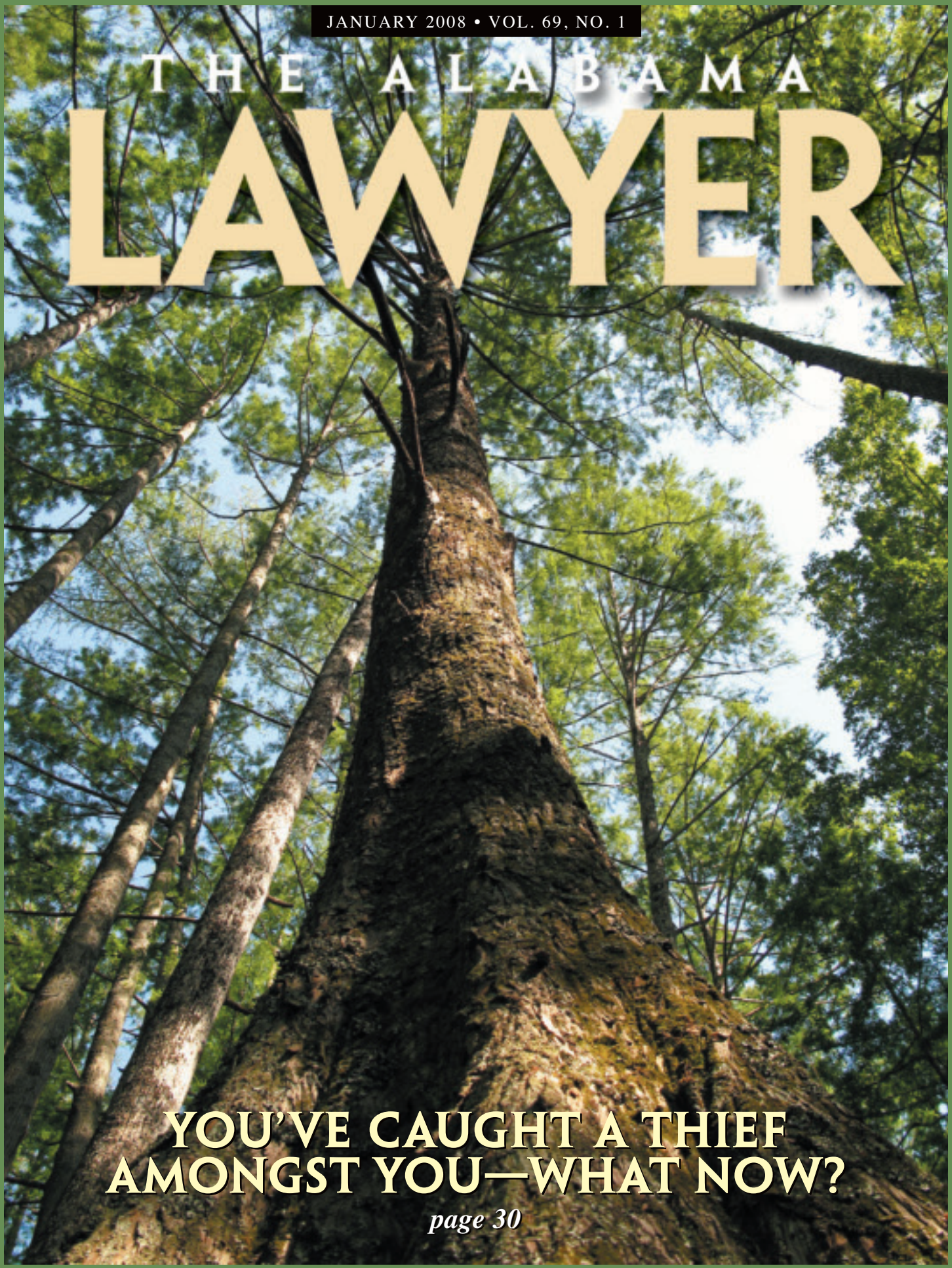
JANUARY 2008 • VOL. 69, NO. 1

THE ALABAMA LAWYER



YOU'VE CAUGHT A THIEF AMONGST YOU—WHAT NOW?

page 30

Having trouble communicating with your commercial malpractice insurer?

Call AIM: We're willing to talk!

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

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

"A Mutual Insurance Company Organized by and for Alabama Attorneys"

www.AttysInsMut.com

Alabama, we love where we live.

For more than 125 years, LandAmerica has been working to serve the communities that make up our country. Today in Alabama, with resources and tools from title services to home warranty, our knowledgeable representatives will respond with foresight and innovation to your changing needs. Whether you're a homebuyer, lender, broker or attorney, you can count on LandAmerica to help you with any real estate transaction need anywhere in the state of Alabama.

We're glad to be in the neighborhood.

LandAmerica Financial Group, Inc.
Commonwealth Land Title Insurance Company
Lawyers Title Insurance Corporation
Transnation Title Insurance Company

2200 Woodcrest Place, Suite 330
Birmingham, AL 35209
Phone: 800-831-6807
Fax: 205-868-1011
www.landam.com

LandAmerica®

ABICLE

Alabama Bar Institute for Continuing Legal Education

Spring Calendar 2008

January	31	Professionalism - Tuscaloosa
February	8	How to Run a Successful Practice - Tuscaloosa
	15	Banking Law - Birmingham
	22	Elder Law - Tuscaloosa
	29	Workers' Compensation Law - Tuscaloosa
March	7	Damages - Tuscaloosa
April	11	Guardian ad Litem - Tuscaloosa
	18	Collections Law - Tuscaloosa
	25	Divorce from A to Z - Tuscaloosa
May	2	Appellate Practice - Tuscaloosa
	9-10	City & County Governments - Orange Beach
	16	Intellectual Property - Tuscaloosa
	23	Professionalism - Birmingham

ABICLE

Alabama Bar Institute for Continuing Legal Education

THE UNIVERSITY OF ALABAMA

SCHOOL OF LAW

Find your way with ABICLE.

THE ALABAMA LAWYER

JANUARY 2008 • VOL. 69, NO. 1

IN THIS ISSUE

ON THE COVER

Cypress trees in Kowaliga slough at Lake Martin

Photo by Lee Huffaker
Maynard, Cooper & Gale, PC, Birmingham

DEPARTMENTS

CLE COURSE SEARCH

The Alabama Mandatory CLE Commission continually evaluates and approves in-state, as well as nationwide, programs which are maintained in a computer database. All are identified by sponsor, location, date and specialty area. For a listing of current CLE opportunities, visit the ASB Web site,

www.alabar.org/cle.

www.alabar.org/cle

ALABAMA STATE BAR
415 Dexter Avenue
Montgomery, AL 36104
(334) 269-1515
(800) 354-6154
FAX (334) 261-6310
E-mail: *info@alabar.org*
Web site: w*ww.alabar.org*

ALABAMA STATE BAR STAFF

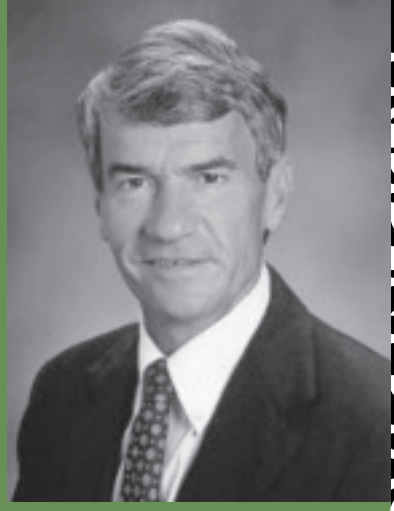
Executive Director .....Keith B. Norman
Executive Assistant .....Diane Locke
Systems Administrator .....Wayne Hughes
Computer Programmer .....Dolan L. Trout
Web Administrator .....Amy Shell
Director of Programs .....Edward M. Patterson
Administrative Assistants for Programs .....Rita Gray
Marie Updike
Lawyer Referral Secretary .....Shannon Knight
Mandatory Continuing Legal Education
Director .....Anita K. Hamlett
CLE Administrative Assistant.....Carol Thornton
Director of Communications &
Public Information .....Brad Carr
Publications Director .....Margaret L. Murphy
Communications and Publications
Assistant.....Marcia N. Daniel
Membership Services Director .....Mary Corbitt
Membership Administrative Assistant .....Emily Farrior
Pro Hac Vice Assistant .....Cathy Sue McCurry
Volunteer Lawyers Program Director .....Linda Lund
VLP Assistant .....Katherine L. Church
Director of Admissions .....Dorothy D. Johnson
Admissions Administrative Assistants .....Heidi Alves
Sonia Douglas
Bookkeeper .....Gale Skinner
ASB Foundation Assistant.....Ann Rittenour
Graphics Arts Director.....Maggie Stuller
Graphics Arts Assistant .....Roderick Palmer
Receptionist .....Stephanie Oglesby
Practice Management Assistance Program
Director .....Laura A. Calloway
P-MAP Administrative Assistant .....Kristi Skipper
Alabama Lawyer Assistance Program
Director .....Jeanne Marie Leslie (834-7576)
ALAP Administrative Assistant .....Sandra Clements
Alabama Law Foundation, Inc. Director.....Tracy Daniel
ALF Administrative Assistants .....Tara Allison
Joi Anderson
Alabama Center for Dispute Resolution
Director .....Judith M. Keegan (269-0409)
ADR Assistant .....Patsy Shropshire

ALABAMA STATE BAR CENTER FOR PROFESSIONAL RESPONSIBILITY STAFF

General Counsel .....J. Anthony McLain
Secretary to General Counsel.....Vivian Freeman
Assistant General Counsel .....Robert E. Lusk, Jr.
Assistant General Counsel .....Samuel S. Partridge
Assistant General Counsel .....Jeremy W. McIntire
Complaints Intake Coordinator.....Kim Ellis
Disciplinary Clerk .....Bonnie Mainor
Paralegals/Investigators .....Cheryl L. Rankin
Carol M. Wright
Client Security Fund Coordinator .....Laurie Blazer
Receptionist .....Sherry Langley

The Alabama State Bar, P.O. Box 671, Montgomery, AL 36101
Phone (334) 269-1515, (800) 354-6154 • *www.alabar.org*

The Alabama Lawyer (USPS 743-090) is published six times a year by the Alabama State Bar, 415 Dexter Avenue, Montgomery, Alabama 36104. Periodicals postage paid at Montgomery, Alabama, and additional mailing offices. POSTMASTER: Send address changes to *The Alabama Lawyer,* P.O.Box 4156, Montgomery, AL 36103-4156.



SAMUEL N. CROSBY

Mandatory IOLTA, Increasing the Pro Hac Vice Fee and an End to Traveling Like Boxcar Willie for Bar Committee Members

Mandatory IOLTA

In magnificent acts of leadership, both the Alabama State Bar Board of Bar Commissioners and the Supreme Court of Alabama unanimously adopted an amendment to Rule 1.15 of the *Code of Professional Responsibility*. This amendment will implement a mandatory IOLTA plan and appropriate comparability rule requiring banks to pay a fair and comparable rate of interest on IOLTA accounts in Alabama.

Alabama currently ranks behind all other states, the District of Columbia and Puerto Rico in funding for access for justice for the poor in civil matters.

Fewer than 20 percent of the civil legal needs of Alabama's poor were served last year.

Alabama's IOLTA program was established by the Alabama Supreme Court as an opt-out program in 1987, but we were one of only 16 states that did not have a mandatory IOLTA program. Thirty-four other states already have a mandatory

PRESIDENT'S PAGE Continued from page 7

IOLTA program. All the states surrounding Alabama except Tennessee have mandatory IOLTA programs. In March 2003, the United States Supreme Court upheld the constitutionality of mandatory IOLTA programs in the case of *Brown v. Washington Legal Foundation*, 538 U.S. 216 (2003).

Even though the Federal Reserve Board has set the Federal Funds rate at 4.25 percent, many banks in Alabama are still paying rates of less than 1 percent on IOLTA accounts.

A result of this amendment will be to provide millions of dollars in funding to help improve our efforts to effectively deliver civil legal services to indigent citizens in our state. Another result should be to double foundation funding to the Alabama Law Foundation and the Alabama Civil Justice Foundation.

The Alabama Law Foundation is the charitable arm of the Alabama State Bar and 80 percent of its funds are used to help provide for the civil legal needs of Alabama's indigent citizens.

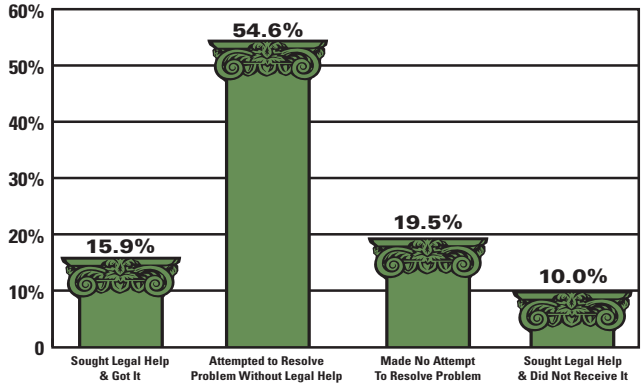
The amendment was drafted over a period of months through the efforts of consultants from the ABA, other states, Tracy Daniel and the trustees of the Alabama Law Foundation, and the Alabama Civil Justice Foundation to ensure that Alabama has an excellent IOLTA rule.

> On July 19, 2007, the trustees of the Alabama Law Foundation unanimously endorsed the concept embraced by this amendment;
>
> On July 20, 2007, the Access to Justice Commission unanimously endorsed this amendment; and
>
> On July 21, 2007, the Alabama State Bar Board of Bar Commissioners unanimously approved this amendment.

The amendment only applies to IOLTA accounts. Also, it asks banks to pay an interest rate comparable to the rate that they would pay to another customer with a comparable balance. The amendment even provides an alternative to the banks to paying comparable rates by allowing them to pay 55 percent of the Federal Funds target rate as of the first day of the business quarter on all IOLTA accounts.

The Preamble to the *Alabama Rules of Professional Conduct* states in part that "a lawyer should be mindful of deficiencies in the administration of justice and to the fact that the poor...cannot afford adequate legal assistance."

How Low-Income Alabamians Resolved Legal Problems in 2006



Our obligation is succinctly summarized in the words of Proverbs 29:7 which state, "The righteous care about justice for the poor, but the wicked have no such concern."

Increasing Alabama's Pro Hac Vice Fee

Alabama needed to raise our pro hac vice fee of $100 because it had not been increased since 1993 and was the lowest of the following states:

> Florida–$350, Louisiana–$250, South Carolina–$250, Texas–$250, Georgia–$200, Mississippi–$200, Tennessee–$135 (Tennessee is per year), North Carolina–$125, and Alabama–$100.

An amendment to Rule VII of the *Rules Governing Admission to the Alabama State Bar* was approved by the board of bar commissioners on October 26, 2007. On November 8, 2007, the Supreme Court of Alabama also approved this amendment. The amendment raises Alabama's pro hac vice fee from $100 to $300, with the additional $200 amount being paid to the Alabama Law Foundation to be used for civil legal needs of Alabama's indigent citizens.

We are hopeful that this change will generate an additional $125,000 per year for access to justice for indigent Alabamians.

All of us are grateful for the leadership shown by the Supreme Court of Alabama, the Alabama State Bar Board of Bar Commissioners and the Access To Justice Commission regarding increased funding for civil legal services for indigent Alabamians.

You Don't Have to Travel Like Boxcar Willie to Serve on a Task Force or State Bar Committee Anymore

I envision the late country-western singer, Boxcar Willie, as a traveling minstrel who logged many miles with his guitar in hand.

In the past, in order to serve on ASB committees or task forces, some lawyers from places like Florence, Dothan and Gulf Shores had to log many miles traveling to and from Montgomery for meetings. Obviously, the investment of time and money by lawyers from other areas of the state can be significantly greater than that of lawyers practicing in the Montgomery area.

A new day is here.

This year each letter appointing members to a committee or task force has included the following language:

> "In order to promote geographic diversity and encourage participation by members from rural areas on Alabama State Bar committees and task forces, a toll-free call-in number will be made available to you before each meeting allowing you to participate in the meeting by teleconference."

Now members may participate in the meetings by teleconferencing rather than traveling to Montgomery.

This development is consistent with the 2005 long-range plan of the ASB which includes promoting "geographic diversity among all programs and components of the bar," and using technology "so that rural members can easily participate." Most of my participation in these meetings is currently occurring by teleconferences.

My hope is that those of us who practice law far from Montgomery will save both time and money while we increase our participation in bar activities through available technology. ▲▼▲

A New Cash Option for Structured Settlement Annuity Holders

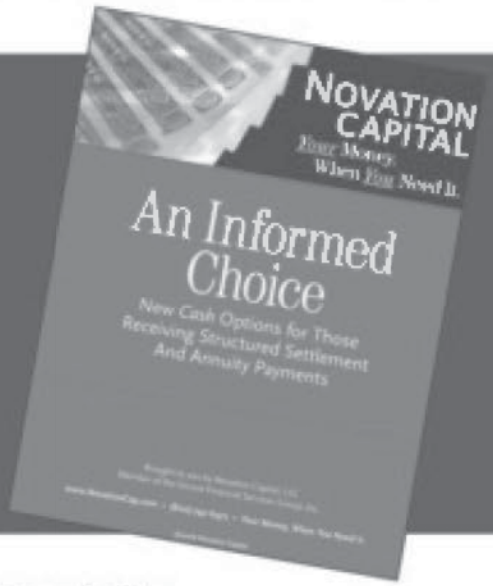
Recently enacted statutes now afford structured settlement and annuity holders a **NEW CASH OPTION.**

Under applicable state and federal law, this new cash option is generally tax free and available if a conversion to cash is in the consumer's "best interests."

Professional advisors who want to learn more about how these new laws give consumers a right to convert their future payments into cash today, should call **(800) 486-1525** or visit **www.NewCashOption.org.**

Call (800) 486-1525 (toll free) to learn more.

Ask for the FREE informational DVD "An Informed Choice: New Cash Options for Those Receiving Structured Settlement and Annuity Payments."



An Information Service provided by

NOVATION CAPITAL LLC

"Helping You, Help Your Clients."

Member of the Encore Financial Services Group, Inc.

www.NewCashOption.org

KEITH B. NORMAN

Short-Changing Our Judges

In 1999, thanks to the efforts of lawyer-legislators, Governor Don Siegleman, the trial courts, the appellate courts, the Administrative Office of Courts, and the Alabama State Bar, the "Investment in Justice Act" ("IIJA"), became a reality. Among its many features, IIJA resulted in raising the fees for attorneys appointed to represent indigents charged with crimes. Besides these much needed increases, IIJA also corrected the disparity of judicial compensation among trial judges created by county supplements.

EXECUTIVE DIRECTOR'S REPORT

Continued from page 11

Former state bar President William Logan Martin of Birmingham wrote an article that appeared in the January 1949 issue of *The Alabama Lawyer* analyzing judicial pay and highlighting the fact that a high percentage of trial and appellate judges originally assumed office through appointment by the governor. Mr. Martin also discussed the variation of compensation for judges as well as the historical increases and decreases in judicial pay. Because of the disparity of county supplements, the pay of trial judges varied considerably across the state. Concerning county supplements, Mr. Martin observed:

> "It cannot be contended that this is the best system. A circuit judge is a state official. His entire salary should be paid by the state and, it might be added, it should be adequate to keep the ablest lawyers on the bench and invite other lawyers to join them."

Prior to the passage of IIJA, several lawsuits were pending challenging the disparity of judicial salaries across the state. With the passage of IIJA 50 years after Logan Martin penned his article, a mechanism was put in place to equalize salaries of circuit and district court judges. IIJA established a statewide base pay for circuit judges at $1,000 above the maximum pay authorized on June 10, 1999 for the state personnel department classification of attorney IV. There was to be a three-year phase-in with the final step of the adjustment to become effective October 1, 2002. On that date, the base pay for circuit judges became $111,973. The base pay for district court judges was $1,000 less.

In addition, IIJA incorporated an experience factor that applied to all judges, including appellate judges. This feature provided judges with a salary enhancement of 1.25 percent of base pay for each year on the bench up to a maximum of 20 years. Under IIJA, each annual increase in bench experience pay would result in a similar reduction in a circuit and district judge's county supplement.

Since the passage of IIJA, state employees, including attorney IVs, have received five cost-of-living increases. Unfortunately, the legislature has excluded judges from these same increases. From 2000 through 2006, the legislature has provided state employees cost-of-living increases

totaling 18 percent, or 19.2 percent due to compounding. Despite pay increases for other state employees, the base pay for circuit judges remained frozen at $111,973 (district judges $110,973). Fortunately, the legislature chose to include judges in the 3.5 percent cost of living increase passed in the 2007 legislative session. This became effective October 1, 2007. Although the base pay for circuit judges is now $115,892 (district judges, $114,892), this small increase hardly makes up for the five years of cost-of-living increases that other state employees have enjoyed.

According to the National Center for State Courts, the base salary for trial judges in Alabama ranks in the bottom 10 percent nationally and 15th out of 17 southern states. After 20 years' service on the bench, circuit judges can now make a top salary of $139,966. In recent years, many experienced judges have chosen to leave the bench and return to the private practice of law or become mediators. As Logan Martin advocated nearly 60 years ago, adequate salaries are needed to attract the best as well as to keep our most experienced judges on the bench.

The Alabama State Bar, along with the circuit and district judges associations, will be working to address this critical issue so that pay for our circuit and district judges is restored to an adequate level. ▲▼▲

IN THE SUPREME COURT OF ALABAMA

November 8, 2007

ORDER

IT IS ORDERED that the first paragraph of Rule VII.D., Rules Governing Admission to the Alabama State Bar, be amended to read as follows:

"D. Verified Application. In order to appear as counsel before a court or administrative agency in this state, a foreign attorney shall file with the court or agency where the cause is pending a verified application for admission to practice (a form for such an application follows this rule), together with proof of service by mail, in accordance with the Alabama Rules of Civil Procedure, of a copy of the application and of the notice of hearing upon the Alabama State Bar at its Montgomery, Alabama, office. In the event application is made before any defendant in an action has appeared, a copy of the application and notice must also be served upon such defendant. The copy of the application and the notice of hearing served upon the Alabama State Bar shall be accompanied by a nonrefundable $300 filing fee. The notice of hearing shall be given at least 21 days before the time designated for the hearing, unless the court or agency has prescribed a shorter period."

IT IS FURTHER ORDERED that the amendment of Rule VII.D. be effective immediately.
IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule VII:

"Note from the reporter of decisions: The order amending Rule VII.D., Rules Governing Admission to the Alabama State Bar, effective November 8, 2007, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 2d."

Cobb, C.J., and See, Lyons, Woodall, Stuart, Smith, Bolin, Parker, and Murdock, JJ., concur.

Judicial Award of Merit

The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the state bar's Judicial Award of Merit through March 15, 2008. Nominations should be mailed to:

Keith B. Norman
Secretary
Board of Bar Commissioners
P.O. Box 671
Montgomery, AL 36101-0671

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

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

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

IMPORTANT ASB NOTICES

Continued from page 15

Local Bar Award of Achievement

The Alabama State Bar Local Bar Award of Achievement recognizes local bar associations for their outstanding contributions to their communities. Awards will be presented during the Alabama State Bar's 2008 Annual Meeting July 12 at the Hilton Sandestin Beach Golf Resort & Spa.

Local bar associations compete for these awards based on their size—large, medium or small.

The following criteria will be used to judge the contestants for each category:

- The degree of participation by the individual bar in advancing programs to benefit the community;
- The quality and extent of the impact of the bar's participation on the citizens in that community; and
- The degree of enhancements to the bar's image in the community.

To be considered for this award, local bar associations must complete and submit an award application by June 1, 2008. Applications may be downloaded from the state bar's Web site at *www.alabar.org*.

Notice of Election

Notice is given here pursuant to the Alabama State Bar Rules Governing Election and Selection of President-Elect and Board of Bar Commissioners.

Elected Commissioners

Bar commissioners will be elected by those lawyers with their principal offices in the following circuits: 8th; 10th, place no. 4, place no. 7; Bessemer Cut-off; 11th; 13th, place no. 1, place no. 5; 15th, place no. 5; 17th; 18th; 19th; 21st; 22nd; 23rd, place no. 1; 28th, place no. 2; 30th; 31st; 33rd; 34th; 35th; 36th; 40th; and 41st.

Additional commissioners will be elected in these circuits for each 300 members of the state bar with principal offices herein. The new commissioner petitions will be determined by a census on March 1, 2008 and vacancies certified by the secretary no later than March 15, 2008.

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 25, 2008).

Ballots will be prepared and mailed to members between May 1 and May 15, 2008. Ballots must be voted and returned to the Alabama State Bar by 5 p.m. on the last Friday in May (May 30, 2008). Election rules and petitions are available at *www.alabar.org*.

At-Large Commissioners

At-large commissioners will be elected for the following place numbers: 3, 6 and 9. ▲▼▲

PROFESSOR HARRY COHEN

GEORGE MACDONALD GALLION

Professor Harry Cohen

Long-time University of Alabama School of Law Professor Harry Cohen, age 80, died October 7, 2007 at Hospice of West Alabama, in Tuscaloosa.

Survivors include his wife of 57 years, Doris Klein Cohen of Tuscaloosa, and Alabama State Bar members Nettie Cohen Blume (daughter) and Gary L. Blume (son-in-law), three other children and eight grandchildren.

Mr. Cohen was born in New Orleans on April 5, 1927. After the death of his mother, Harry and his brothers spent their formative years living in the Jewish Children's Home in New Orleans. He excelled in athletics, playing on an American Legion baseball team that was a perennial Southern power, advancing to the World Series in South Dakota. He entered active duty with the Coast Guard at 17 years of age.

Upon graduation from high school, it is interesting to note that his social worker at the Jewish Children's Home wrote in her discharge report that Harry was clearly not college material and suggested that he begin an apprenticeship in an appropriate trade. Nevertheless, Mr. Cohen received his B.A. (1949) and L.L.B. (salutatorian 1951) from Tulane University. In law school he was book review editor of the *Tulane Law Review* and a member of Phi Delta Phi Legal Fraternity and was elected to Order of the Coif. Following a year of graduate study at the Yale Law School, he practiced law in New Orleans for two years. At that time, he found his life's work when he accepted a position as a law professor at the University of Alabama School of Law.

Professor Cohen was a member of the law faculty for 37 years, holding the Marc Ray Clement Professor of Law Chair and receiving the Sydney Algernon Distinguished Professor Award. He authored two books, *Alabama Mortgage Law* and *Legal Ethics in Alabama*, as well as countless articles for legal journals published throughout the United States and England. He founded *The Journal of the Legal Profession*, the first legal periodical devoted solely to the issue of ethics and the legal profession.

During his tenure, Professor Cohen was both revered and feared by legions of law students as "Hatchet Harry" because of his passion for the law, demanding excellence from his students in the process of training them to "think like lawyers." His mastery of the Socratic method of instruction prepared his students for the demands of law practice and litigation (or led them to seek alternative careers). He mentored many students throughout their law school education, assisting them in obtaining employment upon graduation. Professor Cohen was often sought out by former students for counsel and guidance years after their graduation, particularly in the areas of oil and gas law and ethics.

In lieu of flowers, the family requests that donations be made to the Temple Emanu-El Building Fund, P. O. Box 3066, Tuscaloosa 35403 or Hospice of West Alabama, 3851 Loop Road, Tuscaloosa 35404.

MEMORIALS Continued from page 17

George MacDonald Gallion

George MacDonald Gallion ("Mac" to his friends) died August 11, 2007 at 94. He was a member of that greatest generation to whom duty was second nature. His Alabama roots go back into the 1700s when his family settled in what is now Marengo County and founded the community of Gallion. From there, his family moved to Birmingham where he grew to adulthood.

The son of Dr. Thomas T. Gallion and Varina George Gallion, he attended the University of Alabama where he was a member of Alpha Tau Omega fraternity. Upon graduation from college and law school there, he entered the private practice of law in Birmingham.

Upon the outbreak of World War II, he enlisted in the United States Marine Corps, rising to the rank of first lieutenant. He was wounded in action against the Japanese on Saipan in 1945 and was awarded the Purple Heart.

Returning to civilian life, he became an assistant attorney general for a short time before re-entering private practice, this time in Montgomery; when the Phenix City crisis broke out in 1954 with the murder of Attorney General-elect Albert Patterson, he was recalled to state service as special counsel to Gov. Gordon Persons for both the investigations and prosecutions of the guilty parties.

In those days, constitutional officers could not succeed themselves. Hence, it was only natural that upon the completion of Attorney General John Patterson's term in 1958, Mac, as chief assistant attorney general, should be elected. He maintained a peerless record as the state's top lawyer. He led the successful litigation against loan sharks and in establishing Alabama's off-shore oil and gas rights.

Upon the expiration of his first term as attorney general in January 1963, he re-entered private practice with Nicholas S. Hare, Sr., now of Monroeville. In 1966, when he became eligible for a second term as attorney general, he was overwhelmingly re-elected.

He served for two years as chairman of the National Association of Attorneys General. He also assisted in the formation of the state District Attorneys Association.

Upon the expiration of his second term as attorney general in January 1967, he returned to private practice for the final time and continued as such until his retirement.

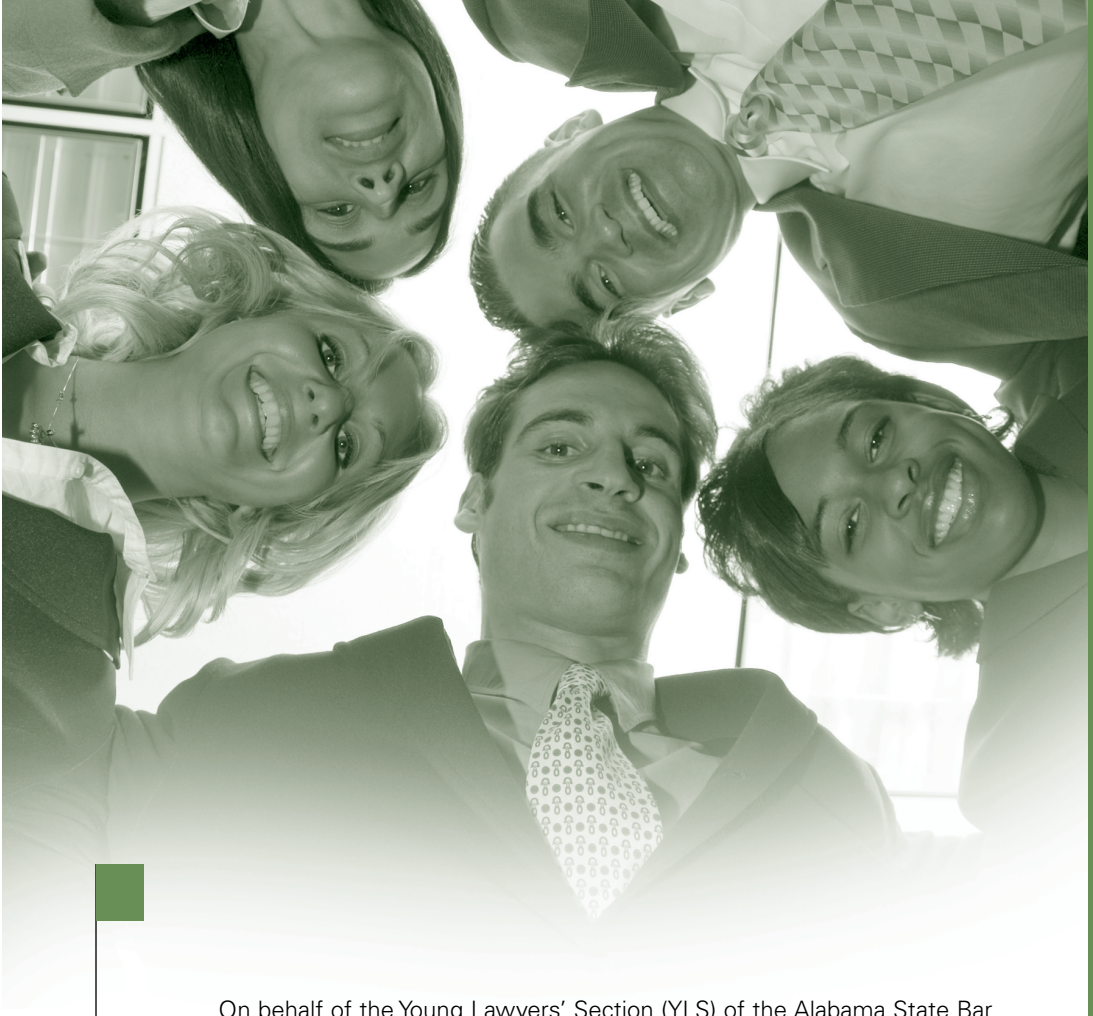
Mac was a former associate editor of *The Alabama Lawyer*, and a member of the Alabama State Bar, the Montgomery County Bar Association, the American Bar Association, the American Judicature Society, and many other legal organizations.

He served for many years as a member of the Board of Directors of the Woodmen of the World Life Insurance Company of Omaha. He was a member of the American Legion, the Veterans of Foreign Wars, the Executive Board of the Boy Scouts, Sons of Confederate Veterans, Alabama Sheriffs and Peace Officers Association, Exchange Club, Montgomery Country Club, and various other organizations.

His wife, Velma B. Gallion, predeceased him. He is survived by his son, Thomas T. Gallion, III, and his daughter, Mallory Gallion Bear, six grandchildren and nine great-grandchildren.

Mac was a Southern gentleman of the old school. He was a friend of many. He was my friend. "He was a man, take him for all in all, I shall not look upon his like again." *Hamlet, Act I, Sc. 2, Line 187.*

–Judge W. Mark Anderson, III, Montgomery



GEORGE PARKER

On behalf of the Young Lawyers' Section (YLS) of the Alabama State Bar and its Executive Committee, I congratulate all of the new attorneys who were recently admitted at the October Admissions Ceremony. One of the many functions of the YLS is to serve as host for the ceremony in May and October each year. I have received several compliments on this year's ceremony and thank Leslie Ellis, chair of the Admissions Ceremony sub-committee, and her co-chairs, Chris Waller and Navan Ward, as well as the many other volunteers who made it a success.

This was a busy year for the YLS. We hosted our Minority Pre-Law Conference and had another excellent CLE at the Sandestin resort in Florida. In addition, the section hosted the annual Iron Bowl CLE on the Friday before Thanksgiving and was able to present a check for $3,000 to the Exchange Club Center for the Prevention of Child Abuse of Mobile, due in large part to the efforts of Shay Lawson, who chairs our Special Grants Committee. The group thanks the following sponsors for their support during 2007:

Baxley, Dillard, Dauphin, McKnight & Barclift; Beasely, Allen, Crow, Methvin, Portis & Miles PC; Bradley Arant Rose & White LLP; Cabaniss Johnston Gardner Dumas & O'Neal LLP; Freedom Court Reporting; Hand Arendall LLC; Hare, Wynn, Newell & Newton LLP; Henderson & Associates Court Reporters; Huie, Fernambucq & Stewart; Jinks, Daniel & Crow PC; McCallum, Methvin & Terrell PC; Parsons, Lee & Juliano; Pro-Legal Copies; Starnes & Atchison; Taylor-Martino-Kuykendall; Tyler, Eaton Court Reporters; Vickers Riis Murray & Curran LLC; and White, Arnold, Andrews & Dowd.

YOUNG LAWYERS' SECTION

Continued from page 19

As 2007 came to a close, we looked forward to an exciting 2008. An outstanding Executive Board and Executive Committee have been assembled to lead the group. Executive Board members for 2007-2008 are:

George Parker, president, Montgomery

James M. Terrell, vice president, Birmingham

Robert N. Bailey, secretary, Huntsville

Clay A. Lanham, treasurer, Mobile

Roman Shaul, immediate past president, Montgomery

Gray Borden, Birmingham

Brandon Hughey, Birmingham

Anna Katherine Bowman, Birmingham

Brent Irby, Vestavia Hills

Kitty Brown, Birmingham

Shay Lawson, Tuscaloosa

David Cain, Mobile

Hughston Nichols, Birmingham

Michael Clemmer, Birmingham

Andrew S. Nix, Birmingham

Christina D. Crow, Union Springs

Rodney Miller, Montgomery

Nathan Dickson, Montgomery

Jon Patterson, Birmingham

Hall Eady, Birmingham

Mitesh Shah, Birmingham

Leslie Ellis, Montgomery

Norman M. Stockman, Mobile

Charles J. Fleming, Birmingham

Chris Waller, Montgomery

J. R. Gaines, Mobile

Navan Ward, Montgomery

Katie Hammett, Mobile

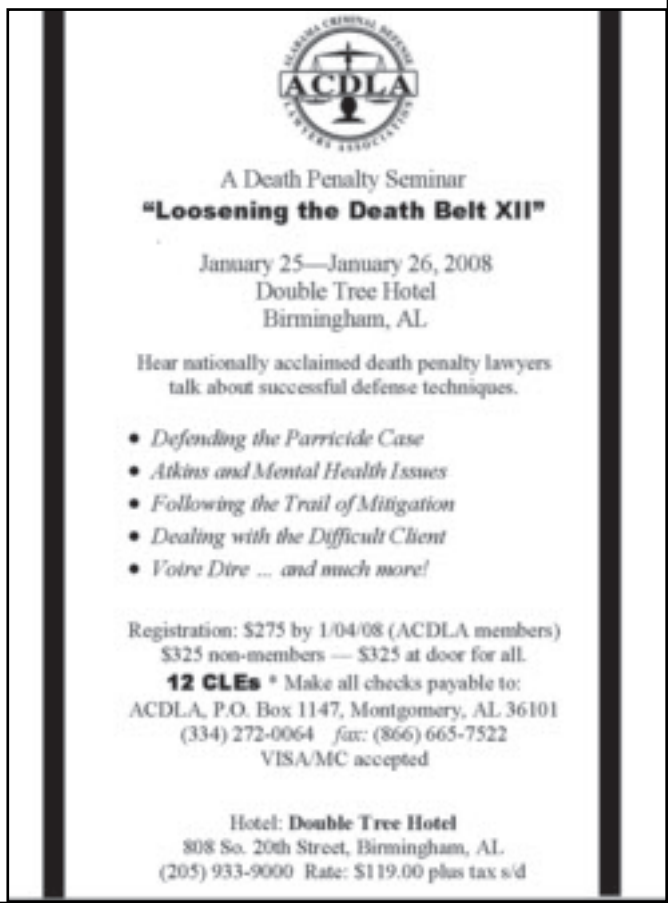
Tucker Yance, Mobile

Larkin Hatchett, Mobile

The YLS looks forward to your participation in the group's offerings in 2008. Consider attending the YLS-sponsored **Sandestin CLE** held in May, featuring many excellent speakers and networking opportunities at the beautiful Sandestin Resort.

Whether you are new to the YLS or an "older" YLS member, become active in the section and familiarize yourself with the opportunities it offers. The YLS Web site, at *www.alabamayls.org,* offers a listing and descriptions of the various sub-committees under the "Get Involved" tab. Simply complete the online form and someone from the YLS will contact you.

I look forward to working with you this year. ▲▼▲



ALABAMA STATE BAR

VOLUNTEER LAWYERS PROGRAM

2007 PRO BONO HONOR ROLL

2007 PRO BONO HONOR ROLL

AUTAUGA COUNTY
Kristel N. Gibbons
George H. Howell
Karen Haiden Jackson
Kimberly G. Kervin
Jim T. Norman
Andy W. Tampling
George P. Walthall, Jr.

BALDWIN COUNTY
Shawn T. Alves
Shannon T. Arndt
E. Andrew Bailey
E. E. Ball
Thomas O. Bear
Vincent A. Bellucci
Bayless Biles
Julian B. Brackin
Lois A. Carney
H. Max Cassady
R. Paul Cater
John E. Chason
Allan R. Chason
L. Brian Chunn
William P. Clifford
Samuel Crosby
Manley Cummins
Jim G. Curenton
Michael A. Dasinger
Carl Davis
Carolyn M. Dohn
Harry M. D'Olive
Kathryn D. Ferrell
Fred K. Granade
Charles W. Ham
Jule R. Herbert
Preston L. Hicks
J. Bradford B. Hicks
George R. Irvine
Richard D. Jensen
Harold A. Koons
Oliver J. Latour
Robert S. Lewis
J. Alan Lipscomb
P. David Matheny
Jessica M. McDill
Samuel McKerall
Leonard F. Mikul
T. Deven Moore
Mary Murchison
Meegan B. Nelson
Narissa Nelson
Charles R. Niven
Thomas B. Norton
James D. Patterson
Allyson C. Pearce
Michelle Perry
William Pfeifer
Wendy Pierce
Christi Roberts
Mark D. Ryan
William Scully
David P. Shepherd
Chandler K. Stanard
Mary Kathleen Steele
Shelia V. Stone
David Vaughn
H. Darden Williams
Elizabeth S. Wills
Marion E. Wynne

BARBOUR COUNTY
Paul W. Brunson
Walter B. Calton
Jimmy S. Calton
Richard Harrison
Deborah Hicks
James L. Martin
Donald J. McKinnon
Courtney Potthoff
William H. Robertson
L. Shane Seaborn
Joel P. Smith

BIBB COUNTY
John Hamilton
Anthony Johnson

BLOUNT COUNTY
William A. Ellis
Roy M. Johnson
Alexander M. Smith
Ted L. Williams

BULLOCK COUNTY
Bradley S. Braswell
Christina D. Crow
Theresa J. Daniel
Lynn W. Jinks
Louis Rutland
Elizabeth C. Smithart

BUTLER COUNTY
Timothy O. Craig
Lewis Hamilton
P. Richard Hartley
Forrest C. Rule
C. Brandon Sellers
Samantha R. Sellers
Charlotte M. Tesmer

CALHOUN COUNTY
Hobart H. Arnold
William H. Broome
LeRoy A. Cobb
Brian K. Combs
Richard W. Couch
Wendy Ghee Draper
Howard W. East
Christopher R. Garner
Robert L. Hagler
Shawn M. Hill
Janet M. Hudson
Rochelle D. Hunt
Kenneth A. Hunt
Fred Lawton
Donna Britt Madison
Stephen H. Miller
D. Brent Morrison
Nathaniel D. Owens
Polly E. Russell
Gary Stanko
Vaughn M. Stewart
Cleophus Thomas
Martin E. Weinberg

CHAMBERS COUNTY
Lisa M. Burdette
Mark H. Carlton
Susan K. Harmon
James C. Ingram
Charles G. Reynolds

CHEROKEE COUNTY
John Kelsey
Albert L. Shumaker

CHILTON COUNTY
James T. Bailey
Robert L. Bowers
David B. Karn
Andrew T. Mayfield
Dale R. Waid

CHOCTAW COUNTY
E. Mark Ezell
Timothy C. Hutchinson
J. Perry Newton
William L. Utsey

CLARKE COUNTY
Ronnie E. Keahey
Hardie B. Kimbrough
Phillip E. Mason
J. Charles McCorquodale
Joseph C. McCorquodale
Lee B. Williams

CLAY COUNTY
Joseph D. Ficquette

COFFEE COUNTY
Dwain D. Hartwick
Letitia L. Myers
J. E. Sawyer
Leon M. Shirley
Richard Waldrop
Stanley P. Walker
Stephanie A. Willis

COLBERT COUNTY
Ouida Y. Brown
Nicole M. Dill
Hartwell A. Gargis
H. Thomas Heflin
James Hughston
William T. Johnson
Charles Kelley
John C. McKelvey
Tim W. Milam
Terry Mock
Sheila F. Morgan
Stanley Munsey
C. Daniel Rosser

CONECUH COUNTY
Todd B. Watson

COOSA COUNTY
Vanessa Leonard

COVINGTON COUNTY
Ben M. Bowden
Corey D. Bryan
Michael L. Jones
Ronald W. Penn
Benton H. Persons
Grant J. Scott

CRENSHAW COUNTY
Wayne Carter
Brandon S. Coots
Jon M. Folmar
William R. King

CULLMAN COUNTY
R. Champ Crocker
Stephen Griffith
Shelbie C. Guthery
Kathryn A. King
John Knight
James R. Knight
Greg Nicholas
Robert A. Sapp
Seth Thompson

DALE COUNTY
Joe W. Adams
Robert H. Brogden
Jack Corbitt
Donna C. Crooks
William Filmore
Joseph J. Gallo
J. David Robinson
Robert G. Robison
Tammy L. Stinson
Everett M. Urech
Joe Walker

DALLAS COUNTY
Katy Smith Campbell
Prince D. Chestnut
April England
B. Kincey Green
Blanchard L. McLeod
Collins Pettaway
John E. Pilcher
Jeffrey C. Robinson
P. Vaughan Russell
Charles H. Sims
Jan G. Thompson
Rick E. Williams

DEKALB COUNTY
L. Suzanne Bailey
James Eric Brisendine
E. Allen Dodd
J. David Dodd
Gary Hartline
Robert K. Jordan
Patricia C. Kellett
Roger G. Killian
Robert T. Ray
Glenn A. Shedd
Patrick H. Tate
John H. Ufford
W.N. Watson
Robert G. Wilson

ELMORE COUNTY
D. Jason Britt
Bonita J. Caldwell
John I. Cottle
Regina B. Edwards
John E. Enslen
John D. Norris
Roderick B. Perdue

ESCAMBIA COUNTY
James E. Coale
John L. Jernigan
Melinda L. Maddox
Robert H. Maxwell
Everette A. Price
William R. Stokes
Joe B. Thompson
Jeffrey A. White

ETOWAH COUNTY
Rose M. Allenstein
Myron K. Allenstein
Michele G. Bradford
Will H. Clay
Loretta D. Collins
H. Wayne Copeland
Brad W. Cornett
Gregory S. Cusimano
Tameria S. Driskill
Patricia T.H. Granger
A. Clark Hall
F. Michael Haney
Charles C. Hart
Emily P. Hawk
William D. Hudson
David A. Kimberley
Daniel B. King
Thomas A. King
Christina D. Knowles
Donna F. McCurley
Bobbi J. McGehee
Philip E. Miles
Jeffrey P. Montgomery
Krystal G. Padula
James D. Pruett
Richard A. Rhea
Michael L. Roberts
John T. Robertson
James T. Sasser
A. Wilson Webb
William R. Willard
J. Curtis Wright

FAYETTE COUNTY
Cynthia M. Bockman
Charles A. Langley
Jerry D. Lawrence
Louis Moore

FRANKLIN COUNTY
Roger H. Bedford
Jerry C. Porch
Luke E. Alexander

GENEVA COUNTY
Alfred J. Danner
Laura A. Dell
David J. Harrison
Jeffery D. Hatcher
David F. Holmes
Michael P. Hughes
Joseph P. Hughes
John L. Knowles
David W. Rousseau

HALE COUNTY
Patrick S. Arrington

HENRY COUNTY
Samuel C. Money
James D. Peterson

HOUSTON COUNTY
Samuel L. Adams
M. Hampton Baxley
Wade Baxley
Bryan S. Blackwell
Randy C. Brackin
W. Trant Bullard
William T. Bullard
Jon C. Capps
Daniel K. Clark
Lori S. Collier
J. Michael Conaway
Bobbie Crook
William Feagin
D. Taylor Flowers
Arne M. Foss
Rafael Gil
Brent H. Gourley
Harry P. Hall
Christen L. Hayes
J. R. Herring
Joe E. Herring
David K. Hogg

2007 PRO BONO HONOR ROLL

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

Gary A. Hudgins
Dow Huskey
Clifford W. Jarrett
Lora Lea J. Johnson
Daniel F. Johnson
A. Gary Jones
Richard R. Klemm
Matthew Lamere
Benjamin E. Meredith
Joseph Morris
Malcolm R. Newman
Joel M. Nomberg
James W. Parkman
Nancy S. Pitman
H. Samuel Prim
Richard H. Ramsey
Joel W. Ramsey
Shannon A. Rash
Tommy R. Scarborough
Jere C. Segrest
Rufus Smith
Gene P. Spencer
J. Farrest Taylor
Kevin Walding
Freddie White

JACKSON COUNTY

Daryl R. Eustace
Stephen M. Kennamer
S. Jack Livingston
Kenneth H. Looney
Pamela M. Parker
Gerald R. Paulk
Finis Royal
Patricia C. Stewart
William W. Tally
C. Rena Webb
Don Word

JEFFERSON COUNTY

Garry W. Abbott
Cassandra W. Adams
Monica Y. Agee
J. Shawn Allen
Leslie M. Allen
Eric C. Andreae
Ricardo Aparicio
Sabra M. Barnett
Herbie W. Brewer
E. L. Brobston
Keith A. Brown
Kris D. Burbank
Cynthia V. Butler
Robert J. Camp
Kevin E. Clark
Gregory C. Cook
John G. Dana
Jonna M. Denson
Barton B. Evans
Jesse Evens
Alan L. Foster
Patrick W. Franklin
V. Edward Freeman
Leatha Kay Gilbert
Robert L. Gorham
Elizabeth D. Harris
George M. Higginbotham
Edward A. Hosp
Mark M. Hogewood
Kaye K. Houser
Sidney J. Hughes
Kearney D. Hutsler
Paul A. Irwin
Perry G. Jackson
Joseph C. Kreps
Thomas M. Little
Bobby Lott
Champ Lyons
Deborah A. Mattison
Gerald Maxwell
Reginald D. McDaniel
Robert E. Moorer
Mari Morrison
Donna K. Naramore
Robert L. Palmer
Warren M. Parrino
Eric G. Peterson
Denise B. Poe
Lorraine W. Pringle
Myra C. Roberts
Lisa C. Robinson
Katrina Ross
Edward K. Rosser
Ayn Traylor-Sadberry
David L. Scott
Heather R. Sharp
Amy J. Shields
Joan B. Singleton
David Smith
Marshall E. Smith
Gregory C. Starkey
Amelia K. Steindorff
Thomas E. Thrash
Tyler C. Vail
Michael A. Vercher
William B. Ware
Latanisha Watters
Gary L. Weaver
J. Bennett White
Derry O. Wilcox
Walter A. Williams
Christopher J. Williams
Mark S. Williams
Anne L. Wohlfeld
Robert W. Wolfe
Tiara S. Young

LAMER COUNTY

Glenn C. Noe

LAUDERDALE COUNTY

Ernest N. Blasingame
Daniel E. Boone
Ryan G. Brake
Greg K. Burdine
Edward W. Doggett
James R. Engelthaler
Michael F. Ford
Robert L. Gonce
Benjamin R. Graves
James E. Hall
Roy Hasseltine
R. Willson Jenkins
Gary Jester
Daryl W. Moon
Kim A. Norris
A. Stewart O'Bannon
John S. Odem
C. David Odem
Dennis N. Odem
Joe M. Patterson
Harold G. Peck
Conrad Pitts
Jamy B. Poss
Frank Potts
L. Mallette Q. Richey
Cindy S. Schuessler
Henry Sherrod
Scott C. Shimer
Robert F. Smith
Hilda Trapp Smith
Donald G. Tipper
Randy D. Whitten
Douglas Wright
Joe H. Yates
Brant Young

LAWRENCE COUNTY

Rod M. Alexander
Mark A. Dutton
Errek P. Jett
John D. Kimbrough
Sean Masterson
Harold Speake
Mike F. Terry
H. Jerome Thompson

LEE COUNTY

Brian Ashley
Russell C. Balch
J. Tutt Barrett
Beverlye N. Brady
James E. Bridges
Margaret Y. Brown
Rebecca W.P. Buxton
M. Joanne Camp
Patrick C. Davidson
Nancy Jones Davis
W. David Dawson
Joseph C. Denison
W. Don Eddins
Frances C. French
Tom E. Jones
C. Robin Kelley
Glen D. King
Stephanie A. Martin
Margaret A. Mayfield
James D. McLaughlin
Marrell McNeal
Robert T. Meadows
Gail Smith Meek
Christopher A. Pankey
Phyllis F. Parker
Robert H. Pettey, Jr.
Roger Pierce
William Larry Ray
Mitzi L. Sears
James Sprayberry
Cecil Tipton
Philip O. Tyler
Arnold Umbach

LIMESTONE COUNTY

Henry W. Blizzard
Stephen G. Campbell
P. Michael Cole
James M. Corder
Dihanne P. Guilbert
Claire C.T. Jones
Byrd R. Latham
Winston V. Legge
Donald B. Mansell
Harlan D. Mitchell
Jim D. Moffatt
Brandon C. Wise

LOWNDES COUNTY

Arlene Richardson

MACON COUNTY

Fred D. Gray
Linda W. H. Henderson
Tiffany N. Johnson
Ernestine S. Sapp
Brian P. Strength

MADISON COUNTY

Donna M. Fork
Tara L. Helms
W. Mike Hill
Reta A. McKannan
Rachel M. Morgan
Richard J. R. Raleigh
Shelly Thornton
Frank S. Ward
Bobbi J. Weeks-Wilson

MARENGO COUNTY

Thomas H. Boggs
Russell Burdett
William Coplin
Woodford Dinning
Gregory Griggers
Richard S. Manley
William S. Poole
Sebie G. Sellers
K. Scott Stapp
William A. Ward

MARION COUNTY

William H. Atkinson
William B. Fite
J. Tony Glenn
C. Harry Green
Diane H. Henderson
R. Wyatt Howell
J.O. Isom
A. Wade Leathers
Lonnie D. Spann
Jeremy L. Streetman
Oliver F. Wood

MARSHALL COUNTY

Christopher F. Abel
George M. Barnett
Randy Beard
E. Will Beard
Gregory Scott Berry
James R. Berry
R. Claud Burke
Jimmy F. Carnes
T.J. Carnes
Richard Fricks
L. Dale Fuller
John C. Gullahorn
Lisa M. Hancock
Charles Hare
Jamie P. Logan
Louis B. Lusk
Jeff R. McLaughlin
Joel S. Mitchell
E. Charles Ogden
Elisa S. Rives
P. David Roadruck
Danny Smith
Stephen B. Smith
Steven V. Smith
Byron Waldrop
James D. Walker
Dan T. Warnes
Coleman K. Wilson
Wade K. Wright

MOBILE COUNTY

Britten L. Britt
Carl E. Freman
Mark S. Gober

2007 PRO BONO HONOR ROLL

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

Christine C. Hernandez
Charles A. Hicks
Jennifer Holifield
Ishmael Jaffree
Kyla G. Kelim
Christopher Kern
Byron Lassiter
Yancey D. Lott
Jeffrey G. Miller
James C. Morris
Brandy B. Osborne
Terrie S. Owens
Laura A. Palmer
Melinda J. Parks
J. Day Peake
Mary E. Pilcher
Wanda B. Rahman
Bryan A. Thames
Stacey L. Thomas
P. Dean Waite
Leslie G. Weeks
Jim W. Zeigler
David B. Zimmerman

MONROE COUNTY

John B. Barnett
Lynn B. Byrd
Tonja B. Carter
John M. Coxwell
Katharine W. Coxwell
Lori L. Crawford
Jeff D. Dyess
Laura R. Grantham
Nicholas Hare
W. Bob McMillan
Donna L. Silcox
Mickey Womble

MONTGOMERY COUNTY

Samuel Adams
Allison Alford Ingram
J. Greg Allen
Deanie C. Allen
Charles L. Anderson
J. Knox Argo
Shapard D. Ashley
Zack M. Azar
Charles W. Barfoot
Judy H. Barganier
Constance S. Barker
Noel S. Barnes
Julia A. Beasley
Jere L. Beasley
Timothy S. Bell
R. Joyce K. Bigbee
Andy D. Birchfield
William R. Blanchard
Donna A. Bland
Britt S. Booth
Joe T. Booth
Eric A. Bowen
Amy V. Bowman
David R. Boyd
W. Evans Brittain
Richard E. Broughton
E. Terry Brown
Rhonda Brownstein
Ben E. Bruner
Judkins M. Bryan
Joseph E. Burkhart
James A. Byram
David B. Byrne, III
David B. Byrne, Jr.
Boyd F. Campbell
Marvin H. Campbell
Malcolm N. Carmichael
Gregory A. Carr
Elizabeth B. Carter
Mark N. Chambless
Karen P. Chambless
William R. Chandler
John W. Charles
Marion D. Chartoff
Kimberly M. Clenney
William P. Cobb
Michael J. Cohan
Shawn J. Cole
William D. Coleman
Zachary T. Collins
Joel D. Connally
Roianne H. Conner
Pamela G. Cook
Paul R. Cooper
Lee H. Copeland
Michael J. Crow
Laura L. Crum
S. G. Culpepper
Larry E. Darby
Greg L. Davis
Richard C. Dean
Kimberly S. DeShazo
Wanda D. Devereaux
Cathy B. Donohoe
Jeffery C. Duffey
Kendall C. Dunson
Russell T. Duraski
Charles W. Edmondson
Joana S. Ellis
Frederick T. Enslen, Jr.
Paul D. Esco
R. Graham Esdale
Quindal C. Evans
Greg B. Everett
Ben H. Farrow
David G. Flack
Douglas C. Freeman
Peter S. Fruin
Bill H. Fuller
E. Dianne Gamble
Richard H. Gill
H. Lewis Gill
C. Nelson Gill
Carla C. Gilmore
C. Lance Gould
G. Grace Graham
Michael A. Griggs
N. Gunter Guy
John Hagood
Timothy C. Halstrom
James D. Hamlett
Alan T. Hargrove, Jr.
Gerald W. Hartley
Frank H. Hawthorne
J. Cliff Heard
David W. Henderson
D. Mitch Henry
Pamela R. Higgins
Shannon L. Holliday
John Allen Howard
Beverly J. Howard
S. Scott Hoyem
J. Lister Hubbard
Joseph L. Hubbard
Robert A. Huffaker
R. Austin Huffaker, Jr.
Henry H. Hutchinson
Wyndall A. Ivey
Michael S. Jackson
Jimmy D. Jacobs
Monica E. Jayroe
Marci S. Johns
L. Scott Johnson
James E. Johnston
Jamie L.A. Johnston
Donald R. Jones
Rhon E. Jones
Richard K. Keith
Susan E. Kennedy
T. Cowin Knowles
Thomas E. Kondrak
Thomas O. Kotouc
Nathan F. Kuykendall
Charles D. Langford
Robin G. Laurie
Barry C. Leavell
W. Don Letford
Sandra H. Lewis
Donald B. Little
Edwin K. Livingston
LuAn M. Long
Terry W. Luck
B. Saxon Main
Thomas Mancuso
Howard A. Mandall
Emily C. Marks
W. Troy Massey
Fred B. Matthews
Warren C. Matthews
Mitch McBeal
Jordan M. McBride
W. Joseph McCorkle
Mickey J. G. McDermott
J. Douglas McElvy
Lee A. McIver
Richardson B. McKenzie
Sabrina L. McKinney
C. Knox McLaney
Gloria J. McPherson
Julian L. McPhillips
Tyrone C. Means
William Z. Messer
Thomas J. Methvin
Brian W. Moore
Richard D. Morrison
F. Chadwick Morriss
Connie J. Morrow
J. Flynn Mozingo
Mark D. Mullins
K. Andy Nelms
Robert F. Nelson
Stephen M. NeSmith
Deborah M. Nickson
Robert F. Northcutt
Dorothy F. Norwood
Tabor R. Novak
John M. Padgett
Debora E. Palmer
B. Diane Paris
J. Ed Parish, Jr.
George R. Parker
Kelly F. Pate
E. Bryan Paul
Simeon F. Penton
Michael Petersen
J. Scott Pierce
A. Wesley Pitters
Jimmy B. Pool
Gregory M. Pool
Debra H. Poole
J. Cole Portis
Donna W. Prashad
Charles Price
Richard L. Pyper
Stacy J. L. Reed
Catherine H. Richardson
Frank W. Riggs
Jim A. Rives
Robert D. Rives
Mindi C. Robinson
Riley W. Roby
Karen S. Rodgers
Geraldine Rose
A. Rothschild
Robert J. Russell
J. Lenn Ryals
Mark W. Sabel, Jr.
Robert E. Sasser
William P. Sawyer
J.P. Sawyer
Patrick L.W. Sefton
Bobby D. Segall
Will B. Sellers
L. Landis Sexton
Roman A. Shaul
C. Winston Sheehan
G. Griffin Sikes
Launice P. Sills
Spence A. Singleton
Clifton E. Slaten
Jerome D. Smith
Maury D. Smith
Sylvester S. Smith
C. Franklin Snowden
Angela C. Starr
Chuck A. Stewart
Chad E. Stewart
Micki Beth Stiller
Pamela Swan
Thomas C. Tankersley
Dana G. Taunton
J. Carlton Taylor
Lisa C. Temple
Robert J. Thomas
C. Clay Torbert
W. Terry Travis
Scarlette M. Tuley
Wayne P. Turner
Judy B. Van Heest
Stewart E. Vance
C. Gibson Vance
Robert J. Varley
George H. Wakefield
J. Dorman Walker
W. Christopher Waller
James N. Walter
Kim Oliver Ward
Robert C. Ward
Kyle D. Weidman
Milton J. Westry
Michael L. White
David J. Wilder
Jim E. Williams
Jesse M. Williams
Trina S. Williams
E. Ham Wilson
A. Kelli Wise
James L. Wright
D. Coleman Yarbrough
Glenn D. Zimmerman

MORGAN COUNTY

James Adams
John Baggette
Jeffery S. Brown
Thomas A. Caddell
David Cauthen
D. Britt Cauthen
Carl A. Cole
Thomas M. Di Giulian
Bingham Edwards
James C. Francis
Arthur Groover
Garland Hall
Stephen V. Hammond
Denise M. Hill
Amber Y. James
Jerry Knight

2007 PRO BONO HONOR ROLL

Mary E. Lamar
David W. Langston
Robert E. Long
Jenny McLeroy
R.T. McWhorter
Phil D. Mitchell
Dan Nelson
H.M. Nowlin
Gary A. Phillips
Joseph B. Powell
Sherman B. Powell
Joseph W. Propst
Gregory Reeves
Nicholas Roth
Angela H. Sahurie
Steven Sasser
Kenneth Schuppert
Timothy L. Shelton
Michael E. Sparkman
R. Eric Summerford
Kevin Teague
Carla K. Thrasher
J. Glynn Tubb
Shelly S. Waters
Robert D. Weathers
Brian M. White
Kenneth R. Widner

PERRY COUNTY

James M. Barnes
Kirtley W. Brown
Robert D. Bryant
Thomas R. Long
Robert H. Turner

PICKENS COUNTY

William D. King
John Earl Paluzzi
John A. Russell

PIKE COUNTY

Robert C. Faircloth
Joseph Faulk
William B. Key
Ruth L. Pawlik

RANDOLPH COUNTY

Michael S. Jazwinski
Kesa M. Johnston
T. Oliver Kitchens

RUSSELL COUNTY

L. Joel Collins
Peter A. Dumbuya
John D. Jones
Sam E. Loftin
Yvonne R. Rush
Thomas F. Worthy

ST. CLAIR COUNTY

A. Dwight Blair
Erskine Funderburg
Alan C. Furr
Joseph R. Kemp
Elizabeth Parsons
Guy C. McCombs
Randall K. Richardson
Charles E. Robinson
Fred W. Teague
William J. Trussell
Edwin Van Dall
Tommie J. Wilson

SHELBY COUNTY

Brent L. Callihan
Frank Ellis
Bruce M. Green
Sanford D. Hatton
C. Todd Henderson
T. Sheree Martin
John A. McBrayer
John E. Medaris
E. Farley Moody
Jo Ellen Mudd
Steven Sears
J. Timothy Smith
Gerald A. Templeton
Harold E. Woodman
Alex A. Yarbrough

SUMTER COUNTY

William C. Brewer
I. Drayton Pruitt

TALLADEGA COUNTY

Cheryl D. Barnett
Sarah C. Bowers
Shelly L. Burnhart
L. Shaw Gaines
Gregory S. Graham
James N. Montgomery
Michael A. O'Brien
Jeanne Dowdle Rasco
William K. Rogers
Barry D. Vaughn

TALLAPOOSA COUNTY

Faye H. Edmondson
Angela J. Hill
John Oliver
Robin F. Reynolds
Mark A. Treadwell
Kenneth E. Wright

TUSCALOOSA COUNTY

James Abernathy
M. Bradley Almond
Cynthia L. Almond
David M. Andres
Foster C. Arnold
Albert C. Barrett
C. Park Barton
John A. Bivens
H.E. Browder
Dolores C. Burroughs

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

Jane L. Calamusa
Paige M. Carpenter
Michael J. Cartee
Frank M. Cauthen
Mary Beth Cavert
Randall Cheshire
D. Wayne Childress
Ginger D. Cockrell
Terry E. Collins
Michael C. Cornwell
Annette B. Crain
Laura J. Crissey
Silas G. Cross
Ronald L. Davis
Karen N. Dice
Linda C. Dunn
Nora E. Elder
Marshall A. Entelisano
Isaac Espy
Katie S. Ferguson
John T. Fisher
Robbyn A. Gourdouze
Bert Guy
Ruth Ann K. Hall
Mary A. Hampton
Josh P. Hayes
J. Marland Hayes
David A. Hughes
Albert Jones
Christopher H. Jones
William A. Jones
Hattie Kaufman
W.H. Kennedy
Angela L. Kimbrough
Hugh M. Lee
John Lloyd
Julie L. Love
David P. Martin
Paul B. Matthews
Allen W. May
John P. McCulsky
D. Tara Middleton
Edwina E. Miller
Steven W. Money
C. Delaine Mountain
Barry L. Mullins
John Owens
W. Cameron Parsons
Joe E. Powell
Laurie Pratt-Johns
Harry M. Renfroe
Robert R. Reynolds
W. Bradford Roane
P. Monica Rodgers
Barbara Rogers
Adrian M. Rowley
W. David Ryan
Mark A. Scogin
R. Cooper Shattuck
Lynn McCreery Shaw
Patrick O. Sims
James J. Sledge
James D. Smith
Jeffery C. Smith
Alyce Manley Spruell
Edgar C. Summerford
Christopher Thigpen
Brian D. Turner
James Turner
Deena V. Tyler
Charles G. Tyler
Raymond Ward
Paula W. Watkins
Rachel L. Webber
G. Stephen Wiggins
Wayne L. Williams
Tom B. Woodard

WALKER COUNTY

James C. Brakefield
Robert Bryan
Richard Fikes
Alton M. Hambric
Garve W. Ivey
Philip Nelson
Robert F. Richardson
Jonathan C. Sapp
Donna W. Smalley
Charles Tatum
Steven Thomas
Mark B. Turner
Greg M. Williams
Robert Wilson

WASHINGTON COUNTY

Harold L. Odom
A. Michael Onderdonk
Halron W. Turner
E. Tatum Turner

WILCOX COUNTY

Donald M. McLeod
Brenda M. Pompey

WINSTON COUNTY

D. Russell Eason
Darlene Eason
Patricia Ann F. Frederick
Betsy M. Harrison
Jerry W. Jackson
B. Grant McNutt
Jeff A. Mobley
Scott A. Slatton

BIRMINGHAM BAR VOLUNTEER LAWYERS PROGRAM

John Aaron
Robert H. Adams
Robin A. Adams
Monica Agee
Janell M. Ahnert
Craig A. Alexander
Charles W. Allen
Elbert S. Allen
Mitchell G. Allen
Roger C. Allen
Russell Q. Allison
M. Clay Alspaugh
LaBella S. Alvis
Wade S. Anderson
Donald K. Andress
Haley Andrews
Allan L. Armstrong
M. Jason Asbell
Leon Ashford
W. Michael Atchison
Monica Austin-Hatcher
Kellie Avery-Tubb
Nolan E. Awbrey
Joyce Baker-Selesky
Helen Ball
Michael S. Ballard
R. Bruce Barze, Jr.
LaVeeda M. Battle
Robert E. Battle
Robert Baugh
Michael K. Beard
Kevin W. Beatty
Elizabeth G. Beaube
Steven A. Benefield
Thomas Bennett
Jeffrey W. Bennitt
Robyn B. Bennitt
Bill D. Bensinger
Edward J. Berry
Yvonne N. Beshany
Ellis D. Bingham, III
Ulyesa Blackmon
Duncan B. Blair
Vaughn Blalock
John N. Bolus
C. Peter Bolvig
Nancy D. Bolyard
Elizabeth C. Bone
Gray M. Borden
Bradford W. Botes
Karen O. Bowdre
Deloris M. Boykin
Philip McC. Bridwell

2007 PRO BONO HONOR ROLL

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

Thomas H. Brinkley
William H. Brooks
Courtney B. Brown
Scott S. Brown
Stephen E. Brown
Brannon J. Buck
Thomas W. H. Buck
Pam Bucy
Stephen Bumgarner
F. Tucker Burge
S. Greg Burge
Warren Burke, Jr.
Charles A. Burkhart
Robin Burrell
John H. Burton, Jr.
Bruce A. Burttram
Jennifer M. Busby
Arnold Bush, Jr.
Jim Bussian
Thomas J. Butler
William C. Byrd
Kenneth R. Cain, Jr.
Robert J. Camp
J. Russell Campbell
Mary L. Campisi
Lois Beasley Carlisle
Terry Carlisle
Richard P. Carmody
Clay R. Carr
D. Chris Carson
Kay L. Cason
Paul Cavender
Douglas J. Centeno
Cheryl D. Chapman
James S. Christie, Jr.
Kevin E. Clark
Thomas C. Clark, III
William N. Clark
Neil R. Clement
Donald L. Colee
C. Clark Collier
Kathleen A. Collier
John David Collins
Gerald D. Colvin, Jr.
Patricia Y. Comer
Shannon N. Connor
Ivan B. Cooper
N. Lee Cooper
Patrick N. Cooper
Robert E. Cooper
Louis Coppedge
Christopher Couch
J. Timothy Coyle
D. Sims Crawford
Stephanie M. Crenshaw
Wendy Brooks Crew
Charles R. Crowder
Greg Curran
Richard A. Cusick
Henry C. Dailey
John G. Dana
Roy L. Dancybey
Walter E. Daniels
Patrick Darby
George N. Davies
Kelvin L. Davis
Paige M. Davis
William A. Davis
William M. Dawson
William L. Deas
Paul J. DeMarco
Damon Denney
Ann S. Derzis
Patricia Diak
Timothy L. Dillard
David Donahue
Luther M. Dorr, Jr.
Christie Dowling
B. Boozer Downs
Helen K. Downs
Mark Drew
C. Ramsey Duck
John P. Dunlin, Jr.
Carolyn L. Duncan
Charles H. Dunn
Thomas E. Dutton
John A. Earnhardt
Robert D. Eckinger
Kathryn Eldridge
Michael D. Ermert
Kellie P. Esposito
Rebecca C. Eubanks
Jesse P. Evans
David L. Faulkner
Joseph A. Fawal
Daniel B. Feldman
G. R. Fernambucq
William S. Fishburne
Deborah P. Fisher
Linda A. Fiveash
Suzanne A. Fleming
Willie Florence, Sr.
Charles A. Flowers
Shannon D. Floyd
Kira Fonteneau
William T. Fortune
Leigh K. Forstman
Alan L. Foster
Stephen Fowler
Karen W. Fox
Samuel H. Franklin
Victoria J. Franklin-Sisson
John R. Frawley, Jr.
Michael D. Freeman
William J. Freeman
Sherri C. Friday
Douglas I. Friedman
Peter Fruin
Floyd D. Gaines
Lucas B. Gambino
Robert T. Gardner
Anthony G. George
Beth Gerwin
Anna L. Giattina
Wesley B. Gilchrist
Enrique J. Gimenez
Dennis E. Goldasich, Jr.
Stephen J. Goldstein
Carole A. Golinski
J. Jeff Goodman
Stevan K. Goozee
James L. Goyer, III
Michael G. Graffeo
Roderick Graham
Jeffrey M. Grantham
Casey C. Graves
Brendette Brown Green
Wilson F. Green
Mitchell Greggs
Matt Grill
Charles T. Grimes
Janice Pierce Groce
Jessica S. Grover
Eric L. Guster
Shelbie Guthery
Larry Lee Guthrie
W. Patton Hahn
John W. Haley
Jane G. Hall
John C. Hall
Scott R. Haller
Todd N. Hamilton
William E. Hamilton
Leigh H. Hancock
Robert D. Hancock
Chad Hanson
Laura S. Hardin
Lorrie L. Hargrove
Christopher B. Harmon
Meade Hartfield
Danita T. Haskins
Fred M. Haston
Gregory H. Hawley
Susan S. Hayes
Kenneth Haynes
Frances Heidt
Jack E. Held
Elizabeth J. Hemby
Hugh C. Henderson
Stephen D. Heninger
G. Steven Henry
Kristin K. Henson
Kenric W. Herren
Todd M. Higey
L.F. Hilbers
Tom Hiley
Kelli Hogue-Mauro
Lee M. Hollis
Jeff Holmes
Edward M. Holt
Kimberly A. Homer
Sanford G. Hooper
James A. Hoover
Jessica Hoppe
Anne Hornsby
Richard Horsley
Edward A. Hosp
Kaye K. Houser
Sybil Corley Howell
Matthew L. Huffaker
James F. Hughey
Robert B. Huie
Scott Humphrey
Melody L. Hurdle
Shannon D. Hutchings
J. Frederick Ingram
Russell L. Irby
Chervis Isom
K. Stephen Jackson
Marshall R. Jackson
Stephen C. Jackson
Frank S. James, III
Norman Jetmundsen
Karen B. Johns
Carl Johnson
David W. Johnson
Alexander W. Jones
Haskins Jones
Loring S. Jones, III
Robert A. Jones, Jr.
Robin H. Jones
William D. Jones, III
Lucy W. Jordan
Anthony A. Joseph
Joe A. Joseph
Paul M. Juliano
Richard Keller
Douglas L. Key
Alan L. King
William H. King, III
Karen G. Kolaczek
Robert R. Kracke
Cynthia Lamar-Hart
Jayna P. Lamar
John M. Laney, Jr.
Bradley W. Lard
Sarah Y. Larson
Rachel M. Lary
Nicholas C. Laster
Kay Laumer
Rejeana Lavender
John R. Lavette
Kenneth J. Lay
Linda S. Lehe
Rocco J. Leo
James B. Leonardi
C. Saint Lewis
William R. Lewis
J. Flint Liddon, III
Warren B. Lightfoot
Warren B. Lightfoot, Jr.
Curtis O. Liles, III
Paul A. Liles
James S. Lloyd
William B. Lloyd
Don B. Long, Jr.
William L. Longshore
Charles J. Lorant
J. Kris Lowry
John G. Lowther
Barbara R. Luckett
Timothy M. Lupinacci
Robby E. Lusk, Jr.
Mark W. Macoy
G.R. Mahmood
Greer B. Mallette
Duncan Y. Manley
Reid S. Manley
Ted L. Mann
Kemberli L. Marks
Alexander J. Marshall, III
Emory Mauldin
Jeffrey P. Mauro
Alaric O. May
Edward E. May, II
W. Randall May
Bradley C. Mayhew
John Mayo
Susan G. McAlister
Walter F. McArdle
Phillip McCallum
Terri D. McClung
Laurence J. McDuff
Michael L. McKerley
Jim G. McLaughlin
Crystal McMeekin
Frank McPhillips
Carey B. McRae
Douglas L. McWhorter
John E. Medaris
Hope D. Mehlman
G. Allen Meighen, Jr.
Kristin B. Metheny
Gerald L. Miller
Cellie W. Miller
Tracy T. Miller
Derrick A. Mills
William H. Mills
Matthew C. Minner
William E. Mitch
Anne W. Mitchell
Christopher Mitchell
James R. Moncus, III
Carolynn H. Moore
Jamie Moore
Patricia N. Moore
Robert E. Moorer
Joe W. Morgan
John G. Morrison
Mariellen Morrison
Eunice Morrow
Randall H. Morrow
William H. Morrow
Anne R. Moses
Charles H. Moses, III
Mitchell S. Mudano
Robert A. Mullins
Michael D. Mulvaney

2007 PRO BONO HONOR ROLL

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

Grace R. Murphy
Amy K. Myers
William R. Myers
James P. Naftel, II
Patrick K. Nakamura
George M. Neal
Laura C. Nettles
E. Bryan Nichols
James L. Noles
Christy O'Callaghan
D. Brian O'Dell
Madison W. O'Kelley, Jr.
Michael B. Odom
Richard F. Ogle
Thomas L. Oliver, II
Jason M. Osborn
Justin Otwell
David F. Ovson
Lewis W. Page, Jr.
Dennis G. Pantazis
Jeffrey W. Parmer
Warren M. Parrino
Bruce A. Parsons
J. Gary Pate
Kevin W. Patton
David T. Payne
Ted Pearson
Henry L. Penick
C. Jackson Perkins
Drew W. Peterson
Byron W. Phillips
William M. Phillips, Jr.
Anthony J. Piazza
Charles Pickney
J. Clinton Pittman
James M. Pool
Maibeth J. Porter
Anthony C. Portera
Andrew J. Potts
J. Bradley Powell
Kimberly Till Powell
Harlan I. Prater
Marcia W. Pratt
Honza J.F. Prchal
D. Mark Price
James L. Priester
William S. Pritchard, III
David W. Proctor
Bennett L. Pugh
Kathryn O. Pugh
Frances K. Quick
Michael C. Quillen
Charles M. Quinn
W. Larkin Radney
William A. Ratliff
Bruce A. Rawls
James P. Rea
C. Lee Reeves
Sandra B. Reiss
Edward E. Reynolds
Lynn Reynolds
Wade Richardson
Dagmar W. Rick
F. Brady Rigdon
Ferris S. Ritchey, III
George M. Ritchey
Jerry Roberson
Gerri W. Robinson
Kenneth J. Robinson
Lisa C. Robinson
Reginald Robinson
Alan T. Rogers
Elizabeth A. Roland
Nicole F. Romano
Richard W. Rowell
Frank J. Russo
S. Shay Samples
J. Michael Savage
David C. Schwartz
David Scott
Vanessa Searight
Thomas L. Selden
Sara Senesac
Kirby Sevier
J. Banks Sewell
Stephen L. Sexton
Michael Shabani
Jacqueline S. Shaia
J. Martin Sheffield
Carolyn R. Shields
J. Suzanne Shinn
Wynn Shuford
James E. Simpson
Henry E. Simpson
Fern Singer
Clarence M. Small, Jr.
Phil K. Smartt
Melissa E. Smiley
Alfred F. Smith, Jr.
Carol A. Smith
Cynthia P. Smith
Daniel B. Smith
David M. Smith
Gary C. Smith
J. Houston Smith, III
Jane C. Smith
Jennifer R. Smith
John W. Smith T
Kathleen S. Smith
W. Wheeler Smith
William F. Smith, II
William W. Smith
John Q. Somerville
Paul Spain
Herbert B. Sparks, Jr.
J. Callen Sparrow
Clifford M. Spencer, Jr.
Robert H. Sprain, Jr.
David Spurlock
Stephen W. Stallcup
William S. Starnes
P. Russell Steen
Mark A. Stephens
James L. Stewart
J. Dawn Stith
Garrick L. Stotser
Charlene I. Stovall
C. Mark Strength
Christine R. Strong
H. Whitfield Strong, Jr.
Ted Stuckenschneider
Eugene B. Stutts
John W. Sudderth
Sidney C. Summey
William R. Sylvester
John B. Tally
Robert W. Tapscott, Jr.
Mary A. Taylor
Jarred O. Taylor, II
Thomas L. Thagard
Robert Lee Thomas
James J. Thompson
John G. Thompson
Ronald F. Thompson
M. Kate Thornton
André M. Toffel
Thomas W. Thrash
Dana Thrasher
W. Lee Thuston
Ayn Traylor-Sadberry
J. Alan Truitt
Jacob Tubbs
Jerome Tucker
Minnie L. Tunstall
Michael E. Turner
Anita Terry Tye
L. Griffin Tyndall
Arnold W. Umbach, III
David O. Upshaw
William K. Upshaw
William C. Veal
J. Scott Vowell
Brian R. Walding
Susan G. Wagner
William B. Wahlheim
W. Ronald Waldrop
Hardwick C. Walthall
Henry Walker
Marion F. Walker
Valerie Frye Walker
Alison Wallace
Michael B. Walls
James F. Walsh
Stephen A. Walsh
Dafina C. Ward
James S. Ward
Jacqueline B. Washington
Ashley E. Watkins
Cynthia D. Watson
Leila H. Watson
William Waudby
Katherine A. Weber
H. Thomas Wells
Leonard Wertheimer
Jonathan S. Wesson
Kimberly R. West
Linda West
Anita B. Westnerry
James H. Wettermark
John F. Whitaker
G. Gregory White
James H. White
J. Mark White
Jere F. White
Bryant A.Whitmire, Jr.
John P. Whittington
Gregory O. Wiggins
Denise F. Wiginton
Donald F. Wiginton
David T. Wiley
Christopher J. Williams
Leotis Williams
S. Douglas Williams
T. Craig Williams
Doris Williford
Edward B. Willis
David M. Wilson
Kenneth Joe Wilson
Natasha L. Wilson
Harlan F. Winn
Miriam Witherspoon
Stephanie K. Womack
J. Fred Wood, Jr.
Lisa L. Woods
Fredrick M. Wright
Peter M. Wright
Terrell Wynn
Suzanne O. Yayman
Christopher L. Yeilding
Lee H. Zell

MADISON COUNTY BAR VOLUNTEER LAWYERS PROGRAM

Daniel F. Aldridge
Chad W. Ayres
John Baggette
Vicki Bell
J. Mark Bledsoe
James K. Brabston
Larry Brantley
Charles H. Brasher, Jr.
Clint W. Butler
H. Nelson Camp
Clem Cartron
Joseph M. Cloud
Susan Conlon
Maureen Cooper
Andrew Dalins
Jay E. Emerson, Jr.
Robert C. Gammons
Connie L. Glass
Jolayne Golden
Kenneth D. Hampton
Kevin Heard
Tara L. Helms
James P. Hess
Jeffery B. Irby
Sharon A. Johnston
Walter Kelley
Joan Marie Kettel-Dean
Patrick Lamar
Larry Marsili
Doug Martinson, Jr.
Robert McCaleb
Reta McKannan
Jeffery McKinney
Rebekah McKinney
Tommy McMurtrie
Chad A. Morgan
Richard J.R. Raleigh, Jr.
L. Thomas Ryan, Jr.
Bradley P. Ryder
Teresa Ryder
H. Kenan Timberlake
Shelly D. Thornton
H. Carey Walker, III
Carol J. Wallace
Jake Watson
Daniel Wilson
Stephen M. Wilson
David E. Worley

MOBILE BAR ASSOCIATION VOLUNTEER LAWYERS PROGRAM

Carvine Adams
Christina N. Adcock
Geoffrey D. Alexander
R. Alan Alexander
Helen J. Alford
Gary P. Alidor
J. Hodge Alves, III
Donna Ames
Orrin K. Ames, III

2007 PRO BONO HONOR ROLL

This honor roll reflects our efforts to gather the names of those who participate in organized pro bono programs.

Tonny Algood
Ferrell S. Anders
Douglas L. Anderson
Tristan R. Armer
Gordon G. Armstrong, III
Katherine B. Arnold
G. Wayne Ashbee
Kristin Ashworth
Grover E. Asmus, II
Daryl A. Atchison
James E. Atchison
Bruce L. Aune
Joseph P.H. Babington
Melvin L. Bailey
Michael E. Ballard
Leanna Bankester
J. Daniel Barlar, Jr.
Eaton G. Barnard
David L. Barnett
Joe E. Basenberg
D. A. Bass-Frazier
Donald Banks
Matthew Bauer
P. Kent Baxley
John G. Baylor, Jr.
Robert A. Beckerle
Paul Beckmann
Billy C. Bedsole
John T. Bender
Thomas H. Benton, Jr.
Russell E. Bergstrom
Jaime W. Betbeze
Windy C. Bitzer
Wesley H. Blacksher
William Blanton
Edward C. Blount, Jr.
Christina M. Bolin
Thomas R. Boller
R. Preston Bolt, Jr.
C. Britton Bonner
Kate Bonnici
John W. Boone
Knox Boteler
Edward G. Bowron
Ashley Brackin-Bonner
Marc E. Bradley
Kasie M. Braswell
Louis E. Braswell
Henry H. Brewster
Donald M. Briskman
Britten Britt
W. Benjamin Broadwater
G. Porter Brock, Jr.
James D. Brooks
David P. Broome
Ann Y. Brown
Chad R. Brown
Douglas L. Brown
Joseph A. Brown
Paul D. Brown
Toby D. Brown
Gregory P. Bru
Melvin W. Brunson
Donald E. Brutkiewicz, Jr.
John C. Brutkiewicz
Neal A. Buchman
Gregory C. Buffalow
Russell C. Buffkin
Peter F. Burns
M. Warren Butler
Bradley R. Byrne
Henry H. Caddell
Jennifer Caldwell
Henry A. Callaway, III
Ashley E. Cameron
Craig Campbell
Robert C. Campbell, III
Kenneth P. Carbo, Jr.
Lois Carney
Joseph E. Carr
Jerome C. Carter
J. Gregory Carwie
William J. Casey
K.W. Michael Chambers
Walter G. Chavers
C.S. Chiepalich
Jennifer P. Clark
Andrew C. Clausen
J. Calvin Clay
Lisa Clayton
William Clifford, III
James P. Clinton
Robert E. Clute, Jr.
Harwell E. Coale, Jr.
Wanda J. Cochran
F. Luke Coley, Jr.
Danny J. Collier, Jr.
Celia J. Collins
Patrick B. Collins
Gregory S. Combs
Bryan Comer
L. Hunter Compton, Jr.
David S. Conrad
Walter M. Cook, Jr.
Angela M. Cooper
Lisa D. Cooper
Braxton C. Counts, III
J.P. Courtney, III
Andrew J. Crane
J. Randall Crane
Stephen G. Crawford
John T. Crowder
A. Evans Crowe
John J. Crowley, Jr.
Blane H. Crutchfield
Manley L. Cummins, III
William M. Cunningham, Jr.
James G. Curenton, Jr.
Edwin J. Curran, Jr.
Dan S. Cushing
M. Stephen Dampier
Glenn L. Davidson
Michael M. Davis
Norman H. Davis, Jr.
Ronald P. Davis
Brent T. Day
Edward A. Dean
T. Jefferson Deen, III
Mignon M. DeLashmet
Scott E. Denson
Ross M. Diamond, III
Charles H. Dodson, Jr.
John W. Donald, Jr.
William A. Donaldson
Richard T. Dorman
Thomas P. Doyle
William M. Doyle
B. Vaughan Drinkard, Jr.
J. Michael Druhan, Jr.
Bryan G. Duhe'
John T. Dukes
Barre C. Dumas
Douglas K. Dunning
Robert S. Edington
Grady R. Edmondson
Mark P. Eiland
William T. Eiland
Mylan R. Engel
C. Mark Erwin
Tamela E. Esham
Michael T. Estep
Christopher B. Estes
Cheryl D. Eubanks
J. Gregory Evans
H. Wade Faulkner, Jr.
Jim H. Fernandez
Gary W. Fillingim
Douglas W. Fink
George W. Finkbohner, III
George W. Finkbohner, Jr.
Patrick Finnegan
P. Gray Finney, III
Charles J. Fleming
Erin Fleming
Timothy W. Fleming
Ben Ford
Marcus T. Foxx
Keith B. Franklin
Ross Frazer
Donald A. Friedlander
Gregory M. Friedlander
Nathan Friedlander
Barry A. Friedman
Sarah S. Frierson
Richard W. Fuquay
Richard M. Gaal
Michael E. Gabel
Ginger P. Gaddy
P. Vincent Gaddy
Thomas O. Gaillard, III
Jeffry N. Gale
Norman J. Gale, Jr.
Robert M. Galloway
William J. Gamble, Jr.
Jonathan P. Gardberg
J. Cecil Gardner
J. Marshall Gardner
Thomas F. Garth
Christopher L. George
John D. Gibbons
Christopher M. Gill
W. Michael Gillion
Walter T. Gilmer, Jr.
William B. Givhan
J.W. Goodloe, Jr.
Charles A. Graddick
Allen E. Graham
Duane A. Graham
Misty C. Gray
Lori Grayson
William C. Grayson
Jon A. Green
J. David Greene
Theodore L. Greenspan
Irvin Grodsky
Timothy M. Grogan
Roger C. Guilian
Virginia W. Haas
Jason K. Hagmaier
Carter R. Hale
Lee L. Hale, Sr.
Patricia W. Hall
Theodore L. Hall
W. Perry Hall
Lawrence J. Hallett, Jr.
David A. Hamby, Jr.
Jubal Hamil
W. Craig Hamilton
Katie L. Hammett
Neil L. Hanley
Daniel A. Hannan
Michael J. Harbin
Sidney M. Harrell, Jr.
Alvin F. Harris
Ashley S. Harris
Thomas E. Harrison
Jeffrey J. Hartley
J. Stephen Harvey
E. Larkin Hatchett
Peter Havas
Edward G. Hawkins
Wilson M. Hawkins, Jr.
Jeffry A. Head
Robert J. Hedge
Benjamin C. Heinz
Frederick G. Helmsing
Frederick G. Helmsing, Jr.
Deborah B. Hembree
Alison B. Herlihy
Warren C. Herlong, Jr.
Brenda D. Hetrick
R. Scott Hetrick
Charles A. Hicks
Lucian B. Hodges
Michael R. Holberg
Lyman F. Holland, Jr.
Frances H. Hollinger
Ryan P. Holloway
W. Steele Holman, II
Broox G. Holmes
Richard H. Holston
D. Charles Holtz
Richard D. Horne
David A. Horton
J. Gordon House, Jr.
Stewart L. Howard
Victor T. Hudson, II
Michael G. Huey
David M. Huggins
W. Gregory Hughes
Christopher G. Hume, III
John M. Hunter
Scott W. Hunter
Willie J. Huntley, Jr.
Harvey A. Hutchinson, III
Herndon Inge, Jr.
Herndon Inge, III
Brandon D. Jackson
J. Walton Jackson
Robert G. Jackson, Jr.
Sidney W. Jackson, III
William B. Jackson, II
Ishmael Jaffree
Jack F. Janecky
Joy A. Jaye
James D. Jeffries, Jr.
Linda C. Jensen
Candace D. Johnson
James A. Johnson
Richard B. Johnson
James C. Johnston
Neil C. Johnston
Vivian G. Johnston, III
Vivian G. Johnston, Jr.
Andrew M. Jones
Gregory R. Jones
Joe Carl Jordan
Shirley M. Justice
Cecily L. Kaffer
Kathleen C. Kaufman
Kyla Kelim
Colin E. Kemmerly
Christopher Kern
Florence A. Kessler
Benjamin H. Kilborn, Jr.
Fred W. Killion, Jr.
Fred W. Killion, III
James W. Killion
James E. Kimbrough, Jr.
William A. Kimbrough, Jr.
Rick O. Kingrea
Richard M. Kirkpatrick
Stephen L. Klimjack
Christopher Knight
Michael D. Knight
Dennis J. Knizley
H. James Koch
Frank H. Kruse
Joseph O. Kulakowski
Banks C. Ladd
Mary Carol Ladd
Gilbert B. Laden
Paul V. Lagarde
R. Edwin Lamberth
James W. Lampkin, II
William R. Lancaster

2007 PRO BONO HONOR ROLL

If we have omitted the name of any attorney who participates in an organized pro bono program, please send that name and address to the Alabama State Bar Volunteer Lawyers Program. P. O. Box 671, Montgomery 36101.

Johnny Lane
Clay Lanham
Alex F. Lankford, III
Alex F. Lankford, IV
Oliver J. Latour, Jr.
Forrest S. Latta
John L. Lawler
John N. Leach, Jr.
Goodman G. Ledyard
Beth Lee
John V. Lee
Tracie Lee-Roberson
J. Stephen Legg
Francis E. Leon, Jr.
Melissa Lindquist-King
James Loris, Jr.
Victor H. Lott, Jr.
Y.D. Lott, Jr.
Darlett Lucy-Dawson
T. Ryan Luna
Jeffrey L. Luther
Marilyn Lyles
William M. Lyon, Jr.
Peter S. Mackey
Arthur J. Madden, III
Melinda L. Maddox
Todd C. Mallette
David Maloney
E. Russell March, III
Chad C. Marchand
Beth Marietta-Lyons
Michael E. Mark
L.A. Marsal
Craig D. Martin
Steven A. Martino
R. Edward Massey, Jr.
R. Edward Massey, III
Kevin F. Masterson
Joseph M. Matranga
Thomas R. McAlpine
Gregory B. McAtee
Brian P. McCarthy
Daniel L. McCleave
Jacqueline M. McConaha
Lynn McConnell
Jason S. McCormick
Douglas L. McCoy
Marcus E. McCrory
James H. McDonald, Jr.
Matthew C. McDonald
Edward B. McDonough, Jr.
Marcus E. McDowell
Stova F. McFadden
William S. McFadden
Katherine M. McGinley
Robert B. McGinley, Jr.
W. Chris McGough
Deborah D. McGowin
William T. McGowin, IV
Robert B. McLaughlin
Michael S. McNair
J. Bart McNiel
Kent Dyer McPhail
Coleman F. Meador
Augustine Meaher, III
Bill C. Messick
S.C. Middlebrooks
Adam M. Milam
Christopher R. Miller
Jason D. Miller
Jeffrey G. Miller
M. Kathleen Miller
Margaret Miller
Brooks P. Milling
L. Daniel Mims
Jonathan Minchin
Joseph J. Minus, Jr.
Michael A. Montgomery
J. Richard Moore
Pamela A. Moore
Stephen C. Moore
Larry C. Moorer
Jack W. Morgan
W. Kyle Morris
Henry T. Morrissette
W. Alexander Moseley
T. Julian Motes
Robert H. Mudd, Jr.
D. Brian Murphy
Michael T. Murphy
Jennifer Murray
P. Bradley Murray
P. Russell Myles
Paul D. Myrick
Meegan Nelson
Mark A. Newell
James B. Newman
Frances R. Niccolai
Steven L. Nicholas
Michael C. Niemeyer
David A. Nihart
Peggy R. Nikolakis
Jason B. Nimmer
John R. Nix
Ken Nixon
Louis C. Norvell
Sonya Ogletree
Thomas M. O'Hara
Rudene C. Oldenburg
Thomas P. Ollinger, Jr.
Mary E. Olsen
Caine O'Rear, III
Juan Ortega
Brandy B. Osborne
Terrie Owens
Laura Palmer
Peter J. Palughi, Jr.
Frank L. Parker, Jr.
John R. Parker, Jr.
Harold D. Parkman
Melinda J. Parks
James D. Patterson
James T. Patterson
Tommy W. Patterson
J. Day Peake, III
David Peeler
Patrick K. Pendleton
R. Jeffrey Perloff
R. John Perry
Christopher E. Peters
Abram L. Philips, Jr.
Will G. Phillips
Brenda J. Pierce
Wendy A. Pierce
Virginia Pike
Mary E. Pilcher
J. Jerry Pilgrim
J. Casey Pipes
S. Wesley Pipes, V
William E. Pipkin, Jr.
Patricia J. Ponder
William C. Poole
Charles J. Potts
Susan L. Potts
Arthur T. Powell, III
Glen Powers, II
Jean M. Powers
Barry C. Prine
Gabrielle R. Pringle
Caroline T. Pryor
Marion A. Quina, Jr.
David R. Quittmeyer
L. Bratton Rainey, III
Julie H. Ralph
Robert S. Ramsey
A. Clay Rankin, III
James Rebarchak
F. Grey Redditt, Jr.
Mark L. Redditt
William H. Reece
W. Boyd Reeves
Elizabeth D. Rehm
Kirkland E. Reid
T. Dwight Reid
Eric B. Reuss
Kenneth J. Riemer
J. Burruss Riis
James V. Roberts, Jr.
E. Luckett Robinson, II
Thomas M. Rockwell
William C. Roedder, Jr.
Jannea S. Rogers
Derek C. S. Rose
Ian Rosenthal
Jay M. Ross
James B. Rossler
Beth M. Rouse
Robert H. Rouse
Edward P. Rowan
Benjamen T. Rowe
Andrew J. Rutens
Elias J. Saad
William H. Saliba
Harry V. Satterwhite
Richard S. Sawyer
Ellsworth P. Scales, III
James D. Sears
John W. Sharbrough, III
Thomas E. Sharp, III
Clifford C. Sharpe
Kirk C. Shaw
Bob Sherling, Jr.
Michael D. Sherman
Richard E. Shields
Jonathan E. Sholtis
Vanessa A. Shoots
William E. Shreve, Jr.
Franklin L. Shuford, Jr.
Larry U. Sims
Patrick H. Sims
William H. Sisson
Amy B. Smith
Brad Smith
Edward L.D. Smith
Fran J. Smith
Frankie F. Smith
Jason D. Smith
Michael A. Smith
Selma L.D. Smith
Susan G. Smith
Hendrik Snow
Mary E. Snow
Domingo Soto
Scott W. Soutullo
Mark E. Spear
Jon M. Spechalske
Jerome E. Speegle
John R. Spencer
Leon F. Stamp, Jr.
Chandler K. Stanard
Joseph D. Steadman
Mary Steele
Ann G. Stein
Gregory B. Stein
T. Jeff Stein
Donald J. Stewart
Louisa L. Stockman
Norman M. Stockman
Samuel L. Stockman
Benjamin F. Stokes, III
Bruce B. Stone, Sr.
Margaret A. Stone
Sheila V. Stone
Todd S. Strohmeyer
Carroll H Sullivan
Joseph R. Sullivan
Molly M. Sullivan
James W. Tarlton, III
Jeremy P. Taylor
Richard H. Taylor
Shane A. Taylor
Stacie F. Taylor
R. Stevens Terry
Steven L. Terry
Bryan A. Thames
Joseph D. Thetford
Richard L. Thiry
Melissa A. Thomas
Barry L. Thompson
Ray M. Thompson
Cooper C. Thurber
Edward R. Tibbetts
William C. Tidwell, III
Desmond V. Tobias
Desmond B. Toler
J. Robert Turnipseed
John M. Tyson, Sr.
G. Hamp Uzzelle, III
Pete J. Vallas
Lawrence B. Voit
James B. Vollmer
Richard W. Vollmer, III
George M. Walker
Thomas B. Walsh
E. Eugene Warhurst, Jr.
H. William Wasden
William W. Watts, III
Lawrence M Wettermark
A. Holmes Whiddon, Jr.
Don O. White
Jarrod J. White
John L. White
J. George Whitfield, Jr.
C. Richard Wilkins
Anna M. Williams
Richard R. Williams
Ronnie L. Williams
Adam T. Williamson
Teresa Williamson
Charles S. Willoughby
Charles C. Wimberly, III
Michael P. Windom
Michael A. Wing
Mark C. Wolfe
Thomas M. Wood
Ricardo Woods
James A. Yance
Richard D. Yelverton
Jay A. York
Michael A. Youngpeter
James W. Zeigler
Thomas T. Zieman, Jr.
Alex W. Zoghby
George M. Zoghby

You've Caught a **Thief** Amongst You– *What Now?*

Options Available to Employers in Attempting to Recover from Employee Theft

by Douglas B. Kauffman

The United States Chamber of Commerce estimates that loss from employee theft is over $20 billion per year. Virtually every employer is faced with the harsh reality that some employees will steal if given the opportunity. A proper investigation designed to collect the necessary evidence and prove guilt is always the first step. However, the adventure does not end when the suspect is fingered. Just like the old adage goes, once the dog catches the car, what does it do with it? Likewise, after an employer has performed a proper investigation and has convincing proof of the theft, what are the employer's options to legally recover what has been wrongfully taken from it? Often these decisions must be made quickly due to the individual's immediate pending discharge from employment. Employers often seek help from their attorneys on the best course of action to take, but sometimes the answers are not always clear. This article discusses some of the options available to employers to recover from current and former employees who have stolen, embezzled or misappropriated money or property.

One Option Really Is To Do Nothing

When faced with the risks associated with other options, some employers prefer to let it go and do nothing, other than perhaps re-examine internal controls or audit practices in an attempt to avoid any further similar losses in the future.

Generally, there is no legal obligation requiring an employer to collect or otherwise pursue money or property that has been stolen by its employees or former employees. Of course, an issue involving millions of dollars or an officer of a public company may require specific action and should be more closely and specifically examined. Further, in the event of insurance coverage for the loss, the applicable insurance policy should be reviewed to determine if the company must make certain attempts to collect prior to recovering any insurance funds. However, absent these or other unusual circumstances compelling some obligation to attempt to recover lost amounts, a decision as to whether to attempt to recover the loss most likely will be completely up to the discretion of the employer. Even in the corporate law context, such decisions fall under the business judgment rule, meaning that the courts will not second-guess the company's decision as long as there is a rational basis for the decision. *See*, *e.g.*, *Hensley v. Poole*, 910 So. 2d 96, 104 (Ala. 2005) (stating Alabama's business judgment rule). Regardless, a company should consider and discuss all the relevant business factors and issues relating to its options before making a decision to do nothing, to avoid an appearance that the decision is something other than a legitimate business decision.

Give It Back Or Else

An employer may request immediate restitution from an employee or former employee who owes it money. In addition, there are few risks with an employer expressing its plans to explore its civil legal options to recover from the individual, assuming that the employer in fact has probable cause to believe such money is legally owed. However, an employer should avoid telling the employee that the decision as to whether to press criminal charges is dependent on the employee's restitution or agreement to pay restitution. *See Ala. Code* §§ 13A-8-1(13)e, -13, -15 (defining extortion in part as knowingly obtaining control over the property of another by threatening the institution of criminal charges). Further, it is not a good employment practice in general to threaten to discharge the employee unless the employee makes restitution, because the decision to terminate employment, which is often a given in these situations, should not be dependent on whether the money is repaid.

Make A Deal With The Devil

In reaching a written agreement with an employee to repay what he or she has wrongfully taken, the use of a promissory note or other type of restitution agreement is helpful, so that if the employee defaults on payments, the matter may be more easily pursued in court without the need to prove the underlying debt is owed. However, prior to making an agreement with the employee to make restitution, the employer should be confident that it knows the full amount of financial loss at issue. An agreement to accept an amount from the employee as restitution may prevent the employer from later asserting that the employee owes more than the initial agreed upon amount.

In some situations, the employer may be concerned that the employee may file an employment claim (e.g., discrimination claim) against the employer resulting from the employee's discharge or other adverse employment action taken by the employer against the employee. In this situation, it may be possible for the employer to use the debt owed by the employee as leverage to secure a general release from any possible claims. For example, the employer might agree to release the employee from any possible liability arising from the money allegedly misappropriated by the employee in exchange for a general release in favor of the employer for all potential claims held by the employee.

Take Back What Is Rightfully Yours

If the subject employee is still employed or is due some wages or other benefits, it may be possible to deduct what is owed to the employer. Unlike many states (*see, e.g., Okla. Admin. Code* § 380:30-1-7; -1-11; *Tex. Lab. Code Ann.* § 61.018), Alabama does not have a statute that dictates permissible or non-permissible reasons for setting off wages with amounts owed to an employer. *But see Ala. Code* § 6-8-82 (limit on counterclaim against employee that is head of household). All employers, however, must be mindful of the Fair Labor Standards Act ("FLSA"). The following are some precautions for employers:

…avoid telling the employee that the decision as to whether to press criminal charges is dependent on the employee's **restitution** or agreement to pay restitution.

- *No deduction below minimum wage:* An employer should make sure that after any deductions it at least pays the employee the minimum wage for each hour worked by the employee. This is especially true with respect to any deductions for cash register shortages and money owed for the destruction of property. *See, e.g.*, *Donovan v. Hudson Stations, Inc.*, No. 77-2172, 1983 U.S. Dist. LEXIS 12751, at *11 (D. Kan. Oct. 14, 1983) ("Except where an employee is convicted of misappropriating funds, it is unlawful for an employer to require an employee to reimburse employer for cash register or inventory shortages . . . ."). The United States Department of Labor states that an employer may deduct to recoup cash advances on the principal (not interest or fines) relating to bona fide loans made to an employee even if such deduction reduces the employee's cash wages below the statutory minimum. *See* 2004 Wage & Hour Op. Ltr. No. 19NA, at 1 (Dep't of Labor Oct. 8, 2004) ("It has been our long-standing position that where an employer makes a loan or an advance of wages to an employee, the principal may be deducted from the employee's earnings even if such deduction cuts into the minimum wage . . . under the FLSA."). In addition, some support exists for a deduction below the minimum wage where an employee has misappropriated funds. *See Brennan v. Veterans Cleaning Serv., Inc.*, 482 F.2d 1362, 1369 (5th Cir. 1973) ("[R]epayment to the employer of amounts misappropriated by the employee may be made by means of paycheck deductions, even where they reduce the net pay to the employee below minimum wage."). However, the most prudent practice would be to avoid any potential violation of the minimum wage standard.
- *No deduction of overtime for non-exempts*: In addition, for non-exempt employees, an employer should not withhold any overtime pay required to be paid pursuant to the FLSA.
- *No deduction below minimum salary rate for exempts:* For exempt employees, it is advisable to pay the employee at least $455 per week, which is the minimum weekly salary requirement for exempt employees. *See* 29 C.F.R. § 541.600

Despite compliance with the FLSA's overtime and minimum wage requirements, there is a risk that deductions from earned wages, benefits or bonuses could result in a breach of contract or a conversion claim against a company. The validity of such claims and the risk of whether they would be filed depend on a number of factors to be evaluated on a case-by-case basis, such as the evidence supporting the employee's alleged indebtedness to the employer.

Also, the Employment Retirement Income Security Act ("ERISA") prohibits any type of garnishment, attachment or constructive trust remedy by an employer with respect to pension and profit-sharing plans covered by ERISA. *See* 29 U.S.C. § 1056(d). However, should the employee voluntarily request distribution of his or her benefits, upon receipt of the funds, the employee can voluntarily give the money to the company. However, care must be taken to avoid any appearance of undue coercion or duress on behalf of the employer as to any distribution request and turnover of funds from an employee's ERISA-governed accounts.

Bring Out The Big Guns

Civil litigation against the employee to recover any amounts owed by the employee is an option. One advantage to civil litigation to recover amounts owed as opposed to just "taking back" what is owed is that it eliminates the risk of a potential breach of contract or conversion by the employee against the employer. Some of the disadvantages are obvious: civil litigation is expensive and time-consuming. Further, an employer should consider that even if it collects a judgment, actual collection of the amounts may be difficult and another expensive process. In the event an employee has sued the employer for some type of employment-related claim, a counter-claim against the employee for the amount owed to the employer is an option to consider as well.

Pressing criminal charges against the employee is always an option and not

Prior to filing a civil lawsuit or pressing charges, an employer should be sure that it has **probable cause** to believe that the employee has violated the law in order to decrease the risk of a malicious prosecution claim.

mutually exclusive of filing a civil lawsuit. Pressing criminal charges puts the matter, including another investigation in the hands and control of the government. An employer should consider whether it wants law enforcement looking into its affairs, including its records and practices. Although the employer will not have to pay the expenses associated with the criminal process, the employer will have to invest time and other resources while cooperating with the applicable law enforcement agency. On the other hand, many employers feel they have a civil duty (although there is no legal obligation) to report or prosecute criminal behavior by their employees in order to protect society in general and as a deterrent to future theft by other employees. In addition, pressing criminal charges sometimes results in a confession and restitution.

Prior to filing a civil lawsuit or pressing charges, an employer should be sure that it has probable cause to believe that the employee has violated the law in order to decrease the risk of a malicious prosecution claim. *See Lee v. Minute Stop, Inc.*, 874 So. 2d 505, 512 (Ala. 2003) (elements of a malicious prosecution claim include lack of probable cause). In addition, any publication to a third party (i.e., anyone outside the employer's organization or inside the organization without "a need to know") that an employee has stolen money or property from the company could result in a defamation action against the employer. Whenever information is reported to a third party, the best practice is to report information or facts that cannot be disputed (e.g., "Employee's corporate card was used to purchase a boat motor and we have been unable to determine that a legitimate business need for a boat motor existed" or "There is sufficient evidence that persuades us to believe that our employee has submitted a false expense report."). An employer should avoid absolute conclusions that could be disproved (e.g., "Our employee stole money from us.").

Conclusion

Each instance of employee theft contains its own set of facts, circumstances and, as discussed above, several options. An employer who carefully weighs all of its options when faced with an employee theft issue and avoids letting only emotion dictate its moves has a better chance in making the right choice and avoiding placing itself in a worse position.

Doug Kauffman is a partner in Balch & Bingham LLP's Birmingham office.

ISI ALABAMA is proud to now serve as the Official Health Plan Administrator for the Alabama State Bar.

As an Alabama State Bar member you now have access to a **newly endorsed Association Major Medical Program** underwritten through World Insurance Company.

ALABAMA STATE BAR

WORLD ASSOCIATION MEDICAL PLANS

CO-PAY PLAN: Insured can adjust premium by varying deductible and co-pay amounts, choosing in-network and out-of-network providers, and adjusting lifetime and/or annual coverage maximums.

HSA PLAN: Provides a tax-free method for funding health expenditures. It is based on a high deductible insurance package which varies only in lifetime and/or annual coverage maximums.

THROUGH ISI MEMBERS CAN NOW ALSO:

Obtain online quoting for all major medical admitted carriers in Alabama including:

United Health Care
Humana
Assurance Health
Aetna

This online software allows members to self structure plans to their individual needs, with rates provided in seconds.

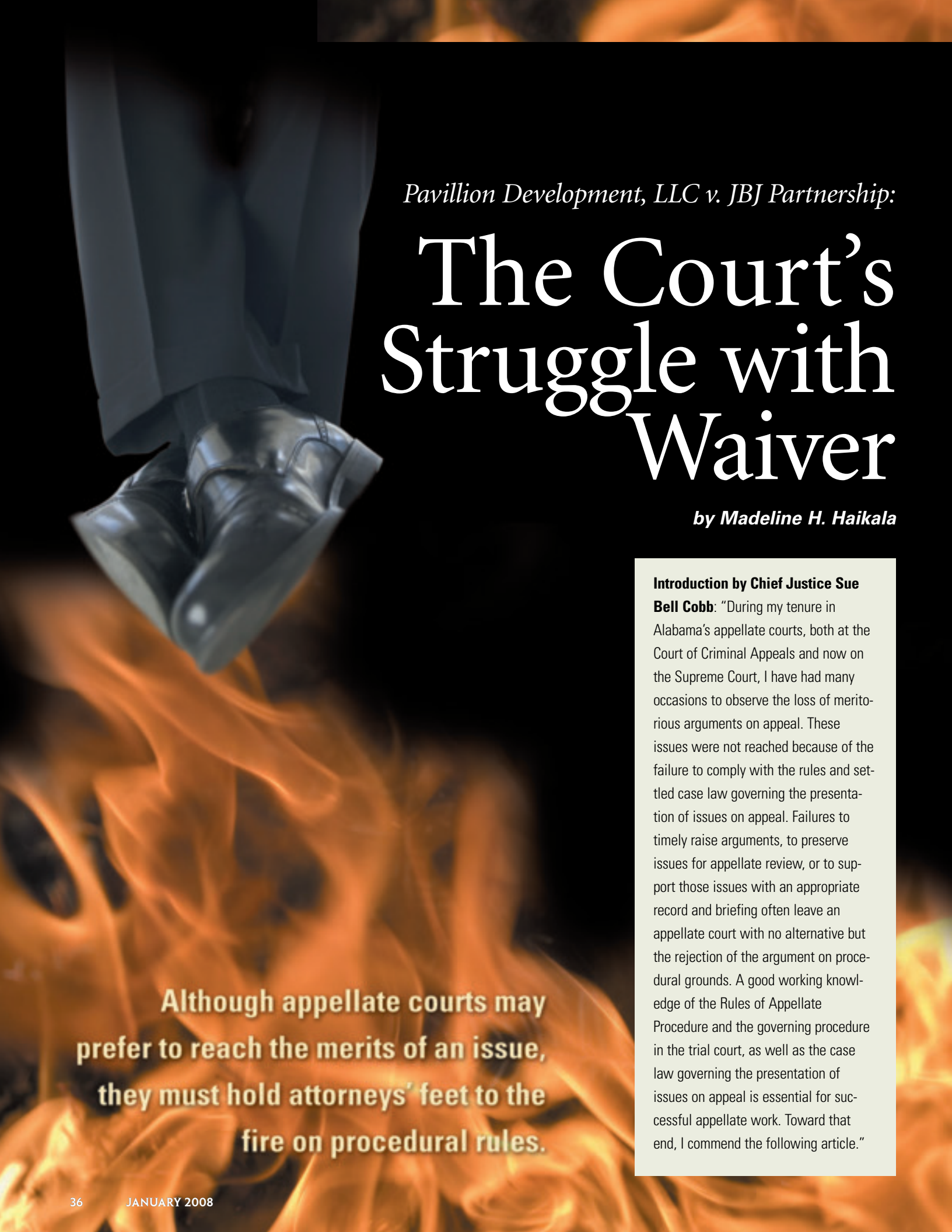
FOR MORE INFORMATION GO TO:

http://www.isi1959.com/associations/asb.asp

ISI ALABAMA
a division of
INSURANCE SPECIALISTS, INC.
EST. 1959

ISI SALES DIRECT: 1-888-ISI-1959

ADIAMM1207



Pavillion Development, LLC v. JBJ Partnership:

The Court's Struggle with Waiver

by Madeline H. Haikala

Introduction by Chief Justice Sue Bell Cobb: "During my tenure in Alabama's appellate courts, both at the Court of Criminal Appeals and now on the Supreme Court, I have had many occasions to observe the loss of meritorious arguments on appeal. These issues were not reached because of the failure to comply with the rules and settled case law governing the presentation of issues on appeal. Failures to timely raise arguments, to preserve issues for appellate review, or to support those issues with an appropriate record and briefing often leave an appellate court with no alternative but the rejection of the argument on procedural grounds. A good working knowledge of the Rules of Appellate Procedure and the governing procedure in the trial court, as well as the case law governing the presentation of issues on appeal is essential for successful appellate work. Toward that end, I commend the following article."

Although appellate courts may prefer to reach the merits of an issue, they must hold attorneys' feet to the fire on procedural rules.

None of us likes to lose a case, particularly one we have handled for years, from complaint to appeal. Perhaps the only thing worse than losing on appeal is losing because the court finds that you waived a pivotal issue by virtue of your procedural error either at trial or on appeal. These losses are the most difficult not because they are blows to our competitive nature but because they leave a client who has endured years of litigation with the disappointment of not receiving a final resolution of the merits of his case.

Although appellate courts may prefer to reach the merits of an issue, they must hold attorneys' feet to the fire on procedural rules. And they do. In the past few years, the Alabama Supreme Court found that parties waived arguments on appeal in dozens of civil cases. The court of civil appeals did so as well. The Alabama Supreme Court's recent *Pavilion Development, LLC v. JBJ Partnership* opinion offers rare and helpful insight into the court's concern with waiver issues. This article discusses the main and minority opinions in *Pavilion,* highlights a few procedural hurdles that frequently frustrate appeals and offers suggestions for ways to better prepare appeals to avoid ignominious defeat because of a procedural flaw.

The Waiver Discussion in *Pavilion Development, LLC v. JBJ Partnership*

Although the waiver issue ultimately takes center stage in *Pavilion Development, LLC v. JBJ Partnership,* No. 1040967 (Ala. August 10, 2007), the parties' dispute concerned a statutory right of redemption in realty that JBJ bought in a foreclosure sale. Pavilion, which obtained the statutory right of redemption via an assignment from a previous owner of the property, sought a declaration of the parties' rights in the property and asked the trial court to enforce its right of redemption.[1]

JBJ moved for summary judgment, asserting primarily that the assignor had no authority to make the assignment and that Pavilion did not meet the statutory prerequisites for redemption. The trial court ordered JBJ to file a supplemental brief, addressing only the assignment issue. The supplemental brief stated at the outset that JBJ's motion was based on "multiple theories of law," but it focused, per the trial court's order, on the assignment issue. *Id.* at 14.

The trial court entered summary judgment for JBJ, holding that the assignor had no authority to transfer the right of redemption to Pavilion. Pavilion appealed. It challenged only the ruling on the assignment issue in its initial appellant's brief. *Id.* at 16. JBJ argued both the assignment and the failure to fulfill the statutory prerequisite issues in its appellee's brief. In its reply brief, Pavilion again limited its discussion to the assignment issue. The Alabama Supreme Court reversed, finding that the assignor had the capacity to transfer the right of redemption to Pavilion. *Id.* at 29-30.

The portion of the primary opinion that sparked disagreement among the justices concerns JBJ's alternative statutory prerequisite argument. In the primary opinion, Justice Bolin wrote, "[a]lthough we have stated that an appellate court may affirm a judgment of a trial court for any valid reason, we do not consider JBJ's arguments about the statutory requirements because the record here indicates that the trial court did not make any findings concerning, nor did it intend to base its judgment on, those alternative grounds." *Id.* at 30 (footnote omitted). After tracing the trial court proceedings that produced the summary judgment order grounded on only one issue, the primary opinion states:

> We are persuaded that the trial court reached and decided only the authority-to-assign issue when it entered a summary judgment for JBJ on November 4, 2004. That ruling was a threshold finding that pretermitted consideration of the failure-to-comply-with-statutory requirements argument and all other issues raised by [Pavilion's] complaint. Because we hold that the trial court's order was so limited, the 'affirm for any valid reason' principle is inapplicable here because the record indicates that the trial court never intended to address the failure-to-comply argument JBJ reasserted on appeal.

Id. at 32-33. Justice Bolin added in a footnote:

> We are mindful that Pavilion did not address the failure-to-comply arguments in its principal brief, and did not respond to those arguments in its reply brief after JBJ raised them in its appellee's brief. This Court recently found in *Fogarty v. Southworth*, 953 So. 2d 1225 (Ala. 2006), that, when an appellant failed in its principal appellate brief to address an issue that had been before the trial court and that could have warranted a judgment below, the appellant's failure to argue that issue in its principal brief brief constituted a waiver as to that issue. However, the rule in *Fogarty* applies only where the trial court does not specify a basis for its ruling. …

Id. at 33 n. 21.

The discussion among the justices on waiver is robust. Justices Lyons and Woodall dissented, stating that the court should have affirmed the summary judgment on the basis of JBJ's statutory prerequisite argument because the argument was plausible, and Pavilion did not respond to it. Chief Justice Cobb and Justices See and Murdock fell between the primary opinion and the dissent, taking issue with both.

In his dissenting opinion, in which Justice Woodall joined, Justice Lyons highlighted the opinions in which the court has held that, "'[a]n appellee can defend the trial court's ruling with an argument not raised below,'" and "an appellate court can affirm a

summary judgment on any valid argument, regardless of whether the argument was presented to, considered by or even rejected by the trial court.'" *Id.* at 57-58 (Lyons, J. dissenting)(quoting *Smith v. Equifax Services, Inc.*, 537 So. 2d 463, 465 (Ala. 1988)). On the other hand, "'[t]his court will not reverse the trial court's judgment on a ground raised for the first time on appeal. . . . This difference is predicated on the 'long-standing, well-established rule that [in order to secure a reversal] the appellant has an affirmative duty of showing error upon the record.'" *Id.* Due process, Justice Lyons explained, limits the "affirm on any ground" rule in certain circumstances. *Id.* at 58-59 (citing *Liberty National Life Ins. Co. v. University of Alabama Health Services Fndn, P.C.*, 881 So. 2d 1013, 1020 (Ala. 2003)).

Justice Lyons is of the opinion that when a trial judge does not "specify a ground for its ruling," the appellant must, in its opening brief, address "all grounds that were presented to the trial court in order to sustain its burden of showing error." *Id.* at 59. The reason for this rule, per *Fogarty v. Southworth*, 953 So. 2d 1225 (Ala. 2006), is that, "'[i]f the rule were otherwise, an appellant could 'sandbag' an appellee by withholding an argument on an issue until the reply brief, thereby depriving the appellee of an opportunity to respond.'" *Pavillion* at 60.

Justice Lyons reasoned that Pavilion knew about JBJ's statutory requirements argument because JBJ raised the defense in its summary judgment motion. Therefore, "[b]y failing to assert the invalidity of this basis for affirmance in its opening brief, Pavilion failed to shoulder its affirmative duty of showing error upon the record." *Id.* at 61. Justice Lyons wrote that limiting the *Fogarty* rule to situations in which the trial judge does not state the basis for its judgment "depart[s] from well-established principles applicable to the obligation of an appellant to demonstrate error in its principal brief. And ignoring the equally well-established rule . . . allowing an appellee to urge affirmance on a ground rejected by the trial court without having to file a cross-appeal to bring the issue before the Court." *Id.* Pavilion's error, in Justice Lyons's view, was compounded by the fact that Pavilion did not respond to JBJ's statutory prerequisite argument in its reply brief.

With respect to the statutory prerequisite argument in *Pavilion*, Justice Lyons stated that, "[b]ecause a defense on this ground is not frivolous on its face, I would affirm the judgment of the trial court solely on the procedural default of Pavilion without analysis of its merits." *Id.* at 62. To eliminate the procedural error that he perceived in the appeal, Justice Lyons proposed amendments to the *ARAP* to incorporate Alabama law on this topic into the rules of appellate procedure.[2]

Justice See disagreed with Justice Lyons, writing: "Notwithstanding the fact that this Court may affirm a judgment for a reason not considered by the trial court, I do not believe that we *must* affirm the judgment of the trial court on a ground that was not relied upon by the trial court, without a consideration of the merits of that ground" despite the fact that the ground is "'not frivolous on its face.'" *Id.* at 36, See, J., concurring (emphasis supplied). Justice See cautioned that Justice Lyons's view "would compel this Court to affirm the trial court's judgment for a possibly invalid reason not relied upon by the trial court." *Id.* at 44.

Justice See pointed out that the court has not consistently applied the affirm on any valid legal ground rule, stating alternatively in some cases that the court "must" affirm when the appellant fails to demonstrate error on the record and, in other opinions, that the court "may" affirm. *Id.* at 37-38. The determinative factor, offered Justice See, is "whether the judgment being affirmed is proper and correct. . . . This is true because this Court affirms judgments, not the arguments of parties." *Id.* at 39. Justice See agreed that the court could decide the appeal on the basis of JBJ's failure to comply argument but only if the record supported that argument and the summary judgment was correct. *Id.* at 40-41.

Justice Murdock concurred specially, not to address the substance of the primary opinion, but to express disagreement with Justice Lyons's dissent and to comment upon *Fogarty*, an opinion that the court delivered before Justice Murdock became a member of the court. Justice Murdock noted that the appellant's burden to make an affirmative showing of error in the record is tied inextricably to the affirm-on-any-legal-ground principle: "'Th[e] rule [regarding the appellant's burden] is premised upon the fundamental proposition that an appellate court will not presume error and will affirm the judgment appealed from if supported on any valid legal ground.'" *Id.* at 47 n. 25.

Justice Murdock agreed with Justice See's observation that the affirm-on-any-ground proposition does not require an appellate court to affirm a lower court judgment. "I do not believe we should transform a rule designed to *allow* an appellate court to affirm a lower court's judgment on *any ground determined to be valid* into a rule that requires an appellate court to affirm a lower court's judgment *on any ground*, *without regard to the validity of the ground*, merely so long as that ground was raised in the trial court by the prevailing party and was not addressed by the appellant on appeal." *Id.* at 48 (emphasis supplied). "The right-for-any-reason doctrine serves the dual ends of justice and judicial economy by preserving *correct legal results*, even when the specific grounds relied upon by the trial court are erroneous." *Id.* at 50 (emphasis supplied).

Justice Murdock discounted the concern voiced in *Fogarty* that an appellant, as a tactical maneuver, might try to sabotage an appellee by reserving an argument for a reply brief. Justice Murdock believes that the court's practice of rejecting arguments that are raised for the first time on appeal in a reply brief already prohibits this strategy, so that no further action is needed either by way of a new rule from the court or a revision to the rules of appellate procedure. *Id.* at 49.

Justice Murdock addressed two practical considerations attendant to Justice Lyons's proposed waiver rule:

> I believe the waiver rule at issue holds the potential for increasing the workload of attorneys and of trial and appellate judges alike. Some litigants may perceive it to be to their advantage to provide to the trial court a multitude of alternative grounds for their position, regardless of the merits of those grounds, in the hope that, if they are successful in the trial court, their opponent might fail to contest one or more of those grounds on appeal, thereby resulting in the affirmance of the judgment by 'default.' . . .
>
> Finally, I am not comforted by the notion that there would be an exception to the waiver rule announced in *Fogarty* for grounds deemed 'frivolous' by a majority of the members of the appellate court reviewing the case. What is and is not 'frivolous' will often be in the eye of the beholder; what is frivolous to one judge may be colorable to another. An unjust result for a litigant is no less so because the

GILSBARPRO

Professional Liability Insurance for Attorneys

Dive In and SAVE with Gilsbar PRO

Get a quote today and save up to 15% on your professional liability insurance premiums this year.

- ☑ Rated "A" (Excellent) by A.M. Best for Financial Strength
- ☑ Over 125,000 attorneys choose CNA.
- ☑ Same day quotes
- ☑ One of the most competitive rates in the state

GilsbarPRO is the exclusive administrator for the CNA Lawyers Professional Liability Program in the State of Alabama.

Call the Pros.

1-800-906-9654

CNA

www.gilsbarpro.com/prontoquote

> ground upon which the result is based is considered by a majority of an appellate court to be nonfrivolous, though incorrect, rather than frivolous and incorrect. In either case, the result is wrong.

Id. at 54 (citations omitted). Chief Justice Cobb concurred with Justice Murdock's opinion.

This discussion about waiver obviously is neither one that appellate justices take lightly nor is it merely academic. Given that waiver impacts so many appeals, lawyers must choose carefully when sifting through potential issues for appeal. Before turning to strategies for issue selection, other types of waiver that frequently prevent the court from reaching the merits of an appeal bear mention.

Waiver Issues that Plague Appeals

Numerous other procedural errors often prove fatal on appeal. Those that seem to occur most frequently are failure to comply with the requirements of *Ala. R. App.* P. 39 when petitioning the Alabama Supreme Court for a writ of certiorari, failure to provide adequate citations to statutes, case law and other authorities to support an argument on appeal and failure to timely initiate appellate proceedings because of miscalculation of the effect of post-judgment motions in the trial court. *See*, *e.g.*, *Bagley v. Mazda Motor Corp.*, 864 So. 2d 301, 313 n. 12 (Ala. 2003)("'When an appellant fails to cite any authority for an argument on a particular issue, this Court may affirm the judgment as to that issue, for it is neither this Court's duty nor its function to perform an appellant's legal research'").

The Rule 39 error may be the most frustrating to the court because the court has amended the rule so often, most recently in 2005, to try to make compliance less difficult. The comment to Rule 39 explains "a high number of petitions have been denied because the Supreme Court had no facts to review. Facts may be considered by the Supreme Court only if presented to the Court in the form required by Rule 39." Rule 39(d)(5) sets forth the procedure for bringing to the court's attention facts that are not included in the court of appeals' opinion or unpublished memorandum. Moreover, lawyers often overlook the fact that there are limited grounds on which a party may seek a writ of certiorari directed to the court of civil or criminal appeals. Rule 39(a) specifies those grounds.

For a comprehensive list of procedural errors that frequently arise on appeal, Ed Haden's article, "Preventing Waiver of Arguments on Appeal," *Alabama Lawyer* May 2007, is mandatory reading. Ed's article provides an overview of waiver traps for the unwary from complaint to appeal.

Practical Advice for Avoiding Waiver

How should the bar respond to the court's concerns about waiver? The first and most obvious answer is that a lawyer filing an appellate brief must read and follow the rules of appellate procedure. When the rules seem unclear or when you have a case that seems to fall into a gray area, call the office of the clerk of the appellate court. If someone there cannot answer your question, the clerk's office will connect you to a staff attorney who will try to help you. If you still are unsure of how to proceed, you probably will have to address the procedural issue in your brief.

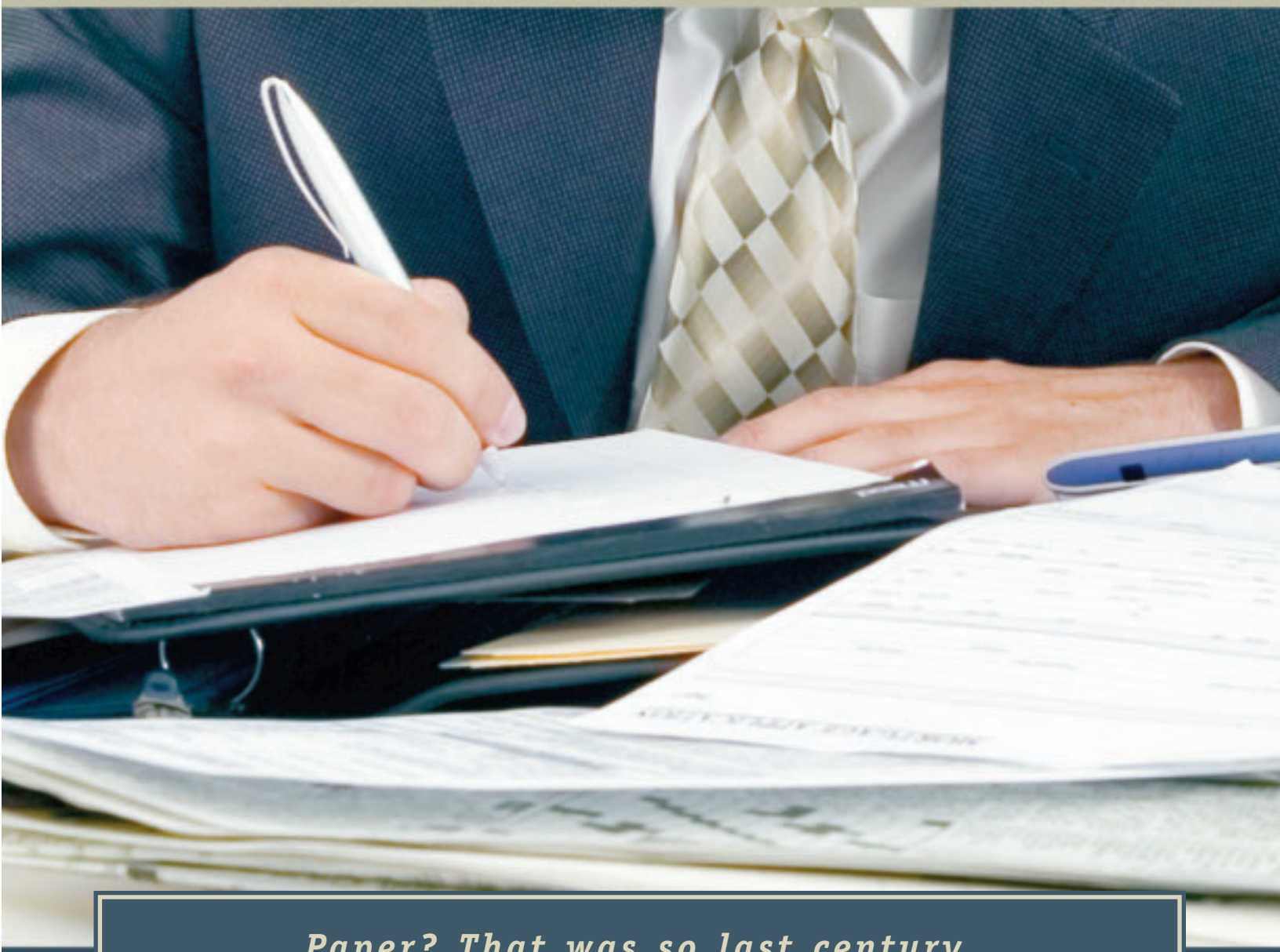
Additionally, the Alabama State Bar has an Appellate Law Section. If you join this section, you will receive updates about changes in the rules of appellate procedure and other significant developments in appellate law in Alabama.

You may find it helpful to attend one of the appellate CLE conferences that are offered annually. The conferences contain a wealth of helpful information about procedural hurdles, new developments in the rules of appellate procedure and tactical ideas for effective appellate advocacy. These are well-attended by our appellate judges, so they offer a unique opportunity to get the court's perspective on a variety of issues. If you are unable to attend, consider ordering the written materials from the program. They are the next best alternative to being there.

Finally, (caution-shameless plug ahead) *Alabama Appellate Watch* is a blog devoted to procedural issues that arise in civil appellate cases in Alabama and in the Eleventh Circuit Court of Appeals. The blog is organized by category so that you may search for recent opinions concerning procedural issues that you may face on appeal *(www.alabamaappellatewatch.com)*.

Pressing beyond the rules of appellate procedure to the more challenging matter of issue selection, lawyers may find themselves between the proverbial rock and the hard place. As the *Pavilion* and *Fogarty* opinions illustrate, lawyers must be mindful of the array of procedural rules that impact issue selection. But those rules often bump up against strategic considerations that typically drive issue selection.

From a strategic perspective, the fundamental rule of issue selection is the fewer, the better. As Judge Godbold wrote in "Twenty Pages and Twenty Minutes," a standard text for appellate lawyers, "It is a lawyer's job to pick with a dispassionate and detached mind the issues that common sense and experience suggest will likely be dispositive. Other issues must be rejected or given short treatment." *The Litigation Manual, Special Problems and Appeals*, featuring Godbold, J., "Twenty Pages and Twenty Minutes," p. 110. Judge Godbold quotes Justice Jackson, "The mind of an appellate judge is habitually receptive to the suggestion that the lower court committed an error. But receptiveness declines as the number of assigned errors increases. Multiplicity hints at a lack of confidence." *Id.* Stated differently in James W.



Paper? That was so last century.

I-Profile

Coming February 2008.

A service of the Alabama State Bar

www.alabar.org

Introducing I-Profile from the Alabama State Bar, the convenient, paperless way to get occupational license renewals, member benefit information, publications, Bar news and more… straight to your e-mail inbox. I-Profile lets you customize the correspondence you want to receive electronically, making it simple to manage the information you need.

So, pack away your letter opener and give paper the pink slip. Because I-Profile is coming soon to a PC near you.

McElhaney's "Twelve Ways to Write a Bad Brief," *Litigation* December 1996, "A brief that raises too many issues lacks focus and direction . . . Even a legal gem that could point the way to the law of the future can get lost when it's buried in doctrinal quiddities." These admonitions are grounded not only in the principal that he who protests too much probably has nothing of substance to protest about, but also in the reality that a judge and his clerk read volumes each day. To win, a lawyer must hone his arguments to make his brief as concise and persuasive as possible.

Conversely, ignoring an issue that is unfavorable to your client in an opening brief in the hope that opposing counsel will overlook the issue is risky business. With rare exceptions, it is better to anticipate issues that your opponent will raise. By presenting an issue first in your opening brief, you have the opportunity to frame the issue in the light most favorable to your client and to take the wind out of your opponent's sails. A judge, seeing for the first time in an appellee's brief an issue that changes the complexion of an appeal, would be wise to question the motive of the appellant in omitting the issue entirely in his opening brief.

So here is the rock–raising every potential issue on appeal may dilute your ability to persuade by dispersing attention from your strongest arguments and giving the impression that you have no confidence in any one argument–you lose. And here is the hard place–if you omit an issue in an opening brief in an effort to maintain focus on your strongest arguments and if your opponent raises the argument in his brief, the appellate court may find that you waived the issue–you lose. The solution–communicate with your client. If you decide that in the big picture, your client will be best served by pursuing only his strongest arguments on appeal, advise your client of your plan and let him know that a finding of waiver is a potential downside to your strategy. A loss in these circumstances is disappointing, but it is a calculated risk that you and your client have accepted.

Of course, waiver occasionally is unintentional. An important issue simply may be overlooked. Often, such an omission stems from the fact that issues at the appellate level shift: issues that were insignificant in the trial court gain importance in appellate proceedings, while issues that held everyone's attention at the trial level sometimes fade, at least relative to the issues that rise to the surface on appeal. Understandably, a lawyer who has lived with a case for years may forget some of the subtleties of the record, having devoted so much attention to the big issues that were crucial to the trial court proceedings.

This is where an appellate lawyer comes in handy. Appellate lawyers are familiar with the nuances of issue reconstruction on appeal and sift through an appellate record with an eye toward adjusting and framing issues for appeal. If your firm does not have a designated appellate attorney and if your client is not in a position to hire one, then ask another litigator in your office to help you review the record. A fresh set of eyes may spot issues that otherwise would be overlooked. If that is not an option, then consider this advice from Judge Ed Smith, a federal appellate judge who taught appellate advocacy at Cumberland Law School for years. When reviewing the record to select issues, work out of order; start at the end of the record and finish at the beginning. Taking the pieces out of context may enable you to

view them in a new light. Finally, if you mistakenly overlook an issue in an opening brief, acknowledge the oversight and address the issue in a reply brief. The appellate court will appreciate your honesty and will treat your client fairly.

At the end of the day, lawyers must give appellate judges confidence that omissions on appeal are deliberate and are in a client's best interest. We can do that only if we are well-versed in the appellate rules (both those in the rules of appellate procedure and those that have become well-settled in case law), and if we consistently demonstrate our understanding of those rules. Justice Lyons rightly places responsibility for allegiance to the rules on the shoulders of attorneys, and Justice Murdock correctly notes that if those rules are expanded in an attempt to anticipate and address every procedural misstep of an attorney, the preventative rules may create a quagmire worse than the original infraction. So choose your way, proceed with informed caution (and a rule book at your side), and make certain that your client is on board. No one likes to lose, and none of us should lose because of a procedural blunder. ▲▼▲

Endnotes

1. There are a number of predecessors in interest to the parties to this appeal. Additionally, a fairly complicated sequence of events led to the summary judgment at issue. For simplicity's sake, I have used the names of the parties in the caption of the court's decision, and I have omitted the procedural events that preceded the summary judgment at issue.
2. So as to incorporate what I consider to be the law of this state at this time and not by way of announcement of a new rule, I would recommend that the Standing Committee on Rules of Appellate Procedure consider the following amendments to Rule 28, *Ala. R. App. P.:*

   Add the following sentence to Rule 28(a)(10):

   Where multiple or alternative grounds are presented to the trial court and the trial court does not expressly limit its consideration of such grounds, the argument must address the merits of each ground before the trial court, including any ground expressly rejected by the trial court, in the opening brief. Issues not argued are waived.

   Add the following sentence to Rule 28(b):

   A waiver by the appellant pursuant to Rule 28(a)(10) with respect to multiple or alternative grounds will be disregarded in the event the appellee argues the merits of such grounds.

   Add the following to Rule 28(c):

   Where a waiver pursuant to Rule 28(a)(10) with respect to multiple or alternative grounds is disregarded pursuant to Rule 28(b) by reason of the appellee's argument of the merits of such grounds, the failure of the appellant to reply to the merits of such grounds shall constitute a waiver of those issues."

   Opinion, p. 63 (Lyons, J., dissenting).

Madeline H. Haikala is a partner with Lightfoot, Franklin & White LLC in Birmingham. She graduated from Williams College and Tulane University School of Law (*magna cum laude*), where she was named to the Order of the Coif. She taught appellate advocacy as an adjunct professor at Cumberland School of Law and is a contributing author to *Lawyer's Cooperative's Eleventh Circuit Appellate Practice Guide.*

Taking Benefits Back: Reimbursement Under ERISA

by David P. Martin

Mrs. Shank was employed stocking shelves at Wal-Mart in a small town in Missouri.[i] As part of her employee benefit package she was covered under a Wal-Mart health plan. Only a few months after her coverage commenced, a semi-trailer truck plowed into the driver's side of her minivan, leaving her incompetent with major brain trauma and the need for round-the-clock medical care. Her health plan paid out over $460,000 in medical bills. Mrs. Shank and her husband filed suit against the trucking company, but it only had $1 million in liability limits. The case was resolved, and after legal fees and expenses were deducted, Mrs. Shank received $417,000, which was put in a special trust to be used for her medical care.

However, in August 2005, Wal-Mart sued the Shanks, seeking reimbursement for over $469,000 in medical costs. The Shank's attorney tried to negotiate a compromise to compensate Wal-Mart for some amount. counsel argued that since Mrs. Shanks wasn't fully compensated for her damages, Wal-Mart proceeded with its lawsuit and won before the district court. On appeal, the 8th circuit affirmed the district court's ruling. The Shank family was obviously decimated by this accident, but now the benefits received were due to be paid back. Mrs. Shank remains in need of medical care, but the burden for that care will now fall completely on governmental programs and taxpayers.

Sooner or later you are likely to experience the anger, frustation or discomfort of a demand for return of employee benefits paid. Perhaps the demand will be made against a client, a firm employee, a friend, a family member, or you, the reader. The demand for reimbursement of benefits has long plagued attorneys litigating personal injury claims. Counsel for plaintiff and defendant alike are frequently faced with concerns over reimbursement claims that often threaten to destroy a settlement. As a result of recent court decisions, attorneys are likely to encounter a reimbursement demand. It is hoped this article will give you a framework in order to provide some answers or guidance.

Reimbursement actions involving employee benefits typically arise under the federal statute known as the Employee Retirement Income Security Act of 1974 (ERISA).[1] Almost all employee benefit policies (which will be called plans in this article) will have reimbursement provisions in them. These plans usually involve health insurance, short-term disability benefits, long-term disability benefits, and life and/or accidental death dismemberment benefits. Many businesses now provide an array of such benefits. Reimbursement or subrogation provisions in an employee benefit plan typically require that if the employee or dependant receives payment from other sources for which benefits have been paid, then the benefits must be repaid to the plan.

For decades, reimbursement provisions have been in such plans, but the provisions never garnered much attention at the time of purchase of the plan. This was due in part to the common law "make whole" rule. Under this rule, benefits did not have to be paid back or reimbursed to the insurance company or plan until the participant or beneficiary was made whole. This rule is still the default rule in the 11th Circuit.[2]

Over time, plans began to include language in an effort to bypass the "made whole" rule. The provisions typically required that the plan was entitled to receive back all benefits paid before the injured plan participants received a penny irrespective of the "made whole" rule. The fairness of such provisions has been debated for some time. Employees argue that premiums were paid and value should be received. They further argue that the reimbursement provisions often turn benefits into an illusory form of coverage. On the other hand, insurers argue they are only trying to keep costs down for everyone.

Unfortunately, the facts of each case often dictate the perceived degree of unfairness. For example, in an accident caused by an individual with low policy limits or in cases with liability issues, occasion for such unfairness is likely. On the other hand, if a healthy recovery is obtained, it is argued that without reimbursement there is a double recovery.

Reimbursement issues also arise in short-term and long-term disability claims. For example, your client became disabled and with your assistance the plan insurer paid long-term disability benefits. You obtained a fee out of the recovery. However, a year later your client obtained a recovery from a retirement disability benefit through a prior employer, and then obtained a Social Security Administration disability benefit. Under an offset provision of the plan, the long-term disability benefit may be retroactively reduced. In fact, the offset may completely eliminate the benefit activating the minimum benefit provision in the plan. The plan now may only pay $100 per month, and this is retroactive!

Now the plan or insurer demands repayment of the overpayment under the reimbursement provision. The client is upset, to say the least. The money has been long since spent to make ends meet, and part went to pay your fee. Now suit is threatened by the plan and long-term disability benefits are diverted from your client to the plan to reduce the reimbursement claim. This scenario is a regular occurrence. Therefore, understanding the framework to deal with reimbursement provisions is very important.

Does ERISA govern the plan?

The first step in evaluating a reimbursement of benefits issue is to determine whether the matter is governed by ERISA. When ERISA governs it preempts state law. Otherwise state law on subrogation will control. While it is safe to say that the majority of policies provided through an employer are governed by ERISA, it is not safe to assume that the plan or policy before you is so governed. It is possible that the policy benefit is exempt from ERISA because it does not have sufficient employer involvement to be considered a plan established or maintained by the employer as part of the employment arrangement. For example, where the employer makes no contribution toward the premiums and the insurer performs all administrative functions, an argument can be made that the employer is not maintaining the plan and therefore the matter is not governed by ERISA.

Principally, five elements must be established before ERISA governs a plan or policy benefit[3]:

1. There must be a plan, fund or program;
2. It must be established or maintained;
3. This must be done by an employer engaged in interstate commerce or in an activity affecting interstate commerce;

4. The purpose of the plan is to provide benefits; and
5. The recipients of the benefits are participants or their beneficiaries as defined by ERISA[4]

According to the 11th Circuit case *Butero v. Royal Maccabees Life Insurance Company,*[5] a key factor is whether the employer established or maintained the plan. The following forms of evidence are evaluated to determine this: 1) the employer's representations and internally distributed documents; 2) the employer's oral representations; 3) the employer's establishment of a fund to pay benefits; 4) the actual payment of benefits; 5) the employer's deliberate failure to correct known perceptions of a plan existence; 6) the reasonable understanding of employee; and 7) the employer's intent.

Additionally, ERISA at 29 U.S.C. § 1003(b) also exempts from its authority government plans, church plans, plans maintained solely to comply with workers' compensation, unemployment or disability insurance laws, plans maintained for non-resident aliens, or excess benefit plans. Church plans may opt into ERISA so investigation as to whether that has occurred may also be necessary.[6]

Third, there is a "safe harbor" to avoid ERISA. The Department of Labor, in exercising its authority to provide regulations to further the statutory purposes, has adopted a safe harbor regulation, which may be found at 29 C.F.R. § 2510.3-1(j). This safe harbor excludes from ERISA's gambit certain group insurance policies. The safe harbor criteria are:

1. No contributions are made by an employer or employee organization;
2. Participation in the program is completely voluntary for employees or members;
3. The sole functions of the employer or employee organization with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees or members, to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer; and
4. The employer or employee organization receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

If an employer fails to satisfy each and every one of these provisions, the safe harbor is closed, and the plan or policy is governed by ERISA. Again, in most instances, benefit plans will fall under ERISA, but it is not safe to assume that will always be the case.

Look at the reimbursement or subrogation language in the plan.

The 11th Circuit made clear, approximately ten years ago in *Cagle v. Bruner,*[7] that unless the ERISA plan language *clearly* precludes the operation of the "make whole" doctrine, the "make whole" rule of federal common law will apply. As will be seen below, this common thread of carefully looking at the plan language is critical in ERISA cases. The 11th Circuit applies the doctrine of *contra proferentem* to construe ambiguous or vague plan language against the drafter.[8] After *Cagle,* one would think that every plan would clearly preclude application of the make whole doctrine but in practice some plans still exist. In any event, the analysis does not end here, even if the contractual provisions are absolutely clear. The next issue to be addressed is whether those contractual provisions may be enforceable in a lawsuit.

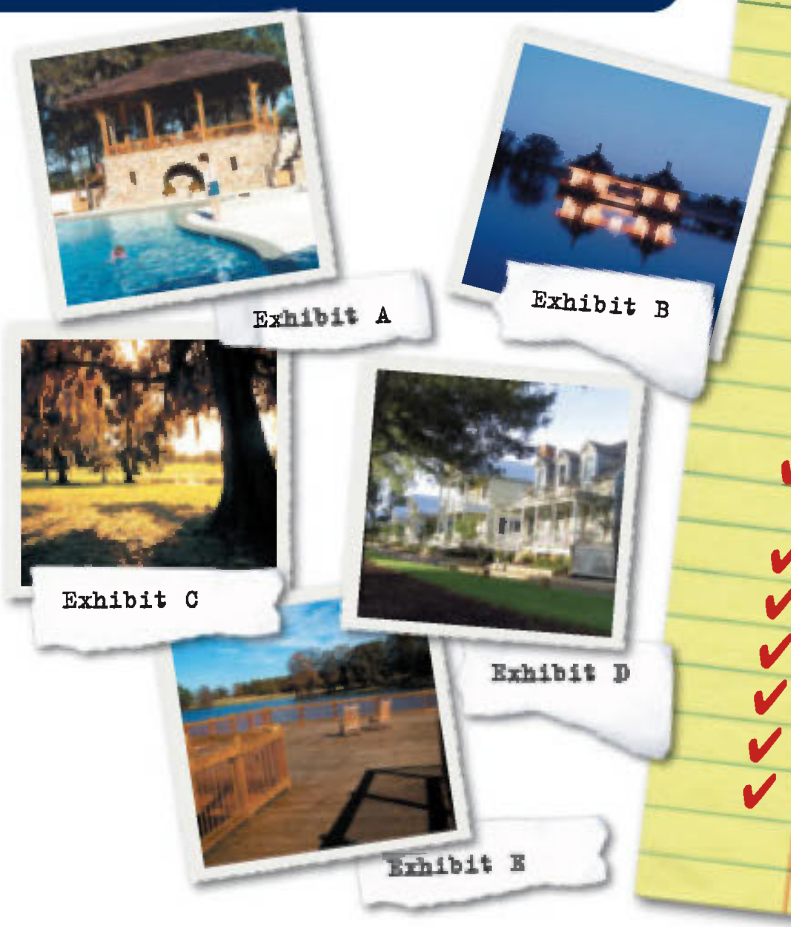
Can the plan sue to recover?

Certainly your employee, friend, family member or client needs to know if they can be sued. Again, it is not safe to assume that suit can be filed. ERISA only lets certain individuals or entities file suit to enforce its provisions. Generally only a participant, beneficiary, fiduciary, state, or the Department of Labor may file suit.[9] Therefore, an insurer must be a fiduciary to file suit, but not every insurer will qualify.

Under 29 U.S.C. § 1002 (21)(A), a person is a fiduciary with respect to a plan if there is exercise of "any discretionary authority or discretionary control respecting management of such plan"… or exercise of any "authority or controlled respecting management or disposition of its assets"… or "discretionary authority or discretionary responsibility and the administration of such plan." Typically, this will mean that an insurer paying benefits out of its own pocket and handling adjustment of the claim is a fiduciary. However, fiduciaries and their responsibilities must be set forth in the plan in writing.[10] Again, careful review of the plan is in order to make certain that the insurer does not disclaim or fail to claim its role as a fiduciary.

If the insurer is indeed a fiduciary, then ERISA allows only a limited form of

Does your life have room for both work and play? Judge for yourself.



Consider the Evidence

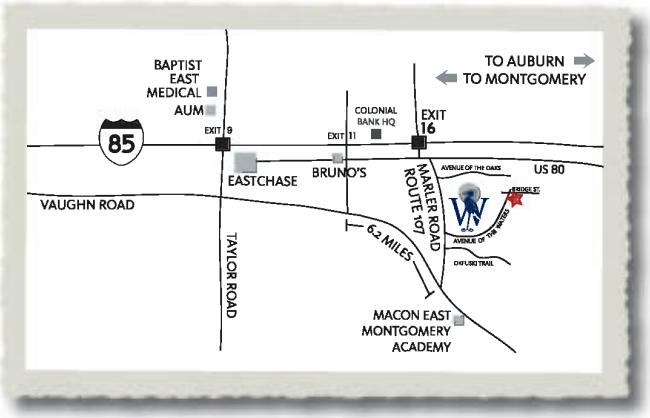
- ✔ Clean, fresh air, with hundreds of acres of parkland
- ✔ Walk to neighborhood square for shops and services, including market, cafe and YMCA
- ✔ Total access to all community lakes, including Montgomery's largest...the 200 acre Lake Cameron
- ✔ World-class, stocked fishing and long-water views
- ✔ Marina with courtesy access to kayaks, canoes, paddle boats, sailboat, pontoon and fishing boats
- ✔ Knology Fiber Optic Direct Connect cable
- ✔ Traditional southern architecture done right, but with all the modern conveniences
- ✔ Family-friendly salt water pool with zero entry and infinity edge
- ✔ Tennis and basketball courts
- ✔ Beach area with Adirondack lounging chairs
- ✔ Outdoor community kitchen with gas grill
- ✔ Wide sidewalks on both sides of the street
- ✔ Home choices for all stages of life and family
- ✔ Natural gas and underground utilities

Discover a place that doesn't just respect your taste. It respects your time.

Feel like you've got it all, except the time to enjoy it? Then you need to examine The Waters. Conveniently located just off I-85 on the east side of Montgomery County, it's the ideal lake property for anyone battling an overfilled calendar.

Not only convenient to access, but also convenient upon arrival thanks to an abundance of amenities steps from your front door. Review the evidence above and you'll agree. There is no place like it in Alabama.

The Waters is just off I-85 on the east side of Montgomery County, just down the road from major medical and shopping facilities.



THE WATERS

334.272.3200

www.thewatersal.com

NEW HOMES FROM THE $200s TO OVER $1 MILLION.

redress: suit may be filed "to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (b) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan."[11] In fact, such claims are only heard in a federal district court according to ERISA § 502(e). It provides that "…the District Courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by … a participant, beneficiary, fiduciary or any person referred to in § 101(f)." However, participants and beneficiaries suing for benefits may file suit in state court or federal court as the same code provision provides, "State Courts of competent jurisdiction and District Courts of the United States shall have concurrent jurisdictions of actions under paragraphs (a)(1)(b)."

The United States Supreme Court in *Great West Life and Annuity Insurance Company v. Knudson*[12] found that a fiduciary may file suit, but not for legal relief. The plan specifically contained a reimbursement provision which gave it a right to any recovery paid to the beneficiary by a third party. The reimbursement provision also imposed personal liability on the participant or beneficiary if there was a failure to reimburse the plan after a recovery was obtained from a third party. In that case, the Knudsons had recovered $656,000 in a settlement against Hyundai and the amount of reimbursement sought by Great West was $411,000. The reimbursement action was deemed a contract action that sought a legal rather than equitable remedy.

The Supreme Court had reason to visit the ERISA reimbursement issue again in *Sereboff v. Mid-Atlantic Medical Services, Inc.*[13] The Sereboffs recovered $750,000 from a tortfeasor, but refused to reimburse their health plan $75,000 in accident related medical bills. The plan fiduciary filed suit and so the Sereboffs agreed to set aside the reimbursement amount of $75,000 pending a final court ruling. The federal district court as well as the 4th Circuit Court of Appeals ruled in favor of Mid-Atlantic. The Supreme Court now affirmed finding that Mid-Atlantic sought reimbursement from "specifically identifiable" funds which were in the possession and control of the Sereboffs. The Supreme Court emphasized that not only must an equitable remedy be sought, but that the basis for the claim must also be equitable.

The Court further discussed the distinction between equitable liens as a matter of restitution and equitable liens involving an agreement or assignment. In instances involving restitution, the plan would need to trace the funds at issue to the fund against which the lien is asserted while an equitable lien by agreement or assignment does not require tracing of the funds. Because the plan provisions identified the fund that was the target of the lien as "all recoveries from a third party," this was an equitable lien by agreement or assignment. Therefore, it was not necessary to trace the funds. The Supreme Court, however, declined to address the issue as to whether the plan's recovery should be compromised by the "make whole" doctrine to the same extent the Sereboffs compromised their personal injury action. This issue had not been raised in the lower courts, so the Supreme Court declined to address the issue. This left in place the *Cagle v. Bruner* decision for the 11th Circuit.

The 11th Circuit provided further guidance regarding reimbursement actions in *Popowski v. Parrot and Blue Cross Blue Shield of South Carolina v. Carillo.*[14] In this opinion which actually involved two distinct cases, the court

looked particularly at the plan language. In *Popowski*, the plan language specifically allowed reimbursement for "benefits paid on his or her behalf out of the recovery made from the third party or insurer." This language was nearly identical to the language in *Sereboff* and so the 11th Circuit had no difficulty allowing a reimbursement action under 29 U.S.C. § 1132(a)(3).

However, in the *Blue Cross* part of the opinion, the court noted that the plan claimed a right to reimbursement "in full, and in first priority, for any medical expenses paid by the plan relating to the injury or illness…", but did not specify that reimbursement was to be made out of any particular fund distinct from the beneficiary's general assets. Therefore there had been no equitable lien by agreement or assignment established. Again, careful attention to the plan language may mean the difference between paying back benefits or not. Even if the plan can't sue or does not sue there are other concerns which should be taken into account.

Can the insurer retaliate in another manner?

The employee or client will also want to know what else may occur if suit is not filed. Some plans contain provisions allowing the insurer to terminate further coverage in the event that the participant or beneficiary does not cooperate in reimbursing the benefits paid. Some have provisions allowing future benefits to be offset until full repayment has occurred. Many participants and beneficiaries may be placed in dire financial straits if they are in the midst of a health crisis and benefits are terminated or offset. While this article will not undertake to analyze such instances, some claimants may be without needed coverage until after appeals with the company are exhausted, suit is filed, and litigation is resolved. It is therefore incumbent upon counsel to disclose the risks involved and the potential for retaliation.

The plan may also be amended to specifically exclude coverage for the employee or client's ailment. ERISA does not provide any substantive rights to health or welfare benefits. The Supreme Court in *Curtiss-Wright Corp. v. Schoonejongen*[15] has stated that plan sponsors "are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans." No cognizable claim will result if the plan sponsor decides to remove from its coverage the very ailment from which your client suffers. The only challenge that may be made is as to the procedure followed in amending the plan.

In the unpublished opinon *Chaudhry v. Neighborhood Health Partnership Inc.,*[16] the 11th Circuit conceded that a claimant's benefits could be reduced or restricted and that such was not an impermissbile form of retalitation. Chaudhry had previously obtained a ruling in her favor regarding the provision of plan benefits. The plan's response was to amend the plan to cut back such benefits. Retaliation in the form of restricting particular benefits was permissible in this case.

In the back of the counsel's mind, there may also be some concern as to whether an attorney holding funds for a client may be sued as some sort of fiduciary. This would arise in the context in which counsel receives the client's recovery and holds the funds in trust. It has been argued that this converts the attorney to a trustee with fiduciary duties owed to the plan and the insurer seeking reimbursement. However, in *Chapman v. Klemick,* 3 F.3d 1508 (11th Cir. 1993), the court held that in spite of the fact that counsel held certain funds in trust for his client, it did not turn counsel into an ERISA fiduciary.

ASB Lawyer Referral Service

The Alabama State Bar Lawyer Referral Service can provide you with an excellent means of earning a living, so it is hard to believe that only three percent of Alabama attorneys participate in this service! LRS wants you to consider joining.

The Lawyer Referral Service is not a pro bono legal service. Attorneys agree to charge no more than $25 for an initial consultation, not to exceed 30 minutes. If, after the consultation, the attorney decides to accept the case, he or she may then charge his or her normal fees.

In addition to earning a fee for your service, the greater reward is that you will be helping your fellow citizens. Most referral clients have never contacted a lawyer before. Your counseling may be all that is needed, or you may offer further services. No matter what the outcome of the initial consultation, the next time they or their friends or family need an attorney, they will come to you.

For more information about the LRS, contact the state bar at (800) 354-6154, letting the receptionist know that you are an attorney interested in becoming a member of the Lawyer Referral Service. Annual fees are $100, and each member must provide proof of professional liability insurance.

Particularly the Court noted, "an attorney has an ethical obligation to his or her client that does not admit of competing allegiances." *Id.* at 1511. The *Florida Rules of Professional Conduct* were cited in support of this holding. It would seem likely that under the *Alabama Rules of Professional Conduct* a similar result would be obtained given the same duty of loyalty owed to a client.

Conclusion–any other solutions?

A number of defenses are obviously available for employees or clients to consider raising. The "make whole" rule may yet be raised as a defense. Perhaps the issue of whether the relief sought in a reimbursement suit is "appropriate" equitable relief may be raised. Of course, contractual arguments about ambiguity, vagueness and *contra proferentem* abound.

A bad experience for an employee may cause a law firm administrator to seek plans or policies for employees that do not contain reimbursement provisions that abrogate the "make whole" rule, but it may be difficult or impossible to find such plans or policies. Fortunately, not all insurers are as aggressive as those appearing in the above cases, and many seek to resolve claims. Perhaps law firm administrators can take into account those appearing more frequently in litigation.

It is also possible for state law to be changed to address that issue. A state statute that is "specifically directed toward" the insurance industry is not preempted by ERISA. The ERISA savings clause found at 29 U.S.C. § 1144(b)(2)(A) does not preempt state laws specifically directed toward insurance agencies. The Supreme Court in *Kentucky Association Plans Inc. v. Miller, Commissioner of the Kentucky Department of Insurance,* 538 U.S. 329 (2003) interpreted the savings clause and found that as long as the state law is "specifically directed toward entities engaged in insurance"…and second "…the state law must substantially affect the risk pooling arrangement between the insurer and the insured," there may be room for states to control some of the issues arising in reimbursement claims.

Lastly, our legislators in Washington could be called upon to amend the ERISA statute. In the meantime, it will be up to our federal judges to further elaborate on reimbursement matters pertaining to the statute we affectionately call ERISA. ▲▼▲

Endnotes

[1] The facts for this introduction have been taken from an article written by Vanessa Fuhrmans, *Wall Street Journal*, November 20, 2007 at page A1.
[1] 29 U.S.C. § 1001 *et seq.*
[1] *See, Cagle v. Bruner*, 112 F. 3d 1510 (11th Cir. 1997)
[1] 29 U.S.C. § 1003(a) and 29 U.S.C. § 1144(a)
[1] Found at 29 U.S.C. § 1002 (7) and (8)
[1] 174 F.3d 1207, 1213 (11th Cir. 1999)
[1] *See, American Ass'n of Christian Schools Voluntary Employees Beneficiary Ass'n Welfare Plan Trust by Janney v. U.S.,* 850 F.2d 1510, 1516-7 (11th Cir. 1988). Only the plan administrator can make this election.
[1] 112 F.3d 1510 (11th Cir. 1997)
[1] *See, Lee v. Blue Cross & Blue Shield of Ala.,* 10 F.3d 1547 (11th Cir. 1994), *Florence Nightingale Nursing Services v. Blue Cross & Blue Shield of Ala.* 41 F.3d 1476 (11th Cir. 1995), and *Jones v. American General Life & Accident Insurance Co.* 370 F.3d 1065 (11th Cir. 2004). There are pending cases before the 11th Circuit where this might be changed.
[1] 29 U.S.C. § 1132(a)
[1] 29 U.S.C. §1102(a)
[1] 29 U.S.C. §1132(a)(3)
[1] 534 U.S. 204 (2002)
[1] 126 S. Ct. 1869 (2006)
[1] 461 F.3d 1367 (11th Cir. 2006)
[1] 514 U.S. 73, 78 (1995)
[1] 2006 U.S. App. LEXIS 10546 (11th Cir. 2006)

David P. Martin
David P. Martin is the principal member of David P. Martin LLC. His statewide practice is located in Northport. He received his law degree from the University of Alabama School of Law in 1992 and has practiced in Tuscaloosa County since then.

WALTER MCGOWIN:
A LAWYER WINNING THE GAME OF SETTING PRIORITIES IN LIFE

by Charles F. Carr

For many years, I practiced law in Birmingham. Whenever I had a really nasty case in Mobile, I would associate Davis Carr. In some strange way, having someone in my corner with the same last name made me feel more protected. I got accustomed to Davis calling me "Cuz."

We couldn't be more different. Davis was short and I was tall. Davis was Jim Taylor of the Green Bay Packers. I was Paul Hornung (with much less talent). Davis never met a fight he didn't like. I never won a fight by engaging in a brawl. We made quite a team.

Shortly after I opened up a branch office and moved to the Mobile area, Davis left his successful defense practice with Helen Alford, Jay McDonald and others and moved to Chicago. Ultimately, he was in charge of defusing the worst of the worst cases in America for one of the largest insurance companies in the world. He had a direct pipeline to the president of this insurance company. He could make the decision to try or settle cases where millions and millions of dollars were at stake.

Davis knew that he would need help to have a complete understanding of so many complex cases. He developed a pilot program in which he surrounded himself with litigators from around the country—a small band of ten to 12 attorneys that he could trust. He called them his "SWAT Team." None were Jim Taylors. All were Paul Hornungs. These lawyers were charged with the responsibility of evaluating these time bombs early and figuring out a way to defuse them or try them successfully.

Oddly enough, when I saw the list of SWAT lawyers, there was another name in Alabama and one that I didn't recognize, Walter McGowan. I looked up Walter in Martindale. It turned out he practiced with Fred Gray in Tuskegee. Who hasn't heard of Fred Gray? I had not heard of Walter McGowan.

Davis was the victim of cancer a couple of years ago. It was one of those terrible moments in my life. A close friend, younger than I, doing something magical and absolutely loving life was struck down before reaching the age of 50. After his death, I decided to find out more about that band of warriors who surrounded Davis. Walter is certainly the most unique.

I don't want to sound too dramatic, but I would be hard pressed to name any other individual who impressed me more in one day than Walter McGowan. He knew ahead of time that I was there to talk to him and he knew the subject of conversation was going to be Walter McGowan. If he was such a good lawyer, wouldn't he want to talk about all the big cases he had won? Wouldn't there be newspaper clippings about big verdicts on his walls? I couldn't get him to talk about his cases and there were no reminders of big verdicts or settlements on his walls.

We spent most of the day talking about his beautiful family, his church and what it meant for him to coach young baseball players in tournaments all over the country. He has coached a baseball team in the Tuskegee area for over 12 years. When I left Walter that day, I was convinced that he would much rather make an impression on those young kids than on lawyers or judges.

I came back and asked Joe Driver in our appellate department to take a few minutes and let me know what showed up on various legal databases when you type in the name Walter McGowan. Joe came back with one question and several paragraphs. His question: "Who is this guy?" Joe couldn't believe what he found.

Among the appellate decisions which referred to Walter was a case which had to be one of the largest products liability verdicts involving a single plaintiff ever rendered by a jury. The case was an appeal of a jury verdict for the client of Walter and his co-attorneys in the amount of $122,000,000. Count the zeros…One Hundred Twenty-Two Million Dollars.

You would think that a plaintiff's lawyer with that kind of verdict under his belt would be a real showboat. If he ever went to New York, for example, he would ride in limousines and dance the night away at some of the fanciest clubs in town.

Recently, I spoke to Lynn Jinks, a good friend from college in the 1960s and himself a very successful plaintiffs' attorney in Union Springs. Lynn was a co-attorney with Walter in that $122 million-verdict mentioned above. Lynn recalled a time when he, Walter and others traveled to New York for depositions. Lynn, certainly no partier himself, took advantage of the good times in New York. He and others stayed up late enjoying the good times and were not their most alert selves at the depositions the following day. Every night, Walter had gone to bed early and was in church bright and early the following morning. No one is a more devout member of the Catholic church than Walter McGowan.

If you ask the citizens of Tuskegee if they know Walter, most will tell you he is one of the best youth baseball coaches in America. If you try to talk to Walter about his successes, he wants to talk about the kids he has coached, his love for his family and his love for his Church. When I sat across from his desk in Tuskegee, I have never felt more comfortable with someone I had never met face to face. It's hard to explain, but you get the feeling that Davis

Lowri and Walter McGowan (seated), with their children Lizzie and Walter-John

Carr sensed the same thing when he would sing Walter's praises. I can just imagine what a jury must feel when Walter tells them something. In a nutshell, the jury believes him.

Walter was blessed with model parents. His mother and father worked for the Veteran's Administration Hospital in Tuskegee for over 30 years each. When I asked what it was like growing up, Walter said:

> "I did not grow up in a mansion, but I grew up with two loving parents who taught me the ethics of hard work at a very early age. They gave me all the opportunities that I could ask for and they went without in order to make sure that I had the things I needed as I went through high school and college. We had food on the table and they got paid every two weeks at the Veterans Administration Hospital, and after the bills were paid there was zero in the account."

Walter is married to Lowri Howard. Walter makes it clear that Lowri has been the stabilizing backbone of the McGowan family. Lowri and Walter have two children, Walter-John who is 19 and Lizzie who is 16. Walter-John followed in Walter's footsteps finishing the last two years of his high school at St. Andrews Sewanee School in Sewanee, Tennessee.

Walter is also an active member in various bar activities. He is presently a member of the ASB Board of Bar Commissioners and is a member of the Board of Trustees of the Alabama Law Foundation. Recently he was selected for membership in the American College of Trial Lawyers. Walter is the first African-American to be a member of the American Board of Trial Advocates.

Right before I left Walter's office, I asked him about how he balanced the things that meant so much in life. What he said is a good summary of my impression of Walter McGowan:

> "Church is first, without a doubt. I am Catholic and a very devout Catholic. Second would be family and third is going to be that baseball team. Because those kids rely on 'Coach' and that is their vacation every summer. For most of them, this is the only vacation they get every summer and to see the kids mature and to move on has just been tremendous for me. Charles, if I am in Chicago on a deposition or whatever, I want to schedule it where I am back by game day. They expect me to be back and I need to be back. So, I have always done that for the last 12 summers. Those kids are going to come first between April and July."

Charles F. Carr was a founder of the Carr Allison firm which has offices in Alabama, Florida and Mississippi. He practiced law in Birmingham and Mobile and now is in the Carr Allison Dothan office and resides in his native city of Enterprise.

First Recipients of Bar's Scholarships Attend National Judicial College

by R. Thomas Warburton

In October, the first group of Alabama judges to receive grants from the state bar's Judicial Scholarship Fund attended the General Jurisdiction Course presented at the National Judicial College in Reno, Nevada. The judges spent long days in the classroom attending sessions focusing on general substantive law, formal discussion groups on the topics covered and additional informal but educational time with judges from other states exchanging ideas on the efficient administration of justice. Circuit Judge Scott Donaldson, a scholarship recipient and attendee, described the experience:

> "The National Judicial College experience was extremely helpful to me as a judge in many ways. We had extensive instruction in substantive law subjects such as evidence, search and seizure, and alternative sentencing programs. We exchanged ideas with judges from across the nation about courtroom management and protocols. And perhaps just as importantly, we spent two weeks thinking and studying about our roles as judges and how we can improve our service to the people we serve here in our own jurisdictions."

Alabama judges attend premier training program at the National Judicial College in Reno

Additional judges in attendance at the General Jurisdiction Course whose attendance was funded by the bar were Etowah County Circuit Judge Clark Hall, Coffee County Circuit Judge Jeffery Kelly, Mobile County District Judge George Hardesty, Mobile County Circuit Judge Sara Stewart, and Monroe County District Judge George Elbrecht. Jefferson County District Judge Norm Winston, also attending the college in October, noted that, "Alabama had a very strong contingent of judges in attendance, many of whom were selected as presenters for the session-ending projects before the collective class and faculty. The state bar was very generous along with all who helped fund this valuable educational experience."

The Judicial Scholarship Fund was established by the bar in 2006 on the recommendation of its Judicial Liaison Committee, which recognized a shortfall in funding for judicial education causing Alabama judges to be unable to attend the Judicial College. Through a fundraising campaign undertaken by the committee in late 2006 and early 2007, members of the bar contributed close to $100,000 to fund this worthy cause. Additional recipients of bar scholarships are slated to attend the General Jurisdiction program in April and October 2008.

Calhoun County Circuit Judge Malcolm Street summed up the judiciary's thoughts on the program:

> "I was privileged to go to the National Judicial College in the late 1970s, and it was an invaluable experience being taught alongside other judges in a team format. Sadly, Alabama judges in the recent past have not been able to attend this program because of financial constraints. I salute the bar for being so forthcoming with its financial resources. We are very thankful." ▲▼▲

This article was submitted on behalf of the Alabama State Bar Judicial Liaison Committee by R. Thomas Warburton. He practices in the Birmingham office of Bradley Arant Rose & White.

ALABAMA STATE BAR

Fall 2007 Admittees

(Photograph by FOUTS COMMERCIAL PHOTOGRAPHY, Montgomery, photofouts@aol.com)

STATISTICS OF INTEREST

JULY 2007 EXAM

Number sitting for exam	521
Number certified to Supreme Court of Alabama	374
Certification rate* percent	71.8
Certification Percentages	
University of Alabama School of Law percent	97.3
Birmingham School of Law percent	34.0
Cumberland School of Law percent	93.2
Jones School of Law percent	83.6
Miles College of Law percent	15.0

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

For full exam statistics for the July 2007 exam, go to *www.alabar.org*, click on "Members" and then check out the "Admissions" section.

Alabama State Bar Fall 2007 Admittees

Abernathy, Meredith Ann
Abernethy, Lucile Scrivner
Adams, Windsor Salet
Akins, Holli Beth
Alexander, Jacquelyn Lenore
Allday, Brandi Edwards
Allen, Amyrtle Montesia
Anderson, Keith Steven
Anderson, **IV** Lewis Conrad
Andrews, William Reeves
Arciniegas, Daniel Eduardo
Arendall, Gwendolyn Katherine
Armstrong, Nicholas William
Ashcraft, Aaron Douglas
Atchison, Thomas Clay
Bagley, Lee Ellen
Baker, Joshua Benjamin
Bart, Kimberly Ann
Baya, Ryan Emery
Bazzell, Christopher Mark
Beckett, Amanda McGregor
Beers, Rebecca Ashley
Bell, Erin Courtney
Bell, Kimberly Leona
Benson, Michael Brent
Bentley, Kristin Jordan
Berryhill, Crystal McNair
Bethay, **III** John Douglas
Blackwood, Keith Marvin
Boiles, **III** Damon Jay
Boozer, Erica Kathleen
Bowman, Mary-Ellen
Brasher, Andrew Lynn
Bridgers, Stephen Christopher
Brimer, Adam Gordon
Bromberg, **Jr.** Charles Clayton
Brown, Paula Gay Bennett
Brown, William Brett
Buck, Rachel Catherine
Burgreen, Zachary Layne
Busby, Patrick Ryan
Buskey, Brandon Jerel
Bussey, Frederick Tristan
Butler, Mary-Coleman Mayberry
Butts, Casey Lampkin
Butts, James Arthur
Byrd, Dustin Ryan
Byrne, **Jr.** Bradley Ellis
Cade, LaResha Dawn
Calhoun, Chrissy Dooley
Calhoun, **Jr.** Richard Fletcher
Carey, Catharine Alice
Carroll, Ginger Lynn
Carter, Kimberly Nicole
Case, Allison Michelle
Cassady, Kathryn Elizabeth
Chambers, Joe Mitchell
Chamblee, Brandy Leigh
Chang, Max Ming
Chatterton, Marcus Richard
Clayton, Jerry Adam
Clements, **Jr.** Fred Lee
Conger, John Matthews
Conley, Rochelle Alicia
Correro, Sarah Josephine
Craft, John Charles
Craine, Mary Joanna
Crane, Robert Jason
Cromey, Jason Hendly
Crosby, Catherine Leigh
Cross, Sarah Jean
Cunningham, **Jr.** William Randle
Curtis, Catherine Anne
Daughtry, Bricker Scott
Davidson, Christopher Micheal
Davis, Lauren Elizabeth
Davis, Melissa
DeAngelo, Jonathan James
Dees, Stephen Parrish
Denham, Rebecca Pruett
Deshler, James Edward
Dial, Jason Bonner
Dike, Annie Jo
Dodson, **III** Jack Robinson
Doughty, Jennifer Allen
Dowben, Minerva Camarillo
Dredden, Courtney Renee
Duckwall, Dorothy Louisa
Duley, Morgan Thomas
Dumas, Roy Clay
Durrett, Jamie Kaye
Dye, Victoria Laine
Elledge, Alan Ray
Eng, Regina Nelson
Eubank, James Bringhurst
Ezell, Oliver Hamilton
Fagan, LaShan
Farmer, Hamilton Neal
Feeley, Robert Andrew
Festa, Jonathan Gerald
Fleming, Jessica Lauren
Fleming, **III** William Mellor Bains
Flowers, Logan Daniel
Forman, Mary Ross
Forrester, Justin Keith
Foster, Greg William
Fox, Patricia Elizabeth R.
Franco, Robin Amy
Friedman, Samuel David
Fussell, Nyla Dionne
Gallagher, Timothy Justin Flinn
Gallant, Rebecca Lynn
Gandy, Denise Nicole
Garmon, Trenton Rogers
Garrett, Alice Elizabeth
Garrett, **III** James WIllis
Garrison, Kevin Ray
Garton, Allison Jo
Gates, Benjamin Patrick
Gerogiannis, Lauren Ainsley
Giles, Jeremiah Shane
Godwin, Michael Otts
Goodman, Lauren Gillespie
Gossman, Richelle Hendrix
Govan, **Jr.** Thomas Ramsey
Gowan, Jonathan Seth
Gray, **II** John William
Green, **III** Braxton Floyd
Greene, Charles Thomas
Gregg, **Jr.** Clifford Terry
Groshart, Sarah Elisabeth
Guthrie, Karen Sue
Hagler, **Jr.** Robert Lee
Haithcock, **III** James Hasting
Hale, Justin Isaac
Hallford, Nathaniel John
Hamilton, Kent Dale
Hammonds, Trina
Hankey, Kyle Conrad
Harmon, Kelly Wayne
Harp, Hoyt Gregory
Harper, Laura Watts
Harris, Steven Aleck
Hart, Kaylin Lee
Harvey, Dara Adrienne
Hassell, **Jr.** Michael Lee
Havron, Kimberly Barr
Hawkins, Matthew Anthony
Haydon, Margaret Louise
Hays, **Jr.** Patrick Lamont
Helix, Gabrielle Nicole
Henson, John Harwell
Herrera, Carla Maria
Heslip, Erin Elaine
Higgins, **Jr.** Lewis Michael
Hill, Kathryn Jean
Hobbs, Kristi Marie
Hocutt, April Halstead
Hollett, Brett Harrison
Holt, Jonathan Tyler
Hooten, Bret Lee
Hoven, Thomas Brian
Howard, John Thomas
Howell, Christopher Darby
Hudson, **III** John Oliver
Isbell, Joseph Pettis
Jackson, Forrest Earl
Jackson, Jett Taylor
Jackson, Matthew Thomas
Jackson, Travis Stuart
Jacob, Alicia Marie
Jarrell, Benjamin Hamilton
Johnson, Janay Marriel
Jones, Allison Medlock
Jones, Billy Jason
Jones, Thomas Matthew
Jones, Trevor Thomas
Kaplan, Bryan Scott
Katsimpalis, Alexandra Christine
Kennedy, David Graham
Kerr, **Jr.** Joseph Lofton
Kesling, Joshua Gene
Kiser, Jacob Andrew
Kline, Miller Erin Leftwich
Kubat, Jessica Faye
Kuykendall, Nathaniel Floyd
Kyle, Joshua Seth
Lamar, Marcia Elaine
Landrum, Mary Allison
Laurie, Rachel Elizabeth
Layson, Jarret Allen
Leggett, Lee Simmons
Lenski, Angela Denise
Leonard, Brian Keith
Littrell, Richard Tidwell
Locklin, Oscar James
Loftin, Jared Heath
Long, **Jr.** Franklin Howard
Lucas, Nathan Howard
Lydick, Christopher Sinclair

Lyles, Kathryn Walker
Lynn, Joseph Paul
Major, Wendell Warren
Maples, Jonathan Ross
Mark, Ladd Wallace
Marks, Kate Frances
Marsh, John Warren
Marshall, Marcus Sidney
Mason, Rachel Abigail
Massey, Javan Patton
Mastin, John Michael
Mathews, Ellen Teresa
Matthews, Robert Christopher
Mauldin, Michelle DeLaine W.
Maynor, Jeffrey Dale
Mays, Stephanie Houston
McBrayer, **Jr.** Charles Vance
McCarthy, Brian Michael
McClain, Rita Panter
McCloud, Stewart Wilcox
McCormick, Gregg Mitchel
McEwen, Terry Cameron
McGee, Andrew Logan
McKnight, Amanda Jane
McLeod, **Jr.** Thomas Alex
McMillan, **IV** Edward Leigh
McNees, James Andrew
McTear, Sean Michael
Mede, Pierre Antoine
Merritt, Wade Cooper
Miller, Edward Aubert Roberts
Mitchell, Robert Latimer
Mooney, Meredith Michelle
Morgan, Fernando Antonio
Moss, William Walker
Mosteller, Clifton Charles
Motlow, **III** William Dudley
Munoz, Mychal Alaina
Murphy, Richard Michael
Nail, Jefferson Kegan
Neese, Mary Blanche B.
Nelson, Monica Teresa
Newton, Seth Autrey
Nichols, **III** Robert Kenneth
Nix, Jess Randall
Noles, Judith Alyssa
Norton, Robert Ernest
Nutter, Roben Megahee Hunt
Odom, William Alexander
Odum, **Jr.** William Horace
Offord, **Jr.** Timothy Alan
Oliver, Laura Bennett
Owens, David Alford
Owens, Marquis Danyel
Parchman, **III** Thomas Wineford
Pate, Robert Ashby
Patterson, Douglas Lee
Paulk, **II** William Thomas
Pawlak, Andrea Lynn
Pearman, Charlie Ronald
Perkins, Kimberly Michelle
Perry, David Adams
Phelps, Lauren Sutton
Piazza, John Daniel
Pickett, Kandice Eboni
Pierce, Troy Blakney
Pilcher, Chad Alan
Pitts, Daniel Lassiter Green
Pool, Mary Ellen Conner
Pope, Kathryn Osburne
Powell, David Lewis
Powell, Jeffrey Thomas
Price, Jada Sarah Kate
Price, **IV** Oscar Monfort
Pruitt, **IV** William Thomas
Pryor, LaShaun Reeves
Ransom, Kelly Elizabeth
Ratliff, Jamie Guy
Ravi, Sreekanth Babu
Ray-Kirby, Holly Nicole
Rayfield, Cindy Annette
Reid, Jennifer Hadrick
Riccio, Robert Joseph
Richerson, Brantley Trest
Richie, John Thomas
Riddle, Robert Edwin
Robinson, Brandon Newman
Roman, Raphael John
Rose, **Jr.** Archer Riddick Randall
Rowell, Andriette Wright
Ryan, Aaron Charles
Ryan, Meaghan Elizabeth
Rynearson, Amy Leah
Sanders, Christopher Edward
Sanders, Jessica Kelley
Sawyer, **III** John Culpepper
Schmidt, Christopher Brian
Searcy-Vaneman, Anne Denise
Sears, **IV** Walter James
Sees, Elizabeth Anne
Semmes, Marcus Andrew
Shah, Jay Vinod
Sheehan, William Allen
Shunnara, Tanya Kassis
Sigler, David Mallon
Silinsky, Jessica Housch
Singletary, Mary Leah
Skipper, Melissa Ann
Smith, Bret Reynolds
Smith, David Cameron
Smith, **Jr.** Ernest Glenn
Smith, Harold Lee
Smith, Lacey Daughdrill
Smith, Meredith Therese
Smith, Tammy Melissa
Sparks, Nicholas Bernell
Stabler, Rachel Grace
Standerfer, Patsy Fairchild
Steele, Jason Kyle
Stewart, Brian Edgar
Stewart, James Radcliff
Stewart, **Jr.** Otis
Stewart, Stephanie Michelle
Stewart, Walker Steven
Sturgis, Tyrus Bernard
Swartzfager, **II** Philip Martin
Sweet, Daniel Parker
Swindal, John Bishop
Talley, Brett Joseph
Taylor, Katherine Leigh
Taylor, Matthew Reeves
Terrell, Richard Trenton
Tewalt, Michael Todd
Thomas, Ashley Brooke
Thomas, John Tyler
Thomason, Kimberly Louise
Thompson, Adrianne Joyce
Thompson, Joshua Stephen
Thompson, Katie Bowling
Thompson, Rayna Jeannette
Thompson, Robert Mathews
Thomson, Andrew John
Tidwell, Casey Jo
Tinney, John Clay
Todd, Tracie Altrovise
Tolbird, Melisa Deanne
Tompkins, Jennifer Joyce
Turner, Kevin Lyle
Turner, Mary Elizabeth
Vanderveer, Nathan Craig
Vaughn, Carrie Elizabeth
Vaughn, **II** Melvin Arthur
Vega, Jose David
Vickery, Garrick Lane
Vinci, Serena Ann Baugh
Vines, Brian Michael
Walker, Jeffrey Clarke
Walker, Jeremy Shane
Walker, Keith Michael
Walker, Michael Brent
Walker, Steven Tracy
Wall, Christina Elizabeth
Waller, Veranita Joette
Walthall, James Elliott
Warren, Jennis Faulkner
Watts, Kenneth Eric
Webb, Jaime Louise
Weed, Andrea Lynn
Welch, Jonathan Martin
Wells, Jonathan Glen
Wells, Vernon Walker
West, Laura Ann
Wetherbee, Kathryn Elizabeth
White, Danielle Marie
White, Rachael Lynn
White-Boler, LaShunta Monae
Wilhite, Stacy Gwyn
Wilkes, Samuel Kenneth
Williams, **IV** Arthur Grady
Williams, Derrick Vincent
Williams, Kelcey Louis
Williams, Kristine Kendra
Williams, Nancy Kathleen
Williams, Ronald D. Scott
Wilson, Jason Thomas
Wilson, Jason Keith
Winstead, Scott Tracy
Wood, Emily Ann
Wright, Rebecca Mae
Yow, II Charles Edwin
Young, Jann Ellen
Zarzour, Peyton Neal
Zeidan, Melody Marie

LAWYERS IN THE FAMILY

Seth Newton (2007),
Bill Newton (1984)
Admittee and uncle

Oliver Hamilton Ezell (2007),
E. Mark Ezell (1966)
Admittee and cousin

Richard Tidwell Littrell (2007),
Timothy Dean Littrell (1974)
Admittee and father

Mychal Alaina Munoz (2007),
Michael John Petersen (1999)
Admittee and father

Oscar M. Price, IV (2007),
Oscar M. Price, III (1980)
Admittee and father

John Warren Marsh (2007),
M. Dale Marsh (1974)
Admittee and father

Dustin Ryan Byrd (2007),
M. Hampton Baxley (2001)
Admittee and brother-in-law

John Oliver Hudson, III (2007),
Nyya Parson-Hudson (2001)
Admittee and wife

Elliott Walthall (2007),
Howard Walthall, Sr. (1967)
Admittee and father

LAWYERS IN THE FAMILY

Erin Courtney Bell (2007),
Richard Warren Bell (1972)
Admittee and father

Pierre A. Mede (2007),
Lonita R. Walker-Mede (2006)
Admittee and wife

Allen Sheehan (2007),
Winston Sheehan (1972)
Admittee and father

Michael Otts Godwin (2007), Michael D. Godwin (1983), Lee M. Otts (1949)
Admittee, father and grandfather

Nate Van Der Veer (2007), Rachel Buck (2007), Frank Buck (1975)
Admittee/fiancé, Admittee/fiancée and father-in-law-to-be/father

James B. Eubank (2007),
Robert B. Eubank (1973)
Admittee and father

Thomas Matthew Jones (2007),
Thomas R. Jones, Jr. (1980)
Admittee and father

William Thomas Paulk (2007),
Gerald Paulk (1979)
Admittee and father

LAWYERS IN THE FAMILY

Ginger Lynn Carroll (2007),
David L. Carroll (1980)
Admittee and father

Kathryn Cassady (2007),
William E. Cassady (1978)
Admittee and father

W. James Sears, IV (2007),
Walter J. Sears, III (1976)
Admittee and father

Jeffrey T. Powell (2007), Jennifer L. Powell (2006),
Jerry W. Powell (1975)
Admittee, sister and father

Samuel Kenneth Wilkes (2007), Harry Kenneth Wilkes (1974),
Ralph Nicolson Hobbs (1969)
Admittee, father and uncle

John M. Conger (2007),
Hon. Paul S. Conger, Jr. (1971)
Admittee and father

Christina Elizabeth Wall (2007),
John F. Wall, III (1984)
Admittee and father

Troy Blakney Pierce (2007),
Roger Pierce (1985)
Admittee and father

LAWYERS IN THE FAMILY

Steven Harris (2007),
Roger Kirby (1976)
Admittee and father-in-law

Chrissy Dooley-Calhoun (2007),
Debra H. Poole (2000)
Admittee and mother-in-law

William Alexander Odom (2007),
Harold L. Odom (1975)
Admittee and father

William Dudley Motlow, III (2007),
William Dudley Motlow, Jr. (1980), Laura Motlow Betts (2000)
Admittee, father and cousin

James Willis Garrett, III (2007),
Alexandra Katsimpalis Garrett (2007), Jim Garrett (1971)
Husband and wife co-admittees and father/father-in-law

Ashby Pate (2007), Gordon Pate (1974), Lenora Pate (1985),
Steven Brickman (1979)
Admittee, father, mother and stepfather

Frederick Tristan Bussey (2007), Fred W. Killion, Jr. (1959),
Fred W. Killion, III (1981)
Admittee, grandfather and uncle

LAWYERS IN THE FAMILY

Andrea Lynn Weed (2007),
Pamela B. Weed (2004)
Admittee and mother

Greg W. Foster (2007),
Julie Schilleci Foster (2003)
Admittee and wife

Mary Leah Singletary (2007),
Rodney Miller (2005)
Admittee and fiancé

Travis Stuart Jackson (2007), Billy W. Jackson (1975),
Donald G. Jackson (1987)
Admittee, father and uncle

Marcus Andrew Semmes (2007), Thomas McAllister Semmes (1977),
Sara Elizabeth Cook Semmes (1992), Francis Bolger Semmes (1981)
Admittee, father, mother and uncle

Robert Lee Hagler, Jr. (2007),
Renee Blackmon-Hagler (1987)
Admittee and wife

R. Michael Murphy (2007),
J. Mark Murphy (1979)
Admittee and father

John M. Mastin (2007),
Michael D. Mastin (1986)
Admittee and father

LAWYERS IN THE FAMILY

Derrick V. Williams (2007), Ronnie L. Williams (1980), Reginald L. Williams (2005)
Admittee, father and brother

W.M. Bains Fleming, III (2007), Kelli Carpenter Fleming (2006), B. Clark Carpenter (1974)
Admittee, wife and father-in-law

John Clay Tinney (2007), John A. Tinney (1974), Claire Tinney Jones (1998)
Admittee, father and sister

Brandon N. Robinson (2007), Charles G. Robinson (1972), Grace Robinson Murphy (2004), Daniel F. Murphy (2006)
Admittee, father, sister and brother-in-law

Jerry Adam Clayton (2007), Jerry Mack Clayton (1979)
Admittee and father

Daniel Lassiter Greene Pitts (2007), J. Randall Pitts, Jr. (2003)
Admittee and brother

Parker Sweet (2007), Jim Sweet (1980)
Admittee and father

LAWYERS IN THE FAMILY

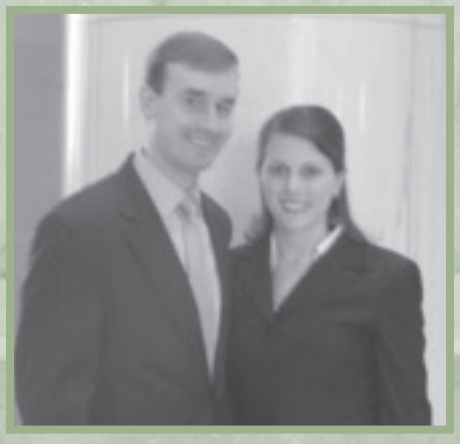
Bradley E. Byrne, Jr. (2007),
Judge Bradley E. Byrne, Sr. (1979)
Admittee and father

Carrie Vaughn-Cromey (2007),
David Philip Vaughn (1979)
Admittee and father

Jennis Warren (2007),
Manning G. Warren, III (1973)
Admittee and father

(Photo by Gary Tramontina)

Janay Marriel Smith (2007), Lloria Munnerlyn James (2005), Samarria Munnerlyn (2003),
Kendall C. Dunson (1996), Charles James, II (2003), and Jock M. Smith (1976)
Admittee, cousins and father



Lauren Sutton Phelps (2007),
Thomas C. Phelps, III (2006)
Admittee and husband

David Adams Perry (2007),
Wade B. Perry, Jr. (1971)
Admittee and father

Mary Ellen Conner Pool (2007),
Gregory M. Pool (2001)
Admittee and husband

LAWYERS IN THE FAMILY

David Arendall (1975),
Gwen Arendall (2007)
Admittee and father

Kathryn W. Lyles (2007),
Tom E. Walker (1978)
Admittee and father

V. Walker Wells (2007),
Vernon L. Wells, II (1973)
Admittee and father

Reinstatement

- The Supreme Court of Alabama entered an order reinstating Huntsville attorney **Mark Bruce Flake** to the practice of law in Alabama, effective September 25, 2007, based upon the decision of Panel III of the Disciplinary Board of the Alabama State Bar. Flake had been on disability inactive status since September 16, 2002. [Pet. No. 07-02]

Transfers to Disability Inactive

- The Supreme Court of Alabama entered an order adopting the order entered by the Disciplinary Board, Panel V, of the Alabama State Bar transferring Logan attorney **Bryan Hugh Andrews** to disability inactive status, effective September 5, 2007, pursuant to Rule 27(b), *Alabama Rules of Disciplinary Procedure*. [Rule 27(b); Pet. No. 07-35]
- Montgomery attorney **Wanda Davis Devereaux** was transferred to disability inactive status pursuant to Rule 27(c), *Alabama Rules of Disciplinary Procedure,* effective November 2, 2007. [Rule 27(c); Pet. No. 07-63]

Disbarment

- Alabama attorney **Paul Christopher Williams**, who is also licensed in Georgia, was disbarred from the practice of law in the State of Alabama, effective September 25, 2007, by order of the Supreme Court of Alabama. The supreme court entered its order, as reciprocal discipline, pursuant to Rule 25, *Alabama Rules of Disciplinary Procedure,* based upon the January 22, 2007 certified opinion of the Supreme Court of Georgia, approving the disbarment of Williams for violations of Rule 1.15(I) and Rule 1.15(II) of Bar Rule 4-102(d) of the *Georgia Rules of Professional Conduct*. [Rule 25; Pet. No. 07-22]

Suspensions

- Montgomery attorney **Walter Mark Anderson, IV** was suspended from the practice of law in the State of Alabama for a period of one year by order of the Disciplinary Commission of the Alabama State Bar, effective October 1, 2007. The Disciplinary Commission based its order on Anderson's guilty plea for violation of rules 8.4(a), (b), (c), (d), and (g), *Alabama Rules of Professional Conduct*. Anderson admitted to forging the signature of a former probate judge, photocopying the signature to letters of administration and providing the letters of administration to his client. [ASB No. 07-84(A)]

DISCIPLINARY NOTICES Continued from page 65

- Fort Payne attorney **Sherry Ann Weldon Dobbins** was summarily suspended from the practice of law in the State of Alabama pursuant to Rule 20(a), *Alabama Rules of Disciplinary Procedure,* by order of the Disciplinary Commission of the Alabama State Bar dated August 6, 2007. On August 14, 2007, the Disciplinary Board, Panel V, denied Weldon's request that the summary suspension be dissolved and entered an order continuing Dobbins's suspension until September 20, 2007. [Rule 20(a); Pet. No. 07-50]

- Columbiana attorney **Kimberly Jean Snow** was interimly suspended from the practice of law in the State of Alabama pursuant to Rule 20(a), *Alabama Rules of Disciplinary Procedure*, by order of the Disciplinary Commission of the Alabama State Bar, effective September 19, 2007. The Disciplinary Commission based its order on Snow's consent to interim suspension. Snow was arrested July 17, 2007 in Shelby County and charged with a serious crime. The criminal charge remains pending in the District Court of Shelby County. [Rule 20(a); Pet. No. 07-54]

- On July 11, 2007, former Montgomery attorney **Kelly Dean Vickers** entered a conditional guilty plea to violation of rules 1.5(e), 8.4(a), 8.4(f) and 8.4(g), *Ala. R. Prof. C.* Vickers waived the filing of formal charges in this matter and agreed to a suspension for a period of 91 days. On August 14, 2007, an order was entered by Panel I of the Disciplinary Board of the Alabama State Bar, accepting Vickers's guilty plea. On August 29, 2007, the Supreme Court of Alabama entered an order suspending Vickers, effective August 29, 2007. While living in New Mexico, Vickers was working as a paralegal for an attorney. The attorney agreed to represent Vickers's son in a personal injury case. Vickers attempted to engage in improper fee-splitting with his son's attorney. Vickers also attempted to gain full control of his son's settlement proceeds. The guardian ad litem disagreed and requested the monies be used to purchase an annuity. The son's attorney told the judge that he was giving $3,000 of his attorney's fees to Vickers. The judge instructed the attorney not to give Vickers a portion of his attorney's fees. At this point, the judge added the $3,000 to Vickers's son's settlement award. [ASB No. 06-27(A)]

- Gadsden attorney **Rodney Lawson Ward** was suspended from the practice of law in the State of Alabama for a period of two years, by order of the Disciplinary Commission of the Alabama State Bar, effective September 27, 2007. The Disciplinary Commission ordered the suspension to be held in abeyance and Ward placed on probation for a period of two years pursuant to Rule 8(b), *Alabama Rules of Disciplinary Procedure*. Additionally, the Disciplinary Commission ordered that Ward be restricted from the practice of law for a period of 60 days. During the period of restriction, Ward shall not accept or undertake new representation in any matter outside of the Probate Court of Etowah County. The Disciplinary Commission entered its order based on Ward's previous guilty plea to violations of rules 3.4(b), 8.4(a), 8.4(b), 8.4(c), 8.4(d), and 8.4(g), *Alabama Rules of Professional Conduct*. Ward learned that his client had given false information to the Federal Bureau of Investigation. The client met with Ward at his office and told Ward she had been subpoenaed to testify before the grand jury. Ward advised the client to "stick" to her story. [ASB No. 03-190(A)]

- Robertsdale attorney **Thomas Patrick Williams** was summarily suspended from the practice of law in the State of Alabama pursuant to rules 8(e) and 20(a), *Alabama Rules of Disciplinary Procedure,* by order of the Disciplinary Commission of the Alabama State Bar, effective September 26, 2007. The order of the Disciplinary Commission was based on a petition filed by the Office of General Counsel evidencing that Williams had failed to respond to requests for information from a disciplinary authority during the course of a disciplinary investigation. [Rule 20(a); Pet. No. 07-55]

Public Reprimands

- Madison attorney **James Ralph Bryant** received a public reprimand with general publication on September 14,

2007 for violating rules 3.10 and 8.4(a), *Alabama Rules of Professional Conduct*. Bryant was retained to represent the wife in a divorce case. Bryant sent a letter to opposing counsel threatening to pursue a criminal matter against opposing counsel's client unless he settled the divorce action.

In another case, Bryant represented a child's biological father in an adoption case. Opposing counsel represented the stepfather and biological mother. Bryant sent an e-mail to opposing counsel threatening to pursue a criminal action against opposing counsel's client solely to obtain an advantage for his client in the civil matter. [ASB No. 06-211(A)]

- On September 14, 2007, Birmingham attorney **Samuel Ray Holmes** received a public reprimand with general publication for violation of rules 8.4(b), 8.4(c), 8.4(d) and 8.4(g), *Ala. R. Prof. C.* In December 2005, Holmes represented a client whose home was subject to a writ of execution. Holmes contacted the attorney for the plaintiff and attempted to negotiate the matter and was told that the sale would be halted if the judgment was immediately satisfied. Holmes contacted his client who promised that he would deposit the funds into Holmes's account immediately. Holmes presented a check drawn on his law firm operating account in the amount of $11,799.96 to opposing counsel. The sheriff's sale was immediately cancelled. Holmes's client failed to deposit the required funds into Holmes's operating account and, as a result, the check was returned for insufficient funds. Opposing counsel made numerous attempts to contact Holmes about the check and Holmes initially failed to correspond with him. In early 2006, Holmes finally contacted opposing counsel and stated that he would resolve the matter. Thereafter, Holmes failed to honor his promises to satisfy the check. Eventually, opposing counsel contacted the Jefferson County District Attorney's Office to pursue criminal charges against Holmes for negotiating a worthless

DISCIPLINARY NOTICES Continued from page 67

negotiable instrument. In February 2006, Holmes signed a restitution agreement and agreed to satisfy the check by February 17, 2006. Holmes failed to honor the restitution agreement and requested an extension. Eventually, Holmes fulfilled his agreement and satisfied the check on March 21, 2006, approximately three months after it was initially issued. The investigation of this matter also revealed that Holmes had issued worthless checks on numerous occasions in the past. [ASB No. 06-21(A)]

- On September 14, 2007, Birmingham attorney **Dorris McDowell Samsil, Jr.** received a public reprimand with general publication for a violation of Rule 8.4(g), *Ala. R. Prof. C.* In February 2006, Samsil telephoned the Fairfield City Clerk of Court and Chief Magistrate on behalf of a Hispanic client who had failed to appear for a criminal case. Samsil explained to the clerk that the client may have missed a court date and asked if he could appear with the client in court. The clerk attempted to explain to Samsil that he did not need to accompany the client because she was not going to swear out a warrant or penalize the client for his failure to appear and that all that the client needed to do was come by the clerk's office and see her about scheduling a new court date. At that point, Samsil and the clerk began to speak over one another, followed by Samsil yelling at the clerk. The clerk then hung up on Samsil.

  Samsil called back and spoke with another party in the office who placed him on hold until the clerk could handle the telephone call. The clerk informed Samsil that she would prefer he call the judge or prosecutor. Samsil responded by speaking profanity to the clerk and she immediately hung up the telephone. On or about February 23, 2006, the clerk filed a complaint for harassing communications. On March 2, 2006, Samsil's attorney filed a motion to quash the complaint. Attached to the motion to quash was a sworn affidavit given by Samsil that contained derogatory remarks about the clerk. [ASB No. 06-066]

- On October 26, 2007, Prattville attorney **Belinda Ann Weldon** received a public reprimand without general publication for violation of rules 1.1, 1.3, 1.16(d), 8.1(b), and 8.4(g), *Ala. R. Prof. C.* Weldon represented a client who appealed his conviction for first-degree assault and was sentenced to 23 years. However, Weldon failed to file a brief with the Alabama Court of Criminal Appeals and then failed to correct the deficiency after receiving notice from the court. The court then ordered Weldon to be removed from the matter and new counsel was appointed. The order also directed Weldon to immediately deliver the appellant's copy of the record on appeal to the new counsel. New counsel made several attempts to obtain a copy of the record from Weldon. All attempts were unsuccessful. New counsel eventually had to obtain a second copy of the record by order of the judge to the circuit clerk. This investigation was then assigned to the Birmingham Bar Grievance Committee. Weldon failed to respond to the assigned investigator, even after numerous attempts to contact her. [ASB No. 05-180(A)]

- **Adam Bourne** was recently appointed to the Chickasaw Industrial Development Board by the Chickasaw City Council.

- Current American Bar Endowment Board member **N. Lee Cooper** was unanimously re-elected by ABE members for a five-year term. Cooper served as president of the American Bar Association (1996-1997) before rejoining the ABE board in 1984. He is a shareholder in the Birmingham firm of Maynard, Cooper & Gale PC. Founded in 1942, the American Bar Endowment has promoted the public service goals of ABA members for more than 60 years.

Cooper

- **J. Foster Clark**, a partner with Balch & Bingham LLP, has been named president of the National Association of Bond Lawyers (NABL). Clark has more than 30 years of experience in public finance and in the roles of bond counsel, underwriter's counsel and disclosure counsel in taxable and tax-exempt bond financings. The NABL promotes the integrity of the municipal market by advancing the understanding of and compliance with the law affecting public finance. A professional association incorporated in 1979, NABL's 3,000 members consist of public finance lawyers practicing throughout the United States.

- **Fournier J. "Boots" Gale III**, a shareholder at Maynard, Cooper & Gale PC, has been elected to the Alabama Judicial Inquiry Commission. Gale was elected by the ASB Board of Bar Commissioners to serve a four-year term as one of two attorneys on the commission. The Judicial Inquiry Commission was established in 1973 by an amendment to the constitution. The commission is

Gale

BAR BRIEFS Continued from page 69

composed of nine members: an appellate judge, two circuit judges, one district court judge, two lawyers, and three non-lawyers, all of whom serve four-year terms.

- Birmingham attorney **Doug Jones** was selected to receive the Civil Rights Distinguished Service Award presented by The Birmingham Civil Rights Institute. He joined former ASB President Fred Gray who was honored with the 2007 Human Rights Award at the Fred L. Shuttlesworth Human Rights Awards Dinner.


Jones

Jones was graduated from the University of Alabama, and earned his law degree from Cumberland School of Law, Samford University. In 1997, he was nominated to be U.S. Attorney by then-President Bill Clinton and was confirmed by the Senate. In 1998, he received national attention as a U.S. Attorney when a bomb exploded at a Birmingham women's health clinic, killing a police officer and seriously wounding a nurse. Jones coordinated a state and local joint task force that led to the indictment of Eric Robert Rudolph. Rudolph was also determined responsible for three other bombings in the Atlanta, Georgia area including the 1996 Atlanta Centennial Olympic Park bombing. Jones was again the focus of national media attention as a federal prosecutor after the re-opening of a historic "cold case" involving the 1963 bombing of the Sixteenth Street Baptist Church in Birmingham in which four young African-American girls were killed. Nearly 40 years later, two former Ku Klux Klan members were convicted of murder and given life sentences.

Jones is a member the Birmingham firm of Whatley Drake & Kallas. In 2007, he testified before the Judiciary Committee of the U.S. House of Representatives about the importance of re-examining crimes of the Civil Rights Era.

- **Donna Pate**, a Huntsville attorney, has become a fellow of the American College of Trial Lawyers. The induction ceremony was held during the 2007 annual meeting of the ACTL in Denver.


Pate

Founded in 1950, the ACTL is composed of trial lawyers from the United States and Canada. Lawyers must have a minimum of 15 years' trial experience before they can be considered for fellowship, and membership in the ACTL cannot exceed one per cent of the total lawyer population of any state or province.

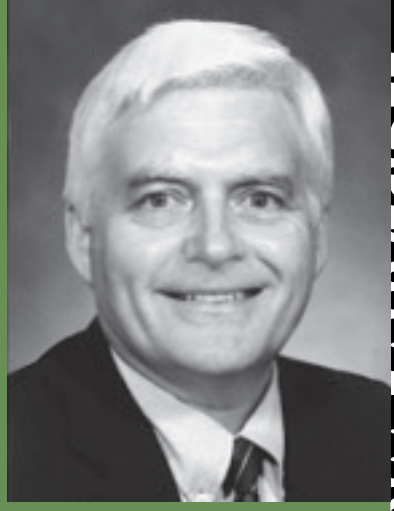
Pate is the only practicing female lawyer in Alabama who is a fellow of the ACTL, with the other Alabama female lawyer being Chief Judge Callie V. S. Granade of the U.S. District Court for the Southern District of Alabama (in Mobile). Pate is a shareholder in the Huntsville-based firm of Lanier Ford Shaver & Payne and has served as president of the Huntsville-Madison County Bar Association and as vice president of the Alabama State Bar. She served as an Alabama State Bar commissioner from 1993 to 2002 and has practiced law in Huntsville for 25 years.

- **Benjamin B. Spratling, III**, an attorney with Haskell Slaughter Young & Rediker LLC, has been appointed chair of the History and Archives Committee of the Alabama State Bar. The committee is charged with maintaining and preserving the historical record of the legal profession in the State of Alabama.


Spratling

▲▼▲

2008 Regular Session of the Legislature



ROBERT L. MCCURLEY, JR.

For more information about the Institute, contact Bob McCurley at (205) 348-7411 or visit www.ali.state.al.us.

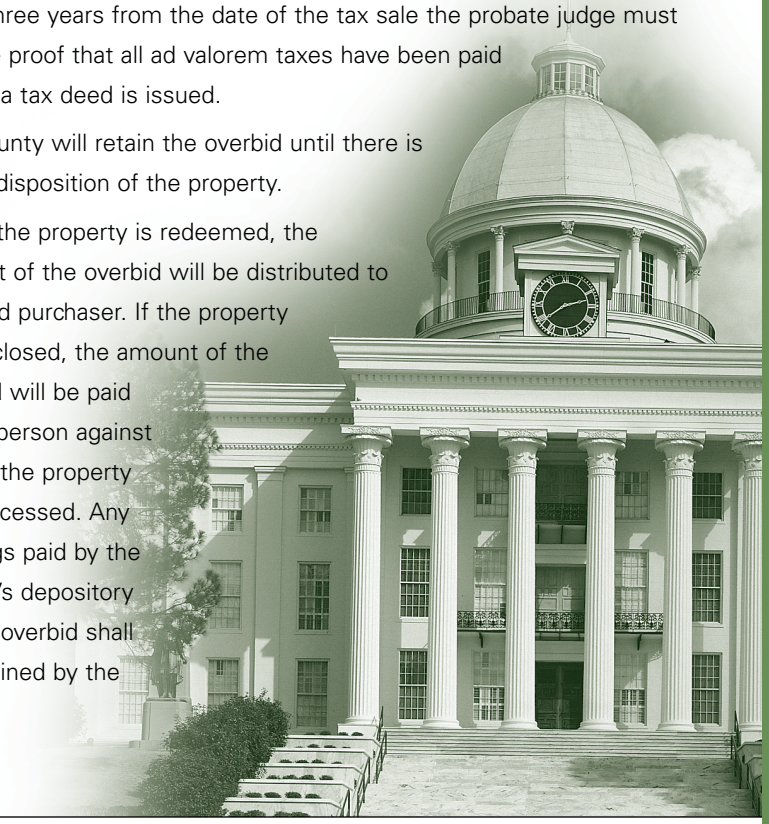
The Alabama Law Institute will present six acts to the legislature that will be major improvements of the current law.

Ad Valorem Tax Sale and Redemption Process

Sponsors: Senator Wendell Mitchell and Representative Mike Hill

This will clarify and codify the current law concerning the redemption of property from ad valorem tax sales. It also clarifies the redemption process by codifying case law on redemption and it delineates the counties' responsibility with regard to holding and refunding overpayment. It also:

1. Provides a procedure for redemption by the landowner from multiple tax sales.
2. The owner who remains in possession after the sale may always redeem.
3. Allows the tax status for Class 3 property to remain to be taxed as a Class 3 property as long as the owner occupies the property.
4. After three years from the date of the tax sale the probate judge must receive proof that all ad valorem taxes have been paid before a tax deed is issued.
5. The county will retain the overbid until there is a final disposition of the property.
6. When the property is redeemed, the amount of the overbid will be distributed to the land purchaser. If the property is foreclosed, the amount of the overbid will be paid to the person against whom the property was accessed. Any earnings paid by the county's depository on the overbid shall be retained by the county.



LEGISLATIVE WRAP-UP Continued from page 71

Uniform Anatomical Gift Act

Sponsors: Senator Ted Little and Representative Robert Bentley

Alabama adopted the current Anatomical Gift Act in 2003, however, it was based on the 1987 Uniform Act. The new revision will provide:

1. Donor's consent (i.e., an individual's anatomical gift of their own organs, eyes and tissue, to take effect at death) is substantially strengthened to bar others from amending, revoking or refusing to honor a gift made by the donor.
2. Absent a donor's consent, gifts by family members are facilitated if the deceased has not acted to make a donation or specifically refuses to make an anatomical gift by:
   - Expanding those that can act to include a health care agent, grandchildren and persons exhibiting special care;
   - Easing consent by enabling a majority of the children to decide;
   - Eliminating the need for consent from individuals who are not "reasonably available;" and
   - Clarifying the manner by which consent may be obtained.
3. Specifically authorizes gifts on donor registries and state-issued identification cards.
4. Registries are encouraged and standards are provided for their operations.
5. Provides for cooperation and coordination between procurement organizations and medical examiners, particularly with regard to procurement from potential donors under the jurisdiction of the medical examiner.
6. Remedies for intentional acts in violation of the Act are provided while retaining immunity for good faith acts under the Act.
7. Harmonizes the Uniform Anatomical Gift Act with federal law, current technology and practice and an Advance Medical Directive.

Prudent Management of Institutional Funds

Alabama's law was last revised in 2002; however, the current law was based on the 1972 Management of Institutional Funds Act. The Act governs investment of the funds of charitable organizations and total return expenditure of those funds. It establishes a prudent management investment policy that was derived from the Uniform Prudent Investor Act that applies only to trusts which were passed in Alabama in 2006. It also provides for a delegation of authority for investment to outside agents and reformation of donor restrictions *(cy pres)* on funds when they are so outdated that the original objective can no longer be followed.

The Act will:

1. Make sure the best investment practices govern the actual investment of the institutional funds.
2. Change obsolete rules governing prudent total return expenditure and provide a modern rule of prudence consistent with the rules that govern investment.
3. Eliminate differences in investment and expenditure rules that apply to different types to nonprofit organizations. The same rules govern all institutions under this act.
4. Encourage growth of institutional funds while eliminating investment risks that threaten the principal.
5. Assures that there are adequate assets in any institutional fund to meet the program need.
6. Make the law governing institutional funds uniform in all states.

This new Act was adopted in 19 states last year.

Uniform Limited Partnership Act

Sponsors: Senator Roger Bedford and Representative Cam Ward

Alabama last revised its Limited Partnership Act in 1983. This revision updates the Limited Partnership Act to reflect modern business practices. Limited partnerships are now used primarily in two ways–for family limited partnerships

in estate-planning arrangements, and for highly-sophisticated, manager-controlled limited partnerships.

A limited partnership is distinguished from a general partnership by the existence of limited partners who invest in the partnership; in return for limited liability, the limited partner usually relinquishes any right of control or management of partnership affairs. However, the general partner of a limited partnership traditionally receives no direct liability protection.

This new act provides:

Perpetual Entity–No termination unless the agreement so provides. A limited partner leaving does not dissolve the entity.

Entity Status–A limited partner is clearly an entity.

Convenience–The new Limited Partnership Act (Lt. P.) provides a single, self-contained source of statutory authority for issues pertaining to limited partnerships. The act is no longer dependent upon the general partnership law for rules that are not contained within it.

LLLP Status–Under this new act, limited partnerships may opt to become limited liability limited partnerships (LLLP), simply by so stating in the limited partnership agreement and in the publicly filed certificate. The primary reason for a limited partnership to elect LLLP status is to provide direct protection from liability for debts and obligations of the partnership to the general partner of the limited partnership.

Liability Shield–In the current limited partnership law, it provides only a restricted liability shield for limited partners. The new act provides a full, status-based shield against limited partner liability for entity obligations. The shield applies whether or not the limited partnership is an LLLP.

Express Default Statute–The act provides default provisions between the partners and between partners and the partnership. Therefore, when the partnership agreement does not define the relationship, there is a fall-back default law.

The act also addresses issues such as allocating power between general partners and limited partners, and setting fiduciary duties owed by general partners to other general and limited partners.

Alabama Uniform Parentage Act

Sponsors: Senator Kim Benefield and Representative Demetrius Newton

The Alabama Uniform Parentage Act was last revised in Alabama in 1984. This act, which revises the Uniform Parentage Act of 1973, modernized the law for determining the parents of children, and facilitates modern methods of testing for parentage. With the rising incidence of children born to unmarried parents, parentage determinations must be improved for the enforcement of child support. The Uniform Act was completed by the Uniform Law Commissioners in 2000 (and amended in 2002). This act will repeal the current parentage law. *Ala. Code* §§26-17-1 through 22.

Article 1–General Provisions

Article 2–Parent-Child Relationship (Determination of legal father)

The legal father may be one of the following: an unrebutted presumed father, a man who has acknowledged paternity under Article 3, an adjudicated father as the result of a judgment in a paternity action, an adoptive father, or a man who consents to an assisted reproduction under Article 7.

Article 3–Voluntary Acknowledgment of Paternity (Provides a non-judicial, consent proceeding for acknowledgment of paternity)

The non-judicial acknowledgment of paternity proceeding under Article 3 of the new Uniform Act allows a knowing and voluntary acknowledgment of paternity that is the equivalent of a judgment of paternity for enforcement purposes. An acknowledgment from another state is given the privilege of full faith and credit in Alabama.

Article 4–Registry of Paternity (Continues Alabama's current putative father's registry)

Ala. Code § 26-10C-1.

LEGISLATIVE WRAP-UP Continued from page 73

Article 5–Genetic Testing (Establishes a separate procedure for genetic testing)

Standards for genetic testing are part of Article 5. The standard for a presumption of paternity as a result of testing is also established by statute. The measure is 99 percent probability of paternity based on appropriate calculations of "the combined paternity index."

Article 6–Proceeding to Adjudicate Parentage (Governs the basic proceeding to determine parentage)

Under the new Uniform Act, the child, the mother of the child, a man whose paternity is to be adjudicated, DHR, an authorized adoption agency or licensed child-placing agency, a representative of a deceased, incapacitated or minor person, or "any interested person" has standing.

Article 7–Child of Assisted Conception (Deals with parentage when there is assisted conception)

Generally, if a married couple consents to any sort of assisted conception, and the woman gives birth to the resultant child, they are the legal parents.

Alabama Uniform Residential Mortgage Satisfaction Act

Sponsors: Senator Myron Penn and Representative James Buskey

This act only applies to residential real estate in Alabama. The process of clearing title for residential real estate mortgage has been complicated by the failure of lenders to render a timely payoff statement and mortgage satisfaction when the mortgage is to be paid off or has been fully paid but not satisfied.

In some instances, the original lender is no longer in business and the mortgage has been sold to another party, however, the legal assignment has not been recorded or has become lost.

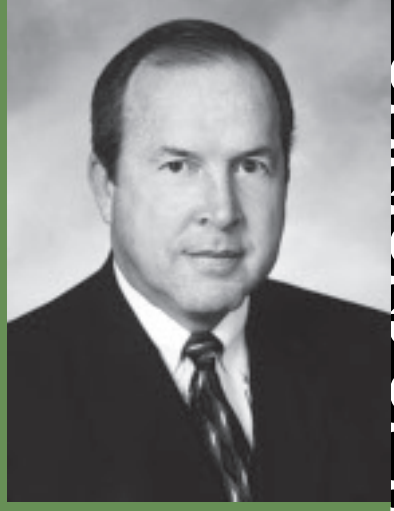
The act basically does the following:

1. **Payoffs–**The mortgage lender must give a payoff statement within ten days after written request. If the lender fails to do so, there is a $500 penalty payable to the borrower. When the mortgage lender fails to pay the $500 penalty after the second 30-day notice, and if the creditor is forced to hire a lawyer, the borrower may collect an attorney's fee.
2. **Mortgage Satisfaction–**A mortgage lender has 30 days after receiving a full payment to submit a satisfaction document. A mortgagee that neglects to file a mortgage satisfaction within the 30 days after being paid may be subject to a $1,000 penalty and any reasonable attorney's fees incurred. (Since 1852, Alabama has had a $200 penalty.)
3. **Self-Help Satisfaction–**When the mortgage lender cannot be found or is non-responsive, the bill provides for a self-help method to remove the satisfied mortgage. After the lender receives full payment, a title insurance company or licensed attorney can follow specified procedure of giving the mortgagee 30 days notice to satisfy the mortgage or object to a satisfaction and record an affidavit of satisfaction on a specific form. This results in a satisfying of the paid mortgage on the record. A satisfaction agent or anyone who knowingly makes a false satisfaction is liable for actual damages as well as attorney's fees and costs.

Unlawful Detainer Statutes

Sponsors: Senator Lowell Barron and Representative Jeff McLaughlin

Alabama currently has 22 unlawful detainer statutes dating back for over 100 years. Many of these are confusing, outdated and no longer applicable. These statutes that have been left on the books often confuse the eviction process. This bill repeals or revises the existing statutes and further reinforces the provisions of the Residential Landlord/Tenant Act to make clear the intentions of the original act which may have been misinterpreted by parties. ▲▼▲



J. ANTHONY MCLAIN

Lawyer May Seek Appointment of Guardian for Client Under a Disability, or Take Other Protective Action Necessary to Advance Best Interest of Client

QUESTION:

"Through Legal Services Corporation, I have agreed to represent an indigent individual in a petition to modify his divorce decree to terminate or reduce his child support since he is now unemployed. He quit his job due to a nervous breakdown and has been hospitalized twice for suicide attempts. He has stopped seeking psychological counseling because he is scared of indigent health care systems and has feelings of paranoia about being watched and/or investigated.

"It has now come to my attention that there in fact is an ongoing investigation about his alleged sexual abuse of one of his children two years ago. He has not been allowed visitation with his children in over a year pursuant to terms in the divorce decree for this very reason.

"Every time I talk to him about any facet of his case he has a complete emotional breakdown. He cannot handle any stress right now. I cannot convince him to seek psychological counseling because of his fear of what might be revealed.

"He is so unstable, I do not believe I can proceed with the petition to modify, because I will not be able to get him through a court proceeding or even the discovery necessary to prove his case. He has no immediate family that I can call upon for help.

OPINIONS OF THE GENERAL COUNSEL Continued from page 75

"I have been approached by opposing counsel (who must represent his client, the ex-wife, who will not consent to a temporary termination of the court-ordered child support), saying that he would be willing to allow an in-chambers presentation to the judge about our dilemma. If I do so I will be divulging to the judge that the man has a serious emotional problem that the judge might want me to establish or he might even order psychological testing to see if my client can adequately assist me with the case. In either event, if the man goes to any counselor, further evidence would be revealed about his serious feelings of guilt and remorse which could be used against him in a criminal investigation.

"I cannot counsel with my client as to which course to take because he cannot deal with conflict without an emotional breakdown and I feel this could jeopardize his life, (i.e. another suicide attempt and/or because he is incapable of making rational decisions). On the other hand, I cannot leave him without relief from the decree of divorce because the arrearages would just keep adding up at $911.56 per month. (He was formerly employed at a very good wage working in an intensive care unit at a local hospital which caused such a high child support award).

"I am convinced my client's emotional instability is real and I have experience and training to make that judgment.

"How must I proceed in properly representing my client?

"This is, of course, urgent because a trial date is coming up in a few weeks and I am further concerned for my client's well-being."

ANSWER:

The *Alabama Rules of Professional Conduct* allow you to seek appointment of a guardian for your client, or to take any other protective action if you reasonably believe that your client cannot adequately act in his own interest. Further, the rules allow you to disclose such confidential information as may be required to adequately represent your client and advance your client's interest.

Rule 1.14, *Alabama Rules of Professional Conduct*, states as follows:

"Rule 1.14 Client Under A Disability

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest."

The comment portion of Rule 1.14 takes note of the fact that disclosure of the client's disability could adversely affect his interests. The comment directs that the lawyer may seek guidance from an appropriate diagnostician in furtherance of the client's best interest.

The issue which you face requires consideration of the obligation of confidentiality, but also requires that you assess the situation and make a determination as to what you feel would be best, under the totality of the circumstances, for your client's interest. In RO-90-67, the Disciplinary Commission stated that Rule 1.14 "... [R]ecognizes that a lawyer may, on occasion, best serve a client by taking action that, on first blush, might appear to be adverse to the client."

In RO-95-03, the Disciplinary Commission reasoned that a lawyer confronted with such a dilemma must determine what is in the best interest of the client based on the lawyer's analysis of all aspects of the situation, including opinions of medical experts. The Commission further stated:

> "Much of the burden of this decision is placed on the lawyer who must keep foremost in his mind the increased standard of responsibility when dealing with a disabled client. He must assess all aspects of the situation, including expert medical opinions, balancing the client's ability to communicate and to appreciate the serious decisions to be made. If the lawyer has doubts, he should resolve those doubts in a manner that best serves his client. The lawyer

should also appreciate the Court's increased concern in matters involving lawyers and their representation of incompetent clients. 'The normal limitations on a lawyer's self-enrichment at the expense of a client are applied with enhanced strictness when the client is a child or otherwise not capable of making fully informed and voluntary decisions.' Wolfram, supra, p.159."

Hazard and Hodes, in their treatise *The Law of Lawyering*, deal with Rule 1.14 and give an illustrative case wherein a lawyer is representing a criminal defendant with diminished capacity. Hazard and Hodes determined that the lawyer acts properly in urging his client, who has diminished capacity, to accept a plea bargain offered by the prosecution and to waive a possible insanity defense, even though it would mean a conviction on the client's record and a short jail term. Hazard and Hodes conclude that the lawyer may judge that his client's long-term best interest would be best served by accepting a short jail term rather than an indeterminate stay in a mental institution. Hazard and Hodes feel that in close cases, the lawyer "cannot be disciplined for any action that has a reasonable basis and arguably is in his client's best interests." Section 1.14: 201.

Finally, Rule 1.6, *Alabama Rules of Professional Conduct,* deals with "confidentiality of information." Subsection (b) of Rule 1.6 allows disclosure of information by a lawyer which is otherwise confidential if the lawyer reasonably believes disclosure is necessary to prevent the client from committing a criminal act which the lawyer believes is likely to result in imminent death or substantial bodily harm. The Comment provision to Rule 1.6 allows that the lawyer has professional discretion to reveal information in order to prevent such consequences. Therefore, if you determine that the best interest of your client would be served by making disclosure to the court of your client's condition, and the possibility that he might harm himself, and that protective measures should be taken to prevent such harm, the Rule would allow such. In conjunction with Rule 1.14, if you make this determination, then you could seek appointment of a legal representative for your client to further protect your client's interest.

There is no definitive standard which can be applied in such a situation to guarantee the best result. The rules are fashioned to allow the lawyer to analyze the client's emotional state, and the interest to be advanced by the lawyer on behalf of the client, and then pursue whatever action the lawyer deems best under obviously difficult circumstances. Once the lawyer has determined what he feels to be the proper course of action to best serve his client, the rules allow the lawyer to do what is necessary to advance the interest of the client, while, at the same time, ensure protection of the client and his well-being. [RO-95-06] ▲▼▲

THE ROAD TO CLE COMPLIANCE 2007

START HERE

STEP ONE: FOR ALL MEMBERS OF THE ALABAMA BAR

I will check my CLE transcript on-line using my bar id number and e-mail address (If I can't view my transcript, I will e-mail ms@alabar.org).

STEP TWO: FOR COMPLIANT MEMBERS

If my on-line transcript is correct and I am compliant, I will print it for my records. I know that I will not need to send anything to the bar this year. When I receive my blue or green reporting form from the bar, I will keep it as my record of compliance.

If my transcript is incorrect, but I am compliant, I will either correct it now by writing a brief letter to the bar or wait and correct it on my green or blue reporting form that will be mailed to me in December. I understand that all corrections must be sent by January 31, 2008.

STEP TWO: FOR NON-COMPLIANT MEMBERS

If my transcript indicates that I am non-compliant, I will complete my courses by December 31, 2007. I will report all hours by January 31, 2008 using the reporting form that will be mailed to me in January.

If I have a good CLE history, but have an extraordinary reason why I could not get my CLE credits in 2007, I will request a deficiency plan no later than January 31, 2008.

STEP THREE: ADDRESS CHANGES

If my address is not correct on my transcript, I will email my change of address to ms@alabar.org and check my form upon receipt to confirm that the change has been made.

THE ALABAMA LAWYER NO LONGER PUBLISHES ADDRESSES AND TELEPHONE NUMBERS UNLESS THE ANNOUNCEMENT RELATES TO THE OPENING OF A NEW FIRM OR SOLO PRACTICE.

About Members

Thomas Logan Davis announces the opening of the **Davis Law Firm LLC** at 1000 Providence Park, Ste. 200, Birmingham 35242. Phone (205) 822-9334.

Erin Jones Schmidt announces the opening of **Erin Schmidt, Attorney at Law, LLC**. The mailing address is P.O. Box 20325, Tuscaloosa 35402. Phone (205) 765-5933.

Traci Owen Vella announces the opening of her office at 200 Office Park Dr., Ste. 216, Birmingham 35223. Phone (205) 868-1555.

Among Firms

Adams & Reese announces that **George Copeland, Jr.** has joined the firm's Mobile office as special counsel.

Thomas B. Klinner announces that he is now with the legal office of the **Alabama Department of Mental Health and Mental Retardation.**

Bradley Arant Rose & White LLP announces that **Meredith A. Abernathy, Keith S. Anderson, Andrew L. Brasher, Kyle C. Hankey, Jess R. Nix, Kevin L. Turner,** and **Quindal C. Evans** have become associates.

Frank S. Buck PC announces that **Rachel Catherine Buck** has joined the firm as an associate.

Capell & Howard PC announces **Chad D. Emerson** has been named affiliated counsel of the firm and that **Richard F. Calhoun, Jr., W. Allen Sheehan** and **William R. Cunningham, Jr.** have become associates.

Charles W. Edmondson PC announces that **Jaime L. Webb** has joined the firm as an associate.

Fees & Burgess PC announces that **Jamie K. Hill** has become associated with the firm.

Friedman, Leak, Dazzio, Zulanas & Bowling PC announces that **Gwen K. Arendall** and **Joseph L. Kerr, Jr.** have joined the firm as associates.

ABOUT MEMBERS, AMONG FIRMS

Continued from page 79

Gamble, Gamble & Calame LLC announces that **Thomas C. Atchinson** has become an associate with the firm.

Haskell Slaughter Young & Rediker LLC announces that **Kirk D. Smith** has returned to the firm.

Holloway & Moxley LLP announces that **Cindy A. Rayfield** and **Brandy L. Chamblee** have joined the firm as associates.

Huie, Fernambucq & Stewart LLP announces that **Stewart W. McCloud, Lauren E. Davis** and **Jennifer H. Reid** have joined the firm as associates.

Kaufman & Rothfeder PC announces the change of its name to **Kaufman Gilpin McKenzie Thomas Weiss PC** and that **John Little** and **Clinton D. Graves** have joined the firm as associates.

Kreps Law Firm LLC announces that **Louise Duckwall** has joined the firm as an associate.

Legal Services Alabama Board of Directors announces the appointment of **James H. Fry** as the new executive director.

Maynard, Cooper & Gale PC announces that **Joshua B. Baker, John D. Bethay, Casey L. Butts, Kathryn J. Hill, Stephanie H. Mays, Grace L. Kipp, Gregg M. McCormick, Jessica F. Kubat,** and **David A. Perry** have joined the Birmingham office as associates.

Norman, Wood, Kendrick & Turner announces that **William H. McKenzie, IV** and **W. M. Bains Fleming, III** have joined the firm as associates.

Smith, Spires & Peddy PC announces that **Scott A. Holmes** has joined the firm as an associate.

D. Robert Stankoski, Jr. and **J. Clark Stankoski** announce the opening of **Stankoski LLP** at 8335 Gayfer Rd. Extension, Fairhope 36532. **Joshua P. Myrick** has joined the firm as an associate. Phone (251) 928-0123.

Starnes & Atchison LLP announces that **Allison Jo Garton** and **C. Clayton Bromberg, Jr.** have joined the firm as associates.

The **United States Attorney's Office** for the Northern District of Alabama announces that **James E. Phillips** has been promoted to First Assistant United States Attorney, **Miles M. Hart** has been promoted to

Deputy Chief Criminal Division and **Daniel Fortune, Jeffery B. Brown** and **Enid Dean** have joined the office as Assistant United States attorneys.

David P. Lewen will begin work as an **Assistant U.S. Attorney** in the Eastern District of Tennessee (Knoxville office) in the criminal division.

Kenyen Ray Brown has been named senior counsel, director of education and training for the **U.S. Senate Select Committee on Ethics.**

Walston Wells & Birchall LLP announces that **Bruce J. Downey, IV, Jeffrey T. Powell** and **V. Walker Wells** have joined the firm as associates.

Webb & Eley PC announces that **Laura Bennett** has joined the firm as an associate.

G. Stephen Wiggins announces his association with **Wiggins, Jones & Davis PC.**

Randall M. Woodrow and **Jason C. Odom** announce the formation of **Woodrow & Odom LLC** at 214 E. 19th St., Anniston 36207. Phone (256) 238-6005.

Zieman, Speegle, Jackson & Hoffman LLC announces that **William Steele Holman II** has joined the firm as a member and **Jennifer S. Holifield** and **Joseph P. Isbell** have become associated with the firm. ▲▼▲

Annual Meeting CLE CD Now Available!

$15

CLE Program Materials from the 2007 Alabama State Bar Annual Meeting are available on a single CD. It's convenient, portable and worth every penny!

LIMITED SUPPLY

Pre-Convention CLE Workshop-Transitioning as a Renewal Process: A Guide for Firm Managers, Retiring Partners and Solos

Opening Plenary Session: Law With A Punch – Media, Cameras, Gag Orders

Ethics in High-Profile Cases

2007 Real Estate Law Update

Labor & Employment Law Update

Workshop: Roundtable Discussion - The Art of Cross and Other Tales

Criminal Defense Law Update 2007

Workshop: Maximize Mediation Opportunities: Top Volume Mediators Give You Tips on How to Get the Best Results for Your Client

Workers' Compensation Law Update 2007

Panel Discussion on Professionalism

Opening Plenary Session: How Lawyers Can Stay Healthy and Keep the Bottom Line In Shape

Family Law Update 2007

Handling Appeals before the Eleventh Circuit

Recent Legislation: 2007 Regular Session

Workshop Roundtable Discussion

The Business Side of Practice: Tips from Mentors and Mentees

Featured Workshop: Brand U: Collegiate Licensing Co.

Taking Depositions – The Freedom to Stay or the Freedom to Go, and a Little Technology to Bring it Home to the Jury

PLUS! You'll get the Alabama Rules of Professional Responsibility and other information from many of the bar's programs, sections and services.

How do I order the CD?

Simply remit a check or money order made payable to the Alabama State Bar for $15 and forward it with your name and mailing address either clearly marked on the check or money order, or by filling in the following information:

Feel free to order as many CDs as you would like! Just tally the cost at $15 per CD, and remit that amount.

Name: _____

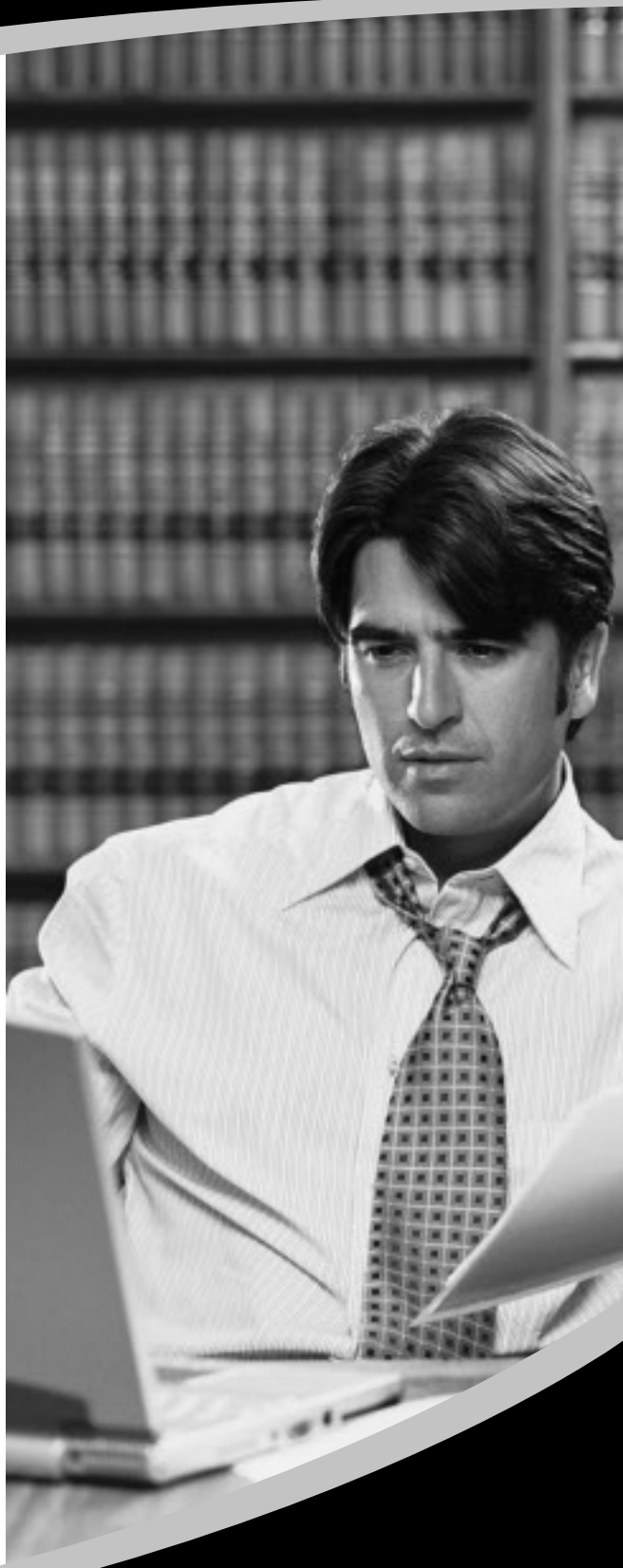
Address: _____

_____

For informational purposes only. No CLE credit will be granted.

Mail To: Alabama State Bar
Communications Department
Post Office Box 671
Montgomery, Alabama 36101

Build your Case on a Solid Business Valuation



Accurate appraisal and analysis form the bedrock of any successful business valuation. You can make sure your case is well-grounded by retaining the right valuation professionals.

Working with a diverse group of industries, companies and private parties, we've built one of the region's strongest valuation practices. Our experience and expertise mean we can swiftly assess the economics of your situation, reducing complex topics to their essence. We present these conslusions in a concise and readily understandable way—to opposing counsel, clients or jurors.

Driving all of this forward is a vigorous commitment to responsive, personalized service, backed by the resources of the largest accounting and advisory firm based in the Southeast. For more on how Dixon Hughes can help you build the strongest case possible, visit us at dixon-hughes.com or call Butch Williams at 205.212.5300.

DIXON HUGHES PLLC

Certified Public Accountants and Advisors

www.dixon-hughes.com

Now showing on a single screen: the best medical resources for litigators.

Now you have access to the **same** peer-reviewed medical information that doctors use – plus an incredibly easy way to find it. The new thesaurus-driven Westlaw® search engine adds synonyms, brand/generic drug names, related topics, and medical and scientific terminology to your search terms. So your plain-English description of a disease, injury, device, or drug on Medical Litigator™ delivers all relevant content from the world's leading medical journals, abstracts, specialized dictionaries, and more. You even get trial-ready medical illustrations. This library is fully integrated on Westlaw, so one search covers both the legal and medical content. For more information, call our Reference Attorneys at **1-800-733-2889 (1-800-REF-ATTY)**.

Westlaw.

THOMSON WEST

Periodicals Postage
Paid
Montgomery, AL