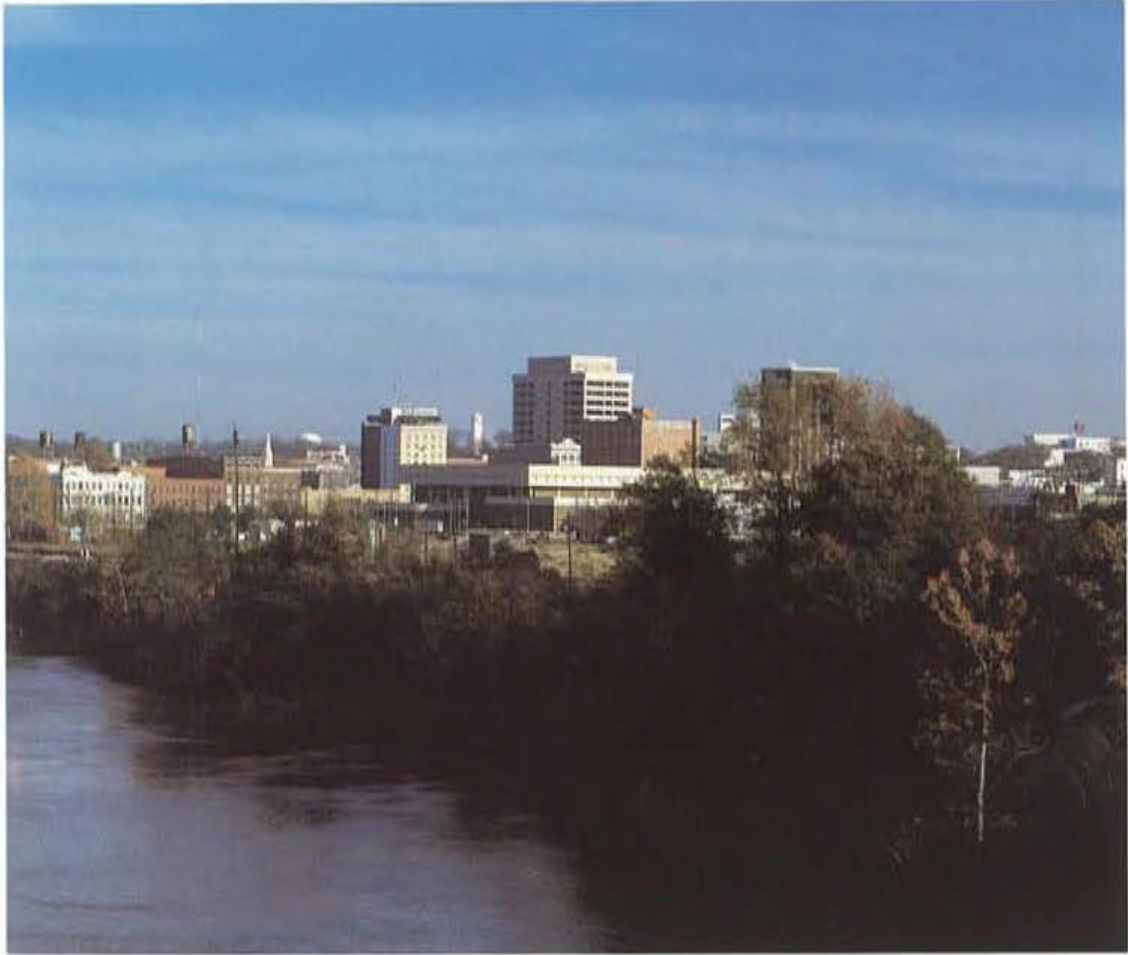
# The Alabama Lawyer

Vol. 49, No. 1

January 1988







**The Union Bank  
Trust Department.  
Your Hometown  
Advantage.**

Come Home To Us. **UNION BANK**   
UNION BANK & TRUST CO., MONTGOMERY, ALABAMA/MEMBER FDIC

**Schroeder, Hoffman and Thigpen on**

# **ALABAMA EVIDENCE**



Copyright © 1997, 488 pages,  
8" x 9" trim size, hardbound  
in Kivar 9 Navy blue.

**INTRODUCTORY  
PRICE  
\$69.95**  
Regularly \$74.95

*by William A. Schroeder,  
Jerome A. Hoffman and  
Richard Thigpen*

In this comprehensive examination of the rules of Alabama Evidence, the authors present an in-depth discussion of all areas of evidentiary procedures from the relatively simple ways to object to evidence through competence, privileges, relevance, impeachment, the best evidence rule and parol evidence. Many sections contain a discussion of Federal law and how it compares to its Alabama counterpart. Case law is thoroughly cited throughout the book. An excellent reference tool for both the inexperienced and veteran lawyer!

## **Table of Contents**

Obtaining, Offering and Objecting to Evidence •  
Competence • Examination of Witnesses •  
Relevance and Limitations on the Admission of  
Relevant Evidence • Privileges • Impeachment •  
Expert Testimony • Hearsay • Authentication  
and Identification — Rules 901, 902, 903 •  
Special Rules Relating to Writings: The Best  
Evidence Rule and the Parol Evidence Rule • Real  
and Demonstrative Evidence • Judicial Notice •  
Presumptions • Burdens of Proof and  
Persuasion

## **About the Authors**

William A. Schroeder received his B.A. and J.D. from the University of Illinois and his LL.M. from Harvard Law School. He is a member of the American Bar Association. He taught Evidence, Criminal Procedure and Trial Advocacy at the University of Alabama from 1980 to 1984. Since then he has been a Professor of Law at Southern Illinois University School of Law where he teaches Evidence and Criminal Procedure.

Jerome A. Hoffman received both his B.A. and J.D. from the University of Nebraska. He is a member of the Alabama State Bar Association and the State Bar Association of California. He has been a member of the Alabama Supreme Court's Advisory Committee on Civil Practice and Procedure since its creation in 1971. He is currently a Professor of Law at the University of Alabama School of Law where he teaches Evidence and Civil Procedure.

Richard Thigpen received his B.A. and M.A. from the University of Alabama and his J.D. from the University of Alabama School of Law. He has an LL.M. from Yale University and also an LL.D. (Honorary) from the University of Alabama. He is a member of the Alabama State Bar Association. He is currently a Professor of Law at the University of Alabama School of Law.

Buy **Schroeder, Hoffman and Thigpen on Alabama Evidence** and get **30% OFF** any of the treatises listed below:

*Gamble & Corley's Alabama Law of Damages* ©1982 (w/ cur. supp.) ~~\$79.95~~ **\$55.95**  
*McCurlley & Davis' Alabama Divorce, Alimony & Child Custody* ©1982 (w/ cur. supp.) ~~\$67.95~~ **\$47.55**  
*Hansford's Tilley's Alabama Equity 2nd Ed.* ©1985 ~~\$49.95~~ **\$34.95**  
*Hoff's Alabama Limitations of Actions & Notice Provisions* ©1984 (w/ cur. supp.) ~~\$37.95~~ **\$26.55**  
*Hood, Hardy & Saad's Alabama Workmen's Compensation* ©1982 (w/ cur. supp.) ~~\$44.95~~ **\$31.45**

AND/OR get **40% OFF** any of "The Law in . . ." series listed below:

*Jeffries & Wilkinson's Collection of Accounts* ©1981 (w/ cur. supp.) ~~\$26.95~~ **\$16.15**  
*Walshall's Corporations — Formation With Forms* ©1981 (w/ cur. supp.) ~~\$26.95~~ **\$16.15**  
*Hairston's Detinue, Executions & Mechanics' Liens* ©1980 (w/ cur. supp.) ~~\$26.95~~ **\$16.15**  
*Jeffries' Enforcement of Security Interests in Personal Property* ©1980 (w/ cur. supp.) ~~\$26.95~~ **\$16.15**  
*Huskey & Etheredge's Landlord & Tenant — Breach & Remedies* ©1981 ~~\$26.95~~ **\$16.15**  
*Jeffries' Wrongful Death Actions* ©1979 (w/ cur. supp.) ~~\$26.95~~ **\$16.15**

**Want fast, efficient service?**  
Call our toll-free WATS  
**1-800-241-3561**

**THE THE HARRISON COMPANY, PUBLISHERS**

3110 Crossing Park • P O Box 7500 • Norcross, GA 30091-7500

87-A7



# "NOBODY CAN GET A TOP QUALITY CORPORATE KIT TO YOU FASTER THAN CORPEX. I GUARANTEE IT."

Stephen Murtha,  
President,  
Corpex Banknote Company

"We're not afraid of a statement like that. We think we make the finest, most comprehensive corporate kits available. And we guarantee overnight delivery to any place in the continental United States.\* That's the kind of quality and service that has earned us a reputation of consistency and reliability with attorneys for fifty years.

Place a standard order of a Corpex kit by 2 p.m. EST, and it will be on a plane to you that same night."

"If you're not completely satisfied that we're the best and the fastest source for corporate outfits, we'll give you your money back. And you can take that to the bank!"

EVERY CORPEX CORPORATE KIT COMES IN MATCHING SLIPCASE COMPLETE WITH:

- corporate seal in foldaway pocket
- 20 custom-printed stock certificates
- stock transfer ledger
- 50 blank sheets for minutes or time-saving printed minutes and by-laws
- special forms section with complete IRS requirements for Sub-Chapter S election, medical and dental reimbursement plans, Section 1244 forms, IRS SS4 form, annual meeting forms.

Standard outfit, \$49.75; with printed minutes and by-laws, \$52.25; 35 page "S" Election Section with kit, \$6.75 (ordered separately, \$13.25). Prices include delivery in Continental U.S., Alaska and Hawaii.

**NEW  
ATLANTA  
OFFICE**  
FOR SOUTHEAST REGION  
**1-800-456-CORP**

To order, or to receive our brochure or more information, call:

**Corpex® 1-800-221-8181**

**DHL**  
WORLDWIDE EXPRESS™

Corpex Banknote Co. Inc. 480 Canal St., NY, NY 10013

IN NY, 1-800-522-7299; 212-925-2400.

\*Some remote locations might require an additional day.



# The Alabama Lawyer

# In Brief

VOL. 49, NO. 1

JANUARY 1988

Published seven times a year by The Alabama State Bar  
P.O. Box 4156 Montgomery, AL 36101  
Phone (205) 269-1515  
**Robert A. Huffaker**—Editor  
**Carol Ann Smith**—Associate Editor  
**Margaret Lacey**—Managing Editor

**BOARD OF EDITORS** Patrick H. Graves, Jr., Huntsville •  
Champ Lyons, Jr., Mobile • Julia Smedley Swann, Birmingham  
• Frank B. Potts, Florence • Susan Shrock DePaula, Mont-  
gomery • Robert P. Dennison, Mobile • Gregory H. Hawley,  
Birmingham • James N. Brown, III, Birmingham • Greg Ward,  
Lanett • Keith B. Norman, Montgomery • Grover S. McLeod,  
Birmingham • Samuel N. Crosby, Bay Minette

**OFFICERS** Ben H. Harris, Jr., Mobile, President • Gary C.  
Huckaby, Huntsville, President-elect • Oliver P. Head, Colum-  
biana, Vice president • Reginald T. Hannes, Montgomery,  
Secretary

**BOARD OF COMMISSIONERS** 1st Circuit, Edward P. Turner,  
Jr., Chilton • 2nd Circuit, Jerry L. Thornton, Haynesville • 3rd  
Circuit, Lynn Robertson Jackson, Clayton • 4th Circuit, Archie  
T. Reeves, Jr., Selma • 5th Circuit, Lewis H. Hamner, Roanoke  
• 6th Circuit, Walter P. Crowder, Tuscaloosa • 6th Circuit  
Place No. 2, John A. Owens, Tuscaloosa • 7th Circuit, H.  
Wayne Love, Anniston • 8th Circuit, A. J. Coleman, Decatur •  
8th Circuit, W. N. Watson, Fort Payne • 10th Circuit Place No.  
1, Francis H. Hare, Jr., Birmingham • 10th Circuit Place No.  
2, Michael L. Edwards, Birmingham • 10th Circuit Place No.  
3, James S. Lloyd, Birmingham • 10th Circuit Place No. 4,  
Thomas Coleman, Birmingham • 10th Circuit Place No. 5, Tim-  
othy L. Dillard, Birmingham • 10th Circuit Place No. 6, Ollie  
L. Bran, Jr., Birmingham • 10th Circuit Place No. 7, J. Mason  
Davis, Birmingham • 10th Circuit Place No. 8, Drayton N.  
James, Birmingham • 10th Circuit Bessemer Cut-off, George  
Higginbotham, Bessemer • 11th Circuit, Robert M. Hill, Jr.,  
Florence • 12th Circuit, Joe C. Casady, Enterprise • 13th Cir-  
cuit Place No. 1, Victor H. Lott, Jr., Mobile • 13th Circuit Place  
No. 2, Broox G. Holmes, Mobile • 13th Circuit Place No. 3,  
Mylan R. Engel, Mobile • 14th Circuit, Phillip A. Land, Jasper •  
15th Circuit Place No. 1, Richard H. Gill, Montgomery • 15th  
Circuit Place No. 2, Charles M. Cook, Montgomery • 15th Cir-  
cuit Place No. 3, James R. Seale, Montgomery • 16th Circuit,  
Ludger D. Martin, Gadsden • 17th Circuit, Richard S. Manley,  
Demopolis • 18th Circuit, Oliver P. Head, Columbiana • 19th  
Circuit, James R. Bowles, Tallapoosa • 20th Circuit, Wade Bas-  
ley, Dothan • 21st Circuit, Broox G. Carnett, Brewton • 22nd  
Circuit, Harold Albritton, Andalusia • 23rd Circuit Place No.  
1, George W. Royer, Jr., Huntsville • 23rd Circuit Place No.  
2, S. Dagnal Rowe, Huntsville • 24th Circuit, L. E. Goss, Ver-  
non • 25th Circuit, Nelson Vinson, Hamilton • 26th Circuit,  
Bowen H. Brasell, Phenix City • 27th Circuit, Charles R. Hare,  
Jr., Albertville • 28th Circuit, John Earle Chason, Bay Mi-  
nette • 29th Circuit, B. Greg Wood, Talladega • 30th Circuit,  
William E. Hereford, Pell City • 31st Circuit, Garman R. Jones,  
Sheffield • 32nd Circuit, John David Knight, Cullman • 33rd  
Circuit, William B. Matthews, Ozark • 34th Circuit, William  
M. Boulton, Russellville • 35th Circuit, William D. Atchison,  
Evergreen • 36th Circuit, Don R. White, Moulton • 37th Cir-  
cuit, Phillip E. Adams, Jr., Opelika • 38th Circuit, John F. Pro-  
ctor, Scotsboro • 39th Circuit, Jimmy E. Alexander, Athens

**GENERAL INFORMATION** The Alabama Lawyer, (ISSN  
0902-4287), the official publication of the Alabama State Bar,  
is published seven times a year in the months of January, March,  
May, July, August (bar directory edition), September and  
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.  
Advertising rates will be furnished upon request. Advertising  
copy is carefully reviewed, but publication herein does not nec-  
essarily imply endorsement of any product or service offered.  
© Copyright 1988, The Alabama State Bar.  
All rights reserved.

The Alabama Lawyer is published seven times a year for  
\$15 per year in the United States and \$20 outside the  
United States by the Alabama State Bar, 415 Dexter Ave-  
nue, Montgomery, AL 36104. Single issues are \$3, plus  
postage for the journal, and \$15 for the directory. Second-  
class postage paid at Montgomery, AL.

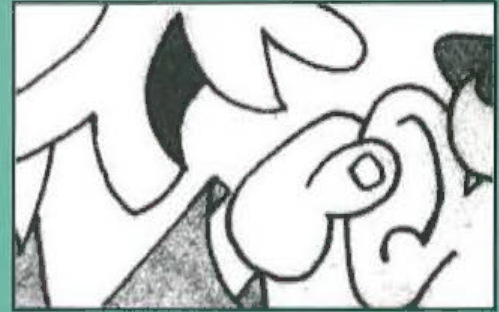
**Postmaster:** Send address changes  
to The Alabama Lawyer, P.O. Box  
4156, Montgomery, AL 36101.

## On the cover—

The streets of Montgom-  
ery, the site of the first  
commercial streetcar  
service in the United  
States, once again are  
being graced by trolleys.  
The reproduction trolley  
cars began operation in  
downtown Montgomery  
in 1986.



Photo courtesy Montgom-  
ery Parks and Recreation  
Department



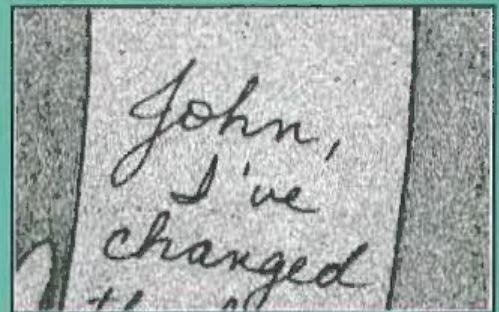
## The Lawyer as a Lobbyist—by Luther J. Strange, III . . . . . 14

Lawyers on occasion may seek assistance  
for a client through contacts with members  
of the Alabama Congressional Delegation.  
To be effective in obtaining this help, the  
attorney must follow some common sense  
ground rules.



## Involuntary Bankruptcy—the Un- known and Little-used Remedy—by M. Donald Davis, Jr. . . . . 10

In a basic primer, M. Donald Davis, Jr.  
explains the substantive and procedural  
rules governing involuntary bankruptcy  
proceedings.



## Service by Publication under Rule 4.3—by Jerome A. Hoffman . 18

An absent defendant or one who cannot  
be located may nonetheless be served with  
process, in some instances, through publi-  
cation. Professor Hoffman explains the pro-  
cedures that must be followed to perfect ser-  
vice by publication under Rule 4.3 ARCP.

## INSIDE THIS ISSUE

President's Page . . . . .	4	Lawyers in the Family . . . . .	38
Executive Director's Report . . . . .	5	MCLE News . . . . .	44
About Members, Among Firms . . . . .	8	Young Lawyers' Section . . . . .	47
Consultant's Corner . . . . .	25	Legislative Wrap-up . . . . .	49
Reaching Out . . . . .	26	Recent Decisions . . . . .	51
Alabama's Courthouses . . . . .	28	Sections . . . . .	55
cle opportunities . . . . .	30	Memorials . . . . .	57
Bar Briefs . . . . .	33	Classified Notices . . . . .	59
Attorneys Admitted . . . . .	34	Disciplinary Report . . . . .	60



# President's Page



HARRIS

Having received the results of the follow-up survey with respect to the formation of a captive insurance company, the Alabama State Bar Board of Commissioners at its December 18 meeting voted to issue a letter to the bar asking for individual contributions of \$125. This would be used for start-up costs of a captive insurance company should the response indicate sufficient interest, support and enthusiasm among the bar for a captive. The commission recognized the many, many hours and hard work by Henry Henzel and the Insurance Programs Committee and much effort on the part of my predecessor, Bill Scruggs.

I urge your response to this effort. A captive insurance company should stabilize the lawyers' malpractice insurance market and provide a readily available source of insurance in the event of another crisis such as we experienced in 1986. It cannot be projected that the formation of a captive will result in a reduction in premiums.

I am pleased to report that former Governor Albert Brewer has agreed to head the Action Group on Post-Conviction Capital Representation. The need to make counsel available at earlier stages in cases involving death row inmates and a system to provide assistance and expertise to appointed counsel in those cases is a critical one in Alabama, and it must be dealt with in a positive manner. I urge all of you to give Governor Brewer and his action group your advice and support.

The Action Group on Professionalism is also in place and is chaired by President-elect Gary Huckaby. The group was formed to help answer expressions by many of a desire

to recapture the mutual respect, civility and courtesy consistent with our noble profession. There are many definitions of professionalism, but among the ingredients are competency, integrity and courtesy. This blue-ribbon panel has been asked to develop a working definition of professionalism and then focus on making practical recommendations of steps to be taken by the bar, the law schools and the judiciary to infuse meaning into that definition. They have been asked also to include suggestions on what should

be done to ensure that the actions recommended will be ongoing and achieve permanence. It is anticipated their work product will include something appropriate for publication in *The Alabama Lawyer*.

Recently, I had the privilege of attending Arden House III, the third national conference on continuing legal education since 1960. The conference was sponsored jointly by the American Bar Association and the American Law Institute. During those meetings, I learned of many problems with CLE in other parts of the country and came away with a strong realization of the many benefits of our mandatory continuing legal education program. We clearly are doing a better job than most in delivering a variety of quality programs to lawyers throughout the state.

I again urge local bars to keep the state bar informed of your activities and work with Tom King, Jr., and the Committee on Local Bar Activities and Services. Tom's committee has been very active and wishes to stimulate the exchange of ideas among the various local bars for the continued improvement of our profession. The committee also will help provide information on the IOLTA program. ■



---

# Executive Director's Report

---

## Thanks

Recently, I had the opportunity to visit with two of our very active local bars. Tracy Daniel, our IOLTA administrator, travelled with me to the Russell and Madison county bar meetings. We appreciated the hospitality extended us and left both meetings with a sense that our visits were beneficial to a better understanding of current bar activities generally and, more specifically, a better understanding of our IOLTA initiative. We since have received our first interest check from an Ozark account; interest earned on one account for one month was \$91.04. I am excited about the potential of this program in Alabama.

## Governor Brewer continues to serve

Albert Brewer, to me, represents the very best in public service. My admiration for him as governor preceded my knowing him as a friend. He has exhibited a quality of genuine caring throughout his public and private life, and this makes him special to me. I was not surprised when he recently accepted President Harris' challenge to head our bar's effort to meet the growing problems we and our courts face in providing constitutionally guaranteed representation to those individuals under sentence of death in our state penal system. Our neighboring states of Florida and Georgia are significantly ahead of us in their efforts to deal with this problem, but I

am confident with his leadership and the support of the other action group members our profession's responsibilities will be fulfilled in a manner in which we can all take pride. Though honored with high office time and again, Albert Brewer remains a lawyer who continues to meet his professional responsibility. Thanks, Governor.

## Client Security Fund statements

During the month of January 1988, every member of the Alabama State Bar will receive an initial statement for the first \$25 contribution to the Client Security Fund. Under the rules establishing the fund, each member is required to contribute up to \$100 over a four-year period. It is anticipated and certainly hoped the entire assessment will not be needed to insure fund stability.

Several lawyers already have remitted checks for the full amount, but their checks have been returned with a request that only a single \$25 installment be remitted at the time the statements are sent. This will greatly facilitate our recordkeeping. Firms can remit a single check for all lawyers in the firm, but we ask that the individual statements of all lawyers covered by such check be returned with it. Please wait to receive your statement before remitting the amount due.

## Acapulco in April

Two years ago, we offered the mem-



HAMNER

bership a CLE opportunity in Bermuda. The trip and the seminar were an unqualified success. Since then, we have been encouraged to "do another one." With the splendid help of Janelle Marsh at the Alabama Bar Institute for CLE, a fine program has been arranged for early April 1988.

Our group will depart Birmingham on Thursday, April 7, for Acapulco, Mexico. The seminar sessions will be conducted by Mexican practitioners on Friday and Saturday mornings. These seminars will be followed by a Dutch treat luncheon with the presenters. Sunday is a free day and the return travel date will be Monday, April 11. The American Airline schedule requires a change of planes at the Dallas-Fort Worth International Airport.

Registration forms will be mailed soon. The seminar will meet tax deductible



criteria, and the registration fee will include the costs of airfare, transfers, lodging (single or double occupancy), hotel taxes and gratuities. No meals are included, but a continental breakfast will be served in the seminar rooms on Friday and Saturday. A lawyer-spouse supplement likewise will be deductible; however, the nonlawyer-spouse supplement, including airfare, transfers and gratuities, will not.

We have 40 rooms at the Acapulco Princess and 80 seats reserved on the flight. Naturally, these will be filled on a first-come, first-served basis. If reservations are filled sufficiently in advance of close-out dates with both the airline and the hotel, we will attempt to secure additional reservations. Act promptly when your reservation request form is received.

#### **MCLE transcripts**

By now you have received your MCLE transcript for 1987. This is another advantage of our computerization effort and it affords you, the member, a new measure of convenience in making your annual report. Special thanks are due to Mary Lyn Pike, Diane Weldon and Margaret Boone for this advancement.

#### **Insurance captive survey**

By the time you read this, a final decision probably will have been made regarding a captive insurance mechanism for Alabama lawyers. Recent survey results are being analyzed by our consultants.

Approximately 73 percent of those responding indicated support for this undertaking. Unfortunately, the total responses number slightly over 2,000. The estimated number of likely participants was over 4,600. It is hoped many of those who did not respond would participate.

The need for such an undertaking becomes more apparent as I watch every current carrier in Alabama make new filings with our state insurance department which essentially strip their existing policies without any concurrent rate reductions. I want to reiterate conservative estimates indicate that a capitalization level of \$2,500,000 to \$3,000,000 will be required before any policies can be written.

#### **Two former presidents**

The recent deaths of John Adams of Grove Hill and Douglas Arant of Birmingham causes one to reflect on their

contributions to our profession. Both continued to practice well into their final year. In reviewing bar records, one is impressed with the visionary leadership they exhibited. Comparing our bar with other state bars, I am grateful for the soundness of the decisions they and our early leaders, as well as their successors, have made through the years. We simply do not have the problems which other bars seem to experience.

Ironically, we were in the process of confirming an observation of the American Bar Association's Division of Bar Services that Mr. Arant likely was the nation's senior state bar president in point of service. He served as our president during the 1936-37 bar year.

Mr. Arant never ceased to serve. Our more recent presidents regularly sought his counsel and leadership. Likewise, the legal legacies which have been left by Mr. Adams also have benefited our bar far beyond his 1945-46 tenure as the Alabama State Bar president. With the death of these two distinguished lawyers and former presidents of the association, John A. Caddell of Decatur, Alabama, becomes the most senior former president of the Alabama State Bar. ■

**Reginald T. Hamner**

## Notice of Election

Notice is given herewith pursuant to the *Alabama State Bar Rules Governing Election of President-elect and Commissioner for 1988*.

#### **President-elect**

The Alabama State Bar will elect a president-elect in 1988 to assume the presidency of the bar in July 1989. Any candidate must be a member in good standing on March 1, 1988. 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, 1988. Any candidate for this office also must submit with the nominating petition a black and white photograph and biographical data to be published in the *May Alabama Lawyer*.

Ballots will be mailed between May 15 and June 1 and must be received at state bar headquarters by 5 p.m. on July 19, 1988.

#### **Commissioners**

Bar commissioners will be elected by those lawyers with their principal offices in the following circuits: 2nd; 4th; 6th-Place #2; 9th; 10th-Places #1, 2, 5 and 8; 12th; 13th-Place #2; 15th-Place #2; 16th; 20th; 23rd-Place #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 therein. The new commissioner positions will be determined by a census on March 1, 1988, and vacancies certified by the secretary on March 15, 1988.

The terms of any incumbent commissioners are retained.

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 29, 1988).

Ballots will be prepared and mailed to members between May 15 and June 1, 1988. Ballots must be voted and returned by 5 p.m. on the second Tuesday in June (June 14, 1988) to state bar headquarters. ■



# Handling Client Funds in the IOLTA Era

by Alex W. Jackson  
Assistant General Counsel

With the adoption on May 5, 1987, by the Alabama Supreme Court of an Interest on Lawyers' Trust Accounts (IOLTA) rule, the general counsel's office has been asked by many Alabama lawyers to explain both current rules and future practice regarding clients' funds. Surprisingly, there is a fairly common misconception among members of the bar that it is permissible to invest clients' funds in interest-bearing accounts and for the lawyer to retain all, or a portion, of the interest generated thereby as a fee or service charge.

First, as to current practice, it is not permissible for an attorney to invest clients' funds in an interest-bearing account and to retain, for his own use, the income generated. The Disciplinary Commission has held that an attorney may, on a case-by-case basis, and with the prior, informed consent of his client, invest that client's funds, provided the client receives the benefit derived from his own funds. For example, suppose Mr. Lawyer collects \$10,000 for Ms. Client but for some reason cannot disburse the funds for 90 days. With Ms. Client's express prior approval Mr. Lawyer may invest those funds at interest, with the interest income being the property of Ms. Client. Suppose further that Mr. Lawyer is entitled to a 40 percent contingency fee from the \$10,000 corpus; Mr. Lawyer then may be entitled to retain 40 percent of the income, but once again prior, informed consent of Ms. Client is required. For lawyers' trust accounts in general, where the funds of more than one client are held for varying periods of time, the lawyer may not utilize an interest-bearing account, and, as it follows, his entitlement to interest should never arise.

IOLTA creates something that never was, in that it provides a mechanism to allow investment of these mixed accounts and provides for distribution of

the income generated. Neither the lawyer nor the client loses anything as the new IOLTA rules apply only to clients' funds which are nominal in amount or expected to be held for a short period of time [DR 9-102(D)(2)(a)].

Thus, individual lawyer/client agreements regarding investment of large amounts, or of amounts expected to be held for a long period of time, are still permissible, subject to full disclosure. It should be noted that, pursuant to DR 9-102(A) all clients' funds "...shall be deposited in one or more identifiable insured depository trust accounts maintained in the state in which the law office is situated."

The lawyer, in essence, has two choices under Canon 9. He may participate in IOLTA, while retaining the ability to place individual client funds in interest-bearing insured depository trust accounts, or he may "opt out" of IOLTA, and still have the same ability to place individual client funds in interest-bearing accounts. He may not utilize any form of account other than an identifiable insured depository trust account located in Alabama, and he may not share the benefit of an individualized interest-bearing investment of a client's funds without the express, prior informed consent of that client.

As now written, certificates of deposit, treasury notes, mutual funds, promissory notes and the like are not permitted since they are not insured depository trust accounts. Other, more imaginative forms of investment are equally unavailable, regardless of their merit or the client's willingness to accept the risk. A client interested in more lucrative types of investment simply will have to wait until he has absolute control over the funds involved.

IOLTA plans have been in operation in other states for some time. They have proved to be little, if any, bother to the lawyers who participate and of great benefit to the legal system and to the public. Most of the changes required to implement IOLTA are for the banking community and involve no additional responsibilities for the lawyer; the fiduciary role of the lawyer remains intact.

The lawyer is not now expected to be an investment counselor, at least insofar as those clients' funds to which Canon 9 applies, and nothing in the IOLTA era should change that. The Disciplinary Rules actually are quite simple, with most problems arising due to a misunderstanding of the lawyer's role as custodian of his clients' funds. A lawyer should invest a little of his own time with Canon 9 before he invests his clients' funds—it will be time well spent. ■

## Forensic Meteorology & Oceanography

### NASH C. ROBERTS, JR. CONSULTANTS, INC.

has over 40 years experience in forensic meteorology and forensic oceanography. We have a staff of mature and experienced scientists with impeccable credentials in all of the atmospheric and oceanographic disciplines.

These nationally recognized professionals are capable of conducting involved investigations, reconstructing weather and marine conditions anywhere in the world, and are eminently qualified to appear in expert testimony.

### Air Quality -- Water Quality -- Hydrology

1040 North Rampart St.

New Orleans, LA 70116

(504) 581-1688



---

# About Members, Among Firms

## ABOUT MEMBERS

**James N. Brown, III**, and **James N. Brown, III, P.A.** announce the relocation of their offices to 800 First National-Southern Natural Building, Birmingham, Alabama 35203. Phone (205) 251-1000.

**Peter J. Meredith** announces the relocation of his office to 3716 5th Avenue, South, Birmingham, Alabama 35222. Phone (205) 591-6920.

**Roy W. Scholl, III**, announces the relocation of his office to #2 Office Park Circle, Suite 200, Birmingham, Alabama 35223. Phone (205) 871-6004 or 871-6011.

**Reggie Stephens** announces the relocation of his office, effective July 2, 1987, to 1110 Montlimar Drive, Suite 530, Mobile, Alabama 36609. Phone (205) 344-6822.

**J.D. Terry** announces the opening of his office for the general practice of law. The office is located at 1010 22nd Avenue, P.O. Box 2321, Tuscaloosa, Alabama 35403. Phone (205) 759-5959.

**Dow T. Huskey** announces the relocation of his office for the practice of law to 112 West Troy Street, Dothan, Alabama 36302. Phone (205) 794-3366.

**Pamela Willis Baschab** announces the opening of her office, one-half block south of Highway 98 on Highway 83 in Elberta, Alabama. Phone (205) 986-5221.

## AMONG FIRMS

The firm of **Bazelon, Less & Price** announces that **Charles H. Wampold, III**, has become associated with the firm. He served as law clerk for the

Honorable **James Hunter**, judge, United States District Court of Appeals for the Third Judicial Circuit, Philadelphia, Pennsylvania. He is a native of Montgomery, Alabama.

The firm's offices are located at Three Mellon Bank Center, 16th Floor, Philadelphia, Pennsylvania.

**The State of Alabama, Department of Education**, announces that **Richard N. Meadows** has been appointed general counsel for the department. He formerly was general counsel for the State Personnel Board and an Alabama assistant attorney general. His office address is 609 State Office Building, Montgomery, Alabama 36130-5320. Phone (205) 261-5320.

**McFadden, Lyon, Willoughby & Rouse** announces a change of partnership name from **McFadden, Riley & Lyon**. Offices are located at 718 Downtowner Boulevard, Mobile, Alabama 36609. Phone (205) 342-9172.

The firm of **Hubbard, Waldrop, Reynolds, Davis & McIlwain** announces that **William Marcus Brakefield** has become associated with the firm. Offices are located at 808 Lurleen Wallace Boulevard, North, Tuscaloosa, Alabama 35401. Phone (205) 345-6789.

**Steele, Hector & Davis** announces that **Charles A. Guyton** has become a member of the firm, with offices located at Suite 200, 201 South Monroe Street, Tallahassee, Florida 32301-1848. Phone (904) 222-4196.

**David A. Garfinkel** announces that, effective November 1, he has withdrawn from the firm of **King & King**, and that with **William C. Veal** has formed the firm of **Veal & Garfinkel**. The office address is 2112 11th

Avenue, South, Suite 219, P.O. Box 55466, Birmingham, Alabama 35255-5466. Phone (205) 326-4146.

**Pittman, Hooks, Marsh & Dutton, P.C.**, announces that **L. Andrew Hollis, Jr.**, has become a member of the firm, and that the firm name has changed to **Pittman, Hooks, Marsh, Dutton & Hollis, P.C.** Offices are located at Suite 801, Park Place Tower, 2001 Park Place, North, Birmingham, Alabama. Phone (205) 322-8880.

**James A. Patton, John C. McKelvey** and **John M. Kennemer** announce the formation of the firm of **Patton, McKelvey & Kennemer**, with offices located at 106 West 2nd Street, P.O. Drawer 928, Tusculumbia, Alabama 35674. Phone (205) 381-5800.

The office of **Winger & Lee, P.A.**, announces that **D. DeLeal Winger, Jr.**, has joined the firm. Offices are located in the Whilldin Building at 517 North 21st Street, Birmingham, Alabama 35203. Phone (205) 322-3663.

The offices of **Ira DeMent** announce that **Ronald W. Wise** no longer is with the firm, and **Roianne H. Frith** has become associated with the firm, with offices at Suite 311, Corporate Square, 555 South Perry Street, Montgomery, Alabama 36104. Phone (205) 834-8900.

**Jim L. Wilson** and **George C. Day, Jr.**, announce the relocation of the offices of **Wilson & Day** to 153 South Ninth Street, Gadsden, Alabama 35901. Phone (205) 546-6334.

**Berry, Ables, Tatum, Little & Baxter, P.C.**, announces that **Melissa V. Erwin** has become associated with the firm,



with offices at Legal Building, 315 Franklin Street, P.O. Box 165, Huntsville, Alabama 35804.

■  
**Bell & Landers** announces that **Michael A. Givens**, formerly assistant district attorney for Talladega County, is an associate of the firm. Offices are located at 223 North Norton Avenue, Sylacauga, Alabama 35150. Phone (205) 245-7486.

■  
**G. Daniel Evans** announces that **Bradford W. Botes** has become associated with the firm with offices at 1736 Oxmoor Road, Birmingham, Alabama 35209. Phone (205) 870-1970.

■  
**Corley, Moncus, Bynum & De Buys, P.C.**, announces **Clayton T. Sweeney** has joined the firm as associate. Offices are located at 2100 Sixteenth Avenue, South, Birmingham, Alabama 35205. Phone (205) 939-0811.

■  
**Ford, Caldwell, Ford & Payne** announces that **Patrick M. Lamar** has become associated with the firm, with offices located at 218 Randolph Avenue, Huntsville, Alabama 35801.

The firm of **Wolfe & Jones, P.C.**, announces the relocation of its office to 929 Merchants Walk, Huntsville, Alabama 35801, and the association of **Curtis L. Whitmore** to the firm. Phone (205) 534-2205.

■  
The firm of **Massey & Baddley, P.C.**, announces that **Garrick L. Stotser** has become an associate of the firm, with offices located at One Medical Park Drive East, Suite 200, Birmingham, Alabama 35235. Phone (205) 836-4586.

■  
**Thomas A. Smith, Jr.**, announces that his son, **Steven C. Smith**, has joined him for the practice of general law. The firm of **Smith & Smith** is located at 328 First Avenue, SE, P.O. Box 398, Cullman, Alabama 35056. Phone (205) 734-4721.

■  
**Jere L. Beasley, Frank M. Wilson, J. Greg Allen** and **Kenneth J. Mendelsohn** announce that they have formed a firm in the name of **Beasley, Wilson, Allen & Mendelsohn, P.C.**, and that **Randall B. James, Mary Ellen Lamar** and **Michael J. Crow** will be associated with the firm. Offices are lo-

cated at 418 South Hull Street, P.O. Box 4160, Montgomery, Alabama 36103-4160. Phone (205) 269-2343.

■  
The firm of **Watson, Gammons & Fees, P.C.**, announces that **Joseph Albert Jimmerson** and **Jeannie L. Bennett** have become associated with the firm. Offices are located at 107 North Side Square, P.O. Box 46, Huntsville, Alabama 35804. Phone (205) 536-7423.

■  
**James R. Knight, Stephen K. Griffith** and **S. Lynn Marie McKenzie** announce the association of **Jason P. Knight** in the practice of law, with offices at The Griffith Building, 409 First Avenue, SW, P.O. Drawer M, Cullman, Alabama 35056. Phone (205) 734-0456.

■  
The firm of **Doke & Riley** announces that **Anthony P. Underwood** has become associated with the firm. Underwood served as a United States Army Captain at the Office of the Judge Advocate General, Washington, D.C. Firm offices are located at 4300 RepublicBank Tower II, Dallas, Texas 75201-3989. Phone (214) 754-9500.

## NO-PRACTICE INSURANCE

Hume or Wells  
P. O. Box 9549  
Mobile, AL 36691  
(205) 344-7084

McGuire or Williams  
3500 Blue Lake Dr., Ste. 111  
Birmingham, AL 35243  
(205) 969-2460

**Paul Revere  
Insurance Group**

A subsidiary of Textron Inc.

**TEXTRON**

Robert Lamon, Gen. Mgr.

That's really what disability insurance is. It GUARANTEES that all your hard work still pays off when you become disabled.

THE PAUL REVERE INSURANCE GROUP\* - Professionals specializing in Disability Protection for ATTORNEYS, recognized as Americas' leader in NON-CANCELLABLE disability income protection.

Personal Income - Overhead Expense - Disability Buy-Out Protection

NORTHWESTERN NATIONAL LIFE - Leader in the latest life insurance products, Universal Life and Mutual Funds.

TRANSAMERICA OCCIDENTAL LIFE - Leader in LOW COST Term Insurance. 20% Annual DISCOUNT for \$250,000+

XEROX FINANCIAL SERVICES - Single Premium Whole Life.

\*Endorsed by several professional associations.

For more information write or call collect your nearest office.



# Nuts and Bolts

## Involuntary Bankruptcy—Unknown and Little-Used Remedy

by M. Donald Davis, Jr.



It is a familiar and frustrating scenario to most general practitioners: a close corporation is indebted to your client but has refused to pay, for no justifiable reason. While the attorney is in state court getting a judgment, the corporation is transferring most of its assets to its owner. By the time the attorney can levy against the corporation, there are no assets left and the judgment is not worth the paper on which it is printed.

Section 303 of the Bankruptcy Code<sup>1</sup> provides a little-used remedy for such creditors—the involuntary bankruptcy proceeding. The Bankruptcy Code of 1978 substantially relaxed the previously rigid requirements for commencing involuntary bankruptcy actions. Although the involuntary proceeding is not the answer to every creditor's woes,<sup>2</sup> it can be a useful remedy where a recalcitrant debtor refuses, for no justifiable reason,

to pay a valid debt. This procedure makes it easier for creditors to go on the offensive to collect delinquent accounts before the assets available to pay the creditor are exhausted. Every Alabama practitioner should be familiar with it.

### General procedure

The involuntary bankruptcy remedy is codified in Section 303 of the Bankruptcy Code.<sup>3</sup> The proceeding is commenced



by the filing of a petition, which must be verified.<sup>4</sup> If the attorney is going to execute the petition on behalf of his client, it is advisable for the attorney to have a written power of attorney authorizing the filing of the petition, which contains hold harmless and indemnity provisions. The petition can be filed under Chapter 7 (liquidation proceeding) or Chapter 11 (reorganization proceeding) of the Bankruptcy Code.<sup>5</sup>

The debtor may contest the petition, which requires the bankruptcy court to conduct a trial on the petition. The court must make a determination of the issues relating to the petition "at the earliest practicable time."<sup>6</sup> An order for relief, dismissal of the petition or other appropriate orders then can be made.<sup>7</sup>

If the petition is contested by the debtor, the debtor must file and serve an answer and must propound any defenses and/or objections prescribed by Rule 12 of the Federal Rules of Civil Procedure.<sup>8</sup> The answer is to be served and filed within 20 days after service of the summons.<sup>9</sup> The service of a motion under Rule 12 of the Federal Rules of Civil Procedure extends the time to serve and file a responsive pleading. The debtor is permitted only to assert counterclaims against the petitioning creditor that would defeat the petition.<sup>10</sup> An affirmative judgment against the petitioning creditor is not permitted.<sup>11</sup> If the involuntary petition is filed by fewer than three creditors and alleges the existence of 12 or more creditors, the debtor must file with his answer a list of all creditors with the creditors' addresses, a brief statement of the nature of the creditors' claims and the amounts thereof.<sup>12</sup> If it appears that there are 12 or more creditors as provided in Section 303(b), the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held.<sup>13</sup> If no pleading or other defense to the petition is filed within the time provided, the court shall enter an order for the relief prayed for in the petition.<sup>14</sup>

If the allegation that the debtor generally is not paying its debts as they become due is contested, discovery pursuant to the Federal Rules of Civil Procedure is permitted.<sup>15</sup> If the debtor fails to appear, produce records or submit to examination or deposition, the court may enter an order for relief or other appro-

priate order, in addition to the sanctions available under Rule 37 of the Federal Rules of Civil Procedure.<sup>16</sup>

### Place to file

A petition for involuntary bankruptcy may be filed in the United States District Court for the district where the domicile, residence, principal place of business or principal assets of the debtor are located 180 days immediately preceding commencement of the proceeding.<sup>17</sup>

### Permitted debtors

Generally speaking, an involuntary bankruptcy proceeding can be commenced against any person or entity which could voluntarily commence a bankruptcy proceeding. However, involuntary proceedings are not permitted against municipalities, farmers and eleemosynary institutions, such as churches, schools and charitable organizations and foundations.<sup>18</sup> Involuntary Chapter 13 (wage-earner repayment plan) proceedings also are not permitted.<sup>19</sup>

### Essential elements

The essential elements which must be present to invoke the involuntary bankruptcy remedy are:

- (1) existence of creditors;
- (2) claim(s) which aggregate at least \$5,000;
- (3) claim(s) not contingent in nature;<sup>20</sup>
- (4) claim(s) not subject to a bona fide dispute;<sup>21</sup> and
- (5) the debtor is not generally paying its debts as such become due, or within 120 days before the date of the filing of the petition, a custodian (other than a trustee), receiver, or agent appointed or authorized

to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.<sup>22</sup>

### Requisite number of claims

Section 303(b) provides that if the debtor has less than 12 creditors, an involuntary petition may be brought against the debtor by a single claim holder who meets the other requirements of Section 303.<sup>23</sup> If the debtor has 12 or more creditors, the involuntary petition must be brought by three or more creditors.<sup>24</sup>

### Which creditors' claims are counted

The Bankruptcy Code excludes certain creditors from the count of claims if considered friendly with the debtor. Employees, insiders and the transferees of certain transfers voidable by other provisions of the Bankruptcy Code are excluded.<sup>25</sup> Likewise, "contingent" claims and claims subject to a bona fide dispute are not counted.<sup>26</sup> Further, claims incurred after the involuntary petition date are not counted.<sup>27</sup>

### Contingent claims

Section 303(b) excludes contingent claims from the count, although unliquidated or unmatured claims are included.<sup>28</sup> A claim is not contingent when the duty to pay the claim does not rest upon the occurrence of a future event or merely because the debtor disputes the creditor's claim and has asserted a counterclaim against it.<sup>29</sup>

### Bona fide dispute

In 1984 Section 303 of the Bankruptcy Code was amended to require that the debts of petitioning creditors not be sub-

---

*M. Donald Davis, Jr., is a member of the Mobile firm of Sirote, Permutt, McDermott, Slepian, Friend, Friedman, Held & Apolinsky, PC. He is a graduate of the University of South Alabama and Cumberland School of Law. Davis is a member of the American Bar Association, Alabama State Bar and its Bankruptcy & Commercial Law Section, Mobile Bar Association, American Bankruptcy Institute and American Trial Lawyers Association.*





ject to a bona fide dispute.<sup>30</sup> Because holders of disputed claims were permitted to be petitioning creditors under the Bankruptcy Code as enacted in 1978,<sup>31</sup> cases concerning involuntary bankruptcy proceedings generally have not discussed disputed claims within the context of the standing of the petitioning creditors. There have been only a handful of cases discussing the bona fide dispute requirement since 1984, and these cases are not in complete agreement with each other.

The first standard applied in determining whether a claim is subject to a bona fide dispute is the same used applicable on motions for summary judgment: if the defense of the petitioning creditor raises material issues of fact or law, the claim is subject to a bona fide dispute.<sup>32</sup>

The second standard enunciated is found in *In Re Johnston Hawks, Ltd.*<sup>33</sup> The *Johnston Hawks* court found that the following factors should be considered to determine whether the claims or defenses are subject to a bona fide dispute:

- (1) The nature of the dispute;
- (2) The nature and extent of the evidence and allegations presented in support of the debtor's contrary claim;
- (3) Whether the creditor's claim and the debtor's contrary claims are made in good faith and without fraud or deceit;
- (4) Whether on balance the interests of the creditor outweighs those of the debtor.<sup>34</sup>

A third standard was used by the United States Bankruptcy Court for the Southern District of Alabama in *In Re Technical Fabricators, Inc.*<sup>35</sup> The *Technical Fabricators* court adopted the four standards stated in *Johnston Hawks*, but also stated that an additional point to consider is whether the debtor disputed the debt in question prior to the commencement of the involuntary proceeding.<sup>36</sup>

The standards stated in *Johnston Hawks* and *Technical Fabricators* appear better reasoned and are more consistent with general bankruptcy principles of law. Since bankruptcy courts are courts of equity,<sup>37</sup> they act to assure that "fraud will not prevail, substance will not give way to form and that technical considerations will not prevent substantial justice

from being done.<sup>38</sup> The summary judgment standard<sup>39</sup> completely ignores these principles. It is a mechanical test, which would operate to permit one to defeat any involuntary petition by simply alleging that disputed facts and/or disputed issues of law exist. The *Johnston Hawks* and *Technical Fabricators* theories<sup>40</sup> recognize the equitable nature and purpose of the bankruptcy court and permit flexibility as a particular situation may demand.

### Generally not paying debts as the same become due

Subsection h of Section 303 provides that if the petition is controverted, the court shall order relief under the appropriate chapter after a trial only if the debtor is generally unable to pay its debts as they mature.<sup>41</sup>

This test is a variation of the "equity insolvency" test which was used under the Bankruptcy Act of 1898.<sup>42</sup> Cases decided under the now repealed Bankruptcy Act of 1898 looked to the debtor's inability to pay.<sup>43</sup> In reforming the standards of involuntary bankruptcy, Congress intended to make it easy to commence cases against debtors.<sup>44</sup> In effect Section 303(h)(1) is a "no-fault" statute—either the debtor is or is not paying its debts as they become due.<sup>45</sup>

It has been said that the "generally not paying" standard is a flexible one.<sup>46</sup> The diversity exhibited by those suffering financial distress calls for a broad definition of the term rather than a mechanical test.<sup>47</sup> In determining whether a debtor is paying debts as they become due, the following factors have been examined: (1) the number and amount of unpaid claims;<sup>48</sup> (2) the length of time the debt has been due;<sup>49</sup> (3) the debtor's overall contemporaneous handling of its affairs;<sup>50</sup> (4) whether the debtor is conducting financial affairs in a manner inconsistent with good faith and outside the ordinary course of business;<sup>51</sup> (5) reduction in the debtor's assets;<sup>52</sup> (6) the debtor's deficit financial situation;<sup>53</sup> (7) the debtor's ability to meet only small, periodic debts and not long-term obligations;<sup>54</sup> (8) whether the debtor's assets have declined dramatically and whether the reduction in debt is due to the sale of assets rather than the generation of profits;<sup>55</sup> (9) the debtor's liquidity;<sup>56</sup> (10) the amount of the debtor's debts com-

pared to the amount of the debtor's yearly income;<sup>57</sup> (11) whether the debtor voluntarily closed its business operations;<sup>58</sup> and (12) the apparent lack of good faith by the debtor's officers in taking loans from the debtor in spite of the debtor's financial distress.<sup>59</sup>

### Operation of business while petition pending

Until an order for relief is made, or the court prevents it, the debtor may continue to operate, use, acquire or dispose of property as if the involuntary case had not been commenced.<sup>60</sup> However, the court may order a trustee to take possession of property and operate any business of the debtor upon request and hearing, if necessary, to preserve the property involved in the proceeding.<sup>61</sup>

If an interim trustee is appointed, the debtor may regain possession of the property held by the trustee by filing a bond the court may require.<sup>62</sup> Possession is conditioned on the debtor accounting for and delivering to the trustee such property, or its value, once an order for relief is made.<sup>63</sup> After notice and a hearing, and for cause, the court may require the petitioners to file a bond to indemnify the debtor for such amounts as the court may later allow under Section 303(i).<sup>64</sup>

### Attorney's fees—filing fees

If the petitioning creditor's petition is granted, Section 503(b)(3)(A) permits reimbursement of the actual necessary expenses of the petitioning creditors. Expenses incident to the filing fee, service of the involuntary petition and the like come within the parameters of this provision.<sup>65</sup>

Section 503(b)(4) permits reasonable compensation for professional services rendered by an attorney to an entity whose own actual, necessary expenses are allowed under Section 503(b)(3)(A).<sup>66</sup> The compensation is based upon the time, nature, extent and value of such services, and cost of comparable services other than in a case under the Bankruptcy Code and reimbursement for actual, necessary expenses incurred by the attorney.<sup>67</sup>

These claims are conferred "administrative status." Under Section 507(a)(1) all administrative expenses allowed are given first priority in payment.<sup>68</sup>



## Conclusion

Too often creditors or their legal counsel do nothing to collect a delinquent account, or commence a lawsuit in the state court system while the debtor disposes of assets, makes preferential transfers and otherwise reduces the source of funds to satisfy debts. By the time the creditor obtains judgment there is either nothing to satisfy the judgment or the debtor commences a voluntary bankruptcy proceeding with few or no assets to pay a dividend to creditors. The end result is that a lot of time, money and effort have been expended for naught. The involuntary bankruptcy proceeding can be a useful tool for recovering valid debts.

for (i) any damages proximately caused by such filing, or (ii) punitive damages. 11 U.S.C.A. Section 303(i) (Supp. 1987).  
<sup>11</sup> U.S.C.A. Section 303 (1979 & Supp. 1987).  
<sup>12</sup> R. Bankr. P. 1008.  
<sup>13</sup> U.S.C.A. Section 303(b) (1979).  
<sup>14</sup> R. Bankr. P. 1011(a).  
<sup>15</sup> Id.  
<sup>16</sup> R. Bankr. P. 1011(b).  
<sup>17</sup> Id.  
<sup>18</sup> R. Bankr. P. 1011(d). For instance, the debtor can challenge the standing of the petitioning creditor. See *Harris v. Capehart-Farnsworth Corp.*, 225 F.2d 268 (8th Cir. 1955).  
<sup>19</sup> Id.  
<sup>20</sup> U.S.C.A. Section 303(b) (1979 & Supp. 1987).  
<sup>21</sup> R. Bankr. P. 1003(d).  
<sup>22</sup> R. Bankr. P. 1013.  
<sup>23</sup> R. Bankr. P. 1012(a).  
<sup>24</sup> R. Bankr. P. 1012(b).  
<sup>25</sup> 28 U.S.C.A. Section 1408 (Supp. 1987). An involuntary proceeding also may be commenced in the district court where there is pending under the Bankruptcy Code a case that includes such person's affiliate, general partner or partnership. *Id.*  
<sup>26</sup> 11 U.S.C.A. Section 303(a) (1979 & Supp. 1987).  
<sup>27</sup> To do so would go against congressional intent because Chapter 13 only works when there is a willing debtor that wants to repay his debts. H.R. 395, 95th Cong., 1st Sess. (1977); S. 989, 95th Cong., 2d Sess. (1978).  
<sup>28</sup> 11 U.S.C.A. Section 303(b) (1979).  
<sup>29</sup> 11 U.S.C.A. Sections 303(b)(1) and (b)(1) (Supp. 1987).  
<sup>30</sup> 11 U.S.C.A. Section 303(b) (1979). For a more general discussion see 2 King, *Collier on Bankruptcy* Paragraph 303.08[12] (15th ed. 1986).  
<sup>31</sup> 11 U.S.C.A. Section 303(b)(2) (1979).  
<sup>32</sup> 11 U.S.C.A. Section 303(b)(3) (1979).  
<sup>33</sup> 11 U.S.C.A. Section 303(b)(2) (1979).  
<sup>34</sup> Id. See also *In Re Skye Marketing Corp.*, 11 Bankr. 891, 896 (Bankr. E.D. N.Y. 1981).  
<sup>35</sup> King, *Collier on Bankruptcy* Paragraphs 303.08[1], 303.08[12][c], 303.12[4] (15th ed. 1986).  
<sup>36</sup> 11 U.S.C.A. Section 303(b)(1) (1979). See also 2 King, *Collier on Bankruptcy* Paragraph 303.08[1][a] (15th ed. 1986).  
<sup>37</sup> *In Re All Media Properties, Inc.*, 5 Bankr. 126, 133 (Bankr. S.D. Tex. 1980), *aff'd*, 646 F.2d 193 (5th Cir. 1980).  
<sup>38</sup> 11 U.S.C.A. Section 303(b)(3) (Supp. 1987).  
<sup>39</sup> 11 U.S.C.A. Section 303(b)(1) (1979).  
<sup>40</sup> See *In re Lough*, 57 Bankr. 993 (Bankr. E.D. Mich. 1986); *In re Stroop*, 47 Bankr. 986 (Bankr. D. Colo. 1985).

<sup>41</sup> 99 Bankr. 823 (Bankr. D. Haw. 1985).  
<sup>42</sup> Id. at 830-31.  
<sup>43</sup> No. 85-00871 (Bankr. S.D. Ala. July 15, 1986).  
<sup>44</sup> Id. at 20.  
<sup>45</sup> *In Re International Horizons, Inc.*, 751 F.2d 1213, 1216 (11th Cir. 1985).  
<sup>46</sup> Id. (quoting *Pepper v. Litton*, 308 U.S. 295, 305 (1930)).  
<sup>47</sup> See *In re Lough*, 57 Bankr. 993 (Bankr. E.D. Mich. 1986); *In re Stroop*, 47 Bankr. 986 (Bankr. D. Colo. 1985).  
<sup>48</sup> *In re Johnston Hawks, Ltd.*, 49 Bankr. 821 (Bankr. D. Haw. 1985); see also *In re Technical Fabricators, Inc.*, No. 85-00871 (Bankr. S.D. Ala. July 15, 1986).  
<sup>49</sup> 11 U.S.C.A. Section 303(b) (1979 & Supp. 1987). The court may also enter an order for relief if a custodian was appointed during the 120-day period preceding the filing of the petition. 11 U.S.C.A. Section 303(b)(2) (1979).  
<sup>50</sup> 11 U.S.C.A. Section 21 (repealed 1978).  
<sup>51</sup> See *In re Morgan & Williams*, 184 F. 938, 941 (N.D. Ga. 1911) (test of solvency is that liabilities exceed assets).  
<sup>52</sup> *In Re B. D. Int'l. Discount Corp.*, 15 Bankr. 755, 762 (S.D. N.Y. 1981), *aff'd*, 701 F.2d 1071 (2d Cir. 1983).  
<sup>53</sup> See *In Re Covey*, 650 F.2d 877, 884 (7th Cir. 1983).  
<sup>54</sup> *In Re Win-Sum Sports, Inc.*, 14 Bankr. 383, 392 (Bankr. D. Conn. 1981).  
<sup>55</sup> *In Re Covey*, 650 F.2d at 883.  
<sup>56</sup> *In Re Hubson*, 28 Bankr. 876, 881 (Bankr. E.D. Tenn. 1983).  
<sup>57</sup> *In Re Reed*, 11 Bankr. 755, 760 (Bankr. S.D. W. Va. 1981).  
<sup>58</sup> Id.  
<sup>59</sup> *In Re B. D. Int'l. Discount Corp.*, 15 Bankr. at 764.  
<sup>60</sup> *In Re Gill Enter, Inc.*, 15 Bankr. 328, 332 (Bankr. D. N. J. 1981).  
<sup>61</sup> *In Re Hill*, 5 Bankr. 79, 83 (Bankr. D. Ariz. 1981).  
<sup>62</sup> *In Re Gill Enter, Inc.*, 15 Bankr. at 332.  
<sup>63</sup> Id.  
<sup>64</sup> *In Re Reed*, 11 Bankr. at 760.  
<sup>65</sup> Id.  
<sup>66</sup> *In Re B. D. Int'l. Discount Corp.*, 15 Bankr. at 764.  
<sup>67</sup> *In Re Gill Enter, Inc.*, 15 Bankr. at 332.  
<sup>68</sup> 11 U.S.C.A. Section 303(i) (1979).  
<sup>69</sup> 11 U.S.C.A. Section 303(i) (Supp. 1987).  
<sup>70</sup> Id.  
<sup>71</sup> Id.  
<sup>72</sup> King, *Collier on Bankruptcy* Section 303.35[3] (15th ed. 1986).  
<sup>73</sup> See 11 U.S.C.A. Sections 503(b)(3)(A) (1979), and 2 King, *Collier on Bankruptcy* Paragraph 503.04[3][a] (15th ed. 1986).  
<sup>74</sup> 11 U.S.C.A. Section 503(b)(4) (1979).  
<sup>75</sup> Id.  
<sup>76</sup> 11 U.S.C.A. Section 507(a)(1) (1979).

## FOOTNOTES

<sup>1</sup> 11 U.S.C.A. Section 303 (1979 & Supp. 1987).  
<sup>2</sup> The penalty for an improper bankruptcy petition is exacting. Section 303(i) of the Bankruptcy Code provides that if the involuntary proceeding is dismissed other than by consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment, the Bankruptcy Court may grant a judgment: (a) against the petitioners and in favor of the debtor for costs and reasonable attorney's fees; or (b) against any petitioner that filed the petition in bad faith

# NOTICE

## Promulgation of Proposed Local Rules of Civil Procedure for the Eighth Judicial Circuit

Pursuant to the requirements of Rule 83, ARCP, the Eighth Judicial Circuit Court has promulgated local rules which will be submitted to the supreme court for approval 90 days after publication. A copy of the proposed rules can be obtained from the clerk of the court. Comments or objections with respect to the proposed local rules should be submitted to the clerk of the court in writing within 90 days after this publication. A copy of any comments or objections also should be transmitted to the clerk of the supreme court.

## AFFORDABLE TERM LIFE INSURANCE — FROM COOK & ASSOCIATES

Compare these low non-smoker annual rates for non-decreasing graded premium life:

MALE AGES	\$250,000	\$500,000	\$1,000,000
25	250.00	455.00	670.00
30	252.50	460.00	677.50
35	255.00	465.00	685.00
40	330.00	595.00	880.00
45	412.50	760.00	1,127.50
50	542.50	1,015.00	1,510.00
55	810.00	1,520.00	2,267.50
60	1,355.00	2,535.00	3,790.00
65	2,372.50	4,385.00	6,565.00

(smoker's rates slightly higher)

Renewable to age 100. Female rates same as males four years younger. All coverage provided by companies rated "A Excellent" by A.M. Best Co.

For a written quotation and policy description send your date of birth and amount of coverage desired to:

## COOK & ASSOCIATES

2970 COTTAGE HILL ROAD • SUITE 201  
 MOBILE, ALABAMA 36606  
 (205) 476-1737



# The Lawyer as a Lobbyist

by Luther J. Strange, III





## Introduction

Given the tremendous influence of the federal government, there obviously are a great number of issues at the federal level which potentially could affect the lawyer's client. And, in fact, Alabama attorneys frequently have occasion to contact their senators or congressman to request information or seek help with a matter of concern to a client. The attorney simply may be interested in learning the status of a particular bill or acquiring copies of documents. Often, however, the attorney is interested in persuading the member of Congress to provide assistance with the passage or defeat of legislation.

The purpose of this article is to provide some practical advice on how to be effective in representing a client on federal issues and dealing with the Alabama congressional delegation in particular. Strictly speaking, a lobbyist has been defined as "one employed to influence legislators to introduce or vote for measures favorable to the interest he represents," *American Heritage Dictionary, New College Edition* at 765. In this article, however, the term is used in a broader sense to include all activities the attorney might undertake, ranging from simple requests for information to actual "lobbying" to pass or defeat legislation.

## Background

The right to lobby individually or on behalf of a client is one of our most fundamental rights. It is protected by the First Amendment to the United States Constitution which provides that "Congress shall make no law . . . abridging the freedom of speech or of press; or the right of the people peaceably to assemble and to petition the Government for redress of grievances."

There is the obvious potential, however, for corruption and conflict of interest in protecting the fundamental rights of groups and individuals to petition. In the early years of our country, corruption and conflicts of interest were commonplace. Perhaps the most often-cited conflict of interest situation from those early years involved President An-

drew Jackson's battle with the Bank of the United States in the 1830s. It was disclosed that Senator Daniel Webster of Massachusetts was on retainer from the bank while at the same time leading the Senate fight to overturn President Jackson's veto of legislation renewing the bank's charter. In a private communication to the bank's president, Webster complained, ". . . I believe my retainer has not been renewed or refreshed as usual. If it be wished that my relation to the bank should be continued, it may be well to send me the usual retainers."

As might be expected, the term "lobbyist" gained a rather unsavory reputation in those early years. The situation is very much different today, however, and despite the occasional unfortunate abuse, I think it is well-established that lobbying is an essential part of the legislative process. Well-informed, knowledgeable members of Congress obviously are better able to act in a way that benefits everyone. Furthermore, members clearly want as much information as possible on issues that are of importance to them and have come to rely in particular on lobbyists to provide it.

## Basic principles

In testimony before the Senate Governmental Affairs Committee, Charles Walker, a well-known Washington lobbyist, remarked:

" . . . When I am asked by students, 'How do you get a bill through Congress?' I respond that it is very simple to do. You just have to convince a majority of the members of the House and a majority of the members of the Senate that what you are for is good for his or her constituents and for the country; and what you are against is bad for his or her constituents. I said it is easy to state but not easy to do." (1983 Lobby Hearings, p. 212)

As Walker's statement indicates, it would be somewhat of an understatement to observe that lobbying is an inexact science. Despite that fact, it can be said that the lawyer has two fundamental goals when representing a client on a legislative matter—to inform and to persuade. The lawyer must be able to effectively inform the member of Congress of the client's problem and persuade that member to take appropriate action. Obviously, all the lawyer's traditional skills of advocacy and negotiation are involved. In fact, handling a legislative issue is very similar to handling a settlement negotiation on behalf of a client.

There are certain basic principles which have proven to be very effective in handling legislative matters. These principles are not necessarily original. In fact, many involve good old-fashioned common sense combined with traditional lawyering skills. Often, however, the basics are overlooked to the detriment of the lawyer and client.

---

*Luther J. Strange, III, is director of federal affairs for Birmingham-based Sonat, Inc., and is in charge of its Washington, D.C. office. A native of Birmingham, he received his undergraduate and law degrees from Tulane University. Strange is a member of the Alabama, Louisiana and Texas state bars, and the Federal Energy Bar Association. Before moving to Washington, he practiced with Sonat in Birmingham.*





### **I. Be knowledgeable and thorough**

Each member of Congress has a personal and committee staff which is available to provide information on a wide range of issues. Other sources of information within the government also are available to members. They rely on outside sources, however, for much of the information they need on specific issues. Perhaps the most important function of the lawyer as a lobbyist is to be a reliable source of such information. This is particularly true of areas where the lawyer or his client has expert knowledge. Of course, the lawyer should be thoroughly familiar with the client's issue and the facts surrounding it. Keep in mind that the member deals with literally hundreds of issues. Do not assume that he knows anything about your client or problem, although he probably will. A "white paper" summarizing your issue and the help you are seeking is very helpful.

### **II. Be accurate and complete**

The lawyer naturally wants to make the best case possible for the client. To do so, it is essential that the information provided to the member be accurate and complete. It is perhaps the cardinal sin to provide a member with faulty or erroneous information. Credibility is essential, and once it is lost it is very difficult to regain.

It is also incumbent upon the lawyer to point out to the member both the pros and cons of the client's issue or position. Virtually every decision the member makes has political implications. Hearing both sides of the issue gives the member an opportunity to make an informed decision taking into account the inevitable political considerations. If there are serious political considerations on the other side of the issue the member will appreciate your making them known. You do not want the member to learn about them from the other side or the "hard way," after a decision has been made.

### **III. Be candid**

Members of Congress face tremendous demands on their time. They deal with diverse issues moving at a hectic pace. They appreciate a candid statement on the lawyer's part of exactly what the client's position is on an issue and what help is being requested. If the issue is a

so-called "pocketbook" issue of importance only to your client then that fact will be apparent to the member. It is in the client's interest to be up front about it. The members of the Alabama delegation have a tremendous amount of experience and tend to know very quickly what type of issue is involved. Be candid with the member about the issue and exactly why it is important to your client.

### **IV. Tie to the state or district**

Members of Congress rarely forget that they are elected to represent their constituents and the lawyer should not forget it either. For all the talk about the influence of so-called "special interest" groups, members of Congress are primarily responsive to the voters at home. If the client's issue is important to Alabama or the congressman's district, say so. Any statistics or other evidence demonstrating the local importance of an issue are extremely helpful.

### **V. Avoid any impropriety**

This point should need no elaboration. The lawyer should always avoid approaches to the member that could be interpreted as unethical or constituting an improper influence.

### **VI. Suggest a solution**

The lawyer should be prepared to state precisely what the client's position is and what the member is being requested to do. Simply complaining to a member about a problem without suggesting a potential solution or recommended course of action is ineffective and counter-productive. Keep in mind that the member will want to be of assistance to your client particularly if the client is a constituent. Make it easy by having a positive solution available. In this regard, be able to provide precise legislative language for any proposed bill or amendment as well as lists of witnesses for hearings and the names of possible co-sponsors for any legislation.

### **VII. Be flexible**

Politics is essentially the art of compromise. Rarely is one issue so clear that there is only one position which can or should prevail. Instead, the member typically faces a number of competing interests. The member naturally will seek a compromise position on those issues which will satisfy all interested parties. Recognize this and be willing to be flexible in order to assist the member in reaching a compromise. In this regard,

do not press the member to make an immediate commitment or decision on an issue. He will appreciate your giving him the time to fully consider the matter.

### **VIII. Seek help from others with a common interest**

In perhaps the majority of cases, the issue or problem of concern to the client will also be of concern to others. The lawyer always should seek to identify any potential allies and obtain their support or join forces with them in any on-going effort. Of particular help in this regard are industry trade associations, public interest groups and similar organizations.

### **IX. Recognize importance of member's staff**

I cannot over-emphasize this point. Each member of the Alabama delegation has a personal staff in Washington and offices in each congressional district. The chief staffer in the Washington office is the administrative assistant. Each member also has legislative assistants who are assigned responsibility for particular issues, such as agriculture, commerce, etc. The staff members of the various Alabama congressional offices are highly competent professionals. I would urge any lawyer, as a first step on behalf of a client, to contact the appropriate staff member to explain any problem or need for information. Always keep the staff advised of developments and remember that a "thank you" goes a long way.

For your convenience, I have listed the names, numbers and addresses of the members of the Alabama delegation along with the names and numbers of their administrative assistants:

### **DIRECTORY ALABAMA DELEGATION**

Washington, D.C.

Sen. Howell T. Heflin (D)  
(Steve Raby)  
(202) 224-4124  
Hart Bldg., Room 728  
2nd & C Sts., NE  
Washington, DC 20510

Sen. Richard Shelby (D)  
(Rick Roberts)  
(202) 224-5744  
Hart Bldg., Room 313  
2nd & C Sts., NE  
Washington, DC 20510



Rep. Sonny Callahan (R-1st)  
(Randy Hinaman)  
(202) 225-4391  
Longworth Bldg., Room 1232  
Independence & New Jersey Aves., SE  
Washington, DC 20515

Rep. William L. Dickinson (R-2nd)  
(Clay Swanzy)  
(202) 225-2901  
Rayburn Bldg., Room 2406  
Independence & So. Capitol Sts., SW  
Washington, DC 20515

Rep. Bill Nichols (D-3rd)  
(Winston Lett)  
(202) 225-3261  
Rayburn Bldg., Room 2405  
Independence & So. Capitol Sts., SW  
Washington, DC 20515

Rep. Tom Bevill (D-4th)  
(Don Smith)  
(202) 225-4876  
Rayburn Bldg., Room 2302  
Independence & So. Capitol Sts., SW  
Washington, DC 20515

Rep. Ronnie G. Flipppo (D-5th)  
(Frank Toohey)  
(202) 225-4801  
Rayburn Bldg., Room 2334  
Independence & So. Capitol Sts., SW  
Washington, DC 20515

Rep. Ben Erdreich (D-6th)  
(Judy Weinstein)  
(202) 225-4921  
Cannon Bldg., Room 439  
1st & Independence Aves., SE  
Washington, DC 20515

Rep. Claude Harris (D-7th)  
(Walter Braswell)  
(202) 225-2665  
Longworth Bldg., Room 1009  
Independence & New Jersey Aves., SE  
Washington, DC 20515

**X. Be aware of registration and reporting requirements**

The attorney should be aware of the existence of certain lobbying regulations which may apply to the activities I have

discussed. The one existing omnibus lobbying law is the Federal Regulation of Lobbying Act (the act) which was passed as part of the Legislative Reorganization Act of 1946. The act itself does not restrict lobbying activities; rather, it requires registration under certain circumstances with the secretary of the Senate and the clerk of the House, along with the filing of quarterly financial reports. Each attorney should review the act and other applicable statutes and regulations to ensure compliance.

**Conclusion**

Alabama is quite fortunate to have a congressional delegation of the highest caliber representing the state in Washington. The members and their staffs are a pleasure with whom to work. I hope the advice contained in this article is of some assistance to those having occasion to contact the Alabama delegation on an issue of importance to a client. ■

**LLM  
in  
REAL PROPERTY**

Program includes leasing, construction, taxation, financing, zoning and planning, in a one-year program, full or part time.

Write or Call:  
**Graduate Program in  
Real Property, Land  
Development and  
Finance Law**

University of Miami  
School of Law  
P.O. Box 248087  
Coral Gables, FL 33124  
Telephone (305) 284-3587

**LL.M  
in  
TAXATION**

Corporate, Foreign and Estate concentrations available in a one-year program, full or part-time.

Write or Call:  
**Graduate Program in  
Taxation**

University of Miami  
School of Law  
P.O. Box 248087  
Coral Gables, FL 33124  
Telephone (305) 284-3587

**LL.M.  
in  
ESTATE PLANNING**

Study with many of the nation's authorities in this nationally-recognized one-year program.

Write:  
**Graduate Program in  
Estate Planning**

University of Miami  
School of Law  
P.O. Box 248087  
Coral Gables, Florida 33124



# Service by Publication under Rule 4.3

by  
Jerome A. Hoffman



Service by publication has not been the same since *Mullane v. Central Hanover Bank*. 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950) That landmark United States Supreme Court decision established a federal constitutional requirement that a person receive the best notice practicable under the circumstances in any action in which he is to be served. The Court said, "An elementary and fundamental require-

ment of due process in any proceeding which is to be accorded finality is *notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.*" *Id.* at 314, 70 S. Ct. at 657, 94 L. Ed. at 873 (emphasis added) By way of explanation, the Court went on to say, "A mere gesture is not due process. The means employed must be such as one

desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.* at 315, 70 S. Ct. 657, 94 L. Ed. at 874 (emphasis added)

Since *Mullane*, lawyers for plaintiffs have had to communicate more diligently with many defendants who formerly might have been served solely by publication. Even so, service by publication certainly has not become a dead letter. It continues to serve an indispensable



function as the means of last resort. Typically, only when counsel uses it short of a last resort does it cause the mischief of which it is capable.

A defendant may not fall in a category of persons upon whom service by publication is authorized. As to him, service by publication may properly be said to be inappropriate. On the other hand, a defendant who falls in an authorized category may not have been served with the formalities required by due process and Rule 4.3 of the Alabama Rules of Civil Procedure. As to him, service by publication, although authorized, may properly be said to have been imperfect. If a defendant inappropriately or imperfectly served by publication appears and defends on the merits, a judgment rendered against him is, of course, valid and enforceable. If, however, a defendant inappropriately or imperfectly served by publication defaults without appearance, a judgment rendered against him upon that default is void. It will not support execution. Recording it will not create a lien upon property (although it may, of course, cast a cloud upon title). It will not support a subsequent judgment. It will not exert *res judicata* effect upon subsequent litigations of the same transaction or occurrence. A plaintiff who takes such a default judgment may not, it is true, have invested much in it. But he has received nothing for his investment, unless a void judgment will have some *in terrorem* effect when brandished before his opponent. And an attorney behaves unethically when he bluffs an ignorant or uninformed layman with a judgment the attorney knows or believes to be void. Thus, it would seem that plaintiffs' counsel have an important stake in understanding the appropriate uses of Rule 4.3 and avoiding the abuses to which it has commonly been subjected.

Defense counsel, by the same token, have an important and often rewarding role to play in policing and enforcing the prophylactic provisions of Rule 4.3 and the constitutional requirements of due process that underlie it.

Rule 4.3 was quite consciously drafted to satisfy the constitutional mandate of *Mullane*. It could not have been drafted more conscientiously, although perhaps in retrospect, it could have been drafted more skillfully. Some of the appellate opinions interpreting it have had to wres-

tle not with matters of substance but with problems created by draftsmanship that have obscured, or at least not spotlighted, the basic distinction between actions *in personam*, on the one hand, and those *in rem* or *quasi in rem*, on the other. By making this one simple distinction, we can cut Rule 4.3 and service by publication down to size. Although it does not always keep them well-separated or distinguished, Rule 4.3 has provisions that apply particularly to *in personam* actions and provisions that apply particularly to *in rem* or *quasi in rem* actions, in addition, of course, to provisions that apply equally to both. Thus, in applying the rule, a judge or lawyer must always ask whether a judgment *in personam* or merely *in rem* or *quasi in rem* is sought in the action under examination.

### A. Judgments *in personam*

An *in personam* judgment is one (usually for money damages) that the sheriff can execute against the defendant or one that subjects the defendant to the court's contempt power. Rule 4.3 (a)(2), ult. sent., provides: "In no event shall an *in personam* judgment be entered on service by publication except as provided in subparagraph (c) of this rule." Thus, under carefully limited circumstances, a party seeking an *in personam* judgment may have service by publication against either an *individual* or a *corporation*.

#### 1. Individuals

Rule 4.3(c), sent. 1, provides: "When [a] *resident defendant* [b] *avoids service* and [c] his present location or residence is unknown and [d] the process server has endorsed the fact of failure of service and the reason therefor on the process and returned same to the clerk or [d2] where the return receipt shows a failure

of service, the court may, on motion, order service to be made by publication." (emphasis and bracketed material added)

a. **Resident defendant**—If, upon service by publication, a nonresident appears and defends, an *in personam* judgment rendered against him will, of course, be valid. But an *in personam* judgment obtained by default against a nonresident defendant is void if based solely upon service by publication. *Brale v. Horton*, 432 So.2d 463 (Ala. 1983) A party moving for service by publication must show affirmatively, by affidavit or otherwise, that the party to be served is a resident of Alabama, and the trial court must make a finding of residency upon that showing. *Id.* at 466.

On its face, Rule 4.2(b)(1)(C) seems to contradict the proposition that *in personam* judgments can be obtained by publication only against resident defendants. The rule provides that out-of-state service by certified mail "shall be deemed to confer *in personam* jurisdiction." Rule 4.2(b), lines 5 & 6 The provision is not limited on its face to out-of-state service upon Alabama residents; indeed, one supposes that the principal utility of Rule 4.2(b) is to be found in its application to nonresidents. Rule 4.2(b)(1)(C) then provides:

... In the event that the return receipt shows failure of delivery, service is complete when the serving party . . . files with the clerk an affidavit setting forth facts indicating the reasonable diligence utilized to ascertain the whereabouts of the party to be served, and service by publication is made under Rule 4.3(c).

Ult. sent., emphasis added—Here, also, the provision is not limited on its face to

---

*Jerome A. Hoffman is a professor of law at the University of Alabama School of Law. He holds B.A. and J.D. degrees from the University of Nebraska and is a member of the Alabama and California state bars. He is a member of the Alabama State Bar's Action Group to Consider Possible Restructuring of Alabama's Appellate Courts.*





out-of-state service upon Alabama residents and, read only with the provision "shall be deemed to confer *in personam* jurisdiction" and not with the related provisions of Rule 4.3(a)(2) and 4.3(c), would seem quite clearly to authorize *in personam* judgments obtained by publication against defendants not residents of Alabama. Rule 4.2 must be read with Rule 4.3, however, and the proscription set forth in Rule 4.3(a)(2), ult. sent., is plain: "In no event shall an *in personam* judgment be entered on service by publication except as provided in subparagraph (c) of this rule," which then limits *in personam* effect to judgments obtained against resident defendants. Even when thus limited by Rule 4.3, Rule 4.2(b)(1) still has at least two fields of operation, namely (1) where the plaintiff seeks an *in personam* judgment against an Alabama resident who can be reached (only?) out of state and (2) where the plaintiff seeks an *in rem* or *quasi in rem* judgment against a defendant that is either a resident or nonresident of Alabama. Thus, it seems

reasonable to suppose that Rule 4.3 was intended to control on this matter and that only resident defendants are subject to *in personam* judgments obtained by publication under any circumstances.

**b. Avoids service**—A party moving for service by publication must show affirmatively, by affidavit or otherwise, that the party to be served "avoids service." The showing must go beyond mere conclusory assertions of the affiant, deponent or witness by "averring facts showing such avoidance." Rule 4.3(d)(1), ult. clause. Avoidance means that "[m]ore than mere inability to find the defendant is required"; the moving party must show an "element of culpability on the part of the defendant." Rule 4.3, committee comments. See also *Richardson v. Arrington* (431 So.2d 1301 (Ala.Civ.App. 1983)). And one court has said that "the draftsmen [of Rule 4.3] required proof of 'culpability' or a 'hiding out' by a defendant before . . . *in personam* judgment can be entered on service by publication." *Federal Deposit Ins. Corp. v. Sims*, 100 F.R.D. 792, 796 (N.D. Ala. 1984). The trial court must make a finding of avoidance upon the moving party's showing. Without such a showing and finding, an *in personam* judgment obtained by default and solely upon service by publication is void. *Miles v. McClung*, 385 So.2d 1326 (Ala.Civ.App. 1980).

**c. Present location of residence unknown**—The moving party's showing

also must include an averment that the avoiding defendant's "present location or residence is unknown." Rule 4.3, sent. 1. Rule 4.3 does not expressly require the moving party to show that he has made a diligent effort to discover the avoiding defendant's present location or residence. Nor does any discovered Alabama decision squarely so require. Nonetheless, an averment of reasonably diligent search would seem to be an essential element of any successful showing that a defendant is avoiding service.

**d1. Return of service shows failure of service**—Before a moving party who seeks an *in personam* judgment may obtain an order authorizing service by publication upon an avoiding resident defendant, he must have unsuccessfully attempted service by process server or certified mail. To show that service has been attempted unsuccessfully by process server, the moving party should attach to his affidavit or other moving papers the process server's return of service showing failure of service. The moving party need not, of course, comply with both d1 and d2; if, however, he has attempted service both by process server and by certified mail, he may, to show his diligence, attach both a return of service and a return receipt.

**d2. Return receipt shows failure of service**—Before a moving party who seeks an *in personam* judgment may obtain an order authorizing service by publication upon an avoiding resident defendant, he must have unsuccessfully attempted service by process server or certified mail. To show that service has been attempted unsuccessfully by certified mail, the moving party should attach to his affidavit or other moving papers the postal service's return receipt showing failure of service. The moving party need not, of course, comply with both d1 and d2; if, however, he has attempted service both by process server and by certified mail, he may, to show his diligence, attach both a return of service and a return receipt.

## 2. Corporations

Rule 4.3(c), sent. 2, provides: "When a defendant is [a1] a domestic corporation or [a2] a foreign corporation having one of its principal places of business in this state and [b] the process server has endorsed the fact that process cannot be

**WE TRACK THEM DOWN —OR YOU DON'T PAY**



When witnesses, defendants, beneficiaries, insureds, policy holders, debtors, have moved and left no forwarding address, we track them down on a world-wide scale. And if we don't find your person, you don't pay. Global's basic charge for a trace when the last known address is three years old or less is \$180.00.

**Call for more information or to start a trace today.**  
**1-800-663-6144 Toll Free**  
 Alaska & Hawaii  
 Call 1-800-443-6144

9 a.m.—7:30 p.m. EST  
 6 a.m.—4:30 p.m. PST


 Established in 1967 ©

**SENTENCING ALTERNATIVE PLANNING**

Our Defense Pre-Sentence Investigations:

- Carry **favorable** weight in the sentencing decisions of **85%** of the judges who read them
- Minimize potential **post-conviction** problems
- Incorporate anticipated **changes** in **federal sentencing** practices
- Include a sentencing recommendation and, when appropriate, **alternatives** to incarceration

**Sentencing and Parole Consultants**  
 National Legal Services  
 710 Lake View Avenue, Atlanta, GA 30308  
 Call now: 1-800-241-0095



served [c1] because of the failure of the defendant to elect officers or appoint agents, or [c2] because of the absence of officers or agents from the state for a period of thirty days from the filing of the complaint or [c3] because the officers or agents are unknown, then such defendant shall be deemed to have avoided service and the court may, on motion, order service on such defendant to be made by publication." (emphasis and bracketed material added)

a1. **Domestic corporations**—The moving party's affidavit or other evidence must show, as one alternative, that the defendant to be served by publication is a domestic corporation.

a2. **Certain foreign corporations**—The moving party's affidavit or other evidence must show, as the other alternative, that the defendant is a foreign corporation "having one of its principal places of business in this state."

b. **Attempted personal service**—Before a moving party who seeks an *in personam* judgment may obtain an order authorizing service by publication upon an avoiding corporation, he must, by the letter of Rule 4.3, have unsuccessfully attempted service by process server. Rule 4.3(c), sent. 2, does not, on its face, recognize attempted service by certified mail as a qualifying attempt at service. Although the committee comments do not explain this omission, it would seem justifiable on the ground that the postal service's return receipt cannot be expected to contain the information required by the Rule. See subsection c., below. If a return receipt can or does in fact contain the required information, there would seem to be no good reason in policy to deny the moving party this less expensive alternative. Furthermore, even if a return receipt cannot contain the required information, there may be no good reason in policy to deny the moving party an opportunity to get the required information before the court by other means, for example, the affidavit, deposition or live testimony of the party, his attorney or an investigator. Perhaps the rule should be amended to make this clear.

c. **Reason for failure of service**—The process server's return of service (or other source of information, if allowed) must show not only that the attempt at per-

sonal service has failed, but must show, as well, that it failed for one of the following reasons:

(1) because of the failure of the defendant corporation to elect officers or appoint agents;

(2) because of the absence of officers or agents from the state for a period of 30 days from the filing of the complaint; or

(3) because the officers or agents are unknown.

## B. Judgments *in rem* and *quasi in rem*

An *in rem* or *quasi in rem* judgment operates only upon specified property or a specified status under the control of the rendering court. Rule 4.3(a) provides that

a party seeking only an *in rem* or *quasi in rem* judgment may have service by publication upon a defendant under two categories of prescribed circumstances. Rule 4.3(b) adds a third category. The rule draws no categorical distinction between individual defendants and corporate defendants, although individual defendants probably will fall more frequently within the rule's requirements, and the rule's provisions may, as a practical matter, apply somewhat differently to corporations than they do to individuals.

### 1. Categories of circumstances in which service by publication is authorized

In brief, the rule provides that service by publication may be authorized (1) where the identity or residence of a

**Peace of mind  
for your  
piece of property.**

Once your property is insured with Mississippi Valley Title Insurance, that title is backed against all challenges to ownership. We are the industry leader in title insurance. And, of course, we are fully computerized for efficiency and the fastest service.

Peace of mind is what insurance is all about—backed by the Mississippi Valley Title Insurance guarantee—so you can rest assured.

**MISSISSIPPI VALLEY  
TITLE**



A Minnesota Title Company

Mississippi Valley Title Insurance Company  
315 Tombigbee Street, 39201  
P.O. Drawer 2428  
Jackson, Mississippi  
39225-2428  
601/969-0222



defendant is unknown, (2) where a resident defendant has been absent from his residence for more than 30 days since the filing of the complaint or (3) where the residence of a defendant is known but service by process server or certified mail has failed.

**a. Identity or residence unknown**—This alternative requirement appears in Rule 4.3(a)(1). Because it is not otherwise limited, it applies to both resident and nonresident defendants. Thus, where a plaintiff seeks only an *in rem* or *quasi in rem* judgment, either a resident or a nonresident defendant may be served by publication under this subsection and, if duly so served, will be bound by the judgment even if he does not participate in its adjudication.

**b. Resident defendant absent from residence**—This alternative requirement also appears in Rule 4.3(a)(1). It is limited by its terms to resident defendants. Thus, only a *resident* defendant "absent from his residence for more than thirty days since the filing of the complaint" may be served by publication under this provi-

sion. A *nonresident* defendant similarly absent from his residence in another state or country may be served by publication, if at all, only under the provision examined in the following subsection.

**c. Residence known but personal service has failed**—This alternative requirement appears in Rule 4.3(b). Because it is not otherwise limited, it applies to both resident and non-resident defendants. Thus, where a plaintiff seeks only an *in rem* or *quasi in rem* judgment, either a resident or a nonresident defendant may be served by publication under this provision and, if duly so served, will be bound by the judgment even if he does not participate in its adjudication. One might argue tenably that Rule 4.3(b) was not intended to create a discrete category of cases in which service by publication might be authorized, that it was intended only to codify the *Mullane* standard of due process that must govern all the other categories of the rule. Be that as it may, the plain language of the provision does seem to authorize service by publication under circumstances not covered by any other provision of the rule. Specifically, where a plaintiff seeks only an *in rem* or *quasi in rem* judgment, a resident defendant of known residence may properly be served by publication under this section without a showing that he avoids service. It need only be shown, by return of service or return receipt and supplemented by affidavit or otherwise as circumstances may allow or require, that service has failed notwithstanding reasonably diligent efforts to effect it.

### C. Procedure

A plaintiff seeking an *in personam* judgment under part A, above, must request service by publication by motion to the court. Rule 4.3(c) is clear about this. On the other hand, a plaintiff seeking only an *in rem* or *quasi in rem* judgment under Part B may, unless the trial court in which the action is pending has established a local practice to the contrary, request service by publication simply by presentation to the clerk of the court. Rule 4.3(d)(2) is not entirely explicit about this, but the small gap in its text can be filled, it would seem, by fair implication. Where a plaintiff seeking only an *in rem* or *quasi in rem* judgment obtains service by publication upon

presentation to the clerk, as seems contemplated by Rule 4.3(d)(2), the trial court will have no formal opportunity to review the presenting plaintiff's affidavit before judgment. Indeed, the court will not review the averments of the affidavit at all, unless the defendant served by publication upon the strength of the affidavit moves subsequently to set aside the judgment under Rules 55 and 60 or challenges it collaterally in a subsequent action in the same court. Thus, the validity of such a judgment will ordinarily depend upon the intelligence, skill and good judgment of counsel for the moving plaintiff. Said another way, where an *in personam* judgment is sought, the trial court is expected to save the plaintiff's counsel from the folly of investing in a void judgment; where an *in rem* or *quasi in rem* judgment is sought, it is not expected to do so, and cannot do so, if it has not established a local practice bringing all requests for service by publication before it. It can only let the chips fall, retrospectively, where they may upon post-judgment attack, setting aside the judgment if counsel has not complied scrupulously with the letter and spirit of Rule 4.3.

Rule 4.3(d)(1) requires an affidavit. As suggested in part A, above, an affidavit should not be thought the only means (although it is the usual means) by which a moving plaintiff can support his motion before the court. Under part B, however, where the presentation is to the clerk, the presenting plaintiff must make his factual showing exclusively by affidavit, because the clerk is not authorized to hold a factual hearing. Whether in support of a motion to the judge or a presentation to the clerk, the affidavit(s) must go beyond conclusory averments with regard to certain elements. As perhaps the most fundamental example of this proposition, the moving plaintiff must assert facts from which the court can reasonably conclude that the moving plaintiff has made reasonably diligent efforts to identify and/or find the defendant whose identity or residence he avers to be unknown, *Whitfield v. Sanders*, 366 So.2d 258 (Ala. 1978); *Wynn v. Smith*, 357 So.2d 973 (Ala. 1978), or to effect personal service upon a defendant of known or easily ascertainable residence. *Sams v. Equitable Life Assur. Soc.*, 402 So.2d 999 (Ala.Civ.App. 1981). On the other hand,

### MEDICAL EXPERTS

Medical and Hospital  
Malpractice  
Personal Injury  
Product Liability

1650 Board Certified *highly qualified* medical experts in all specialties, nationwide and Alabama, to review medical records and testify.

We review, approve and *guarantee* all reports.

- Flexible fee options from \$150
- Financial assistance: Alabama Bar and ABA approved
- Experience: 10 years and 9,000 cases for 4,000 satisfied attorneys. Local references.
- FREE books by us, one with foreword by Melvin Belli.
- FREE telephone consultations with our Medical Directors.

### The Medical Quality Foundation

The American Board of  
Medical-Legal Consultants  
(703) 437-3333

TOLL FREE  
1-800-336-0332



conclusory averments should probably suffice as to certain other elements of the affidavit. Although they certainly do not foreclose the inquiry, the illustrative form affidavits presented in the following part suggest where factual conclusions might be thought permissible and where they might not.

**D. Some illustrative forms of affidavit**

The following forms are intended to be illustrative of the elements required by the due process clause as interpreted in *Mullane* and by Rule 4.3. As such they may serve to stimulate discussion over competing understandings of those requirements. A trial judge might use them as they are or with such modifications as may bring them into conformity with his own understanding of the requisites of Rule 4.3 or with the practical needs of his court. For example, he may wish to delete the decision-tree instructions that appear in caps within brackets throughout the bodies of the forms, reserving for himself the judgments that such instructions put within the affiant's reach. A lawyer might use them as they are or with such modifications as may bring them into conformity with his own understanding of the requisites of Rule 4.3 or with the practical needs of his office. For example, he may wish to use them only as guides from which to create professional looking, nonform affidavits.

Form 1

**AFFIDAVIT IN SUPPORT OF SERVICE BY PUBLICATION**

[For use where in personam judgment is sought]

[NAME OF COURT]

\_\_\_\_\_, ) CIV. NO. \_\_\_\_\_  
 Plaintiff(s), )  
 ) AFFIDAVIT SUPPORTING  
 ) MOTION TO THE COURT  
 v. ) FOR AN ORDER  
 ) AUTHORIZING SERVICE  
 ) BY PUBLICATION  
 \_\_\_\_\_ ) (Movant seeks an in  
 Defendant(s). ) personam judgment)

THE AFFIANT AVERS THE FOLLOWING:

1. My name is \_\_\_\_\_.  
 I am \_\_\_\_\_ in the captioned action.

[STATE YOUR RELATIONSHIP TO THE CAPTIONED ACTION, E.G., PLAINTIFF, ATTORNEY FOR PLAINTIFF, WITNESS FOR PLAINTIFF, ETC.]

2. I have personal knowledge of the propositions of fact stated herein.

3. Plaintiff \_\_\_\_\_ seeks an *in personam* judgment against Defendant \_\_\_\_\_, the named defendant against whom service by publication is requested.

[IF YOU DO NOT SEEK AN IN PERSONAM JUDGMENT, THIS IS NOT AN APPROPRIATE FORM OF AFFIDAVIT TO SUPPORT YOUR MOTION. AN IN PERSONAM JUDGMENT IS ONE THAT THE SHERIFF CAN EXECUTE AGAINST THE DEFENDANT OR THAT THE COURT CAN ENFORCE BY ITS CONTEMPT POWER.]

4. Is the Defendant named in paragraph 3, above, a resident individual of the State of Alabama? \_\_\_\_\_

[IF THE NAMED DEFENDANT IS A NONRESIDENT INDIVIDUAL AND YOU ARE SEEKING AN *IN PERSONAM* JUDGMENT AGAINST THIS DEFENDANT, YOU ARE NOT ENTITLED TO SERVICE BY PUBLICATION. IF THE NAMED DEFENDANT IS A RESIDENT INDIVIDUAL OR A DOMESTIC OR FOREIGN CORPORATION, COMPLETE THE APPROPRIATE PARAGRAPH(S), BELOW.]

*Resident Individual*

5. If the named Defendant is a resident individual, is his present location or residence unknown? \_\_\_\_\_. If so, have you made diligent efforts to discover his present location or residence?

[IF YOUR ANSWER TO EITHER OF THESE QUESTIONS IS NO, YOU ARE NOT PRESENTLY ENTITLED TO SERVICE BY PUBLICATION. IF YOUR ANSWER TO BOTH QUESTIONS IS YES, STATE BELOW THE FACTS FROM WHICH THE COURT CAN CONCLUDE THAT YOU HAVE, IN FACT, MADE DILIGENT EFFORTS TO DISCOVER THE NAMED DEFENDANT'S LOCATION OR ADDRESS. IF THE SPACE PROVIDED IS NOT ADEQUATE, ATTACH ADDITIONAL PAGES AS NECESSARY. THEN COMPLETE THE FOLLOWING PARAGRAPH.] \_\_\_\_\_

\_\_\_\_\_

6. Has personal service of process upon the named Defendant been attempted by process server? \_\_\_\_\_  
 By certified mail? \_\_\_\_\_

[IF YOUR ANSWERS TO BOTH OF THESE QUESTIONS ARE NO, YOU ARE NOT PRESENTLY ENTITLED TO SERVICE BY PUBLICATION. IF YOUR ANSWER TO EITHER IS YES, ATTACH THE RETURN OF SERVICE OR RETURN RECEIPT TO THIS AFFIDAVIT AND COMPLETE THE FOLLOWING PARAGRAPH.]

7. Does the return of service or return receipt show failure of service? \_\_\_\_\_. [IF YOUR ANSWER TO THIS QUESTION IS NO, YOU ARE NOT PRESENTLY ENTITLED TO SERVICE BY PUBLICATION. IF YOUR ANSWER IS YES, COMPLETE THE FOLLOWING PARAGRAPH.]

8. Is the named individual Defendant avoiding personal service of process?

[IF YOUR ANSWER TO THIS QUESTION IS NO, YOU ARE NOT PRESENTLY ENTITLED TO SERVICE BY PUBLICATION. IF YOUR ANSWER IS YES, STATE BELOW THE FACTS FROM WHICH THE COURT CAN CONCLUDE THAT THE DEFENDANT IS, IN FACT, AVOIDING SERVICE OF PROCESS. IF THE SPACE PROVIDED IS NOT ADEQUATE, ATTACH ADDITIONAL PAGES AS NECESSARY.]

\_\_\_\_\_

*Domestic or Foreign Corporation*

9. Is the named Defendant a domestic corporation? \_\_\_\_\_. A foreign corporation having one of its principal places of business in this state?

[IF YOUR ANSWERS TO BOTH OF THESE QUESTIONS ARE NO, YOU ARE NOT ENTITLED TO SERVICE BY PUBLICATION UNDER THIS PARAGRAPH. IF YOUR ANSWER TO EITHER IS YES, COMPLETE THE NEXT PARAGRAPH.]

10. Has personal service of process upon the named corporate Defendant been attempted by process server? \_\_\_\_\_



[IF YOUR ANSWER TO THIS QUESTION IS NO, YOU ARE NOT PRESENTLY ENTITLED TO SERVICE BY PUBLICATION. IF YOUR ANSWER IS YES, ATTACH THE RETURN OF SERVICE TO THIS AFFIDAVIT AND COMPLETE THE NEXT PARAGRAPH.]

11. Has personal service of process failed because the Defendant corporation has failed to elect officers or appoint agents? \_\_\_\_\_ Because the Defendant corporation's officers or agents have been absent from the state for thirty days from the date upon which your complaint was filed? \_\_\_\_\_ Because, after diligent inquiry, the Defendant corporation's officers or agents are unknown? \_\_\_\_\_

[IF YOUR ANSWER TO EVERY ONE OF THESE QUESTIONS IS NO, YOU ARE NOT PRESENTLY ENTITLED TO SERVICE BY PUBLICATION. IF YOUR ANSWER TO ANY QUESTION IS YES, STATE BELOW THE FACTS THAT SUPPORT YOUR YES ANSWER(S). IF THE SPACE PROVIDED IS NOT ADEQUATE, ATTACH ADDITIONAL PAGES AS NECESSARY.] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Affiant.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

NOTARY PUBLIC \_\_\_\_\_  
COUNTY \_\_\_\_\_  
STATE \_\_\_\_\_

Form 2  
AFFIDAVIT IN SUPPORT OF SERVICE BY PUBLICATION  
[For use where in rem or quasi in rem judgment is sought]

[NAME OF COURT]

\_\_\_\_\_) CIV. NO. \_\_\_\_\_  
\_\_\_\_\_) AFFIDAVIT SUPPORTING  
Plaintiff(s), ) REQUEST TO THE CLERK  
v. ) FOR A DIRECTION  
\_\_\_\_\_) AUTHORIZING SERVICE  
\_\_\_\_\_) BY PUBLICATION  
\_\_\_\_\_) (Movant seeks an in rem  
Defendant(s) ) or quasi in rem judgment)

THE AFFIANT AVERS THE FOLLOWING:

1. My name is \_\_\_\_\_ I am \_\_\_\_\_ In the captioned action. [STATE YOUR RELATIONSHIP TO THE CAPTIONED ACTION, E.G., PLAINTIFF, ATTORNEY FOR PLAINTIFF, WITNESS FOR PLAINTIFF, ETC.]

2. I have personal knowledge of the propositions of fact stated herein.

3. Plaintiff \_\_\_\_\_ seeks an in rem or quasi in rem judgment against Defendant \_\_\_\_\_, the named defendant against whom service by publication is requested. [IF YOU DO NOT SEEK AN IN REM OR QUASI IN REM JUDGMENT, THIS IS NOT AN APPROPRIATE FORM OF AFFIDAVIT TO SUPPORT YOUR MOTION. AN IN REM OR QUASI IN REM JUDGMENT DETERMINES RIGHTS IN PROPERTY THAT IS UNDER THE CONTROL OF THE COURT OR ESTABLISHES OR TERMINATES A STATUS.]

4. Do you seek service by publication because the Defendant, who is a resident of this state, has been absent from his known residence for more than thirty days from the date upon which your complaint was filed? \_\_\_\_\_. If so, have you attempted to serve the Defendant personally by process server or certified mail? \_\_\_\_\_

[IF YOUR ANSWERS TO THESE QUESTIONS ARE YES, ATTACH THE RETURN OF SERVICE OR RETURN RECEIPT TO THIS AFFIDAVIT. IF YOUR ANSWER TO EITHER QUESTION IS NO, YOU ARE NOT ENTITLED TO SERVICE BY PUBLICATION UNDER THIS PARAGRAPH 4, ALTHOUGH YOU MAY STILL BE ENTITLED TO SERVICE BY PUBLICATION UNDER PARAGRAPHS 5 AND 6, OR 7, BELOW.]

5. Do you seek service by publication because the Defendant's identity is unknown? \_\_\_\_\_. Because the Defendant's residence is unknown? \_\_\_\_\_

[IF YOUR ANSWER TO EITHER OF THESE QUESTIONS IS YES, COMPLETE THE FOLLOWING PARAGRAPH.]

6. Have you made diligent efforts to ascertain the identity and/or residence of the Defendant? \_\_\_\_\_

[IF YOUR ANSWER TO THIS QUESTION IS NO, YOU ARE NOT PRESENTLY ENTITLED TO SERVICE BY PUBLICATION, UNLESS YOU ARE SO ENTITLED UNDER PARAGRAPH 4, ABOVE OR PARAGRAPH 7, BELOW. IF YOUR ANSWER TO THIS QUESTION IS YES, STATE BELOW THE FACTS FROM WHICH THE COURT CAN CONCLUDE THAT YOU HAVE, IN FACT, MADE DILIGENT EFFORTS AS ASSERTED. IF THE SPACE PROVIDED IS NOT ADEQUATE, ATTACH ADDITIONAL PAGES AS NECESSARY.] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Do you seek service by publication because reasonably diligent efforts to serve a defendant of known residence, either in Alabama or another state or country, by process server or certified mail have failed? \_\_\_\_\_

[IF YOUR ANSWER TO THIS QUESTION IS NO, YOU ARE NOT ENTITLED TO SERVICE BY PUBLICATION UNDER THIS PARAGRAPH, ALTHOUGH YOU MAY BE SO ENTITLED UNDER ONE OR MORE OF THE FOREGOING PARAGRAPHS. IF YOUR ANSWER IS YES, ATTACH THE RETURN OF SERVICE OR RETURN RECEIPT TO THIS AFFIDAVIT AND DESCRIBE BELOW THE EFFORTS YOU HAVE MADE TO AID IN EFFECTING PERSONAL SERVICE. IF THE SPACE PROVIDED IS NOT ADEQUATE, ATTACH ADDITIONAL PAGES AS NECESSARY.] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Affiant.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

NOTARY PUBLIC \_\_\_\_\_  
COUNTY \_\_\_\_\_  
STATE \_\_\_\_\_

\* \* \* \* \*  
■



---

# Consultant's Corner

---

*The following is a review of and commentary on an office automation issue with current importance to the legal community, prepared by the office automation consultant to the state bar, Paul Bornstein, whose views are not necessarily those of the state bar.*

*This is the sixth article in our "Consultant's Corner" series. We would like to hear from you, both in critique of the article written and suggestions of topics for future articles.*

---

## **Don't say no**

Last column, we took a rather tongue-in-cheek look at "six types of vendors I would never buy anything from." One faithful reader (actually the attorney for my malpractice insurer) suggested that an article on a positive note would be appropriate. Herewith, one consultant's opinion on the type of vendor you should do business with, even if you have no immediate plans to buy anything. By one of the most remarkable coincidences, this type of vendor also has six characteristics.

## **Believable**

If it sounds too good to be true . . . (you know the rest). There is an unwritten allowance for creative hyperbole in sales pitches, not unlike that accorded attorneys in opening and closing arguments. That said, you are entitled to a presentation consisting of something other than pure flummery.

He may have something new to show you, perhaps revolutionary, but the believable vendor generally will restrain his enthusiasm to a level of "tolerable ex-

aggeration." He may even understate a point or two, out of respect for your conditioned skepticism.

## **Verifiable**

There are vendors who opened their doors yesterday, and will be titans of the industry tomorrow. On the other hand, a distressing number of today's "stars" are tomorrow's burned-out meteorites. Ask for references and check them. Has the vendor kept in touch since installation? Is he as concerned as you about the success of the system? Has he offered follow-up help, albeit at a price?

If the vendor states he cannot reveal the names of any customers, or "only a few," be wary. Most vendors have one or two customers who decline to be referenced, but an entire book of phantom users should trigger immediate alarms.

## **Knowledgeable**

The vendor should understand law firm operations as well as or better than you do. Several years ago you could not have insisted on such competence, but you can now and you should. Do not deal with incompetent vendors. If the vendor is less knowledgeable than you about law firm operations, do not deal.

## **Reputable**

This can get a bit tricky. A vendor's reputation is often mixed, a combination of favorable and not so favorable opinions. This is to be expected. No one is perfect. The key is how the vendor responds. Is he overly defensive? Is he forthcoming? Does he impress you as someone who will go at least the next-to-last mile to make you a satisfied customer?

## **Likable**

This sounds almost trivial. After all, what counts is performance, right? Yes and no. It is sad, perhaps, but true that business relationships often are affected by "feelings." You should capitalize on one of your strengths, namely, the developed ability to size up people. If you genuinely dislike a vendor, you should not do business with him. The odds are overwhelming that a poor outcome will ensue, because you expect it to happen.

"Death wish" is too strong a term, but "self-fulfilling prophecy" is not far from the mark. Follow your instincts and seek out another vendor if the chemistry simply is not there.

## **Professional**

The acid test of a true professional is two-fold: how he handles success and how he handles failure. The professional should be animated, but short of "high fives." He should move at once to discussing implementation strategy, cutover planning, conversion and training. His job has hardly begun. Even after the system has become a success, you should still expect him to call on a regular basis.

No one likes to lose, least of all a professional. Many of them, after a decent interval of private mourning, will ask for a final favor. What could I have done to change the outcome? If there is something that might have swayed you, say it. On the other hand, if nothing would have changed the outcome, as often is the case, then say that, too. Finally, if you feel that one or more of the "non-selected" vendors behaved with uncommon grace in the face of rejection, write to a principal of the vendor's company and speak your mind. ■



## ANNOUNCEMENT

# The University of Alabama School of Law's "Special" Special Collection: Reaching Out for Law School History

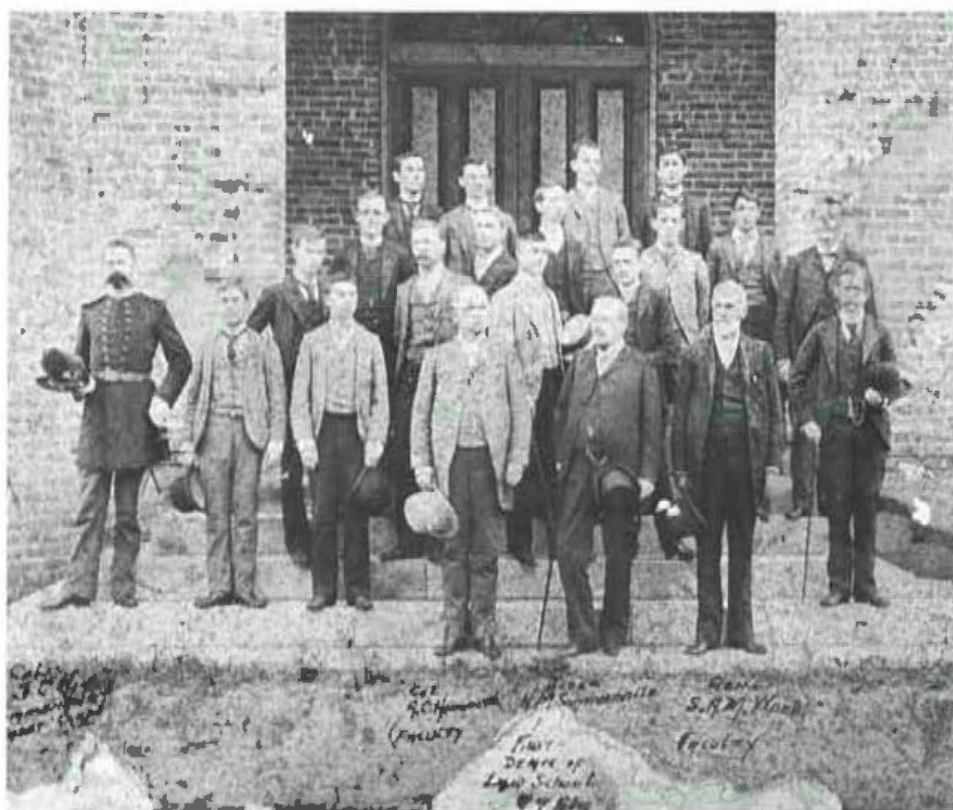
by Paul M. Pruitt, Jr., assistant law librarian

Most law school graduates possess an assortment of relics from their student days—class notes and course outlines, student handbooks and newspapers, Moot Court briefs and so forth, filed away in personal archives, either as valued documents or forgotten baggage. If you are a graduate of the University of Alabama School of Law, the School of Law Library would like to know what you have. There may be something in your files that could round out one of the library's most important collections.

Following the school's recent Hugo Black centennial observances, Dean Charles Gamble responded to a growing interest in the history of the law school—its students, alumni, faculty and administration. The result was the creation of a "History of the Law School" committee, and as part of the activities of that committee, School of Law librarians are evaluating their special collections holdings. They have found a wealth of materials.

For example—in addition to such scholarly publications as *The Alabama Law Journal* (1882-1885), (1925-1930) and *The Alabama Law Review* (1948-present), the library holds student newspapers, in-house publications of the School of Law, guidebooks, directories and manuscript collections.

Assistant Law Librarian David Lowe has written a computer program so the library eventually will be able to produce a bibliography of its law school-related books and papers. The special collections department will be occupying ex-



Students and faculty of the University of Alabama School of Law—probably taken around 1890

panded quarters within a few months, so now is a good time to seek new sources of historical documents.

The librarians involved are interpreting the phrase, "the history of the law school," as broadly as possible. They have collected (and are determined to collect more) films and videos of Law Week activities, and hope to add to the

library's existing collection of photographs. Many publications by or about faculty and alumni are available in the library, but the goal is to collect all such works—including working papers, drafts and memoranda generated during the process of composition.

The library welcomes the donation of class notes, seminar papers, Moot Court



briefs and other documents that speak of the history of legal instruction. In many cases, collections of personal papers also are welcomed.

If you are a potential donor to the library's "history of the law school" collection, please do not limit yourself to the categories or types of documents mentioned above. Your judgment of which materials reflect the history of legal education is likely to be a sound one. Quite a number of agencies not directly connected with the School of Law issue publications and reports having to do with the people and concerns of the school. Moreover, in order to set up biographical files on alumni and faculty, the library needs to have its own collection of the *Corolla* (the University of Alabama yearbook), particularly those issues published before 1940. Copies of older *Martindale-Hubbell* are important for keeping track of graduates and

establishing "geneologies" of law firms with which alumni and faculty have been associated.

The library would be especially pleased to receive the following:

*The Alabama Law Advocate* (student newspaper), any issue dated 1977 or later;

*The Alabama Law Reporter* (in-house newsletter), any issue dated 1972 or later;

*The Column* (student newspaper), volume 8 (published in the 1985-1986 academic year);

Law Week films or videos (including student-produced satires) of any date, certainly 1980-1986;

*The Martindale-Hubbell Law Directory* (and its ancestors, *Hubbell's Legal Directory* and *Martindale's American Law Directory*) for the years 1870, 1872, 1875-1877, 1880-1881, 1884, 1892-1899,

1901-1910, 1912, 1915-1918, 1920-1926, 1928-1929, 1931-1939, 1941-1943, 1945, 1947-1948, 1950.

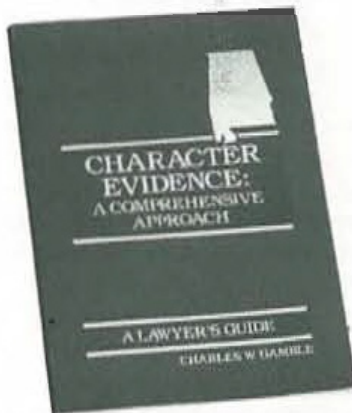
To arrange for donation of materials to the special collections department of the School of Law Library contact library director Cherry L. Thomas, (205) 348-1108, or assistant law librarian Paul Pruitt, (205) 348-1107. You may write to the University of Alabama School of Law Library, P.O. Box 6205, Tuscaloosa, Alabama 35487. If possible, please provide a list of the materials you would be willing to donate. The library can help find an expert evaluator if you wish to claim tax credits. Recently, the library received several faded copies of *The Column* from a librarian at the University of Washington's M.G. Gallagher Law Library—proof that there are plenty of historical materials waiting to be found. ■

### ILLUSTRATIVE TOPICS COVERED IN THE HANDBOOK ARE: \_\_\_\_\_

1. Other Accidents on the Premises of the Civil Defendant
2. Criminal History of an Accused
3. Impeachment of Witnesses
4. Rehabilitation of Impeached Witnesses
5. General Reputation Evidence
6. Other Injuries from the Product of the Defendant
7. Other Misrepresentations in Fraud and Deceit
8. Past Failures to Pay in Bad Faith Cases
9. Habit of a Civil Defendant
10. "Other Purpose" Rules for Admission of Character



Charles W. Gamble



## CHARACTER EVIDENCE—A Comprehensive Approach

By Charles W. Gamble

### Order Form

\_\_\_\_\_ copies @ \$28.00 each..... Total \$ \_\_\_\_\_

This price includes: Book \$25.00; Alabama Sales Tax \$1.75; Shipping and Handling \$1.25.

#### Mail to:

*Agora Publishing Company* P.O. Box 59328  
Birmingham, AL 35259

All orders must be **PREPAID**. Allow one week for delivery.  
Make check payable to AGORA PUBLISHING CO.

#### Ship To:

Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_



# Building Alabama's Courthouses

by Samuel A. Rumore, Jr.



---

The following continues a history of Alabama's county courthouses—their origins and some of the people who contributed to their growth. *The Alabama Lawyer* plans to run one county's story in each issue of the magazine. If you have any photographs of early or present courthouses, please forward them to:

Samuel A. Rumore, Jr.  
Miglioni & Rumore  
1007 Colonial Bank Building  
Birmingham, Alabama 35203-4054

---

## Madison County

Madison County is the second oldest county in Alabama, second only to Washington County. It was created on December 13, 1808, by proclamation of Governor Robert Williams of the Mississippi Territory. It is also somewhat unique in Alabama because all of its courthouses have been located in one public square in Huntsville which was dedicated to that purpose. Madison County was named for James Madison, who was secretary of state, and the newly-elected president of the United States.

John Hunt came to the area in 1805, and settled near the Big Spring. The property was later purchased by Martin Beatty and then acquired by Leroy Pope, an early developer. Pope suggested the name of Twickenham for the town located around the Big Spring. This was the name of poet Alexander Pope's home in

England. But on November 25, 1911, the name was changed to Huntsville by popular demand in honor of the first settler.

The initial term of the orphan's court, comparable to today's probate court, met on the first Monday in January 1810. The first term of the Madison County Superior Court of Law and Equity convened October 1, 1810. The minutes of these courts do not reflect the location of the court sessions. However, by November 1811 the first courthouse was completed to the extent that a courtroom was in use for the full term of the superior court.

The original plat of Twickenham, later Huntsville, set aside an entire block for the public square. This block sat atop a rocky bluff approximately 75 feet above the Big Spring. Near the center of the block was an elevated rocky knoll. The first courthouse and each succeeding "Temple of Justice" have been built here.

The first courthouse was a two-story brick structure facing south. It was topped by a cupola, a weathervane and a gilded eagle. In the early days, it served as a religious, as well as civic, meeting place. The public square became the hub of commercial activity, and many stores surrounded the square.

On July 5, 1819, the Constitutional Convention of the Alabama Territory convened in Huntsville, and chose the town as the temporary capital from July through December 1819. The legislature met in the county courthouse, and the first governor of Alabama, William Wyatt Bibb, was inaugurated in the ground floor courtroom. Alabama entered the

Union on December 14, 1819, and soon thereafter the capital was moved to Cahaba.

By the 1830s it became apparent that Madison County would need a new courthouse. The 1830 census showed the county holding first place in population and wealth in Alabama. In 1837 the old courthouse was sold at auction for \$494 and removed. The ten-foot elevation on which the courthouse stood was graded, and construction began on a new courthouse, the second for Madison County. According to court records, the building on the square owned by Stephen S. Ewing was rented to serve as a temporary courthouse and clerk's office from August 1837 to January 1840.

The design of George Steele, a local architect, was selected. The building was two-story, stone and brick, with a domed top and full basement. The total cost was approximately \$40,000. A four-faced clock was added to the top of the dome in 1849, and this second courthouse served Madison County until 1913.

Shortly after the turn of the century, the citizens of Madison County again felt that their county had grown and that a new courthouse was needed to reflect the progress they had made. On October 6, 1913, the county commission contracted to build a structure of lightly colored brick with four entrances. Fluted columns were used on all four porticoes. The county courts were removed to the federal courthouse pending construction.

On September 10, 1914, the third Madison County Courthouse was dedicated. The clock from the former courthouse





*Madison County Courthouse*

was retained in the new structure. Massive doric columns supported the four entrances. In the ensuing years the county continued to grow, and by 1937 the courthouse once again had become inadequate to handle all activity of county government. An annex was acquired and the courthouse building was renovated in 1940.

Madison County and Huntsville experienced their greatest population surge between 1940 and 1966. To a great extent this was caused by the growth of Red Stone Arsenal and its significance, first to the war effort of World War II, and then to the United States' space program. In 1950, Huntsville's population was 16,437. In 1960 it was 72,360. By January 1, 1967, the population was estimated at 144,000.

Planning for a new courthouse began during the 1960s. A determination had to be made whether a new site should be selected. After much discussion and public input, the decision was made to build a modern skyscraper structure on the public square. The preliminary plans

of architects Loyd Kranert and Thomas Jones were approved December 20, 1963. From September 1964 until December 1966 courts were conducted at the federal courthouse located in the downtown post office.

The first courts convened January 5, 1967, in Madison County's fourth courthouse. This latest courthouse is an 11-story structure of modern design

which cost approximately \$5,300,000. Numerous mementoes, such as plaques and cornerstones, remind the visitor to this building that three prior structures occupied the same site. However, the long-range planning that went into the construction of this courthouse should assure for the foreseeable future that the needs of Madison County will be served. ■

---

*Samuel A. Rumore, Jr., is a graduate of the University of Notre Dame and the University of Alabama School of Law. He served as founding chairman of the Alabama State Bar's Family Law Section and is in practice in Birmingham with the firm of Miglironico & Rumore.*





# cle opportunities

## january

### 15 friday

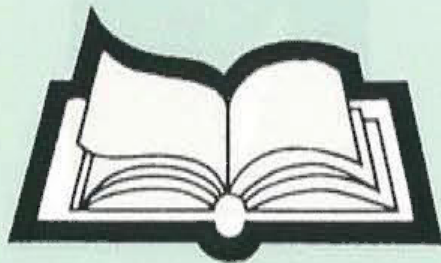
**FAMILY LAW IN ALABAMA**  
Birmingham  
Legal Education Institute, Inc.  
Credits: 6.0 Cost: \$98  
(813) 643-5043

### 16-17

**MEDICAL MALPRACTICE & RISK MANAGEMENT**  
Sheraton World Hotel, Orlando  
Medi-Legal Institute  
Credits: 12.0 Cost: \$425  
(818) 995-7189

### 21 thursday

**BANKRUPTCY FRAUD**  
Law Center, Tuscaloosa (satellite program)  
Alabama Bar Institute for CLE  
Credits: 3.8  
(800) 253-6397



### 21-22

**ADVANCED STRATEGIES IN EMPLOYMENT LAW**  
Hyatt on Union Square, San Francisco  
Practising Law Institute  
Credits: 11.8 Cost: \$425  
(212) 765-5700

### 22 friday

**FAMILY LAW IN ALABAMA**  
Huntsville  
Legal Education Institute, Inc.  
Credits: 6.0 Cost: \$98  
(813) 643-5043

**APPELLATE PRACTICE**  
Wynfrey Hotel, Birmingham  
Alabama Bar Institute for CLE  
Credits: 6.3 Cost: \$85  
(205) 348-6230

**REAL PROPERTY**  
Ramada Civic Center Plaza, Birmingham  
Cumberland Institute for CLE  
Credits: 6.0  
(205) 870-2865

### 23-24

**ASBESTOSIS & RELATED LUNG DISORDERS**  
Caesar's Palace Hotel, Lake Tahoe  
Medi-Legal Institute  
Credits: 12.0 Cost: \$425  
(818) 995-7189

### 28-30

**MID-WINTER CONFERENCE**  
Wynfrey Hotel, Birmingham  
Alabama Trial Lawyers Association  
Credits: 10.5 Cost: \$125  
(205) 262-4974

### 28-29

**PRODUCTS LIABILITY**  
Pointe at Squaw Peak, Phoenix  
Defense Research Institute  
Credits: 11.9 Cost: \$395  
(312) 944-0575

**LEGAL WRITING FOR LAWYERS**  
Doral-on-the-Ocean, Miami  
Practising Law Institute  
Credits: 10.0 Cost: \$350  
(212) 765-5700

### 29 friday

**REPRESENTING AGRICULTURAL CLIENTS**  
Ramada Inn, Greenville  
Mississippi Center for CLE  
Credits: 7.2 Cost: \$110  
(601) 982-6590

**COMMERCIAL LAW**  
Civic Center, Birmingham  
Alabama Bar Institute for CLE  
Credits: 6.0 Cost: \$85  
(205) 348-6230

## february

### 4-6

**TRIAL TECHNIQUES**  
The Westin Plaza, New York  
Association of Trial Lawyers of America  
Credits: 15.0  
(800) 424-2725

### 5 friday

**CREATION, FINANCING & DISSOLUTION OF BUSINESSES**  
Ramada Civic Center Plaza, Birmingham  
Alabama Bar Institute for CLE  
Credits: 7.0  
(205) 348-6230



**SOCIAL SECURITY**

Atlanta  
ICLE of Georgia  
Credits: 6.0  
(404) 542-2522

**RECENT DEVELOPMENTS IN ETHICS**

Atlanta  
ICLE of Georgia  
Credits: 6.0  
(404) 542-2522

**11-12****LEGAL WRITING FOR LAWYERS**

Hyatt Regency on Capitol Hill,  
Washington  
Practising Law Institute  
Credits: 10.0 Cost: \$350  
(212) 765-5700

**12** friday**MAINTAINING & OPERATING BUSINESSES**

Ramada Civic Center Plaza, Birmingham  
Alabama Bar Institute for CLE  
Credits: 6.5  
(205) 348-6230

**COMMON MALPRACTICE COMPLAINTS**

Atlanta  
ICLE of Georgia  
Credits: 6.0  
(404) 542-2522

**INSURANCE LAW**

Ramada Civic Center Plaza, Birmingham  
Cumberland Institute for CLE  
Credits: 6.0  
(205) 870-2865

**18-19****BRIDGE-THE-GAP**

Atlanta  
ICLE of Georgia  
Credits: 12.0  
(404) 542-2522

**19** friday**EMPLOYEE ISSUES IN BUSINESSES**

Ramada Civic Center Plaza, Birmingham  
Alabama Bar Institute for CLE  
Credits: 6.0  
(205) 348-6230

**EMPLOYEE BENEFIT PLANS**

Atlanta  
ICLE of Georgia  
Credits: 6.0  
(404) 542-2522

**19-28****BASIC COURSE IN TRIAL ADVOCACY**

San Francisco  
Association of Trial Lawyers of America  
(800) 424-2725

**21-25****EXPERIENCED PROSECUTOR COURSE**

Inter-Continental, Hilton Head  
National College of District Attorneys  
(713) 749-1571

**25** thursday**AIR, WATER, HAZARDOUS WASTE/SUPERFUND**

Law Center, Tuscaloosa (satellite program)  
Alabama Bar Institute for CLE  
Credits: 4.0  
(800) 253-6397

**26** friday**ADVANCED FAMILY LAW**

Ramada Civic Center Plaza, Birmingham  
Alabama Bar Institute for CLE  
Credits: 6.0  
(205) 348-6230

**BAD FAITH LITIGATION**

Ramada Civic Center Plaza, Birmingham  
Cumberland Institute for CLE  
Credits: 6.0  
(205) 870-2865

**EFFECTIVE LEGAL WRITING**

Atlanta  
ICLE of Georgia  
Credits: 6.0  
(404) 542-2522

**26-27****TRIAL EVIDENCE**

Atlanta  
ICLE of Georgia  
Credits: 12.0  
(404) 542-2522

**28-2****CHILD ABUSE AND EXPLOITATION**

Hyatt Wilshire, Los Angeles  
National College of District Attorneys  
Cost: \$375  
(713) 749-1571

march

**4** friday**BUYING AND SELLING BUSINESSES**

Ramada Civic Center Plaza, Birmingham  
Cumberland Institute for CLE  
Credits: 6.0  
(205) 870-2865

**4-5****BRIDGE-THE-GAP**

Civic Center, Birmingham  
Alabama Bar Institute for CLE  
Credits: 9.0  
(205) 348-6230



10 thursday

PROBLEMS OF SELF-INSURANCE

Law Center, Tuscaloosa (satellite program)
Alabama Bar Institute for CLE
Credits: 4.0
(800) 253-6397

12-13

LITIGATING PSYCHOLOGICAL INJURIES

Sheraton World Hotel, Orlando
Medi-Legal Institute
Credits: 11.5 Cost: \$425
(818) 995-7189



13-16

JUVENILE JUSTICE

Inter-Continental, Miami
National College of Juvenile Justice and
National College of District Attorneys
Cost: \$265
(702) 784-6012 or (713) 749-1571

19-20

ANATOMY FOR ATTORNEYS (Part II)

Mark Hopkins Hotel, San Francisco
Medi-Legal Institute
Credits: 12.0 Cost: \$425
(818) 995-7189

20-24

PROSECUTING DRUG CASES

The Monteleone, New Orleans
National College of District Attorneys
(713) 749-1571

24 thursday

EXECUTIVE COMPENSATION

Law Center, Tuscaloosa (satellite program)
Alabama Bar Institute for CLE
Credits: 4.0
(800) 253-6397

25 friday

ADVANCED ESTATE PLANNING

Atlanta
ICLE of Georgia
Credits: 6.0
(404) 542-2522

25-26

MEDICAL NEGLIGENCE

Atlanta
Association of Trial Lawyers of America
(800) 424-2725

The Alabama Lawyer once again is sponsoring a writing competition for law student articles. The purpose of the competition is to help students develop their writing skills and knowledge of the law.

Articles must be received by the Alabama State Bar no later than 5 p.m., April 18, 1988. Limit articles to no more than 20 pages (8 1/2" x 11"), double-spaced, typed.

The winner will receive an award of \$250 and will be recognized at the state bar's 1988 annual meeting in Birmingham. In addition, the winning entry will be considered for publication in the July 1988 Alabama Lawyer.

NOTE: Papers written for a seminar and/or law review will be considered.

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION. Includes fields for publication title, frequency, address, and circulation statistics.



# Bar Briefs

## Snodgrass elected chair of national judicial college

Judge John D. Snodgrass, presiding judge of the circuit court in Huntsville, was elected chairman of the board of directors of the National Judicial College at a board meeting in October.

Judge Snodgrass is a graduate of Judicial College courses and has served on the board since 1983.

He is active in the American Bar Association Judicial Administration Division, the Alabama Association of Circuit Judges and the Alabama Law Institute. He also serves on the Cumberland School of Law Advisory Board and on the boards of the Central Bank of North Alabama and the Central Bank of Huntsville.

He earned his law degree at the University of Alabama Law School, where he also earned a B.S. in commerce and business administration.

The National Judicial College, located at the University of Nevada-Reno, trains more than 1,500 judges per year from around the world. Affiliated with the American Bar Association, NJC is the leading judicial education and training institution in the nation.

## 1988 Law Day USA Theme

Law Day USA was established by United States presidential proclamation in 1958 and reaffirmed by a joint resolution of Congress in 1961. The purpose of Law Day USA, celebrated annually on May 1, is to reserve a "special day of celebration by the American people in appreciation of their liberties and to provide an occasion for rededication to the ideals of equality and justice under laws."

The 1988 theme, "Legal Literacy," encourages Law Day programs and events to urge all citizens to increase their knowledge and understanding of the law.

State and local bar associations, libraries, community organizations, schools, churches, law enforcement agencies, service clubs, legal auxiliaries and scouting organizations are among the many groups which sponsor Law Day USA programs and events.

The events are numerous and varied, ranging from mock trials conducted in schools, court ceremonies, poster and essay contests to television and radio call-in programs.

## Dominick selected as a Judicial Fellow for program's 1987-88 year

Mary F. Dominick, a member of the Alabama State Bar since 1982, has been selected as a Judicial Fellow for 1987-88.

Dominick received her B.A. and J.D. degrees from Vanderbilt University and an LL.M. from the Parker School of Foreign and Comparative Law at Columbia University. She most recently has been a lecturer and research associate at the Max Planck Institute for Comparative Public Law and International Law at Heidelberg, Germany. Her duties there included reporting on current legal developments in the United States, writing for the Encyclopedia on Public International Law and teaching a course on American private law at the University of Heidelberg. Dominick also has worked in the Netherlands, Switzerland, Belgium, France and the United States, concentrating on the institutional aspects of legal and political systems. She will be assigned to the Administrative Office of the U.S. Courts.

The program, established 15 years ago, is patterned after the White House and Congressional Fellowships.

## Richard Wilson & Associates

Registered  
Professional  
Court Reporters

17 Mildred Street  
Montgomery, Alabama 36104

264-6433

Fellows are chosen by the commission to spend a year, beginning in September, in Washington, D.C., at the Supreme Court, the Federal Judicial Center or the Administrative Office of the U.S. Courts.

—The Third Branch

## Bar Commissioners elected

In the September issue of *The Alabama Lawyer*, biographical sketches and photographs were published of newly-elected Alabama State Bar Commissioners.

At the time of publication, information on Drayton N. James and William M. Bouldin was unavailable.



James



Bouldin

## 10th Circuit, Place #8

**DRAYTON N. JAMES**, born January 5, 1938, Selma, Alabama; graduated from Auburn University, 1961; University of Alabama School of Law, 1969. Captain, United States Marine Corps, 1962-66.

Served on Executive Committee, Birmingham Bar Association, 1983-85; member, Alabama State Bar Committee on Character and Fitness, 1986-87; member, advisory board of Jefferson County Family Court, executive board of Alethia House (United Way agency).

Married to former Billie Walker; daughter, Tracy.

## 34th Circuit

**WILLIAM M. BOULDIN**, born June 2, 1938, Colbert County, Alabama. Graduated, 1963, University of Alabama School of Law. Practices with Guin, Bouldin & Alexander, Russellville, Alabama.

Member, Franklin County Bar Association, Alabama State Bar, Alabama Defense Lawyers Association, Association of Trial Lawyers of America.



# Attorneys Admitted to Bar, Fall 1987

Dorothy Agnes Agnew	Madison, Alabama	Mark Adam Crosswhite	Birmingham, Alabama
Breeman Neal Ainsworth, Jr.	Birmingham, Alabama	Michael J. Crow	Montgomery, Alabama
Roger Carl Allen	Montgomery, Alabama	John James Crowley, Jr.	Mobile, Alabama
Mortimer Parker Ames, III	Selma, Alabama	Janet Jordan Curtis	Atlanta, Georgia
Suzanne Gotham Ashe	Birmingham, Alabama	Kerry Stewart Curtis	Atlanta, Georgia
William Alfred Austill	Birmingham, Alabama	Henry Clyde Dailey, Jr.	Birmingham, Alabama
Jefforey Craig Bailey	Alabaster, Alabama	Maria Renee diLiberti	Birmingham, Alabama
John Benjamin Bancroft	Birmingham, Alabama	William Daniel Dillon	Montgomery, Alabama
Judith Long Banks	Mobile, Alabama	Clarence Dortch, III	Talladega, Alabama
Leslie Runco Barbour	Birmingham, Alabama	Ronald Tyrone Dudley, Jr.	Birmingham, Alabama
Susan Wade Barr	Birmingham, Alabama	Hugh Bryan Dye	Birmingham, Alabama
Wanda Jo Wallace Batson	Sylacauga, Alabama	Patrick Fain Dye, Jr.	Birmingham, Alabama
Jack Mason Beard, Jr.	Birmingham, Alabama	Mark Christopher Eagan	Birmingham, Alabama
John Thomas Bender	Mobile, Alabama	Leslie Ellis	Birmingham, Alabama
Jeannie Lynn Bennett	Huntsville, Alabama	Melissa Vaughn Erwin	Madison, Alabama
Zonja Renee Blackmon	Dothan, Alabama	Daniel Brian Feldman	Homewood, Alabama
Ralph Bohanan, Jr.	Birmingham, Alabama	Jackie Dale Ferguson	Hartselle, Alabama
Randall Harry Bolen	Birmingham, Alabama	Kathryn Dananne Ferrell	Daphne, Alabama
John Norman Bolus	Birmingham, Alabama	Clark Dale Fine	Birmingham, Alabama
Axel Bolvig, III	Birmingham, Alabama	John David Floyd	Gadsden, Alabama
John Dewey Bond, III	Birmingham, Alabama	Janice Garner Formato	Gardendale, Alabama
Terry Buse Boutwell	Pensacola, Florida	Roianne Houlton Frith	Montgomery, Alabama
Aaron Eugene Bradshaw	Daphne, Alabama	Martha Elizabeth Fuller	Birmingham, Alabama
William Marcus Brakefield	Tuscaloosa, Alabama	Cynthia Talley Funderburk	Prattville, Alabama
William Charles Braswell, Jr.	Hoover, Alabama	Timothy David Garner	Montgomery, Alabama
Clyde Ellis Brazeal, III	Birmingham, Alabama	Anna Giattina	Homewood, Alabama
Lester Morton Bridgeman	Mobile, Alabama	Anita Sheree Gifford	Birmingham, Alabama
Faulkner Eugene Brodnax	Birmingham, Alabama	Gregory William Gill	Montgomery, Alabama
Steven Clyde Reed Brown	Birmingham, Alabama	David William Glanzer	Montgomery, Alabama
Joseph Hiram Calvin, III	Huntsville, Alabama	James Tony Glenn	Hodges, Alabama
Jeffrey Keith Carder	Birmingham, Alabama	Kay Elizabeth Godfrey	Huntsville, Alabama
Karen Hazel Carr	Mobile, Alabama	William Bradley Goodwin	Birmingham, Alabama
Virginia Gilder Carruthers	Birmingham, Alabama	Bryce Uraldine Graham, Jr.	Tuscumbia, Alabama
Tobin Keith Clark	Huntsville, Alabama	John Mack Green	Mobile, Alabama
John Carter Clary	Bessemer, Alabama	John Mark Greer	Montgomery, Alabama
Jack Richard Cohen	Montgomery, Alabama	William Bradley Grete	Springfield, Virginia
Thomas Coleman, Jr.	Birmingham, Alabama	Charles Louie Grizzel, Jr.	Birmingham, Alabama
Audrey Joan Connolly	Mobile, Alabama	James Kenneth Guin, Jr.	Carbon Hill, Alabama
Christopher Edward Connolly	Killen, Alabama	Keith Durell Gunter, Jr.	Birmingham, Alabama
William Timothy Copeland	Gadsden, Alabama	Thomas Holmes Guthrie, Jr.	Huntsville, Alabama
Richard Ernest Corrigan	Atlanta, Georgia	Michael Lee Haggard	Tuscumbia, Alabama
Monica Lynne Cothran	Prattville, Alabama	Barry William Hair	Birmingham, Alabama
Forrest Keith Covington	Birmingham, Alabama	James Edwards Hall, II	Florence, Alabama
Stewart McKinnon Cox	Birmingham, Alabama	Billy Jordan Hand, Jr.	Birmingham, Alabama
Bobbie Shaw Crook	Dothan, Alabama	Michael Jack Harbin	Eight Mile, Alabama



Teresa Camille Harris	Montgomery, Alabama	Robert Entrekin Lusk, Jr.	Montgomery, Alabama
William Moody Harris	Panama City, Florida	Thomas Jeremiah Mahoney, Jr.	Birmingham, Alabama
Charles Edward Harrison	Daphne, Alabama	James Edward Malone	Marietta, Georgia
Danita Tara Haskins	Montgomery, Alabama	George Alvin Martin, Jr.	Mobile, Alabama
Alicia Kay Haynes	Birmingham, Alabama	Gordon Gallalee Martin	Washington, DC
Rebecca Jeneane Haynes	Birmingham, Alabama	Bernard Paul Matthews, Jr.	Mobile, Alabama
William Sidney Haynes	Montgomery, Alabama	John William Mayer	Montgomery, Alabama
Darron Code Hendley	Birmingham, Alabama	Melinda Etheredge McClung	Birmingham, Alabama
Boyett Judson Hennington, III	Birmingham, Alabama	Stephan Land McDavid	Mobile, Alabama
Maxwell Gordon Herrington, Jr.	Birmingham, Alabama	James Hamil McFerrin	Birmingham, Alabama
Mark David Hess	Montgomery, Alabama	William Henry McGowen, III	Birmingham, Alabama
Pamela Ryan Hiebert	Birmingham, Alabama	Frances LeMoyne McLaney	Mobile, Alabama
Mary Elizabeth Hildreth	Atmore, Alabama	Bobbie Champion McSheridan	Lincoln, Alabama
Samuel Mark Hill	Pelham, Alabama	Mary Beth Meyer	Birmingham, Alabama
David Elliot Hodges	Vestavia Hills, Alabama	Bari Gordon Miller	Montgomery, Alabama
Broox Garrett Holmes, Jr.	Mobile, Alabama	Dent Miller Morton	Birmingham, Alabama
Robert Milton Hope, Jr.	Mobile, Alabama	Dick Wilson Mount, Jr.	Birmingham, Alabama
Rodney Neil Hyatt	Birmingham, Alabama	Sally Robin Mozley	Atlanta, Georgia
Anne Carson Irvine	Mobile, Alabama	James Russell Murphree, Jr.	Montgomery, Alabama
Robert Gerald Jackson, Jr.	Mobile, Alabama	John Harrington Nathan	Mobile, Alabama
Dwight McKenzie Jett, Jr.	Hartselle, Alabama	Frank Lawrence Nelson	Birmingham, Alabama
Joseph Albert Jimmerson	Huntsville, Alabama	Kenneth Allen Nixon	Saraland, Alabama
Winthrop Edward Johnson	Montgomery, Alabama	David Barry Norris, Sr.	Birmingham, Alabama
George Edward Jones, III	Montgomery, Alabama	Edward Andrew Norwood	Montgomery, Alabama
John Fletcher Jones, Jr.	Montgomery, Alabama	Christopher Glen Outlaw	Birmingham, Alabama
Joe Alan Joseph	Homewood, Alabama	David Ray Pace	Birmingham, Alabama
Grover Patterson Keahey, Jr.	Birmingham, Alabama	Robert Leslie Palmer	Birmingham, Alabama
Patricia Kaye Kelley	Butler, Alabama	Kenneth Mark Parnell	Birmingham, Alabama
Joshua Oscar Kelly, III	Huntsville, Alabama	Harold Scott Patrick	Phenix City, Alabama
Paul Van Kilpatrick, Jr.	Columbus, Georgia	Ralph John Perry	Mobile, Alabama
David Richard King	Birmingham, Alabama	Donald Saxon Pittman	Decatur, Georgia
Walter Stewart King	Sheffield, Alabama	Adam Michael Porter	Birmingham, Alabama
John Fred Kingren	Birmingham, Alabama	Eunice Marona Posey	Mount Olive, Alabama
Richard Mark Kirkpatrick	Elberta, Alabama	Alice Higdon Prater	Birmingham, Alabama
Jason Paul Knight	Cullman, Alabama	Harland Irby Prater, IV	Birmingham, Alabama
Robert Keith Lang	Moulton, Alabama	Constance Kuklo Pritchett	Tuscaloosa, Alabama
John Michael Lawhorn	Mobile, Alabama	Archibald Thomas Reeves, IV	Mobile, Alabama
Mark McCarroll Lawson	Birmingham, Alabama	Patrick David Roadruck	Guntersville, Alabama
Alex Brock Leath, III	Birmingham, Alabama	John Charles Robbins	Birmingham, Alabama
Michael Edward Lee	Springville, Alabama	Amy Lee Robertson	Birmingham, Alabama
John Anthony Lentine	Birmingham, Alabama	Jackie David Robinson	Tuscaloosa, Alabama
Ellen Ruth Leonard	Montgomery, Alabama	Dell Yarbrough Rollins	Mobile, Alabama
Paul Stephen Leonard	Birmingham, Alabama	David Jamison Rutledge	Birmingham, Alabama
Laura Elizabeth Lewis	Northport, Alabama	Dorris McDowell Samsil, Jr.	Birmingham, Alabama
Mark Edwynn Lewis	Mobile, Alabama	Deborah Glee Sciascia	Mobile, Alabama
Sandra Holston Lewis	Birmingham, Alabama	Peter Andrew Seitz	Birmingham, Alabama
Sarah Jane Lindsay	Mobile, Alabama	Sebie Gibbs Sellers	Montgomery, Alabama
Elena Antoinette Lovoy	Huntsville, Alabama	Joan Bledsoe Sheffield	Birmingham, Alabama
James Kris Lowry	Birmingham, Alabama	William Eugene Shreve, Jr.	Mobile, Alabama
David Vance Lucas	Huntsville, Alabama	Jane Opitz Shuler	Birmingham, Alabama



Fern Singer . . . . .	Birmingham, Alabama	Jordan Dorman Walker, Jr . . . . .	Montgomery, Alabama
Andrew Jackson Sinor, Jr. . . . .	Birmingham, Alabama	William Waldrum Walker, Jr. . . . .	Tuscaloosa, Alabama
Bradley Jerome Sklar . . . . .	Birmingham, Alabama	David Banks Walston . . . . .	Birmingham, Alabama
James Daniel Smith . . . . .	Millbrook, Alabama	Kendrick Emerson Webb . . . . .	Montgomery, Alabama
Kathy Dianne Smith . . . . .	Arlington, Virginia	William Bowen Welden . . . . .	Birmingham, Alabama
Larry Edward Smith . . . . .	Jasper, Alabama	Christopher William Weller . . . . .	Birmingham, Alabama
Michael Allen Smith . . . . .	Mobile, Alabama	David Cleveland Wesley . . . . .	Hartford, Alabama
Selma Dingler Smith . . . . .	Mobile, Alabama	Herbert Harold West, Jr. . . . .	Mobile, Alabama
William Franklin Smith, II . . . . .	Birmingham, Alabama	Kenneth Eugene White, III . . . . .	Columbus, Georgia
Michael Sharp Speakman . . . . .	Auburn, Alabama	Curtis Lee Whitmore . . . . .	Huntsville, Alabama
Robert Henry Sprain, Jr. . . . .	Birmingham, Alabama	Dalford R. V. Widner . . . . .	Arab, Alabama
Frank Johnston Stakely . . . . .	Montgomery, Alabama	Dixie Dawn Williams . . . . .	Grove Hill, Alabama
Anne Byrne Stone . . . . .	Birmingham, Alabama	Gilda Branch Williams . . . . .	Boligee, Alabama
Allen Richard Stoner . . . . .	Hartselle, Alabama	Mark Jefferson Williams . . . . .	Montgomery, Alabama
Joseph Whitsitt Strickland . . . . .	Birmingham, Alabama	Thomas Packer Willingham . . . . .	Birmingham, Alabama
Elizabeth Ann Stuhldreher . . . . .	Stone Mountain, Georgia	Sue Ann Willis . . . . .	Birmingham, Alabama
James Robert Sturdivant . . . . .	Birmingham, Alabama	Anthony Clark Willoughby . . . . .	Birmingham, Alabama
Lori Sue Stutts . . . . .	Dothan, Alabama	Johnnie Randall Winborn . . . . .	Florence, Alabama
Clayton Thomas Sweeney . . . . .	Birmingham, Alabama	David DeLeal Wininger, Jr . . . . .	Birmingham, Alabama
Charles Clyde Tatum, Jr. . . . .	Jasper, Alabama	Mark Christopher Wolfe . . . . .	Mobile, Alabama
Mary Elizabeth Thames . . . . .	Montgomery, Alabama	Edward Kirksey Wood, Jr. . . . .	Birmingham, Alabama
William Gordon Thames, Jr. . . . .	Montgomery, Alabama	Allen Gerald Woodard . . . . .	Dothan, Alabama
Robert Cleston Thomas, Jr. . . . .	Homewood, Alabama	Lois Smith Woodward . . . . .	Birmingham, Alabama
Leonard Charles Tillman . . . . .	Birmingham, Alabama	James Marion Wooten . . . . .	Montgomery, Alabama
Stephen Page Todd . . . . .	Dothan, Alabama	Douglas Alan Wright . . . . .	Killen, Alabama
James Arnold Tucker . . . . .	Cape Coral, Florida	Grant Arnold Wright . . . . .	Tuscumbia, Alabama
Robert Edwin Turner . . . . .	Montgomery, Alabama	Thomas Jeffery Young . . . . .	Washington, D.C.
Tonnie Boice Turner, Jr . . . . .	Anniston, Alabama	Michael Anthony Youngpeter . . . . .	Daphne, Alabama
Martin Eric Vann . . . . .	Vestavia Hills, Alabama		

## Fall 1987 Bar Exam Statistics of Interest

Number sitting for exam . . . . .	369
Number certified to Supreme Court . . . . .	240
Certification rate . . . . .	65%
Certification percentages:	
University of Alabama . . . . .	85%
Cumberland . . . . .	72%
Alabama nonaccredited law schools . . . . .	25%



FALL 1987 ADMITTEES





# Lawyers in the Family



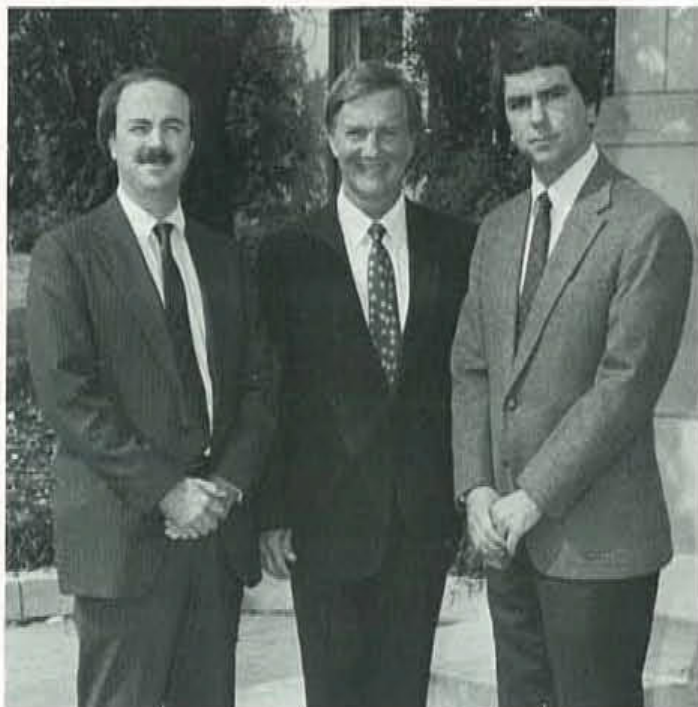
*Adam Michael Porter (1987) and John F. Porter, III (1978) (admittee & brother)*



*Clark Dale Fine (1987); Joseph L. Fine, Jr. (1963) and J. Craig Fine (1983) (admittee, father & brother)*



*Thomas Coleman, Jr. (1987) and Thomas Coleman, Sr. (1942) (admittee & father)*



*James Edward Malone (1987); Judge Kenneth F. Ingram (1963) and Kenneth F. Ingram, Jr. (1986) (admittee, father-in-law & brother-in-law)*



*David Barry Norris, Sr. (1987) and Robert McKim Norris (1976) (admittee & brother)*





*John David Floyd (1987) and George H. Floyd (1953) (admittee & father)*



*Jason Paul Knight (1987) and James R. Knight (1962) (admittee & father)*



*William Bowen Welden (1987); Charles V. Welden, Jr. (1964) and Charles V. Welden, III (1986) (admittee, father & brother)*



*William Timothy Copeland (1987); B. Keith Copeland (1986); H. Wayne Copeland (1951); Buford L. Copeland (1942); and James M. Copeland (1985) (admittee, cousin, father, uncle & brother)*



*Randall Harry Bolen (1987); H. Ralph Bolen (1952) and Ralph J. Bolen (1977) (admittee, father & brother)*





*Jane Opitz Shuler (1987) and Frank G. Shuler, Jr. (1983) (admittee & husband)*



*Anne Byrne Stone (1987) and Norborne C. Stone, Jr. (1947) (admittee & father)*



*David Banks Walston (1987) and Robert H. Walston (1960) (admittee & father)*



*Bryce Uraldine Graham, Jr. (1987) and Bryce Uraldine Graham, Sr. (1950) (admittee & father)*



*Dixie Dawn Williams (1987) and Lee B. Williams (1956) (admittee & father)*





*George Edward Jones, III (1987); R. Marcus Givhan (May 1987) and Cartledge W. Blackwell, Jr. (1972) (admittee, cousin & uncle)*



*Broox Garrett Holmes, Jr. (1987) and Broox G. Holmes (1960) (admittee & father)*



*Lori Sue Stutts (1987) and Phillip G. Stutts (1985) (admittee & brother)*



*Mary Elizabeth Hildreth (1987) and Emmett F. Hildreth, Jr. (1963) (admittee & father)*



*Patricia Kaye Kelley (1987); John W. Thompson, II (1969) and James J. Thompson, Jr. (1969) (admittee & uncles)*





Thomas Holmes Guthrie, Jr. (1987); Patricia Guthrie Fraley (1982) and John M. Fraley (1982) (admittee, sister & brother-in-law)



John Fletcher Jones, Jr. (1987); J. Fletcher Jones (1953) and Amy Williamson Jones (1987) (admittee, father & spouse)



David Richard King (1987); Charles E. King (1976); Alan L. King (1982); J. Thomas King, Jr. (1976); and J. Thomas King (1951) (admittee, cousin, brother, brother & father)



Joseph Hiram Calvin, III (1987) and Joe H. Calvin (1947) (admittee & father)



Archibald Thomas Reeves, IV (1987) and Archibald T. Reeves, III (1956) (admittee & father)





*Kendrick Emerson Webb (1987) and James W. Webb (1956)  
(admittee & father)*



*Frank Johnston Stakely (1987) and Charles A. Stakely (1960)  
(admittee & father)*



*Linda S. Perry (1982) and Ralph John Perry (1987) (daughter  
& admittee)*



*Joseph Albert Jimmerson (1987) and J. Thomas King, Jr. (1976)  
(admittee & brother-in-law)*



*Michael Allen Smith (1987) and Karen Hazel Carr (1987) (co-  
admittees, husband & wife)*



# MCLE News

by Mary Lyn Pike  
Assistant Executive Director

**SOMETHING NEW** Printed on the following page is the "annual report of compliance" form for 1987. If you have not already submitted one, you may submit it, listing your bar number, full name, firm or organization, mailing address, office telephone number and birthdate. Please remember we are required to maintain and use an office address, unless there is none or you are prohibited from receiving state bar mail at the office. Full names are preferred to avoid possible confusion of similar names.

**1987 CLE TRANSCRIPT** Also printed on the form is space for listing approved courses attended during 1987. Inquiries regarding registration for courses should be directed to the organizations that conducted them.

**TEACHING CREDIT** is earned by teaching lawyers or law students in approved CLE activities. If a substantial handout was provided, 6.0 credits per 50 minutes of instruction may be claimed. If the required handout was not provided, only 3.0 credits per 50 minutes of instruction may be claimed. Repeat presentations qualify for one-half the credit earned for an initial presentation. For purposes of calculating teaching credit, panel discussion time must be divided equally among the panelists, unless the Commission is informed otherwise.

If a law school course was taught, you may claim 6.0 credits per law school credit earned by students taking the course, e.g., 12.0 CLE credits for 2.0 academic credits. Repeated or second section law school courses qualify for one-half the credit earned for the initial course offering.

**CREDIT SUMMARY** When all courses have been listed, please figure attendance credits, teaching credits, total credits and 1988 carryover credits, then enter the numbers in the box in the lower right-hand corner of the form.

**1988 CARRYOVER CREDITS** Attorneys subject to the CLE requirement must report a minimum of 12.0 credits for 1987. If 12 or more were brought forward from 1986, 12 of those credits are used for 1987, the remainder are lost and all credits earned during 1987 may be carried forward to 1988. If less than 12 were brought forward from 1986, take that number and add to it enough 1987 credits to make 12. The remaining credits earned during 1987 are carryover credits for 1988.

**SUBMISSION OF REPORT** Forms are to be submitted to the MCLE Commission no later than January 31, 1988. Keeping a copy is recommended for documentation of tax deductions, obtaining or renewing professional liability insurance, applying for employment or promotions, etc.

**LATE FILING** Any attorney subject to the requirement whose report has not been received and approved by January 31, 1988, is due to be certified to the Disciplinary Commission, unless a deficiency plan has been approved (procedure below). Any report received after that date must be accompanied by a check for \$50, made payable to the Alabama State Bar, and reports not so accompanied must be returned to the attorneys who submitted them.

**DEFICIENCY PLANS** Attorneys were required to earn 1987 CLE credits during the calendar year, January 1 through December 31, 1987. Those few who did not may make up their credits between January 1 and March 1, 1988, if: (1) a letter is submitted by January 31, 1988, stating the dates, titles and sponsors of approved courses to be attended; and (2) approval is given by the Commission. Courses listed must be accredited, not requiring submission of an application by a sponsor.

The plan must be fulfilled by March 1, 1988, and the report received by the Commission no later than March 15, 1988, accompanied by a check for \$50, made payable to the Alabama State Bar.

**AMENDMENTS** of reports may be accepted through March 1, 1988. The simplest procedure is to submit a photocopy of your file copy, adding courses omitted and marking it "amended" in the upper right-hand corner.

**EXEMPTIONS** Any exempt attorney

wishing to report credits must do so by January 31, 1988. Reports of credits earned submitted after that date must be accompanied by a late filing fee of \$50, in the form of a check made payable to the Alabama State Bar.

**1987 ALABAMA STATE BAR ADMITTEES** are exempt from earning credits or filing reports; however, if credits have been earned to carryover to 1988, they must be reported no later than January 31, 1988. (Claim exemption "A.")

**AGE 65** No one who attained the age of 65 before 1987 is required to submit a form. Anyone who became 65 during 1987 may claim exemption "B" this year and should not hear from the Commission again.

**RULE 2.C.1 EXEMPTIONS** are available for full-time judges, members of the U.S. and Alabama House and Senate, active duty military and attorneys prohibited from private practice by constitution, law or regulation. (Claim exemption "C.") Assistant attorneys general, district attorneys and assistant or deputy district attorneys are not exempt.

**SPECIAL MEMBERS** (exemption "D") are those who did not practice law in Alabama after January 1, 1987, and paid 1986-87 special membership dues to the Alabama State Bar. (Many such members refer to this as "inactive status.") Those who are not attorneys employed by the State of Alabama are exempt from earning credits or filing reports; however, if credits are going to be used for 1988, they must be reported by January 31, 1988.

**ATTORNEYS WHO HELD A REGULAR, PRIVATE PRACTICE LICENSE** during any part of 1987 are required to report 1987 compliance, even if they have changed to special or inactive status, or changed from special to active status before December 31, 1987.

**INQUIRIES** The volume of telephone calls to be handled by the Commission's limited staff increases to an almost impossible level at this time of year. Written inquiries will be appreciated; the address is on the form. ■







## BUSINESS VALUATIONS

stockholder disputes  
estate planning•charitable gifts  
taxes•divorces  
acquisitions/divestitures  
esops•fairness opinions  
intangible assets

Contact:  
**Mitchell Kaye, CFA, ASA**  
(404)973-6214

Member

American Society of Appraisers  
President-Atlanta Chapter

The Institute of Chartered Financial  
Analysts

•  
**Court Testimony  
and  
I.R.S. Experience**

**F**or those who need  
quality office space  
without a lot of overhead.

- attorneys
- manufacturer's reps
- architects, engineers
- investment brokers
- accountants, CPAs
- small business ventures

### -NEW EXECUTIVE OFFICE SUITES-

complete with full secretarial, janitorial, mail handling services, telephone answering, conference room, reception area.

### -OVERLOOKING I-65, HOMEWOOD-

Johnnie Wiggins

Call (205) 942-1158



Pro Share  
Executive  
Centre, Inc.

130 Vulcan Road - Suite 200  
Birmingham, Alabama 35209

# NOTICE

## United States Bankruptcy Court Northern District of Alabama

Opening for the position of Clerk, U.S. Bankruptcy Court  
in Birmingham, Alabama  
Salary: \$63,135-\$72,500 JSP16

Closing date for applications: January 25, 1988, suggested or until filled

### POSITION DESCRIPTION:

The clerk of the court is a high-level management position which functions under the direction of the judges of the court. The clerk is responsible for managing the administrative activities of the court which include matters relating to the court's policies and procedures, personnel, budget, procurement and data processing activities.

### QUALIFICATIONS:

#### A. EXPERIENCE

1. General: A minimum of ten years of progressively responsible administrative experience in public service or business which provides a thorough understanding of organizational, procedural and human aspects in managing an organization. Experience with computer systems would be helpful.

2. Management Responsibility: At least three of the ten years' experience must have been in a position of substantial management responsibility. Applicant also must have experience in personnel management.

3. Practice of Law—Active Practice: An attorney who is in the active practice of law in either the public or private sector may substitute said active practice on a year-for-year basis for the management or administrative experience requirement.

#### B. EDUCATION

Bachelor and graduate degrees in accounting, judicial, public or business administration or a law degree are desirable.

#### EDUCATIONAL EQUIVALENTS

1. Undergraduate: Education in a college or university of recognized standing may be substituted for a maximum of

three years of the required general experience on the basis of one academic year of education equals nine months of experience. A bachelor's degree from the college or university of recognized standing may be substituted for three years of the required general experience. Preferably such degree should have included courses in law, government, public, business or judicial administration or related fields.

2. Postgraduate: A postgraduate degree in public, business or judicial administration from such a college or university may be substituted for one additional year of the required general experience.

3. Legal: A degree from an accredited law school may be considered as qualifying for two additional years of the required general experience.

### SELECTION PROCEDURE:

The judges will review all applications and select the most qualified for personal interviews. (No funds are available for reimbursement of interview expenses.)

### TO APPLY:

Submit in quadruplicate a résumé or SF 171 (Application for Federal Employment) to:

Honorable George S. Wright,  
chief judge  
United States Bankruptcy Court  
Northern District of Alabama  
P.O. Box 3226  
Tuscaloosa, Alabama 35403

AN EQUAL OPPORTUNITY EMPLOYER



# Young Lawyers' Section



**Charles R. Mixon, Jr.**  
YLS President

## YLS Passes 50!

**B**y resolution adopted February 27, 1937, by the Alabama State Bar Board of Bar Commissioners, the Young Lawyers' Section of the bar was established. The original name of the organization was the Junior Bar Section; it was changed to the Young Lawyers' Section in 1965. Having recently passed the 50th anniversary of the founding of YLS, I thought it would be appropriate to share with you the past presidents of this organization:

1937-1938	George A. LeMaistre	Tuscaloosa
1938-1939	Daniel T. McCall, Jr.	Mobile
1939-1940	Bryant A. Whitmire	Birmingham
1940-1941	Robert K. Bell	Huntsville
1941-1942	Vincent F. Kilborn	Mobile
1942-1943	T. Julian Skinner, Jr.	Birmingham
1943-1944	Robert W. Gwin	Bessemer
1944-1945	John W. Vardaman	Anniston
1945-1946	Edwin I. Hatch	Montgomery
1946-1947	Lee I. Porter	Gadsden
1947-1948	T.O. Howell, Jr.	Mobile
1948-1949	James W. Garrett	Montgomery
1949-1950	Herman W. Maddox	Jasper
1950-1951	Thomas G. Greaves, Jr.	Mobile
1951-1952	Rufus Bealle	Tuscaloosa
1952-1953	John W. Gibson	Troy
1953-1954	Herndon Inge, Jr.	Mobile
1954-1955	M.T. Ormond	Tuscaloosa
1955-1956	Ralph A. Franco	Montgomery
1956-1957	Walter R. Byars, Jr.	Troy
1957-1958	George Peach Taylor	Birmingham
1958-1959	Herman H. Hamilton, Jr.	Montgomery
1959-1960	H. Vann Waldrop	Tuscaloosa
1960-1961	N. Manly Yeilding, Jr.	Birmingham
1961-1962	Erskine Smith	Birmingham
1962-1963	Donald L. Collins	Birmingham
1963-1964	Euel A. Screws, Jr.	Montgomery
1964-1965	Eugene M. McLain, Jr.	Huntsville
1965-1966	Finis E. St. John, III	Cullman
1966-1967	Bert S. Nettles	Mobile
1967-1968	L. Lister Hill	Montgomery
1968-1969	D. Broward Segrest	Mobile
1969-1970	James M. White	Huntsville
1970-1971	Thomas S. Lawson, Jr.	Montgomery
1971-1972	James L. North	Birmingham
1972-1973	Ernest L. Potter	Huntsville
1973-1974	Larry Morris	Alexander City

1974-1975	N. Lee Cooper	Birmingham
1975-1976	Alto V. Sansone	Montgomery
1976-1977	William Michael House	Montgomery
1977-1978	Fournier J. Gale, III	Birmingham
1978-1979	C. Lynwood Smith, Jr.	Huntsville
1979-1980	Robert L. Potts	Florence
1980-1981	Joseph T. Carpenter	Montgomery
1981-1982	Randolph P. Reaves	Montgomery
1982-1983	J. Thomas King, Jr.	Birmingham
1983-1984	Edmon H. McKinley	Thomasville
1984-1985	Robert T. Meadows, III	Auburn
1985-1986	J. Bernard Brannan, Jr.	Montgomery
1986-1987	Claire A. Black	Tuscaloosa

## Bar admissions

On October 19, 1987, the Young Lawyers' Section welcomed new young lawyers into the state bar. At the fall bar admissions ceremony, once again ably coordinated by Laura Crum of Montgomery, these bright, eager young people heard from such distinguished speakers as Ben Harris, president of the state bar, and Reggie Hamner, executive secretary. Following the swearing-in ceremony, Robert L. Potts, a former YLS president and now general counsel for the University of Alabama System, gave an inspiring speech during the luncheon portion of the program.

## American Bar Association activities

On October 22-24, 1987, several Alabama young lawyers participated in the ABA-YLD Affiliate Outreach Project program in Kansas City, Missouri. This program presents an outstanding opportunity for our members to learn of various public service projects being presented by other young lawyer sections. This year, Claire Black, immediate past president of the Alabama State Bar YLS, and Keith Norman, president of the Montgomery Young



Lawyers' Section and a member of the YLS Executive Committee, served on a panel discussion concerning state-wide public service projects. Claire and Keith specifically discussed the Alabama Youth Judicial Project. They did an outstanding job in their presentation, as they have with the program, and I believe that other young lawyer groups throughout the nation will want to consider implementing this program in their states. Besides serving on the panel with Keith, Claire also was very active in the presentation of the entire program as she is a member of the AOP team. Jim Priester from Birmingham also was instrumental in the Kansas City meeting as an AOP team member. Rick Kuykendall of Birmingham is vice chairman of the Labor and Employment Section of the ABAYLD. Percy Badham of Birmingham serves as an editor of the

Member Net Newsletter, published in conjunction with the Membership Support Network of the ABAYLD. Percy published an article in the fall 1987 issue, entitled "Practicing Law Beyond the Courtroom Doors."

#### **Alabama-Georgia joint meeting**

On October 31, 1987, the Alabama Young Lawyers' Executive Committee had a wonderful time meeting with the Executive Council of the Georgia Younger Lawyers in Birmingham. The Georgia lawyers came to Birmingham to enjoy the sights and sounds of the city, including horse racing. Following a Friday night social event, the respective committees held a joint meeting at the Pickwick Hotel and then adjourned for separate business sessions. It was an outstanding opportunity for lawyers from the two states to exchange ideas, and we

look forward to future meetings of that kind.

#### **"Lawyers Helping Lawyers"**

I am pleased to report that Tom King of Birmingham, a former Young Lawyers' Section president and now chairman of the state bar's Committee on Local Bar Activities and Services, has appointed a vigorous subcommittee, chaired by Loring Jones of Vestavia Hills, which is actively promoting the "Lawyers Helping Lawyers" program. Elsewhere in this publication you will see an advertisement concerning this program. The concept is to pair an inexperienced lawyer with a more experienced attorney to provide guidance and assistance. This program is being implemented with the able assistance of Steve Shaw, our Young Lawyers' representative on that subcommittee, and certainly is a worthwhile effort.

#### **Montgomery County Young Lawyers' Section activities**

On October 1, 1987 the Montgomery Young Lawyers' Section sponsored a happy hour for lawyers and legal assistants. More than 75 people attended the festivities which were held at the Montgomery Marina on the Alabama River.

As a service project to the bar, the Montgomery County YLS sponsored a bridge-the-gap seminar and reception Thursday, November 12, at the new Montgomery County Courthouse. Speakers represented the Montgomery County court administrator, the Montgomery County District Attorney's office, the United States Attorney's office, the Alabama Attorney General's office and judges from both the state and federal courts. Each speaker offered personal insights and practical suggestions for young lawyers with limited practical experience. In addition to the short presentations, materials were distributed including local rules, courthouse floor plans and names and telephone numbers of court personnel. Following the presentation, a reception was held for all speakers and attendees. The program was well-attended and those attending received three hours of CLE credit. ■

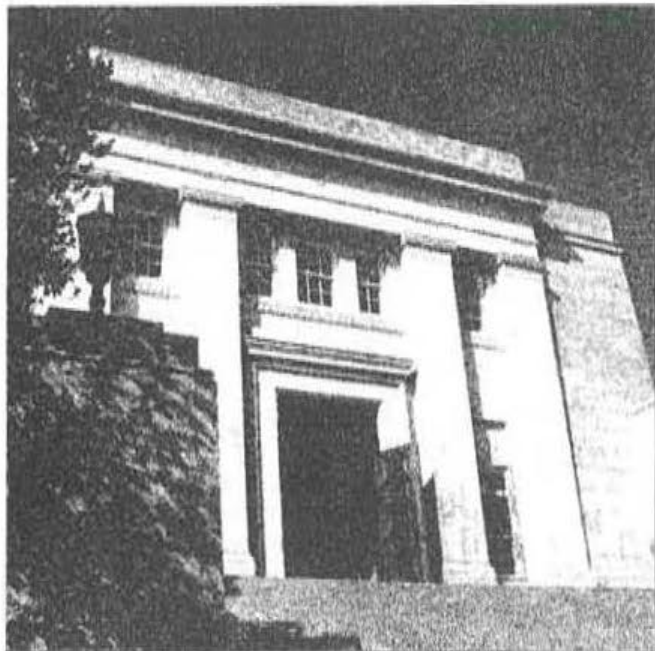
# Introduce Your Clients to a Valuable Service.

Refer them to **Business Valuation Services** for expert determination of fair market value of businesses, and financial analysis and consultation in cases of:

- |   |  |
|---|--|
| <input type="checkbox"/> Estate planning                | <input type="checkbox"/> Bankruptcy proceedings      |
| <input type="checkbox"/> Estate settlement              | <input type="checkbox"/> Mergers or acquisitions     |
| <input type="checkbox"/> Marital dissolutions           | <input type="checkbox"/> Buy-sell agreements         |
| <input type="checkbox"/> Recapitalizations              | <input type="checkbox"/> Dissident stockholder suits |
| <input type="checkbox"/> Employee stock ownership plans |  |

Contact Dr. John H. Davis, III

4 Office Park Circle • Suite 304 • Birmingham, Alabama 35223  
P.O. Box 7633 A • Birmingham, Alabama 35253  
(205) 870-1026



# Recent Decisions

by John M. Milling, Jr.,  
and David B. Byrne, Jr.

## Recent Decisions of the Alabama Court of Criminal Appeals

### *Mulhern* reaffirmed

*Borden v. State*, 7 Div. 691 (October 13, 1987)—Borden and his son were indicted separately for trafficking in marijuana in violation of § 20-1-80(1), *Code of Alabama* (1975), and possession of cocaine in violation of § 20-2-70. The defendants were tried jointly and found guilty.

On appeal, the Bordens relied on *Mulhern v. State*, 494 So.2d 787 (Ala.Crim.App. 1986), and argued that the prosecution did not prove a *prima facie* case of trafficking in marijuana because it failed to prove that the amount of marijuana contained within the plant material was in excess of 2.2 pounds of marijuana—the amount required by § 20-2-80.

In *Mulhern, supra*, the Alabama Court of Criminal Appeals declared:

"Therefore, while there is evidence that the total weight of green plant material possessed by the appellant was in excess of 2.2 pounds, there is no evidence that the quantity of marijuana contained within that total weight of the green plant material was sufficient to satisfy the requisite amount found in the enacting clause of § 20-2-80, *Code of Alabama* 1975."

In a unanimous opinion authored by Judge Patterson, the Alabama Court of Criminal Appeals agreed with the Bordens and reaffirmed the doctrine of *Mulhern*.

In *Borden*, Dr. Ronald Hubbard, a chemist with the Alabama Department of Forensic Sciences, testified about his examination of the plant material found in ten state exhibits. In describing the contents of these exhibits, he was asked about each exhibit. His testimony in regard to nearly all of the exhibits was similar to the evidence found insufficient in *Mulhern*. As an example of the insufficiency,

the court of criminal appeals quoted the following testimony pertaining to state's exhibit 29: "One clear plastic bag containing plant material revealed the presence of marijuana. The total weight was 4.0 grams."

Judge Patterson's opinion clearly recognized that Hubbard's testimony supports the premise that the Bordens were in possession of a quantity of green plant material in excess of 2.2 pounds. However, the testimony failed to specify that there was in excess of 2.2 pounds of marijuana contained in the plant material. The court reasoned as follows:



John M. Milling, Jr., is a member of the firm of Hill, Hill, Carter, Franco, Cole & Black in Montgomery. He is a graduate of Spring Hill College and the University of Alabama School of Law. Milling covers the civil portion of the decisions.



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 portion of the decisions.



"From the testimony, we are unable to conclude whether all of the 9.94 pounds of the plant material was marijuana or whether a certain quantity of marijuana was included among various and assorted other plant materials."

### Issue of First Impression—Federal Youth Corrections act cannot be "conviction" for habitual offender status

*Milam v. State*, 3 Div. 745 (October 27, 1987)—Milam pleaded guilty to one count of third degree burglary and one count of second degree theft. At sentencing, the state moved to invoke the Alabama Habitual Felony Offender Act, § 13A-5-9, *Code of Alabama* (1975), based upon a prior conviction in the United States District Court. The defendant objected to the use of the prior conviction on the ground that the conviction was under the Federal Youth Corrections Act, 18 U.S.C. § 5010(b) (repealed by Pub.L. 98-473, 1984).

Proceeding under the Alabama Habitual Felony Offender Act, the trial court sentenced the defendant to three years in the penitentiary, suspended upon the condition that the defendant serve one year in the county jail.

The court of criminal appeals, in a case of first impression, reversed. Judge Patterson, writing for a unanimous court, held:

"This State has not heretofore addressed this issue. However, we are persuaded by the reasoning and conclusions reached in the federal decisions cited above that once a conviction under the Federal Youth Corrections Act is set aside or expunged by the Court, that conviction is vacated and can have no further operative effect. More specifically, we hold that a conviction under the Federal Youth Corrections Act which has been set aside or expunged pursuant to the Act cannot be used for enhancement purposes under the Alabama Habitual Felony Offender Act."

### Overwhelming evidence of guilt does not render prejudicial error harmless under rule 45

*Hall v. State*, 4 Div. 927 (October 27, 1987)—Hall was convicted of intentional murder and sentenced to life imprisonment. The trial judge charged the jury on both intentional and reckless murder. Proper objection was made by the de-

fense counsel. A long line of Alabama cases recognize that the court's charge constituted reversible error. *Ex parte Washington*, 448 So.2d 404 (Ala. 1984); *See also Matthews v. State*, 491 So. 2d 1087 (Ala.Crim.App. 1986); *Bell v. State*, 455 So.2d 1022 (Ala.Crim.App. 1984).

The attorney general argued that the charge on reckless murder was abstract and without prejudice because "the undisputed and unconflicting evidence was of an intentional and only an intentional homicide."

In a unanimous opinion authored by Presiding Judge Bowen, the Alabama Court of Criminal Appeals focused the issue as follows:

"The proper inquiry here is not whether evidence of the defendant's guilt is overwhelming but, instead, whether a substantial right of the defendant has or probably has been adversely affected . . . Overwhelming evidence of guilt does not render prejudicial error harmless under Rule 45, Alabama Rules of Appellate Procedure. *See Ex parte Johnson*, 507 So.2d (1351, 1356 (Ala. 1986) . . . Here, Hall had a constitutional right to be informed of the nature and the cause of the accusation against him. *Washington*, 448 So.2d at 407-408 Under *Washington*, we cannot say that the denial of this constitutional right constituted harmless error on the basis of speculation as to what the jury might have done had the improper charge not been given."

---

## Recent Decisions of the Supreme Court of Alabama—Criminal

---

### Rule in *Montgomery* overruled

*Bickerstaff v. State*, 21 ABR 4683 (September 18, 1987)—Bickerstaff was convicted of manslaughter. The court of criminal appeals reversed, holding that if a significant period of time lapses between the time of a traffic accident and the time witnesses observe a party involved in the accident and conclude that he was intoxicated, and it is shown that during that interim the party had access to alcohol, then as a matter of law, the witnesses cannot testify that the party was intoxicated at the time of the accident. On cert, the Supreme Court of Alabama reversed and overruled the court of criminal appeals' decision in

*Montgomery v. State*, 44 Ala. 129, 203 So.2d 695 (1967).

Justice Adams' decision pointed out three factors to be weighed in determining whether a defendant is, in fact, intoxicated at the time of the offense: (1) testimony of the witnesses, (2) access to alcohol and (3) the amount of time between the commission of the offense and the observation of the defendant. In the court's opinion, the better rule is "that a driver's drunken condition after an automobile accident can be a fact from which the jury could infer that he was driving the automobile while in that condition."

Thus, the requirement that the state show that the defendant did not have access to, or consume, alcoholic beverages after the accident now is removed.

### Issuing worthless check a lesser included offense of theft by deception

*Oliver v. State*, 21 ABR 4879 (September 25, 1987)—Mook advertised a man's ring for sale. The defendant called in response to the ad and agreed to purchase the ring and two other pieces of jewelry. The defendant paid for the jewelry by writing a check drawn on a closed account. The evidence at trial indicated that the defendant knew the account was closed when she wrote the check.

Defendant was indicted by the Montgomery County grand jury for theft by deception, § 13A-8-2(2), *Code of Alabama* (1975). During the trial, defendant filed a written motion requesting the trial court to charge the jury on the offense of issuing a worthless check, suggesting that it was a lesser included offense under theft by deception. The trial court denied the motion.

The supreme court, through Justice Maddox, reversed and held that the trial court erred when it refused to charge the jury on issuing a worthless check in violation of §13A-9-13.1, as a lesser included offense of theft by deception.

The law is clear that a defendant is entitled to a charge on a lesser included offense if there is any reasonable theory from the evidence that would support the position. *Chavers v. State*, 361 So.2d 1106 (Ala. 1978); *Fulgham v. State*, 291 Ala. 71, 277 So.2d 886 (1973); and *Williams v. State*, 474 So.2d 178 (Ala.Crim.App. 1985). The court further stated:



"In this case, the issuance of a worthless check can be established by the same facts as the charged offense of theft by deception. The only fact that is necessary to prove theft by deception that is not required for proving the issuance of a worthless check is the element of deception."

### **Drug enhancement statute precludes use of subsequent drug conviction to trigger Alabama Habitual Offender Act**

*Chambers v. State*, 21 ABR 4944 (September 25, 1987)—Defendant was indicted for trafficking in marijuana, but a jury found him guilty only of felony possession. The state proved a prior drug offense, and, pursuant to the Alabama Habitual Offender Act, § 13A-5-9(a)(1), the trial court sentenced defendant as a habitual offender to 20 years imprisonment and a \$10,000 fine.

On cert to the supreme court, defendant contended that the Habitual Felony Offender Act was inapplicable to enhance his conviction for a drug-related offense on account of a prior drug-related offense. A unanimous supreme court agreed and reversed.

During one defendant's sentencing, the state presented sufficient documentary evidence to establish that he had a prior conviction in Florida for the offense of "sale of a hallucinogenic drug," which had been affirmed by the Florida District Court of Appeals for the First Circuit. Defendant argued that he should have been sentenced according to the provisions of *Code of Alabama* (1975), § 20-2-70, which provide that the penalties for the subsequent offenses relating to possession of marijuana shall be imprisonment "for not less than two nor more than 15 years, and, in addition, [a fine of] not more than \$25,000.00."

The supreme court agreed with the defendant that the Habitual Felony Offender Act is not the proper penalty enhancement provision to be applied.

In an opinion authored by Justice Beaty, it was held:

"Because the sentence is applicable to drug offenses and repeat drug offenses are provided within the Controlled Substances Act, we hold that defendants convicted thereunder must be sentenced according to its provisions, not the sentencing provision of Title 13A." (emphasis the court's)

However, the supreme court carefully pointed out in a footnote that they did

not reach the issue of whether a prior felony drug conviction could be used under the Habitual Felony Offender Act to enhance the punishment for non-drug-related felonies.

### **Recent Decisions of the Supreme Court of Alabama—Civil**

#### **Accountant malpractice . . . tort or contract?**

*Esther O. Blumberg, et al. v. Touche-Ross & Company, etc.*, 21 ABR 4711 (September 18, 1987)—Touche-Ross, an accounting firm, agreed in writing to provide accounting services, i.e., to examine Blumberg's balance sheet in accordance with generally accepted auditing standards. Touche-Ross failed to disclose a material overstatement of accounts receivable and Blumberg filed an action in assumpsit. Touche-Ross maintained that the alleged malpractice was tortious only and barred by the statute of limitations. The trial court agreed with Touche-Ross and granted its motion for summary judgment. Blumberg appeals.

In a case of first impression in Alabama, the supreme court held that if an accountant enters into an express agreement to perform his duties in accordance with generally accepted standards of his profession and he does not, the injured contracting party may sue for breach of contract or he may sue in tort.

The supreme court initially looked to the New York state courts which have distinguished personal injury cases from those involving property or pecuniary interest. In the former, the action is said to sound essentially in tort. In the latter, where there is a contractual agreement, the tendency has been to allow the plaintiff to elect between contract and tort. In Alabama, one who expressly promises to use due care is liable in both tort and contract when his negligence results in injury. He is liable in contract for breach of an express promise to use due care. He is liable in tort for violating the duty imposed by law on all people not to injure others by negligent conduct.

#### **Civil procedure . . . rule 55(c) discussed**

*Ex Parte: Illinois Central Gulf Railroad Company (in re: Faye Horton, etc. v. Il-*

*linois Central Gulf Railroad Company, et al.*), 21 ABR 4818 (September 21, 1987)—Horton served ICG's agent on August 2, 1986. The summons was received by ICG's attorney on August 6, 1986, and opened by a secretary. Inadvertently, the complaint was not brought to the attention of the answering attorney until September 4, 1986. Horton applied for a default on September 4, 1986, and the trial court made the entry of default on September 5, 1986. Horton proved damages on September 11, 1986, and the court entered a default judgment against ICG on September 12, 1986. ICG was not informed of the damages hearing. ICG first learned of the entry of default on September 12, 1986, and of the judgment of default on September 16, 1986. ICG's attorney moved to set aside the entry of default on September 12, 1986, and moved to vacate the default judgment on September 19, 1986. The trial court denied ICG's motion to set aside the default, and ICG appeals, maintaining that the trial court abused its discretion. The supreme court agreed.

The supreme court noted that ICG's motion was a rule 55(c) A.R.Civ.P. motion. However, the trial court apparently treated the motion as a rule 60(b) motion which requires the movant to prove *inter alia*, "excusable neglect." The supreme court stated that rule 55(c) contemplates a more liberal exercise of the trial court's discretion in favor of setting aside default judgments. While the movant does not have to show excusable neglect, etc., to prevail, a trial judge will be affirmed when he denies a motion where the movant is found to have intentionally engaged in conduct evidencing disrespect for the judicial system. Language in *Elliott v. Stephens*, 399 So.2d 240 (Ala. 1981), to the contrary is expressly overruled. Additionally, movant also must offer proof of a meritorious defense to the action, whether the motion is filed pursuant to rule 55(c) or rule 60(b).

#### **Courts . . .**

##### **contacts necessary for in personam jurisdiction**

*Delro Industries, Inc. d/b/a Cannon v. Evans*, 21 ABR 4895 (September 25, 1987)—Delro is a wholesale distributor of swimming pools located in Massachusetts. Delro made credit sales



of equipment and accessories to Swim Time Pools, an Alabama corporation. All orders were made by mail or telephone from Alabama.

Evans is an Alabama resident who executed a guaranty agreement in Florida that provided he would personally guarantee payment of every claim Delro had against Swim Time. Swim Time hankrupted owing Delro money. Delro sued Evans in Massachusetts to enforce the guaranty agreement and obtained a default judgment. Delro filed this present action to enforce that default judgment.

The trial court found that the Massachusetts court did not have personal jurisdiction over Evans, and, therefore, the judgment was not entitled to full faith and credit in Alabama. The supreme court agreed.

Evans' contacts with Massachusetts included three visits to attend "pool shows" put on by Delro. Evans also placed an order for Swim Time while in Massachusetts. All other orders were from Alabama. The Alabama Supreme Court noted that the United States Supreme Court has held that "purchases and related trips, standing alone, are not a sufficient basis for a State's assertion of jurisdiction" over a non-resident in a cause of action unrelated to those purchases and trips. Evans' visits to Massachusetts had no relation to the claim on the guaranty agreement asserted by Delro in the Massachusetts court.

#### Estates and wills . . .

##### removal of signature page revokes will

*Board of Trustees of the University of Alabama v. Calhoun, et al.*, 21 ABR 4484 (September 11, 1987) — Mrs. Bourziel executed wills in 1973, 1978 and 1983, with

a codicil added in 1985. Each will provided for the establishment of a scholarship fund at various universities in Alabama. The 1985 will expressly revoked all prior wills and codicils. The 1983 will was found in the deceased's safe deposit box, intact except for the last page of the will, which contained her signature. The last page had been removed from the will and was not in the safe deposit box. The board of trustees attempted to probate the 1983 will without the signature page. The probate court would not accept the will on the ground that it was effectively revoked when the signature page was removed. The trustees appealed.

The issue before the court was whether the physical act of removing and discarding the signature page from the body of the will, accompanied by the requisite statutory intent, complies with section 43-8-136(b) requirements for revocation. The supreme court answered the question in the affirmative. Section 43-8-136(b), as interpreted by our supreme court, requires that there be a "material mutilation" of the document. The supreme court noted that an essential element in the execution of a will is the signature of the testator, or a substitute as provided for by statute. Without the signature, there can be no will. Consequently, if the deceased intended to revoke the will, no more effectual physical means of doing so could have been resulted to, short of total destruction of the document. Moreover, since the will was in the possession and control of the deceased, there is a rebuttable presumption that the missing signature page was removed and destroyed with the intention of revoking the will.

#### Insurance . . .

##### Alabama Insurance Guaranty Association Health insurance payments do not reduce association's obligations under statute

*Alabama Insurance Guaranty Association v. Stephenson, et al.*, 21 ABR 4938 (September 25, 1987)—Stephenson was in an accident with Cummings and sued for damages. Cummings had liability insurance with Standard Fire Insurance Company of Alabama, which is in receivership and, thus, under limited operation by the association. Stephenson was a member of an employee health benefit plan at her place of employment and Blue Cross was its administrator. Blue Cross paid medical benefits on behalf of Stephenson and has a subrogation claim against Cummings. The association filed a declaratory judgment action asking the court to declare that it was entitled to deduct from its obligation imposed by statute any amount paid to Stephenson by Blue Cross. The trial court ruled adversely to the association, and the supreme court affirmed.

In a case of first impression in Alabama, the supreme court held that Blue Cross payments to Stephenson fall within the exception of section 27-42-3, *Ala. Code* 1975, and therefore are not subject to the non-duplication provisions of section 27-42-12, *Ala. Code* 1975. The supreme court noted that section 27-42-3, *supra*, exempts "life annuities, disability, accident and health . . . insurance." Therefore, the insurance guaranty statute does not apply to health insurance policies, and thus, the claim filed by Stephenson with Blue Cross is not a covered claim. Accordingly, the non-duplication provision in the statute does not apply. ■

### SMITH-ALSOBROOK & ASSOC. EXPERT WITNESS SERVICES

- Tire consulting
- Rim/tire explosions
- Traffic accident reconstruction



BOBBY D. SMITH, B.S., J.D., President  
P.O. Box 3064 Opelika, AL 36803 (205) 749-1544

Specializing In Expert Testimony  
In  
Industrial & Construction Accidents

F R E D M E L O F

4 Pamona Ave., Homewood  
Birmingham, AL 35209

(205) 879-5159



# Sections of the Alabama State Bar

Sections are groups of attorneys interested in particular areas of the law. Membership in most Alabama State Bar sections is voluntary; attorneys 36 years of age and under, or admitted three years or less, automatically are members of the Young Lawyers' Section.

## **Administrative Law**

Section members are lawyers interested in administrative proceedings at the federal and state levels. Members include government attorneys as well as private practitioners. The section presents a program during the annual meeting of the state bar and has been active in the implementation of the Alabama Administrative Procedure Act. The section also sponsors the Eugene W. Carter medalion, an award given annually to a former public servant for excellence in balancing the rights of individuals against the interests of government.

Officers for 1987-88 are George E. Hutchinson, chairman; Jack Mooresmith, chairman-elect; Ron J. Bowden, vice chairman; and Al L. Vreeland, secretary-treasurer.

## **Bankruptcy and Commercial Law**

The primary purpose of the Bankruptcy and Commercial Law Section is to facilitate communication among its members concerning bankruptcy and commercial law matters and legal decisions, with a view toward promoting consistent application of these laws in the various districts and circuits of Alabama. The section has four standing committees: bankruptcy practice; commercial practice; CLE/annual meeting; and communications/newsletter.

Additional committees are appointed on an *ad hoc* basis. The section sponsors CLE programs and law school writing competition and also is involved in promoting legislation needed in the commercial law practice.

Officers for 1987-88 are Larry B. Voit, chairman; Lee R. Benton, chairman-elect; Robert B. Rubin, secretary; and E. Terry Brown, treasurer.

## **Business Torts and Antitrust Law**

This section is concerned with business litigation, including antitrust, trade regulation, interference with business relations, defamation of business, stockholder litigation and employment relations. An annual seminar usually is held, entitled "Antitrust and Business Torts." Meetings also are held during the annual meeting of the state bar.

The 1987-88 officers are George G. Lynn, chairman; Andrew P. Campbell, vice chairman; Linda A. Friedman, secretary-treasurer; and Jonathan H. Waller, newsletter editor.

## **Corporation, Banking and Business Law**

This section is involved in projects of interest to every member of the bar. The section works with the Alabama Law Institute, revising the corporate laws of Alabama, and publishes a newsletter for section members.

The 1987-88 officers are Ralph F. MacDonald, III, chairman; Howard P. Walt-hall, vice chairman; and Curtis W. Jones, secretary-treasurer.

## **Criminal Law**

The section is comprised of bar members having an interest in matters relating to the criminal justice system of state and federal courts. Membership is open to all members of the state bar expressing an interest. The area of criminal law is changing constantly and provides many opportunities for active discussion and input.

The 1987-88 chairman is Al Pennington of Mobile.

## **Environmental Law**

Services and activities of the section are professional improvement in the field of environmental law, analysis and reporting to members of developments in the field and communication with other lawyers practicing in the environmental law area.

The 1987-88 officers are Russell C. Stoddard, chairman; R. Craig Kneisel,

vice chairman; and Neil C. Johnston, secretary.

## **Family Law**

This section of the Alabama State Bar was established in 1984. It publishes a newsletter for the benefit of family law practitioners. It also has a legislation subcommittee whose function is to consider state and federal legislation in the area of family law and the law of domestic relations, and suggest needed reforms. The section has a legal education subsection which presents programs for members.

The 1987-88 officers are Joseph C. Sullivan, Jr., chairman; G. Richard Fernambucq, chairman-elect; Bryant Whitmire, vice chairman; and James A. Wltcher, treasurer.

## **Labor Law**

This section includes lawyers from throughout the state whose practice involves work in the areas of labor, fair employment, employee benefits and occupational safety and health. In addition to providing a forum for the exchange of information and ideas, the section sponsors an annual, two-day seminar and, with the labor law sections of various other state bars, co-sponsors an annual multistate labor and employment law seminar.

The 1987-88 officers are Frederick Kuykendall, III, chairman; Braxton Schell, Jr., vice chairman; and J. Patrick Logan, secretary-treasurer.

## **Litigation**

The section seeks to (1) provide a forum where all trial attorneys may meet and discuss common problems; (2) provide an extensive educational program to improve the competency of the trial bar; and (3) improve the efficiency, uniformity and economy of litigation and work to curb abuses of the judicial process.

The 1987-88 officers are David B. Caughen, chairman; Carroll H. Sullivan, chairman-elect; and Charles W. Crook, secretary-treasurer.



### Oil, Gas and Mineral Law

The section was established in 1976 and consists of an oil and gas division and a hard minerals division. Its primary purpose is to keep members apprised of developments in the law, and this is accomplished by cosponsoring with ABICLE an annual seminar on oil, gas and mineral law, as well as sponsoring a "mini-seminar" during the annual meeting of the state bar. Currently, the section is preparing a handbook on oil, gas and mineral law in Alabama.

The 1987-88 officers are Mary R. McKay, chairman; John W. Donald, Jr., vice chairman-oil & gas; Harold D. Rice, vice chairman-hard minerals; David E. Hudgens, secretary; and Stephen W. Still, treasurer.

### Real Property, Probate and Trust Law

This section cooperates with and assists the Cumberland Institute for Continuing Legal Education in preparing and presenting programs relating to real property, trust and probate matters for mem-

bers of the bar. The section, also in cooperation with the Cumberland School of Law, publishes a periodic newsletter reviewing recent court decisions dealing with real property, trust and probate matters and reports other matters of interest relating to these topics. An annual seminar is held in conjunction with the annual meeting of the state bar.

The 1987-88 officers are J. Fred Powell, chairman; William K. Martin, vice chairman; and Romaine S. Scott, III, secretary-treasurer.

### Taxation

Membership in this section is primarily composed of tax practitioners. The section gives special emphasis to Alabama tax matters and has been involved in changing Alabama law and assisting the Department of Revenue in writing tax regulations. A program is held each year during the annual meeting of the state bar.

The 1987-88 officers are David M. Wooldridge, chairman; Bruce P. Ely, vice

chairman; and Roy J. Crawford, secretary-treasurer.

### Young Lawyers'

The Young Lawyers' Section of the Alabama State Bar is composed of all attorneys 36 years of age and under or who have been admitted to the bar for three years or less. It conducts various seminars throughout the year for lawyers and other professionals. It also sponsors service projects designed to aid the public in their understanding of the law and assist in solving legal problems. There are no dues since persons who are members of the Alabama State Bar and fulfill the age or admission requirements automatically are members. Anyone interested in becoming actively involved in projects of the Young Lawyer's Section should contact Charles R. Mixon, Jr., president 1987-88, P.O. Box 1988, Mobile, Alabama 36601.

Other officers are N. Gunter Guy, Jr., president-elect; James H. Anderson, secretary; and W. Percy Badham, III, treasurer. ■

## ALABAMA STATE BAR SECTION MEMBERSHIP APPLICATION

To join one or more sections, complete this form and attach separate checks payable to each section you wish to join.

Name: \_\_\_\_\_

Firm or agency: \_\_\_\_\_

Office address: \_\_\_\_\_

Office location: \_\_\_\_\_

Office telephone number: \_\_\_\_\_

### Section

### Annual dues

_____ Administrative Law	\$20
_____ Bankruptcy and Commercial Law	\$15
_____ Business Torts and Antitrust Law	\$15
_____ Corporation, Banking & Business Law	\$10
_____ Criminal Law	\$0
_____ Environmental Law	\$20
_____ Family Law	\$15
_____ Labor Law	\$10 if practicing less than 5 yrs. \$25 if practicing 5 or more yrs.
_____ Litigation	\$15
_____ Oil, Gas and Mineral Law	\$15
_____ Real Property, Probate & Trust Law	\$10
_____ Taxation	\$10
_____ Young Lawyers'	\$0

TOTAL \_\_\_\_\_

**Remember:  
Attach a separate check  
for each section.**

**Mail to:  
Sections  
Alabama State Bar  
P.O. Box 671  
Montgomery, AL 36101**





# Legislative Wrap-up

Robert L. McCurley, Jr.

The 1988 regular session of the legislature convenes Tuesday, February 9, 1988, when the legislature will consider several major revisions of law prepared by the Alabama Law Institute. Principal revisions will be adoption law; redemption of real property; powers of sale, which may be contained in mortgages; and the Trade Names Act. Other revisions which are being made ready for possible introduction are the Fraudulent Transfer Act, Condominium Revision and Securities Revision.

## Adoption law

In 1984 the Law Institute was requested by legislators to review proposed bills to prevent the buying and selling of infants and other bills dealing with grandparent adoptions. This interest in adoptions led the Institute to review Alabama's entire adoption law. Prior to 1886 Alabama's adoption laws were by declaration. The last major revision of the adoption was in 1931. During the last 56 years there have been various amendments, but this is the first indepth revision. The following is an excerpt from the preface by Professor Camille W. Cook to the Adoption Committee's completed draft. The general philosophy of the committee has been to foster the parent-child relationship with special emphasis on the best interest of the child. Professor Cook of the Alabama School of Law served as reporter while William N. Clark of Birmingham served as chairman. Other members of the committee are:

Judith S. Crittenden—Birmingham  
Pat H. Graves, Jr.—Huntsville  
Probate Judge Martha Kirkland—Brewton  
Tommy S. Lawson—Montgomery  
Sammye O. Ray—Birmingham  
Bryant A. Whitmire, Jr.—Birmingham  
Alan Livingston—Dothan  
District Judge Deborah Bell Passeur—Florence  
Mary Lee Stapp—Department of Human Resources  
Coleman Campbell—Department of Human Resources  
Circuit Judge Malcolm Street, Jr.—Anniston

After a great deal of study, the committee determined that the model proposed by the Family Law Section of the American Bar Association applied the best approach. However, the Alabama committee was not willing to "rubber stamp" the ABA model act. Changes were made after

extensive discussion and study in a number of significant areas. The primary changes resulted from inquiry into the practical application of the model act. The Department of Human Resources made innumerable valuable suggestions to the committee during the time of this work effort. Their input was of tremendous assistance to the committee in its effort to tailor the model act to the specific needs of Alabama as perceived by members of the committee in procedural, as well as substantive, areas.

One of the significant areas of change in the proposed adoption act relates to the criminal sanctions against individuals who attempt to profit from buying and selling babies. Under current law, the penalty for the illegal placement of children or inducement to the parents to part with their children is a misdemeanor with a small fine and no more than three months in jail. The proposed act substantially increased the penalty provision which will range from a Class A misdemeanor to a Class C felony.

Another significant area of change relates to the persons whose consent or relinquishment are required. Section 7 provides that the presumed father's consent or relinquishment shall be required for adoption under certain circumstances. This is in line with emerging case law underscoring the rights of fathers.

Section 29 seeks to clarify present law by providing that both the rights and responsibilities of the natural parents

*continued on page 58*



*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.*



# Memorials

---

**William Douglas Arant—Birmingham**

Admitted: 1923

Died: October 30, 1987

**Daniel Reid Boyd—Roanoke**

Admitted: 1927

Died: April 26, 1987

**Joseph Gladstone Burns—Tuscaloosa**

Admitted: 1936

Died: October 27, 1987

**Abner Riley Powell, Jr.—Andalusia**

Admitted: 1937

Died: October 30, 1987

**James W. Traeger—Montgomery**

Admitted: 1979

Died: June 11, 1987

**Charles Theodore Reese—Daleville**

Admitted: 1948

Died: October 31, 1986

**Clifford Roland Reeves—Birmingham**

Admitted: 1935

Died: October 30, 1987

**Robert Bloch Ryne—Tuscaloosa**

Admitted: 1964

Died: March 27, 1987

**Paschal Patrick Vacca—Birmingham**

Admitted: 1937

Died: November 9, 1987

These notices are published immediately after reports of death are received. Biographical information not appearing in this issue will be published at a later date if information is accessible. We ask you to promptly report the death of an Alabama attorney to the Alabama State Bar, and we would appreciate your assistance in providing biographical information for *The Alabama Lawyer*.



Douglas Arant, one of the leaders of the Alabama State Bar for more than 60 years, died October 30, 1987, at his home in Birmingham.

Mr. Arant was born in Waverly, Alabama, May 19, 1897, and received B.S. and M.S. degrees from the University of Virginia, where he also was an instructor in political science. He then entered Yale Law School, from which he was graduated *magna cum laude* in 1923, having served as editor-in-chief of the *Yale Law Journal*. He had been preceded at the law school by his older brother, Herschel C. Arant, who also had served as the editor-in-chief of the *Yale Law Journal* and later was dean of the Ohio State University Law School and a judge on the United States Court of Appeals for the Sixth Circuit.

Immediately following his graduation, Mr. Arant joined the firm of Tillman, Bradley & Baldwin, and became a member of that firm in 1927. He was a partner in a successor firm, Bradley, Arant, Rose & White, at his death. Throughout his career, he was a member of the Birmingham Bar Association, the Alabama State Bar and the American Bar Association. He served as a member of the

board of bar commissioners from 1931-1940 and was elected president of the Alabama State Bar in 1936 at the age of 39. During his term as president, he was the movant in the creation of the Junior Bar Section (now the Young Lawyers' Section) of the Alabama State Bar. He was an early chairman of the American Bar Association Committee on the Bill of Rights.

From 1933-34 he served as special assistant to the Attorney General of the United States and chief counsel to the Petroleum Administrative Board, National Recovery Administration, and as chairman of the Regional Labor Board for the Sixth District, National Recovery Administration in 1934-35. He was a public member of the Fourth Regional Labor Board, Atlanta, from 1942 to 1944, and served at the request of the Attorney General of the United States in 1953 and 1954 as a member of the National Committee to Study the Antitrust Laws (he was the only practicing lawyer in the south on that committee). In 1976 he was named "Lawyer of the Year" by the Birmingham Bar Association. He also was one of the organizers of the Legal Aid Society of Birmingham and served as president of that organization. Mr. Arant was a Fellow of the American Bar Foundation and a member of the Council of the Alabama Law Institute. He was a member of the American Law Institute and the Association of the Bar of the City of New York.

At the urging of friends in New York and Washington in 1937, Mr. Arant served as chairman of the National Committee for Independent Courts, a nationwide organization composed primarily of persons who had supported President Roosevelt's re-election in 1936 but were opposed to his attempt to pack the Supreme Court of the United States soon after that election.

He was active in civic and community affairs throughout his career, having served as president of the Birmingham

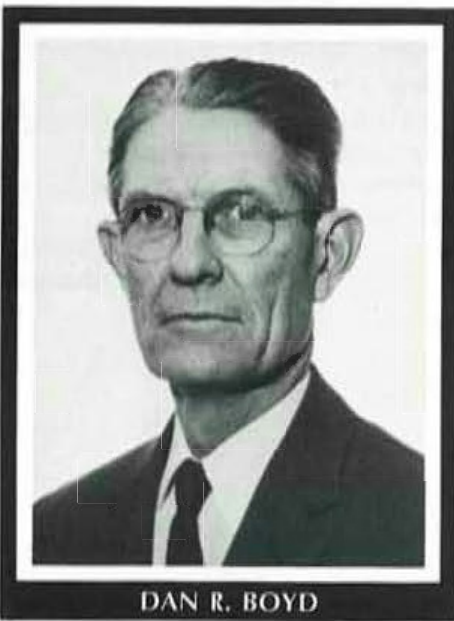


Civic Symphony Association (the predecessor of the Alabama Symphony Association) and the Birmingham Civic Opera Association. He served as a member of the Distribution Committee of the Greater Birmingham Foundation, as a trustee of Brooke Hill School (predecessor of the Altamont School in Birmingham) for more than 30 years and as a member of the boards of the Eye Foundation and the Norton Center at Birmingham-Southern College. He was awarded honorary doctoral degrees by the University of Alabama, Birmingham-Southern College and Rhodes College, formerly Southwestern at Memphis.

Mr. Arant enlisted as a private in the United States Army in 1918 and later was commissioned a second lieutenant in the field artillery, prior to his release from the service following the end of World War I.

Mrs. Arant, the former Letitia Tyler McNeel, predeceased him, but he is survived by three daughters, Adele Arant Stockham and Letitia Arant of Birmingham, and Fairlie Arant Maginnes of Washington, and several grandchildren.

His law firm and others have established and endowed the Douglas Arant Professorship of Law at the University of Alabama Law School and the Douglas Arant Pre-Law Scholarship at Birmingham-Southern College.



DAN R. BOYD

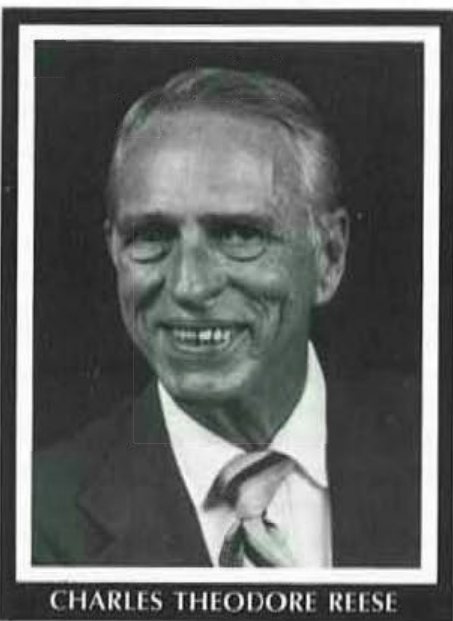
Judge Dan R. Boyd died April 26, 1987. He was an alumni of Auburn University and the University of Alabama School of Law, graduating in 1928 and was a devoted alumnus of both schools.

He began the practice of law in Roanoke, Alabama, in August 1928. He was elected state senator in 1938 and afterward served two terms as district attorney (circuit solicitor of the 5th Judicial Circuit). A few years later, he was elected circuit judge of the same district; he served in that capacity until his election to supernumerary judge, a position he held until his death.

Judge Boyd was an active member in the civic life of Roanoke—a charter member of the Roanoke Lions Club, now in its 57th year of continuous service. He served as a Sunday School teacher, superintendent and deacon in the historic First Baptist Church of Roanoke.

His only child, Catherine Boyd Johnson of Huntsville, Alabama, preceded him in death January 6, 1987.

He is survived by his wife, Gladys Baxter Boyd, whom he married in 1930, and four grandchildren, Dr. Reeves Johnson, Jr., of Montgomery and Shorter, Alabama; Daniel Boyd Johnson, attorney in Atlanta; Mrs. Tom McLain, Atlanta; and Thomas Baxter McLain of Huntsville; one greatgranddaughter, Catherine Keller Johnson.



CHARLES THEODORE REESE

Charles T. Reese, a practicing attorney in Daleville, Alabama, and distinguished and respected member of the bar, died October 31, 1986. He was a member of the firm of Reese & Reese where he practiced law with his son, Charles N. Reese, and daughter-in-law, Jo Reese.

Reese graduated in 1941 from the University of Virginia with a bachelor's degree in commerce, and received his bachelor of laws degree from the University of Alabama in 1948. He received his license to practice law on September 20, 1948, and on June 1, 1969, he received the degree of juris doctor from the University of Alabama as a replacement for the previously conferred degree of bachelor of laws.

Reese honorably served his country in the United States Army in which he obtained the rank of lieutenant colonel. He served with OSS (forerunner of CIA) in World War II in Indochina, was assigned to the 82nd Airborne Brigade and the 9th Ranger Battalion and was a member of the Fighting Blue Devils. For a period of time during his military career he was the only Airborne Ranger who was in the Judge Advocate General's Corp with the U.S. Army. On March 10, 1971, Reese was appointed honorary lieutenant colonel, aide-de-camp in the Alabama State Militia by Governor George C. Wallace.

He retired from the U.S. Army as lieutenant colonel in 1967 at Fort Rucker, Alabama, where he began his private practice of law with offices in the cities of Enterprise and Daleville. Subsequently he closed his Enterprise office and concentrated his practice in Daleville. He was a member of the Dale County and Alabama State bars and the Alabama and American Trial Lawyers associations.

Reese had all the special qualities required of an attorney who carries on a general practice in a small town setting. He was a good trial lawyer, counselor and advisor in all areas of the law and represented his clients with equal energy and vigor, regardless of their station in life.

He is survived by his wife, Mildred Wade Reese, Fort Walton Beach, Florida; one daughter, Mary Elizabeth Crabbe,



# Wrap-Up

continued from page 55

are terminated by adoption. Inheritance rights of adopted children will be determined by the Alabama Probate Code.

The committee attempted to balance the interest of all parties involving confidential matters relating to identity and other sensitive issues. The proposed statute now provides for documenting and preserving family, medical and other relevant information. The statute also provides for the disbursement of information under various enumerated circumstances.

## Guardian and Protective Proceedings Act

January 1, 1988, the new Guardian and Protective Proceedings Act became effective. Existing guardianships may want to

petition the court to define whether the existing appointment is for a "guardianship" of the person or a "conservatorship" of the estate. Without taking any action existing guardianships may continue in effect as they existed prior to this act with all of the powers and duties of the guardianship. Additional powers and duties may be granted or limited by the probate court.

A bond no longer is required for guardians whose powers and duties now are to care for the health, education and welfare of the person. Conservators now have specified duties and powers with new bond requirements. The probate court may lower the bond requirements from double the estate to an amount equal the estate minus the value of the real estate.

Guardianships historically have been for minors and persons who are *non*

*compos mentis*. "Incapacitated persons" now include persons "who lack sufficient understanding or capacity to make or communicate responsible decisions concerning his person." This broader definition permits legal protection, commensurate with the person's capacity. Limited guardians and conservators are provided for in the act to allow for appointments which are the least restrictive protection rather than all-or-none status.

A major provision of the act is to give definition to the powers and duties of both guardians and conservators. The commentary to this new law has been included in the 1987 supplement to the Code. Copies of any of the revisions proposed to the legislature can be obtained from the Institute by writing: **Bob McCurley, Jr., Director, Alabama Law Institute, P.O. Box 1425, Tuscaloosa, Alabama 35486.** ■

# Memorials

Kansas; and two sons, Charles Neville Reese, Daleville, and John William Reese, Minnesota.

—**Kenneth W. Quattlebaum**  
Ozark, Alabama



## JAMES W. TRAEGER

James W. Traeger, an active member of the Montgomery County Bar, died June 11, 1987, at the age of 33.

Jim was born in Demopolis, Alabama, on November 6, 1953. He attended undergraduate school at the University of Alabama, receiving his bachelor's degree in 1976. He subsequently received his

J.D. degree from the University of Alabama in 1979. After graduation from law school, Jim went to work as an assistant district attorney for Montgomery County. After completing four years with the district attorney's office, during which time he tried over 100 cases, Jim joined the Montgomery law firm of Beasley and Wilson. He was made a partner in the firm in 1985. The firm's name subsequently was changed to Beasley, Wilson, Traeger, Allen and Mendelsohn.

In a relatively short period of time, Jim established a reputation as an excellent trial lawyer. He was universally recognized for his honesty, integrity, intelligence, ability and capacity for hard work. His compassion for clients, most of whom had suffered misfortune, was perhaps the thing that made him special.

Jim was a member of the Board of Governors of the Alabama Trial Lawyers Association and was extremely active in the Montgomery County Trial Lawyers Association. He also was a member of the

Association of Trial Lawyers of America.

Jim is survived by his wife, Paige; his parents, Mr. and Mrs. William H. Traeger; and a brother, Billy Traeger.

Jim will be missed by all who knew him. The members of his law firm lost a friend. The legal profession lost one of its bright and shining stars.

A scholarship fund is being established at the University of Alabama Law School in memory of Jim Traeger by his family and members of his law firm.

—**Jere Beasley**  
Montgomery, Alabama





# Classified Notices

RATES: Members: No Charge, except for "positions wanted" or "positions offered" listings, which are at the nonmember rate; 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:

Jan. '88 Issue—Deadline Nov. 27

March '88 Issue—Deadline Jan. 29

May '88 Issue—Deadline March 31

No deadline extensions will be made. Send classified copy and payment, made out to The Alabama Lawyer, to: Alabama Lawyer Classifieds, c/o Margaret Lacey, P.O. Box 4156, Montgomery, AL 36101

## SERVICES

**CERTIFIED BUSINESS APPRAISALS/EVALUATIONS:** Avoid conflict of interest while helping your client with legal matters and the new tax laws. You get a defensible value by using our contacts and knowledge in this specialty. We work for you or client. Expert witness. Confidential. One of only 70 IBA Certified in the U.S. **D. Richards, CBA., RA Financial Serv., P.O. Box 7016, Greenville, South Carolina 29606. Phone (803) 292-1450.**

**RURAL APPRAISAL/FORESTRY SERVICES:** Accredited Rural Appraiser and Registered Forester offers appraisal and management services to attorneys, estates and absentee owners. Timber cruises, estate appraisals, condemnation appraisals, damage appraisals, forest management, courtroom testimony. **Joseph E. Rigsby, ARA, RF Rigsby Investment Company, Inc. 3613 East South Boulevard, Montgomery, Alabama 36116. Phone (205) 271-6353.**

**WINDOW OF OPPORTUNITY—**Do you have retirement plans that are out of compliance because of failure to file amendments? Adoption of certain prototype plans may help avoid penalties. **Contact Bill Rucker (404) 322-6751.**

**LEGAL RESEARCH HELP:** Experienced attorney, member of Alabama State Bar since 1977. Access to law school and state law libraries. Westlaw available. Prompt deadline service. \$35/hour. **Sarah Kathryn Farnell, 112 Moore Building, Montgomery, Alabama 36104, 277-9937. In Jefferson and Shelby counties, call free: 322-4419. No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.**

## EXAMINATION OF QUESTIONED

Documents: Handwriting, typewriting and related examinations. Internationally court-qualified expert witness. Diplomate, American Board of Forensic Document Examiners. Member: American Society of Questioned Document Examiners, the International Association for Identification, the British Forensic Science Society and the National Association of Criminal Defense Lawyers. Retired Chief Document Examiner, USA CI Laboratories. **Hans Mayer Gidion, 218 Merrymont Drive, Augusta, Georgia 30907, (404) 860-4267.**

## BARRISTERS' RESEARCH GROUP:

Legal research and writing services performed by a group of licensed Alabama attorneys. A unique, timely and inexpensive way to solve your research needs. Requesting attorney controls deadlines and total time expended on each request. Rate \$30 per hour. **Contact Barristers' Research Group, P.O. Box 6981, Birmingham, Alabama 35210. (205) 595-5426. No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services. All services will be performed at the request of and become the sole and exclusive work product of the requesting attorney.**

## VALUATIONS/FAIRNESS OPINIONS

Closely-held Businesses, Banks, Professional Practices. For ESOPs, Gifts, Estate Planning, Shareholder Disputes, Dissolutions, Economic Loss. Experience with hundreds of cases and many industries. Litigation Support. Court Testimony. Call/write for our Newsletter. **Mercer Capital Management, Inc., 1503 Union Ave. #201, Memphis, Tennessee 38104 (901) 725-0352.**

**FIRE INVESTIGATIONS** for attorneys and insurance companies. Our firm specializes in fire, fraud, arson, subrogation and surveillance. Insurance background. Qualified in state and federal court. References and rates will be furnished upon request. **James E. Posey, Jr., and Linda F. Hand d/b/a Investigative Services, 4849 10th Avenue, N., Birmingham, Alabama 35212 (205) 591-1164.**

## FOR RENT

**FOR RENT:** One entire floor of a two-tenant building located near the Jefferson County Courthouse. Terrific space suitable for four attorneys and staff. The Whilldin Building, 513 North 21st Street, Birmingham, Alabama 35203. **Contact DeLeal Winger (205) 322-3663.**

## WANTED

**WANTED TO BUY:** Alabama Practice & Forms, West Publishing Co.: 1947, Walter B. Jones (six-volume set); Alabama Jury Instructions, West Publishing Company: 1953, Walter B. Jones (two-volume set). **Contact George E. Jones. (205) 261-4351 or 265-8871.**

## POSITIONS OFFERED

**STAFF ATTORNEY,** U.S. Court of Appeals, 11th Circuit, Atlanta. Two-year clerkships beginning June. Law degree from accredited school, strong academic background, excellent research/writing skills, law review or equivalent. 1-3 years' experience preferred. Résumé, law school transcript, unedited writing sample and references to: **Karen C. Wilbanks, Director, 56 Forsyth Street, Room 549, Atlanta, Georgia 30303-2289.**



# Classified Notices

RATES: Members: No Charge, except for "positions wanted" or "positions offered" listings, which are at the nonmember rate; 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:

Jan. '88 Issue—Deadline Nov. 27

March '88 Issue—Deadline Jan. 29

May '88 Issue—Deadline March 31

No deadline extensions will be made. Send classified copy and payment, made out to *The Alabama Lawyer*, to: *Alabama Lawyer Classifieds*, c/o Margaret Lacey, P.O. Box 4156, Montgomery, AL 36101

## FOR SALE

**FOR SALE:** Landtech 86 Real Estate Settlement System Designed for IBM, PC, XT, ATT & PS/2. Complete a closing within 20 minutes. Prepares HUD Pages 1 and 2, Buyers and Sellers Closing Statements, all Disbursement Statements and Checks. Reg. Z APRs and Amortization Schedules. PROGRAM FEATURES: Integrated Word Processor allows preparation of Commitments, Policies, Notes, Affidavits & others. Forms Generator for preparing FNMA, VA, FHA, and other pre-printed forms. Complete Escrow Accounting for up to 15 bank accounts. Cross Reference System permits you to look up closing files 23 different ways. Full reporting capability. Automatically prorates and calculates closing figures. This is the best real estate number-cruncher available. \$1,295.00 Complete. **SATISFIED CUSTOMERS COAST TO COAST.** Bell Data Systems, 303 Guaranty Building, 120 S. Olive Avenue, West Palm Beach, Florida 33401, (305) 833-0454.

**FOR SALE: USED LAW BOOKS** Alabama Reports/Appellate Reports, Alabama Code, Southern Reporter 1st & 2d, Southern Digest and more. SAVE 30-60% We buy, sell & trade. **LAW BOOK EXCHANGE (800) 325-6012, P.O. Box 24990, Jacksonville, Florida 32241-4990.**

**FOR SALE:** Antique Alabama maps, Authenticity guaranteed. Excellent office decoration when framed. Write for list and photos. **Sol Miller, P.O. Box 1207, Huntsville, Alabama 35807.**

## POSITIONS OFFERED

**ATTORNEY JOBS**—National and Federal Legal Employment Report: highly regarded monthly detailed listing of hundreds of attorney and law-related jobs with U.S. Government, other public/private employers in Washington, D.C., throughout U.S., and abroad. \$30—3 months; \$53—6 months. **Federal Reports, 1010 Vermont Ave., NW, #408-AB, Washington, D.C. 20005. (202/393-3311). Visa/MC.**

**POSITION AVAILABLE** in six-person law firm for lawyer with one to three years' experience in civil litigation. All inquiries confidential. **Send résumé to: Hiring Partner, P.O. Box 130225, Birmingham, Alabama 35213.**

**SPECIAL DRUG PROSECUTOR:** Mobile County District Attorney's Office seeks experienced lawyer to specialize in drug prosecutions and related condemnations. Salary negotiable. All inquiries confidential. **Send résumé to: Drug Prosecutor, P.O. Box 2841, Mobile, Alabama 36652.**

Classified Notices  
Deadline For March '88 Issue  
Is January 29th.  
For More Information:  
Contact Margaret Lacey  
P.O. Box 4156  
Montgomery, AL 36101



# Disciplinary Report

## Suspensions

● Birmingham lawyer **Thomas E. Baddley, Jr.**, was suspended from the practice of law in the State of Alabama for a period of six months, effective November 26, 1987, by order of the Supreme Court of Alabama, dated November 24, 1987. Baddley's suspension was based upon his April 29, 1985, guilty plea in Jefferson County Circuit Court to felony marijuana possession, (case no. CC-83-2376), which resulted in his being placed on two years' probation by the circuit court. [ASB No. 83-254]

● By order of the Supreme Court of Alabama, Montgomery lawyer **Earl L. Dansby** was suspended from the practice of law for a period of 45 days, effective October 15, 1987. Dansby's suspension is based upon his conviction before the Disciplinary Board of the Alabama State Bar of unethical conduct. He represented to a client, a state employee who was the object of a personnel disciplinary proceeding, that the outcome of that official proceeding could be influenced by the payment of \$2,000 to a political "slush fund." [ASB No. 86-270]



## *Ex Arguendo . . .*

**“A democracy cannot exist as a permanent form of government. It can only exist until the voters discover they can vote themselves largess out of the public treasury. From that moment on the majority will always vote for the candidate promising the most from the public treasury — with the result that democracy will collapse over a loose fiscal policy, always to be followed by dictatorship.”**

---

An observation 200 years ago by British historian Alexander Tyler.



**BIRMINGHAM PUBLISHING COMPANY**

130 S. 19th Street, Birmingham, Alabama 35233 205/251-5113 FAX 205/251-2222

Financial and Legal Printers Since 1910



**“Only one annotated federal law source is superior in every detail. Only one.”**

Creating a great legal resource is never simple. Every detail counts. USCA editors take special pride—and effort—in the details that make your research easier and more accurate.

Take USCA's detailed alphabetical indexes to Notes of Decisions, for example. These indexes help you find cases on specific topics easily. And only USCA has them.

USCA. Where you can take the basics for granted—and rely on the superior details when you need them.

For a free Buyer's Guide to USCA, contact your West Sales Representative or write to: West Publishing Company, 50 W. Kellogg Blvd., P.O. Box 64526, St. Paul, MN 55164-0526.

**USCA<sup>®</sup>**  
*The Choice for success*

Call 1-800-328-9352  
(MN or AK 1-612-228-2973)

**MICHAEL D. GOODSON**  
P.O. Box 17334  
Montgomery, AL 36117  
Phone: 205/277-1914

**JOHN L. DAVIS, J.D.**  
P.O. Box 36386  
Birmingham, AL 35236  
Phone: 205/320-6240

Mr. William D. Coleman  
Capell, Howard, Knabe & Cobbs  
P. O. Box 2069  
Montgomery AL 36197