

The Alabama
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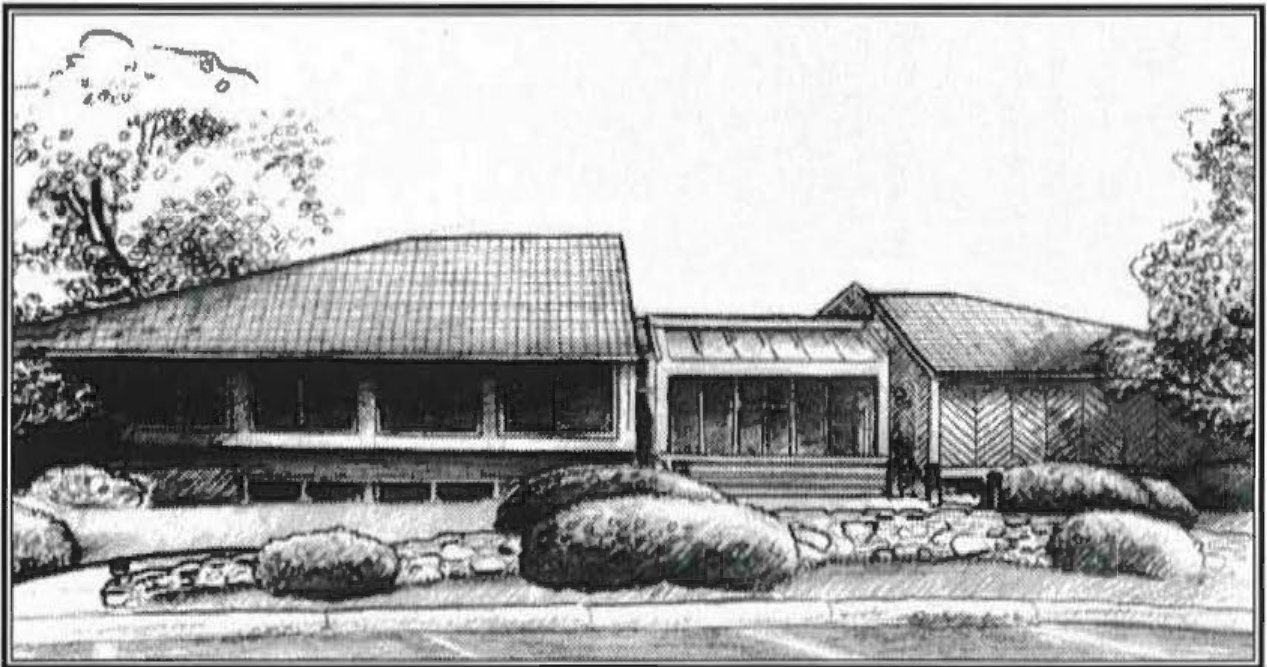
Vol. 59, No. 5

July 1998

SPECIAL FOCUS ON
ALTERNATIVE DISPUTE RESOLUTION

Begins on page 236

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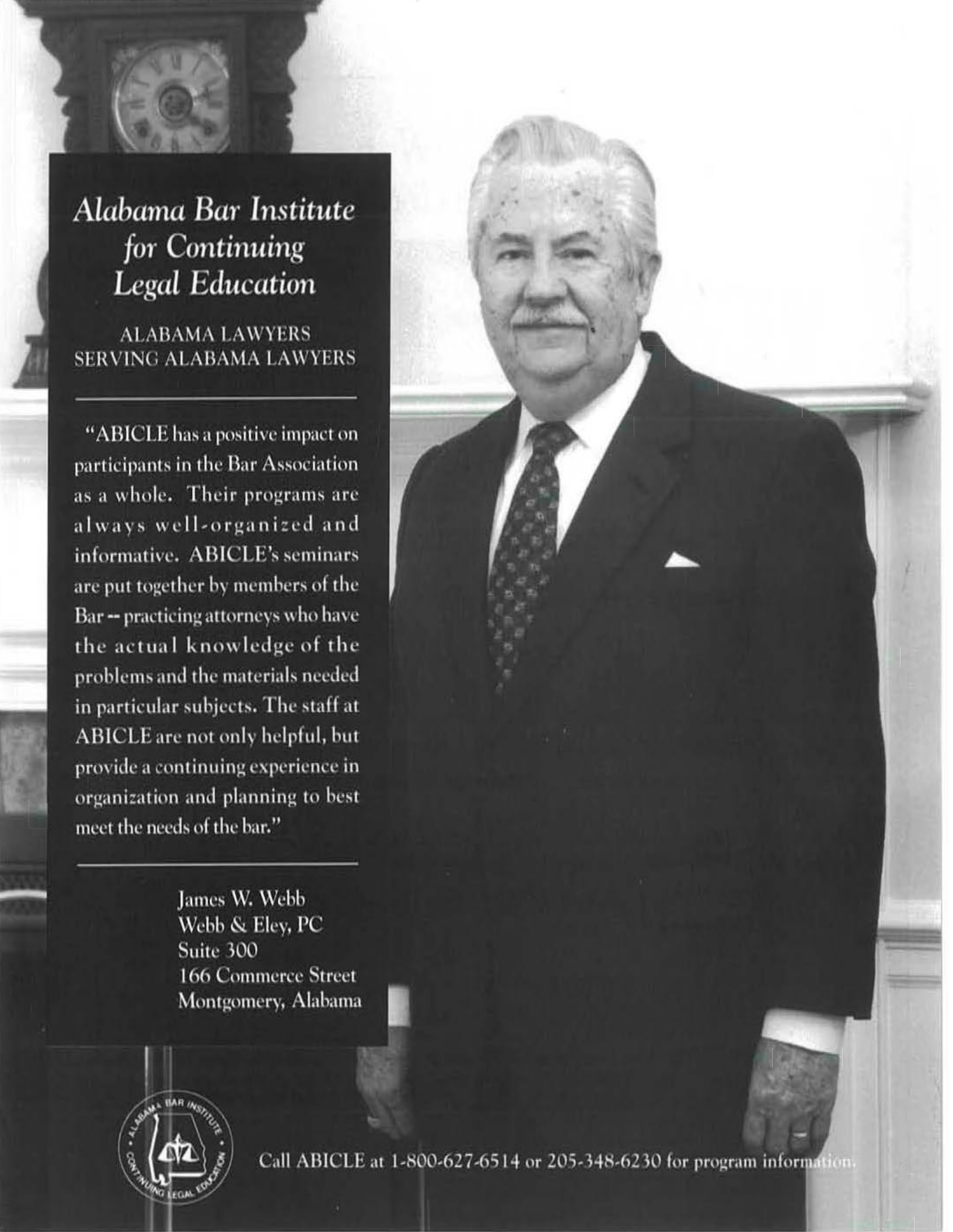
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On the Cover

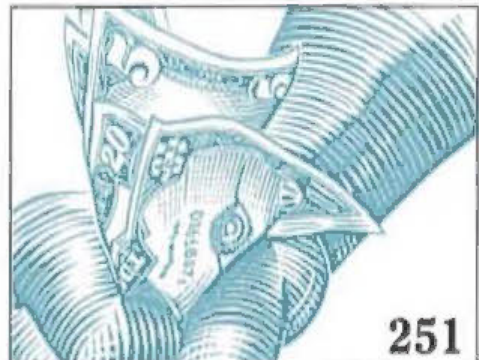
Nature trail at *Wind Creek State Park*, near Alexander City, Alabama

—Photo by Paul Crawford, JD, CLU

IN THIS ISSUE

1998 SPRING ADMITTEES	222
LAWYERS ASSIST DISASTER VICTIMS	228
SUMMIT ON THE PROFESSION: STORM CLOUDS GATHERING ON THE HORIZON ..	230
ALTERNATIVE DISPUTE RESOLUTION ARTICLES:	
ALABAMA SUPREME COURT COMMISSION ON DISPUTE RESOLUTION	236
THE ALABAMA CENTER FOR DISPUTE RESOLUTION, INC.	237
MEDIATION COMES OF AGE IN ALABAMA	239
MAKING PEACE IN ALABAMA	244
FACILITATIVE MEDIATION OR EVALUATIVE MEDIATION:	
MAY YOUR CHOICE BE A WISE ONE	246
REPORT ON MEDIATION PILOT PROJECT OF THE MONTGOMERY COUNTY FAMILY COURT	250
RULES ON THE ALABAMA STATE BAR RESOLUTION OF FEE DISPUTES	251
LEE COUNTY DISTRICT COURT VOLUNTEER MEDIATOR PILOT PROJECT	254
GOVERNOR SIGNS EXECUTIVE ORDER ENCOURAGING USE OF MEDIATION BY STATE AGENCIES	255
THE MONTGOMERY COMMUNITY DISPUTE RESOLUTION PROGRAM	256
UNIVERSITY OF ALABAMA SCHOOL OF LAW	257
THE INSTITUTE FOR DISPUTE RESOLUTION AT JONES SCHOOL OF LAW	257
ADR AT CUMBERLAND SCHOOL OF LAW OF SAMFORD UNIVERSITY	258
ENVIRONMENTAL LAW SECTION INITIATES COMMUNITY SERVICE PROJECT ..	259
ALABAMA ACADEMY OF ATTORNEY MEDIATORS HOLDS FIRST MEETING	260
ASB SCHOOL PARTNERSHIP PROGRAM	261

(Continued on page 196)



DEPARTMENTS

President's Page

198

Executive Director's Report

202

About Members, Among Firms

204

Bar Briefs

208

Memorials

210

Building Alabama's Courthouses

214

Opinions of the General Counsel

218

Legislative Wrap-Up

232

CLE Opportunities

264

Recent Decisions

266

Disciplinary Notice

268

Classified Notices

270

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PRESIDENT'S PAGE

By Dag Rowe

"Motion for Adjournment"



Dag Rowe

This is my final report to you as president of the Alabama State Bar. As Past President **Bill Hairston** quipped at this juncture in his term, "a motion for adjournment is timely and in order." However, before the gavel sounds and the curtain comes down, I want to share with you some of my thoughts and observations from the last 12 months.

First, I express my profound and sincere thanks to the almost 12,000 members of the Alabama State Bar for the honor and privilege of serving as your president. As demanding, time-consuming and sometimes frustrating as it has been, I will forever be grateful to you for this unique privilege to serve a profession that has been so good to me.

One of the greatest personal benefits of my bar service over the last ten years has been the enduring friendships with so many lawyers who are giving their time and talents selflessly and often without adequate recognition or thanks to benefit this bar and our profession. These champions of our profession are young and old, black and white, male and female. They come from the plaintiff's bar and the defense bar, from solo practices and large firms, and from small towns and big cities. They have all found common ground at the Alabama State Bar, and they share a belief that our profession and our communities can be better if we each take our place at the table and then work together.

The credit for this year's accomplishments goes to these committed members, our bar staff, our commissioners, and my predecessors as president. I will highlight a few of these accomplishments:

Public Image of Profession

The image of our profession continues to be a major concern of lawyers. In previous "President's Pages" and in my remarks to law students, to new admittees and to local bar associations I have stressed the personal responsibilities of each lawyer and the need for renewed

commitment to integrity, civility and service. In December 1997, in the interest of enhanced professionalism, the Board of Bar Commissioners recommended to the Alabama Supreme Court the adoption of **MCLE Rule 9** that would require each new admittee to the bar to undergo at least six hours of training in professionalism within the first year after admission. In the ensuing months the training materials have been prepared and the bar staff and the **Ethics Education Committee** are poised to implement this important initiative as soon as it is approved by the Alabama Supreme Court.

The profession's image continues to be improved by the growth and success of the bar's award-winning **Partnership Program** in which a lawyer "adopts" a single elementary class and over the school year spends ten hours in that classroom (armed with lesson plans developed by the American Bar Association) providing encouragement, instruction and a role model.

Realizing that the decline in professionalism (and the resulting damage to our profession's image) can only be reversed if our young lawyers are an integral part of the "solutions," this year the Commissioners approved a joint recommendation of the **Young Lawyers' Section**, the **Solo and Small Firm Practitioners Committee** and the **Committee on Local Bar Activities and Services** for the establishment of a statewide mentoring program. With the rapid growth of the ranks of lawyers and with over two-thirds of our practicing members either solos or in small firms, we believe that our traditions of civility, professionalism and high ethical standards can best be passed to succeeding generations of lawyers if each of us will sacrifice a little of our time to mentor a young lawyer.

(Continued on page 200)

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President's Page

(Continued from page 198)

Although we know that our profession cannot buy a good public image (we must earn it) and that we live in a society dominated by mass media, which often ignore our profession's value and contributions while exaggerating our individual and collective failures, television and radio *are* undeniably valuable tools in influencing and shaping public opinion. With this purpose, the Board of Bar Commissioners entered into a contract this year with the **Alabama Broadcasters Association** under which the bar would buy \$50,000 in television and radio spots and the broadcasters would "match it by at least four to one." By the latest estimates, we believe that for our investment we will receive by year-end as much as \$300,000 in air time.

Member Services

The **Law Office Management Assistance Program (LOMAP)** which was

launched last year is now fully operational under the direction of its full-time director, attorney **Laura Calloway**. LOMAP provides invaluable consulting services and a library of materials to solos and small firms on topics ranging from how to start a new firm to computer programs for today's law office.

The **Alabama Lawyers Assistance Program (Ala-Pals)** has continued to improve and expand its services to lawyers experiencing impairment from alcohol or other substance dependency through education, advice, intervention and referral services. The Commissioners approved the hiring for that program of a part-time director to coordinate and manage the Ala-Pals Program in coordination with the **Lawyers Helping Lawyers Committee** of the Alabama State Bar.

At a time when the bar is increasingly polarized and factionalized, the ASB is attempting to unify our bar and to foster a realization of what we have in common and how much we can accomplish if we "pull" together. To that end, on May 14th we convened the **1998 Summit On The Profession** with representatives attending from the Alabama Trial Lawyers Association, the Alabama Defense Lawyers Association, the District Attorneys Association, the Criminal Lawyers Association, Women in the Profession Committee, the Alabama Lawyers Association, and our appellate courts and various judges associations. At this meeting, common issues facing our profession were discussed. While this meeting led to no simple solutions, there was clear consensus as to the need for a working relationship that could lead to resolution.

Public Service

The **Fee Dispute Mediation** program, which was launched last year, is now fully operational statewide. This valuable program provides a voluntary, non-judicial mechanism for resolution of fee disputes between lawyers and clients. This mediation process doubtless will resolve many disputes outside the bar's disciplinary process and provide resolution to emotionally charged issues that create enormous adverse public sentiment for our profession when they are unresolved.

Earlier this year, our state bar also provided valuable services to the state

(and again enhanced our public image) by providing disaster response. Members of our bar, working in cooperation with local bars in Coffee, Pike, Montgomery and Jefferson counties, provided pro bono legal services to victims of the flood in Elba and the tornado in Birmingham.

Legislative Activities

Our members and staff at the ASB were active this year supporting needed legislation. Most critically, because the attorneys representing indigent defendants in criminal cases have not had a fee increase since 1981, the bar aggressively pushed passage of **H.B. 458**, sponsored by lawyer/legislators **Demetrius Newton, Ken Guin, Marcel Black** and **Mike Rogers**, and its senate counterpart, **S.B. 437**, sponsored by lawyer/senator **Rodger Smitherman**, which would have raised the hourly rates to \$55 per hour in court or out of court. To our delight, the bill passed on the last day of the recent legislative session. Unfortunately, probably due to some last-minute misinformation as to the cost of this fee increase to the general fund (as well as the fact that this is an election year), Governor James pocket vetoed the bill. Although understandably disappointed, the ASB staff and supporters are encouraged by the legislative support of this bill and plan to re-introduce it in the next regular or special session. Also at that time, the bar will again support its proposed **Barratry Act**, which will make it a crime for lawyers and non-lawyers to illegally solicit cases.

Task Forces

Because the primary functions of the bar relate to admissions and discipline and because it has been several years since these ASB responsibilities have been critically studied or materially modified, I appointed a **Task Force on Admissions** chaired by attorney **Robert Potts**, president of the University of North Alabama, and a **Task Force on Lawyer Discipline**, chaired by Past President **Phil Adams**.

This year the Task Force on Lawyer Discipline has studied the entire disciplinary process and will, in the early fall, make its recommendations relative to such specific issues as:

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We anticipate receiving the task force's report and recommendation in late summer.

The Task Force on Admissions is focusing on how to deal with the significantly increased number of applicants and the resulting undue burden on our bar examiners. This task force is considering new testing products, such as the Multistate Performance Test (MPT) and Multistate Essay Examination (MEE), currently used by several other states, to maintain the high quality of the bar examination while alleviating some of the test drafting duties of the bar examiners. We anticipate receiving this task force's report and recommendations in late summer.

Because of the slashed funding for Legal Services (with resulting cuts in its staffing and services) I appointed a third task force to study possible alternative funding for this valuable agency in Alabama. Chaired by past presidents **Sonny Hornsby** and **Ben Harris**, this task force is expected to complete its analysis and make its funding recommendations before the end of the year.

Bar Survey

From the outset this year, we realized that the state bar cannot adequately represent the diverse interests of our members if we do not know your concerns and circumstances. With that perspective, the state bar has engaged **Southern Opinion Research** to conduct an extensive survey of our members relating to adequacy of training, pay scales, income levels, applicable fee rates, technology needs and usage, specialties, bar services, etc. If you are among the more than 600 lawyers who were randomly chosen to be surveyed, I urge you to complete your questionnaire thoughtfully and conscientiously because the results of that survey will benefit our members in important

career decisions and your state bar in planning its services, activities and programming.

Other Activities and Programs

Of course, there have been numerous other services, initiatives and programs (and, yes, some failures) of the ASB this year. While I will not try to describe such activities, I do express my sincere thanks and abiding gratitude to so many who have worked tirelessly and unselfishly for our profession and this bar. First, I thank our executive director, **Keith Norman**, for his kindness, support and insight. I also recognize and appropriately praise the entire staff at the state bar for their enthusiasm, ability and dedication. I am especially grateful to my Executive Council and to the Board of Bar Commissioners for their commitment and wisdom, and I heartily salute them for a job well done.

Also, I express my sincere appreciation and everlasting gratitude to the members of my firm, **Burr & Forman LLP**, for their unwavering encouragement and support. Serving as president of the Alabama State Bar consumes enormous blocks of time and I am indebted to my partners for affording me the privilege of this service. Special thanks also go to my office co-workers, **Pam Moring**, **Sara Cheatham** and **Dot Branche**, who have tirelessly shared (and often carried) the load.

I cannot begin to adequately thank my wife, **Melissa**, and my children, **Anna** and **Dag, Jr.**, for their support and patience. In fact, if it had not been for the confidence and enthusiastic encouragement of Melissa, I would have withdrawn my candidacy for this position when it required a contested election.

In closing, I hope you share my pride in this bar's accomplishments and my confidence in the future of our profession. There remain, however, ominous signs and serious challenges for our profession and this bar. I am fortified by my belief that my successor, **Vic Lott**, has the temperament, experience and wisdom to provide innovative leadership. I urge you to offer him your cooperation and assistance.

Thank you so much for permitting me to serve as your president. The experience of working for you, and with you, I will treasure for the rest of my life. ■



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EXECUTIVE DIRECTOR'S REPORT

By Keith B. Norman

Looking Back on ADR at the Alabama State Bar



Keith B. Norman

Alternative Dispute Resolution had its state bar beginnings in the early 1980s. **Nick Gaede** of Birmingham chaired an ADR task force and was followed by **Wayne Ashbee** of Mobile. Since my arrival at the bar in 1988, I have had the pleasure of working with and observing the leadership of five dedicated people, **Rodney Max, Noah Funderburg, Marshall Timberlake, Bill Coleman, and Steven Benefield**, who have led the important work of this bar group. Over the past decade, much has been achieved by the dedicated and hard-working lawyers of this committee who have strived to advance ADR in Alabama. In this article, I attempt to recap some of the significant accomplishments of this vital bar committee over the course of the last ten years.

1988-1989 Bar Year

The ADR Task Force was chaired by Rodney Max. The task force had the following scope and purpose:

1. To study and develop a mediation model in Alabama;
2. Consider divorce mediation;
3. Consider court procedures in court annexed ADR; and
4. Consider proposals for the legislature to implement arbitration procedures in Alabama.

The task force was divided into mediation and arbitration subcommittees.

The task force spent most of the bar year working on an acceptable draft of a proposed arbitration act to replace the original arbitration act adopted by the Alabama Legislature in 1901. The Board of Bar Commissioners approved the recommended legislation offered by the task force although the arbitration legislation was never introduced during the 1989 legislative session.

Work also began on uniform mediation guidelines. Other issues studied by the task force included mediation in minor neighborhood disputes, labor disputes, domestic relations disputes and complex personal injury and commercial suits.

1989-1990 Bar Year

Rodney Max continued as chair and the task force's purpose and scope remained unchanged. During this time, the task force drafted amendments to Rule 16 of the *Alabama Rules of Civil Procedure* to provide for the voluntary use of extrajudicial procedures to resolve disputes and drafted accompanying *Civil Court Mediation Rules*. These drafts were approved at the recommendation of the task force by the Board of Bar Commissioners and sent to the supreme court for its consideration.

1990-1991 Bar Year

Noah Funderburg of Tuscaloosa became the chair of the ADR Task Force. Two changes were made in the

task force's purpose and scope. In addition to the previous charges, two additional charges were added:

1. To consider the feasibility of a statewide system of dispute resolution through the use of privately retained judges and retired judges; and
2. To publicize and educate the bar on alternative dispute resolution mechanisms and the benefits of alternative means of dispute resolution including the development of CLE programs on alternative dispute resolution.

Toward these ends, the task force published a series of articles which appeared in *The Alabama Lawyer* magazine that detailed different forms of alternative dispute resolution. The task force also developed several CLE programs for bar members on mediation and other forms of ADR.

1991-1992 Bar Year

Noah Funderburg continued as chair of the task force. The amendment to Rule 16 and the mediation rules were adopted by the supreme court, becoming effective August 1, 1992. Mediation training was held at the state bar's 1992 Annual Meeting. The mediation training was conducted by the Center for Dispute Settlements of Washington, D.C. The purpose and scope of the committee's activities remained virtually unchanged from the previous year.

1992-1993 Bar Year

Marshall Timberlake of Birmingham was appointed chair. Although the scope and purpose of the task force remained the same, the task force undertook a number of new initiatives in furthering the task force's charge. Included were: efforts to encourage local bar associations to establish ADR programs; continuing responsibility for statewide educational activities for lawyers; assisting the Federal District Court for the Northern District of Alabama in implementing forms of ADR in its local procedures; developing corporate ADR programs; and helping plan, in conjunction with the state court judges' midwinter conference, an all-day program on ADR. In addition, the task force undertook to organize a formal ADR center to coordinate all future ADR activities in the

state. The Board of Bar Commissioners adopted the recommendation of the task force to establish and house a Center for Dispute Resolution at the state bar headquarters. The task force also published a book, *Alternative Dispute Resolution Procedures in Alabama with Mediation Model*.

1993-1994 Bar Year

Marshall Timberlake continued as chair of the task force. The scope of the task force was expanded to develop legislation to implement a statewide ADR program and seek funding for such program as well as continued development of a statewide Center for Dispute Resolution. In addition, the Board of Bar Commissioners approved the task force's recommendation for the supreme court to create a permanent commission on ADR. On July 1, 1994, the supreme court adopted rules creating the Alabama Supreme Court Commission on Dispute Resolution. The Center for Dispute Resolution became fully operational in August 1994 with a grant from the Alabama Law Foundation and the hiring of a part-time director, **Judy Keegan**. The Board of Bar Commissioners approved the recommendation that the task force become a standing committee of the bar.

1994-1995 Bar Year

Bill Coleman of Montgomery was appointed chair of the committee. The committee oversaw the operation of the Center for Dispute Resolution as well as continued to sponsor workshops, seminars and other educational programs across the state. The committee drafted a code of ethics for mediators which was submitted to the Alabama Supreme Court. Issues of privilege for mediators (both liability and testimonial) were studied. Two nonprofit corporations were created to provide for the continued supervision and funding of the Center for Dispute Resolution. The committee continued to work on a family law mediation project.

1995-1996 Bar Year

Bill Coleman continued as chair of the committee. Funding was obtained for the Alabama Supreme Court Commission on Dispute Resolution. The committee continued work on

developing a program for implementation in the area of domestic relations as well as recommencing work on a model arbitration act for Alabama. Publicity, education and training for Alabama lawyers and judges continued as a focus of the committee and the Center for Dispute Resolution. Interim mediator standards and registration procedures were recommended as minimum standards for approval by the Alabama Supreme Court. The committee began considering community-based mediation programs as well state administrative law ADR procedures.

1996-1997 Bar Year

Steven Benefield of Birmingham became chair of the committee. The committee continued the previous work of the committee. Testimonial privilege legislation was introduced and passed. The committee continued its close work with the Alabama Center for Dispute Resolution, as well as the Alabama Supreme Court Commission on Dispute Resolution.

1997-1998 Bar Year

Steven Benefield continued as chair of the committee. The Governor, at the recommendation of the committee, the Alabama Center for Dispute Resolution and general counsel for various state agencies, signed an Executive Order encouraging state agencies to consider using mediation to resolve disputes.

The first printed edition of the *Alabama Mediator Roster* became available in June 1998, and the second edition of *Alternative Dispute Resolution Procedures in Alabama with Mediation Model* will be available shortly.

ADR in Alabama has flourished because of the vision of the leaders of the ADR committee and the dedication of the many lawyers who have served on this committee. We can all be proud of what has been accomplished in such a short period of time. Alabama's ADR program continues to thrive and grow in an orderly fashion. It has grown not out of necessity but as a way to offer clients another way to help them resolve their disputes. Through ADR, we are better stewards of the public's trust in helping them to resolve their disputes in peaceful ways. ■



ABOUT MEMBERS, AMONG FIRMS

About Members

Allison Marshall Wright announces a change of address to 117 Edgewood Boulevard, Birmingham, 35209.

Patricia Y. Comer announces the relocation of her office to The Massey Building, Suite 201, 290 21st Street, North, Birmingham, 35203. Phone (205) 250-7670.

Gary C. Young announces the relocation of his office to 2107 Fifth Avenue, North, Suite 100, Birmingham, 35203. Phone (205) 328-7546.

Richard W. Bell announces a change of address to 3000 Riverchase Galleria, Suite 950, Birmingham, 35244. Phone (205) 985-3557.

Randy S. Arnold announces the relocation of his office to 100 W. Church Street, P.O. Box 1181, Troy, 36081-1181. Phone (334) 670-9700.

Kelli F. McDaniel announces the opening of her office at 207 Montgomery Street, Suite 414, Bell Building, Montgomery, 36104. Phone (334) 269-5585.

Melinda Lee Maddox announces the relocation of her office to 109 Saint Joseph Street, Suite 106, Brewton, 36426. The mailing address is P.O. Box 1350, 36427. Phone (334) 867-3377.

Andrew M. Skier, formerly deputy district attorney for the Fifteenth Judicial Circuit, announces that he is entering

private practice. His office is located at 505 S. Perry Street, Montgomery, 36104. His mailing address is P.O. Box 4100, 36103. Phone (334) 263-4105.

J. William Mayer, formerly chief deputy district attorney for the Fifteenth Judicial Circuit, announces that he is entering private practice. His office is located at 3006 Jasmine Road, Montgomery, 36111. Phone (334) 269-0511.

Meade Frierson, III, formerly of the predecessor to **Maynard, Cooper & Gale, P.C.**, announces the opening of his office at 3940 Montclair Road, Suite 209, Birmingham. The mailing address is P.O. Box 130969, 35213-0969. Phone (205) 879-9455.

Robbie J. Priest, formerly of Priest & Davis, announces the opening of her office located at 412 S. Court Street, Shoals Office Building, Suite 304, Florence, 35630.

Among Firms

The Social Security Administration Office of Hearings and Appeals announces that **Steven S. Smith** has joined as staff attorney. Offices are located at Equitable Center, 1515 Poydras Street, Suite 1600, New Orleans, Louisiana 70112. Phone (504) 589-2418.

Ferrell S. Anders, David A. Boyett, III and J. David Brady, Jr. announce the formation of **Anders, Boyett & Brady, P.C.** Offices are located at 3800

Airport Boulevard, One Maison Building, Suite 303, Mobile, 36608. Phone (334) 344-0880.

Hawthorne & Hawthorne, L.L.C. announces that **C. Gibson Vance** has become a partner. The firm name has changed to **Hawthorne, Hawthorne & Vance, L.L.C.** Offices are located at the Bell Building, Suite 1100, 207 Montgomery Street, Montgomery, 36104. Phone (334) 269-5010.

Walston, Wells, Anderson & Bains, L.L.P. announces that **Julia Boaz Cooper** has become a partner. **David B. Ringelstein, II, Mtesa P. Cottemond, J. David Moore** and **Erin O. Brooks** have become associates. Offices are located at the Financial Center, 505 20th Street, North, Suite 500, Birmingham, 35203. Phone (205) 251-9600.

Ted L. Mann, formerly of Ted L. Mann, P.C. and **David M. Cowan**, formerly a member of Heninger, Burge & Vargo, announce the formation of **Mann & Cowan, P.C.** Offices are located at 2000-A SouthBridge Parkway, Suite 523, Birmingham, 35209. Phone (205) 879-9661.

Hare, Hair & White announces that **Allan Sidney Jones** has become an associate. Offices have relocated to 1901 Sixth Avenue, North, AmSouth/Harbert Plaza, Suite 1500, Birmingham, 35203. Phone (205) 322-3040.

Capell, Howard, Knabe & Cobbs, P.A. announces that **C. Clay Torbert, III** has become a member. **Bryan K.**

Prescott, Richard H. Allen and Richard H. Marks have become associates. Offices are located at 57 Adams Avenue, Montgomery, 36104. Phone (334) 241-8000.

Ball, Ball, Matthews & Novak, P.A. announces the relocation of their offices to 2000 Interstate Park Drive, Suite 204, Montgomery, 36109-5413. The mailing address will remain P.O. Box 2148, 36102-2148. Phone (334) 387-7680.

Johnstone, Adams, Bailey, Gordon & Harris, L.L.C. announces the opening of the Baldwin County office located at 104 Hand Avenue, Bay Minette. **Charles C. Simpson, III** and **Lawrence J. Seiter** have become members, and **Brock B. Gordon** and **J. Connor Owens, Jr.** have become of counsel in the Mobile offices located at 104 St. Francis Street, 8th Floor, Mobile.

Andrew T. Citrin announces the relocation of his offices to 29000 Highway 98, Summit Building A, Suite 202, Daphne, 36526. **George A. Martin, Jr.** has become an associate. Phone (334) 626-7766.

Caroline A.E. Smith announces she has taken a position as a trial attorney for the **United States Department of Justice**, civil division, commercial litigation branch, federal claims, federal circuit section. The mailing address is 1100 L Street, Northwest, Washington, D.C. 20530. Phone (202) 307-1011.

Kelly Gallop Davidson, formerly of Webb & Eley, and **Melissa B. Thomas**, formerly of James R. McKoon, Jr., have joined **Nancy J. Davis**. The firm name is **Davis, Thomas & Davidson**. Offices are located at 324 E. Magnolia Avenue, Auburn, 36830. Phone (334) 821-1908.

Schmitt & Harper announces that **John G. Smith** has become a shareholder. The firm's new name is **Schmitt, Harper & Smith**. Offices are located at 213 Barnett Boulevard, P.O. Box 780608, Tallahassee, 36078. Phone (334) 283-6855.

Fite, Davis, Atkinson, Guyton & Bentley, P.C. announces that **J. Daryl Burt**, **Mark E. Hammitte** and **R. Scott**

Hunt have become associates. Offices are located at 118 Military Street, South, Hamilton, 35570. Phone (205) 921-7878. Other offices are located at 735 U.S. Highway 43, South, Winfield, 35594. Phone (205) 487-4848.

Peter Johnson Davis, formerly of Priest & Davis, announces the opening of **Davis Law Firm**, located at 412 South Court, Suite 411, Florence, 35630. Phone (256) 764-3322.

Terry Bullard and **Trant Bullard** of Bullard & Bullard announce that **Gene Spencer** has joined as a partner. The new name is **Bullard, Bullard & Spencer**. Offices are located at 211 W. Main Street, Suite II, P.O. Box 398, Dothan, 36302. Phone (334) 793-5665.

Randall B. James, P.C. announces that **Larry O. Daniel, Jr.** has become an associate. Offices are located at 611 S. Lawrence Street, Montgomery, 36104. Phone (334) 262-0500.

Michael B. Bryan announces that he has become senior vice-president and general counsel of **Brindlee Mountain Telephone Company** and executive vice-president of **Brindlee Investment Partnership, L.L.C.** The mailing address is P.O. Box 684, 113 S. Main Street, Arab, 35016. Phone (256) 586-0803. Bryan has ceased the public practice of law and closed his office located at 2 Office Park, 615 Cullman Road, Arab.

Holt, McKenzie, Holt & Mussleman announces a name change to **Holt, Mussleman & Holt**. Members of the firm are **Donald E. Holt**, **J. Ben Holt**, **Lindsey Mussleman Davis** and **Ralph E. Holt**, and **Melinda A. Morgan** has become an associate. Offices are located at 216 Dr. Hicks Boulevard, West, Florence, 35630. Phone (256) 766-0503.

Charles E. Robinson, P.C. announces that **Charles E. Robinson, Jr.** has become a partner. The name has changed to **Robinson & Robinson, P.C.** Offices are located at 6th Avenue-Court Street, West, P.O. Box 370, Ashville, 35953. Phone (205) 594-5133.

Anne R. Moses and **Patricia Y. Comer** announce they are sharing offices at The Massey Building, Suite 201, 2901 21st Street, North, Birmingham, 35203. Phone (205) 322-5232, (Moses) and (205) 250-7670, (Comer).

James Steven Clem, formerly of Lucas, Alvis & Wash, P.C., has relocated to the **Southeastern Legal Group**, located at 1920 Huntington Road, Birmingham, 35209. Phone (205) 870-5704.

Pittman, Hooks, Dutton & Hollis, P.C. announces that **Page A. Poerschke** has joined the firm. Other members are **W. Lee Pittman**, **Ken Hooks**, **Tom Dutton**, **L. Andrew Hollis, Jr.**, **Jeffrey C. Kirby**, **Ralph Bohanan, Jr.**, **Chris T. Hellums**, **Adam P. Morel**, **Keith T. Belt, Jr.**, **Robert Potter**, **Leigh King Forstman**, **Christopher A. Price**, and **Michael C. Bradley**. Offices are located at 1100 Park Place Tower, Birmingham, 35203. Phone (205) 322-8880.

Patrick C. Davidson, formerly with Walker, Hill, Adams, Umbach, Meadows & Walton, has taken a new position as corporate counsel with **Price Oil, Inc.** The mailing address is P.O. Drawer 210249, Montgomery, 36121-0249. Phone (334) 277-0943.

Sirote & Permutt announces that **Russell Carter Cache'** has joined the firm. Offices are located at 2222 Arlington Avenue, South, Birmingham, 35205. The mailing address is P.O. Box 55727, 35255-5727. Phone (205) 933-7111.

Maddox, Austill & Parmex, P.C. announces that **M. Jason McCulloch** has become an associate. Offices are located at 2204 Lakeshore Drive, Suite 215, Birmingham, 35209. Phone (205) 870-3767.

Parsons & Eberhardt announces the relocation of its offices to 820 Franklin Street, Huntsville, 35801. The mailing address remains P.O. Box 534, Huntsville, 35804. Phone (256) 533-2172.

Stone, Granade & Crosby, P.C. announces that **L. Brian Chunn** has become a shareholder and that **Karen L. Tucker** and **James Gentry** have

become associates. Offices are located in Bay Minette, Daphne and Foley.

Simon Donovan, L.L.P. has relocated offices to 1150 Financial Center, 505 N. 20th Street, Birmingham, 35203. Phone (205) 324-2727.

Thomas, Means & Gillis, P.C. announces that **James L. Richey** is of counsel. Offices are located at 505 20th Street, North, 1035 Financial Center, Birmingham, 35203-2605. Phone (205) 328-7915.

Stephen L. Johnson announces he has joined **Orion Consulting, Inc.** Offices are located at the Penn Center West, Building Three, Suite 411, Pittsburgh, 15276. Phone (412) 788-8355.

Vickers, Riis, Murray & Curran, L.L.C. announces that **M. Kathryn Knight** has become a member. Offices are located at the Regions Bank Building, Eighth Floor, 106 Saint Francis Street, Mobile, 36602-3408. Phone (334) 432-9772.

Drew, Eckl & Farnham, L.L.P. announces that **Bryant G. Speed, II** and **M. Kristi Wallace** have joined the firm. Offices are located at 880 W. Peachtree Street, P.O. Box 7600, Atlanta, Georgia 30357-0600. Phone (404) 885-1400.

C. David Stubbs, Wesley M. Frye and **Gerald O. Sills** announce the formation of **Stubbs, Sills & Frye, P.C.** Offices are located at 224 J Street, Anniston, 36207. The mailing address is P.O. Box 2023, 36202. Phone (256) 236-3600.

Buntin, Etheredge & Dowling announces that **Steven C. Curtis** has become an associate. The office is located at 185 N. Oates Street, Dothan, 36303. The mailing address is P.O. Box 1193, 36302. Phone (334) 793-3377.

Stephen Land McDavid announces the formation of **Mayo, McDavid, P.L.L.C.** Offices are located at 100 N. Lamar, Suite 200, Oxford, Mississippi 38655. Phone (601) 236-0055.

Zimmerman & Rothschild, L.L.C. announces that it has relocated to 608

S. Hull Street, Montgomery, 36104. Phone (334) 262-2400.

Albrittons, Clifton & Alverson, P.C. announces that **Julie Sorrells Moody** has become a shareholder and the new firm name is **Albrittons, Clifton, Alverson & Moody, P.C.** Offices are located at 109 Opp Avenue, P.O. Drawer 880, Andalusia, 36420. Phone (334) 222-3177.

Crosslin, Slaten & O'Connor, P.C. announces that **Joseph Lenn Ryals** has joined the firm. Offices are located at 207 Montgomery Street, Suite 900, Montgomery, 36104. Phone (334) 262-8882.

Allen Tippy & Associates announces its new name. Offices are relocated to 5905 Airport Boulevard, Suite H, Mobile, 36608. Phone (334) 344-1220.

Boggs & Hill announces that **Amy J. Hayes** has joined the firm. The mailing address is P.O. Box 597, Clanton, 35046. Phone (205) 755-0638.

Lightfoot, Franklin & White, L.L.C. announces that **William H. Brooks, Sara Anne Ford, Madeline H. Haikala** and **J. Banks Sewell, III** have become partners. The firm also announces that **Suzanne Alldredge, Ivan C. Cooper, Lisa W. Daniel, Anne Sikes Hornsby,** and **Stephen J. Rowe** have become associates. Offices are located at 505 20th Street, North, 300 Financial Center, Birmingham, 35203. Phone (205) 581-0700.

Tully & Philips announces a change of address to 1015 Montlimar Drive, Suite B-1, Mobile, 36609. The mailing address and phone number remain the same.

Cheryl Blume Stahl and **John W. Stahl** announce the formation of **Stahl & Stahl.** Offices are located at 1009 23rd Avenue, Suite A, Tuscaloosa, 35401. Phone (205) 345-9500.

Richard S. Jaffe, P.C. announces a name change to **Jaffe, Strickland, Beasley & Drennan, P.C.** Offices are located at The Alexander House, 2320 Arlington Avenue, Birmingham, 35205. Phone (205) 930-9800.

T. Rhett Smith, P.A. announces that **Christopher P. Janes** has joined the firm. Offices are located at 714 N. Spring Street, P.O. Box 1713, Pensacola, 32598-1713. Phone (850) 438-1220.

Bell & Nunnally, P.L.L.C. has changed its name to **Bell, Nunnally & Martin, P.L.L.C.** The firm announces that **Don T. O'Bannon** has joined as a principal and **Beverly A. Whitley** has been named a principal, and that **Eric J. Golle** and **Mark T. Downey** have become associates. Offices are located at 1400 One McKinney Plaza, 3232 McKinney Avenue, Dallas, 75204-2429. Phone (214) 740-1400.

James R. Sturdivant announces he is no longer with the firm of Lightfoot, Franklin & White, L.L.C. He has opened his practice, located at 300 21st Street, North, Suite 200, Title Building, Birmingham, 35203. Phone (205) 254-0053.

Robert J. Varley and **William Z. Messer** announce the formation of **Varley & Messer, L.L.P.** Offices are located at 229 S. McDonough Street, Montgomery, 36104. Phone (334) 834-7770.

Compton & Associates, L.L.P. announces a change of address to 2000 Powers Ferry Road, Suite 200, Marietta, Georgia 30067-9442. Phone (770) 988-0104.

Swift, Currie, McGhee & Hiers, L.L.P. announces that **Laura Jones French** has joined the firm. Offices are located at 1355 Peachtree Street, N.E., Suite 300, Atlanta, Georgia 30309. Phone (404) 874-8800.

Ferrell S. Anders, David A. Boyett, III and **J. David Brady, Jr.** announce the formation of **Anders, Boyett & Brady, P.C.** Offices are located at 3800 Airport Boulevard, One Maison Building, Suite 303, Mobile, 36608. Phone (334) 344-0880.

Victor T. Hudson and **William W. Watts, III** announce the formation of **Hudson & Watts, L.L.P.** Offices are located at 305 State Street, Mobile, 36603. The mailing address is P.O. Box 989, Mobile, 36601. Phone (334) 432-7200.

Richard G. Brock, formerly an associate with Armbrecht, Jackson, Demouy, Crowe, Holmes & Reeves, has become the director of attorney recruiting with **Amicus Legal Staffing, Inc.** Offices are located at 2340 Woodcrest Place, Suite 210, Birmingham, 35209. Phone (205) 870-3330, extension 102.

Michele G. Bradford announces she has been appointed to serve as backup judge for **Gadsden's City Court**. Her office is located at 518-A Walnut Street, Gadsden, 35901. Phone (256) 549-0090.

Luker, Cole & Associates, L.L.C. announces that **James W. Woolley** has joined as an associate. Offices are located at 2205 Morris Avenue, Birmingham, 35203. Phone (205) 251-6666.

Robert K. Dawson announces the relocation of his office to 1225 I Street, N.W., Suite 500, Washington, D.C. 20005, and the formation of **Dawson & Associates, Inc.** Phone (202) 312-2005.

Sexton & Jones, P.C. announces that **William Z. Cullen** has joined the firm. Offices are located at 3021 Lorna Road, Suite 310, Birmingham, 35216. Phone (205) 823-5515.

Laird & Wiley, P.C. announces that **Russell B. Robertson** has become an associate. Offices are located at 1700 Fifth Avenue, Jasper, 35501. Phone (205) 221-5601.

Woodley C. Campbell and **W. Clark Campbell, Jr.** announce the relocation of **Campbell & Campbell** to 4220 Carmichael Court, North, Montgomery, 36106. The mailing address remains P.O. Box 5018, 36103. Phone (334) 396-0232.

T. David Weston has become a partner in the firm of **Campbell & Labudde, L.L.C.**, changing the firm's name to **Campbell, Labudde & Weston, L.L.C.** Offices are located in The Bell Building, 207 Montgomery Street, Suite 1000, Montgomery, 36104. Phone (334) 265-4477. Other offices are located in Anniston and Talladega.

James D. Love announces he has accepted a position with the **City of Birmingham Law Department**. Offices are

located at 710 N. 20th Street, Room 600, City Hall, Birmingham, 35203-2290. Phone (205) 254-2369.

Pierce, Ledyard, Latta & Wasden, P.C. announces that **Tracy S. Guice** has become an associate. Offices are located at 41 N. Beltline, Suite 400, Colonial Bank Centre, Mobile, 36608. Phone (334) 344-5151.

Rogers, Young, Wollstein & Hughes, L.L.C. announces that **Donna Britt Madison** has become an associate. Offices are located at 1304 Quintard Avenue, Anniston, 36201. Phone (256) 235-2240.

Grace & Shaw announces that **Julie L. Wills** has become an associate. Offices are located at 108 N. Jefferson Street, Huntsville, 35801. Phone (256) 534-0491.

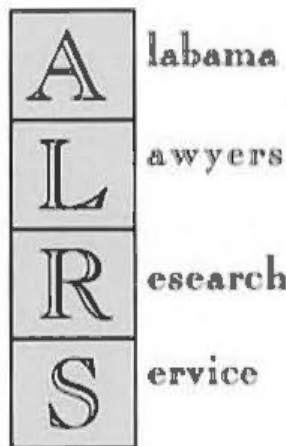
Pittman, Manuel, Thompson & Perry announces that the Birmingham office has been permanently closed. New offices are located at 314 Magnolia Avenue, Panama City, 32401. The mail-

ing address is P.O. Box 710, 32402. Phone (850) 784-9000.

Johnston & Conwell, L.L.C. announces that **Arthur Lee Martin, Jr.** has joined the firm. Offices are located at 800 Shades Creek Parkway, Suite 325, Birmingham, 35209. Phone (205) 414-1200.

Blackburn, Maloney & Schuppert, L.L.C. announces that **H. Wallace Blizzard, III** has become an associate. Offices are located at 201 2nd Avenue, S.E., P.O. Box 1469, Decatur, 35602.

Hatcher, Stubbs, Land, Hollis & Rothschild announces that **C. Morris Mullin, Theodore D. Morgan** and **Teri Yancey Callahan** have become partners of the firm and that **W. Fray McCormick** and **Bradley R. Coppedge** have become associates. Offices are located at 233 12th Street, Suite 500, Corporate Center, Columbus, Georgia 31901. Phone (706) 324-0201. ■



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BAR BRIEFS

• **Joe C. Cassidy, Gregory S. Cusimano, Keith B. Norman, Kenneth C. Randall, and William D. Scruggs** were recently elected Fellows of the American Bar Foundation. The Fellows is an honorary organization of attorneys, judges and law professors whose professional, public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.

Established in 1955, the Fellows encourage and support the research program of the American Bar Foundation.

• **Joe C. Cassidy** of Enterprise is of counsel to the firm of Cassidy, Fuller & Marsh. Cassidy has been a member of the Alabama State Bar Board of Bar Commissioners since 1979 and is a past vice-president of the state bar (1984-85). He is a past president of the Alabama Defense Lawyers Association (1985-86).

• **Gregory S. Cusimano** of Gadsden is of counsel to the firm of Floyd, Keener, Cusimano & Roberts, P.C. Cusimano is a past president of the Etowah County Young Lawyers' Association (1973-74), a past president of the Etowah County Bar Association (1980-81), and a past president of the Alabama Trial Lawyers Association (1985-86).

• **Keith B. Norman** of Montgomery is the executive director of the Alabama State Bar. He is a past chair of the American Bar Association's Committee on Pre-Law Counseling in the Young Lawyers' Division (1989-90). He is a past president of the Alabama State



Joe C. Cassidy



Gregory S. Cusimano



Keith B. Norman



William D. Scruggs

Bar's Young Lawyers' Section (1991-92) and a past chair of the Montgomery County Bar Association's YLS (1987-88).

• **Kenneth C. Randall** of Tuscaloosa is the dean of the University of Alabama School of Law. Dean Randall is a member of the American Bar Association, the Alabama State Bar and the

Tuscaloosa County Bar Association. He is the chair of the American Bar Association's Technology Committee in the Legal Education and Admissions to the Bar Section, a member of the ABA's Law School Administration Committee, and a member of the Association of American Law Schools' Library and Technology Committee.

• **William D. Scruggs** of Fort Payne is of counsel to the firm of Scruggs, Jordan & Dodd, P.A. Scruggs served as president of the Alabama State Bar from 1986-87. He is a past chair of the Continuing Legal Education Commission (1981-86), the Committee on Discipline, and the Committee on Professionalism.

• In addition, two members of the Alabama State Bar, **Richard Bounds**, a member of Cunningham, Bounds, Yance, Crowder & Brown in Mobile, and **L. Vastine Stabler**, a member of Walston, Stabler, Wells, Anderson & Bains in Birmingham, were honored as Life Fellows of the American Bar Foundation at the 42nd Annual Meeting of the Fellows.

• **Earle F. Lasseter**, a partner in the firm of Pope, McGlamry, Kilpatrick & Morrison, was recently nominated to become treasurer-elect of the American Bar Association. Lasseter's nomination will be presented for election to the ABA House of delegates during the 1998 ABA Annual Meeting in Toronto in August. The ABA is the world's largest voluntary professional association, with membership in 1997 more than 392,000 (346,000 of those being lawyers).

Lasseter previously served as a member of the Judge Advocate General's Corps. He is a member of the boards of governors of the State Bar of Georgia and the Alabama Trial Lawyers Association, and is a member of the Alabama State Bar and District of Columbia Bar.



Left to right, 1997 President Faye Edmondson with new TCBA officers Young, Treadwell and Kirk

He is a graduate of Auburn University and the University of Alabama.

• Nine members of the **Tallapoosa County Bar Association** were recently honored for their years of service. They were: **Sim Wilbanks** of Alexander City, who began practicing law in 1936; **Tom F. Young** of Alexander City, 1938; **Ruth S. Sullivan** of Camp Hill, 1955; **John Tom Radney** of Alexander City, 1960; **Charles G. Reynolds, Sr.** of Alexander City, 1953; **Jennie Lee Kelley** of Alexander City, 1970; **Charles R. Adair, Jr.** of Dadeville, 1948; **John F. Dillon, IV** of Alexander City, 1954; and **John P. Oliver** of Blue Creek, 1948.

Also, officers elected for the 1998 bar year are: **Tom F. Young, Jr.**, president; **Mark Allen Treadwell, III**, vice-president; and **Jessica Kirk**, secretary-treasurer. ■



Bar commissioner John Percy Oliver, II, second from left, congratulates Tallapoosa County Bar Association members Wilbanks, Young, Sullivan, Radney, Reynolds, Kelley, Adair, and Dillon.

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MEMORIALS

Wiley Phillip Henderson

Wiley Phillip Henderson passed away on October 16, 1997 at the age of 71 in his home in Flomaton, Escambia County, Alabama.

Wiley Phillip Henderson was a lifelong resident of Flomaton. He earned his bachelor's degree in commerce and business administration and his Juris Doctorate from the University of Alabama. He was admitted to the Alabama State Bar on June 13, 1955. He served as a first lieutenant in the United States Air Force in the Judge Advocate General's Corps. He was engaged in the private practice of law in his hometown of Flomaton from 1957 until 1965 when he was appointed to the office of District Attorney of Escambia County, where he served for more than 21 years. Upon his retirement in January 1987, the Alabama Senate passed a resolution of commendation for his exemplary service to Escambia County.

He was a member of the Escambia County Bar Association, Alabama State Bar, American Bar Association, National District Attorneys Association, Alabama District Attorneys Association, and Phi Alpha Delta Law Fraternity. He was a Master Mason, 32 Degree Scottish Right, Noble of the Mystic Shrine, Escambia County Shrine Club, and the Fraternal Order of Police and was listed in Who's Who of America. He served on the Advisory Board of Directors of the United Bank. He was an aircraft pilot and at one time held a temporary flight instructor's rating. He was a longtime member of the First Baptist Church of Flomaton and in 1981 was ordained as a deacon in his church.

Wiley, who was loved and respected by the members of the bench and bar of Escambia County and the citizens whom he served, is survived by one brother, Allen Henderson, Jr.; his wife, Willneila; one son, Wiley Phillip Henderson, Jr.; three daughters, Rachel Henderson Bickerstaff, Charlotte Henderson and Victoria Henderson

Benton; and three grandchildren, Wiley Phillip Henderson, III, Elizabeth D. Henderson and Joshua M. Henderson.

— **Charles R. Godwin**
President, Escambia County Bar Association

Charles Grady Reynolds, Sr.

Whereas, the Tallapoosa County Bar Association wishes to honor the memory of Charles Grady Reynolds, Sr., a distinguished member of this association, who died on Friday, March 6, 1998, and the association, desiring to remember his name and recognize his contributions to our profession and to this community; now, therefore, be it remembered.

Charles Grady Reynolds, Sr., known to all of us as "Charlie," was raised in Chambers County, Alabama and graduated from Valley High School. He later attended Auburn University and graduated from the University of Alabama School of Law in 1953. Charles Grady Reynolds, Sr. served two terms in the Alabama State Legislature, being the youngest member ever elected to the House of Representatives. He began his law practice in Lanett, Alabama and later moved his practice to Alexander City and became a general practitioner in the fullest sense. During his latter years he devoted much of his practice to the Federal Bankruptcy Court. He was also a member of the First Baptist Church in Alexander City, Alabama. He was a tenacious advocate who was firm and efficient in his representation of clients but, as all great men, he was constantly aware of the importance of courtesy. Charles Grady Reynolds, Sr. was recognized by the Tallapoosa County Bar Association on January 22, 1998 for his leadership, many years of exemplary service to the public and excellence in the legal profession.

He was never too busy to take time to offer assistance to those who were in need, whether clients or acquaintances. It was evident in each day of his life that

courtesy and consideration were his outstanding traits and which will be missed the most by those with whom he associated.

Mr. Reynolds was a devoted father and family man, leaving surviving him his wife, Bennie B. Reynolds; two sons and a daughter-in-law, Charles G. Reynolds, Jr., a local attorney, and wife, Patty Reynolds, and Michael Reynolds; three daughters and two sons-in-law, Carol R. Miramon and husband, Jaques Miramon; Rene R. Mason; and Rita R. Harris and husband, Dr. Lewis Harris; and seven grandchildren, Bridgett Miramon, Brett Miramon, Blake Miramon, Brock Miramon, Brooke Miramon, Elana Reynolds, and Marsha Mason.

He is survived by his three brothers and sisters-in-law, Hugh O. Reynolds and wife Donna Reynolds; Bill Reynolds and wife Jackie Reynolds; and Donald Reynolds and wife Judy Reynolds.

Now, therefore, be it resolved, by the Tallapoosa County Bar Association on the 16th day of March 1998, that the Association mourns the passing of Charles Grady Reynolds, Sr. and acknowledges his long and honorable service to the association, his profession and the community and that this resolution be offered as a memorial to his family.

— **Tom F. Young, Jr.**
President, Tallapoosa County Bar Association

Eugene M. Zeidman

Eugene M. Zeidman, age 93, of Birmingham, died at his home on Friday 17, 1998. Funeral services were February 19, 1998, at Temple Beth-El cemetery.

An attorney and longtime leader in Birmingham's Jewish community, Zeidman is survived by his son, Philip F. Zeidman of Washington, D.C.; his daughter, Adele Z. Silver of Cleveland, Ohio; five grandchildren, Johnathan, Michael and Sarah Silver, and Betsy and Jennifer Zeidman; two great-grandchild-



dren. His wife of 57 years, Ida Fisher Zeidman, and a grandson, John Fisher Zeidman, predeceased him.

Zeidman was born in St. Joseph, Missouri and the family moved to Birmingham during his early childhood. A graduate of Phillips High School, the University of Alabama and its law school, he began the practice of law with A. Leo Oberdorfer. In the teeth of the Depression, he struck out on his own. For the next five decades, he was essentially a sole practitioner and counselor for his business clients and their families.

Born and married into families committed to Judaism and Zionism, Mr. Zeidman made those values his own. He was an eager and skilled debater in high school and college, and throughout his life untiringly used his talents to advocate for synagogue and community projects, for the rescue of European Jews, and for the establishment of the State of Israel. He served as chairman or president of several Jewish organizations, among them The United Jewish Fund and Temple Beth-El. One of his great joys was the honor his synagogue annually offered him, to assume a ceremonial role in the religious service of Yom Kippur, the holiest day in the Jewish calendar.

— **Phillip F. Zeidman**
Washington, D.C.

John Thomas Black

John Thomas Black died October 31, 1997. Jay, as he was universally known, was born in Crossville, Alabama in 1916, the son of Hilliard Brown Black and Victoria Weathington Black.

After graduating from the University of Alabama, he taught school briefly in DeKalb County and then enlisted in the U.S. Army.

Jay was a paratrooper in World War II and made the glider landing at D-day and later the jump across the Rhine.

After the war, he graduated from the University of Alabama School of Law and commenced private practice in Fort Payne. Shortly thereafter, he was

recalled to active duty for the Korean conflict and served as the executive officer of 187th Regimental Combat Team (Airborne), and the 325th. He retired as a full colonel in the Army reserves.

After returning from the Korean war, he was elected Circuit Solicitor, (now district attorney) of the Ninth Judicial Circuit which included DeKalb, Jackson and Cherokee counties.

He was a prosecutor from the old school and was fearless almost to the point of recklessness. His ability on cross-examination was legendary. Before the day of youthful offender status and diversion, Jay dismissed many cases when the young offender enlisted in the regular Army.

A relative of Hugo Black, Jay prosecuted a number of white-on-black crimes and in spite of these high profile cases, continued to be re-elected during the 1960s and '70s. He often stated that he did not believe in civil rights, but he just did not like criminals. Jay was one of the intended victims of Hugh Otis Bynum who did bomb Judge Loy Campbell. Those events are described in *Lay Down With Dogs*.

After his retirement as district attorney, he was chairman of the board of First Federal Bank and was instrumental in the expansion of the DeSoto Country Club. Jay then moved to Florida and died after a brief illness at the age of 81.

He is survived by his wife, Jean Black; his daughter, Elizabeth Black Auman; his son-in-law, William Auman, a lawyer in Charlotte, North Carolina; and his nephew, William D. Scruggs, an attorney in Fort Payne.

— **W.D. Scruggs**
Payne, Alabama

W. Taylor Hardy

Whereas, the Etowah County Bar Association has lost one of its senior members, W. Taylor Hardy, to death on March 25, 1998, in Gadsden; and

Whereas, Taylor Hardy graduated from Montevallo High School and earned undergraduate and law degrees from the University of Alabama; and

Whereas, following law school, Taylor joined the FBI and came to Gadsden in 1947 as the agent in charge of a four-county area, and in 1950 entered the insurance business, in which he remained for 45 years; and

Whereas, Taylor was a strong believer in community and church life throughout his years, serving as a member and officer of numerous organizations including the Gadsden Rotary Club, American Red Cross, Gadsden Association of Life Underwriters, and many others, and as an active member and former senior warden and vestry member of the Episcopal Church of the Holy Comforter; and

Whereas, Taylor Hardy was admired and respected by his large circle of clients and friends, and was known to estate planning lawyers as an authority on wills and trusts with particular emphasis on the use of life insurance in the formulation of estate plans; and

Whereas, Taylor Hardy was a gentleman of grace and dignity who is missed by his fellow lawyers and mourned by his loving family, including his wife of 58 years, Ethel Carter Hardy; his son, E. Taylor Hardy, a member of the Alabama State Bar; and his daughter, Sidney Hardy Powers; and five grandchildren.

Now, therefore, be it resolved by the Etowah County Bar Association that it mourns the death and honors the memory of its friend, W. Taylor Hardy, and be it further resolved that this resolution be spread upon the minutes of this association and that copies be forwarded to members of the W. Taylor Hardy family.

— **W. Roscoe Johnson, III**
President, Etowah County Bar Association

Walter Bruce Henley

Walter B. Henley, age 72, a lawyer in Northport and Tuscaloosa since 1954, died April 25, 1998 at his home in Northport. He had battled cancer for more than four years.

Born on a south Alabama farm near Rome in Covington County, Henley served in the Navy during World War II.



Following the war, Henley completed pre-law studies at Springhill College in Mobile and received his law degree from the University of Alabama in 1952.

Although defeated in a race for circuit judge in 1958, he was appointed to the circuit court in 1964 by former Governor George Wallace to fill an unexpired term. He was a member of the American Bar Association, the Alabama State Bar and the Tuscaloosa Bar Association.

Henley developed land near Lake Tuscaloosa and north Tuscaloosa County including Spencer's Cove, North Riviera, North River Shores, Mt. Laurel and Barberwood.

He was a member of the Board of Education of the Birmingham Diocese of the Catholic Church in the 1980s. He sang in the choir of the Holy Spirit Catholic Church where he was a member. He was also a member of the Knights of Columbus.

Survivors include his friend, Dot Lucas; two daughters, Terry Henley Woosley of Montgomery and Sioux Henley Campbell of Marietta, Georgia; two sons, Raymond

Henley of Douglasville, Georgia and Walt Henley of Birmingham; eight grandchildren and one great-grandson. He is also survived by his brother, Bill Godwin of Pleasant Home and two sisters, Martiel Matthews of Grove Hill and Susie Williams of Mobile.

— **A. K. Callahan**
Tuscaloosa, Alabama

Hugh Edward Rozelle

Hugh Edward Rozelle passed away on March 2, 1998 at the age of 82 in Foley, Alabama after a lengthy illness.

Judge Rozelle was born in Ashland, Clay County, Alabama. He resided in Atmore, Alabama for more than 50 years and lived part-time in Gulf Shores, Alabama. With the encouragement of his uncle, Hugo Black, associate justice, United State Supreme Court, he earned his undergraduate degree at National University in Washington, D.C. and his Juris Doctorate from George Washington University. After law school, he worked on

the staff of Senator Lister Hill. He served in the United States Army in Europe during World War II. He was engaged in the private practice of law in Atmore, Alabama beginning in 1948. He also served as district court judge for 16 years before retiring in 1981. After his retirement, Judge Rozelle practiced law in Monroeville and Atmore until late 1997.

He was a member of the Escambia County Bar Association, the Alabama State Bar and numerous other professional and civic organizations. He was also a member of the First United Methodist Church in Atmore, Alabama.

Hugh, who was loved and respected by the members of the bench and bar of Escambia County and the citizens whom he served, is survived by one brother, Albert Lee Rozelle, one sister, Audrey Riddle; his wife, Mary Jane Rozelle; one son, Hugh Edward Rozelle, Jr.; and two grandchildren, Lee Rozelle and Ashley Rozelle.

— **Charles R. Godwin**
Commissioner, 21st Circuit, Atmore

Ralph Wyatt Adams

Troy
Admitted: 1940
Died: May 13, 1998

Roderick Beddow, Jr.

Birmingham
Admitted: 1950
Died: May 13, 1998

George Alexander Black

Geneva
Admitted: 1952
Died: December 19, 1997

John P. Buck, Jr.

Northport
Admitted: 1949
Died: January 24, 1998

William Michael Clarke

Mobile
Admitted: 1950
Died: January 25, 1998

Edwin L. Davis

Montgomery
Admitted: 1981
Died: March 31, 1998

Woodford Wyndham

Dinning
Demopolis
Admitted: 1941
Died: May 1, 1998

Emily B. Gassenheimer

Montgomery
Admitted: 1974
Died: April 28, 1998

Hardy W. Taylor

Gadsden
Admitted: 1942
Died: March 25, 1998

Charles A. L. Johnstone, Jr.

Birmingham
Admitted: 1934
Died: March 3, 1998

R.B. Jones

Warrior
Admitted: 1953
Died: April 19, 1998

William Bryan McClure, Jr.

Dallas, Texas
Admitted: 1972
Died: May 4, 1998

J. Connor Owens, Jr.

Bay Minette
Admitted: 1951
Died: March 13, 1998

Charles Grady Reynolds, Sr.

Alexander City
Admitted: 1953
Died: March 6, 1998

David L. Rosenau, Jr.

Athens
Admitted: 1925
Died: March 13, 1998

Ormond Somerville

Irondale
Admitted: 1926
Died: March 21, 1998

Alfred Gaston Swedlaw

Birmingham
Admitted: 1939
Died: January 6, 1998

James Edward Thornburgh

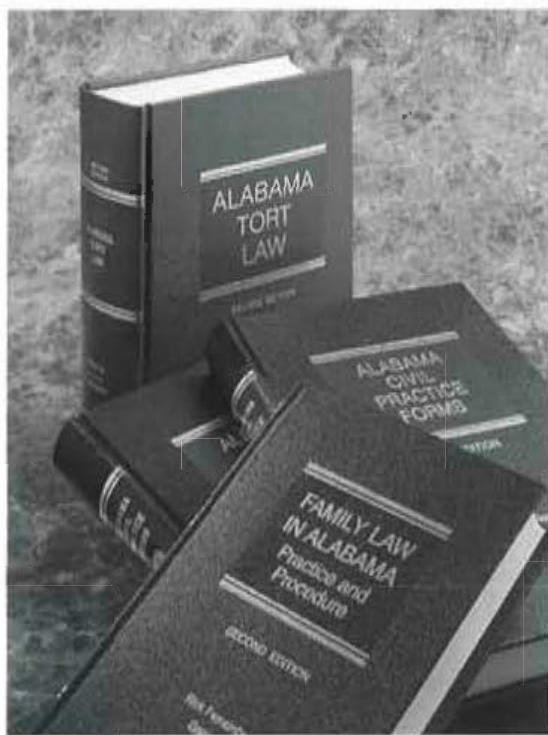
Birmingham
Admitted: 1982
Died: March 16, 1998

William O. Walton, Jr.

Lafayette
Admitted: 1952
Died: March 22, 1998

Gary Wayne Weston

Warrior
Admitted: 1973
Died: May 7, 1998



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BUILDING ALABAMA'S COURTHOUSES

By Samuel A. Rumore, Jr.



Crenshaw County

Established: 1866

The following continues a history of Alabama's county courthouses—their origins and some of the people who contributed to their growth. If you have any photographs of early or present courthouses, please forward them to: Samuel A. Rumore, Jr., Miglionico & Rumore, 1230 Brown Marx Tower, Birmingham, Alabama 35203.

Crenshaw County

Crenshaw County was created during the Reconstruction period of Alabama history. It did not exist during the Civil War and no major battles or even small skirmishes took place in the territory that would become Crenshaw County. Union troops did pass through the area once near present-day Honoraville. The only losses came from the pantries and smokehouses that were raided. But many of the sons of this land failed to return home from the war. The establishment of a new county in this area provided the residents a fresh start in their struggle against the hardships of Reconstruction.

Crenshaw County is a small wedge of land in south central Alabama that is squeezed between Pike County on the east, Butler County on the west, Montgomery County on the north, and Covington County on the south. It is also bordered by Lowndes County on the north-west and Coffee County on the southeast. This primarily rural and agricultural county extends approximately 40 miles north to south and 18 miles east to west. The land for Crenshaw County was carved out of its surrounding neighbors, except for Montgomery County, by the Reconstruction Legislature.

The legislature established Crenshaw County on November 24, 1866. Although the county only dates back to the Reconstruction Era, its namesake, Judge Anderson Crenshaw, was an

early Alabama pioneer whose move to Alabama came in the year of statehood.

Anderson Crenshaw was born in the Newberry District of South Carolina on May 22,

1783. It is reported that he was the first graduate of the South Carolina College at Columbia that became the University of South Carolina. He studied law and began a law practice in 1809. By 1812 he was a member of the South Carolina legislature. In 1819 Crenshaw moved to the capital city of Alabama at Cahaba and practiced law there.

When Alabama became a state in 1819 there were five judicial circuits. In those days the circuit judges meeting as a body served as the Supreme Court of Alabama. When a sixth judicial circuit was created in 1821, Anderson Crenshaw became that circuit judge. He also became the sixth member of the Alabama Supreme Court. He served as a



Crenshaw County Courthouse — Completed May 1896 and demolished May 1955

member of the supreme court until 1832 when a separate supreme court was created, consisting of three judges with six-year terms. Though he was "demoted" from the supreme court, Crenshaw remained as a circuit judge until 1839. In that year, a change in Alabama law gave him another opportunity to serve the people of Alabama.

In the original Constitution of Alabama, the legislature was given the power "to establish a court or courts of chancery with original and appellate jurisdiction." The Constitution also stated that "until the estab-

lishment of such court or courts, the said jurisdiction shall be vested in the judges of the circuit courts respectively." On January 1, 1823, a body of rules governing proceedings in chancery suits went into effect. However, in the early days of Alabama there were few equity type actions and so all such proceedings continued in the various circuit courts.

On January 26, 1839, the legislature recognized the need for separate chancery courts and established two chancery divisions consisting of three districts each. One division covered north Alabama and the other division included south Alabama. All equity powers were withdrawn from the circuit courts and placed in the courts of chancery. The Legislature elected the two chancellors—one to serve the northern division and the other to serve the southern. The first chancellor for the southern division was Judge Anderson Crenshaw.

The chancery system expanded over the years. A middle division was created in 1842. The three divisions contained 40 chancery districts. By 1887 a fourth division was created and the divisions were re-designated northeastern, northwestern, southeastern and southwestern. Due to the growth in the Birmingham area another division known as the northern division was created in 1895. On August 16, 1915 the Legislature abolished the separate system of chancery courts and the last chancellors left office in 1917. Equity jurisdiction was transferred to the newly established system of circuit courts.

Anderson Crenshaw remained as a chancellor for the southern division until his death in Butler County, Alabama on August 31, 1847. Besides his work as a jurist, he was a prominent planter in Butler County. Along with many of the early pioneers, he settled on the ridge which is the highest elevation of that county. His home near the Manningham community was built between 1838 and 1840. It still stands today and is owned by his descendants. Several of his offspring became prominent in their own right.

A son, Walter H. Crenshaw, served in the Alabama House of Representatives from 1838 to 1841, from 1847 to 1849, and from 1861 to 1865. He was Speaker of the House of Representatives during the Civil War. He also served in the



1955 courthouse

Alabama Senate from 1851 to 1855 and became presiding officer of the Senate in 1865. His brother, Thomas C. Crenshaw, served in the House of Representatives from 1865 to 1867. It was at this time that the new county of Crenshaw was created.

The Alabama Legislature was certainly justified in honoring Anderson Crenshaw, one of the first persons to hold the office of supreme court justice, circuit judge and chancellor in the state of Alabama. However, his prospects for being honored were significantly enhanced in 1866 when one of his sons was in the House, another son was in the Senate, and Senator Crenshaw, who had been Speaker of the House during the previous four years, was at that time presiding over the upper chamber. Honors will find those with prominent progeny.

The legislation creating Crenshaw County called for an election on the first Monday in March, 1867. Five commissioners, Felix Jordan, George W. Thaggard, Thomas Mahone, J. D. Chapman, and Adam Benbow, were named in the act to conduct an election for county officers and for the selection of a county seat. They were also authorized to build a suitable courthouse and jail.

Two communities vied for the position of county seat: Barber's Crossroads and Fuller's Crossroads. The former site is located on present-day state road 10 two miles west of U. S. Highway 331. The latter is located at the junction of present-day county road 50 and U. S. Highway 331. Barber's Crossroads won the election. This community was named for a local family.

Soon after Barber's Crossroads became county seat, the citizenry changed its name. Barber's Crossroads became the town of Rutledge. The Rutledge family had sent a number of sons off to the recent war. A.V. Rutledge served in the Confederate Army and surrendered at Appomattox. His brother, Henry, was a captain and commanding officer of Company C in the 59th Alabama Infantry Regiment. He was killed at the Battle of Drewry's Bluff in Virginia. The town of Rutledge was named for this fallen hero.

A post office was established at Rutledge in 1867. The town was incorporated in 1871. It was never a large place, with a

population in 1890 of 314. Its population in 1990 was only 473. No description exists of the courthouse at Rutledge.

In the years prior to the Civil War, two railroad lines were surveyed through the area that would become Crenshaw County. However, the railroads were not completed until the late 1880s. They became important for hauling timber, lumber, cotton, corn, fertilizer, and other supplies. The development of the railroads directly led to a new Crenshaw county seat.

Around 1886 a group of Montgomery men began buying up land in Crenshaw County for a railroad. These businessmen formed a corporation with the intention of starting a town. Stockholders of the corporation included Dr. M.P. LeGrand, M.P. LeGrand, Jr., S. D. Hubbard and George A. Folmar. Folmar became manager of the corporation and he hired a young man, J.O. Sentell (the father of the former clerk of the supreme court, J.O. Sentell, Jr., who was also editor of *The Alabama Lawyer* from 1967 to 1982), to survey 40 acres and lay out streets and avenues.

When the incorporators sought the name for their corporation, local legend states that they chose the name of Dr. LeGrand's wife for their inspiration. Mrs. M.P. LeGrand, Sr., was Louisa Jones LeGrand. The incorporators also noted the lush and verdant foliage through which they planned to run a railroad. By combining the "Lou" for Louisa LeGrand and "Verne" for the green countryside, the corporation was named the Luverne Land Company. The town which followed became Luverne.

Luverne grew in importance as the railroad grew. A post office was established in 1887. The town was incorporated on February 6, 1891. The incorporators had great plans for Luverne because the incorporation documents described the town limits as one mile each way, north, south, east and west, from the "courthouse square" as laid out by the Luverne Land Company. This language should have given warning to the county seat town of Rutledge of Luverne's intentions because there was no courthouse in Luverne.

In 1892 the legislature passed a local act calling for an election where the citizens of Crenshaw County would choose whether to move their courthouse to Luverne or let it remain in Rutledge. The election took place on the third Monday in January 1893. Those who favored moving the county seat to Luverne won the election.

One of the conditions written into the election law was that if Luverne captured the vote, the town would have to construct a suitable courthouse without any expense to the county. Section 8 of the act authorized the mayor and council of the town to borrow up to \$25,000 to build a courthouse. Work

began immediately and on June 5, 1893, the county commission ordered all records removed from the old courthouse at Rutledge to the newly built one at Luverne.

The first Luverne courthouse was constructed on the site where two later courthouses would be built. In 1897 this courthouse burned. The fire started in the northeast jury room upstairs. Fortunately a fireproof vault had been installed in the probate office and all mortgages, notes and deeds were saved. The circuit clerk's office was a complete loss with no books or records retained. All records of the register in chancery were lost.

In 1898 the county replaced its courthouse with a massive two story brick structure. This courthouse contained interesting architectural elements including corners crowned with pyramidal roofs and patterned brickwork. The pre-eminent feature of the courthouse was its soaring clock tower topped by a dome and cupola. This building clearly dominated downtown Luverne and its location in the courthouse square placed it in the center of activity. Unfortunately, by the 1950s, the county needed more space and additions to the courthouse were impractical. The beautiful old building was razed and the third courthouse at Luverne was built on the same site.

The 1955 courthouse was designed by architect Carl Herbert Lancaster, Jr. of Montgomery. J. W. Sullivan of Montgomery was project superintendent for Jones & Hardy Contractors of Montevallo. The building is of modern design, cost approximately \$362,000, and was heralded by the citizens of Crenshaw County as a great step toward progress. Warren Lightfoot, a native of Luverne and former Alabama State Bar president, worked as a young man on the construction of this courthouse. The building contains 38,170 square feet. It was built of blond brick with Alabama limestone facing. Sculptured panels on either side of the entrance commemorate the county's contributions to agriculture, industry and freedom. These panels were created by sculptor Georges Bridges of Birmingham. As a link to its past through its former courthouse, the county incorporated the mechanism from the old courthouse clock into the new building.

The courthouse consists of two main floors and a basement. Its air-conditioning was a welcomed feature in 1955. The central facade consists primarily of glass. The building also contains marble trim.

In the foyer of the courthouse is an historical sketch on Crenshaw County written by J. O. Sentell, Jr. It is inscribed on the wall in gold leaf letters. The inscription begins: "This county was created November 24, 1866, by men of vision who saw and met the need for good government, true justice and a sound economy..." It ends with this fitting conclusion: "Crenshaw County, developing in the spirit of the men who created it, now faces the day of new achievement with courage, steadfastness, and faith." ■

References:

- "Luverne, On The Pavement," Peter A. Brannon, *Montgomery Advertiser*, September 5, 1937; "An Early History of Crenshaw County," Joe R. Sport, typed manuscript, 1957; Telephone interview, Warren Lightfoot, March 25, 1998; Telephone interview, Edgar Sentell, March 26, 1998.



Samuel A. Rumore, Jr.

Samuel A. Rumore, Jr. is a graduate of the University of Notre Dame and the University of Alabama School of Law. He served as founding chairperson of the Alabama State Bar's Family Law Section and is in practice in Birmingham with the firm of Miglionico & Rumore. Rumore serves as the bar commissioner for the 10th Circuit, place number four, and is a member of *The Alabama Lawyer* Editorial Board.

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Fall 1998 Schedule

September	11	Developments and Trends in Health Care Law 1998 - Birmingham
	18	Consumer Finance Litigation - Birmingham
	25	Is Your Client Covered? Insurance Claims and Conflicts - Birmingham
October	2	9th Annual Bankruptcy Law Seminar - Birmingham
	9	Automobile Accident Litigation - Birmingham
	16	Representing Businesses in Alabama - Birmingham
	22-23	Basic Lawyering Skills - Birmingham
	30	A Day in Discovery featuring <i>James W. McElhaney</i> - Birmingham
November	6	Advanced Domestic Relations - Birmingham
	13	12th Annual Workers' Compensation Seminar - Birmingham
	20	Expert Testimony with <i>Edward J. Imwinkelried</i> - Birmingham
December	4	Recent Developments for the Civil Litigator - Mobile
	4	Recent Developments for the Civil Litigator - Birmingham
	10	Employment Law, Including Sexual Harassment - Birmingham
	18	Pro-Active Mediation/Arbitration - Birmingham
	30-31	CLE By The Hour - Birmingham

Brochures describing the specific topics to be addressed with a listing of the speakers for each of the seminars will be mailed approximately six weeks prior to the seminar. If for any reason you do not receive a brochure for a particular seminar, write Cumberland CLE, Box 292275, 800 Lakeshore Drive, Birmingham, AL 35229-2275, or call 870-2391 or 1-800-888-7454. Additional programs may be added to the schedule.

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OPINIONS OF THE GENERAL COUNSEL

By J. Anthony McLain, general counsel

In keeping with the theme of this issue of The Alabama Lawyer, ASB General Counsel Tony McLain has substituted his regular column with questions he has received regarding mediation.

Mediation Q&A



J. Anthony McLain

Q. I am an attorney who just completed mediation training. I would like to include on my stationery and business cards "mediation services available." Does this require the disclaimer?

A. No, it does not require the disclaimer.

Q. I would like to include a statement in my Yellow Pages ad that my law firm supports the concept of mediation. Do I need the disclaimer?

A. Yes, the disclaimer needs to be included in the ad.

Q. Does confidentiality Rule 1.6 apply to mediation?

A. Yes, if the mediator is an attorney. Additionally, Rule 11 of the Civil Court Mediation Rules and Rule 6 of the Alabama Code of Ethics for Mediators impose similar requirements for all mediators, whether lawyers or non-lawyers.

Q. May a lawyer include a fee dispute arbitration clause in his/her employment contract with a client?

A. Yes, if the client understands the ramifications of same (contingent-contingency fee).

Q. As a retired judge with a special membership, I would like to know if serving as an early neutral evaluator constitutes the private practice of law.

A. Based on the definition of early neutral evaluation as found in the Alabama ADR Handbook, serving as an evaluator does not constitute the private practice of law and you may, therefore, participate in the process as an evaluator while holding a special membership license in the Alabama State Bar. ■

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Alabama Students are Winners on Law Day

An Alabama high school student from Muscle Shoals has made it "two in a row" with her second winning Law Day essay in as many years. Sarah Beasley is the first place winner in the high school division of the 1998 Law Day statewide essay contest sponsored by the Alabama State Bar, an honor she also received last year. Sarah joins students from across the state in receiving recognition—and United States Savings Bonds—as winners of the essay and poster contests.

An annual nationwide event celebrated on May 1, Law Day's purpose is to raise public awareness of American law and justice and its valuable impact on each citizen's life. For 41 years, Law Day has offered a special chance for the legal profession to work with students and citizens.



The theme for this year's Law Day was "Celebrate Your Freedom."

This year's winners include:

Poster Contest, Grades K-3

First Place—Andy Goldman, Monroeville Elementary

Second Place—Bryson Dabney, Monroeville Elementary

Third Place—Lakeshia Thames, Monroeville Elementary

Honorable Mention (tie)—Steven Strickland and
Consia Grace, Monroeville Elementary

Poster Contest, Grades 4-6

First Place—Sarah McDaniel, Indian Valley School, Sylacauga

Second Place—Jenny Jenkins, Excel Public School

Third Place—Hillary Winter, Indian Valley School, Sylacauga

Honorable Mention (tie)—David Wood, Bear Exploration School, Montgomery;
Jana McClung, Hall-Kent School, Birmingham; and
Jason Zylstra, Indian Valley School, Sylacauga

Essay Contest, Grades 7-9

First Place—Michael McCracken, Cherokee High School

Second Place—Brooke Carson, Cherokee High School

Third Place—Nicholas Turner, Carroll High School, Ozark

Honorable Mention—Justin Burton, Cherokee High School

Essay Contest, Grades 10-12

First Place—Sarah Beasley, Muscle Shoals High School
(This is the second year that Sarah has won first place in the essay contest!)

Second Place—Brad Hunter, Carroll High School, Ozark

Third Place—Renee Makowski, Bob Jones High School, Madison

Honorable Mention (tie)—Chad Brouillette, Bob Jones High School, Madison;
Mike Stinson, Bob Jones High School; and
Brenda Shirley, Carroll High School, Ozark

First, second and third place winners received U.S. Savings Bonds. Honorable mention winners, as well as all participating schools throughout the state, received certificates of recognition for their participation.

Governor Fails to Sign Indigent Defense Bill

Governor Fob James failed to sign House Bill 458, killing efforts to increase compensation for indigent defense counsel. H.B. 458 would have increased the current compensation of \$20 per hour out-of-court and \$40 per hour in-court, last increased in 1981, to a flat \$55 per hour. The increased cost associated with H.B. 458 would have been covered by a \$28 increase in judicial docket fees.

Lawyer-legislator **Demetrius Newton** of Birmingham sponsored H.B. 458 and similar legislation during previous sessions. Lawyer-legislators **Marcel Black** of Tusculumbia, **Ken Guin** of Carbon Hill and **Mike Rogers** of Anniston were co-sponsors during this legislative session.

On the Senate side, **Lieutenant Governor Don Siegelman**, lawyer-legislators **Pat Lindsey** of Butler, **Roger Bedford** of Russellville, **Wendell Mitchell** of Luverne, **Don Hale** of Cullman, and **Rodger Smitherman** of Birmingham, among others, were instrumental in helping H.B. 458 receive favorable action in the Senate.

Countless lawyers, including bar commissioners and judges, made telephone calls, wrote letters and visited legislators to encourage support for this needed legislation. Despite the governor's decision not to sign H.B. 458, an effort will be made to pass similar legislation during the 1999 session.

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1998 Spring Admittees



STATISTICS OF INTEREST FEBRUARY 1998 BAR EXAM

Number sitting for exam.....	344
Number certified to Supreme Court of Alabama.....	189
Certification rate*	54.9 percent

Certification Percentages:

University of Alabama School of Law.....	77.4 percent
Cumberland School of Law	66.7 percent
Birmingham School of Law.....	38.6 percent
Jones School of Law.....	62.2 percent
Miles College of Law	0.0 percent

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

Alabama State Bar 1998 Spring Admittees

Ames, Sarah Andrea Astrid	Edwards, Matthew Timothy	Jones, Patrick Burrus III	Robinson, Jeffrey Charles
Armstrong, Jeremy Wayne	Eldridge, Ruth Merrill	Jovings, Samuel Anthony	Robinson, Michael Wayne
Autry, Edward Thomas	Elliott, Ewell Herman Jr.	Keely, Chester Martin	Robinson, Tanya Clark
Avery, Kellie Suzanne	Entelisano, Marshall Angelo	Kynard, Horace Wayne	Rosler, Craig Neil
Bailey, David Lance	Esco, Paul Douglas	Le, Quan Son Tien	Sanders, Richard Devon
Bailey, James Timothy	Evans, Robert Patrick	Leffard, Gregory Warren	Sandidge, Russell Leon
Bald, Geoffrey Sean	Festoso, James Jacob	Legg, Albert Day III	Schulberg, Robin Elise
Barbee, Jenifer McCord	Floyd, Steven Patrick	Lewis, C. Saint	Scruggs, Beverly Bhaswattia
Barrios, Joseph Luis	Furtado, David Jeffrey	Lewis, Damon Wyatt	Selwyn, Robert Daniel
Bedgood, David Allen	Gaffney, Shannon Margaret	Long, Chanda Linette	Sherer, Christopher Alan
Benson, Jimmie Clay Jr.	Gentle, Mickey Joe	Lowell, Carol Mark	Sigmon, Ernesto DeAndre
Benton, Victoria Henderson	Ghee, Wendy Marschelle	Luck, Tiernan Wilson III	Smedley, Valerie Murry
Bergstrom, Russell Edwin	Gorman, Letta Dillard	Majors, Michael Mark	Smiley, Karen Lea
Billy, Stephen Mahone	Gosnell, Scott Wayne	Marie, Rhonda	Smith, Aimee Michele Cobb
Blackmon, Ulyesa Denice Finch	Gott, Mark David	May, Allen Wayne Jr.	Smith, David Laurence
Blackwell, Dawn Marie Quinn	Graham, James Paul III	Mays, Allison Michele Brown	Smith, Marlana Renee
Blake, George Henry III	Graham, William Gregory	McCain, Kevin Mark	Smith, Scott Burnett
Blizzard, Henry Wallace III	Granger, Patricia Tolbert Hall	McDaniel, Sondra Kay Jackson	Smith, Sylvester S.
Bodin, Vincent Joseph	Gray, Walter Lee III	McHugh, James Burke	Spencer, James Victor III
Briggs, Pamela E. Brown	Greene, James David Jr.	McHugh, Timothy Charles	St. Denis, Janet Anne
Brooks, Beverly Joyce Lowe	Greene, Lesa Carol	McIntyre, Thomas Robin	Starling, Marion Jefferson III
Bryant, John Stephen	Griffin, Kimberly Paige	Mixon, Christopher Allan	Sudduth, Mose Lee Jr.
Bundy, Nereida Renae Dewberry	Hamil, Jubal Lee	Moffett, Terrill Kay	Sullivan, Joel Lee III
Bunin, Alexander	Hampton, Mary Ann	Moncus, Catherine Dunn	Sullivan, Molly McDonough
Burch, Laurie Ann Richardson	Hamrick, Robert Alan	Money, Samuel Christopher	Theus, Matthew Walton
Burt, Yumeka Chanee	Hanan, Mindy Leigh Bradford	Morris, John Clyde III	Thomas, James Norman
Chipser, Brett Stephen	Hardison, Edward Lewis	Moyer, Courtney Adele Schloemer	Thompson, James Brent
Clark, David Stringiellow	Hardy, William Edgar Jr.	Myers, Letitia Lynn	Thompson, Philip Allen
Clark, John Edward Jr.	Harris, Joan Marie	Nelson, Robert Francis	Thornton, James Charles
Clark, Shannon Renell Sims	Harris, Vincent Paul	Neumann, Michelle Dye	Taylor, David Benjamin
Clem, Roger Garry	Hartwick, Dwain DeNeal	Newman, Lawrence Grimes	Turk, Harold Preston
Cockrell, William Patrick II	Harvey, Craig Roy	Olin, Linda	Underwood, Cynthia
Cooper, Louisa Dawn	Hatcher, Tony Neil	Pankey, Christopher Alan	Van Buskirk, David Wyman
Coots, Brandon Shane	Hawkins, Shirley Jean Thompson	Parish, Joseph Edward Jr.	Vance, Stewart Earl
Coppedge, Bradley Ryan	Head, Thomas Wayne	Penn, Ronald Wayne	Velarde, Casandra Dwan
Cordery, Franklin Wayne	Hinote, Thomas Woodrow	Perdue, Allen Eugene Jr.	Walker, Laura Christine
Craig, Timothy Orea	Hobbie, Whitney Lance	Phillips, Alane Delores Adcox	Walker, Leon David III
Crumbley, Russell Wilson	Hodge, Catherine Rushing	Phillips, Byron Whitfield Jr.	Ware, Martha Frances
Curtis, Hope Denise	Hoffpauir, Sandra Dianne Parker	Phillips, John Wendell Jr.	Warren, Charles Edwin Jr.
Daniel, Larry Orville Jr.	Hollingsworth, John Richard Jr.	Pippin, Jonathan William Edwards	Watson, Cynthia Denise
Darby, Shirley Dawn Miller	Hooper, John Scott	Powell, Joseph Edward	Weldon, Belinda Ann
Davenport, Patrick Hubert	Hopper, Mark Timothy	Prchal, Honza Jan Ferdinand	Whibbs, John Donovan
Day, James Lewayne	Horn, Allwin Earl IV	Price, Cathleen Indira	Whitehead, Christopher Kyle
Dean, Karen Sullivan	Hubbert, Jonathon Fairley	Pryor, Caroline Thomason	Whitmire, Steven Lamar II
Dickinson, Clay Chapman	Hughes, Lola Dianne	Rech, Johannes Thomas II	Wilkes, James Lewis II
Dixon, Heather Kenny	Hunt, Janine Elena	Reeves, Grady Andrew	Williams, Harris Augustus Bell
Dodd, Leigh Perrin Rigby	Hunter, Jeffrey Guy	Remington, Amie Harper	Williams, Thomas Craig
Donaldson, Michael Andrew	Hunter, John Michael	McDaniel	Wilson, Joan Elizabeth
Donaldson, Ryan Anthony	Hurley, James Bassett Jr.	Richardson, Arlene Marie Marceau	Woodham, John Michael
Drake, Naomi Grace	Jackson, Natasha Dianne	Rickman, Lesley Ann	Wooten, Nicholas Heath
Dunn, Angela Renee Wickert	Jackson, William Frederick	Ricks, Rodney Scott	Wright, Emil Francis Jr.
Eady, Nancy Marilyn Linn	Johnson, Levather Denise	Roberts, Stuart Dewane	Yoder, Louise Whitney
Edmonds, Charles Hugh Sr.	Jones, Derrick Allen	Roberts, William Michael	

Lawyers in the Family



Whitney Lance Hobbie (1998) and Judge J.D. Smith (1966) admittee and uncle



Henry Wallace Blizzard, III (1998) and Henry Wallace Blizzard, Jr. (1968) admittee and father



Janine Hunt-Hilliard (1998), Congressman Earl F. Hilliard (1968) and Alesia Hilliard-Smith (1993) admittee, father-in-law and sister-in-law



Lawrence Grimes Newman (1998), Graydon L. Newman (1964) and Graydon C. Newman (1994) admittee, father and brother



W. Greg Graham (1998), James P. Graham, III (1998), James P. Graham, Jr. (1983) and William J. Benton, Sr. (1960) co-admittees, father and grandfather



Steven L. Whitmire, II (1998), Hoyt L. Baugh, Jr. (1984) and James W. Smith (1968) admittee, stepfather and uncle



Mindy B. Hanan (1998) and Ellis D. Hanan (1975) admittee and husband



Stewart E. Vance (1998) and C. Gibson Vance (1992) admittee and cousin

Lawyers in the Family



*Rick Hollingsworth, Jr. (1998) and
J. Rick Hollingsworth (1978)
admittee and father*



*Courtney S. Moyer (1998) and
David S. Moyer (1997)
admittee and husband*



*Lyn Walker (1981) and Dee
Walker (1998)
sister and admittee*



*Christopher Whitehead (1998) and
Joseph D. Whitehead (1974)
admittee and father*



*Tiernan W. Luck, III (1998), Oscar Hale (1978), Ashley Rivers (1993) and
Patrick Hale (1997)
admittee and cousins*



*Byron W. Phillips (1998) and
Thomas K. Brantley (1977)
admittee and father-in-law*



*Sarah Andrea Astrid Ames (1998)
and Mortimer Parker Ames, III
(1987)
admittee and husband*



*Victoria H. Benton (1998) and Wiley
P. Henderson (1955)
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EXAMINEE DEBT STATISTICS

	FEBRUARY 1998	FEBRUARY 1997	FEBRUARY 1996
FIRST-TIME EXAMINEES	283	199	287
EXAMINEES HAVING EDUCATIONAL DEBT	125 (44%)	105 (53%)	148 (51%)
TOTAL EDUCATIONAL DEBT	\$5,235,600	3,710,500	\$5,180,000
AVERAGE DEBT	\$41,885	35,308	35,000
DEBT RANGE	\$500-\$125,000	\$1,500-\$90,000	\$3,000-\$90,000
DEBT SERVICE 7.5% Interest Rate for 10 Years on Average Debt	497	420	415

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Lawyers Assist Disaster Victims

In a little less than a month, Alabama was struck by two natural disasters. In March, flood waters ravaged Elba and surrounding areas in south Alabama. In April, powerful tornadoes struck Jefferson County and two other counties, leaving a 15-mile path of death and destruction. In both instances, Alabama lawyers unselfishly volunteered their services to assist the victims of these disasters. The free assistance given by these lawyers has made it easier for the victims to cope with the extreme hardships inflicted upon them by these storms.

Joe Faulk of Troy, bar commissioner for the 12th Judicial Circuit, and **Robert Brogden** of Ozark, bar commissioner for the 33rd Judicial Circuit, played an active role in the flood victim assistance effort. Pike County attorneys **Robert C. Faircloth**, **Thad Yancey, Jr.**, **Larry Jarrell** and **Don Dickert** volunteered at the Disaster Recovery Center in Elba. **Paul Young, Jr.** from Enterprise volunteered, as did **Chad Tindol** of Montgomery, to help answer questions from flood victims visiting the center. The **Alabama State Bar** set up a statewide free legal help-line.

Members of the **Montgomery County Bar Association** played a role in assisting flood victims by taking referrals from the Legal Helpline operated through the state bar. **Mike Jackson**, Montgomery County Bar Association president, and **Dawn Howard**, MCBA's executive director, played a key role as well. The following lawyers agreed to handle calls of victims who called the Helpline:

Jason A. Shamblin	David Wible	Judy B. Van Heest
Angela L. Kimbrough	Nikki Rothschild	Charles Haigler
Kelli McDaniel	Nancy Stuart	Elna Reese
Lynette Gayle	Mike Kirtland	Daniel Wright
David Martin	David Zimmerman	Kyle Massengale
Craig Woosley	Britt S. Booth	Anna Harrison
Robert C. Ward, Jr.	C. Franklin Snowden, III	

Melinda Waters, executive director of Legal Services Corporation of Alabama, and LSCA staff attorneys **Larry Gardella** and **Bill Messer**, as well as paralegal **Rosetta Crowell**, helped conduct training for lawyers handling assigned cases. LSCA staff members were also on site at the Disaster Recovery Center to help answer victims questions. **Fred Enslin**, chair of the Real Property, Probate and Trust Law Section, took an active role in the volunteer training. The success of the response was aided by the efforts of **Kim Oliver**, director of the Volunteer Lawyers Program, and **Greta Chambless**, VLP assistant.

The quick and efficient work of **Mike Freeman** and **Candace McGowan** had the Birmingham Bar Association disaster response effort in full gear within days following the strike of the deadly tornadoes. In addition to organizing the program,

Mike and Candace organized volunteer training with the full aid and support of the Alabama State Bar and the Birmingham Bar Association and its leadership, particularly BBA president **Steve Heninger**. **Ken Cain**, director of the Legal Services Corporation of Metro Birmingham, as well as **Deborah Jenkins**, director of the Birmingham Volunteer Lawyers Project, took an active role in the tornado victims assistance effort. **Beth Carmichael**, executive director of the Birmingham Bar, and the bar's capable staff, **Dana Thomas**, **Mary Nell McGough** and **Tia Graham**, handled intake, screening and referral of the many victims who contacted the bar for assistance. The following lawyers participated in the tornado victims' assistance program:

Tom S. Roper	Clifford W. Hardy	Robin Graves
Lauren E. Wagner	William A. Short, Jr.	Tim Dillard
Doug Friedman	J. Ross Forman	LeeAnn Pounds
Michael D. McKibben	S. Allen Baker	Mike Ermert
Bryant A. Whitmire, Jr.	Gregory S. Ritchey	Karry Lahey
Laura C. Nettles	Amy Stuedeman	Macbeth Wagnon
Mary Lynn Campisi	Tripp Galloway	Robert R. Kracke
Ross N. Cohen	Amy Myers	James S. Lloyd
A. H. Gaede, Jr.	Jim Archibald	Anne Hornsby
Elizabeth Hutchins	Jodie Smith	Herb Sparks
Linda S. Lehe	Mary Lynn Bates	Russ Campbell
Patricia N. Moore	Tim Lupinacci	Brannon Buck
J. Anthony Salmon	Fred Heffler	Sandy Mullins
J. Birch Bowdre	Barbara Luckett	Danny Markstein
Gregory Hyde	Martha Jane Patton	Candace Hemphill
Roy F. King, Jr.	Sammye O. Kok	Ralph Yeilding
Anna W. Mitchell	Randy Nichols	Brian Williams
Jenna McCammon	Georgia Roberson	Peter Wright
Sidney C. Summey	Brittin T. Coleman	Scott Beard
Nancy C. Hughes	George Harris	William Samerville, III
Bert Lipscomb	DeWayne Pope	Don B. Long, Jr.
Douglas McWhorter	Jim Sturdivant	Helen Kathryn Downs
Anne Reilly Moses	Glenn Waldrop	Richard Brockman
Bruce A. Rawls	Anna Giattina	John L. Cole
J. William Rose, Jr.	James Pugh	

Undoubtedly, there are lawyers who do not appear above but who have in some way or another assisted victims of these two disasters. We can be proud of the way the legal profession responded by helping the victims of the floods and tornadoes with their legal needs. The spirit of service reflected by those who responded to the call of the victims of these disasters exemplifies the highest ideals of the legal profession. ■

ASB Disaster Response Team

Volunteer lawyers from the Birmingham Bar Association and the Alabama State Bar recently provided free legal advice and information to victims of the tornadoes that struck Jefferson County and surrounding areas. Disaster victims could call the Birmingham Bar and be referred to volunteer lawyers who answered their legal questions and addressed their legal concerns. Birmingham attorneys Candace McGowin and Mike Freeman (below), who headed up the effort, inspect the disaster site.



SUMMIT ON THE PROFESSION

Storm Clouds Gathering on the Horizon

In May, ASB President Dag Rowe called together various leaders in the legal profession to identify and discuss possible ominous developments affecting the legal profession. Those organizations invited to participate in the summit included the Alabama Lawyers Association, Women in the Profession Committee of the state bar, the Alabama Trial Lawyers Association, the District Attorneys Association, the Alabama Defense Lawyers Association, and the Alabama Criminal Defense Lawyers Association. Leaders of the four largest local bar associations were also invited.

Each representative attending the summit was asked to list the most important issues facing the profession and the justice system. Top issues of concern turned out to be judicial selection/campaign conduct/politicization of the judiciary; professionalism/civility/factionalization of the profession; and public perception of the profession and public confidence in the justice system. Fifteen specific suggestions were established, from initiating a joint effort to pass non-partisan election legislation to increasing continuing legal education to 14 hours with two of those concentrating on professionalism and ethics to promoting professionalism within the bar membership and decreasing factionalization.



"I invite you to join in our efforts to ensure that this bar serves all its members: plaintiff's lawyers and defense lawyers, male lawyers and female lawyers, city lawyers and 'country' lawyers, big firm lawyers and solo lawyers. There is a place at the table for us all."

-Dag Rowe, 1997-98 ASB president



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LEGISLATIVE WRAP-UP

By Robert L. McCurley, Jr.

Legislation of interest to lawyers passed in the last days of the Legislature may be retrieved by bill number from the Internet at: www.Legislature.state.al.us/searchableInstruments/1998rs/Bills/

For bills passed early in the 1998 Regular Session of the Legislature see *Alabama Lawyer*, May 1998 at page 170. Since that time the following acts of interest to lawyers have become law:

Act 98-192 (SB-456) Local Tax Simplification Act of 1998

Bill provides for a uniform system of municipal and county taxation that would authorize municipal and county governments to levy taxes which parallel the States Sales Use Tax and Lodging Tax, except for the rate of tax and the filing.

Act 98-256 (SB-92) Abandoned Vehicles on Public Property

Amends Alabama Code Section 32-13-3 which allows for the towing of abandoned motor vehicles and their sale at a public auction after giving notice to the owner, any lien holders and at least ten days notice in the paper.

Act 98-279 (HB-222) Codification Bill

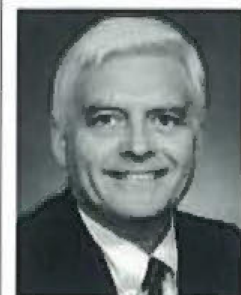
This Act officially makes the Acts of 1997 a part of the Code of Alabama.

Act 98-291 (HB-729) Immunity Volunteer Fire Departments

Provides for civil immunity for those persons donating fire control equipment to the Alabama Forestry Commission for use by volunteer fire departments.

Act 98-295 (HB-631) and Act 98-365 (SB-332) Judges' Retirement

Supreme court judges, judges of the courts of appeals, circuit court judges, district court judges and probate judges may elect to retire after 24 years and purchase one extra year of service and retire at any age.



Robert L. McCurley, Jr.

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

Act 98-297 (HB-26) Immunity from Civil Liability

Provides immunity from civil liability for medical professionals who provide services without compensation at free medical clinics.

Act 98-299 (HB-642) Roth IRAs

Amends Section 40-18-25 relating to Income Taxation of Estates and Trusts to conform Alabama's Income Tax treatment of IRA accounts with the new federal "Roth" and "Educational" IRAs.

Act 98-301 (HB-42) Chief Clerks

Circuit clerks' and district clerks' compensation amends Alabama Code Section 12-17-82 to increase the salary of circuit and district clerks, effective January 18, 1999.

Act 98-370 (SB-524) DHR Termination of Parental Rights

Provides that the Department of Human Resources may file a petition to terminate the parental rights of parents where the parent has murdered another child, abandoned the child, or committed a felony assault on the child.

Act 98-371 (SB-535) Reporting Child Abuse

The Department of Human Resources may instigate legal action for the care or treatment of a child when necessary to prevent serious harm to a child and to provide medical treatment even when contrary to the parent's religious beliefs.

Act 98-372 (SB-536) Foster Care

Amends Sections 12-15-6 and 65 to provide that within 12 months of the placement of a child in foster care, the court ordering placement must hold a permanency hearing to determine when the child will be returned to its parents or placed for adoption.

Act 98-381 (HB-19) Moment of Silence

Provides that at the opening of school every day, in each public school and classroom, the teacher in charge shall conduct a brief period of quiet reflection of not more than 60 seconds with the participation of every pupil in the classroom.

Act 98-409 (SB-604) Religious Freedom Constitutional Amendment Act

Establishes the Alabama Religious Freedom Amendment prohibiting the burdening of freedom of religion unless the government demonstrates that it has a compelling interest in doing so in the interests it's achieved by the least restrictive means and provides a claim or defense in relief against the government.

Act 98-467 (SB-607) Obscenity

Regulates "adult only" video stores, adult bookstores, adult movie houses, adult-only entertainment, and sale of obscene material. Actions commenced by filing a complaint and a preliminary injunction or temporary restraining order may be granted.

Act 98-468 (SB-74) Minimum Income Tax Thresholds

Amends Sections 40-18-27 and 73 to increase the minimum individual state income tax filing thresholds to \$1,875 for a single filer and \$3,750 for joint filers. Provides that upon certification by an employee to an employer that the employee incurred no income tax liability for the preceding taxable year and anticipates none in the current year, the employer will not be required to deduct or withhold any tax upon the payment of wages to the employee.

Act 98-470 (HB-90) Forfeiture of Vehicle

Amends Alabama Code Section 30-6-19 in which a motor vehicle driven by a person who is driving while his/her drivers license or driving privilege has been canceled, suspended or revoked for any reason, may be seized or forfeited.

Act 98-471 (HB-114) Mutual Services Contracts

Authorizes counties and municipalities to enter into written agreements with each other to perform any service common to all contracting parties and would establish the requirements creating the contracts.

Act 98-489 (SB-86) Community Notification Act for Sex Offenders

If a sex offender decides that he or she will reside within the state, then the offender must give five days written notice of

where they are going to live to the attorney general, Department of Public Safety, district attorney and sheriff of the county where the sex offender intends to reside. In every



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ALABAMA LAW OFFICE PRACTICE DESKBOOK

EIGHTH EDITION, 1997

by Robert L. McCurley, Jr.



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THIRD EDITION, 1998 Pocket Part by Penny A. Davis and Robert L. McCurley, Jr.

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case where a criminal sex offender is released, the offender must reside a minimum of 30 days at the address they stated in their declaration unless they receive written approval from the sheriff of the county or chief of police, before changing their address. Also provides for a community notification flyer to be distributed to residents, schools and daycare centers within a specified distant from the declared residence.

Act 98-494 (HB-432) Criminal Littering

Amends Alabama Code Section 13A-7-29 for criminal littering to provide a fine for the first conviction which increases the minimum fine from \$100 to \$250 and the second subsequent conviction a minimum of \$500.

Act 98-606 (HB-182) Unemployment Compensation

An individual filing any claims for unemployment must disclose whether or not they owe child support.

Act 98-609 (SB-310) Abandoned Vehicle on Private Property

Amends Alabama Code Sections 32-13-1 and 2 to specify that the owner of private property may declare a vehicle abandoned under certain circumstances when it remains on property maintained by the property owner. It requires the property owner to give notice of declaration of abandonment to the owner of the vehicle when it remains on the property for 30 days.

Act 98-618 (HB-204) Real Estate Broker Agreements

Amends Sections 34-27-81 and 82 so that a real estate bro-

ker or sales person does not have to provide a written disclosure agreement form to a business entity.

Tort Reform

None of the bills pending on tort reform passed the Legislature. See *Alabama Lawyer*, May 1998.

Barratry

Bill proposed by the Alabama State Bar to prohibit unlawful practice by non-licensed attorneys or those whose license has expired did not pass.

Fair Trial Fee (HB-458)

To increase fees for attorneys representing indigent defendants to \$55 per hour in and out of court and raising the maximum allowed, passed both houses of the Legislature on the last day of the session but the Governor did not sign it, thereby leaving the current 1981 law in effect.

Annual Institute Meeting

The Alabama Law Institute's annual meeting will be held at 2:30 p.m. on Thursday, July 9, 1998 at the Perdido Beach Resort, Orange Beach, Alabama (during the Alabama State Bar Meeting).

For more information concerning the Institute contact Bob McCurley, director, Alabama Law Institute, P.O. Box 861425, Tuscaloosa, Alabama 35486-0013, fax (205) 348-8411, phone (205) 348-7411.

Institute Home Page - www.law.ua.edu/ali ■



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TO SERVE THE PUBLIC is a complete public service video presentation that includes an eight-minute video, a handbook of speech points and detailed informational brochures for the audience. Designed for use in speaking to civic and community groups, including schools, every local bar association in the state received at least one free copy of the video presentation and 300 brochures. Highlighted programs include Lawyer Referral Service, Alternative Dispute Resolution Center, Law Week, Drug Awareness Projects and School Partnership Programs. Using guidelines and information provided to them, Leo Ticheli Productions of Birmingham worked with a sub-committee of the Lawyer Public Relations Committee on shooting, editing and final production of the video. The ASB Board of Bar Commissioners enthusiastically funded and supported the entire project. Five days of shooting in central locations enabled diversity in scenes and opportunities for over 60 lawyers and/or firms to participate. Designed for use during the upcoming three to five years, the video also allows editing of 30- and 60-second segments for radio and television announcements as part of a long-range public relations plan.

Objectives of the Lawyer Public Relations Committee project were to: 1) highlight public service programs and resources of the state bar, focusing on the public as the true beneficiary of our legal system; 2) feature real Alabama lawyers involved in their communities to present a positive message about the legal profession in Alabama, and 3) make it easy for individual attorneys to take this message out to their communities.

The key to the success of the program lies with each individual bar member. If the video is not seen by the public, our efforts will have been for naught!

The challenge now is for Alabama attorneys to use this presentation in each of their communities to help create that positive image, "one lawyer at a time."

**FOR FURTHER INFORMATION, CONTACT COMMUNICATIONS, ALABAMA STATE BAR
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___ YES, I will volunteer to assist in presenting the ASB **TO SERVE THE PUBLIC** video to civic, school and community groups in my area.

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Alabama Supreme Court Commission on Dispute Resolution

By William D. Coleman, chair, Montgomery

An energetic Supreme Court Commission on Dispute Resolution has been hard at work for four years in an effort to create a model ADR program in Alabama. This article will provide a brief history of the commission, describe its membership composition, and advise of its duties and on-going efforts for the orderly development of ADR in the state.

Joint Petition

In May 1994, the State Circuit Court Judges Association, the State District Court Judges Association and the Alabama State Bar filed a joint petition with the Supreme Court of Alabama requesting the creation of a Supreme Court Commission on Dispute Resolution. As grounds for the petition, the petitioners recognized that the judicial application of ADR principles had become institutionalized on a national scale and that the implementation of ADR was being developed in the Alabama court system through local initiative and local structuring, particularly in the more populated areas. But the petitioners urged that a commission was needed to provide a permanent, central and authoritative body to develop and implement ADR effectively in the state.

Commission Established

The supreme court responded promptly and affirmatively to the joint petition. In June 1994, it entered an order effective July 1, 1994 that granted the petition and created a broad-based, 19-member Alabama Supreme Court Commission on Dispute Resolution. The membership of the commission consists of one associate justice of the supreme court, one judge of the court of civil appeals, two circuit court judges, two district court judges, three members of the Alabama State Bar, and seven members appointed, one each, by the Governor, Lieutenant Governor, Speaker of the House, Attorney General, Alabama

Trial Lawyers Association, Alabama Defense Lawyers Association, and Alabama Lawyers Association. Additionally, three members are designated, at large, by the commission to afford diverse representation, i.e., representing groups such as law schools, consumer groups, business groups, labor groups, social service agencies, and the like. The director of the Administrative Office of Courts and the executive director of the Alabama State Bar serve as liaison members of the commission. The commission meets at least quarterly, and members serve without compensation.



William D. Coleman

Duties and Responsibilities

The commission is charged in the order with instituting necessary guidelines for the orderly progress of ADR programs and procedures in the state court systems; supervising the Center for Dispute Resolution; developing training procedures, qualification criteria and standards of conduct for mediators and other ADR neutrals; maintaining statistical data to evaluate the effectiveness of ADR in Alabama; addressing funding needs for implementing ADR; initiating and coordinating community-based ADR programs; and providing advice and recommendations to the Alabama Supreme Court on all matters related to alternative dispute resolution in the state.

On-Going Work of Commission

An article about the Alabama Center for Dispute Resolution in this ADR issue reflects much of the work of the commission. In addition to its oversight of the center, other on-going activities of the commission include:

- studying the current civil court mediation rules for the purpose of proposing appropriate revisions;
- receiving and acting upon applications for mini-grants to provide funding for implementing ADR programs;
- considering revisions to the current interim standards for mediator registration with the center;
- considering the adoption of minimum standards for arbitrators as a prerequisite for registration with the center;
- coordinating programs to educate the judiciary, state bar and the public on the means, methods and benefits of ADR;
- studying the need for, and creation of, a public issue dispute resolution entity;
- working with the Administrative Office of Courts to develop and implement programs to obtain statistical data to evaluate on a continuing basis the effectiveness of ADR in the state; and
- studying and proposing procedures for implementation of mediation or other ADR procedures in district courts.

Additionally, the commission will continue to monitor the work of the Family Law Task Force, which was created in 1997 by the commission and is composed of the family court judges, domestic relations lawyers and other professionals. This task force will study, develop and report to the commission recommendations for statewide implementation of a mediation program in the area of domestic relations. Currently, it is conducting a pilot program in the Montgomery County Family Court.

Suggestions Solicited

Comments and suggestions about any aspect of the work of the commission are solicited. Please send them to the commission in care of the Alabama Center for Dispute Resolution located at the state bar building. ■

The Alabama Center for Dispute Resolution, Inc.

By Judith M. Keegan, director

Remarkably, it has been four years since the Alabama Center for Dispute Resolution began its work, and I was the fortunate one selected to help launch it.

It all started when Judge Joseph Phelps, whom we miss, introduced me to Bill Coleman at Capell, Howard, Knabe & Cobbs in Montgomery. Shortly thereafter, I was invited by Bill to meet with him, Marshall Timberlake and Keith Norman at the Alabama State Bar to interview for the new ADR Center consultant position. To fund the first years of the center's operation, the state bar Committee on Alternative Methods of Dispute Resolution had applied for, and received, a grant from the Alabama Law Foundation. The center would operate under the supervision of the newly created Alabama Supreme Court Commission on Dispute Resolution, and the bar would provide an office. It was during that first visit that I saw *The Alabama Lawyer* prominently displayed in the bar's reception



Judith M. Keegan

area. Since then, this special ADR issue has been on my mind.

Alabama dispute resolution has developed to formidable dimensions during the last four years. In 1997, the center received over 684 requests for written information, and we know we had about that many additional calls we were able to field without mailing information. We have gone from one mediation training course a year in Alabama to about 30 courses, from a few trained mediators to almost 300 on the Alabama Mediator Roster. And, because there is a need, we are forming a state arbitrator roster. Current center funding now comes by way of the Alabama Supreme Court Commission on Dispute Resolution and the Alabama Supreme Court.

The center has been instrumental in developing brochures, educational materials, and television and radio spots promoting mediation. As the center director, I make presentations at clubs, churches, state and local bar associations, judges' meetings, schools, law schools, professional organizations, and universities. I have given many radio, television, newspaper and magazine interviews about alternative dispute resolution, and the prevention and early resolution of conflict.

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Other recent accomplishments at Alabama's only public law school include:

- hosting distinguished guests such as Judge Harry Edwards, District of Columbia, who gave the Hugo L. Black Lecture; U.S. Supreme Court Justice Antonin Scalia, who will give the 1999 Albritton Lecture; leading constitutional law authority Ronald Rotunda, who will visit in Spring 1999; and Professor Lea Brilmayer of the Yale Law School, who will give the Daniel J. Meador Lecture in Spring 1999
- 93% of 1997 graduates passed the Alabama State Bar exam in July 1997
- summer program established in Fribourg, Switzerland
- LL.M. in Taxation program taught by interactive distance learning technology
- 98% of students graduating in the 1997 class employed
- nation's largest Disability Law Institute created
- placed first in the 1998 National Duberstein Bankruptcy Moot Court competition in New York
- four teams placed first in regional advocacy competitions in 1997-98
- admission yield rate for 1997 was over 70%, one of the highest in the country
- appointed David Epstein to the Tweedy Chair and Steven Hobbs to the Bevill Chair.

Arlene Richardson, my assistant since September 1997, has joined me in this work.

At the center, we network with state offices of dispute resolution around the country, and support federal ADR initiatives. For example, we trained EEOC employees in mediation during 1997, and have met with the Air Force ADR director from the Pentagon to establish the foundation for a future meeting between state offices of dispute resolution and federal agency offices of dispute resolution. We recently partnered with the Alabama Department of Public Health for a national teleconference on preventing youth violence, and helped to develop consensus among the leadership at Alabama agencies for Executive Order 42, signed by the Governor on March 18, 1998, that encourages the use of mediation in state administrative agencies.

The center has trained teachers in conflict resolution, as well as attorneys and citizen volunteers in both mediation and the Alabama Code of Ethics for Mediators. As of May 1998, we have three court mediation pilot programs up and running, and are looking forward to making the programs and their results available to other interested Alabama courts.

The Montgomery Community Dispute Resolution Center is off to a great start in neighborhood mediation. An article on that program appears in this issue. Other states are calling us because they have heard about the cooperative bench and bar

ADR effort in Alabama, and our mediation public awareness promotions, and want to know how we did it. Annually, the center publishes the roster of mediators, with updates on the Web site. At www.alabamaADR.org you can find mediators in your county by clicking on an Alabama map, learn when the next training courses in mediation and arbitration are scheduled, find out about national conferences, learn about the latest standards for Alabama mediators, hyperlink to other ADR sites, and pick up the latest ADR news. Additionally, the center has been publicized nationally, and has published through its director and commission in state and national publications.

What a privilege it has been for me to meet and work with so many great Alabama ADR leaders, mediators and arbitrators in pursuing the center's goal to "develop, implement, administer, assist and manage alternative dispute resolution (ADR) programs in the courts, neighborhoods, educational facilities and government agencies within the State of Alabama." Thanks for all your support!

Visit us at www.alabamaADR.org. ■

ADR on the Web: Sites to Surf

Academy of Family Mediators

www.mediators.org

Alabama Center for Dispute Resolution

www.alabamaADR.org

American Arbitration Association

www.adr.org

American Bar Association Section of Dispute Resolution

www.abanet.org/dispute

Association of Family Conciliation Courts

www.afccnet.org

CPR Institute for Dispute Resolution

www.cpradr.org

Federal Mediation & Conciliation Service

www.fmcs.gov

Peacemaker Ministries

www.peacemakerministries.org

National Institute for Dispute Resolution

www.nidr.org

Society for Professionals in Dispute Resolution

www.spidr.org

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U.S. District Courts

U.S. District Court for the Northern District of Alabama
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Birmingham, AL 35201

The Northern District has an ADR plan and panel of neutrals. To obtain an application to be on the panel and a copy of their *Local Rules and ADR Plan* (which includes panel qualifications), write or call the clerk's office: (205) 731-1700.

U.S. District Court for the Middle District of Alabama
United States Courthouse
15 Lee Street
Montgomery, AL 36104

The Middle District currently does not have a formal ADR plan, but uses magistrates to do mediations. Clerk's office: (334) 223-7308

U.S. District Court for the Southern District of Alabama
United States Courthouse
113 St. Joseph Street
Mobile, AL 36602

The Southern District has an ADR plan and a neutral panel. To obtain a copy of the plan and an application for the panel (with panel qualifications) write or call the clerk's office at (334) 690-2371.

Mediation Comes of Age in Alabama

By Rodney A. Max, Sirote & Permutt, P.C., Birmingham, Alabama

Introduction

The year 1996 represented the first year that the concept of mediation in Alabama was regulated not only by rules of court (which have been in effect since 1992 in state courts, and since 1993 in the United States district courts), but also by statute and code of ethics. The statute and code have been implemented, not to hamper mediation, to the contrary, they are meant to encourage the use of this non-binding voluntary procedure and at the same time maintain the high integrity of the process.

The Statute

On April 23, 1996, Governor Fob James signed into law Act 96-515 known as the Mandatory Mediation Act. The Act makes mediation mandatory prior to trial under certain circumstances and imposes sanctions for failure to mediate. It requires that mediation be mandatory in three instances:

- (1) At any time where all parties agree.
- (2) Upon motion by any party. The party asking for mediation shall pay the cost of mediation, except attorney fees, unless otherwise agreed.
- (3) In the event no party requests mediation, the trial court may, on its own motion, order mediation. The trial court may allocate the costs of mediation, except attorney fees, among the parties.

It is important to understand the parameters of these mandates. First, the agreement referred to in subsection 1 has no time restriction; thus, it may be entered into at the time of the existing dispute or prior to the existing dispute. In other words, the parties may enter into a contractual relationship that specifies an agreement to mediate, which will, at the time of a dispute, make mediation mandatory. In the absence of an agreement, one party may request mediation, and to the extent that they are willing to pay for it, said mediation is mandatory. Thus, mediation is required by either bilateral (sub-

section 1) or unilateral (subsection 2) actions of the parties. Alternatively, in the absence of a bilateral or unilateral stipulation, the court may order the parties to mediation (subsection 3).

It must be emphasized that there is a difference between "mandatory" and "binding" mediation. Mediation is not binding. While it may be mandatory, that mandate merely requires the parties to come to the mediation table and attempt to discuss their issues in good faith and negotiate where appropriate. It does not require parties to negotiate beyond their good faith evaluation of their relative positions.

It is suggested that if a party to a mandated mediation comes to the good faith opinion that mediation is inappropriate, a protective motion to vacate the mediation should be filed. If the mediation is not otherwise vacated, the parties are required to attend the mediation. Subsection (c) of Act 96-515 authorizes the court to apply sanctions if a party fails to mediate as required by the Act.

Act 96-515 also sets forth parameters in which mediation shall not be ordered:

- (1) In a petition for an order for protection pursuant to The Protection from Abuse Act, Section 30-5-1 through Section 30-5-10 of the Code of Alabama 1975 or in any other petition for an order for protection where domestic violence is alleged. (Subsection d).
- (2) In a proceeding concerning the custody or visitation of a child, if an order for protection is in effect or the court finds that domestic violence has occurred. (Subsection e).
- (3) In an action involving child support, adult protective services or



Rodney A. Max

child protective services wherein the Department of Human Resources is a party to said action. (Subsection h).

Where a mediator receives a referral for mediation, he/she is required to screen for the occurrence of domestic or family violence between the parties. Where such domestic violence exists, the mediation shall occur only if:

- (f)(1) Mediation is requested by the victim of the alleged domestic or family violence;
- (f)(2) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and
- (f)(3) The victim is permitted to have in attendance at mediation a supporting person of his or her choice, including but not limited to an attorney or advocate.

Alabama Code of Ethics for Mediators

On March 1, 1996, the supreme court adopted the Alabama Code of Ethics for Mediators. This Code applies to:

- (1) Mediation of cases pending in courts of the State of Alabama; and
- (2) Mediation conducted by persons whose names are listed on the roster of mediators maintained by the Alabama Center for Dispute Resolution.

The Code establishes "Standards" which require the integrity, impartiality and professional competence of all mediators (Standard 1. General(a)). They require a mediator not accept any engagement or undertake any act that would compromise the mediator's integrity. They require mediators to maintain professional skills, to include but not limited to the following:

- (A) Staying informed of and abiding by all statutes, rules and adminis-

trative orders relevant to the practice of mediation; and

- (B) Regularly engaging in educational activities promoting professional growth.

Code of Ethics for Mediators, Standard I(a)(2)

The Standards also require that a mediator shall be candid, accurate and fully responsive to a court concerning the mediator's qualifications, availability, and other matters pertinent to his or her being selected to mediate. (Code of Ethics for Mediators, Standard 2)

The Standards make explicit the parties' right to decide the resolution of their dispute:

STANDARD 4. SELF-DETERMINATION

- (a) Parties' right to decide. A mediator shall assist the parties in reaching an informed and voluntary agreement. Substantive decisions made during mediation are to be made voluntarily by the parties.
- (b) Prohibition of Coercion. A mediator shall not coerce or unfairly influence a party into entering into a settlement agreement.
- (c) Misrepresentation Prohibited. A mediator shall not intentionally misrepresent material facts or circumstances in the course of a mediation.
- (d) Balanced Process. A mediator shall promote a balanced process and shall encourage the parties to participate in the mediation proceedings in a non-adversarial manner.
- (e) Responsibility to Non-Participating Parties. A mediator may promote consideration of the interest of persons who may be affected by an agreement resulting from the mediation process and who are not represented in the mediation process.

These Standards reiterate the impartiality, conflict of interest and confidentiality requirements as set forth in the Mediation Rules. The Standards, however, define the limits of a mediator's offering of professional advice.

STANDARD 7. PROFESSIONAL ADVICE

- (a) Generally. A mediator shall not provide information the mediator is not qualified by training or experience to provide.
- (b) Independent Legal Advice. When a mediator believes a party does not understand or appreciate how a potential agreement reached through the mediation process may adversely affect the party's legal rights or obligations, the mediator should advise the participant to seek independent legal advice.
- (c) Absent Party. If one of the parties is unable to participate in the mediation process for psychological or physical reasons, a mediator should postpone or cancel mediation until such time as all parties are able to participate.
- (d) Personal or Professional Opinion. A mediator may discuss possible outcomes of a case, but a mediator may not offer a personal or professional opinion regarding the likelihood of any specific outcome except in the presence of the attorney for the party to whom the opinion is given.

The Standards also provide, among other things, for parameters of mediation fees and pro bono services (Standard 8) and training and education (Standard 9).

Why Mediate?

The bar and bench are to be highly commended for establishing responsible laws, rules, and high ethical and professional standards which are intended to insure the integrity of the mediation process. What the litigating parties and their counsel must decide is—why mediate?

The best way to appreciate the value of mediation is to understand both the process and to weigh the alternatives to the process.

Mediation is an *opportunity* for both (or all) sides of a dispute to fairly, candidly, and objectively evaluate their positions with the aid of a third-party neutral—the mediator—for the purpose of achieving resolution. The process is voluntary—even if ordered by the court (once in mediation, the process may be terminated at the will of either side).

The process is non-binding. (No party is committed to a position or course of action unless and until the parties reach an agreement; it is only at the time an agreement is achieved that the parties are bound.) The process is confidential. (This is the hallmark of the mediation process—never will any party, their attorney or the mediator be called upon or will be allowed to utter statements, positions, or actions that occurred within the mediation process. The only exception is if *all* the parties agree to waive the confidentiality requirement.)

The mediator is someone chosen by the parties or the court who is impartial, knowledgeable, trusted and qualified in bringing conflicting parties together. The mediator represents the interest of resolution, not by being a decision-maker of right or wrong, but by being a facilitator (and if necessary, an architect) of the parties' competing interests. The mediator must be a good listener. He/she must be a person who understands the court, jury and/or other venue in which the dispute will otherwise be heard. The mediator must earn the respect of the parties and their attorneys so that if *they* can establish a "ballpark of resolution," *he/she* will be able to bring the parties to "home plate."

The value of mediation can best be understood by comparing it to the alternative venue of the courtroom. At the courthouse, the parties are looking to a third party—a judge or six to 12 jurors (depending on federal or state court)—to make a decision for them. The only control any party has over these decision makers is the power of persuasion. The jurors do not get the opportunity to have dialogue with the parties or ask questions of their positions. The jury process, as treasured as it is, limits the means by which the jury receives facts for deliberation: formal rules of evidence obtained through direct examination and cross examination, redirect and re-cross examination until the attorneys have exhausted each witness with issues deemed to be important to the litigants. Then after closing arguments of counsel and jury instructions from the judge, the jurors recess to a private room where, outside the control of everyone, they attempt to come to a resolution—a verdict.

Now, let us reflect on the jury's decision-making process. First, while the parties "pick" their attorneys or their mediator, they do not "pick" their jury. The jury is established by a process whereby each side requests a limited number of potential jurors to be struck from the jury pool. Plaintiff's counsel strikes potential jurors who have interests in common with the defendant, and the defendant's counsel strikes potential jurors who have interests in common with plaintiff.

The result of this limited striking process is that the parties are left with those jurors who are *least undesirable* to all and least in common with either side. Not only are the remaining jurors the least interested in the parties, they usually do not know each other. Some are older, some younger; some educated, some not; some working, some unemployed or retired; some live in the west part of town, some are from the east, north or south part of town; some are of one race, ethnic origin or faith, and some are from others.

Do they fairly represent the community? Yes, as fairly as the legal process can guarantee. But, are they better qualified to take the resolution out of the control of the parties? No, not unless the parties are unable to compromise their differences.

Let us analyze what a jury must do to come to a decision. All of them must agree *unanimously* on a verdict. These disinterested people, from their uncommon backgrounds and different points of view (their only commonality is their lack of commonality with the parties), must all agree on one result. This is by no means automatic. More times than not, it takes hours, if not days, before they reach unanimity. Some may align with the plaintiff; some may align with the defendant; and some may just want to talk about it. Whether for defendant or for plaintiff and whether for \$100 or \$1,000,000, they must eventually all agree.

There is no question that the jury process requires *compromise* among all jurors. If not, the case will end in a mistrial, and the parties will have to try their case again until they finally get a group of jurors who can work together, compromise and agree unanimously on a resolution—the jury's verdict.

If these disinterested jurors can reach a resolution through a verdict, should not the parties be able to do the same through a mediation resolution? The key to success in mediation is the ability (or opportunity) of the parties and their counsel to fairly, candidly and objectively weigh the alternative—what is a reasonable verdict range with these facts, with these parties, in this court,

before this judge and a representative group of jurors? Through the knowledge and experience of the attorneys and the mediator, and with the aid of other known, similar precedential cases, a reasonable verdict range can be established—the "ballpark." And through the trusted skill of the mediator, a reasonable settlement can be achieved—"home plate."



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Will compromise be necessary? Absolutely, but no less than that in which the jury engage in reaching a verdict. It is necessary for the parties to agree on the "rightfulness" of the others' position? No, but what is necessary is for each party to listen and understand the other side's position so—without necessarily agreeing—each can fairly and candidly evaluate the prospects of resolution.

Dissecting the Mediation Process

The mediator will begin the process with a brief introduction. He/she will allow the parties to introduce themselves and their representatives. The mediator will introduce himself/herself and will fully, yet simply, explain how the mediation will proceed. Depending on the mediator and the experience of the parties, there will be a comparison of the dispute resolution alternatives, as discussed above. The mediator will emphasize the need for patience and good listening. Finally, the mediator will outline and explain the different aspects of mediation—from opening statement to caucuses to the mediation agreement.

Next, the attorneys from each side will articulate their positions in opening statements. This is a crucial stage of the mediation. It is as crucial as the opening statement in trial (where statistics reveal about 85 percent of the decision-making occurs). However, it is crucial in mediation for a different reason.

In the mediation opening statement, counsel will have, for the first and perhaps only time, the right and the opportunity to speak with the opposing parties. The only other contact with the opposition is in formal discovery or in cross-examination in the trial of the case.

Direct statements to (and eye contact with) the opposing parties can drive home more than one side's version of the case. It can be used to display determined advocacy, while exhibiting an openness to fair and reasonable compromise. It can also be used to emphasize one's strengths and acknowledge or diffuse apparent weaknesses. It can be used to display empathy and compassion where appropriate. It can be used

to visualize liability and damages through the use of videos, photographs, reports and itemized charts. The preparedness of the parties and their counsel at the mediation will convey the message of a similar preparedness should trial be necessary.

Upon completion of the opening statement, the caucus stage begins. Private caucuses are meetings of the parties outside the presence of the opposing parties.¹ There are three types of private caucuses:

1. Private party caucus with the mediator

Here the mediator will visit with each party and his/her/its counsel. These visits will be for the threefold purpose of (a) communicating the opponent's position and offer; (b) confidentially evaluating the strengths and weaknesses of that party's positions; and (c) receiving and transmitting that party's responses and counteroffer to the opponent.

It is the mediator's duty and obligation to keep confidential those aspects of the caucus which are designated as confidential. Likewise, it is the mediator's duty and obligation to convincingly and ardently, yet tactfully, transmit points a party requests to be communicated. Accordingly, the mediator plays a dual role as a "pastoral confidant" and a "designated advocate" for each party as the communications go back and forth toward the goal of resolution.

2. A second private caucus is a party-counsel caucus.

Here the party and/or his/her attorney request the right to meet outside the presence of the mediator. This is normal and expected. It allows the client and his/her attorney the right of privacy to re-establish their direction in the negotiating process. Thereafter, they will reinvite the mediator to join them and share the desired response for the mediator to take to the other side. The mediator will give all parties and their counsel the time and room to caucus together privately so as to remain comfortable with each other and with the process.

3. The third type of private caucus is the attorney caucus.

Here the mediator or either of the attorneys requests a private meeting among counsel. Such a caucus will occur outside the presence of all parties.

This type of caucus is usually necessary where legal issues, factual issues or simply mediation hurdles need to be confronted and dealt with by and among the attorneys and the mediator.

The parties should be told about all three types of caucuses before they occur. In this way, the parties will know what to expect and will not get suspicious of the process. For the mediation to succeed, both the parties and their attorneys must trust and be comfortable with the process.

Conclusion to Mediation

A. The Mediation Agreement

It is the golden rule of mediation that any resolution should be reduced to writing and signed by the parties and their attorneys. This agreement does not require formality of all detailed terms and conditions. So long as the attorneys are familiar with the customs and practices of releases and dismissals, it is sufficient to state:

1. The defendants shall pay plaintiff the sum of \$ _____ within _____ days from the date of this Agreement.
2. The defendant's counsel shall prepare a complete release to be reviewed and approved by plaintiff's counsel after which plaintiff shall execute said release.
3. The above-styled case shall be dismissed with prejudice, each party to bear his/her/its own costs.
4. The costs of the mediation shall be divided equally between plaintiff (one-half) and defendant (one-half).

Dated: _____

If there are specific terms within the release that have been negotiated (confidentiality, indemnification, waiver of subrogation rights, etc.), these should be enumerated. If there are any other aspects of the resolution that have been negotiated, these too should be included.

Each party should get a copy of the agreement, and the mediator should retain the original.

B. Post-Mediation Negotiations

Often, the resolution cannot be achieved in the mediation session, but

the parties clearly indicate their own desire to continue the process. Before the mediation session is concluded, the parties and the mediator should agree on a time frame within which to complete the resolution. There is always the tendency to move onto other cases. However, neither the attorneys nor the mediator should allow the negotiations to "get stale."

While the mediator has no authority to insist on additional negotiations, he/she can continue to inquire of the parties and encourage additional movement. The mediator can, with consent of counsel, help by communicating with other levels of a party's authority when they are not present at the mediation.

If resolution can be reached after the mediation session, the mediator should confirm the terms and conditions by letter to each of the attorneys or the designated party representative. If resolution cannot be reached, the mediator should send a letter of termination to each of the attorneys or the designated party representatives.

C. Report to the Court

The rules require the court to be advised of the conclusion of the mediation. This report is limited to disclosure of the success or the failure of the mediation. If successful, the report should state that the attorneys of record will be forwarding the appropriate dismissal documents within the next few days. If unsuccessful, the report should state that the parties are prepared to move forward with litigation. Where appropriate, the report may state that the attorneys performed most professionally in working toward resolution of the case while representing the best interests of their clients. This helps to take care of ethical considerations should they later be brought into question.

Each attorney or party, if unrepresented, should get a copy of this report.

Reflection

In writing on mediation in 1996, I stated:

In the two and a half years since its implementation, mediation has

been warmly received—by attorneys, their clients, and the courts. As guardians of the process, the bench and bar must endeavor to assume the highest standards of ethical considerations in encouraging and utilizing mediation as an alternative dispute resolution mechanism.

Since its implementation, mediation has expanded to all areas of our legal profession. It is being drafted into agreements as widely as it is being voluntarily entered into between disputing parties. Our bench and bar have established high standards of ethical considerations so as to enable our profession and the public to have confidence in the process. Mediation is truly an alternative dispute resolution concept whose time has come. ■

Endnotes

1. A joint caucus (as opposed to a private caucus) is a meeting with all parties and their attorneys present.

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Making Peace in Alabama

By Glenn G. Waddell, regional director, Southeast Region, Peacemaker Ministries

In the December 1996 edition of the Alabama State Bar *ADDENDUM*, two attorneys debated the question, "What is the major problem with the legal profession?"¹ In his "counterpoint," William McGowin observed that historically "lawyers were looked up to as facilitators and mediators of disputes. Lawyers were the ones who took a dispute and settled it." While it is far too easy to blame attorneys for all of the real and imagined problems in our legal system, Mr. McGowin's statement strikes at the heart of what many lawyers describe as their primary motivation for practicing law. After all, what can be more satisfying to an attorney than settling a client's dispute and solving their problems? Imagine not only solving the substantive issues in a dispute, but helping to reconcile the parties' relationship—whether it is a marriage, friendship or business relationship.

In his 1982 Report on the State of the Judiciary, Chief Justice Warren Burger was careful not to lay the blame for our nation's litigation explosion squarely at the feet of the legal profession. He accurately observed:

One reason our courts have become overburdened is that Americans are increasingly turning to the courts for relief from a range of personal distresses and anxieties. Remedies for personal wrongs that once were considered the responsibilities of institutions other than the courts are now boldly asserted as "legal entitlements." The courts have been expected to fill the void created by the decline of church, family, and neighborhood unity.²

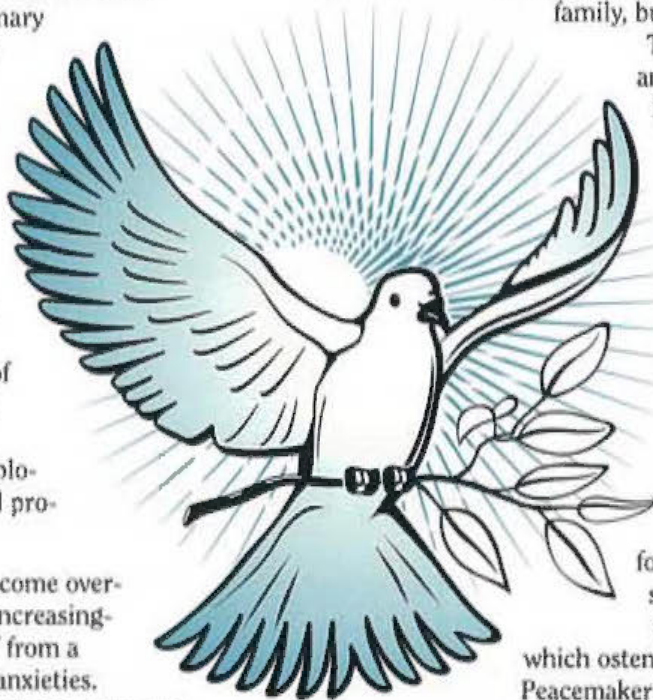
Stated more simply, our churches, families and neighborhoods have lost much of the ability they previously had to prevent disputes, or at least to resolve conflicts outside the courtroom. To be sure, the problem extends far deeper into our society than a simple increase in litigation. Local and national media routinely report on minor conflicts escalating into scuffles, riots and even murder. How can we, as attorneys, help our communities reclaim the ability to make peace? For the many Alabama attorneys involved in local churches, a related question is how can we integrate our faith more effectively into the practice of law?³

As reported elsewhere in this issue, there are a number of ongoing initiatives designed to promote dispute resolution

throughout the state. One exciting initiative is the recent announcement by Peacemaker Ministries that it will open its first-ever regional office in Birmingham this summer. Peacemaker Ministries, which has held a number of seminars here in Alabama over the past few years, was established under the auspices of the Christian Legal Society in 1982. The ministry is dedicated to teaching practical concepts of peacemaking through seminars, developing educational resources, training, and mediating and arbitrating family, business, church and legal disputes.

The peacemaking principles taught and utilized by Peacemaker Ministries, known as Christian Conciliation, improve on the typical mediation process by looking not just at the resolution of a claim, but also at the restoration of the relationship of the parties. Parties are required to participate actively in a process that explores the background of the problems and searches for solutions. Solutions are not based solely on who has the "deepest pocket," but on universal concepts of honesty, responsibility, justice and concern for the other party. Resolution of personal issues are frequently just as important as the financial issue which ostensibly framed the original dispute.

Peacemaker Ministries offers a conciliator training program ("CTP"), and a number of Alabama attorneys have participated in the CTP. In fact, the primary reason Peacemaker Ministries selected Alabama for its first regional office is the high level of interest in the state and the legal community in Christian Conciliation. For more information about the CTP or Peacemaker Ministries generally, take a look at the ministry's Web page (www.peacemakerministries.org) or contact the ministry at 1537 Avenue D, Suite 352, Billings, Montana 59102. ■

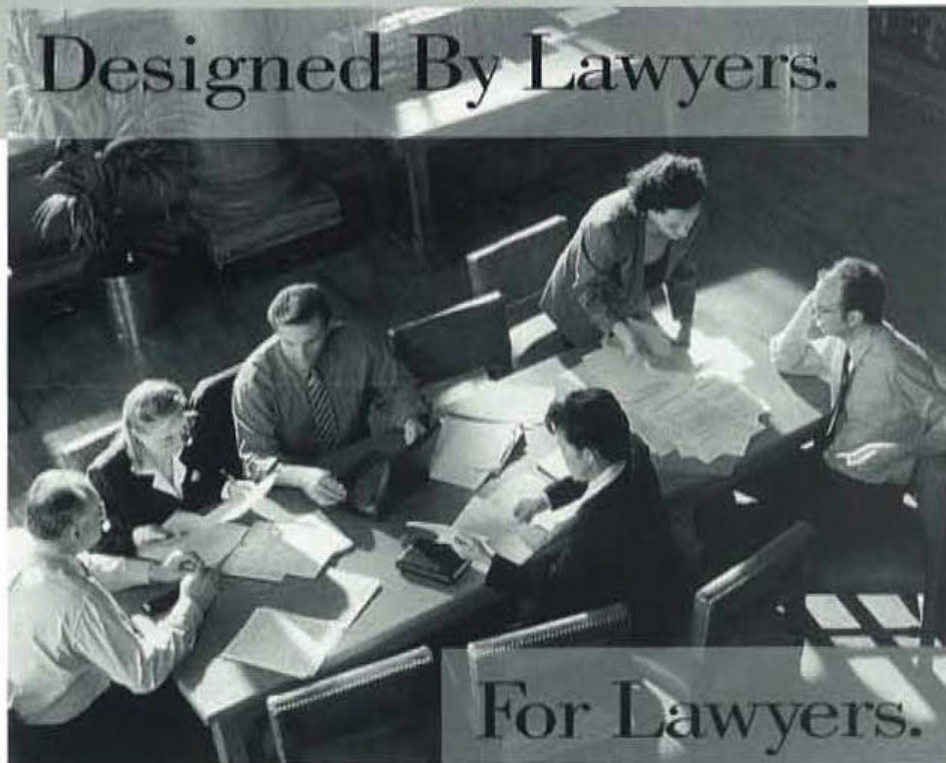


Endnotes

1. Alabama State Bar *ADDENDUM* (December 1996), p. 6.
2. Warren Burger, C.J., "Annual Report on the State of the Judiciary," *American Bar Association Journal* (March 1982), p. 68.
3. For further elaboration and an excellent discussion of this issue, see Karen Bowdre's article "Law Practice: A Place for Moral Values" in the May 1996 issue of *The Alabama Lawyer*.

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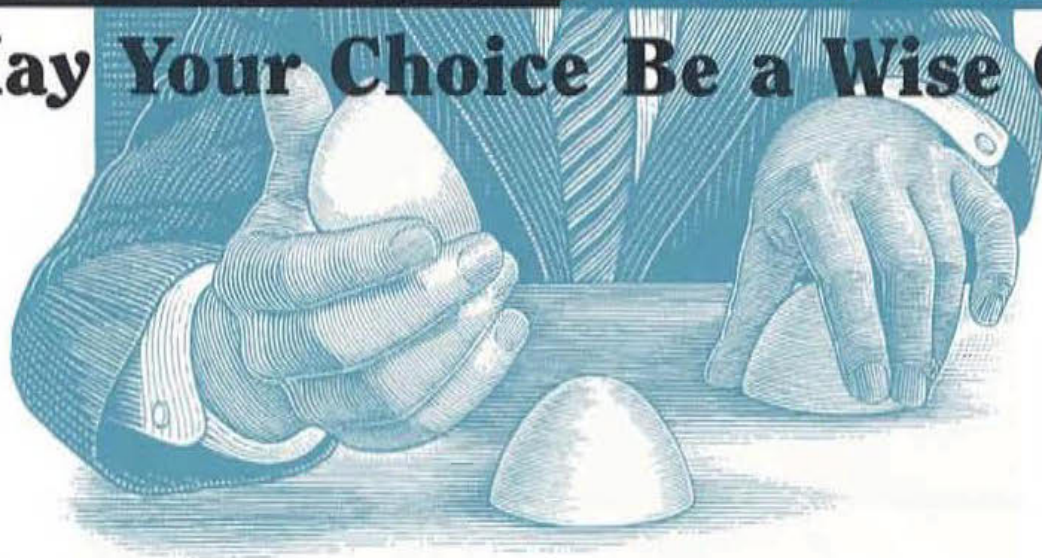
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FACILITATIVE MEDIATION **or** EVALUATIVE MEDIATION:**May Your Choice Be a Wise One**

*By Scott H. Hughes, assistant professor of law and director of clinical education,
the University of Alabama School of Law*

Asking attorneys to describe mediation is like asking a group of visually impaired individuals to define an elephant; each defines the pachyderm based on the part they hold in their hand and each is certain that they know the "true" animal. "[M]ediation¹ is a term used in an 'extraordinary variety of ways.'² Consequently, attorneys and parties often do not know what to expect.³

This conundrum is no more apparent than in the furious debate between the proponents of facilitative and evaluative mediation.³ Since the two styles are very different in their approaches to and underlying assumptions about mediation, it is important that attorneys fully understand each in order to adequately counsel their clients when deciding on the use of mediation and the selection of an appropriate mediator. As a disclosure of personal bias, I am an unrepentant apologist for facilitative mediation and an ardent opponent of evaluative mediation. With that in mind, I will attempt to be as objective as possible in my analysis of these two styles of mediation.

The Facilitative/Evaluative Debate

In facilitative mediation, which is seen by its supporters as the traditional or "pure" mediation,⁴ the role of the

mediator is to assist the disputing parties in evaluating their own situations instead of evaluating the disputes for them.⁵ The parties participate in problem-solving activities in a manner that features party choice.⁶ The principal mission is to clarify and to enhance communication between the parties in order to help them decide what to do.⁷

The facilitative mediator does not give advice, legal or otherwise; does not provide opinions on the relative value of a parties case or individual issues within the matter; and does not make predictions on the possible outcome of the action should the parties fail to reach agreement and proceed to litigation or arbitration.⁸

Facilitative mediation is based upon three fundamental assumptions: first, the disputants are reasonably intelligent and potentially able to work with each other if placed in a neutral and safe environment. Second, the parties, after being properly counseled by their attorneys are, "capable of understanding their situations better than the mediator and, perhaps, better than their lawyers."⁹ And, third, the clients, "can develop better solutions than any mediator might create."¹⁰

In evaluative mediation, the mediator does what the facilitative mediator does not; she may give advice, make assess-

ments, propose fair and workable resolutions to one or more issues, press the parties to accept a particular resolution, and state opinions, including opinions on the likely outcome.¹¹ This manner of dispute resolution has several other labels: neutral evaluation (or, early neutral evaluation depending upon its timing), settlement conference, and settlement-oriented mediation.

Evaluative mediation rests upon two fundamental premises: first, parties want and need the mediator to provide guidance on the law and the relative merits and values of their respective positions, and second, the mediator, "is qualified to give such guidance by virtue of training, experience, and objectivity."¹²

An analysis of the relative merits and demerits of the two processes runs parallel to a more generalized view of alternative dispute resolution. Evaluative mediation is seen as more adversarial than facilitative mediation. The former is thought to be more distributive, where the emphasis is on deciding how much of the pie each gets, while the latter is thought to be more integrative where the emphasis is on expanding the size of the pie and allowing each side to get more. In evaluative mediation the parties tend to focus on positions, arguments and compromise, while in facili-

tative mediation the parties focus on interests, win-win solutions, and collaboration.¹³ Although it is true that in all mediations the parties make the final decision, one crucial difference between the two styles of mediation is the source of options and potential solutions to the dispute. In facilitative mediation, these come from the parties themselves, while in evaluative mediation, the parties look to the mediator for the answers to their problems.

The academic debate over the two styles coalesced after a 1994 article by Len Riskin¹⁴ and a follow-up piece two years later.¹⁵ In this turf battle over the heart and soul of mediation, the proponents of facilitative mediation decry that the facilitative definition was originally intended to be the definition for "all" of mediation and not just a portion of it. Evaluative mediation is an oxymoron because, by definition the mediator should not interject her own values into the dispute between the parties.¹⁶ On the other hand, the term facilitative mediation is redundant because the mediator's role is to be facilitative.¹⁷ Evaluative mediation "is both conceptually different from, and operationally inconsistent with, the values and goals characteristically ascribed to the mediation process."¹⁸ "[M]ediation is not a process designed for having an expert apply some external criteria to assess the strengths and weaknesses of the parties' cases,"¹⁹ but is a process for orienting the parties toward each other.²⁰

Two principal criticisms of evaluative mediation include the parties' loss of self determination and the mediator's loss of impartiality.²¹ First, although the parties in mediation always retain the ultimate authority to settle or not, critics assert that the ability to fashion a resolution based upon their own needs and interests may be compromised by a natural tendency to rely on the ideas, options, opinions and predictions from the mediator who is a person with expertise and authority. However, the mediator brings only apparent and not actual expertise. The parties (with the help of their attorneys) have greater expertise than the mediator. They have lived with the dispute for months, if not years, have slept on it, sweated over it,

and cried about it. The mediator has, at most, a few hours of exposure to the dispute and cannot be expected to know more than the parties.

Second, any opinions or valuations threaten the mediator's impartiality. Any opinion or evaluation will favor one side and disfavor the other. The natural tendency of those whose "ox is being gored" by a mediator opinion is to discount its validity and to attribute it to mediator bias. Such circumstances could severely threaten the mediator's ability to function.

On the other hand, evaluative mediation falls within the generally defined limits of mediation.²² In one of the seminal texts in the field, Chris Moore defines mediation as:

...the intervention into a dispute or negotiation by an acceptable, impartial, and neutral third party who has no authoritative decision-making power to *assist* disputing parties in voluntarily reaching their own mutually acceptable settle-

ment of issues in dispute.²³

The rub in the whole debate, then, is the nature and the breadth of the term, "assist." Should the mediator just assist in a way that guarantees complete self-determination? Or, does this assistance extend to opinions about the merits of each parties case?

Proponents of evaluative mediation assert the desire of the parties for help in understanding the law and how their cases are impacted by the law. Further, the "expert" mediator can help the parties to determine what is fair so that neither leaves the table only to find out later that they "got taken." Understanding how the law might vindicate their rights and avoiding an unfair result are two legitimate interests of parties to mediation.

Proponents of facilitative mediation respond that parties bargain under the shadow of the law, not within the control of it. Although the law may have some impact on the final resolution, mediation allows parties to fashion a set-

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tlement which comports with the law, disregards the law or resides somewhere in between, but which meets the unique needs of the parties to the dispute. Any settlement may parallel the relief that would be fashioned by a court or not, as the case may be. Use of evaluative mediation with its emphasis on comparing the case to potential outcomes in litigation or to the mediator's expert guidelines of similar cases, opponents believe, would tend to circumscribe the creative ability of the parties to resolve the matter in a manner which meets their interests, but which might be outside the realm of normal court-fashioned relief.

Unfortunately, since labeling is also defining, the structure of the debate has been too compartmentalized resulting in a false dichotomy between the terms.³¹ Facilitative and evaluative mediation are not separate and distinct categories. No mediator is purely facilitative. Even the staunchest facilitative mediator will, from time to time, utilize tools which can be considered evaluative. Even a decision to raise an issue or ask a question can be seen as evaluative in nature. Nor is an evaluative mediator without facilitative tools which are used to create a neutral and safe environment for the parties to discuss alternative solutions. Further, many evaluative mediators will not immediately jump into rendering opinions and evaluations until the appropriate atmosphere has been developed. Instead of looking at the two as separate and distinct orientations, it is more productive to look at the two as resting at the opposite ends of a continuum.³²

Choosing a Mediation Style

Assuming that mediators tend toward one end of the continuum or the other, how do you and your client choose the appropriate style for the mediation? What follows is a short list of considerations, none of which is absolute or controlling, but only suggestive. At the end of the discussion of each consideration I have added a personal comment intended to generate some reflection on the two mediation styles.

What role does your client want or need to play in the settlement process? The place of the client in mediation is

fundamental to the distinction between the two alternative approaches. Does your client want to have a part in creating her own solutions or does she wish to take a less active role during mediation? Facilitative mediation calls upon the parties to create options, explore alternatives, brainstorm possibilities and think laterally to fashion a resolution to the dispute. In facilitative mediation, the emphasis is on self-determination.

If your client does not desire to actively participate or appears to lack the ability to do so, then evaluative mediation may be in order. With this model, parties may take a more passive role, merely having to respond to the opinions, valuations and predictions of the mediator and the positions of the other parties. In evaluative mediation, the emphasis is on settlement.

Since evaluative mediation looks more like litigation than facilitative mediation, lawyers appear to favor the former over the latter. It is only natural for this prejudice to occur. The principles behind evaluative methods are familiar, comfortable and tested while the principles behind facilitative methods are new, different and untried. Evaluative methods are easy, even enticing while facilitative methods are difficult and require some risk-taking. Attorneys' predisposition for evaluative mediation may not be shared by their clients. Attorneys have to guard against disregarding or underestimating their client's need for a self-determinative process or their ability to participate meaningfully in facilitative mediation.

Is money an adequate proxy for the problems that exist? Since evaluative mediation calls upon the mediator to render opinions on the value of cases and to possibly predict the outcome of a dispute at trial, the natural medium of such discussions is money. "How much will I get if I go to court?" "What is my case worth?" Perhaps evaluative mediation may provide the best fit if money is the sole issue or the bargaining will be purely distributive (dividing the pie) as opposed to integrative (expanding the size of the pie), as in some contract cases or in simple personal injury or property damage cases.

With most cases, though, money is a poor proxy for the issues which the parties bring to the table. Would an apology be in order? Does your client need to vent? How important is it that your client get to tell her side of the story, whether it be to the mediator or to the other side? Will your client not sleep at night unless they receive even the slightest recognition of their plight from the other side? Does pain and suffering play a major role in your client's daily life? Is some sense of closure key to helping your client move on? If any of these questions ring true, evaluative mediation and its use of money to solve most ills may not benefit your client. On the other hand, facilitative mediation can provide the environment and the facilitative mediator can provide the encouragement for the parties to explore these questions.

Too many attorneys cannot, or chose not, to see the extent to which these issues permeate their clients' needs. Although the money is always nice and sometimes crucial, pure pocketbook justice does little, if nothing, to resolve these other matters. The idea of money is frequently trumped by these other concerns in the mind of the client. When these issues surface, facilitative mediation will provide the best chances of resolving all of the issues and not just the monetary one.

Is the dispute susceptible to collaborative, win-win solutions? Do opportunities exist for the parties to expand the pie instead of focusing merely on how much of the pie each will receive? Expanding the pie is the epitome of facilitative mediation. Are there things that one side can do or provide which have greater value for the plaintiff than the defendant? Are there services or goods that the defendant can provide more cheaply than the plaintiff can purchase? Facilitative mediation provides the opportunity to create ingenious combinations of options for resolution, none of which may have been apparent to the parties beforehand.

While this can occur in evaluative mediation, the orientation of this style reduces the opportunity for such creativity to take place. Evaluative media-

tion is one-dimensional. It frequently relies upon the payment of money as the only medium of exchange. If the only thing that the defendant can do is pay money, the size of the pie is irrelevant. Each additional dollar for one side is one less dollar for the other. If this is the case, perhaps evaluative mediation may be beneficial.

However, attorneys must avoid automatically dismissing any given case as merely a distributive dispute. Even in insurance defense cases possibilities may arise. Does the plaintiff have special needs which can be provided for with a low-cost annuity? Can an apology be tied to a memorial donation to a church or charity? In business-to-business cases, what synergistic possibilities exist between the parties? Facilitative mediation, with its focus on interests and collaborative problem-solving, is best situated to explore the myriad possibilities which may develop.

What is the nature of the relationship? Do the parties have an ongoing relationship or is this a one-time incident in which the parties were, and will continue to be, strangers? If there is a relationship, facilitative mediation, with its collaborative and interest-based orientation, will better help the parties to repair the relationship, work that is crucial to solidify any resolution of the dispute. A typical example would be an employer-employee dispute where the employee still works for the employer or a contractual dispute between two companies that have continuing business relations. Relatedly, if the parties are stuck in a relationship against their will, such as a divorced couple with continuing child custody and visitation dealings, facilitative mediation is better situated to provide an environment for the parties to learn dispute resolution skills by witnessing the skills modeled by the mediator and by actually resolving their own dispute in a safe, hands-on manner.

However, disputing strangers may see more benefit from an evaluative model. This may be especially true in automobile personal injury cases in which the defendant is represented at mediation by an insurance adjuster.

Caveat: Even where it appears that no current relationship exists, there may be a lot of baggage from a prior relationship with which the parties need to deal. For instance, in a medical malpractice action involving the former family doctor, both sides may have significant personal issues other than the pure monetary compensation. This may be true for the doctor, as well, even though the insurance company will pay any settlement and, since doctors are not experience-rated, any loss will not affect the premiums. If this is the case, facilitative mediation can provide a significant opportunity for healing to begin.

Picking a Mediator

Since mediation styles differ from mediator to mediator, ask each potential mediator to generally describe his or her style. Then, proceed to more specific questions: Will you evaluate my client's case? If so, under what circumstances will you provide such evaluation? Do you consider yourself a facilitative or an evaluative mediator? Without breaching any confidences, can you describe a few situations in which you felt your style of mediation worked well?

Conclusion

Each attorney should fully understand potential mediator styles and fully explore the facilitative/evaluative choice with the client before the client makes a decision about how to proceed. When it comes to choosing a form of mediation or mediator, make sure that your client can see the "whole elephant," and not just depend on the portion that you may be holding at the time, to make their decision. ■

Endnotes

1. Leila P. Love, "The Top Ten Reasons Why Mediators Should Not Evaluate," 24 *Fla. St. U. L. Rev.* 937, 946 (1997) quoting Chief Judge's N.Y. State Court Alternative Dispute Resolution Project, Court-Referred ADR in N.Y. State 7 (1996).
2. See *id.* at 947.
3. Carrie Menkel-Meadow, "When Dispute Resolution Begets Disputes of Its Own: Conflicts Among Dispute Professionals," 44 *UCLA L. Rev.* 1871, 1887 (1997).
4. *Id.*

5. See Love, *supra* note 1, at 939.
6. Joseph B. Stulberg, "Facilitative Versus Evaluative Mediator Orientations: Piercing the 'Grid' Lock," 24 *Fla. St. U. L. Rev.* 985, 990 (1997).
7. *Id.* at 996.
8. Leonard L. Riskin, "Understanding Mediator Orientations, Strategies, and Techniques," 12 *Alternatives to High Cost Litig.*, 111 (1994).
9. Stulberg, *supra* note 6 at 995.
10. *Id.*
11. See Love, *supra* note 1, at 938.
12. Stulberg, *supra* note 6 at 995.
13. *Id.* at 1000.
14. Riskin, *supra* note 8.
15. Leonard L. Riskin, "Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed," 1 *Harv. Negotiation L. Rev.* 7, 23-24 (1996); see Stulberg, *supra* note 6 at 985.
16. Kimberlee K. Kovach & Leila P. Love, "Evaluative Mediation Is an Oxymoron," 14 *Alternatives to High Cost Litig.*, 31 (1994).
17. *Id.*
18. Stulberg, *supra* note 6 at 986.
19. Stulberg, *supra* note 6 at 1001.
20. Lon L. Fuller, "Mediation - Its Forms and Functions," 44 *S. Cal. L. Rev.* 305, 325 (1971).
21. Robert B. Moberly, "Mediator Gag Rules: Is it Ethical for Mediators to Evaluate or Advise?," 98 *S. Tex. L. Rev.* 669, 672 (1997), see Love, *supra* note 1, at 939; Stulberg, *supra* note 6 at 986. Even the facilitative camp is not homogeneous; should mediators seek settlement or should they attempt to transform the parties to better understand and value themselves and the other side. Carrie Menkel-Meadow, *supra* note 3, at 1887-88. Unfortunately, since labeling of ideas is also defining, this dichotomous debate over these two principals totally forecloses any discussion of transformative mediation. See generally Robert A. Baruch Bush & Joseph P. Folger, *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*.
22. See, Riskin, *supra* note 15, at 12-13, 40; Stulberg, *supra* note 6 at 988.
23. Christopher W. Moore, "The Mediation Process: Practical Strategies for Resolving Disputes" 14 (1986).
24. Jeffrey W. Stempel, "Beyond Formalism and False Dichotomies: The Need for Institutionalizing a Flexible Concept of the Mediator's Role," 24 *Fla. St. U. L. Rev.* 949, 951-52 (1997).
25. James H. Stark, "The Ethics of Mediation Evaluation: Some Troublesome Questions and Tentative Proposals, From an Evaluative Lawyer Mediator," 38 *S. Tex. L. Rev.* 769, 774 (1997), see Carrie Menkel-Meadow, *supra* note 3, at 1887.

Report on Mediation Pilot Project of the Montgomery County Family Court

By Honorable Richard H. Dorrough, Montgomery County Circuit Court

In August 1997, the Montgomery County Family Court received funding from the Alabama Supreme Court Commission on Dispute Resolution for a mediation pilot project, whereby all new divorce cases and modifications concerning custody, visitation and post-majority education issues would be subject to referral for mediation. A mediation notice is issued in each subject case and if no objection is filed to mediation, an order of mandatory mediation is entered after approximately ten days. Parties who can show that they are unable to pay for mediation may seek a waiver and mediators can be paid up to \$250 for services under the project from project funds.

Although the grant was approved in August 1997, it took until approximately November 1997, to start the program in earnest. Currently, 26 mediators are approved under the program project and all three of the family court judges are sending mediation notices and orders of mediation when appropriate. Generally, the response by parties and the bar has been good, however, it initially appears that education concerning mediation and encouragement without mandating mediation may be the best approach for family law cases.

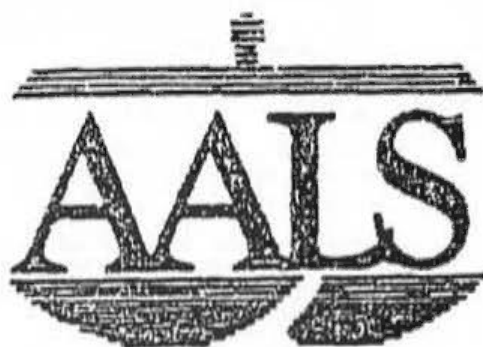
Between November 1997 and April 1998, objections to mandatory mediation were filed in approximately 40 percent of the cases, with the primary objections being to the cost of mediation (even in light of the waiver provisions) and notation that the parties are already working toward a settlement

with counsel and that mediation would appear to be unnecessary. A few attorneys routinely object to mediation, but the majority are open to the same and apparently are analyzing their cases on a case-by-case basis.

Of cases ordered to mandatory mediation, approximately one-half have resulted in a mediation agreement and settlement; in the other one-half of cases, either no report has been filed by the mediator (primarily due to the parties' failure to make arrangements for mediation) or a notice of non-settlement has been received.

Contrary to expectations, in the majority of cases where mediation occurs, the parties are apparently making direct arrangements for payment of mediation fees. Only a few requests for waiver of mediation fees have been received and only a handful of requests have been processed for pilot fund payment to mediators. It may also be that a number of mediators are utilizing project mediations as their required pro bono services.

The Montgomery County Family Court is also participating in a pilot mediation project for visitation access issues in paternity actions. Under this program a fund-paid mediator is present at docket calls, or otherwise available for appointment, to mediate issues of visitation in child support enforcement and paternity actions. It is hoped that this project will be expanded to address other issues in the near future and it appears to be beneficial to clients who are generally *pro se*. ■



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Rules on the Alabama State Bar Resolution of Fee Disputes

By Rodney A. Max, *Sirote & Permutt, P.C.*; William W. Sanderson, Jr., *Lanier, Ford, Shaver & Payne*; and Judith M. Keegan, *Alabama Center for Dispute Resolution, Inc.*

In 1996, the Alabama State Bar Board of Bar Commissioners approved Rules on the Resolution of Fee Disputes. These Rules devise a program by which the Alabama State Bar Committee on Fee Dispute Resolution is to administer a program for resolving disputes between lawyers and their clients (Rule 101 Committee). The expressed purpose of the program is set forth in the preamble as follows:

The purpose of this program is to provide a simple and convenient non-judicial mechanism for the resolution of disputes between lawyers and clients over fees.

Participation in the program is completely voluntary. Unless both parties by written consent agree to mediation and/or arbitration by the Committee, the Committee has no grounds for jurisdiction to involve itself with the dispute.

Jurisdiction of the committee is predicated upon the petitioning party providing evidence that he or she has made a good faith effort to resolve the dispute. Additionally, the program is not designed to resolve fee disputes between lawyers (where joint services have been rendered), and is not to be used to resolve disputes between lawyers in connection with their involvement in a partnership or other business entity.

The preamble provides that parties who consent to use the fee dispute program must first attempt to achieve a jointly agreed upon resolution through non-binding mediation. If the parties are unable to reach an agreement through mediation, then binding arbitration may be requested by either side.

While mediation by definition is non-binding, arbitration by expressed definition in the Rules is binding. Thus, to

the extent that an arbitration award is obtained, it is enforceable under the general Arbitration Rules of the State of Alabama.

The Committee on Fee Dispute Resolution consists of no more than 36 members to be appointed by the president of the Alabama State Bar (Rule 102). The initial committee has been selected and consists of 30 members with staggered terms of up to three years. Thereafter, each member serves for a period of three years. The Rules provide that if a member's term expires while engaged in a mediation or arbitration, his/her term shall be extended until the mediation or arbitration is



Rodney A. Max

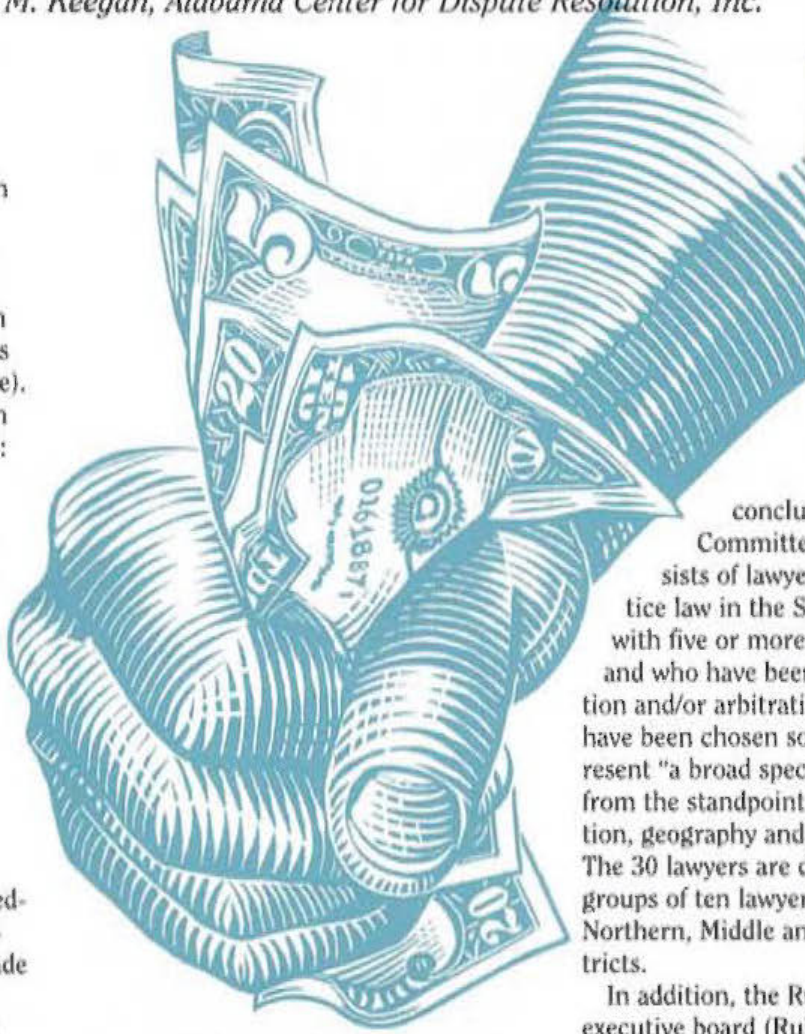
concluded (Rule 102).

Committee membership consists of lawyers licensed to practice law in the State of Alabama, with five or more years of experience and who have been trained in mediation and/or arbitration. The lawyers have been chosen so as to properly represent "a broad spectrum of the Bar from the standpoint of firm organization, geography and types of practice." The 30 lawyers are divided into three groups of ten lawyers representing the Northern, Middle and Southern districts.

In addition, the Rules provide for an executive board (Rule 103) consisting of six members, one of whom is the chair of the committee. The executive board is charged with the responsibility of overseeing the work of the committee, reviewing recommendations for dismissal of complaints, and developing forms to implement the procedure prescribed herein, and may formulate Rules of procedure not inconsistent with these Rules.

Rule 104 defines the jurisdiction of the committee as follows:

The Committee shall have jurisdiction over any disagreement between lawyers and clients over fees not otherwise precluded by the limitations set forth in Rule 104 or



105. The fee in question, whether paid or unpaid, must be charged for legal services rendered by a lawyer who is or who was at the time of the rendition of the service licensed to practice law in the State of Alabama. The services or charges in question must have been performed either in the State of Alabama or from an office located in the State of Alabama. At the time the legal services in question were performed there must exist or have existed an express or implied contract establishing an attorney-client relationship.

Rule 104 expressly excludes committee jurisdiction over disputes in which a court has jurisdiction to fix the fee by statute or other law; disputes which involve services which may constitute a violation of the *Rules of Professional Conduct*; and disputes in which the full amount of all terms have already been fixed or approved by order of a court. Additionally, the dispute must not be the subject of litigation in a court of record at the time the petition for mediation or arbitration is filed, and the dispute must not be the subject of an arbitration more than two years following the date on which the controversy arose (if the date is disputed, it shall be determined in the same manner as the commencement of a cause of action on the underlying contract)

Fee complaints are processed according to Rule 105. Requests for Committee consideration of fee disputes shall be submitted in writing on forms approved by the committee and addressed to the Alabama State Bar Committee on Fee Dispute Resolution, 415 Dexter Avenue, Montgomery, Alabama 36104, or mailed to the Alabama State Bar, Committee on Fee Dispute Resolution, P.O. Box 671, Montgomery, Alabama 36101-0671.

Rule 105 expressly states that a fee dispute may be referred to the committee by the Alabama State Bar Center for Professional Responsibility, the Disciplinary Commission of the Alabama State Bar, local bar association grievance committees, or any attorney or client. Any fee disputes submitted to the Committee, other than from the Alabama State Bar Center for

Professional Responsibility or the Disciplinary Commission of the Alabama State Bar, are first sent to the general counsel of the Alabama State Bar for review of potential Code of Professional Responsibility violations. If the general counsel determines that the petition is appropriate, it is processed by the committee pursuant to the Rules.

A complaint should state with clarity and brevity the facts, the petitioner's position, the identity of both the client and the attorney (together with their addresses), a list of names and addresses of those persons who are affected by the outcome, and a statement as to what good faith effort the petitioner has made to resolve the dispute.

Once the petition is received by the committee, it will be assigned a number and forwarded to the chairman of the committee who will assign it to a member within the district from which the complaint arises. A letter of explanation of the process will be sent by the chairman to the client and attorney, together with a copy of the Rules.

The assigned member is required to review the complaint and obtain additional information to assure jurisdiction under the Rules. This preliminary review will consist of a determination as to whether or not an attorney/client relationship existed and whether fees were paid and services were rendered under an expressed or implied contract. If the committee member determines that there are no jurisdictional grounds for the complaint, he/she shall prepare a brief written report setting forth the facts and recommendation for submission to the executive committee which will make a final decision as to whether or not to approve or disapprove the committee member's recommendation. If the executive committee disapproves of the committee member's recommendation, the complaint will be reassigned to a new member. If the executive board concurs in the assigned member's recommendation, the matter is closed and the complainant so advised.

If the committee member determines that the complaint meets the jurisdictional prerequisites, he/she will recommend that the parties consider mediation and will send them a form to expressly consent to the process. Upon

receipt of an affirmative response by both parties, mediation shall take place under Rule 106 in the following manner:

1. Mediation will be convened within 30 days pursuant to the Alabama Civil Court Mediation Rules.
2. Each party shall have a person or representative present with authority to settle the dispute.
3. If resolved, a written agreement setting forth the terms and conditions of the resolution shall be prepared and signed by all parties.
4. If unresolved, written notice shall be sent by the committee member declaring the mediation process at an end.

Consistent with the Alabama Civil Court Mediation Rules, confidentiality of the proceedings is mandatory. In addition, it is expressly stated that "all conferences and discussions which occur in connection with mediation conducted pursuant to this process shall be deemed settlement discussions, and nothing said or disclosed, nor any document produced, which is not otherwise independently discoverable, shall be offered or received as evidence or used for impeachment or for any other purpose at any current or future arbitration or litigation."

Rule 107 prescribes the arbitration process. If mediation is unsuccessful, the committee member or the committee chairman asks the parties to consider binding arbitration, and if the parties are interested, they are given the opportunity to express their consent in writing by a form provided by the committee. This consent form includes a notice that the arbitration will be handled pursuant to the procedures set out in § 6-6-1 *et seq.*, *Code of Alabama*. The Rule further states that the arbitrator selected shall not be the same person who served as mediator. If the parties do not wish to consent to the arbitration, the committee member has "no obligation to assist the adverse party in finding legal representation, and no obligation to serve without fee as an expert witness in any subsequent litigation which the attorney or the client may institute to resolve the dispute."

If the parties do consent to binding arbitration, one committee member is selected to decide any controversy less

than \$2,500. In any controversy of \$2,500 or more, either party may request that the arbitration hearing be conducted by a panel of three arbitrators. Panel members are selected by the chair of the committee, who will designate which of the three arbitrators shall be chair of the panel. Each member chosen must disclose to the committee chair any reasons why he/she cannot ethically or consciously serve on the panel (due to a conflict or otherwise). Should a member decline, the committee chair shall select an eligible committee member with the mandate to "rotate selection of panel members in an equitable manner." The Rule provides for the absence and replacement of arbitrators at the discretion of the chair of the panel and/or the chair of the committee.

Parties may elect to waive oral hearing and may submit their contentions in writing to the arbitrator(s). To the extent that an oral hearing is requested, the arbitrator(s) are vested with all the powers and duties as granted and imposed upon neutral arbitrator(s) by the Code of Alabama 1975 § 6-6-1 *et seq.* The arbitrator(s) will hold a hearing within 45 days after receipt of the assignment and will render an award within 15 days after the closing of the hearing. In the event of an arbitration panel, a decision is binding if agreed upon by the majority. Written notice of the hearing is made by registered or certified mail no less than 14 days before the hearing. Each party will be requested to file a statement of the facts at least seven days before the hearing.

Rule 107 defines "party" as any party who has executed a consent to binding arbitration with the understanding that if a person has failed to consent to binding arbitration, they shall not be entitled to notice and shall not be eligible to participate in the hearing.

At the arbitration hearing, the parties are entitled to present evidence and cross-examine witnesses. Each party has a right to be represented by an attorney. The Rules expressly prohibit any *ex parte* communications between party and arbitrator.

The arbitrator or panel is entitled to rule on admission and exclusion of evidence and questions of procedure, and is

to exercise powers relating to the conduct of the hearing as it is set forth in the Code of Alabama 1975 § 6-6-1 *et seq.*

The arbitrator or panel may request opening statements and prescribe the order of proof.

The normal order of proceedings shall be the same as in a trial with the petitioner first presenting his or her claim. In any event, all parties shall be afforded full and equal opportunity for the presentation of any material evidence or relevant proofs. **The standard of proof to be used by the arbitrator(s) in determining issues shall be by a preponderance of the evidence.**

All testimony shall be given under oath, administered by the arbitrator (or when a panel, by the chair of the panel).

If either party to the arbitration, having been duly notified, fails to appear, the arbitrator or panel may hear and determine the controversy upon the evidence produced notwithstanding the failure to appear, and the arbitrators may enter a binding award.

The decision of the arbitrator or panel is expressed in a written award signed by all of them. To the extent that there is a

dissent, it shall be separately signed, but the award shall be binding if signed by the majority of the arbitrators. (Rule 108)

An arbitrator or panel may grant any remedy of relief, including a direction for specific performance. "However, no arbitrator shall have the authority to enter an award contrary to the terms of an executed written contract between the parties except on the grounds of fraud, accident, mistake, or as being contrary to the laws of this State governing contracts." In essence, the arbitrator(s) shall follow the terms of the contract unless those terms are vitiated by proof of fraud, accident, mistake or contravention of statute or common law.

Upon conclusion of the arbitration and execution of the award, the chair of the panel is required to forward the award, together with the entire file to the chair of the committee who, on behalf of the panel, will serve a signed copy of the award on each party to the arbitration, either personally, registered or certified mail. A copy of the award is also to be filed with the Alabama State Bar.

Certainly, the parties may settle their dispute during the course of the arbitration by submitting a written consent of all parties in a written settlement award which



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is to be communicated as set forth above (to the arbitrator or panel chair who will thereafter forward it to the chair of the committee as hereinabove stated).

The award does not need to be in a particular form, but is to set forth the remedy consistent with the issues presented. The award should not divulge any matters or communications between attorney and client which remain confidential or privileged, and may assess payment of expenses related to the proceedings (but not fees to the arbitrators or counsel).

Rule 109 mandates that the "arbitration shall be governed by the substantive laws of the State of Alabama without regard to conflicts of law rules and by the arbitration law of the Federal Arbitration Act (Title 9, United States Code), and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof." Accordingly, the award may be enforced as provided by the general arbitration laws of the State of Alabama.

If the award determines that the attorney is not entitled to a fee, the attorney will:

- A. Terminate all claim or interest against the client in respect to the subject matter of the arbitration;

- B. Terminate all right to retain possession of documents, records or other property of the client pertaining to the subject matter of the arbitration; and

- C. Terminate all right to oppose substitution of counsel in any pending litigation pertaining to the subject matter of the arbitration.

If the award is in favor of the attorney, the award will fix the amount of entitlement and payment will:

- A. Constitute a complete satisfaction of all claims and interest against the client in the subject matter of the arbitration;

- B. Terminate all right of the attorney to retain possession of any documents, records or other property of the client pertaining to the subject matter of the arbitration; and

- C. Terminate all right of the attorney to oppose substitution of any attorney who may be participating in any pending litigation pertaining to the subject matter of the arbitration.

If the award is in favor of the client and requires a refund, the payment of the amount identified will constitute a complete satisfaction of all claims and interests of the client against the attorney in respect to the subject matter of the arbitration.

Under Rule 110, confidentiality is expressly mandated. Specifically:

With the exception of the award itself, all records, documents, files, proceedings, and hearings pertaining to arbitration or mediation of any dispute under these Rules in which both the complainant and the attorney have agreed to be bound by the result, shall not be opened to the public or any person not involved in the dispute without a written consent of both parties to the arbitration or mediation. However, the Committee may reveal confidential information in those circumstances in which the Office of General Counsel of the Alabama State Bar is authorized to do so by Rule 30 of the *Rules of Disciplinary Procedure*.

This above synopsis is not as much an interpretation of the Rules, as it is a recitation and review of them, so that members of the bar are aware that the program is available and are familiar with the procedures. The executive committee, together with the committee itself, is encouraged to review these Rules for the purpose of achieving consistency, clarification and equitable results. ■

Lee County District Court Volunteer Mediator Pilot Project



Volunteers complete a three-day mediation training provided by Judy Keegan of the Alabama Center for Dispute Resolution and Ken Duham of Jones Law School.

Governor Signs Executive Order Encouraging Use of Mediation by State Agencies



L-R, Marshall Timberlake, Karen LaMoreaux Bryan, Judith M. Keegan, Governor Fob James, and Frank Lankford

On March 18, 1998, Proclamation Day, Governor Fob James signed Executive Order Number 42 encouraging state agencies to study, develop and implement appropriate mediation procedures within their agencies. The executive order was the result of a collaborative effort by the Alabama State Bar Committee on Alternative Methods of Dispute Resolution (ADR) Subcommittee on State Administrative Law ADR chaired by Karen LaMoreaux Bryan, P.E. LaMoreaux & Associates, Inc.; Judith M. Keegan, director, Alabama Center for Dispute Resolution, Inc.; Olivia Jenkins, office of general counsel, Alabama Department of Environmental Management; O. James Goodwyn, Jr., chief legal counsel, Alabama Department of Conservation and Natural Resources; Jim L. Mysinger, deputy general counsel, Alabama Department of Public Health; Robert L. McCurley, Jr., director, Alabama Law Institute; Tracy S. McCooley, attorney, Alabama State Employees Association; R. Frank Ussery, legal counsel, and Richard N. Meadows, chief administrative law judge, Alabama Personnel Department; A. Lee Miller III, general counsel, Alabama Department of Finance; Troy R. King, deputy executive secretary, State of Alabama Governor's Office; and Justice Champ Lyons, Jr., Supreme Court of Alabama.

With the executive order in place, state agencies now have the encouragement of the executive branch to seek mediation training for agency personnel and to identify ways of using

mediation in the workplace in pre- and post-litigation situations.

Steven A. Benefield, the chair of the state bar Committee on ADR, lauded the partnership effort, stating, "The consensus found by all of the parties interested in Executive Order 42 is an example of the positive results that can be created by encouraging parties to discuss matters with an attitude and willingness to reach agreement rather than being adversaries. Executive Order 42 will provide the impetus for state agencies to work creatively to find agreement with the citizens of Alabama and within and among the agencies themselves instead of automatically approaching differences with an adversarial attitude. The efficiency and savings generated by such an effort could be staggering. All of those who participated in the process are to be commended. It is another example of lawyers, in both private practice and government service, serving the public."

A task force is being formed to facilitate and coordinate the study and implementation of mediation in state administrative agencies and offices. Marshall Timberlake and Karen LaMoreaux Bryan will head that task force. Additional members will include representatives of state agencies.

On the same day, Governor James made an initial contribution of \$100,000 to the recently formed Alabama Dispute Resolution Foundation. Accepting the check were Marshall Timberlake and Frank Lankford. ■

The Montgomery Community Dispute Resolution Program

By Malcolm N. Carmichael, Balch & Bingham, Montgomery

During 1997, Leadership Montgomery, Inc. sponsored the formation of the Montgomery Community Dispute Resolution Program ("MCDR"), a community-based alternative dispute resolution program located in Montgomery. Modeled in part after the Dispute Settlement Center of Durham, North Carolina, the Montgomery program trained its first all-volunteer community mediators during August 1997. A 20-hour, two-and-a-half day block of intensive training was provided by a trainer from the Dispute Settlement Center of Durham.

MCDR accepts referrals of community disputes from the Montgomery area at large. There is no charge for community mediation services provided through the program by its volunteer mediators. Fourteen volunteer mediators became part of the initial core mediator group. Program volunteer mediators for community disputes are not required to be attorneys. The mediators represent a variety of educational, work and cultural backgrounds and reflect the demographic makeup of

the community as a whole. Of the 14 initial volunteer mediators, only one is a lawyer.

The purpose of MCDR is to reduce destructive conflict and offer constructive processes for resolving differences and disputes referred to MCDR between individuals, groups and organizations in the community. Typical community disputes may involve issues over neighborhood parking, boundaries and uses, neighborhood relationships, harassment, animal nuisance, disturbing the peace and noise, or strife among co-workers, friends or other conflicts where maintaining a positive relationship is a critical factor. Public issue disputes may also be dealt with through a community mediation program.

Cases referred to MCDR are initially screened by the program director. If determined appropriate for community mediation, the program director will assign each case as promptly as possible to volunteer mediators. Each MCDR case is assigned to two volunteer mediators. Normally a mediation is scheduled within two weeks of its referral to the program.

The first mediation of a case referred to MCDR was completed on August 27, 1997. By April 15, 1998 77 cases had been referred to MCDR. Of those cases, 73 were deemed appropriate for mediation. Fifty mediations have been conducted or scheduled for mediation by April 15, 1998. Written or verbal agreements resulted in 97 percent of those cases where mediations have already taken place.

The community disputes mediated through MCDR include property, neighbor-to-neighbor, harassment, disorderly conduct, and relationship/communication issues. In some cases warrants had already been issued but were dismissed by the parties as a result of the mediation.

The MCDR developed a comprehensive program manual, including contracts by which the disputants agree to participate in the mediation and abide by the MCDR confidentiality rules. The manual also includes form mediation agreements which are completed and signed by the parties during the course of the mediation. Ethical guidelines for the mediators are also included.

The MCDR intends to be a model for other towns in the state with respect to community mediation programs. Additional information regarding MCDR may be obtained from the program director, John Dow, at P.O. Box 241441, Montgomery, Alabama 36124-1441, or (334) 395-9871.

The MCDR has already alleviated some of the criminal court docket in the Montgomery community. It is further providing members of the community with a process by which persons in conflict may seek to resolve that conflict themselves. MCDR mediators are afforded the unique opportunity to demonstrate to citizens problem resolution and communication skills and methods that would otherwise not be available to the community. Those skills and methods may also be applied by citizens themselves in addressing other conflicts. ■

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University of Alabama School of Law

*By Scott Hughes, director
of Clinical Education*

The University of Alabama offers a three-credit-hour survey course in Alternative Dispute Resolution. Since demand for the course has increased more than six-fold, ADR may be offered each semester for at least three more semesters. This simulation-based course emphasizes integrative negotiation skills, facilitative mediation and communication styles while still leaving time to discuss theoretical and ethical issues which abound in ADR. The students learn by planning for and conducting a variety of role-playing exercises, reflecting on the results of the exercises, and then writing about their experiences. This "learning loop" helps reinforce the skills and values which are crucial to all forms of voluntary dispute resolution. Finally, near the end of the semester, the students are grouped into teams for the design and analysis of a mediation simulation.

Because of the increased interest in this topic, I will be team-teaching this course with skilled negotiators and mediators from the community in order to maintain close contact with the students.

I am also working on plans for a mediation clinic to give interested students a hands-on exposure to mediation. ■

The Institute for Dispute Resolution at Jones School of Law

*By Kenneth F. Dunham, ADR director,
Jones School of Law, Faulkner University*

On February 19, 1998, Jones School of Law hosted the Second Annual Alabama Conference on Dispute Resolution. The keynote speaker for the second conference was N. Lee Cooper, immediate past president of the American Bar Association. Following Mr. Cooper's keynote address about the positive effects of mediation on the daily practice of law, the participants were able to choose from a variety of topical classes in the ADR field. The faculty for the second conference included numerous local, national and international luminaries in the field of dispute resolution. The Second Annual Jones School of Law Mediation Award was presented to Birmingham attorney and mediator Marshall Timberlake.

The approach taken regarding ADR at Jones School of Law is two-fold. Practical skills seminars will be offered on a regular basis to allow lawyers and other professionals to enhance their ADR skills, and elective curriculum courses will be offered to law students. Jones School of Law will offer several seminar courses in mediation and nego-

tiation in the coming months. These courses will be taught by instructors who are certified professionals in their field. The curriculum course offerings will be expanded in the near future to include arbitration, negotiation, and interviewing and counseling, in addition to the present course offerings. The future plans include a certificate program in ADR for professionals, and eventually an LLM program in ADR. The Institute for Dispute Resolution at Jones School of Law has as its stated goal to be the best ADR training facility in the Southeast. The Institute is committed to maintaining the highest quality programs and courses available in the ADR field, while keeping the cost of these programs at an affordable level.

For more information about program availability and upcoming seminars at Jones School of Law, contact Kenneth F. Dunham, ADR director, or Melissa Hilyer, assistant to the director, Institute for Dispute Resolution, Jones School of Law, Faulkner University, 5345 Atlanta Highway, Montgomery, Alabama 36109, or call (334) 260-6101. ■

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ADR at Cumberland School of Law of Samford University

*By Henry C. Strickland, Professor of Law
Cumberland School of Law, Samford University*

Alternative Dispute Resolution was taught at Cumberland School of Law even before the subject became a well-known and important part of law practice in Alabama. Today, ADR is an important part of the curriculum. The subject is now a part of many traditional courses, including civil procedure, contracts, domestic relations, and others. In addition, Cumberland offers a growing number of specialized courses and extra-curricular opportunities relating to ADR.

ADR instruction at Cumberland currently is built around an elective course entitled "Alternative Dispute Resolution," which is offered every semester. This course surveys the many processes available to resolve disputes and examines both the dynamics and legal implications of those processes. It examines negotiation, mediation and arbitration as well as such other processes as the minitrial, summary jury trial, med/arb, and others. It also provides students the opportunity to con-

duct mock negotiations and mediations. Other courses relating to ADR that are currently in the catalogue or being developed for the 1998-99 academic year are legal interviewing, counseling and negotiation; a mediation seminar; and a seminar on faith-based conciliation, offered in conjunction with Samford's Beeson Divinity School.

Cumberland also provides students opportunities to develop negotiation skills in several negotiation competitions. The school holds intramural negotiation competitions each spring and summer modeled on the ABA National Negotiation Competition. In these competitions, students conduct mock negotiations, complete with confidential information and instructions from their clients. These sessions are judged and critiqued by experienced lawyer-negotiators in the Birmingham area and by faculty. Cumberland also has been active in the ABA's National Negotiation Competition, hosting the regional competition regularly and fielding teams each year. Like its trial teams, Cumberland's negotiation teams have been very successful. This year's team, for example, won the Southeast Regional held in Virginia and went on to place third in the country at the national finals.

Cumberland will alter and expand its ADR instruction in the next year or two as part of a complete review of the curriculum now being planned. Details of the changes must await the completion of that process, but they likely will include additional specialized courses on such subjects as negotiation, mediation and arbitration. The faculty also intends to explore programs that will offer additional experiential training in the ADR area, including externships and perhaps involvement in some form of mediation clinic. With its current programs and these changes, Cumberland will continue its tradition of strong skills training not only in the area of trial advocacy but also in ADR. ■

D. Dale Tyler... Founder of Tyler, Eaton, Morgan, Nichols & Pritchett Court Reporters, died on January 28, 1998. He was our mentor, dear friend and partner.

Dale was the first Registered Professional Court Reporter in the state of Alabama, an expert in his field, and was always armed with a laugh, a helping hand and a warm, caring heart.

We will miss him deeply!

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Environmental Law Section Initiates Community Service Project

The Environmental Law Section of the Alabama State Bar has taken an active role in the community by developing and instigating an ongoing mediation-oriented service project aimed at high school and college-aged young men and women in Alabama.

The section initiated its project in celebration of Earth Day, conducting its first environmental mediation scenario on April 21 with law students in an Alternative Dispute Resolution class taught by Professor Scott H. Hughes at the University of Alabama School of Law. On April 28, graduate and undergraduate students in Dr. C. Hobson Bryan, Jr.'s Environment and Society class used the scenario for their final class of the semester as a way of demonstrating what they had learned throughout the semester.

In May, two Senior Girl Scout Troops, Troop 238 co-led by Nancy Lambert Brown and Betty Hardee, and Troop 343 led by Linda Steeves, initiated a program of study utilizing the Environmental Law Section's mediation role-play scenario to demonstrate their conflict resolution skills for achievement of the Girl Scout Gold Award, the highest award granted a Girl Scout.

Byron Bart Slawson, a practicing attorney from Birmingham, Alabama, and Karen Bryan, vice-president of P.E. LaMoreaux & Associates, Inc. (PELA), an environmental consulting firm, serve as co-chairs of Earth Day activities for the Environmental Law Section. They developed the script for the scenario which involves the siting request for a Concentrated Animal Feed Operation (CAFO) by Pigs R Us, a fictional corporation, in Pennyles County, a fictional county. Ms. Bryan, a practicing attorney-mediator, has led the mediation role-plays for the Environmental Law Section.

The Environmental Law Section of the Alabama State Bar plans to conduct role-play scenarios throughout the year in elementary school, high school and college classes around the state. The project provides an opportunity for members of the section to become involved in community service work and to learn more about mediation and CAFOs.

Anyone interested in participating in or conducting a role-play activity in conjunction with the Environmental Law Section should call Karen Bryan at (205) 752-5543 (Tuscaloosa) or Bart Slawson at (205) 870-1997 (Birmingham). ■



Members of Girl Scout Troop 238



University of Alabama Geography Department Environment and Society class



University of Alabama School of Law, Alternative Dispute Resolution class

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Alabama Academy of Attorney Mediators Holds First Meeting

The first meeting of the Alabama Academy of Attorney Mediators was held on May 7 at the office of its president, Charles Denaburg of Najjar Denaburg, P.C. in Birmingham, Alabama.

The Alabama Academy of Attorney Mediators is a nonprofit organization that was formed this year for the purpose of supporting and promoting attorney-mediators who are committed to using mediation as a method of alternative dispute resolution.

Members of the Academy are among the most experienced attorney-mediators in Alabama. The Academy's membership is open to Alabama attorney-mediators who are sponsored by three members of the Academy and who have practiced at least ten years, completed 20 hours of mediation training, and conducted ten mediations in the preceding two years. ■

ASB School Partnership Program

The Alabama State Bar's successful school partnership program, now in place or being started in 14 Alabama counties, is actively involving students in conflict resolution. The Montgomery County Bar Association served as the pilot program sponsor in 1996, using the American Bar Association's "I'm the People-It's about citizenship and you" curriculum. Resolving conflicts, one of four topics included in the material, is one of the most popular among lawyers and teachers in the program. Conflict resolution being taught in the classroom is featured prominently in the ASB public service video presentation "TO SERVE THE PUBLIC" and in the excerpts used for a 30-second public image statewide radio and television campaign begun in 1998.



Peer Mediation In Alabama Schools

Madison County Middle School students participate in peer mediation training, through a mini-grant from the Alabama Supreme Court Commission on Dispute Resolution. Training of the students was conducted by Anne Isbell of the Huntsville Better Business Bureau.

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The Alabama State Bar is pleased to make available to individual attorneys, firms and local bar associations, at cost only, a series of brochures on a variety of legal topics of interest to the general public.

Below is a current listing of public information brochures available from the Alabama State Bar for distribution by local bar associations, under established guidelines.

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In-State Mediation Training

(Approved for CLE credit and Alabama Center for Dispute Resolution roster registration)

July 13-15
Birmingham

Mediation Process & the Skills of Conflict Resolution

Litigation Alternatives, Inc.
(Troy Smith)
(800) ADR-FIRM • (888) ADRCLE3
22 Hours

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Montgomery

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August 5-9
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School for Dispute Resolution
(Lemoine Perce)
(404) 373-4457
40 Hours

OUT-OF-STATE

July 16-20
Atlanta

Divorce Mediation

Atlanta Divorce Mediators
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Note: To date, all courses except those noted have been approved by the Center. Please check the Interim Mediator Standards and Registration Procedures to make sure course hours listed will satisfy the registration requirements. For additional out-of-state training, including courses in Atlanta, Georgia, call the Alabama Center for Dispute Resolution at (334) 269-0409.



CLE OPPORTUNITIES

The following listing is a random sampling of in-state programs approved for credit by the Alabama Mandatory CLE Commission on the printing deadline date for this issue of The Alabama Lawyer. Many other in-state programs, as well as programs nationwide, are continually being evaluated and approved. All are identified by sponsor, location, date and specialty area. For a complete listing, contact the MCLE Commission office at (334) 269-1515, ext. 156 or 158, or you may view a complete listing of current, approved programs at www.alabar.org.

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9

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16

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National Business Institute
CLE credits: 6.0 Cost: \$179
(715) 835-8525

17

Trying the Automobile Injury Case in Alabama

Montgomery
Governor's House
National Business Institute
CLE credits: 6.0 Cost: \$179
(715) 835-8525

Buyers and Sellers Beware: A Guide to Buying or Selling an Alabama Business

Huntsville
Lorman Business Center, Inc.
CLE credits: 6.0 Cost: \$169
(715) 833-3940

21

Recent Developments in Insurance Law

Birmingham
Lorman Business Center, Inc.
CLE credits: 6.0 Cost: \$169
(715) 833-3940

AUGUST

5-9

Divorce & Child Custody Mediation Training

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School for Dispute Resolution
CLE credits: 40.0 Cost: \$985
(404) 299-1128

7

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14

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SEPTEMBER	11	Elder Law	Birmingham
	18	Criminal Defense	Birmingham
	25	Family Law Practice	Birmingham

OCTOBER	2	Depositions	Birmingham
	9	Tort Law	Birmingham
	16	Insurance Law	Birmingham
	23	Mediation	Birmingham
	30-31	Family Law Retreat	Gulf Shores
	30	Trial Skills	Birmingham

NOVEMBER	6	Real Estate Law	Birmingham
	13	Bankruptcy Practice	Birmingham
	19	Jury Selection	Birmingham



RECENT DECISIONS

By Wilbur G. Silberman

Bankruptcy

United States Supreme Court declares that treble damages allowed in fraud case not dischargeable

Cohen v. De La Cruz, 118 S.Ct. 1212, March 24, 1998, 32 BCD 400. Prior to bankruptcy, the debtor owned residential properties in Hoboken, New Jersey. The city rent control administrator found the debtor was overcharging his tenants, and ordered the debtor to make a refund. The debtor did not comply, but filed a chapter 7 seeking to discharge his debt. The tenants filed an adversary proceeding contending the debt was not dischargeable under §523(a)(2)(A). Under the New Jersey Consumer Fraud Act, the tenants sought and were allowed treble damages by the bankruptcy court. All lower courts, including the Third Circuit, affirmed. Because of a split in the circuits, the United States Supreme Court accepted the case.

In affirming the lower courts' holdings, it approved the Eleventh Circuit decision of *In re St. Laurent*, 991 F.2d 672 (11th Cir. 1993). Justice O'Connor opined that a straightforward reading of the section clearly excepted from discharge "any debt" for money, property, services or credit which had been fraudulently obtained, including treble damages assessed by reason of fraud. Justice O'Connor wrote that a "debt" is defined as a "liability on a claim" and a "claim" is defined as a "right to payment" which has been held to be "nothing more nor less than an enforceable obligation" and that the Code section in question imposes no limitation on the extent to which a debt arising from fraud is excepted from discharge. The debtor argued that the Code section excepted only that portion of the award for damages corresponding to the value of the property obtained through fraud. The Court rejected such by stating that, as used in the Code, debt is construed as a result of the fraud and, if Congress wished to limit the fraud exception to

that which would be considered as restitution, Congress would have made this unmistakably clear.

COMMENT: As the Supreme Court did not change the Eleventh Circuit holding of some five years, this does not change the law in the Eleventh Circuit that punitive damages cannot be discharged under the Bankruptcy Code's exceptions.

When is repossessed automobile property of estate? Eleventh Circuit answers question

In re Lewis, 137 F.3d 1280; 32 BCD 488 (11th Cir. Mar. 25, 1998). In August 1992, Elgin Lewis bought a used car from Hall Motors on an installment plan which granted to seller a security interest in the automobile. Lewis failed to make the October payment. Thereafter, he and his wife filed a chapter 13 in the Northern District of Alabama, which case was dismissed on March 28, 1993. On June 2, 1993, after receiving notice of the dismissal, the seller repossessed the vehicle.

Notice

Proposed Rule of Juvenile Procedure ("Juvenile Conference Committees")

The Alabama Supreme Court's Advisory Committee on Rules of Juvenile Procedure has recommended to the court the adoption of a new rule that would authorize juvenile court judges to establish "juvenile conference committees." The court has ordered that notice of this proposed rule be given by publication in *Southern Reporter Advance Sheets*. The proposed rule provides that in certain situations a juvenile case will be referred to the juvenile conference committee, which will evaluate the case, recommend to the juvenile court judge sanctions to be imposed, and monitor the juvenile's progress. This proposed rule appears in an advance sheet dated on or about May 28, 1998. The court will receive comments regarding this proposed rule through September 2, 1998.

— George Earl Smith, Reporter of Decisions, Alabama Appellate Courts

Two days later, the Lewises filed a second chapter 13 listing the automobile as an asset and offering to pay .62 on the dollar for the outstanding secured balance. The seller refused to return the automobile. The Lewises then filed a turnover petition in the bankruptcy court. The bankruptcy court, holding the automobile to be property of the estate, ordered its return to the debtors, along with compensatory and punitive damages, and attorney's fees. The district court reversed on the ground that debtors only had the right of redemption, which was not property of the estate.

The Lewises appealed to the Eleventh Circuit, arguing that legal title was retained in the repossessed automobile under Alabama law as set forth in the UCC. In addition, they argued that they had a statutory right to redeem the vehicle. In opposition, Hall Motors (the seller) contended that under the Alabama law of conversion, the Lewises lost title and the right to possession of the vehicle upon their default. Hall further contended it had no duty to return the vehicle to the debtors, as their chapter 13 plan did not call for repayment of the total outstanding secured balance plus expenses. The Eleventh Circuit, in reviewing the Bankruptcy Code, held that a "turnover" is ordered only if three primary requirements are met: (1) the property must be "property of the estate," (2) at the time of filing the petition, the debtor must have a right to use, sell or lease the property, and (3) upon request, the court must ensure that the other party's interest in the property is adequately protected. In determining the answer to (1) above, the Court held that the question of debtors' interest being "property of the estate" is a federal question, but that the nature and existence of the debtors' right to property is determined by state law. The Court found that the Northern District of Alabama's

bankruptcy and district courts are split on this issue, but that the Alabama Supreme Court unequivocally holds that a plaintiff must have both title to, and a right of possession in, allegedly converted property to succeed in a conversion action. This view has been confirmed by the Fifth Circuit in the 1997 case of *Thompson v. Ford Motor Credit Co.*, 550 F.2d 256. The Court concluded that when the Lewises filed their second chapter 13, they did not retain any ownership interest in the repossessed automobile. It then determined, following a recent Eleventh Circuit case pertaining to real property (*In re Smith*, 85 F.3d 1555 (11th Cir. 1996)), the same principle should apply to personal property in holding that the statutory right of redemption becomes property of the estate at the beginning of the case. However, after having said this, it held that even if §542(a) of the Bankruptcy Code requires that the property be turned over to the estate, affirmative steps must be taken pursuant to state law, to convert the dormant right to redeem into a meaningful ownership interest, thus requiring the trustee (debtor herein) to tender all obligations plus expenses in order to exercise the right of redemption under the Alabama Code. In *Lewis*, only .62 on the dollar was proposed in the plan. Clearly the estate had not chosen to exercise its right of redemption as it failed to offer full payment. The Court further stated that debtors failed in another requirement by not proposing adequate protection. In conclusion, the Eleventh Circuit held that under the facts, the "bare right of redemption" failed to render the vehicle "property of the estate" under §541(a)(1) and subject to turnover under §542(a).

COMMENT: A complete reading is suggested to determine how this case will

apply in the future to different sets of facts. Why did the opinion conclude with a mention of adequate protection when the court already indicated that under Alabama law, full payment of the obligation plus expenses would be required? Did the mention of adequate protection imply that the court would consider a plan allowing full payments over a period of time, provided that adequate protection was offered? Is this what was meant by inviting comparison to the Sixth Circuit B.A.P. case of *In re Elliott*, 214 B.R. 153 (1997), where the Ohio statute on redemption mirrored that of Alabama, but which plan provided for payment over its life. As *Elliott* discusses the district court opinion in *In re Lewis*, 211 B.R. 970 (N.D. Ala.1997), a review of the *Elliott* opinion should prove helpful, even though in concluding its favorable opinion in behalf of the debtor, it held "as we have determined . . . under Ohio law, absolute title ownership changes *only* after the property possessed by the secured creditor is disposed of pursuant to applicable state law." ■

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Wilbur G. Silberman

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



DISCIPLINARY NOTICE

Notices

- **James Cannon, Jr.**, whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of July 15, 1998, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB No. 97-304(A) before the Disciplinary Board of the Alabama State Bar. [ASB No. 97-304(A)]
- **William Felix Mathews**, whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of July 15, 1998, or thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB No. 98-344(A) before the Disciplinary Board of the Alabama State Bar. [ASB No. 98-344(A)]

Disability

- On March 24, 1998, Panel IV of the Disciplinary Board signed an order placing Tallassee attorney **Charles B. Pienezza** on disability inactive status pursuant to his request and Rule 27 of the Rules of Disciplinary Procedure. [Rule 27; Pet. No. 98-001]

Reinstatements

- On February 13, 1998, Gadsden attorney **John Edward Cunningham** was reinstated as an attorney authorized to practice law in the courts of Alabama. [Rule 28; Pet. No. 97-002]
- Birmingham attorney **Bruce LeLand Jaffee** was reinstated to the practice of law by order of the Disciplinary Board of the Alabama State Bar effective May 19, 1998. [Pet. No. 97-09]

Disbarments

- Fairfield lawyer **Yolanda Nevett-Johnson** was disbarred from the practice of law in the State of Alabama by order of the Supreme Court of Alabama, effective May 8, 1998. Johnson's disbarment was based upon findings by the Disciplinary Board of the Alabama State Bar that she violated the following Rules of Professional Conduct: 1.1 [Competence], 1.3 [Diligence], 1.4(a) [Communication], 1.6(a) [Confidentiality of Information], 1.16(d) [Declining or Terminating Representation] and 8.4(a) (d) & (g) [Misconduct]. [ASB Nos. 96-210(A), 96-231(A), 97-148(A) & 97-320(A)]
- Gadsden attorney **Jeffrey Donald Pruett** was disbarred from the practice of law by order of the Supreme Court of

Alabama, effective March 17, 1998. Pruett was convicted of conspiracy and bank fraud in the United States District Court for the Northern District of Alabama. [Rule No. 23(a)(2); Pet. No. 98-01]

Suspensions

- On March 20, 1998, the Disciplinary Commission of the Alabama State Bar interimly suspended Montgomery lawyer **Daniel Reese Farnell, Jr.** from the practice of law. [Rule No. 20(A); Pet. No. 98-005]
- Effective February 6, 1998, Mobile attorney **Charles Timothy Koch** has been suspended from the practice of law in the State of Alabama for noncompliance with the Mandatory Continuing Legal Education Rules of the Alabama State Bar. [CLE No. 97-08]
- Mobile attorney **Charles Timothy Koch** was interimly suspended from the practice of law by order of the Disciplinary Commission of the Alabama State Bar, effective May 13, 1998. [Rule No. 20(a); Pet. No. 98-07]

Public Reprimands

- On March 20, 1998, Huntsville lawyer **Carter Alan Robinson** received a public reprimand without general publication for violating Rules 1.3 and 1.4(a), Alabama Rules of Professional Conduct. This discipline was imposed by the Disciplinary Commission of the Alabama State Bar after finding that Robinson willfully neglected a legal matter entrusted to him by a client and failed to respond to reasonable requests for information from the client about the matter [ASB No. 95-162]
- On March 20, 1998, Huntsville lawyer **Sheila Kay Facemire** received a public reprimand with general publication for having violated Rule 1.4, Alabama Rules of Professional Conduct. This discipline was imposed by the Disciplinary Commission after finding that Facemire failed to communicate with a client regarding the status of a matter despite repeated requests for information regarding the status of the matter by the client. [ASB No. 97-89]
- On March 20, 1998, Mobile lawyer **Paul Martin Foerster, Jr.** received a public reprimand without general publication for violating rules 1.3, 1.4(a) and 1.16(d) of the Rules of Professional Conduct. Foerster was paid to handle an uncontested divorce. The documents were signed by the husband and wife, but never filed. Between January 1995, and October 1996, Foerster kept assuring the complainant

(the wife) that the documents were filed, and awaiting the judge's signature. The complainant called the court, and learned otherwise. The complainant asked for a refund, and Foerster agreed. As of March 20, 1998, no refund had been made. [ASB No. 97-048(A)]

- On March 20, 1998, Mobile lawyer **John Wayne Boone** received a public reprimand without general publication. The Disciplinary Commission found that during the pending of a divorce case, Boone communicated directly with his client's wife, knowing that she was represented by counsel. Boone called her to try and arrange Christmas visitation for his client. This ex parte contact violated Rule 4.2 of the Rules of Professional Conduct because Boone did not have the opposing counsel's prior consent. [ASB No. 97-187(A)]
- Dothan attorney **Michael Joseph Gamble** received a public reprimand without general publication on March 20, 1998. The Disciplinary Commission of the Alabama State Bar had imposed discipline on Gamble in the form of a private reprimand for having communicated by letter directly with an individual that Gamble knew to be represented by counsel. Gamble refused to accept the private reprimand and demanded formal charges against him be heard by the Disciplinary Board of the Alabama State Bar. At the hearing before the Disciplinary Board, Gamble testified under oath that the letter was mailed in response to an unsolicited

telephone call placed to his office by the recipient of the letter. The recipient of the letter also testified at the hearing and stated under oath that he had never placed such a telephone call to Gamble's office. The Disciplinary Board determined that the discipline imposed upon Gamble should be increased from a private reprimand to a public reprimand without general publication. [ASB No. 95-096(A)]

- Birmingham attorney **William Sherrill Crowson** received a public reprimand without general publication on May 15, 1998. Crowson was retained to represent a plaintiff in the Circuit Court of Calhoun County, Alabama. Prior to trial Crowson and his co-counsel withdrew from the case. However, neither Crowson nor his co-counsel notified their client in writing or filed and received permission of the trial judge to withdraw. Crowson's failure to communicate to his client the fact of his withdrawal and the reasons therefore violates Rule 1.4(b), Alabama Rules of Professional Conduct, which requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Furthermore, Crowson's failure to appear for trial, not having filed a motion to withdraw as counsel and receiving permission from the trial court to withdraw, violates Rule 1.16(d), A.R.P.C., which requires upon termination of representation that a lawyer take steps to the extent reasonably practicable to protect the client's interests. [ASB

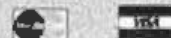
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