

The Alabama Lawyer

Vol. 44, No. 2

MARCH 1983



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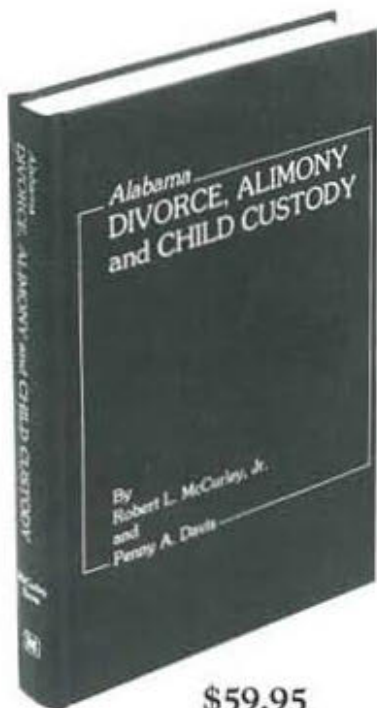
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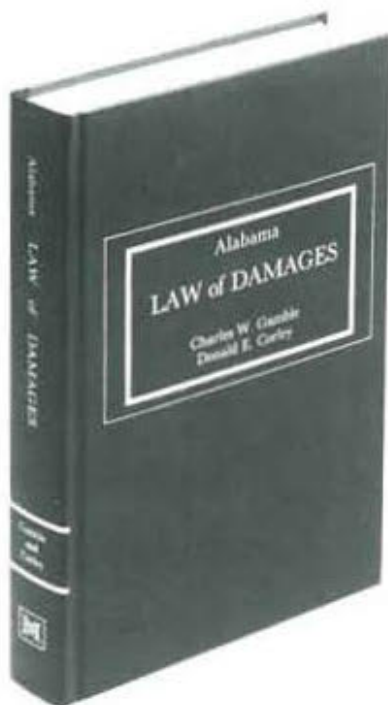
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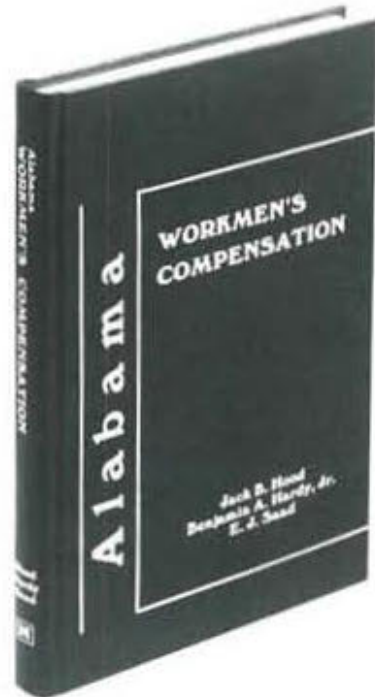
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GENERAL INFORMATION

The Alabama Lawyer is published six times a year in January, March, May, July, September and November by the Board of Commissioners of the Alabama State Bar. Manuscript submissions and letters to the editor are encouraged.

Advertising rates are available upon request. Publication of an advertisement is not to be deemed as an endorsement of any product or service offered. All advertising copy is subject to approval, and the publisher reserves the right to reject any considered objectional in appearance or content.

The Alabama Lawyer is provided to association members without charge. If a member should move, it will be necessary to submit a change of address in order to continue receiving the publication. Nonmember subscriptions: \$15.00 in the United States; \$20.00 elsewhere. All subscriptions must be prepaid. Single issues are \$3.00, plus postage.

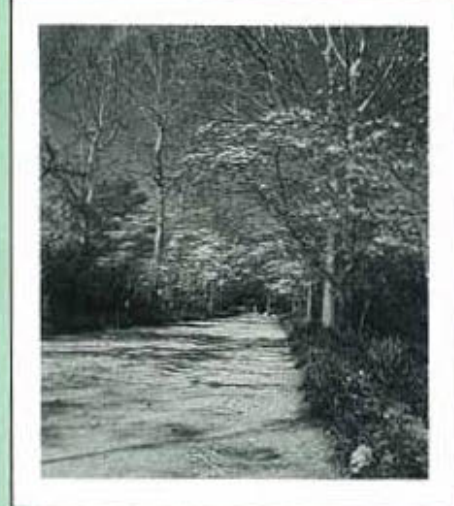
THE MARCH 1983



Bankruptcy practice under the rule

—pg. 84

Although the United States Supreme Court decision in *Northern Pipeline* declared the Bankruptcy Reform Act of 1978 unconstitutional, the promulgation of a special rule has allowed the bankruptcy system to function pending remedial legislation.



On the cover

Thanks to the Montgomery Area Chamber of Commerce for providing this beautiful photograph of an early spring in Montgomery.



The gulf separating joint tenancy and tenancy in common

—pg. 72

Recent Alabama Supreme Court decisions have blurred the distinctions between joint tenancy and tenancy in common. Artful drafting of deeds is crucial to conveyance of the proper estate.

ISSUE IN BRIEF



Book review— *Alabama Law of Damages*

—pg. 87

Measurement and proof of damages in civil litigation often presents a bewildering array of rules and exceptions. A new treatise offers a practical explanation of this area of the law.



What's news statewide?

—pg. 94

Bar exam challenged in court, Alabama wins ABA Law Day Award, Supreme Court adopts new criminal rules, President-elect of the ABA speaks at Montgomery meeting, and other news briefs of interest inside.



Do you know how to write a fee letter?

—pg. 100

A frequent source of conflict between an attorney and client is a misunderstanding of the fee arrangement. This potential problem can be avoided through the use of a clear and concise fee letter.

Regular Features

President's Page	68
Executive Director's Report	69
Letters to the Editor	71
Riding the Circuits	78
CLE News and Events ..	80
Young Lawyers' Section .	83
Avoiding Legal Malpractice Claims	88
Recent Decisions	90
Bar Briefs	94
Legislative Wrap-Up	98
The Lighter Side of Law	106
About Members, Among Firms	109
General Counsel Opinions	110
Disciplinary Report	111
The Final Judgment	113
Classifieds	115
Et Cetera	116



President's Page

The idea behind this page is to bring to the attention of the members of the Bar matters which the writer thinks might be of particular interest and to also create an awareness of particular problems faced by the Bar.

CLE

First, let's talk about Continuing Legal Education. There are 6,943 members of the Alabama State Bar who are subject to the rules governing continuing legal education. As of the last of January ninety-two percent of those members have complied by submitting their reports. We think this is a great response and the members are to be commended for their cooperation and assistance. We have had some problem with getting reports from members who are exempt, but who must, nevertheless, file a compliance report. And so you can see, the active practicing attorneys have, by and large, complied. A number of extensions had been granted as of January 31st. We shall have no alternative with respect to those who do not comply except to comply ourselves with the Rule and institute the proceedings which are mandated.

Fees in Indigent Cases

Next, on the subject of Fees in Indigent Cases. This is a follow-up to my remarks in the last "Message" and to let you know that the staff of the Center for Professional Responsibility is pursuing the matter vigorously. We are continu-

ing to have the cooperation of the Office of the Comptroller and also of the Administrative Office of Courts in attacking this problem.

In this regard, I feel compelled to state that the Disciplinary Commission and the staff are doing an excellent job in trying to keep our docket of disciplinary proceedings current and to handle all complaints expeditiously.

Board of Bar Examiners

One of the hardest working groups of the Bar is the Board of Bar Examiners. The lawyers who have undertaken to serve on this Board really do a tremendous job and are faced with a tremendous burden. Recently appointed to fill vacancies on the thirteen-member board are Robert L. Potts, James F. Hughey, Jr., Max C. Pope, George P. Ford and Dow M. Perry, Jr. In July, 429 candidates took our exam. Three hundred thirty-five were certified to the Supreme Court. Of the total, forty-one were "re-peats" and of that number eleven passed. The rather meager stipend which our examiners receive is more than justified when you consider the job of grading 429 papers on just one of the examinations.

Annual Meeting

The Annual Meeting will be held in Birmingham in July and, as always, the Birmingham Bar will do a tremendous job. We will be honored to have Morris Harrell, president of the American Bar

Association, as our guest speaker at the Bench and Bar luncheon. He is a delightful and interesting Texas lawyer, and I am confident you will enjoy meeting him and listening to his remarks.

The Alabama Lawyer

I have received no adverse comments with respect to the new format of *The Alabama Lawyer*. I would like to remark here that we will continue to make this a publication by lawyers for lawyers and that the Board of Bar Commissioners has made it abundantly clear this must be done. We appropriate a good bit of your money each year to the publication and we have a continuing duty to see that we give you a first class job.

Conclusion

The Department of Examiners of Public Accounts has recently completed an audit of the records of the Alabama Bar and except for one or two recommendations with respect to some minor recommendations which they made as to internal controls, we passed with flying colors.

Since I have not seen fit in this message to emote or engage in platitudes, it is somewhat brief, but I hope that it has served the purpose of bringing you up to date on some of our functions. We always welcome inquiries from lawyers and will be glad to respond immediately to any questions you might have about any of our programs.

Norborne C. Stone, Jr.

Executive Director's Report



What does the State Highway Department, the State Health Department, the Public Safety Department and the Alabama State Bar have in common?

They're all four agencies of the State of Alabama.

You may ask, "Why am I being told this?"

Well, I will frequently be discussing some event or future undertaking of the state bar and in the conversation will be stopped mid-sentence to explain, for instance, "Why does the president of the state bar or a committee chairman need prior approval of the governor to attend an out-of-state meeting?" The reason: the state bar comes under state travel regulations and, if one is to be reimbursed for travel, this prior approval is required.

The bar association budget is approved by the state legislature. Our monies are appropriated each year by the legislature even though we neither seek nor receive monies from the General Fund. Monies flow into a special trust fund from the annual license fee you pay, the examination fee paid by applicants, professional corporation filing fees and the fee which accompanies a petition for reinstatement. When the state bar was integrated into state government in 1923, a special fund was established to provide for the financial affairs of the state bar.

Fiscal Policy

The fiscal affairs of the state bar are subject to review by the state auditor, the comptroller and the Department of Examiners of Public Accounts. We ex-

pend your monies in accordance with a sixty-page (plus exhibits) manual of fiscal operation. The expenditures of these monies, while directed by the Board of Bar Commissioners, must be in accordance with state law.

Since gifts, food, beverages and advertisements are not proper subjects for the expenditure of state monies, we fund our conventions from registration fees. We do not purchase gifts nor do we advertise the vast number of worthwhile programs for which we are solicited. Political contributions from state funds are likewise prohibited.

Commission Compensation

The law permits the reimbursement of commissioners for their service on the Commission to the extent authorized by law, namely a limit of 20¢ per mile and a maximum of \$30 per day as per diem. Commissioners receive no additional compensation for their service. A commissioners meeting is usually held on a single day in which case the commissioners will receive mileage and a per diem allowance of \$5.00. The allowance would be \$12.50 if the commissioner is away from home over 12 hours but not overnight. Commissioner service on disciplinary panels or commissions are similarly compensated.

Membership Cards

The circuitous route that your annual license fee takes to reach the state bar fund presently precludes the issuance of

membership cards for all practical purposes.

You should purchase your license in October of each year, but the issuing authority, the probate judge or license commissioner, has until the 20th of November to forward the funds to the Revenue Department which then submits same to the state treasurer. It is usually March before a certified list is sent to the state bar. Special Membership cards are issued upon receipt of dues to our Special Members since these dues are remitted directly to the state bar. It would require passage of legislation to allow all dues for licenses to be collected by the secretary. This type legislation has been discussed with the state treasurer. A problem area exists with regard to the revenue the issuing authorities now receive. In our larger counties this is a substantial amount of money.

One advantage to you—the lawyer—and the state bar would be the bar's ability to bill you and monitor your license to insure against delinquencies. A second advantage would be the elimination of a cash-flow problem we currently experience each new fiscal year.

Mug-Wump Bar

Not all of the bar's operations are dictated by the legislature. The bar is "an arm" of the Supreme Court of Alabama in the matters of discipline and admissions. The Alabama State Bar is not controlled totally by either the legislature or the Supreme Court as is the case

Continued page 12

A Convenient,
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Alabama Rules Annotated, 1983 Edition, provides a convenient reference source for the practitioner. Up-to-date through January 1, 1983, it contains all rules promulgated by the Alabama Supreme Court, with complete annotations, as well as federal circuit and district court rules with annotations to cases arising in Alabama. An index follows each set of rules. This guidebook is designed to minimize research and save valuable time for the practicing attorney.

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Letters to the Editor



LETTERS TO THE EDITOR

The purpose of the Letters to the Editor column is to provide a forum for the expression of the readers' views. Readers of *The Alabama Lawyer* are invited to submit short letters, not exceeding 250 words, expressing their opinions or giving information as to any matter appearing in the publication or otherwise. The editor reserves the right to select the excerpts therefrom to publish. Unless otherwise expressed by the author, all letters specifically addressed as Letters to the Editor will be candidates for publication in *The Alabama Lawyer*. The publication of a letter does not, however, constitute an endorsement of the views expressed. Letters to the Editor should be sent to:

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Letters to the Editor
P.O. Box 4156
Montgomery, AL 36101

Comments on the new format . . .

"I have just received and read *The Alabama Lawyer* for January 1983. It is excellent and I congratulate you on its form and substance. I look forward to further issues . . ."

Douglas Arant
Birmingham

"I very much enjoyed reviewing the January edition of *The Alabama Lawyer*. I was very pleased with the new format and am certain that *The Alabama Lawyer* will be of even greater service to the Bar."

Nathaniel Hansford
Tuscaloosa

"I was travelling the early part of this week and took with me the new *Alabama Lawyer*. I am thrilled with the publication. It exceeds my highest expectation . . ."

Albert Copeland
Montgomery

. . . and one letter to the president

How does one measure success? Most would agree that being president of the state bar is quite an honorable position; however, after looking at the January issue of *The Alabama Lawyer*, bar commissioner Nelson Vinson set an even higher goal for his friend Norborne Stone. Remembering a song of the early seventies, Mr. Vinson began cutting and pasting and within a few minutes our bar president had his picture on "the cover of the *Rolling Stone*." If you didn't happen to get that issue of the *Rolling Stone*, at least you have a picture of a rolling Stone on the cover of your *Alabama Lawyer*.

Congratulations to Norborne Stone for his "genuine" success and to Nelson Vinson who has proven that lawyers *really do* have a sense of humor!



Cartoonist Dennis R. Bailey is a member of the law firm of Rushton, Stakely, Johnston & Garrett, P.A. in Montgomery.

Joint Tenancy and Tenancy in Common of Real Property — The Gulf Separating Them

Robert P. Denniston

Carrie Durant was in a quandary. She didn't really know just what to do. The year was 1977. A long bout with diabetes had already cost her both legs and now she was suffering from a host of other illnesses. Looking back over the years since she and Roy married in 1967, she worried about what was going to happen to their property when she was gone. Would her own sons, born of an earlier marriage, ever share in what she and Roy had worked so hard for? Would Roy's own two children someday get it all?

All of this just didn't seem to be a problem in the early years of their marriage when she and Roy bought the farm, parcel by parcel. It seemed then so simple and convenient and fair for the two of them to put both their names in the deeds. The lawyer said with survivorship deeds it would all just pass one day to the one that outlived the other.

Six months later poor Carrie passed on to her reward. There was no will. Roy thought about the land. "Well, that's the way we agreed all along. Now the land is mine. Deep down in my heart I believe Carrie would have provided for my children someday if I had gone first. Someday I will have to see that Steve (one of Carrie's sons) gets his inheritance."

Little did Roy know at the time that Steve had a helping hand in seeing to his

inheritance. On December 19, 1977, Carrie had executed a deed conveying all but six of their thirty-one and one half acres to one of her sons, Steve Hamrick. Her other son had been a patient in a V.A. hospital for a long time. This bit of news was communicated to Roy two or three days after the funeral. Thus came about *Durant v. Hamrick*, 409 So. 2d 731 (Ala. 1981).

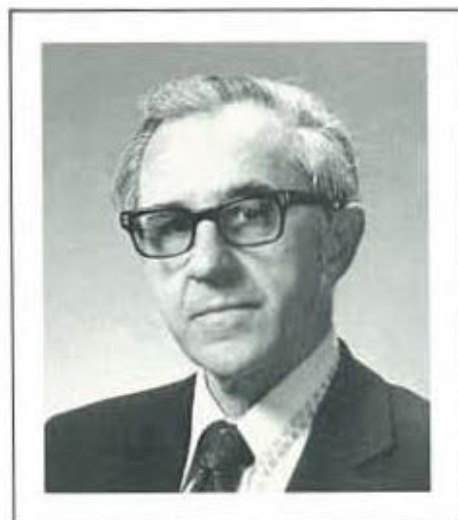
Norman J. Gale, Jr. (of the Mobile Bar) examined the deeds under which the Durants acquired title. One appeared to come squarely under the doctrine of *Nunn v. Keith*, 289 Ala. 518, 268 So. 2d 792 (1972). The granting clause conveyed to Roy and Carrie "... during their joint lives, and upon the death of either of them, then to the survivor of them in fee simple, and to the heirs and assigns of such survivor forever." Norman sighed and set this one aside.

Two of the deeds had identical granting clauses as follows:

"... as tenants in common and with equal rights and interests for the period or term that the said Grantees shall both survive and unto the survivor of the said Grantees, at the death of the other..."

These two deeds Norman decided to use to test the scope of the decision in *Nunn*.

With Chief Justice Torbert writing for himself and Justices Almon, Shores and



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Beatty, and with a special concurring opinion by Justice Embry, our Supreme Court held that these two deeds created a tenancy in common on the part of Roy and Carrie for life, with cross-contingent remainders to the survivor in fee, indestructible. The remainder interest in Roy as the survivor was impregnable against the 1977 deed from Carrie to her son, Steve. Justices Maddox, Faulkner, Jones and Adams dissented, with Justice Adams offering his own opinion and Justice Maddox writing an opinion with which Justice Jones concurred.

"You can't ever assume a doggone thing." The treatment of joint tenancy and tenancy in common in Alabama bears witness to this adage.

Is there a practicing lawyer in Alabama who does not occasionally draft a deed? What does this decision portend for all of us? This article suggests at least some answers.

As they used to say in the military services, "You can't ever assume a dog-gone thing." The treatment of joint tenancy and tenancy in common in Alabama bears witness to this adage. From the time of the abolition of joint tenancies by the Legislature shortly after Alabama achieved statehood until 1924, it was generally considered by the Bar that with the demise of joint tenancy there existed in our jurisprudence only tenancy in common, without any form of survivorship. In that year the Alabama Supreme Court recognized survivorship among tenants in common pursuant to language adequate to express such an intent in a bank savings account contract; the decision, however, not expressly limiting its scope to personalty. See *First National Bank of Birmingham v. Lawrence*, 212 Ala. 45, 101 So. 663 (1924).

After the 1945 amendment to the Code recognizing survivorship among joint tenants upon express language to that effect in the instrument creating such tenancy, and the 1951 amendment abolishing the need for a straw man conveyance in order to create a joint tenancy with survivorship, the decision of *Bernhard v. Bernhard*, 278 Ala. 240, 177 So.2d 565 (1965) established a strong precedent for the rule that a right of survivorship created by express language in the conveyance was indestructible without the consent of all of the tenants. It would have required the acumen of a lawyer more alert at the time than the author to divine the extent to which the Court in that decision had confused joint tenancy with tenancy in common, and the distinctions between survivorship among the two forms of ownership.

The same can be said as to the decision in *Nunn*. To be sure, many of us "assumed" after *Nunn* that all titles held in survivorship under either joint tenancy or tenancy in common could be severed by the unilateral action of a tenant. Such was not to be. Enter *Durant*.

Have the surprises ceased? Disregarding whatever the Legislature may see fit to do our first caveat arises from the divisions within the Court itself. Some would argue that the departure from the bench of four among the five justices constituting the majority in *Nunn* and of the additional justice who delivered a concurring opinion before *Durant* came up for review could have

spelled the difference between those two decisions. Those holding to this view would likely argue that with future changes on the bench the Court will retreat from its ruling in *Durant* and might even overrule it. In this particular instance the author is not particularly impressed with this suggestion, but finds the division in the Court over the issues in *Durant* nevertheless a cause for much uncertainty. As questions are presented in the future involving retroactivity, the interpretation of specific language and the intention of the parties, and potential exceptions to the general rule, changes in the composition of the Court could have a decided impact, even if we "assume" that the basic rule of *Durant* will find continued acceptance by the Court.

This suggests to the bar that in drafting conveyances we must exercise great care to express in language as clear and unambiguous as possible the intention of the parties.

All this suggests to the bar is that in drafting conveyances we must exercise great care to express in language as clear and unambiguous as possible the intention of the parties. The relaxation of some of the earlier, strict rules of construction, though a comfort to a degree, can trap the unwary scrivener where he allows conflicting terms to appear in different parts of the same instrument, e.g., in the granting and habendum clauses. The Supreme Court has now warned us that joint tenancies with survivorship and tenancies in common with survivorship provisions can have a vastly different impact upon the parties in interest. Where we know the wishes of the parties, our task remains to express these in legal terms in the conveyance to the best of our ability. I have seen deeds to two grantees (by name), "and to the survivor of them." What estate is thereby created? Certainly, if a joint tenancy is intended, that express language should be included in the granting clause and repeated in the habendum clause. If a

tenancy in common is intended, language expressly to that effect should be used in a similar fashion. In the case of joint tenancy, it would appear from the statute and decisions that any language making it clear that the joint tenants are to have a right of survivorship would be adequate. Since it is conceivable that minds might differ on the precise meaning of "right of survivorship," caution suggests the wisdom of such language as "and upon the death of either of them, to the survivor of them." In our office we have concocted similar language for situations involving three or more joint tenants and (however awkward) language applicable to two sets of husbands and wives, all as grantees, and I am sure others have done the same.

It seems to me that provision for survivorship among tenants in common is somewhat more complex. Having no statute to guide us, we must rely on judicial interpretations alone. Chief Justice Torbert, writing for the majority in *Durant*, used alternative definitions in recognizing "a form of concurrent property ownership as tenants in common which provides for survivorship." He first said that this form can be characterized as creating "concurrent life estates with cross-contingent remainder in fee" and then went on to describe the same form as "a tenancy in common for life with a contingent remainder in favor of the survivor." In summarizing his interpretation of the two similar deeds in *Durant* he described the title in the original grantees as "a form of concurrent ownership in property as tenants in common during the respective lives of the grantees with cross-contingent remainders in fee to the survivor." It will be recalled that the deeds themselves did not mention life estates or cross-contingent remainders. The majority of the Court found no problem in equating the language in the deeds with the standard set by the Court for placing the mantle of indestructibility upon the survivorship aspect of the tenancy. Whether a scrivener seeking to secure that element to the grantees should rely fully on this aspect of the opinion or should expressly provide for cross-contingent remainder interests is a question I will leave to the judgment of the reader. At any rate, any language less specific than that found in

the two deeds in *Durant* might well invite litigation.

By their very nature, cross-contingent remainder interests would appear to be indestructible (without consent of all remaindermen) because it cannot be ascertained which remainder interest will survive the other; all of which provides a potent argument for incorporation of language which clearly contemplates the two separate estates—life interests and remainder interests.

Yet, contemplating the endless variety of situations which can and do arise, it is not difficult to imagine that one day the Court, despite language which includes “tenants in common” and “survivorship,” will determine from the remaining language in the deed that the parties did not intend the survivorship interests to be indestructible. Whether it will recognize a third category consisting of a tenancy in common with a “destructible” survivorship or a joint tenancy (despite tenancy in common language in the document), I am unwilling to predict. We do know that before *Durant* the Court, on a number of occasions, referred to documents which used tenancy in common language as having created a joint tenancy. See *Germaine v Delaine*, 294 Ala. 443, 318 So. 2d 681 (1975). It is safe to predict that many lawyers will develop language which closely tracks the language Chief Justice Torbert used in writing his opinion.

Some deeds use the language, “A and B for (or during) their joint lives, and upon the death of either of them. . . .” On many occasions in the past the court has not concerned itself with precision in determining whether a joint tenancy or a tenancy in common was created, being only interested in the existence or nonexistence of a valid survivorship provision. Henceforth, imprecision in such language may provoke litigation as to whether a joint tenancy or a tenancy in common was intended. In the very recent case of *Smith v. Smith*, 418 So.2d 898 (Ala. 1982), the granting clause in a deed was simply “unto the said Perry Smith and Katie Lou Smith during their joint lives, and upon the death of either of them, then to the survivor of them in fee simple forever . . .” In a *per curiam* opinion the Court held that the habendum clause contained “precisely the language necessary to establish concurrent

ownership as joint tenants with right of survivorship under Code of Ala. (1975), §35-4-7.” This, to the writer, suggests two points.

First, the Court had the option to construe the habendum clause merely as showing a clear intent to provide for a title with survivorship while nevertheless looking to the granting clause in order to find the nature of the title which was to be effective prior to the death of either grantee. Had it laid more emphasis on the precedence of the granting clause, in the writer’s opinion, it could have found a tenancy in common and could still have given effect to the habendum clause as creating a survivorship (albeit an indestructible survivorship). The writer suspects that the Court was influenced in its decision by the fact that there is a statutory basis for survivorship among joint tenants (§35-4-7) and only case law supporting the concept under tenancy in common. Such a distinction should no longer be material since the Court has so clearly recognized the validity of survivorship under tenancy in common.

Second, the use of the words “for their joint lives” is equated by the Court with “as joint tenants” and therefore excludes the indestructible survivorship which may be associated with tenancy in common. In my opinion the Court did not need to reach this conclusion in order to recognize the survivorship provision in *Smith*.

The language describing survivorship may not be adequate to distinguish between the two types of ownership. Even where joint ownership with survivorship is expressed, the remainder interests are cross remainders and each one is contingent upon the prior death of the joint owner. It is, therefore, clearly the common law characteristic of severability among joint owners which makes such an interest “destructible” and not some distinction in the survivorship interest itself or in the language describing the survivorship interest.

While a simple tenancy in common is a separate estate conveyable independently of the consent of other tenants, the Supreme Court now says that it is the cross-contingent remainder interest which cannot be unilaterally destroyed. We must conclude, therefore, that to distinguish between the two types in

conveyances, words clearly specifying either “joint tenancy” or “tenancy in common” are more significant than words describing the survivorship interest. Despite the decision in *Smith*, the cautious scrivener is advised to use the words “as joint tenants” rather than “during their joint lives” so as to further emphasize that a joint tenancy is intended.

In the Mobile area most contracts for the purchase and sale of homes are in the form of accepted purchase offers on printed forms used by real estate brokers. Typically there is a limited space or a blank to indicate whether or not the conveyance is to be “with survivorship.” The author is unfamiliar with the practice in those parts of the state where lawyers customarily draft such agreements for the parties. In any event, it seems clear that the parties to such transactions (and certainly the grantees) now need to be made aware by somebody that a choice is available to them where they desire a survivorship provision. Absent such information, they will not be in a position to make an informed decision. Heretofore, the discussion has focused upon the passage of title at the time of death of the first grantee and the later death of the survivor, the convenience of bypassing probate of the will of the first to die, and the estate tax implications. Those persons who have advised the parties on such matters in the past will now likely be burdened with the further responsibility of explaining the legal differences between survivorship among joint tenants and survivorship among tenants in common. Those of us who have cautioned realtors as to their responsibilities and liabilities in this area should now alert them to this new element, and lawyers, in advising any clients in such transactions, must certainly be alert to the distinctions wrought by *Nunn* and *Durant*.

Suppose, in addition to advice on the legal distinctions, the clients solicit advice as to which of the two forms of survivorship is best suited for their situation? In my own view, the longer I have practiced law the less inclined I have become to give such advice. Instead, I have leaned more to limiting my role to pointing out the distinctions and discussing with the client the potential impact under several sets of circumstances.

However, I always insist that the ultimate decision be that of the client.

We have but to hark back to the family situation involving Carrie and Roy Durant to remind ourselves that circumstances can change, and generally do change over the years, illustrating that there is no permanent and perfect solution as to how title to property in members of a family should be held. In the remainder of this article, we will explore some of the additional factors to be considered by prospective grantees in reaching their decisions.

Just how indestructible is the survivorship title described by the Court in *Durant*? While the mere fact of divorce does not work a severance of joint ownership, there appears to be no question after *Nunn* that a court, in aid of either joint owner in a divorce proceeding, may sever the tenancy and convert the interests of both spouses to those of tenants in common, eliminating rights of survivorship. The case of *Owens v. Owens*, 281 Ala. 239, 201 So.2d 396 (1967) is instructive as to the potential impact of a divorce upon a tenancy in common with survivorship, though it may turn out not to be decisive after *Durant*. Writing in the post-*Bernhard* and pre-*Nunn* era, Justice Harwood, while not describing the exact language of the deed to the husband and wife, nevertheless determined to treat the conveyance as having established the relationship of tenancy in common between the husband and wife with contingent remainders, not subject to division without the consent of both tenants. He then concluded that since the parties had invoked the equity jurisdiction of the Court and had the power themselves to divide the tenancy by agreement, the Chancellor was empowered by his equity jurisdiction to supply such agreement for either party. It shouldn't be long before the present Supreme Court will be provided with the opportunity to consider this same question in the wake of its decision *Durant*.

Both in *Owens* and in *Killingsworth v. Killingsworth*, 284 Ala. 524, 226 So. 2d 308 (1969) the Court relied in part upon the fact that, by virtue of cross bills, both grantees had applied for equitable relief. A future spouse-litigant relying upon a deed clearly expressed in terms of tenancy in common with survivorship may

avoid filing a cross bill and seeking equitable relief, and thereby try to prevail upon the Court to distinguish these earlier cases without overruling them.

Shortly before the decision in *Durant* the Court decided *Kempaner v. Thompson*, 394 So. 2d 918 (Ala. 1981), involving the felonious killing of a husband by his wife. The Court described the couple as "joint tenants," each of whom had been previously married and each of whom owned an interest in a lot and house. Each executed a deed conveying their two houses and lots to themselves, "for and during their joint lives and upon the death of either of them, then to the survivor of them in fee simple." The Court first determined that the parties created a "valid joint tenancy with right of survivorship," and that under *Nunn* the estate was destructible as at common law. The felonious killing was held to have severed the joint tenancy, thereby creating a tenancy in common, with the surviving (former) joint tenant retaining an undivided half interest in the property, and with the other half interest passing to the estate of the deceased (former) joint tenant. Since the Court acknowledged that the case was one of first impression in Alabama and that varying results have been reached in other jurisdictions, we can expect a second look when the felonious killing involves tenants in common with a survivorship provision.

Can the rights of an intervening creditor of one of the owners of property held under a survivorship deed work the destruction of the cross-contingent remainder estates? The question has been substantially answered in the post-*Bernhard*, pre-*Nunn* decision of *Brown v. Andrews*, 288 Ala. 111, 257 So. 2d 356 (1972), authored by Justice McCall, but with Justice Maddox and Chief Justice Heflin dissenting. The two deeds in question conveyed the property to Mr. and Mrs. Andrews, during their joint lives, and upon the death of either of them, then to the survivor of them in fee simple. Shortly afterwards, the couple conveyed all of the property to a straw man, who then reconveyed a fee simple title to Mrs. Andrews alone. The two subsequent conveyances were held to be in fraud of creditors in a prior litigation in which the court impressed a lien

against the interest of Mr. Andrews to secure an indebtedness for which a judgment was rendered. The question to be considered by the Supreme Court was the definition of the interest in the property which was owned by Mr. Andrews.

Relying on *Bernhard* the court held that the parties to the original two deeds had intended to create and did create a tenancy in common during the joint lives of the tenants with the right of survivorship, and that a division could be had during the joint lives only with the consent of both of the grantees. Under the later decisions in *Nunn* and *Durant*, the trial court would have to make a distinction as to whether or not the deeds had created a joint tenancy with survivorship or a tenancy in common with survivorship, if such a distinction would be controlling to the disposition of the case. The court examined what is now §6-9-40 Ala. Code (1975) concluding that contingent remainders were not among the estates in real property subject to levy and sale under an execution. Hence, prior to the fraudulent conveyances, the contingent remainders could not have been subject to levy and sale under execution, nor could they have been subject to a judgment lien. Such being the case, the creditors could not have been injured by the fraudulent transaction insofar as any disposition of the contingent remainder interest was concerned. Thus, the only interest which was set aside by the judgment declaring the conveyances to be fraudulent and which was still subject to levy and sale under execution was the estate of Mr. Andrews for life in an undivided half interest in the property. Interestingly enough, under this line of reasoning Mrs. Andrews wound up owning both of the contingent remainder estates, so that if Mr. Andrews survives his wife, her estate in the property will descend and vest either under the laws of descent and distribution or in accordance with her will. It is also to be observed that under §35-6-20 the owner of the life estate in the half undivided interest for the life of Mr. Andrews is entitled to a sale for division.

There is considerable law in other jurisdictions recognizing that if a joint tenancy exists, the levy of execution against such interest does work a severance of the joint tenancy although the

mere entry of judgment against the interest of a joint tenant does not alone operate as a severance. In the light of the decision in *Nunn* it would be logical for our Supreme Court to so hold, without having to overrule *Brown*.

The writer has seen several situations in which a federal tax lien was levied against one spouse where the spouses held title under a survivorship deed. At a time when it was assumed that there could be no severance without the consent of both grantees, the wife was able to purchase the life estate of her husband at an execution sale for a relatively nominal amount. The situation could be far less comforting to the parties if they were held to be joint tenants with survivorship and if a severance could be forced.

Yet another area awaiting clarification involves retroactivity. In *Jackson v. Fillmore*, 367 So. 2d 948 (Ala. 1979) the Court refused to give retroactive application to *Nunn* in a joint tenancy with survivorship situation created under a deed executed after *Bernhard*. There the husband-joint tenant attempted a severance by conveying to a third party and then died (all prior to *Nunn*) and a title lawyer rendered an opinion to a purchaser of the entire title from the surviving wife. The Court determined that the title attorney had relied upon *Bernhard*.

Counsel for both parties in their briefs in *Durant* argued the question of retroactivity, although the Court found it unnecessary to reach that issue. Since *Durant* distinguished without overruling *Nunn* a limitation on retroactive ap-

plication of *Durant* might appear unlikely, but agile minds may find an appropriate hardship case worthy of the attempt. The vigorous dissents in *Durant* and the passage of years between *Nunn* and *Durant* suggest that the Court may be tempted to consider some type of retroactive strictures upon the scope of that decision.

The Alabama Uniform Disclaimer of Property Interests Act, §35-17-1 et seq, Ala. Code (1975), was adopted shortly before the decision in *Durant*. The statute provides a framework for disclaimer of various property interests, including that of a "surviving joint tenant." Nowhere does it make reference to the interest of a survivor among tenants in common with cross-contingent remainder interests.

Vicissitudes of the type which buffeted the lives of Carrie and Roy Durant should sound familiar to lawyers in every part of Alabama. We can take no comfort that, perhaps by chance alone, Roy and his stepson each wound up with some of the property, because the wording in all of the deeds was not identical. It is apparent that the difference between "destructibility" and "indestructibility" can make a profound difference in the lives and fortunes of some among our clients. Either a method should be devised for routinely explaining these distinctions to the parties to all "survivorship" contracts and conveyances so that they can make informed choices, or steps should be taken to obliterate the distinction in Alabama between the two estates, so that there will be only one, be it "destructible" or "indestructible." □

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Riding the Circuits

Birmingham Bar Association

Birmingham Bar Association officers for 1983 are:

J. N. Holt—President
Thomas W. Christian—Vice President
J. Mark White—Secretary/Treasurer

James S. Lloyd is the president of the Birmingham Young Lawyers Section for 1983.

The Birmingham Bar Association holds monthly CLE luncheons on the third Friday of each month and sponsors CLE seminars each fourth Friday of the month.

The 1,620 members of the Birmingham Bar look forward to seeing you in Birmingham at the Annual Meeting of the State Bar.

—submitted by Beth Carmichael

Calhoun County

The Calhoun County Bar Association held its first meeting of 1983 on Thursday, January 13, 1983. This organizational meeting was held at the Calhoun County courthouse.

The members of the Association expressed their appreciation to Judge Robert M. Parker through a resolution citing him for his many accomplishments during his 18 year tenure on the bench.

Officers for the coming year were elected. Those assuming leadership roles in the local Bar Association are:

Richard H. Cater—President
William H. Jackson—Vice President
Grant A. Paris—Secretary
Wilford J. Lane—Treasurer

—submitted by Gordon F. Bailey, Jr.

Houston County

The Houston County Bar Association is well into its new year and continues to grow with over 88 members now registered. Meetings are held the fourth Wednesday of every month at noon at the Sheraton Inn in Dothan. Attendance at the monthly meetings continues to be extremely high, and Houston County lawyers have shown their interest in their profession and local bar association by such attendance. Outstanding programs have been presented so far this year by such speakers as Richard Jordan, Justice Oscar Adams of the Alabama Supreme Court and John Wilkerson, Clerk of the Alabama Court of Civil Appeals.



Pictured in the Houston County Law Library are (L to R) Sam Adams, vice president of the Houston County Bar Association; Rhonda Weadon, county law librarian; and Ernie Hornsby, president of the local bar.

A source of much pride by the Bar Association is the law library maintained in the Houston County Courthouse. Through the dedicated efforts of Presiding Circuit Judge Jerry White, the library has been upgraded to the point that it is heavily used and relied upon by Houston County lawyers. A much needed librarian has also been employed.

—submitted by Ernest H. Hornsby



James J. Duffy, Jr., president of the Mobile Bar Association, presided when retirement ceremonies were held for the Honorable John L. Moore (seated far left), Probate Judge of Mobile County.

Mobile County

The Mobile Bar Association held its annual Christmas monthly meeting December 17, 1982. Members enjoyed eggnog prior to the luncheon and used this time to visit and extend good wishes of the season.

Past presidents of the MBA were honored. Twenty-one of twenty-eight living past presidents were in attendance. Also recognized for their assistance to the members of the MBA were the clerks of the Circuit, District and Probate Courts and the Register of Chancery.

At the close of this, the final meeting in 1982, Mylan R. Engel, 1982 president, presented the gavel to James J. Duffy, Jr., incoming president for 1983. The entire assembly gave Mr. Engel a standing ovation in recognition of an outstanding year of leadership.

Open House at the new MBA Headquarters was held December 21. Guests toured the new facility between the hours of ten and four and enjoyed eggnog and "goodies" provided by the Auxiliary. The 127-year-old Le Vert Office was the perfect setting for the friendly gathering of lawyers, their families, friends and office staff to celebrate the Holiday Season and extend to each other good wishes for the New Year.

Retirement Ceremonies were held for the Honorable John L. Moore, Probate Judge of Mobile County from 1963-1983, on Thursday, January 13, 1983, in the Probate Courtroom where he was sworn in 19 years ago.

Letters to Judge Moore from U.S. Rep. Jack Edwards and U.S. Sen. Howell Heflin were read by James J. Duffy, Jr., president of the Mobile Bar Association, and Mayor Gary Greenough proclaimed January 17th John L. Moore Day.

When asked how it felt to retire, Judge Moore quipped, "I'm too old to cry and a little too young for it not to hurt."

A reception honoring Judge Moore was held in the Mobile Bar Association Headquarters immediately following the ceremony. More than three hundred family members, friends, county and city officials and other dignitaries came to express their good wishes upon his retirement and express their appreciation for his years of dedicated service to the citizens of Mobile.

—submitted by Barbara Rhodes

Montgomery County

The Montgomery County Bar Association held its Annual Meeting January 19, 1983, at the Whitley Hotel. There were approximately 170 members of our association present. The guest speaker was Wallace D. Riley, president-elect of the American Bar Association. Also in attendance was Norborne Stone, president of the Alabama State Bar, and Bill Hairston, president-elect of the Alabama State Bar.

The American Bar Association 50-year Award was presented to Mr. T. B. Hill, Jr.

The following officers and directors were elected to serve for the year 1983:

Euel A. Screws, Jr.—President
 Henry C. Chappell, Jr.—Vice President
 James R. Seale—Secretary/Treasurer
 David B. Byrne, Jr.—Director
 Wanda D. Devereaux—Director
 George H. B. Mathews—Director

—submitted by Gloria Waites



T. B. Hill, Jr., a partner in the firm Hill, Hill, Carter, Franco, Cole & Black, accepts the American Bar Association Fifty Year Award at the Montgomery County Bar Association Annual Meeting in January. Presenting the award is Montgomery lawyer Joe Espy.

CLE News and Seminars

Mary Lyn Pike
Staff Director, MCLE Commission



MCLE NEWS

Reporting of CLE Credits: 1982

The review of approximately seven thousand individual reports of compliance with the CLE requirement has been an eye-straining and eye-opening task for this author. Ideas for improvement in the design of the reporting form have developed. Additionally, several suggestions for individuals completing the form have come to mind. For example, it is suggested that information reported in 1983 be typed rather than handwritten, in order to ensure legibility. Note also that there is no sponsoring organization named "CLE." Attorneys have used this name to refer to such organizations as the Birmingham Bar Association, the Mobile Bar Association, and the Alabama Bar Institute for Continuing Legal Education. It is unnecessary to list the particular room in which an activity was conducted; it is sufficient to name the city. Filing copies of program brochures, in anticipation of reporting the credits earned, will assist in the making of complete and accurate reports.

It is not necessary to wait until December of each year to attend seminars and submit the reporting form. Such delays may result in inaccurate, yet interesting, reporting. For example, one individual reported attending a seminar entitled "Marital Relations." To date, no sponsor of CLE activities has scheduled such a seminar. One individual in a hurry designated a new legal malpractice specialist for the Bar: "Dukenord Lingerstem." According to the Executive Secretary of the Bar, the Bar Association's malpractice specialist remains Duke Nordlinger Stern.

MCLE Regulations: 1983 Amendments

At its meeting on December 10, 1982, the Board of Bar Commissioners adopted several amendments to the Regulations for Mandatory Continuing

CONTINUING LEGAL EDUCATION OPPORTUNITIES

March 1-May 31, 1983

To register for any of these seminars, contact the sponsoring organization rather than the MCLE Commission office.

Sponsor Code	Sponsor Name	Telephone Number
ABANI	American Bar Association National Institutes	(312) 567-4675
ABICLE	Alabama Bar Institute for Continuing Legal Education	(205) 348-6230
ADIR	Alabama Department of Industrial Relations	(205) 832-5040
ALI-ABA	American Law Institute— American Bar Association	(215) 243-1630
AtBA	Atlanta Bar Association	(404) 521-0781
CICLE	Cumberland Institute for Continuing Legal Education	(205) 870-2865
DRI	Defense Research Institute	(414) 272-5995
GWU	George Washington University National Law Center	(202) 676-6815
NCDA	National College of District Attorneys	(713) 749-1571
NITA	National Institute for Trial Advocacy	(919) 962-8518
PLI	Practising Law Institute	(212) 765-5700
PRG	Patent Resources Group, Inc.	(202) 223-1175
TULS	Tulane University Law School	(504) 865-5939

SCHEDULE OF SEMINARS

Dates	Names and Places
March 1, 1983	Birmingham— <i>Avoiding Legal Malpractice</i> . ABICLE. Credits: 3.9.
March 2, 1983	Montgomery— <i>Avoiding Legal Malpractice</i> . ABICLE. Credits: 3.9.
March 3, 1983	Andalusia— <i>Avoiding Legal Malpractice</i> . ABICLE. Credits: 3.9.
March 4, 1983	Mobile— <i>Avoiding Legal Malpractice</i> . ABICLE. Credits: 3.9.
March 9, 1983	Birmingham— <i>Federal Practice</i> . ABICLE. Credits: 7.2.
March 11-12, 1983	Birmingham— <i>Banking Law</i> . ABICLE. Credits: 6.6.
March 11-14, 1983	San Francisco— <i>Medical Malpractice</i> . DRI.
March 16-18, 1983	Washington, D.C.— <i>Government Contract Claims</i> . GWU. Credits: 20.7.
March 17-18, 1983	New Orleans— <i>Admiralty Law Institute</i> . TULS.
March 18-19, 1983	Atlanta— <i>Consumer Credit</i> . PLI.
March 19, 1983	New Orleans— <i>Advanced Medical Malpractice</i> . PLI.
March 20-24, 1983	Birmingham— <i>Federal Rules of Civil Procedure</i> . CICLE. Credits: 3.
March 24-25, 1983	Bermuda— <i>Comparative Law</i> . ABICLE.
	New Orleans— <i>Current Developments in Bankruptcy and Reorganizations</i> . PLI.

March 25, 1983	Birmingham— <i>New Probate Code</i> . ABICLE. Credits: 7.2. Birmingham— <i>Trial Advocacy</i> . CICLE. Los Angeles— <i>Securities Law for Nonsecurities Lawyers</i> . ALI-ABA.
April 1, 1983	Birmingham— <i>Southeastern Trial Institute</i> . ABICLE.
April 6-7, 1983	Birmingham— <i>Workmen's Compensation</i> . ADIR. Credits: 10.2.
April 6-9, 1983	Reno— <i>Public Civil Law Problems</i> . NCDA.
April 7, 1983	Huntsville— <i>Age, Race and Sex Discrimination</i> . ABICLE.
April 7-8, 1983	New York— <i>Tax Exempt Financing</i> . PLI.
April 8, 1983	Birmingham— <i>Age, Race and Sex Discrimination</i> . ABICLE.
April 14, 1983	Mobile— <i>Age, Race and Sex Discrimination</i> . ABICLE.
April 14-16, 1983	Las Vegas— <i>Business Reorganizations Under the Bankruptcy Code</i> . ALI-ABA.
April 15, 1983	Birmingham— <i>Criminal Procedure</i> . CICLE. Montgomery— <i>Age, Race and Sex Discrimination</i> . ABICLE.
April 17-21, 1983	Chicago— <i>Trial Advocacy for Prosecutors</i> . NCDA.
April 28, 1983	New York— <i>Banking and Commercial Lending Law 1983</i> . ALI-ABA.
April 28-30, 1983	Point Clear— <i>Southeastern Corporate Law Institute</i> . ABICLE.
May 2-6, 1983	Hilton Head— <i>Institute on Patent Law</i> . PRG.
May 5-7, 1983	Atlanta— <i>Superstar of Seminars: Criminal Defense Litigation</i> . AtBA. Credits: 20.8. New York— <i>Partnerships</i> . ALI-ABA. Washington, DC— <i>Water and Air Pollution</i> . ALI-ABA.
May 12-22, 1983	Chapel Hill— <i>Southeast Regional Institute on Trial Advocacy</i> . NITA. Credits: 90.0.
May 13-14, 1983	Sandestin— <i>Alabama Young Lawyers</i> . ABICLE.
May 14, 1983	New York— <i>Taking Depositions</i> . ABANI. Credits: 7.5.
May 19-20, 1983	Birmingham— <i>Medical Malpractice</i> . CICLE.
May 20, 1983	Mobile— <i>Oil, Gas and Mineral Law</i> . ABICLE.
May 27-28, 1983	Point Clear— <i>23rd Annual Tax Seminar</i> . ABICLE.

MCLE News *Continued*

Legal Education, as recommended by the MCLE Commission.

Regulation 3.3. This regulation established advance credit for the calendar year 1982 to the effect that CLE activities attended after May 4, 1981 could be reported for credit in 1982. This regulation was deleted because it has no further field of operation. Only credits earned in 1983 may be reported in 1983.

Regulation 3.5. This regulation concerns the earning of CLE credit for teaching in approved CLE activities and in accredited law schools. The regulation was amended to the effect that CLE presentations accompanied by thorough, high quality, readable and carefully pre-

pared written materials qualify for CLE credit on the basis of six credits for each hour of presentation. Presentations accompanied by one or two page outlines or not accompanied by written materials now qualify for CLE credit on the basis of three credits per hour of presentation. Repeat presentations qualify for one half of the credits available for the initial presentation. Individuals teaching courses in accredited law schools may now claim six hours of CLE credit for each hour of academic credit awarded by the law schools for the courses.

Regulation 3.8. This new regulation provides that credit may be earned through service as a Bar Examiner in

Alabama and in any other state. Twelve hours of CLE credit will be awarded for the preparation and grading of one or more bar examination questions during a given year.

Regulation 3.9. Credit may be earned through formal enrollment and education of a postgraduate nature, either for credit or by audit, in an accredited law school. One CLE credit may be claimed for each hour of class attendance.

Regulation 4.1.10. This regulation has been amended to the effect that program sponsors are no longer required to submit copies of evaluation questionnaires completed by participants unless specifically requested to do so by the MCLE Commission. It is, however, required that within 30 days of the conclusion of a given activity, a data summary of the results of the questionnaires be forwarded to the Commission. Sponsors are now required to maintain the questionnaires for a period of 90 days following a program, pending a request for submission of them to the Commission.

Regulation 4.2. For 1983, continuing legal education activities sponsored by the following organizations are presumptively approved for credit, provided that the standards set out in Regulations 4.1.1 through 4.1.11 are met.

Accredited law schools (ABA, AALS)
Administrative Office of Courts—The Judicial College
Alabama Association of Corporate Counsel
Alabama Bar Institute for Continuing Legal Education
Alabama Consortium of Legal Services Programs
Alabama Criminal Defense Lawyers Association
Alabama Defense Lawyers Association
Alabama District Attorneys Association
Alabama State Bar and Bar Sections
Alabama Trial Lawyers Association
American Academy of Judicial Education
American Bar Association and Bar Sections
American Law Institute—American Bar Association Committee on Continuing Professional Education
American College of Trial Lawyers
American Judicature Society
Association of Trial Lawyers of America
Bar Associations of the sister states, the District of Columbia, Puerto Rico and the Trust Territories

Birmingham Bar Association
 Commercial Law League of America
 Fund for Public Education
 Cumberland Institute for Continuing
 Legal Education
 Defense Research Institute
 Federal Bar Association
 Federal Publications, Inc.
 Huntsville-Madison County Bar Associ-
 ation
 International Association of Insurance
 Counsel
 International Society of Barristers
 Legal sections, agency programs—U.S.
 and state governments
 Library of Congress—Legislative Ser-
 vice
 Maritime Law Association
 Mobile County Bar Association
 Montgomery County Bar Association
 Motor Carrier Lawyers Association
 National Bar Association
 National College of District Attorneys
 National College of Juvenile Justice
 National District Attorneys Association
 National Health Lawyers Association

National Judicial College
 National Institute for Trial Advocacy
 National Organization of Social Security
 Claimants' Representatives
 National Rural Electric Cooperative As-
 sociation (legal programs only)
 Patent Resources Group, Inc.
 Practising Law Institute
 Professional Education Systems, Inc.
 (Alabama programs only)
 Rocky Mountain Mineral Law Founda-
 tion
 Southeastern Bankruptcy Law Institute,
 Inc.
 Southern Federal Tax Institute, Inc.
 Southwestern Legal Foundation
 Trial Lawyers Association of Madison
 County

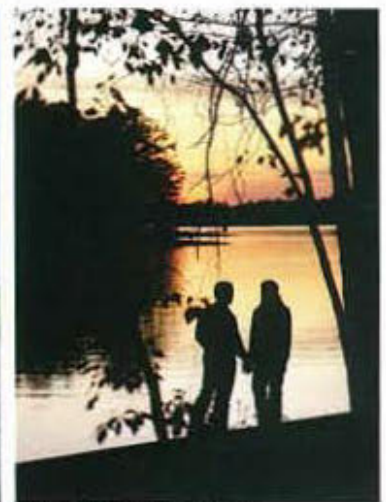
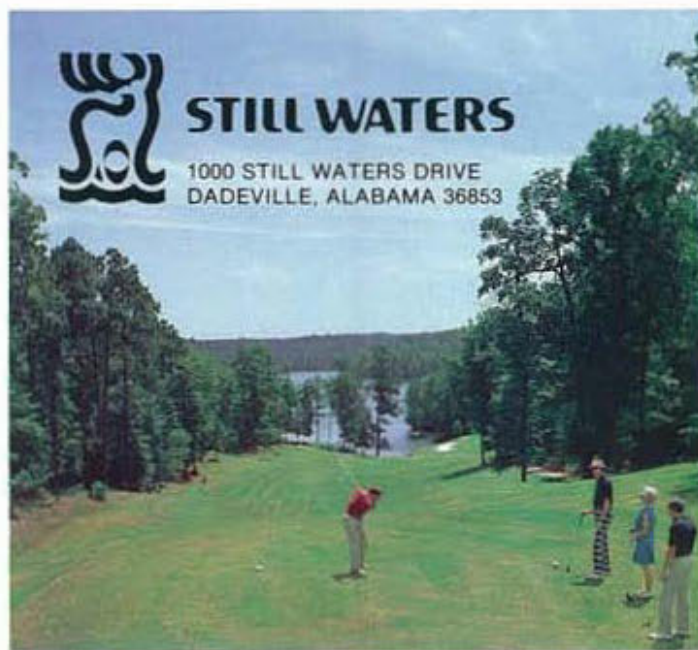
Regulation 4.5. Any organization not included in Regulation 4.2, desiring approval of a course, program, or other activity, will apply to the Commission by submitting the required application form and supporting documentation at least 30 days prior to the date for which the course or program is scheduled. □

Executive Director's Report

Continued from page 69

in most jurisdictions where there is an integrated bar—and they exist in 32 jurisdictions. Our role in state government is not a unique one. The California State Bar is much like ours in its organization. A former president of that group once said the California Bar was a "mug-wump" bar. Its "mug" was in the legislature and its "wump" was in the Supreme Court. If you're tired of the labels of Democrat, Republican or other known political entities, remember you could claim to be a "mug-wump."

Reginald T. Hamner



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AL-1A

Young Lawyers' Section

J. Thomas King, Jr.
President



The third Executive Committee Meeting of the Young Lawyers' Section of the Alabama State Bar was held at the Stafford Inn in Tuscaloosa on February 12, 1983. The meeting was well-attended and proved to be quite successful.

The Saturday conference was preceded on Friday evening with a social event, which was hosted by Claire Black and Ron Davis. In addition, Claire and Ron made arrangements for those interested Executive Committee members to attend the Alabama-Georgia basketball game on Saturday afternoon.

The weekend can be capsuled by stating that everyone had an enjoyable time, and much was accomplished.

Plans are well under way for the Young Lawyers' Annual Seminar, which will be held at Sandestin during the weekend of May 13-14, 1983. Caine O'Rear, III, and his committee are arranging another interesting program. More specific details will be forthcoming.

The Birmingham Young Lawyers elected Officers and Executive Committee Members for 1983 at the Annual Meeting and Christmas Party held on December 16, 1982. These newly elected officeholders are as follows:

President—James S. Lloyd
First Vice President—Carol Ann Smith
Second Vice-President—James H. "Popsie" Miller
Secretary—Bert P. Taylor
Treasurer—B. Boozer Downs, Jr.
Assistant Treasurer—Rowena Crocker

Executive Committee:

Robert M. Girardeau	Lee Benton
Jasper P. Juliano	S. Shay Samples
Stephen A. Rowe	John W. Haley
Julia Smeds	J. Gary Pate
H. Thomas Wells, Jr.	Robert A. Jones, Jr.
Judy Whalen	

President Jim Lloyd advises that the tentatively scheduled dates for YLS evening social meetings during 1983 are March 31, May 12, July 21 (during the Alabama State Bar Meeting in Birmingham), September 8, and October 27. The Annual Meeting and Christmas Party will be held on December 15, 1983. The Birmingham Young Lawyers wish to especially invite young lawyers from around the State to join them for the social function planned during the Alabama Bar Convention.

The Montgomery YLS recently held elections for Officers and Directors to serve during the coming year. Those chosen to serve are as follows:

President—Thomas R. DeBray
Vice President—Pamela Gooden Hope
Secretary/Treasurer—James H. Anderson

Directors:

Wade Hope
William R. Blanchard
Susan Bevell
Wanda Devereaux—
Immediate Past President

The Alabama Lawyer provides the best means available to disseminate information concerning recent or planned activities of local YLS groups around the State, as well as noteworthy accomplishments or activities of individual young lawyers. I want to encourage all young lawyers to report any pertinent news to the Chair of the Young Lawyers' Alabama State Bar Information Committee, Stephen E. Brown, 1400 Park Place Tower, Birmingham, Alabama, 35203, for publication in *The Alabama Lawyer*.

Bankruptcy Practice Under the "Rule"

Wilbur G. Silberman



Wilbur G. Silberman, a partner in the Birmingham law firm of Gordon, Silberman, Loeb, Cleveland & Gordon, P.A., received both his undergraduate and law degrees from the University of Alabama. He has been a contributor to The Alabama Lawyer in the past.

All lawyers now should be aware that on the 28th day of June 1982, the United States Supreme Court decreed that the Bankruptcy Reform Act of 1978, generally effective October 1, 1979, was unconstitutional. *Northern Pipeline Construction Company v. Marathon Pipe Line Co.*, 50 U.S.L.W. 4892, 102 S.Ct. 2858. The Court held that the Act violated Article III of the U.S. Constitution in granting broad pervasive jurisdiction to bankruptcy judges over all civil proceedings arising under the Act, or relating to cases under the Act (e.g.—claims for damages) since the bankruptcy judges are not Article III judges as they serve only for a fixed term of years and their salaries are subject to reduction. The theory is that Article III judges who serve for life with no possible reduction of compensation are insulated from outside pressures.

The Court stayed the judgment until October 4, 1982, saying: "This limited stay will afford Congress an opportunity to reconstitute the bankruptcy courts, or to adopt other valid means of adjudication, without impairing the interim administration of the bankruptcy laws." Although the stay was extended until December 24, Congress has not acted and the stay has expired.

Prior to October 4, 1982, the Judicial Conference of the United States (See 28 USC §331) issued a paper discussing *Northern Pipeline*, stating reasons for its opposition to giving Article III status to bankruptcy judges, and proposing remedial legislation. Later it recommended a rule, as a means to ensure the continued functioning of bankruptcy courts, pending corrective legislation. The rule as fleshed out by the administrative office has been adopted in substantially the same form by all district courts of the nation. The purpose of this article is to discuss practice under this rule; it is not to editorialize as to status of bankruptcy judges or the validity of the Rule. The Rule is set forth in the appendix as an aid in understanding the following discussion.

The bankruptcy court shall continue to be known as the United States Bankruptcy Court of its district. The bankruptcy clerk maintains the files in bankruptcy cases and in adversary proceedings regardless of whether a case is referred to the United States District Court Judge. All papers in cases or proceedings relating to bankruptcy under Title 11 of the United States Code are filed with the Clerk of the Bankruptcy Court, whether the case is before the bankruptcy judge or a district court

judge, with the exception that a judgment of the district court is filed in accordance with Rule 921 of the Bankruptcy Rules.

Before proceeding with an explanation of the Rule, it is important to understand the difference between "related" and "Title 11" proceedings as these terms will be used in this article. The Rule uses no term to contrast the proceedings called "Title 11" or "related proceedings." I recommend a reading of Rule (d) (3) to understand the difference between the two types, but as examples to distinguish the two: a Complaint For Relief From Automatic Stay is "Title 11" while one for Breach Of Contract where no claim has been filed against the estate, is "related."

Any bankruptcy matter pending on December 25, 1982 is deemed referred to the bankruptcy judge before whom it was pending. All new cases of whatever nature arising under Title 11 or related to cases under Title 11, are referred to the bankruptcy judges of the district court. However, this reference may be withdrawn by the district court at any time on its own motion or upon a motion timely filed by one of the parties to the proceedings. No approval of the district court is required to transfer cases in part or in whole between bankruptcy judges within the particular district.

If a motion is filed for withdrawal of the automatic reference to the bankruptcy judge, there will not be a stay of the bankruptcy matter then pending before the bankruptcy judge, *unless a specific stay is issued by the district court*. If the reference is withdrawn, the district court has several alternatives: It may keep the entire matter; it may refer part back to the bankruptcy judge; or it may even refer the entire matter back to the bankruptcy judge delineating at the time the powers and functions which may be exercised by the bankruptcy judge. When the reference is withdrawn, the district court's usual system for assigning civil cases will govern the reassignment to the district court judge.

The extent of the powers of the bankruptcy judge are set forth in Section (d) of the Rule. Bankruptcy judges are authorized to perform all of the acts and duties in referred cases necessary for the handling of these cases, except bankruptcy judges may not conduct:

- (A) A proceeding to enjoin a court.
- (B) A proceeding to punish a criminal contempt, not committed in the presence of the bankruptcy judge, or which warrants punishment or imprisonment.
- (C) An appeal from a judgment, order, decree or decision of the United States bankruptcy judge.
- (D) Jury trials.

Matters which may not be performed by a bankruptcy judge will be transferred to a district judge. The Rule does not set forth whether any motion is necessary to effect the transfer, but it would appear that the bankruptcy judge should *sua sponte* order the transfer.

As contrasted with the 1978 Act, the bankruptcy judge, under the Rule, has no power to conduct a jury trial, probably because this is considered a judicial duty only to be exercised by an Article III judge. An unanswered question is whether a request for a jury trial automatically causes a reference to the district court judge, or whether the bankruptcy judge has discretion to deny the request, thereby preventing the transfer to the district court. It is not known whether this was considered by the Judicial Conference.

Except for "related proceedings," the orders and judgments of the bankruptcy judges are effective upon entry by the clerk of the bankruptcy court, unless there is a stay. The stay may be entered by the bankruptcy judge or by the district judge. This practice is similar to the present Bankruptcy Rule 805 as to appeals.

Final orders and judgments of the bankruptcy judge are subject to review by the district court, which is initiated by notice of appeal filed within ten days of the date of the entry of the judgment or order. The Rule provides that, except as modified by Section (c) (2)(A) and (b), the appellate procedure is set forth in part VIII of the existing Bankruptcy Rules. The Rule also provides that Bankruptcy Interim Rule 800⁴ applies to applications for leave to appeal interlocutory orders of bankruptcy judges. Anyone desiring to appeal a ruling of a bankruptcy judge should either file notice of appeal within the ten day period or request an extension of time in which to file the notice. Either action should be taken within the ten day period.

Section (d) (3) (B) provides that in "related proceedings," the bankruptcy judge does not enter any judgment or any order to dispose of the matter, but submits to the district judge the finding, conclusion and proposed judgment or order, unless the parties consent to entry of the judgment or order by the bankruptcy judge. The Rule is not conclusive since it does not state when the consent is to be given and whether it can be revoked by either party. If there is such consent, apparently the ruling becomes a final judgment or dispositive order.

Under Section (c) (4) it is the burden of the parties to raise the issue of whether any proceeding is a "related proceeding" prior to the time of the entry of the order or judgment of the district judge after review. There is a question then as to whether there is any burden on the parties to raise this issue before the bankruptcy judge. If it is not raised before the bankruptcy judge, and the bankruptcy judge treats it as a "Title 11" matter, with an entry by the bankruptcy court clerk under Section (d) (2), is this tantamount to a consent that this order is final? If the bankruptcy judge may not enter a judgment or dispositive order in a "related proceeding" without consent, what is the result when such an order is entered without consent and no appeal or application is taken within the ten day period? Is that order ineffective as being contrary to Section (d) (3) (B) of the Rule? Also, what is the effect of the parties at the district court level raising the question of whether the proceeding is a "related proceeding?"

Section (e) (2) (B) provides that in conducting the review, the district court may hold a hearing and may receive such evidence as is appropriate and may accept, reject or modify in whole or in part the order or judgment of the bankruptcy judge, and need give no deference to the findings of the bankruptcy judge. This operates to abrogate the "clearly erroneous" doctrine previously in effect under Bankruptcy Rule 810.

District Court review is set forth in Section (e) of the Rule. Subsection (1) sets forth three separate appeal criteria:

1. Final order of judgment.
2. Proposed order or judgment of a bankruptcy judge.
3. Interlocutory order of bankruptcy judge.

These three encompass review of interlocutory and final judgments in both "Title 11" and "related proceedings." To summarize, the district judge shall review, under Section (d) (2), the usual administrative matters only if notice of appeal was timely filed or application for leave to appeal was timely filed, or if the bankruptcy judge certified that the order or judgment should be reviewed by the district judge. However, with regard to related matters, defined under Section (d) (3), the district court shall review the proposed order or judgment whether or not any party appeals or applies for leave to appeal. If the bankruptcy judge certifies that circumstances require approval by the district judge, whether or not there was any contest, the review is automatic. The same is true as to a proposed order or judgment of a "related proceeding," requiring an Article III judge, unless there be consent of the parties. The bankruptcy judge is, in effect, acting as a Special Master in the "related proceeding."

There also is provision under Section (e) (3) that the bankruptcy judge may certify that circumstances require immediate review by the district judge of a matter directly arising under Title 11, and in such circumstances, a district judge is to review the matter and enter an order or judgment as soon as possible.

Section (f) provides that in proceedings before the bankruptcy judge, the local bankruptcy rules apply and in proceedings before the district court the district court rules apply. Section (c) (1) makes reference to the Interim Bankruptcy Rules. If the district court has not adopted these Interim Rules, then it would be better practice that it do so at this time.

Section (g) provides that bankruptcy courts and bankruptcy procedure shall continue to be governed by Title IV of Public Law 95-598 (Bankruptcy Act of 1978) and by the Bankruptcy Rules prescribed by the Supreme Court pursuant to 28 U.S.C. 2075 and limited by Section 405(d) of the Bankruptcy Act, but only to the extent that these are not inconsistent with the holding in *Northern Pipeline*. This raises some very interesting questions since some have argued that the plurality opinion in *Northern Pipeline* declaring Section 241(a) of the Bankruptcy Act of 1978 to be uncon-

stitutional, implies that the entire bankruptcy court system is unconstitutional. Apparently the Supreme Court does not accept this view as it was aware of the Rule when it rejected the request for a further stay after December 24th.

There have been dire predictions as to chaos in the bankruptcy courts. Articles have appeared in various newspapers, especially the Wall Street Journal, quoting authorities in the field on the confusion resulting from the *Northern Pipeline* decision. Senator Howell Heflin, former Chief Justice of the Alabama Supreme Court, and one of the leading members of the Senate Judicial Committee, is well aware of the situation and is working diligently with regard to remedial legislation. Senator Denton is also a member of the Senate Judicial Committee and is cognizant of the situation. Thus, the State of Alabama will have a strong voice in the enactment of needed legislation. In the meantime the courts and lawyers in the bankruptcy field do have guidelines, through the Rule of the District Court, which will allow the bankruptcy courts to continue to operate in the public interest. It remains for Congress to enact legislation to comply with the mandate of *Northern Pipeline*. □

RULE

(a) Emergency Resolution

The purpose of this rule is to supplement existing law and rules in respect to the authority of the bankruptcy judges of this district to act in bankruptcy cases and proceedings until Congress enacts appropriate remedial legislation in response to the Supreme Court's decision in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, _____ U.S. _____, 102 S. Ct. 2858 (1982), or until March 31, 1984, whichever first occurs.

The judges of the district court find that exceptional circumstances exist. These circumstances include: (1) the unanticipated unconstitutionality of the grant of power to bankruptcy judges in section 241(a) of Public Law 95-598; (2) the clear intent of Congress to refer bankruptcy matters to bankruptcy judges; (3) the specialized expertise necessary to the determination of bankruptcy matters; and (4) the administrative difficulty of the district courts' assuming the existing bankruptcy caseload on short notice.

Therefore, the orderly conduct of the business of the court requires this referral of bankruptcy cases to the bankruptcy judges.

(b) Filing of Bankruptcy Papers

The bankruptcy court constituted by §404 of Public Law 95-598 shall continue to be known as the United States Bankruptcy Court of this district. The Clerk of the Bankruptcy Court is hereby designated to maintain all files in bankruptcy cases and adversary proceedings. All papers in cases or proceedings arising under or re-

lated to Title 11 shall be filed with the Clerk of the Bankruptcy Court regardless of whether the case or proceeding is before a bankruptcy judge or a judge of the district court, except that a judgment by the district judge shall be filed in accordance with Rule 921 of the Bankruptcy Rules.

(c) Reference to Bankruptcy Judges

(1) All cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are referred to the bankruptcy judges of this district.

(2) The reference to a bankruptcy judge may be withdrawn by the district court at any time on its own motion or on timely motion by a party. A motion for withdrawal of reference shall not stay any bankruptcy matter pending before a bankruptcy judge unless a specific stay is issued by the district court. If a reference is withdrawn, the district court may retain the entire matter, may refer part of the matter back to the bankruptcy judge, or may refer the entire matter back to the bankruptcy judge with instructions specifying the powers and functions that the bankruptcy judge may exercise. Any matter in which the reference is withdrawn shall be reassigned to a district judge in accordance with the court's usual system for assigning civil cases.

(3) Referred cases and proceedings may be transferred in whole or in part between bankruptcy judges within the district without approval of a district judge.

(d) Powers of Bankruptcy Judges

(1) The bankruptcy judges may perform in referred bankruptcy cases and proceedings all acts and duties necessary for the handling of those cases and proceedings except that the bankruptcy judges may not conduct:

- (A) a proceeding to enjoin a court;
- (B) a proceeding to punish a criminal contempt—
 - (i) not committed in the bankruptcy judge's actual presence; or
 - (ii) warranting a punishment of imprisonment;
- (C) an appeal from a judgment, order, decree, or decision of a United States bankruptcy judge; or
- (D) jury trials.

Those matters which may not be performed by a bankruptcy judge shall be transferred to a district judge.

(2) Except as provided in (d)(3), orders and judgments of bankruptcy judges shall be effective upon entry by the Clerk of the Bankruptcy Court, unless stayed by the bankruptcy judge or a district judge.

(3) (A) Related proceedings are those civil proceedings that, in the absence of a petition in bankruptcy, could have been brought in a district court or a state court. Related proceedings include, but are not limited to, claims brought by the estate against parties who have not filed claims against the estate. Related proceedings do not include: contested and uncontested matters concerning the administration of the estate; allowance of and objection to claims against the estate; counterclaims by the estate in whatever amount against persons filing claims against the estate; orders in respect to obtaining credit; orders to turn over property of the estate; proceedings to set aside preferences and fraudulent conveyances; proceedings in respect to lifting of the automatic stay; proceedings to determine dischargeability of particular debts; proceedings to object to the discharge; proceedings in respect to the confirmation of plans; orders approving the sale of property where not arising from proceedings resulting from claims brought by the estate against parties who have not filed claims against the estate; and similar matters. A proceeding is not a related proceeding merely because the outcome will be affected by state law.

(B) In related proceedings the bankruptcy judge may not enter a judgment or dispositive order, but shall submit findings, conclusions, and a proposed judgment or order to the district judge, unless the parties to the

proceeding consent to entry of the judgment or order by the bankruptcy judge.

(e) District Court Review

(1) A notice of appeal from a final order or judgment or proposed order or judgment of a bankruptcy judge or an application for leave to appeal an interlocutory order of a bankruptcy judge, shall be filed within 10 days of the date of entry of the judgment or order or of the lodgment of the proposed judgment or order. As modified by sections (c) (2) (A) and (B) of this rule, the procedures set forth in Part VIII of the Bankruptcy Rules apply to appeals of bankruptcy judges' judgments and orders and the procedures set forth in Bankruptcy Interim Rule 8004 apply to applications for leave to appeal interlocutory orders of bankruptcy judges. Modification by the district judge or the bankruptcy judge of time for appeal is governed by Rule 802 of the Bankruptcy Rules.

(2) (A) A district judge shall review:

- (i) an order or judgment entered under paragraph (d) (2) if a timely notice of appeal has been filed or if a timely application for leave to appeal has been granted;
- (ii) an order or judgment entered under paragraph (d) (2) if the bankruptcy judge certifies that circumstances require that the order or judgment be approved by a district judge, whether or not the matter was controverted before the bankruptcy judge or any notice of appeal or application for leave to appeal was filed; and
- (iii) a proposed order or judgment lodged under paragraph (d) (3), whether or not any notice of appeal or application for leave to appeal has been filed.

(B) In conducting review, the district judge may hold a hearing and may receive such evidence as appropriate and may accept, reject, or modify, in whole or in part, the order or judgment of the bankruptcy judge, and need give no deference to the findings of the bankruptcy judge. At the conclusion of the review, the district judge shall enter an appropriate order judgment.

(3) When the bankruptcy judge certifies that circumstances require immediate review by a district judge of any matter subject to review under paragraph (d) (2), the district judge shall review the matter and enter an order or judgment as soon as possible.

(4) It shall be the burden of the parties to raise the issue of whether any proceeding is a related proceeding prior to the time of the entry of the order of judgment of the district judge after review.

(f) Local Rules

In proceedings before a bankruptcy judge, the local rules of the bankruptcy court shall apply. In proceedings before a judge of the district court, the local rules of the district court shall apply.

(g) Bankruptcy Rules and Title IV of Public Law 95-598

Courts of bankruptcy and procedure in bankruptcy shall continue to be governed by Title IV of Public Law 95-598 as amended and by the bankruptcy rules prescribed by the Supreme Court of the United States pursuant to 28 U.S.C. §2075 and limited by SEC. 405 (d) of the Act, to the extent that such Title and Rules are not inconsistent with the holding of *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, _____ U.S. _____, 102 S. Ct. 2858 (1982).

(h) Effective Date and Pending Cases

This rule shall become effective December 25, 1982, and shall apply to all bankruptcy cases and proceedings not governed by the Bankruptcy Act of 1898 as amended, and filed on or after October 1, 1979. Any bankruptcy matters pending before a bankruptcy judge on December 25, 1982 shall be deemed referred to that judge.

Book Review



Robert L. Potts

One positive aspect of the lawyer explosion in Alabama is that it is now apparently economically prudent for law publishers to print books directed solely to Alabama attorneys. With their 1982 treatise on the Alabama law of damages, Deans Corley and Gamble have joined a number of other Alabama lawyers who have recently published monographs on Alabama law.

"Damages" have been defined as "pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another." The word "damage" is taken from the Latin word "damnum" which is derived from the verb "demo." "Demo" means "to take away," indicates a species of loss and signifies the thing taken away or the lost item which a party is entitled to have restored to him so that he might be made again whole.

With this book on this important subject, Mr. Gamble and Mr. Corley have restored the focus that this subject deserves in Alabama. They have done an admirable job in comprehensively discussing the Alabama cases and statutes relating to this important, though frequently neglected, topic. Indeed, since the abolition of common-law pleading in Alabama, there is a growing tendency for lawyers to forget the necessity of both knowing and articulating their claims to damages, which are inseparably tied to the doctrine of remedies. The authors of this book have recognized that fact and have done more than simply discuss the law of damages. They have comprehensively researched and articulated the civil remedies available in Alabama, and in so doing, have, by necessity, discussed much substantive Alabama civil law.

Further, by directing this work solely toward Alabama practice, they have covered in an all-inclusive manner various areas of state law that have recently changed, such as the products liability field, with its recent Alabama Extended Manufacturers Liability Doctrine, and the sovereign immunity defense, which is no longer available in several types of cases.

The law of damages can be categorized in many ways. Indeed, *Black's Law Dictionary* lists thirty-four categories or types of damages. In this treatise, the authors have chosen to discuss, first, the various types of damages, generally without regard to the subject matter, and then, in the second part of the book to examine the law of damages as it relates to particular subject areas. This format lends itself to

Alabama Law of Damages

By

Charles W. Gamble and Donald E. Corley
The Harrison Company
Norcross, Georgia 1982. Pp. 463

easy and quick reference for the busy practitioner, and the citations to Alabama cases and statutes contained in the footnotes are of inestimable value in researching a particular damage or remedy issue.

If the treatise can be criticised in any manner, it is only that by attempting to make the book state the present Alabama law, in a concise, yet comprehensive and organized form, the authors have neglected, with a few notable exceptions, to discuss the reason or spirit of the damage principles, with appropriate criticism of unreasonable or inappropriate damage rules. As Blackstone taught many years ago in his lectures at Oxford, "the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it; or the cause which moved the legislator to enact it. For when this reason ceases, the law, itself, ought likewise to cease with it."

However, even the authors' conscious effort to avoid any judgmental analysis of the rules, which is evident throughout most of the treatise, yielded to a greater need in their discussion of damages for wrongful death! The indefensible interpretation placed on the 1872 Alabama Wrongful Death Act, which only allows punitive rather than compensatory recovery, has continued to the present. The authors' note that "The Alabama approach to wrongful death and punitive damages is a departure from the traditional purpose intended to be served by the imposition of punitive damages." They have properly soundly condemned the present rule.

In conclusion, *Alabama Law of Damages* is a must for every lawyer's library in Alabama. This work goes far toward filling an important gap in an area of law that is neglected not only by law schools and bar examiners, but to some extent is ignored by practitioners. Deans Corley and Gamble have done the lawyers of this state a great service by their yeoman's effort in compiling this treatise.



Robert L. Potts, reviewer of *Alabama Law of Damages*, is a practicing attorney in Florence and a partner in the law firm of Potts, Young & Blasingame. He has contributed frequently to *The Alabama Lawyer* and is presently chairman of the Alabama State Bar Board of Bar Examiners.



HOW MUCH INSURANCE IS ENOUGH?

Duke Nordlinger Stern

Mr. Stern serves as risk manager to the Alabama State Bar in the areas of claims analysis, loss prevention, claims repair and insurance counsel.

The question of what limits of professional liability insurance a given law firm should purchase is often asked of risk managers, insurers, brokers and agents. Unfortunately, the most accurate response is that there is no definite answer. Not only is it impossible to create an all inclusive limits determination formula, it is equally inconceivable that the perfect limits can be ascertained for a specific firm. Nonetheless, there are a number of factors that should be considered in determining adequate limits of coverage, and the attorney who takes the necessary time to objectively evaluate the firm's practice in terms of these elements can be reasonably assured of having sufficient dollars of protection.

Severity Factor

The sizes or dollar values of matters handled by a firm are significant factors in determining adequate limits. For example, suppose a medium size law firm of seven attorneys that has a general practice which includes real estate, plaintiff's litigation, family law, estate planning, commercial law and taxation. The average dollar values of the matters handled in each of these six practice areas are respectively \$140,000, \$84,000, \$78,000, \$267,000, \$112,000 and \$56,000. To protect against an act, error or omission which would result in a loss the firm would seem to be safe with a per occurrence policy limit of

\$300,000, although given the categories of limits available from most insurers \$500,000 would probably have to be purchased.

Average dollar values can, however, be very misleading. Looking in more depth at the firm's estate planning practice it is observed that the average matter of \$267,000 is the mean of all matters handled in this area ranging from \$12,000 to \$1,750,000. Unfortunately, there is no guarantee that a claim resulting from an estate planning error will never exceed the average. Professional liability coverage like most other forms of insurance should be purchased to protect against the catastrophic loss. The most costly potential loss faced by the law firm should be given far more weight than the average exposure.

Frequency Factor

The potential claim severity consideration may be subject to additional modification by the frequency factor. Not all areas of practice have the same probability of claim occurrence. A review of claims experience shows that in almost all studies real estate and personal injury-plaintiff are the two areas with the greatest chance for claims. The second grouping of areas of practice has significantly lower probabilities of claims and includes family law, estate planning and commercial law. All other areas of prac-

tice have relatively low claim probabilities.

The foregoing would seem to indicate that if a firm's practice is divided among areas with low probabilities of claims there would not be the need for high limits of coverage. However, another critical statistic is that even in relatively claim free areas, if the firm devotes only a small or moderate portion of its practice to such areas, that specific firm's claim likelihood is much greater than the firm that specializes even in the higher risk areas.

Risk Tail Factor

The longer the period between the act, error or omission and the eventual claim, the greater the possibility that the eventual loss payment will be subject to inflation because of the passage of time. For example, real estate claims typically have a long risk tail because the incident which gives rise to the claim is usually not discovered until the property is resold, and this may be many years later. Since real estate is usually subject to inflation and other upward trending market pressures, the value of the loss can increase over time. Litigation practice claims, on the other hand, have a relatively short risk tail. As a result the risk tail factors for the various areas of practice of the firm can have a bearing on the malpractice insurance limits needed.

Defense Impact Factor

Certain areas of practice, such as criminal law and securities, generally have a greater ratio of defense dollars to indemnity dollars per claim. If the policy being considered charges defense costs against limits, it could be extremely important to purchase greater levels of coverage to avoid this problem. To fail to do so might result in insufficient limits for the total of both loss payments and defense costs.

The law firm that has exposure in the areas of practice with high defense cost experience should also consider purchasing a policy which provides first dollar defense by not applying the deductible to such costs. If this is not available, the firm should look for a policy

with a policy period deductible versus a per claim deductible.

Aggregate Limit Factor

The policy aggregate limit determines the amount available for all loss payments (and possibly defense expenses) during the policy year irrespective of the number of claims. While it is possible that a sole practitioner could experience several claims in one year, it is more likely that frequency will increase with the number of attorneys in the firm. As a result, the policy aggregate limit can be as critical a consideration as the per occurrence limit.

The aggregate limit is also an important factor in an extended reporting endorsement purchase decision. While a few insurers have built in a limited annual increase factor to the endorsement aggregate limit or allow the insured to reinstate the aggregate annually, most carriers confine the aggregate limit to that of the last practicing policy pur-

chased even though the endorsement must provide protection during the entire risk tail. If the policy owned or under consideration has such a limitation, it is important to note on the firm's docket control entry for annual malpractice coverage review prior to renewal that the aggregate limits should be increased prior to purchasing the extended reporting endorsement. However, existing aggregate limits may already be sufficient if the endorsement is to be purchased by only one insured in a firm that already has adequate dollar coverage for the multiple practitioners.

The Unanswered Question

The question of what limits of professional liability insurance a given law firm should purchase has no single answer. Only by annually considering a number of factors can the insured be reasonably comfortable that it has adequate protection. □

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"Your Safety-Policy covers falling off the scaffold all right, but not hitting the ground."

Recent Decisions





John M. Milling, Jr., a member of the Montgomery law firm of Hill, Hill, Carter, Franco, Cole & Black, received his B.S. degree from Spring Hill College and J.D. from the University of Alabama.

Mr. Byrne and Mr. Milling will co-author this section of *The Alabama Lawyer* concerning significant decisions in the courts. Mr. Byrne will cover the criminal area and Mr. Milling the civil.



David B. Byrne, Jr., a member of the Montgomery law firm of Robison & Belser, P.A., received both his undergraduate degree and J.D. from the University of Alabama.

\$13,000 medical expenses from both State Farm policies. State Farm eventually agreed to pay the medical expenses if plaintiff would execute a subrogation agreement designed to permit State Farm to recover the expenses from Phillips.

In denying State Farm's right to subrogate against its own insured, the Court reasoned that if subrogation were allowed under such circumstances, an insurer could pass the incident of loss, either partially or totally, from itself to its own insured, thus, permitting the insurer to avoid coverage which its insured had purchased.

Intervention . . . denial of motion of intervene appealable

Thrasher v. Bartlett, et al., 17 ABR 536, (December 30, 1982). In a case of first impression in Alabama, the Supreme Court held that the trial court's denial of a motion to intervene as of right is "final" and, therefore, notice of appeal must be filed within forty-two days of the date of the order denying intervention. The movant cannot rely upon Rule 54(b), A.R.C.P., and delay his appeal until final judgment as to all parties in the main action.

Medical liability act . . . fraud does not toll the statute of limitations

Horn v. Citizens Hospital, et al., 17 ABR 523 (December 30, 1982). In this case, a doctor left a portion of a needle in a patient. There was evidence that the doctor concealed this fact from the patient and that the four-year statute of limitations expired before suit. The Supreme Court held that fraudulent concealment of malpractice does not toll the operation of the four-year statute of limitations in the Medical Liability Act (Section 6-5-482, et seq., Ala. Code 1975). The Court declined to incorporate the principal of fraudulent concealment into the effects of §6-5-482, *supra*, by ingrafting §6-2-3 or §6-5-102, Ala. Code 1975.

The Supreme Court traced the history of the medical malpractice statutes and

Recent Decisions of the Supreme Court of Alabama—Civil

Evidence . . . motion in limine

Banner Welders, Inc. v. Melvin Knighton, 17 ABR 449 (December 17, 1982). Although the Supreme Court declined to decide whether a party is required to object when evidence is offered at trial where the court has already granted that party's motion in limine concerning that evidence, the Court, quoting authorities from other jurisdictions, admonishes that the safer practice to preserve error is to object at trial when the evidence is offered. Broad-based motions which require the trial court to speculate concerning either the grounds of objection or the purpose for which the evidence is offered may not be sufficient to preserve error if there is no objection when the evidence is offered at trial.

In this case the evidence consisted of photographs which depicted post-accident modifications of a machine. In granting the motion in limine, the trial court used a pair of scissors to cut off

portions of the photograph depicting the modifications. The defendant objected to this practice, but the Supreme Court sanctioned the trial court's action stating that where objectionable matter can be separated from proffered evidence, the objectionable matter may be deleted and the remainder admitted.

Insurance . . . subrogation rights of insurer against its own insured

Moring v. State Farm Automobile Insurance Co., 17 ABR 400 (December 10, 1982). In a case of first impression, the Supreme Court stated that an insurance company has no right to subrogate against its insured. Plaintiff was a passenger in a vehicle driven by Phillips and she was injured and incurred medical expenses in excess of \$13,000. Plaintiff was insured by State Farm and had medical payments benefits in the amount of \$8,000. State Farm also provided liability and \$5,000 medical payments coverage under a separate policy issued to Phillips. The parties settled for the limits of the liability policy and a consent judgment was entered. Thereafter, plaintiff demanded payment of her

noted that the forerunner of §6-5-482(b), provided that actions for malpractice were subject to laws relating to the computation of time, i.e. §6-2-3, *supra*. However, when the Medical Liability Act was enacted in 1975, the legislature specifically added a provision stating "that notwithstanding any provisions of such sections (i.e. §6-2-3, *supra*) no action shall be commenced more than four years after the act, omission or failure complained of. . ." The Supreme Court recognized the legislative intent to limit medical malpractice suits to four years and found that the four-year limitations period was reasonable.

Venue . . . rule 9(h), "fictitious parties"

Ex parte: Smith (Deese v. Dr. Lee S. Smith), 17 ABR 408, (December 10, 1982). Denying a petition for writ of mandamus to require the trial judge to transfer a case from Jefferson County to Calhoun County, the Supreme Court held that Rule 9(h), A.R.C.P., "fictitious parties," subsequently identified and served by plaintiff should be considered by the court in deciding venue.

In this case, Dr. Smith moved to transfer the action to Calhoun County where he practiced and where the alleged malpractice occurred. The complaint described fictitious parties and plaintiff subsequently amended to identify a party which would permit plaintiff to remain in Jefferson County. Petitioner cited a line of authorities which held that venue is decided when suit is filed and that subsequently *added* parties cannot be considered. The Supreme Court distinguished that line of authorities noting that Rule 9(h) does *not add* new parties. Rule 9(h) merely *substitutes* identified parties for previous fictitious parties.

Recent Decisions of the Supreme Court of Alabama—Criminal

Writ of error coram nobis . . . an expanded view

Longmire v. State, 17 ABR 356 (December 10, 1982). In this case, the Su-

preme Court expanded the traditional scope of the Writ of Error Coram Nobis in reversing the Court of Criminal Appeals and in permitting the defendant an out-of-time appeal.

On June 11, 1979, the defendant was convicted of robbery and sentenced to thirty years imprisonment. He failed to appeal his conviction, but on April 6, 1981, filed a Petition for Writ of Error Coram Nobis contending that he was denied his right of appeal. The defendant's petition was based on the authority of *Daniels v. Alabama*, 487 F.2d 887 (5th Cir. 1973), and asked that the trial court discharge him, grant him a new trial or afford him an appeal.

The trial court ordered a hearing and found that the defendant desired to appeal his conviction and informed his appointed counsel of his desire to appeal. Through no fault of the defendant, an appeal was never perfected and the time for appeal lapsed.

The Supreme Court through Justice Maddox reviewed the traditional scope of the writ of error coram nobis in light of the Court of Criminal Appeals' dismissal of the defendant's appeal. Justice Maddox observed:

"This Court has traditionally ruled that a writ of error coram nobis issues for correction of a judgment entered in ignorance of certain *matters of fact* which if they had been known to the court rendering the judgment would not have been entered." (Emphasis ours.)

Justice Maddox observed that the defendant's petition for writ of error coram nobis constituted "cause" for the Supreme Court to reexamine its traditional application.

In grappling with the issue presented, the Supreme Court recognized that the Court of Criminal Appeals had repeatedly held that the notion of an "out-of-time appeal" does not exist in Alabama. *Goolsby v. State*, 374 So.2d 929, (Ct. Crim. App. 1978). However, the Supreme Court enunciated a balancing test, concluding that "justice and fairness" warranted granting the defendant an appeal of his conviction.

Appeal Bond . . . a jurisdictional prerequisite

Buckner v. State, 17 ABR 618 (December 30, 1982). This case presents the question of whether timely filing of an appeal bond is a jurisdictional prerequisite for appeal of a misdemeanor conviction in district court. Justice Beatty, writing for a unanimous court, held: No, and reversed and remanded.

Buckner was convicted in the District Court of Shelby County of the misdemeanor offense of driving an overweight truck. After the district court denied the defendant's motion for a new trial, Buckner filed a timely notice of appeal to the circuit court but did not post an appeal bond. The State moved to dismiss the appeal claiming that the defendant failed to perfect his appeal in accordance with §12-12-70(b), *Ala. Code* 1975, because the notice of appeal was not accompanied by the appropriate bond.

In reversing, the Supreme Court held in pertinent part:

"... We must conclude that the filing of an appeal bond is *not* a jurisdictional requirement for appeal of a misdemeanor conviction from district to circuit court. . . (T)he purpose of the appeal bond was 'not to confer jurisdiction on the circuit court but to enable the defendant to release himself from custody pending the appeal. . .'" (Emphasis ours.)

Providency determination

Russell v. State, 17 ABR 635 (December 30, 1982). The Supreme Court on rehearing was asked to consider if the record of a guilty plea must reflect that the defendant admitted having committed each element of the offense to which he pled guilty. Chief Justice Torbert, writing for a divided court, held that a providency determination does not require an element by element admission of guilt on the part of the defendant. Justice Torbert reasoned:

"... The decisions of our courts indicate the defendant must be fully informed of all the elements of the offense. (Citing cases). This *does not necessitate* that the defendant admit having committed each element of the offense where, as here, he has pleaded guilty to the charge of attempted robbery. Once

the defendant is aware of the elements of an offense, and pleads guilty as charged, this constitutes an admission of every element of the crime . . ."

Recent Decisions of the Alabama Court of Civil Appeals

Civil procedure . . . rule 40(b) applied

Coker v. Farmers Mutual Exchange, Civil Appeals No. 3425 (January 5, 1983). In this case, the Court addresses Rule 40(b), A.R.C.P., for the first time and notes that the Rule and its comments place a duty upon the clerk to give prompt notice of a setting to all *out-of-county attorneys*. The defendant filed a motion to dismiss, and the motion came up on the motion docket and was denied. The case was set for trial. Neither defendant nor his attorney appeared at the motion docket and they were not notified of the setting. The case was tried without defendant or his attorney, and judgment was entered against defendant. Defendant's Rule 59 motion was also denied. The Court of Appeals noted that the clerk had not complied with Rule 40(b), *supra*, since there was no notice by personal service, by mailing a letter or by mailing a copy of the trial docket. The motion docket hearing was not sufficient to obviate the requirements of Rule 40(b).

Workmen's compensation . . . one-year statute of limitation for medical benefits

McLain v. JAF Corp., _____ So. 2d _____, Civil Appeals No. 3319 (December 1, 1982). In a case of first impression, the Court was asked to consider whether medical payments under the Workmen's Compensation Act are subject to the one-year statute of limitations. Plaintiff was diagnosed as having asbestosis approximately one year and one month after his retirement. Plaintiff conceded that he was no longer entitled to disability compensation because his claim was not filed within one year from his last date of employment. He argued, however, that the Workmen's Compensa-

tion Act provides no statute of limitations for medical payments.

Conceding that the Workmen's Compensation Act contains no specific statute of limitations for medical payments, the Court of Civil Appeals, however, reasoned that the one-year statute of limitations for disability compensation is jurisdictional and, therefore, a limitation on "the right itself." Once the court loses jurisdiction to hear the claim of disability benefits, it also loses jurisdiction to hear the claim for medical benefits.

Recent Decisions of the Alabama Court of Criminal Appeals

DUI . . . what constitutes physical control?

Key v. Town of Kinsey, 4 DIV 9 (December 28, 1982). Key was convicted in the District Court of Houston County for the offense of driving while under the influence of alcohol in violation of §32-5A-191, *Ala. Code* 1975, as adopted by an ordinance of the Town of Kinsey. An appeal was taken to the circuit court where defendant was again convicted.

On appeal Key alleged that the State's evidence was not sufficient to prove the elements of the offense charged. The Court of Criminal Appeals agreed and reversed and remanded the case.

Judge Barron surveyed the earlier Alabama statutes which established the rule that before an accused could be convicted of the offense, he must, at the time and place charged, have been driving while intoxicated. *Gamble v. State*, 36 Ala. App. 581, 60 So. 2d 696 (Court of Appeals 1952). In reversing the rule of *Gamble* and *Underwood v. State*, 24 Ala. App. 191, 132 So. 606 (Court of Appeals 1931), Judge Barron cited other states' decisions defining what constitutes "physical control."

The Court of Criminal Appeals outlined the necessary elements to establish that one is in "physical control" of a vehicle under the provisions of §32-5A-191, *Ala. Code* 1975:

"1. Active or constructive possession of the vehicle's ignition key by the person charged or, in the alternative,

proof that such a key is not required for the vehicle's operation;

2. Position of the person charged in the driver's seat, behind the steering wheel, and in such condition that, except for the intoxication, he or she is physically capable of starting the engine and causing the vehicle to move;

3. A vehicle that is operable to some extent."

Parole . . . no "liberty interest" entitled to fourteenth amendment protection

Andrus v. Lambert, 3 DIV 689 (December 28, 1982). Andrus was convicted of second degree murder and was sentenced to twenty years imprisonment. On May 5, 1981, Andrus was interviewed by two members of the Alabama Board of Pardons and Paroles in order to determine whether she should be granted a parole in July, 1981. Parole was denied. Andrus then filed a complaint in circuit court alleging that the Board improperly denied her parole and requesting that the circuit court issue a writ of mandamus or writ of habeas corpus commanding the Board to either reconsider her for parole or place her on parole. The circuit court denied relief and an appeal was taken.

Judge Bowen, writing for a unanimous Court, relied upon Judge Truman Hobbs' excellent analysis of Alabama's legislative standard for parole action in *Johnston v. Alabama Pardon and Parole Board*, 530 F. Supp. 589 (M.D. Ala. 1982). The issue of an inmate's entitlement to the constitutional protections of due process in regard to consideration for parole was addressed by the United States Supreme Court in *Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex*, 442 U.S. 1, 99 S. Ct. 2100, 60 L.Ed.2d 668 (1979). The Supreme Court in *Greenholtz* held that a statutory provision that holds out the mere possibility of parole does not create a "liberty interest" entitled to the protection of due process.

Relying upon the authority of *Greenholtz* and *Johnston*, the Court of Criminal Appeals found that the record did not support a finding that the Parole Board acted in an arbitrary or capricious manner by denying parole.

Bar Briefs

District court rejects exam challenge

On Wednesday, November 24, 1982, U.S. District Judge William Stafford of Florida rejected arguments by four blacks that the state bar examination discriminates. Stafford said that the Alabama State Bar does not "intentionally discriminate" in its examination of prospective lawyers and threw out the complaint as unwarranted.

The suit was filed by Roxanne Jones, Mary Kyser, Velma Taylor and Perry Varner who claimed that disproportionate numbers of blacks failed the test. Ms. Jones, a 1979 graduate of Rutgers Law School, failed a portion of the test once; Ms. Kyser, a 1978 graduate of Howard Law School, failed the test three times; Ms. Taylor, a 1979 graduate of Howard, failed the test twice; and Perry Varner, a 1976 graduate of Boston College Law School, failed the test five times which makes him ineligible to take the test again.

Stafford, who heard the case because Alabama's federal judges recused themselves, said the test was a tool for evaluating an applicant's knowledge and did not single out any group.

The four also claimed that the Bar unfairly limited applicants to five tries at passing the exam. Varner, who had already reached that limit, wanted to take the exam again.

Stafford rejected the argument that the five-time rule is arbitrary. He also tossed out arguments that Ms. Jones, Ms. Kyser and Ms. Taylor were not given fair reviews after failing the test.

The case is now on appeal.

Alabama wins prestigious law day award

The American Bar Association annually gives its prestigious Law Day Public Service Award to only two Law Day programs in the nation. The Alabama State Bar/Unified Judicial System received the award for its outstanding 1982

Law Day effort which included numerous programs and activities across the state planned to foster greater public understanding of the place of law in our lives.

At the December meeting of the Board of Commissioners in Montgomery, State Bar President Norborne C. Stone, Jr., presented the award to Immediate Past President Broox G. Garrett and Alabama Supreme Court Chief Justice C.C. Torbert, Jr.

In his remarks at the meeting, Chief Justice Torbert commended the bar and staff support and the outstanding leadership of the Law Day Committee responsible for the preparation and success of Law and Court Observance Week. Melinda Mitchell Waters of Mobile and Judge Ralph D. Cook of Bessemer chaired the 1982 Law Day Committee. Mrs. Waters represented the State Bar and Judge Cook the Unified Judicial System in this joint effort.

ABA spokeswoman Margaret Carlson explained that the awards given were special awards since under the 1982 guidelines volunteer

organizations or groups were not eligible for the award; however this year the award guidelines have been broadened to include volunteers.

The second special award was presented to the Office of the Staff Judge Advocate, 1st Cavalry Division, Fort Hood, Texas, in recognition of their Law Day programs.

Law Day is observed during the first week in May.

Commissioners appoint new examiners

There are five new names on the Board of Bar Examiners of the Alabama State Bar. Robert L. Potts of Florence, the one non-examining member of the board, has been appointed chairman. The other four beginning four year terms to the board (eight exam periods) are George P. Ford of Gadsden; James F. Hughey, Jr. of Birmingham; Max C. Pope of Birmingham; and Dow M. (Mack) Perry, Jr. of Decatur.



Alabama State Bar President Norborne C. Stone, Jr. (center) presents ABA Law Day Award to Alabama Supreme Court Chief Justice C. C. Torbert, Jr. (left) and Immediate Past President of the Bar, Broox G. Garrett (right).

Other members of the thirteen member board (and the examination marking the end of their term in office) are David R. Boyd, Montgomery (Feb. 1985); Delores R. Boyd, Montgomery (Feb. 1983); Milton C. Davis, Tuskegee (Feb. 1984); Thomas F. Garth, Mobile (Feb. 1985); Phillip A. Laird, Jasper (Feb. 1985); Winston V. Legge, Jr., Athens (July 1983); Alan C. Libingston, Dothan (Feb. 1984); and Richard H. Sforzini, Mobile (Feb. 1985).

Bar examiners are responsible for the preparation, administration, and grading of the essay portion of the Alabama State Bar Examination given in February and July of each year.

Negligence is costing attorney, courts, and state unnecessary time and expense

Until 1979, the State of Alabama refused to accept garnishments against State employees and officials. In *Druid City Hospital v. Epperson*, 378 So. 2d 696, the court nullified the State's position thereby clearing the way for garnishments *ex contractu* to be honored.

At that time, the Administrative Office of Courts, in conjunction with legal representatives of the Finance Department and the Attorney General, developed a procedure which was widely publicized. Many attorneys are not familiar with this *modus operandi* and, consequently, cost themselves, the courts, and the State much unnecessary time and expense.

The State assents to make deductions conditioned upon receipt of a final judgment against the State as provided by Ala. Code 1975, §6-6-483. Many attorneys and/or court clerks *are not* following this routine and, subsequently, threaten to file suit against the State due to their own negligence.

In a recent hearing in Montgomery District Court, the State's position was upheld. Attorneys who are not familiar with this plan should contact the State Comptroller who is the garnishee for all State employees with the exceptions of the Department of Mental Health, State Docks, all institutions of higher learning, trade schools and junior colleges, and city and county boards of education.

Supreme court adopts two new criminal rules; considers amendments to district court rules

The Alabama Supreme Court on January 3, 1983, approved Temporary Rules 15 and 16, Rules of Criminal Procedure. These rules are effective March 1, 1983.

Temporary Rule 15 provides for joinder of offenses and defendants, and allows such joinder for trial even without the consent of the defendant or defendants, in the absence of a showing of possible prejudice.

Temporary Rule 16, dealing with pleadings and motions, requires that certain defenses be made by pre-trial motion. The rule also introduces a provision by which a party can request that the admissibility of any of his evidence be determined at a pre-trial stage just as if a motion to suppress had been filed by the opposing party.

The courts advisory committee on district court procedure has submitted for the Court's consideration certain amendments to the district court rules which would allow third-party practice in the district court. This third-party practice would not apply to cases on the small claims docket. While an amendment to Rule 14(dc), A.R.Civ.P., would allow district court third-party practice, an amendment to Rule 82(dc) and its comments would limit it to situations "when venue as to the third-party claim exists independently of venue as to the main action."

The committee has also recommended formal amendments to Rules 7(dc), 12(dc), 18(dc), 41(dc), 54(dc), and 55(dc), A.R.Civ.P., so as to conform those rules to the proposed change in Rule 14(dc).

If approved by the Supreme Court, these amendments will become effective July 1, 1983. The complete text of these proposed amendments will be published in the Southern 2d advance sheet, and any interested person will have until April 28, 1983, to express to the Court any objections or other comments regarding the proposals.

ABA child advocacy program announces new bar activation grant competition

The American Bar Association's National Legal Resource Center for

Child Advocacy and Protection announced on January 19 that grants of up to \$5,000 are now available to help state and local bar associations develop and implement programs that would provide *pro bono* court representation of children in a range of possible areas.

Through a grant from the Pew Memorial Trust, funds for the Center's fifth annual competition for its Child Advocacy Bar Grant Program will be available to bar groups that demonstrate a capacity to actually put into place, with the full cooperation of the local judiciary, a special court-appointment panel (or acceptable alternative) for assignment of trained counsel or guardians *ad litem* for children.

According to Center Director Howard Davidson, "Programs may focus on court representation in one or more of the following areas: child abuse or neglect, foster care review, termination of parental rights, adoption, and the representation of children in domestic relations cases." However, he said preference will be given to projects which propose to make effective use of court-appointed representatives of children to *facilitate the adoption of children with special needs*.

The Center, a project of the ABA's Young Lawyers Division, is a national source of technical assistance on the legal aspects of child welfare, publishes over twenty books and monographs and has previously supported thirty-nine state or local bar association child advocacy projects.

The deadline for submitting applications for the new grants is April 4, 1983. Requests for the grant application package or a list of Center publications should be addressed to Howard Davidson, National Legal Resource Center for Child Advocacy and Protection, American Bar Association, 1800 M Street, N.W., Washington, D.C. 20036. (202) 331-2250.

Speakers bureau brings lawyers "out of the woodwork"

The Speakers Bureau of the Birmingham Bar Association has begun a concentrated campaign to make programs on various issues available to the general public. Its goal is to make the public better aware of various legal issues and, at

the same time, let the public know of our concern to serve them. The idea that lawyers operate in a vacuum is easily attributed to bar associations. It is the Speakers Bureau's effort to bring lawyers "out of the woodwork" and let the public hear from them through a media of refined programs.

These programs are being designed by attorneys who specialize in particular fields who, in turn, will gather around them experts who typically serve lawyers in those categories. For example, a program on Debtor-Creditor Rights may include not only an attorney, but also a member of a credit association and a member of the Better Business Bureau; a program concerning Divorce and Separation will include not only an attorney, but also an accountant, pediatrician and family counselor; a program concerning the Criminal Justice System would include not only an attorney, but also members of various law enforcement agencies.

Every civic organization in the Birmingham area will be sent notices of these topics and programs. The local newspapers will run articles on these programs so as to inform the public of their availability.

It is through the above efforts that the Birmingham Bar Association's Speakers Bureau hopes to enlarge its service to the community. If any reader knows of or belongs to an organization which would be interested in utilizing the services of the Birmingham Bar Speakers Bureau, please contact Rodney A. Max at 328-5760 or Beth Carmichael at 251-8006.

DeCarlo succeeds Harris on Court of Criminal Appeals

On February 1, 1983, Judge John P. DeCarlo became presiding judge of the Alabama Court of Criminal Appeals, elected by members on the bench to fill the position of Judge John O. Harris.

Judge Harris had informed the court of his desire to be relieved of the duties of presiding judge for health reasons, and so that he could devote more time to research and writing. He will serve the remaining two years of his six-year term on the court that he has been a member of since February 1972.

On assuming his new position on the court, Judge DeCarlo says, "I am proud to be associated with men of the caliber of those on the Court of Criminal Appeals and am honored to be chosen as their presiding judge."

ABA President-Elect Visits Bar Meeting



The Montgomery County Bar Association was honored to have Wallace Riley, president-elect of the American Bar Association (ABA) as guest speaker at their annual meeting on January 19. Mr. Riley then visited the state bar headquarters before returning to Detroit. Pictured is Wallace Riley (2nd left) with (L to R) Reggie Hamner, executive director; Norborne Stone, president; and Bill Hairston, president-elect of the Alabama State Bar. Mr. Riley plans to return to the state in July with ABA President Morris Harrell who will be the guest speaker at the State Bar Annual Meeting in Birmingham. The following week they will be in Atlanta for the ABA Annual Meeting where Riley will assume the office of president.

Imagine: You're about to erect a spectacular new office tower. There's just one small hitch.

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Lawyers Head State Government

Governor George C. Wallace (admitted to bar, 1942), Lt. Governor Bill Baxley (1964), Speaker Tom Drake (1963) and Chief Justice C. C. Torbert, Jr. (1954) were sworn in January 17, 1983 to head the Executive, Legislative and Judicial branches of government for the next four years.

Governor Wallace has selected attorney Ken Wallis of Birmingham as his legal advisor and attorney Henry Stegall of Ozark to be his Finance Director.



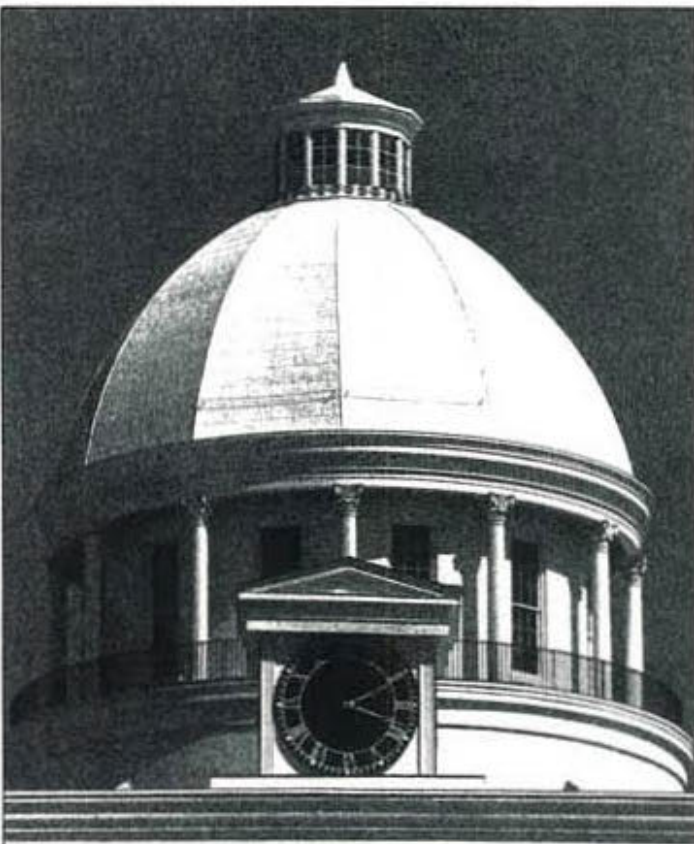
Wallace



Baxley

Lt. Governor Bill Baxley has organized the Senate by naming the following attorneys as committee chairmen or vice chairman:

- Senator John Amari, Birmingham, Chairman Committee on Aging
- Senator Spencer Bachus, Birmingham, Vice Chairman Student and Youth Activities
- Senator Roger Bedford, Russellville, Chairman Student and Youth Activities
- Senator Steve Cooley, Cullman, Vice Chairman Industrial Expansion
- Senator Ryan deGraffenried, Tuscaloosa, Chairman Constitutional Revision and Vice Chairman Finance for Special Education Trust Fund
- Senator Michael Figures, Mobile, Chairman Consumer Affairs
- Senator Don Harrison, Montgomery, Vice Chairman Consumer Affairs
- Senator Earl Hilliard, Birmingham, Chairman Judiciary and Vice Chairman Commerce, Transportation and Utilities
- Senator Larry Keener, Gadsden, Chairman Business and Labor Relations and Vice Chairman Constitutional Revision
- Senator Reo Kirkland, Brewton, Vice Chairman Judiciary
- Senator Ted Little, Auburn, Deputy Chairman Finance
- Senator Wendell Mitchell, Luverne, Chairman Governmental Affairs
- Senator Mac Parsons, Birmingham, Chairman Education
- Senator Richmond Pearson, Birmingham, Chairman Jefferson County Delegation
- Senator Lister Hill Proctor, Sylacauga, Chairman Health and Welfare



LEGISLATIVE WRAP-UP



Robert L. McCurley, Jr., director of the Alabama Law Institute, received both his undergraduate and law degrees from the University of Alabama. In this regular column, Mr. McCurley will keep us updated on legislation of interest and importance to Alabama attorneys.

Senator Jim Smith, Huntsville, Chairman Banking and Insurance and Vice Chairman Rules

There are seventeen lawyers in the Senate.



Drake

Speaker Tom Drake has organized the House by naming the following attorneys to leadership positions:

Representative Charles Langford, Montgomery—Chairman Judiciary

Representative Rick Manley, Demopolis—Chairman Banking and Vice Chairman Judiciary

Representative John Casey, Heflin—Chairman Rules

Representative Jim Campbell, Anniston—Vice Chairman Banking

There are eleven lawyers in the House, plus Representative Phil Poole who graduated from the University of Alabama School of Law in January and took the bar examination in February and Representative Jarushia Thornton, a law school student at Miles College, who expects to graduate in May of this year. In addition to those named, the following attorneys are Representatives: Tom Nicholson, Jasper; Morris Brook, Huntsville; Jerome Tucker, Birmingham; Albert Johnson, Phenix City; Ham Wilson, Montgomery; Michael Box, Saraland.

Senate Judiciary:

Earl Hilliard, Chairman, Birmingham; Reo Kirkland, Vice Chairman, Brewton; Roger Bedford, Russellville; Gary Aldridge, Hartselle; Steve Cooley, Cullman; Jim Smith, Huntsville; Larry Keener, Gadsden; John Amari, Birmingham; Mac Parsons, Birmingham; Ryan deGraffenried, Tuscaloosa; Spencer Bachus, Birmingham; Lister Hill Proctor, Sylacauga; and Don Harrison, Montgomery.

House Judiciary:

Charles Langford, Chairman, Montgomery; Rick Manley, Vice Chairman, Demopolis; Nathan Mathis, Slocomb; Michael Box, Mobile; Jim Campbell, Anniston; Jim Bennett, Birmingham; Bobby Junkin, Gadsden; Jarushia Thornton, Birmingham; Ham Wilson, Montgomery; Al Johnson, Phenix City; Glen Browder, Jacksonville; Morris Brooks, Huntsville; Richard Laird, Roanoke; Loyd Coleman, Arab; Bob Albright, Huntsville.

Judges take oath.

Among the oaths of office taken on Inauguration Day in Montgomery were those of Alabama Supreme Court Justices re-elected to the bench . . . Chief Justice Torbert and Justices Adams, Beatty and Maddox.



Torbert



Adams



Beatty



Maddox

HOW TO WRITE A FEE LETTER AND OTHER WAYS TO MAKE ENDS MEET

William P. Pinna

This article is being reprinted with permission from Legal Economics, where it appeared in the March/April 1979 issue, and from the author. William P. Pinna is a partner in the law firm of Pinna & Corvett, P.A. in Raleigh, North Carolina.

An informal survey concerning methods law firms use in collecting accounts receivable was administered by the Committee of Billing, Work in Progress and Accounts Receivable of the Section of Economics of Law Practice of the American Bar Association. The results received from 44 firms of various sizes in 24 states are the basis for this article.

Getting a Retainer

By far the most commonly mentioned suggestion for improvement in solidifying control over fee collections was that of obtaining a "retainer." As used in the context of the responses, "retainer" translates as "fee advance" rather than monthly minimum. The ideal is simple, but often overlooked and apparently underemployed. Despite the irresistible logic that it is economically sounder to charge against money advanced than to dun for unpaid work, there seems to persist an entrenched reluctance to ask for a fee advance as a retainer on a new piece of business, despite the fact that most attorneys who require such retainers find that clients in fact expect such a request and usually comply without questions.

Establishing a Fee for One-Time Consultations and Initial Conferences for New Clients

This advice has applicability to relatively smaller general practices where new clients are apt to come in informally by way of referral or simply via the yellow pages.

Set the fee for an initial consultation when you are first contacted. Whether it is \$15 or \$40 for one-half hour, make this disclosure at the outset. There are

Figure 1

Contract for Contingent Fee Arrangements
A & A
Attorneys at Law

RE: _____

Gentlemen:

I hereby retain A & A as my attorneys in the above-captioned case and all cases arising out of said case.

I understand that you will represent me in all stages of this proceeding and will diligently prosecute this case to the best of your ability until settlement is reached or the complaint is filed and judgment results.

I agree that you may withdraw as my attorneys at any time after reasonable notice to me and I agree to keep you advised of my whereabouts at all times and to cooperate at all times in the preparation and trial of my case or cases, to appear upon reasonable notice to me for depositions and court appearances and to comply with all reasonable requests made of me in connection with the preparation and presentation of my case.

I hereby give you my power of attorney to execute all complaints, claims, contracts, checks, settlements, drafts, compromises, releases, verifications, dismissals, deposits and orders as I could myself. It is expressly understood that settlement of my case or cases will not be effected without my consent.

For your services as attorneys, it is agreed that you shall receive twenty-five percent (25%) of any amount recovered before the complaint is filed, thirty-three and one-third percent (33 1/3%) of any amount recovered in the event of settlement, forty percent (40%) of any amount recovered in the event of trial, and fifty percent (50%) of any amount recovered subsequent to an appeal of my case or cases. I agree that I shall pay all costs of investigation, clerks' fees, court reporters, depositions, stenographers, transcripts, witness fees, jury fees, appeal fees, notary fees and any other costs necessary to a proper conclusion of my case.

Approved this _____ day of _____, 19____.
A & A

BY: _____

two immediate benefits. First, you screen out "shoppers" and potential freeloaders. Second, you avoid the inevitable squabble that comes about with post-conference billing when a client decides not to pursue the matter with your

firm and says: "I thought I would be charged only if you went ahead and formally represented me." Collect your fee before the client departs. The practice of collection on the spot for a limited consultation is well entrenched in medical

and dental practice, and by now it is more probable that a consumer expects this procedure than "advice now/pay later."

Making a Written Fee Contract with Written Disclosure of Billing Expectations

"Handshake" fee arrangements are notorious progenitors of confusion, disagreement and debate when time for payment arrives. Put the agreement in writing. Figure 1 is a sample fee contract for matters normally handled under contingent fee arrangements.

Figure 2 is a fee contract providing for representation at a set hourly rate. There is a provision for payment of a retainer in conjunction with the retention of the firm's services. More important, perhaps, are the following provisions: a notice as to when billings are made and when payment is expected; a warning that if bills are unpaid suit may follow; and a demand for reasonable attorney's fees if suit is filed. By putting a fee arrangement in writing, the attorney has a ready reminder, signed by the client, to refer to if demand need be made for past-due bills.

Figure 3 is a fee contract that contains several variations of fee arrangements, in the alternative: a lump sum payment at the conclusion of the work requested; a lump sum paid in predetermined installments; and an hourly fee option that gives the client the security of an estimate and the firm the flexibility of revising the estimate to meet contingencies. Incorporated as indispensable parts of the contract are the provision requiring current reimbursement for expenses, fees and costs advances, and the provision requiring a retainer (nonrefundable) to be credited to the client's account.

Whatever fee arrangement is selected, it is paramount that it be in writing and in simple, easy-to-understand terms so that there can never be a claim of non-disclosure or misunderstanding. A copy of the fee contract should always be furnished to the client. It is a good idea to have some wording to this effect on the face of the contract (see Figure 3) so that there is no question about its delivery.

Figure 2

Hourly Fee Agreement

A, B & C
Attorneys At Law

RE: _____

I/We hereby hire the law firm of _____, as my/our attorneys in the above-designated matter and shall pay \$ _____ per hour for such firm's legal services.

I/We have paid \$ _____ as a retainer which shall be credited to my/our account. This retainer is not refundable unless otherwise agreed upon.

I/We shall pay \$ _____ per hour for time traveling in this matter together with all out-of-pocket expenses incurred.

I/We understand that I/We will be billed on a monthly basis and that within ten (10) days after receipt of such statement I/We will pay the total balance due thereon unless otherwise agreed upon. In the event of nonpayment and the filing of suit to collect the same, I/We agree to pay in addition a reasonable attorney's fee.

I/We understand that you will make every reasonable effort to complete this matter at the earliest possible time and that you will represent me/us to the best of your ability in this matter.

APPROVED this _____ day of _____, 19____.
BY _____

Figure 3

Fee Contract
S, D & L
Attorneys at Law

RE: _____

I/We hereby retain and employ S, D & L, Attorneys at Law, in the above-referenced matter, and agree to pay them as fees for their legal services:

(The sum of \$ _____, due and payable within ten days after being billed at the conclusion of said work, in addition to the retainer fee described below.)

(The sum of \$ _____, payable in _____ monthly installments of \$ _____ each, due on or before the 10th of each month, beginning _____ 10, 19____, in addition to the retainer fee described below.)

(The sum of \$ _____ per hour, for a number of hours now estimated to be _____, but subject to upward revision depending on difficulties encountered).

I/We will pay all costs advanced, fees, and out of pocket expenses incurred by the law firm immediately when billed.

I/We have paid to the law firm of S, D & L as a non-refundable retainer the sum of \$ _____, which has been credited to our account.

It is understood that the law firm of S, D & L will complete work on this matter as quickly as possible, and represent my/our interest to the best of its ability.

This _____ day of _____, 19____.

ACCEPTED AND APPROVED ON BEHALF OF THE FIRM

BY: _____

_____ Copy Given to Client(s).

Billing Early, and Establishing Regular Review of Bills

Unfortunately, too many attorneys have haphazard billing cycles that make regular review of troublesome accounts difficult, and that prevent detection of problem debtors early before the pattern becomes irreversible. It is not a novel observation that, with the difficulties presently experienced in cash flow in all sectors of the economy, debtors will pay those bills first which they feel can potentially harm them the most if left unattended. Obviously, if an attorney does not establish regular billing, he or she will not receive regular billing payments. The end result is chaos, because most persons plan their money management carefully with an eye toward paying a bill at a time proximate to completion of services.

When billing is delayed, the client might use money originally allocated for payment of legal services to pay other bills—bills which might be pressed more assiduously than his attorney's. In one reported case, a client agreed to pay an hourly rate of \$50 for legal services involving a health claim. The client was billed approximately \$500 for various negotiations that brought about a recovery in excess of \$3,400. The client was grateful and happy with the attorney's services. The only problem arose when the billing for the services rendered was overlooked for the monthly cycle in which the recovery was ac-

complished. The bill went out the following month, and the client reported: 1) that he had not realized his bill would be quite so much; 2) that if he had known how much it was earlier, when he received the money, he would have had the wherewithal to pay the bill; 3) that, as things stood, most of the recovery money had been spent and he would have to work out payment arrangements with the firm. The lessons of this fee fiasco are obvious: Communicate fees early and bill promptly.

After a regular billing cycle has been set and maintained, review of outstanding bills becomes imperative. Bills unpaid at the end of the next billing cycle (presumably 30 days later) should be sorted out for special attention by the attorney most involved in providing the client services in question.

The use of computer services for billing has already simplified the task of achieving regularity and control of collection of accounts in many offices.

Using the Telephone for Collection of Past-Due Accounts

This is a sensitive area for many attorneys. Approximately 25 percent of those responding to the questionnaire stated that telephone calls are used in an effort to bring past accounts current. Practices vary with firms' philosophies as to who should make a call. In some firms the

calls are made by a nonattorney, such as a bookkeeper or office manager. In other firms, only attorneys make calls—to the delinquent clients for whom they have provided services. Approaches by telephone are usually low key, such as: "We thought you might not have received our statement; if you have not, we will be glad to furnish you another one." Or, "Is there any problem with the services we have provided, or some questions about our bill. If so, when can we meet to discuss these problems? (If there is no problem, when can we expect payment?)"

Approaches by telephone can be stronger: "We cannot afford to carry you any longer. We must have payment at once"; "We are not your bankers, we have overhead costs to meet, just like you."

Using a Collection Agency and Suit on an Account

• **A collection agency.** The threat of use of a collection agency is, of course, no threat to a practiced deadbeat, or to a client who is hopelessly insolvent. Nor is the use of a collection agency likely to yield results for a firm that has its own established followup procedures, promptly administered by telephone and by letter, for past-due accounts. As a practical matter, if a law firm, with its advantage of superior

Figure 4

Notice of Past-Due Account

F, F, & G
Attorneys at Law

Dear Client:

Enclosed herewith is our statement for legal services during October, 1981. While I personally have had little contact with your legal affairs in recent months, nevertheless, under our internal office system, I am responsible for your account.

While I am pleased with the increasing volume of legal work we are doing for you, I am concurrently disturbed by the build up of your unpaid balance. We have received no payment since August 31, 1981. All work and no pay is a foolish way to run a law office. Unless you have plans for promptly bringing your account current, I would appreciate your calling me so that we can discuss the matter.

Very truly yours,

knowledge about what really can be done to effectuate a legal recovery, can not achieve an account settlement after diligent effort, the account will probably be worthless to pursue.

The collection agency can serve as a shield for a firm that does not want to engage at all in direct dunning of clients (or former clients). Selection of such an agency should be made with care, with special checks on its professional reputation.

• **Suit on an account.** One of the greatest taboos in the legal profession has been the actual suit of a client for a fee. One fear is the specter of counter-suits or defenses based on claims of misrepresentation of anticipated results, failure of performance, or outright malpractice.

In some states, attorneys have assigned claims for past-due fees to other individuals or corporations to institute suit. This arrangement has the advantage of avoiding undesired publicity for those who want to keep the firm or lawyer from being one of the named parties to the suit.

All that can be said is that copious written records should be kept as a standard practice, including not only detailed time records but memoranda of clients' instructions and responses to advice. If all is in order, and a case has been pursued vigorously, ethically and professionally, suit may be the only avenue open to preserve credibility. Lawyers perform this service routinely for others. There is no particular reason why the aphorism "Physician, heal thyself" should not be applied to attorneys, who are best able among all professions to advance the cause correcting deficiencies in their own collection procedures.

Labeling or Stamping Messages on Past-Due Bills

One sample label submitted read as follows: "Our past due accounts are referred to commercial collection division, Dun & Bradstreet, Inc." Another read: "Please advise why you are withholding your remittance."

Continued page 105

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Notice of Past-Due Account

Figure 5A

X, R & Y
Attorneys at Law

Dear Client:

In reviewing your statement, I have noticed that there has not been a recent payment made.

Our office policy is to receive payment in advance or upon completion of the work. Under certain circumstances we will allow a client thirty (30) days after receipt of our statement to make payment.

However, when an account remains unpaid, as yours has, we have very few alternatives. Naturally, we would hope to continue our good relationship, but this requires your cooperation.

We hope you will understand our position and make prompt payment. If you care to discuss your account, please contact us immediately.

Yours very truly,

Figure 5B

Notice of Past-Due Account

X, R & Y
Attorneys at Law

Dear Client:

Thank you for your payment of \$50.00. The balance on your bill is now \$47.00.

We expect payment on this amount within 30 days in order to avoid referring this matter to Credit Services of Billings.

Yours very truly,

Figure 5C

Notice of Past-Due Account

X, R & Y
Attorneys at Law

Dear Client:

It has come to my attention that a payment has not been made on your account with this office. The current balance is \$133.45. If payment in full is not received within 10 days, we will be forced to turn this matter over to Credit Service Co., Inc.

Yours very truly,

Notice of Past-Due Account

Figure 6A

M, M & M
Attorneys at Law

Dear Client:

The enclosed statement is our record of the sum now outstanding on your account. We would appreciate it if you would check your records and (if you find that the bill has not yet been paid) send us your check or money order for the amount indicated. If, however, there has been any oversight on our part, please let us know.

Thanking you, I remain

Sincerely yours,

Figure 6B

Notice of Past-Due Account

M, M & M
Attorneys at Law

Dear Client:

Enclosed please find our statement for services rendered, which was originally billed on _____.

This account has been billed and is now considered past due. Since we have not heard from you we can assume there has been no problem with the amount of the bill or the services you have received from us. Therefore, we would appreciate your attention to payment.

If you wish to arrange installment payments please contact this office immediately and we will arrange a payment plan and note our records.

Sincerely,

Figure 6C

Notice of Past-Due Account

M, M & M
Attorneys at Law

Dear Client:

I have set an appointment for _____ so that we may discuss payment of the enclosed bill. I shall welcome the opportunity to review this matter and shall expect to see you at the above time and date.

Sincerely yours,

Sending Demand or "Dunning" Letters

By far the most common method of attempting collection of past-due accounts is the writing of letters to the delinquent client.

Typically, a first reminder letter is an effort at friendly persuasion. One such letter is shown in Figure 4.

Most firms that implement a formal billing review, whether in 30-60- or 90-day stages, or any other cycle, administer a three-letter program before final action on a past-due account is taken. Figures 5, 6 and 7 comprise three sets of demand letter packages, each consisting of three progressively insistent letters labeled "A", "B" and "C." The packages vary in style and approach and are meant to be suggestive of approaches that could be used by firms that presently have no formal plan for collections. They can be mixed and matched, or simply used as food for thought in tailoring demand letters to the needs of a specific firm and client.

The thrust of these demand letter packages is that required to get a response and a commitment to pay. A good introduction, in any case, is to suggest a meeting to find out if the client has any questions about the bill. Figure 6C goes so far as to set a date and time for the meeting. Depending on the nature of the client, this can be very effective. Since many people can avoid coming to realistic grips with financial obligations indefinitely as long as they think past-due accounts will be tolerated, the setting of an exact time for a review meeting (with a follow-up confirmation call by the billing partner or an appropriate member of his support staff) can bring the immediate nature of a firm's demand into focus, much like the setting of a court date. As all attorneys know, when a long-pending case is put down in black and white for hearing on a final calendar, cases that have gone unattended have a way of getting settled quickly.

Even if a complete payoff cannot be achieved, after you have gotten a debtor's attention, a significant down payment might be elicited, or you might be able to secure an appropriate note—preferably secured. Anything is better than having an account lie untended until it is so stale that it is absolutely uncollectible. □

Figure 7A

Notice of Past-Due Account

P, D & G
Attorneys at Law

RE: _____

Dear Client:

The matter of your indebtedness to this office in the amount of \$_____ was raised at a recent meeting of the members of the firm.

We are concerned about the fact that there has been no payment received on this account. This amount has been outstanding since _____.

Please consider this letter a friendly reminder and request for payment at this time.

If you are presently unable to pay the balance in full, please contact me so that I can be advised of your plans for the liquidation of your indebtedness.

Thank you for the anticipated promptness of your reply.

Very truly yours,

Figure 7B

Notice of Past-Due Account

P, D & G
Attorneys at Law

Dear Client:

Perhaps you have overlooked what we had intended to be a friendly reminder of your obligation for the payment of the balance owing on our fee in the above-entitled matter.

Please let us hear from you within the next ten days.

Very truly yours,

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Figure 7C

Notice of Past-Due Account

P, D & G
Attorneys at Law

Dear Client:

In the past several weeks you have received two letters from this office requesting the long overdue payment of the balance of our fees in the above-entitled matter.

Unless my information is incorrect, you have completely ignored those requests.

While we truly regret having to place ourselves in adversity with clients in matters of this nature, I must advise you that unless your account is paid in full within ten (10) days from the date hereof, we will sue you for \$_____ plus interest from _____.

Please be assured that this is the last letter of personal correspondence on this matter that you will receive from this office.

Very truly yours,

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

There will be no memorandum this month as Mr. Fairweather is away on his annual vacation in the Cayman Islands. We are printing, instead, this postcard from him:

Mr. Dearest Firm,

I greet you from the sunny Caribbean.

All is not well. The weather is hot. The air conditioner in our condo has been erratic. And the ceiling fans, while quaint and tropical, blow Mrs. F's hair (would that I had some to blow) around something awful, and make a terrible racket, besides.

The pool is loaded with children—mainly grandchildren, I think—and I fear that the warmth of the pool water is not altogether attributable to the sun. The kids are mean. None of them will give me a turn in their inner tubes or rafts, and they seem never to shut up, rather like some of you in committee meetings. And speaking of committee meetings, cancel them until I get back. There is nothing that can't wait.

I have found lying around the beach to be very conducive to thinking about legal problems. In fact, I am considering redoing the office in a Caribbean motif in order to increase office productivity. Have the interior designer sketch out a few alternatives for me to consider when I return.

In the meantime, I want the guys from the mailroom to remove the oriental rug and rolltop desk from my office and haul in four tons of sand, with assorted cigarette butts. Also, have the bulbs in my chandelier replaced with sun lamps. And I think it's worth investing a little time in a training program to teach the messengers to bring in the office mail and coffee with a little calypso beat (you know, "Day-o, issa day, issa day, issa day-ay-ay-o.") If we are going to do it, let's do it right.

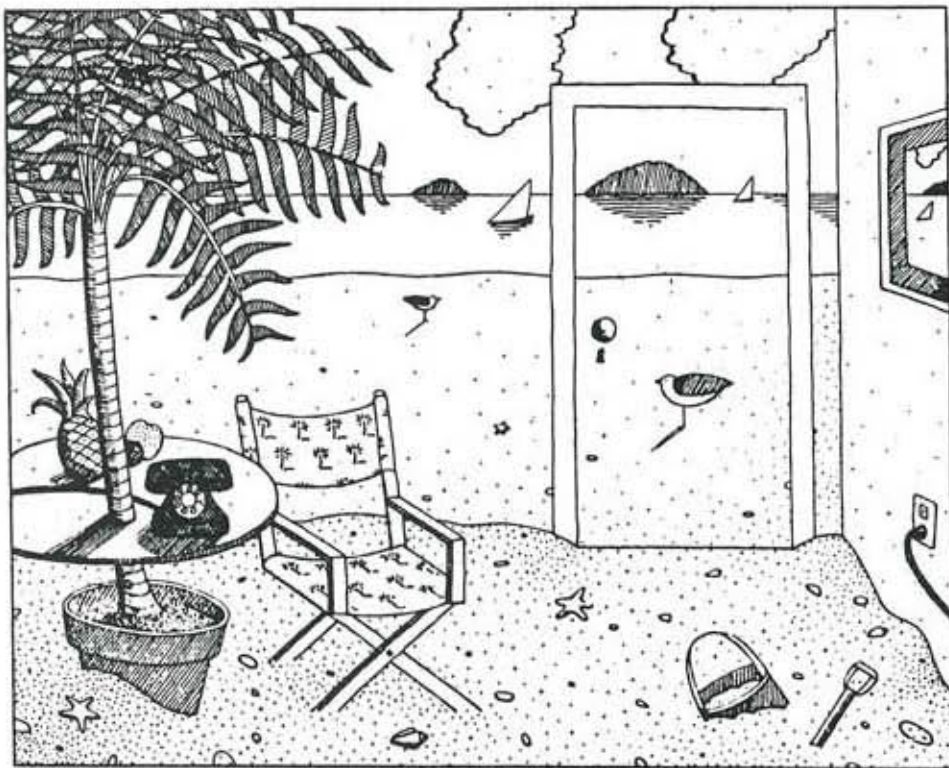
I'm afraid that a lot of my best ideas on this trip may be in peril of getting lost forever. I brought one of those newfangled pocket dictators along, but I forgot the damn tapes. Please ship Ms. Oxenhandle down the quickest way.

I have been giving some preliminary thought to our establishing a branch office down here. While the lack of clients is something of a drawback, the idea has some compensating features which, for tax fraud reasons, I won't delve into here. Trust me.

And I'm working on an idea to improve the client situation and develop a new profit center for the firm at the same time. The problem with people running the other large law firms today is they're too stodgy to give a bold, new concept a try. Mrs. F and I are taking turns manning the pilot lemonade stand that we set up under a large umbrella on the beach near our condo. This has put us in close touch with lots of potential clients, since our competitive prices and friendly services have attracted huge crowds to the "Fairweather Oasis."

Fairweather, Winters & Sommers

Arnold B. Kanter



Paul Hoffman

The pilot has proved such a success that we have franchised three oases on other parts of the island, all of which seem to be prospering as well. This may be due to the catchy jingle we are running on local radio, "you deserve a break today, so get up and get away, to the Fairweather Oases, we do it all for you-oo-oo." We are thinking of adding the "Big Stan," a double turtleburger with trimmings, to the menu. Future promos may feature discounts on simple wills with the purchase of a Big Stan and an Oasis Shake.

Suffice it to say, I've opened the branch office. Remind me to have the executive committee ratify this when I get back.

In the meantime, you may want to pick up a copy of the April issue of *American Lawyer*, which is running a nice little feature on me and our new Cayman office entitled "Stanley J. Fairweather says it's sink or swim in the Caymans," complete with photo of yours truly in scuba gear. While the reporter, Sheila Stowaway, was gracious enough to refer to me as "the majestic eagle ray in a school of guppies who dwell around his legal reef," I don't think that she was intending to put any of you down personally. Ms. Stowaway

seemed genuinely to enjoy the fortnight that she spent with me and Mrs. F at the condo while writing her piece and she fairly gushed over the black coral necklace we gave her as a little remembrance on her last night.

Please express mail two or three associates, a couple of paralegals, an assortment of secretaries and a receptionist to staff our office pronto. I say pronto because I see death as one of the prime growth areas. And, frankly, there are several of my new buddies down here who, even with their gorgeous tans, don't figure to celebrate too many more Washington's birthdays.

Last Thursday it was overcast for several hours so I dropped in on the local law school to try to scare up some potential fodder for the home office. What a pleasure to speak to students who, not having become accustomed to fealty, treat the twenty minute interview as a chat among equals, rather than the grant of an audience to their potential employer. This may come from the island being too small for employers to fly students from coast to coast.

In candor, though, I am not having the type of success recruiting-wise that I had

hoped for, in part because it is not easy to pooh-pooh convincingly a 165 degree temperature difference (even though I've argued vigorously and, to my mind, persuasively, that the windchill factor skews the figures badly). I have, however, made headway in explaining away our sweatshop image as attributable to air conditioning failure and suggest that we may want to waltz that line 'round the law schools, stateside.

Unfortunately, however, even the top students down here may not be of great use to us. They seem to be preoccupied with questions that are of only tangential relevance to those of us north of Cuba, such as whether a dive boat operator is liable in tort for leading a dive group into a school of hungry bar-

racuda. And even though the Cayman Journal of Transoceanic Treasure Trove is the mothership of the TTT journal fleet, experience on it may not make a student a shoo-in for success in our practice.

With so much time on one's hand down here, there is an opportunity to reflect, to be somewhat more introspective. I have used part of this time to ponder matters such as firm structure and governance. Having ruled the firm with an iron, but tender, fist for the last quarter century, it has occurred to me, as I'm sure it must have occurred, at least in passing, to some of you from time to time, that it might be the hour to pass the torch to a younger generation.

On reflection, however, that seems to me

absurd. There isn't anybody around even remotely as gifted as I in running the firm. So, for those of you who dreamt that this might be your big chance, forget it.

I've gotta run now. Even though I print quite small, there is not much room left on this postcard. The day is drawing to a close. Time to shut down the Fairweather Oasis, run up to the condo to shower, fix a pina colada and watch the sun set on the gently heaving ocean.

Wish you all could be here. But you're not. And I am. So eat your hearts out.

Stanley

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It Happened at the Bar

The Positive Witness

Judge Grubb appointed me to defend a man charged with counterfeiting. The alleged counterfeit one-dollar bill was so crude that it occurred to me that any witness who could not tell it from a genuine one-dollar bill would not be able to tell the defendant from anybody else.

On cross-examination, I told the prosecuting witness to come to the table where all the counsel, the defendant, and the others were sitting and pick out the man who had given her the counterfeit bill. She picked out Bob Harwood, the prosecuting attorney. (He has just retired as justice of the Alabama Supreme Court.)

I said, "Oh, somebody told you, didn't they?"

And she replied, "I will swear on a stack of Bibles this is the man that did it, and you can't mix me up."

Love in Bloom

A few months ago, we had an unrehearsed comedy in Judge McElroy's court that was one of the best I ever saw. The female plaintiff had sued the male defendant for using obscene language in her presence, which was against the state law.

On the stand she said that he had used obscene language and the judge asked, "What did he say?"

The lady replied, "It was so vile that it was unspeakable. I would not soil my lips with the four-letter words he used."

The judge asked her if she would write it. She was supplied with a sheet of

notepaper, wrote the words on it, and handed it to the judge. Dry-cleaned it read, "I would like to sleep with you." The judge read it and each juror in turn read it and passed it along. Finally the note was handed to Number 1 on the back row, a lady of ample and interesting proportions. Her neighbor, a gentleman on the right, was dozing; she had to shake him awake and then she handed him the note. He read it, nodded pleased and surprised agreement, and stuck it in his pocket.

The judge said, "Mr. Jones, pass the note on."

He replied, "Not on your life, Judge. This is a highly personal matter between me and this lady."

This was the high point in a pretty dull trial. □

A glance a decade past



The wheels are rolling again in preparation for Law Day to be observed in May. Ten years ago, Alabama Supreme Court Chief Justice Howell Heflin and his wife, Elizabeth Ann; and State Bar President Drew Redden and his wife, Christine, are pictured at Maxwell Air Force Base in Montgomery for one of the many Law Day events of 1973. Montgomery attorney Lawrence Kloess was chairman of Law Day that year.

Heflin is now a U.S. Senator from Alabama and Redden is a partner in the Birmingham law firm of Redden, Mills & Clark.

These memorable cases are excerpts from Birmingham lawyer Francis H. Hare's book *My Learned Friends—Memories of a Trial Lawyer*. Members of the bar are encouraged to submit interesting tales of memorable days in court, or other unique stories that are related to the practice of law, to *The Alabama Lawyer* for publication.

This photo was found in a file of old pictures at the State Bar Headquarters. Any member of the Alabama State Bar possessing a historic bar-related photograph is urged to send it to *The Alabama Lawyer* for possible publication.

About Members Among Firms

About Members

Sheila Roberts Tweed has been named partner in the Houston law firm of Foreman & Dyess. Ms. Tweed was awarded her J.D. degree from the Cumberland School of Law in 1976, graduating cum laude. She was admitted to the Alabama Bar that same year. Foreman & Dyess, with offices in Houston and Washington, D.C., is a general civil practice firm of 77 attorneys.

Aliceville native, Libby Kirksey, has been selected as the first female Member of the Year Award winner by the Greater Tuscaloosa Chamber of Commerce. Ms. Kirksey is an attorney with Gulf States Paper Corporation.

Broox G. Garrett of Brewton and Charles R. Adair of Dadeville were elected in December to the Judicial Compensation Commission of the State of Alabama. They succeeded T. Massey Bedsole of Mobile and Elisha C. Poole of Greenville to four year terms on the commission.

Among Firms

The law firm of Austin & Dobson announces that Robert E. Austin has been elected District Court Judge of Blount County and that John J. Dobson will continue to engage in the general practice of law at 200 2nd Avenue East, Oneonta, Alabama.

Richard (Cracker) Waldrop announces the removal of his office to Suite 5, Executive Plaza, Enterprise, Alabama 36330.

Hand, Arendall, Bedsole, Greaves & Johnston, 30th Floor First National Bank Building, Mobile, Alabama, takes pleasure in announcing that Joe E. Basenberg has become a partner in the firm.

The law firm of Aldridge & Haddock is pleased to announce that Gary L. Aldridge has been elected senator for the third senatorial district of Alabama which is comprised of portions of Morgan and all of Lawrence County. The firm is located at 215 East Moulton Street, Decatur, Alabama 35601.

Mandell & Boyd announces the opening of its new offices at 25 South Court Street (on Court Square), Montgomery, Alabama.

Whittelsey, Ray & Tipton takes pleasure in announcing that Dewey W. Teague has become a partner in the firm and that the firm name has been changed to Whittelsey, Ray, Tipton & Teague. Offices are located at 600 Avenue A, Post Office Box 106, Opelika, Alabama 36801.

Jerry R. Barksdale takes pleasure in announcing that James D. Moffatt is now associated with him in the practice of law at 212 South Marion Street, Athens, Alabama 35611.

Stanard and Mills takes pleasure in announcing that F. Lenton White, II has become associated with the firm which is located at 1802 First National Bank Building, Mobile, Alabama 36602.

Benjamin H. Richey and F. David Lowery are pleased to announce the formation of a partnership for the general practice of law under the firm name of Richey & Lowery with offices located at 501 North Jackson Avenue, Russellville, Alabama 35653.

Larry C. Jarrell has joined his law practice with that of John B. Crawley at 103 S. Three Notch Street, Troy, Alabama. The mailing address is P. O. Box 426, Troy, Alabama.

Leonard Wertheimer, III, P.C. announces the opening of his office for the practice of law at 555 Bank For Savings Building, Birmingham, Alabama, 35203. Telephone 326-3033.

The law firms of Johnson & Hornsby and Huskey & Etheredge announce their merger for the practice of law under the firm name of Johnson, Huskey, Hornsby & Etheredge with offices at 131 North Oates Street, Post Office Box 1193, Dothan, Alabama 36302. Telephone (205) 793-3377.

Silver & Voit, Attorneys at Law, P.A., announces with pleasure that Barry L. Thompson has become associated with the firm in the general practice of law. Offices are located at 4317-A Midmost Drive, Mobile, Alabama 36609. Telephone 343-0800.

Phillip A. Laird and Henry C. Wiley, Jr. take pleasure in announcing the formation of a partnership for the general practice of law under the firm name of Laird and Wiley and the relocation of their offices to Suite C, Bankhead Byars Bldg., 1816 Third Avenue, P. O. Box 498, Jasper, Alabama 35502-0498.

From the Center for Professional Responsibility



Opinions of the General Counsel

William H. Morrow, Jr.

QUESTION:

"When an attorney has drafted or witnessed a will, may that attorney or a member or associate of his firm act as trial counsel for the proponent of the will in a will contest if the attorney ought to be called as a witness for the proponent?"

ANSWER:

Neither the attorney who has drafted or witnessed a will nor any member or associate of his firm should act as trial counsel for the proponent of the will in a will contest if the attorney knows or it is obvious that he should testify as to a contested matter such as the existence, vel non, of testamentary capacity, undue influence, duress, etc. If the due execution and witnessing of the will is an uncontested matter, the attorney may testify to the due execution of the will and the attorney or a member or associate of his firm may act as trial counsel in a will contest, but if the due execution of the will is put in issue, neither the attorney nor a member or associate of his firm may act as trial counsel in a will contest involving this issue.

DISCUSSION:

The Disciplinary Commission has been called upon on several occasions to render opinions as to the propriety of an attorney who drafted or witnessed the execution of a will acting as the trial attorney for the proponents of the will in a will contest. In Ethics Opinion 348 the Disciplinary Commission held that an attorney could act as a witness to the due execution and witnessing of a will and, nevertheless, act as trial counsel in a will contest when the sole grounds of the contest was the alleged execution of a subsequent will.

In will contests the contestants frequently allege numerous grounds including the contention that the will was not duly executed and witnessed. Whether or not the due execution and witnessing of the will is a real issue in the case can usually be determined prior to the trial. An interesting discussion of this problem is found in the case of *Elvers v. Security First National Bank of Sheboygan* 179 N.W. 2d 881, (Wis. 1970), wherein the court observed:

"But here, the execution was put in issue and whether it was to be vigorously contended or not could have been resolved prior to the trial. It seems to be customary in undue-influence cases for the objectors to throw in the objection to the procedural execution of the will for good measure. When this is done the seriousness of the issue should be determined before trial. It is wrong for counsel to object to the execution of a will just to disqualify another attorney.

However, when a lawyer witnesses a will, either in hopes it will enhance his chance of probating the will for convenience, he assumes the risk that if the execution is put in issue, his first duty is to his client to sustain the will and this requires him to free himself completely from the issue of its admissibility. A lawyer should not be both a witness for and an advocate of the cause of action."

Ethical Consideration 5-10 in part provides:

"It is not objectionable for a lawyer who is a potential witness to be an advocate if it is unlikely that he will be called as a witness because his testimony will relate only to an uncontested issue."

Disciplinary Rule 5-101 (B) (1) and (2) provides:

"A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.”

In the case of *Jones v. South Dakota Children's Home Society* 238 N.W. 2d 677, (S.D. 1976), the court pointed out the “all too obvious” conflict that would arise if the attorney’s testimony establishing the testator’s capacity entitle the attorney’s firm to probate a large estate. In the case of *Judge v. Janicki* 374 A. 2d 547, (R.I. 1977), the court urged trial judges to insist on strict compliance with DR 5-101 (B), unless the facts brought into play one of the exceptions under DR 5-101 (B).

In summary, we feel that when an attorney has drafted or witnessed a will, the attorney and the members and associates in his firm should rarely, if ever, act as trial counsel for the proponents in a will contest, since frequently the attorney knows or it is obvious that he ought to be called as a witness concerning matters other than the due execution of the will. However, if his testimony will relate solely to the due execution of the will, and that is not a contested issue, the attorney and the members and associates in his firm are not necessarily precluded from acting as trial counsel in a will contest. No requests for opinions concerning the exceptions under DR 5-101 (B) (3) and (4), in this context, have been presented to the Office of General Counsel and the Disciplinary Commission, therefore, we pretermitt any discussion of the same herein. □

QUESTION:

“Under what circumstances may an attorney ethically represent both the driver of an automobile and the driver’s passenger in a lawsuit against the driver of another vehicle involved in an accident?”

ANSWER:

An attorney may with ethical propriety represent both the driver and the passenger in a lawsuit against the driver of another vehicle involved in an accident if (1) the attorney is convinced, after investigating all of the facts, that there is no possibility of liability on the part of the driver and (2) if the representation is undertaken with the consent of both the driver and the passenger after a full disclosure of the possibility of potential conflict which might require the attorney to withdraw from the case.

DISCUSSION:

Our research reveals only one opinion of the Committee on Ethics and Professional Responsibility of the American Bar Association addressing this question. In Informal Decision C-723 (1964) this Committee held that under certain circumstances an attorney can represent both the driver and a passenger in a suit against the driver of another vehicle involved in an accident. In its opinion the Committee stated:

“The Committee believes it preferable that the attorney refuse to represent both parties. However, if they both insist, and the attorney is of the opinion, after investigating all the facts, that there is no possible liability on the part of the driver of the car, there is no reason why he should not represent both parties . . .”

Disciplinary Report

On December 10, 1982, the Supreme Court of Alabama reversed the August 26, 1981 order of the Disciplinary Board disbaring **Mayer W. Perloff** of Mobile. The Supreme Court set Perloff’s discipline, which was imposed for paying kickbacks to town councilmen in the town of Saraland, at suspension from the practice of law for a period of two years, commencing October 5, 1981, the date that Perloff surrendered his license.

Jerry Lee Stapp, Sr. of Huntsville filed a petition for reinstatement to active status which was granted by Supreme Court order on Friday, January 24, 1983.

Robert Creel, of Hamilton, Marion County, Alabama, was suspended from the practice of law for a period of 30 days, without automatic reinstatement, by an Order of the Supreme Court of Alabama dated January 3, 1983. The effective date of said suspension being December 22, 1982. Mr. Creel had pled guilty to violating Disciplinary Rule 2-104(A) of the Code of Professional Responsibility of the Alabama State Bar, which prohibits an attorney from suggesting or recommending his employment as a lawyer to someone who has not sought his advice regarding employment of a lawyer.

There were four private reprimands administered before the Board of Bar Commissioners on December 10, 1982.

Old Canon 6, Canons of Professional Ethics of the American Bar Association provided in pertinent part as follows:

"... a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

Present Disciplinary Rules 5-105 (A) and (C), Code of Professional Responsibility of the Alabama State Bar provide:

"(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105 (C).

(C) In the situations covered by DR 5-105 (A) and (B), a lawyer may represent multiple clients if he reasonably determines that he can adequately represent the interest of each and if each consents to representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each."

Opinions of various ethics committees are not entirely consistent in their approaches to this question. Some ethics committees have taken the position that under no circumstances can an attorney represent both the driver and the passenger involved in an accident. North Carolina State Bar (1956), New Jersey Bar (1970).

Perhaps a greater number of ethics committees have held that, under certain circumstances, an attorney may represent both the driver and the passenger against the other party involved in an automobile accident. A digest of an opinion of the Ethics Committee of the Maryland State Bar Association (1961) provides as follows:

"An attorney may simultaneously represent both a passenger and driver in an automobile accident case only if (1) he is convinced after thorough investigation that the driver is so clearly free of negligence that he would win on summary judgment in advance of trial were the passenger to sue the driver (2) both parties consent after full disclosure, which includes as an explanation that if an actual conflict of interest arises, the attorney will have to cease representation of both parties."

See also opinions of the following Bar Associations: Louisiana State Bar (1964); New York County Bar Association (1966); New York State Bar Association (1972).

Certain ethics committees have held that a lawyer who accepts employment from the driver and his passenger in an automobile accident case, believing at the time that the driver cannot have been contributory negligent, must withdraw from the case entirely when other evidence points to contributory negligence by the driver. New York County Bar Association Opinion 521 (1964); Oregon State Bar Association 75 (1959).

In summary, we believe that an attorney can with ethical propriety represent both the driver and the passenger under the circumstances hereinabove described. □

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The Final Judgment



Robert Bynum Albritton

1905-1983

Robert Bynum Albritton of Andalusia, Alabama, died January 19, 1983, at the age of seventy-seven.

Mr. Albritton, known to his many friends and acquaintances as Bob, was born February 1, 1905, in Andalusia. He was the son of the late Mr. and Mrs. William Harold Albritton, Sr. and was a life-long resident of Andalusia.

He was educated in the public schools of Andalusia and received his preparatory education and legal education at the University of Alabama, graduating in law in 1930 and was admitted to the Alabama Bar the same year. Bob was a deacon in the First Presbyterian Church in Andalusia and served as city attorney for the City of Andalusia for some seventeen years. He was a former president of the Covington County Bar Association during the period of 1971-72. He was an active Rotarian and was past president of the Andalusia Rotary Club. He was chairman of the Committee on Revision of the Alabama Probate Code, a member of the Alabama Defense Lawyers Association, Association of Insurance Attorneys, American Judicature Society, World Association of Lawyers and was a Fellow in the American College of Probate Counsel. Bob was a member of Phi

Delta Phi Legal Fraternity and a member of the President's Cabinet at the University of Alabama. Also he was a member of Kappa Sigma Fraternity, Alabama Law Institute and Farrah Law Society. Bob loved the University of Alabama Law School and served as a member of the University of Alabama Law School Foundation.

Bob's family to date has five generations of lawyers. His grandfather, Judge Edgar T. Albritton, moved to Andalusia from North Carolina in the 1880's and formed a partnership with the late Dempsey M. Powell of Greenville, Alabama, whom he met at a circus in Greenville, Alabama. Bob's father, William Harold Albritton, Sr., practiced law in the firm until his death in 1929 and Bob's son, W. Harold Albritton, III, has been practicing law in the firm in Andalusia since 1960. The fifth generation of the Albritton Attorneys is Bob's grandson who is now in law school at the University of Alabama.

In the 1948 presidential election, Bob was duly elected as a member of the Electoral College from Alabama. All these Alabama electors were very conservative Democrats and were techni-

cally committed to support Senator Strom Thurmond of South Carolina, although actually they hoped to control the entire election if it was very close. On the night following the election about 2 A.M., the race between President Truman and Thomas E. Dewey was practically even on a count of potential electoral votes. It appeared for a period of several hours that the Alabama Delegation would possibly be in a position to bargain with other electors and control the nomination of the president of the United States. But alas, when the sun rose on the morning following the election, President Truman took a substantial and decisive lead in the election and the hopes of Bob and the other Alabama electors were gone—likewise the premature headline of the Chicago Tribune declaring Dewey the winner became a world famous blooper. Bob loved to tell this story of the '48 election.

Bob's survivors are his wife, Carrie; his son, W. Harold Albritton, III; and three grandchildren—Hal, who is in law school at the University of Alabama; Ben, who is a junior at the University of Alabama in Birmingham; and Tom, who is a student at Andalusia High School. Two of his brothers, W. H. Albritton, Jr. and J. M. Albritton, are members of the firm of Albrittons and Givhan, Bob's Andalusia firm, and are in active practice in Andalusia now. His other brothers are John Thomas Albritton of Andalusia, Col. Jesse T. Albritton of Mobile, and Dempsey P. Albritton of Brewton. His one sister is Mrs. Mary Cabaniss of Manilus, New York.

We mourn the passing of a great lawyer who practiced for some fifty-two years and will always remember him as a true friend.

—Abner R. Powell, Jr.



W. M. Pitts

William McLean Pitts died unexpectedly at his home in Selma on November 22, 1982. He was seventy-one.

Mr. Pitts, known to friends as "Mac," attended the University of Alabama Law School and was admitted to the practice of law in Alabama in 1933. Upon admittance to the bar, he began practicing with his father, Arthur M. Pitts. Mr. Pitts managed this extensive law practice in Selma until his recent death.

During his law career, Mr. Pitts served for several years as a special agent of the Federal Bureau of Investigation. For eighteen years he represented the mayor and governing body of the city of Selma—the city he was born in and spent the remainder of his life. He was a member of the Dallas County, Alabama, and American Bar Associations.

The contributions of Mr. Pitts to the Dallas County Bar, to his chosen career, and to his community are distinguished and numerous. As an active member of the Alabama State Bar, Mr. Pitts served on the Board of Commissioners for twenty-four consecutive years. He was the commissioner from the fourth judicial circuit from 1946-1970.

Mr. Pitts was respected and admired by those he represented and those who knew him because of his dedication to his calling and his family.

Surviving family members include his widow, Mrs. Mary H. Pitts; his daughters, Mrs. Weir Alexander, Mrs. John Henry, Miss Mary M. Pitts; his son, Phillip Henry Pitts; and nine grandchildren.



G. M. Grant

George McInvale Grant, former United States Representative from the state of Alabama, died in early November 1982 of a heart attack while returning from Europe aboard the *Queen Elizabeth II*. He was eighty-five years old.

Mr. Grant was born in Louisville, Alabama. He attended the University of Alabama and, after serving in the Army Signal Corps during World War I, he graduated from the University of Alabama School of Law. The year was 1922.

Mr. Grant practiced law in Troy, Alabama where he served as Pike County Solicitor from 1927-37. He was chairman of the Pike County Democratic Executive Committee (1927-1938), and was a member of the State Democratic Executive Committee. Mr. Grant also served as State Commander of the American Legion (1929-30).

As a member of the United States House of Representatives, Mr. Grant represented the state of Alabama from 1938 through 1964. There he served on the Committee of Agriculture. After his congressional service Mr. Grant resumed the practice of law in Washington, D.C.

He is survived by his wife, Natalie Carter Grant of Washington; a son, George McInvale Grant, Jr. of Chevy Chase, Maryland; a daughter, Alicia Longwell of Brooklyn, New York; and three grandchildren. He is also survived by a brother, B. M. Grant, of Louisville, Alabama.



G. O. Miller, Jr.

George Oliver Miller, Jr. of Montgomery died on November 12, 1982. He was sixty-eight.

Mr. Miller was born on December 13, 1913 in Linden, Alabama to Lanell and George O. Miller, Sr. of nearby Livingston. His father, also an attorney, served as a commissioner to the state bar. Mr. Miller moved with his family to Montgomery during his teenage years and finished high school at Sidney Lanier. He graduated from the University of Alabama School of Law and was admitted to the Alabama State Bar in 1939. Like most men his age, the U. S. Army claimed him in 1942 and from that date until 1945 he was no stranger to combat in the European theatre.

In 1948 Miller became the first and, until his retirement in January 1980, the only attorney for the Alabama Department of Agriculture and Industries.

Mr. Miller was active in the Alabama Farm Bureau Federation, the Alabama Cattlemen's Association, the American Legion, the Veterans of Foreign Wars, and of the Cloverdale Baptist Church.

Those who knew and worked with George Miller admired him. He was a fine gentleman and followed the rules of courtesy and kind regard for his fellow attorney. His wise counsel was often sought by those he had worked with, even after his retirement, and it was graciously given.

Sympathy is expressed to his wife, Gloria Underwood Miller, and their many friends.

In Memoriam

These notices are published immediately after reports of death are received. Memorials not appearing in this issue will be published at a later date if information is accessible.

NAME	CITY	DATE OF DEATH
ALBRITTON, Robert Bynum	Andalusia	January 19, 1983
GILES, Robert Clinton, Jr.	Mountain Brook	December 12, 1982
MAXWELL, Albert Russell, Jr.	Elberton, Ga.	December 23, 1982
SMITH, John Alexander, Jr.	Fayette	January 25, 1983
WAID, Luther Pinkney, Jr.	Oneonta	December 8, 1982

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Avoiding Legal Malpractice, Mobile (ABICLE)

WED 9
Banking Law, Birmingham (ABICLE)
Federal Practice, Birmingham (ABICLE)

TUES 15
Deadline for Submitting Information for May Alabama Lawyer

SAT 19
Federal Rules of Civil Procedure, Birmingham (CICLE)

FRI 25
New Probate Code, Birmingham (ABICLE)
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APRIL

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Southeastern Trial Institute, Birmingham (ABICLE)

SUN 3
Easter

WED 6
Workmen's Compensation, Birmingham (ADIR)

THURS 7
Workmen's Compensation, Birmingham (ADIR)
Age, Race and Sex Discrimination, Huntsville (ABICLE)

FRI 8
Age, Race and Sex Discrimination, Birmingham (ABICLE)

THURS 14
Age, Race and Sex Discrimination, Mobile (ABICLE)

FRI 15
Criminal Procedure, Birmingham (CICLE)
Age, Race and Sex Discrimination, Montgomery (ABICLE)

MAY

THURS 5
Board of Commissioners Meeting, Gulf Shores

FRI 6
Board of Commissioners Meeting, Gulf Shores

FRI 13
Alabama Young Lawyers, Sandestin (ABICLE)

SAT 14
Alabama Young Lawyers, Sandestin (ABICLE)

THURS 19
Medical Malpractice, Birmingham (CICLE)

FRI 20
Medical Malpractice, Birmingham (CICLE)
Oil, Gas and Mineral Law, Mobile (ABICLE)