The Alabama Lawyer

Vol. 55, No. 6 SEPTEMBER 1994

While some malpractice insurance policies can be an incomplete puzzle...

One company puts together all the pieces.

Alabama attorneys want coverage where it counts! Many commercial malpractice policies contain a penalty-for-refusal-to-settle clause. This clause can be used to force an insured to accept an offer of settlement or, if rejected, pay the difference between the offer and the ultimate verdict. By contrast, AIM's policy gives its insureds protection and peace of mind. AIM will not settle a case without an insured's consent and will ***not*** penalize an insured for refusing settlement and going to trial. AIM's policy even guarantees its insureds a voice in selecting defense counsel. AIM does what most commercial insurers refuse to do:

Serve the best interest of Alabama attorneys.

AIM: For the Difference!

Attorneys Insurance Mutual of Alabama, Inc.*
22 Inverness Center Parkway
Suite 525
Birmingham, Alabama 35242-4889

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

*MEMBER: NATIONAL ASSOCIATION OF BAR-RELATED INSURANCE COMPANIES.

Two Special Offers From
The Employee-Owners of Avis
Exclusively For Members Of
Alabama State Bar

Case Closed! It's Avis For Great Member Benefits.

AVIS
We try harder.®

When it comes to bar association member benefits, Avis always rules in your favor. "We try harder" by offering you low, competitive daily business rates along with special discounts for both business and leisure rentals.

And just for the record, now you can enjoy valuable offers like a **free upgrade** and **$10 off a weekly rental.** See the coupons below for details.

As a bar association member, you'll also appreciate our many convenient airport locations and time-saving services that make renting and returning an Avis car fast and easy. With an Avis Wizard® Number and an advance reservation, Avis Express® lets you bypass busy rental counters at over 70 U.S. and Canada airport locations. And during peak periods at major airports, Roving Rapid Return® lets you depart with a printed receipt in seconds if you are a credit card customer and require no modifications to your rental charges.

At Avis, justice is served every day. To take advantage of the offers below, call your travel consultant or the Avis Special Promotion number toll free: **1-800-831-8000.** Be sure to mention your Avis Worldwide Discount (AWD) number:

#A530100

A Free Avis Upgrade!

Terms and Conditions
Coupon valid for a one-time, one-car-group upgrade on an Intermediate (Group C) through a Full Size 4-door (Group E) car. Maximum upgrade to Premium (Group G). Offer valid on daily, weekend and weekly rates only. Coupon must be surrendered at time of rental; one per rental. Coupon valid at Avis corporate and participating licensee locations in the contiguous U.S. Cars and upgrades are subject to availability at time of rental. **An advance reservation with request for upgrade is required.** Renter must meet Avis age, driver and credit requirements. Minimum age is 25.

Rental Sales Agent Instructions
At Checkout:
Assign customer a car one group higher than car group reserved. Upgrade to no higher than Group G. Charge for car group reserved. In AWD, enter number printed below. In CPN, enter number printed below. Complete this information:
RA#_____Rental Location_____
Attach to COUPON tape.

AWD **#A530100**
CPN **#UUGC132**
Offer Expires **12/31/94**

AVIS
We try harder.®

$10 Off Weekly Rates

Terms and Conditions
Offer valid on an Intermediate (Group C) through a Full Size 4-door (Group E) car for a 5-day minimum rental at weekly rates. Coupon must be surrendered at time of rental; one per rental. May be used in conjunction with bar association special rates and discounts. May not be used in conjunction with any other coupon, promotion or offer. Coupon valid at Avis corporate and participating licensee locations in the contiguous U.S. Offer not available during holiday and other blackout periods. Offer may not be available on all rates at all times. Cars subject to availability. Taxes, local government surcharges and optional items, such as LDW, additional driver fee and refueling, are extra. Renter must meet Avis age, driver and credit requirements. Minimum age is 25.

Rental Sales Agent Instructions
At Checkout:
In AWD, enter number printed below. In CPN, enter number printed below. Complete this information:
RA#_____Rental Location_____
Attach to COUPON tape.

AWD **#A530100**
CPN **#MUGC048**
Offer Expires **12/31/94**

AVIS
We try harder.®

IN BRIEF

September 1994 Volume 55, Number 6

ON THE COVER:

Reginald T. Hamner has retired as Secretary and Executive Director of the Alabama State Bar after 25 years of service. His tenure made him the nation's senior state bar executive in point of service. Pictured is the Hamner family, left to right, Anne, Chris, Patrick and, seated, Reggie. *Photo by Crosby Thomley Photography of Tuscaloosa, Alabama*

INSIDE THIS ISSUE:

ALABAMA STATE BAR HEADQUARTERS STAFF
415 Dexter Avenue, Montgomery, AL 36104 (205) 269-1515 • FAX (205) 261-6310

Executive Director ....Keith B. Norman
Executive Assistant ....Margaret Boone
Administrative Assistant for Programs ....Diane Weldon
Programs Secretary ....Heidi Alves
Publications Director ....Margaret L. Murphy
Volunteer Lawyers Program Director ....Melinda M. Waters
Publications & VLP Secretary ....Linda F. Smith
Membership Services Director ....Christie Tarantino
Membership Assistant ....Kelly Carden
Director of Admissions ....Dorothy D. Johnson
Admissions Assistant ....Elizabeth Shwarts
Alabama Law Foundation, Inc. Director ....Tracy Daniel
ALF Secretary ....Suzanne Scarbrough
Bookkeeper ....Gale Skinner
Graphics Arts Director ....Maggie Stuller
Lawyer Referral Secretary ....Katherine C. Creamer
Receptionist ....Jennie Logan

ALABAMA STATE BAR CENTER FOR PROFESSIONAL RESPONSIBILITY STAFF
415 Dexter Avenue, Montgomery, AL 36104 (205) 269-1515 • FAX (205) 261-6311

General Counsel ....Robert W. Norris
Assistant General Counsel ....J. Anthony McLain
Assistant General Counsel ....L. Gilbert Kendrick
Assistant General Counsel ....Milton L. Moss
Ethics Opinions Coordinator ....Vivian Freeman
Complaints Intake & Advertising Coordinator ....Kim Ellis
Unauthorized Practice of Law, Client Security Fund, CSF & CLE Coordinator ....Bonnie Mainor
Paralegal/Investigator ....Vicki Glassroth
Investigators ....Peggy Garrett, Cheryl Rankin

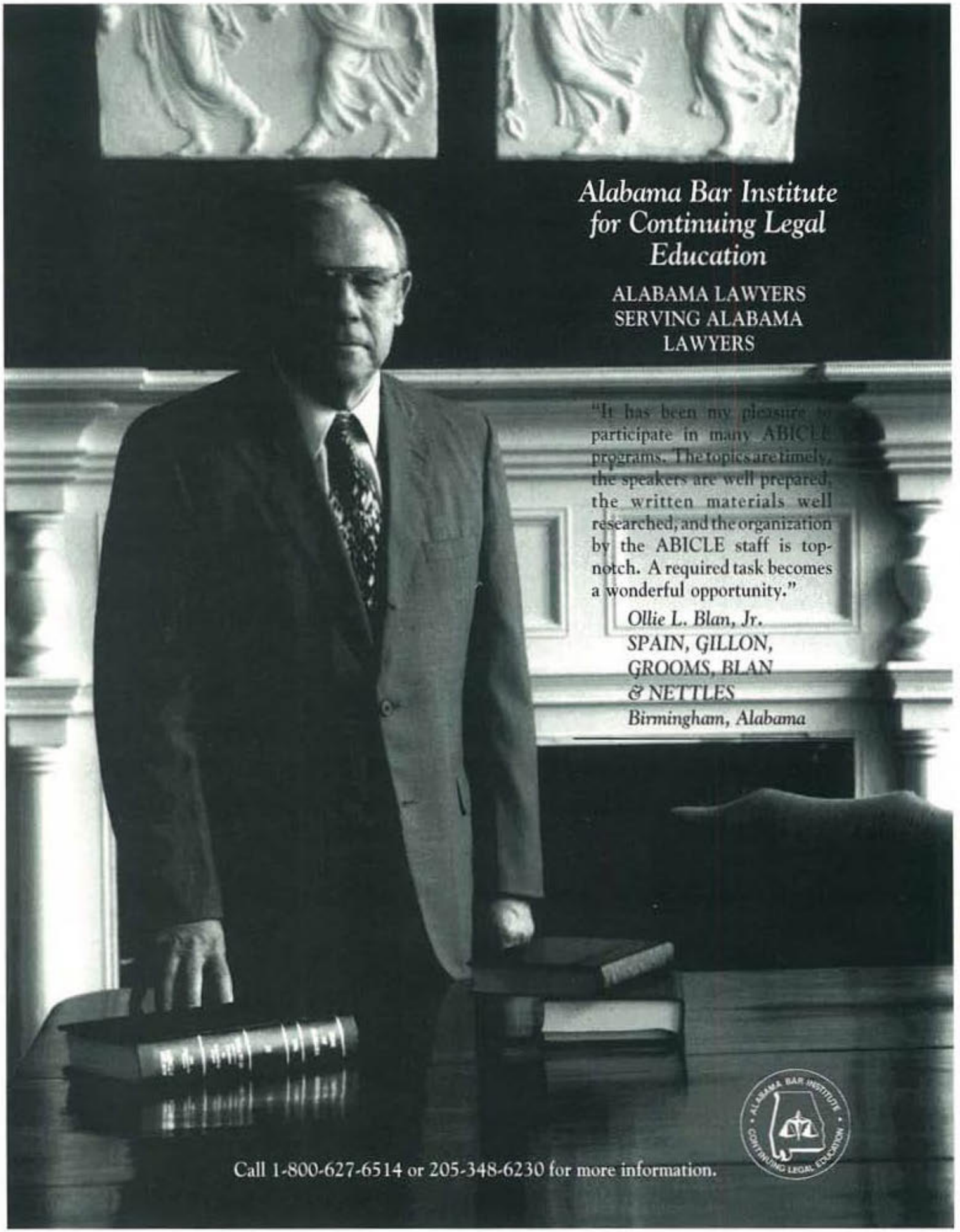
The Alabama Lawyer

Published seven times a year (the June issue is a bar directory edition) by the Alabama State Bar, P.O. Box 4156, Montgomery, Alabama 36101-4156. Phone (205) 269-1515.

Robert A. Huffaker ....Chair & Editor
Susan Shirock DePaola ....Vice-Chair & Associate Editor
Richard F. Allen ....Vice-Chair, finance
Margaret Murphy ....Managing Editor

The Alabama Lawyer is published seven times a year for $20 per year in the United States and $25 per year outside the United States by the Alabama State Bar, 415 Dexter Avenue, Montgomery, Alabama 36104. Single issues are $3.50, plus first-class postage, for the journal and $25/$40 for the directory. Second-class postage paid at Montgomery, Alabama.

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


Alabama Bar Institute
for Continuing Legal
Education
ALABAMA LAWYERS
SERVING ALABAMA
LAWYERS
"It has been my pleasure to participate in many ABICLE programs. The topics are timely, the speakers are well prepared, the written materials well researched, and the organization by the ABICLE staff is top-notch. A required task becomes a wonderful opportunity."
Ollie L. Blan, Jr.
SPAIN, GILLON, GROOMS, BLAN & NETTLES
Birmingham, Alabama
Call 1-800-627-6514 or 205-348-6230 for more information.

LET'S UNIFY OUR UNIFIED BAR

As we begin what I believe is the 116th year of our Alabama State Bar, I first thank Spud Seale for his hard work and the manner in which he has presided over our bar this past year. Spud led the board of bar commissioners through some difficult issues and it is through his persistence and hard work those problems are, for the most part, behind us.

I know it has been said many times in this column that "it is a privilege to serve as your president." For me, as I am sure it has been for a long line of our presidents, it is indeed a privilege with special meaning for me to serve as president of the Alabama State Bar. But I realize there is a lot more to this job than the title. This bar and its members rightfully expect that I and the other officers will serve the bar well and continue to accomplish the mission and duties we are charged with for the benefit of our profession and the public.

Broox G. Holmes

On December 13, 1878, the Alabama State Bar Association was organized with a membership of 30. Today we have over 10,000 members. In 1923, the bar, by act of legislature, became the first (second some say) unified, i.e., mandatory, bar in the country. By this Act, every lawyer licensed to practice law in the State of Alabama became a member of the Alabama State Bar. The Alabama State Bar undertook a public and professional responsibility to accomplish the matters it was charged with performing when it became a unified bar in 1923. This responsibility was undertaken by and must be achieved by Alabama lawyers.

While we are "unified" by law, our bar has in recent years experienced increasing fragmentation and discord. To some degree this is understandable. We are lawyers with diverse views and we are adversarial by nature. We have our legal specialty associations and special interests. But when it comes to the missions and goals of the Alabama State Bar we can and we must do a better job of working together.

In my acceptance remarks before the convention on July 21, 1994, I reminded those assembled of an incident early in the 1968 presidential campaign. The nation was then in turmoil over the Vietnam war and racial violence. While President Nixon was going through Ohio, he saw a little girl holding up a homemade sign which said, "BRING US TOGETHER AGAIN." That sign became the theme of the successful Nixon campaign.

I hasten to add that I do not want my term of office to end as President Nixon's; however, I would like us all to think on the togetherness theme. I would like to help bring our bar together again. I say *again* because the fragmentation and division we are experiencing is of comparatively recent origin. We were, until recent times, a unified bar by law and in practice.

I sense a hunger for a return to that unity. I have heard this from so many lawyers and judges from all parts of the state. An appellate judge said most appropriately in a recent letter to me:

> *"We are at a crucial time for our noble profession. We, as lawyers, need to come back to the Alabama State Bar as the life source of our profession. The State Bar must be the organization that encompasses all of us, and it must be the organization that all of us support."*

How true it is! Regardless of legal specialties or special interests, we should work together in our common goals of improving the profession, improving the image of our profession and the work of the bar in serving the public. Every lawyer has a stake in the Alabama State Bar and an obligation to support it.

We have just received the report of the Long Range Planning Task Force headed so ably by Camille Wright Cook. The report has not yet been adopted by the board of bar commissioners but, among other things, it recognizes that the Alabama State Bar has an obligation, *"To urge that a standard policy of inclusion be institutionalized and commu-*

nicated to members of the profession as the paramount response to separatism and fragmentation."

I urge each of you to work toward unity of purpose this year and to get behind this bar.

We were all very concerned when Reggie Hamner decided to retire from his position as our executive director after serving so well and so faithfully for 25 years. I can't top the well-deserved accolades given by so many to Reggie. I can only thank Reggie for his friendship and guidance over the years and for his great service to the lawyers and people of Alabama. We will certainly miss Reggie and Anne. We wish them the best.

It is said when one door closes another opens. We are very fortunate to have a person with the knowledge and experience of Keith Norman to step in as executive director at this crucial time. Keith is backed up by a very able staff who do a great job in handling the everyday work of the bar.

Our Executive Council, committees and task forces are in place and ready for the new year. When we consider all of our resources, there is no reason, other than discord, why we can't accomplish the work we are charged with doing.

So let's get together and go to work. Again, I thank you for giving me this opportunity to serve our profession. ■

Important!
Licensing/ Special Membership Dues 1994-95

All licenses to practice law are sold through the Alabama State Bar headquarters, as well as payment of special membership dues—the same as last year.

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

If you are actively practicing or anticipate practicing law in Alabama between October 1, 1994 and September 30, 1995 please be sure that you purchase an occupational license. Licenses are $250 for the 1994-95 bar year and payment must be received between October 1 and October 31 in order to avoid an automatic 15 percent penalty ($37.50). **Second notices will not be sent!**

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

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

If you do not receive an invoice, please notify **Christie Tarantino**, membership services director, at 1-800-354-6154 (in-state WATS) or (205) 269-1515 **immediately!**

FACTS/FAX POLL

Lawyers Serving the Public and Their Communities

The state bar's Committee on Lawyer Public Relations, Information and Media Relations wants to hear about your local bar association public service activities. We want to let the public know all the good things that lawyers do for their communities, but we need your help! Please use the following fax memo to tell us about the projects you've been working on during the past year—we look forward to hearing from you!

FAX MEMO

TO: Margaret L. Murphy
AT: (205) 261-6310

FROM: _____
(Your Name)

of the _____ County Bar Association

DATE: _____

RE: _____
(Public Service Activity/Event)

Date of Event: _____

Complete Description of the Events: _____

_____

_____

_____

Participants/Volunteers: _____

_____

_____

_____

Was the event publicized?_____ If so, describe how, and attach any newspaper articles or photographs

_____

Who should we contact for more information? _____

Telephone No. _____

THANK YOU

"Be It Resolved by the Board of Commissioners of the Alabama State Bar that Reginald T. Hamner be and he is hereby elected as the Secretary of the Board of Commissioners of the Alabama State Bar; he to begin his duties on the first day of June 1969...."

—Minutes, Board of Commissioners Meeting, May 2, 1969

The simple words above launched a 29-year-old lawyer, barely four years out of law school, on a magic carpet ride that has now stopped to refuel. What a trip! It would be impossible to chronicle the happenings on this trip in the space allowed; suffice it to say that over these past 25 years, our profession has grown dramatically in number as we have marched toward new horizons and into venues not dreamed of only a short time before. I have been fortunate to have enjoyed a front row seat for much of this adventure. Throughout it all, it has been the people I have worked with along the way who have made it all so worthwhile and personally rewarding.

Reginald T. Hamner

It is to all of you that I say, "THANK YOU," for allowing me to share our journey together. You are too numerous and too special to mention individually, and far too many are but memories of the earlier part of this fantastic voyage.

As I have worked within the organized bar at the local, state, regional and national levels, I continue to marvel at the wisdom of our founders who placed the Alabama State Bar on the firmest of foundations 115 years ago, a foundation that has stood the test of time. This foundation has not left us free from challenge and it never will. It does, however, offer men and women who have chosen to pursue the rule of law within the profession a means to seek true justice for all. This has been my pole star. I can imagine no better means through which to serve our profession than in the work of the organized bar.

In recent months, I have been touched by your warm letters, phone calls and numerous other acts of kindness and friendship. I thank you for the years of support and encouragement you have given me as we have sought to serve the public together through our profession.

I leave this office with the sure knowledge that no bar executive in the land has had better support of an association's elected leadership, its volunteer workers or a more dedicated professional staff of coworkers. Any credit that has come my way is rightfully shared with you and those who preceded us in our bar's work over the years.

I have asked that Anne and our sons, Patrick and Christian, share the cover photo of *The Alabama Lawyer* with me. Our family literally has grown up with the Alabama and American bars. Without Anne's support and our sons' receiving less than my undivided attention on perhaps too many occasions, those accomplishments deemed positive or productive by others would not have been possible.

As I shift gears and enter upon new challenges, I am confident of our bar's future. I bid you not farewell for I hope to see you soon and often. I thank you for this rarest of opportunities.

I will close this, my final "Executive Director's" column, by paraphrasing Dr. David Mathews' remarks to a championship football team not too long ago:

> "Greatness in any field has to come out of some kind of tradition and it is our job to make certain the tradition that is the Alabama State Bar means as much and stands for as much for those who are yet to come as it has for us and those who have gone before us." ■

ANNUAL MEETING T-SHIRTS ARE STILL AVAILABLE!

(ALL T-SHIRTS ARE SIZE XL.)
TO ORDER:
SEND CHECK OR MONEY ORDER FOR
$10.00
PAYABLE TO THE "ALABAMA STATE BAR"

TO:
ALABAMA STATE BAR
CONVENTION T-SHIRTS
P.O. BOX 671
MONTGOMERY, AL 36101





A TRIBUTE TO REGGIE HAMNER

After 25 years of service as executive director of the Alabama State Bar, Reggie Hamner retires this year. His service to the association has spanned four decades, during which he has witnessed a remarkable growth in the number of members of our profession, and he has successfully battled to preserve the integrity and professionalism of lawyers practicing in this state. It has not been an easy task – public perception of lawyers remains at a low ebb. Undaunted, Reggie has overseen the institution of continuing legal education programs, restructuring of the bar association, improvement of disciplinary proceedings, and, recently, the completion of an addition to the state bar headquarters. He leaves for his successor, Keith Norman, large shoes to fill.

As a measure of respect which he was garnered, friends, professional colleagues, and former bar presidents offer hereafter their reminiscence of "Reggie." He will be missed – we wish him well in his future endeavors.











THE 25-YEAR LOVE AFFAIR

By William B. Hairston, Jr.

THE MAN AND THE HOUR

Trite but true, the 25-year love affair between Reginald T. Hamner and the Alabama State Bar brought together the man and the hour.

For about the first 70 years of its existence, the Alabama State Bar was a relatively small group of influential and dedicated male Anglo Saxons. These men stood in high places of leadership in their churches, communities, and political institutions, and they also practiced law. The end of World War II heralded a beginning of a dramatic change—a change akin to a revolution. There was a dramatic increase in both the number, sex and national origin of lawyers and the types of law that they practiced.

Underlying these changes were a number of factors: the GI bill of rights that enabled a growing number of students to attend law school; the opening of the Cumberland School of Law; the growing number of injuries that resulted from the use of automobiles and complicated machinery; and not the least, the fact that lawyers started making money. A profession was evolving into a business.

To meet this rising legal population, the Alabama State Bar building was completed in 1964. A few years later a Citizens' Conference on Alabama State Courts initiated a drive for procedural reform of the system.

With the bar headed in the right direction, Judge John B. Scott announced his retirement as secretary. A search committee composed of T.B. Hill, Walter Mims, and Oliver "Pi" Brantley recommended Reginald T. Hamner to take Judge Scott's place.

On June 1, 1969, Reginald T. Hamner took on the job of executive secretary of a bar association composed of some 2,000 members that employed a staff of five. It was governed by a 40-man board of bar commissioners. Its president was elected at the annual meeting of the association by participants in that meeting. Its vice-president was elected by the board of bar commissioners following the annual meeting.

To the staff, the board of bar commissioners, the lawyers, the Legislature, and the public in general, Reginald T. Hamner became "Reggie". He has known more Alabama lawyers by name and face than any other person, living or dead. He has a greater knowledge of the affairs of this association and its members than anyone else.

During his tenure, the membership in the bar and the number of staff personnel grew to five times its 1969 size. Despite the magnitude of this increase, Reggie has always found time to devote his energy to the problems of the bar and its membership, be those problems large or small. With a finger on every pulse, he found the time to take care of the most minute detail. It made little difference if the task was to find a hotel reservation for a procrastinating lawyer or attending a legislative session in the dead of night to shepherd a bill of importance to the lawyers.

A prime example of Reggie's dedication to the problems affecting lawyers occurred in 1978 in connection with the Indigent Defense Fund. The fund was broke. Lawyers just were not getting paid. The Indigent Defense Committee recommended an increase in the Fair Trial Tax and the application of that tax to municipal courts. The board of bar commissioners determined that such a move was not politically feasible. The committee determined otherwise and a bill was present to the Legislature. Reggie put his expertise to work and the bill passed to the gratitude of those lawyers who were providing indigent clients with legal services. The crisis of the moment was met because of the concern of our executive secretary.

Reggie is most visible at the annual convention and these conventions have presented some unusual problems. Since time in memorial the convention hosted an annual banquet. This concept hit the skids with the address of Attorney General John Mitchell at the Huntsville convention in 1972. This was probably the most boring address ever perpetrated on a captive audience. The address would have been delivered to a hungry audience had it not been for the negotiation between Reggie and those who supplied the food. The host motel was on a

COD basis with its vendors. Since the hotel could not float the price of the meal, Reggie had to pay the vendors on the spot for delivery in order to get the food on the table.

And talk about float. A rainstorm hit Huntsville at a later convention and the hotel parking lot was flooded. Few cars were spared that day. "I survived the flood" became a badge that showed the dedication of the convention-goers.

In 1973 the association incurred the wrath of the Mobile Legislative Delegation when it took the convention to Biloxi. The association got back in good graces with the promise of "never again." With that, Reggie started working on an alternative: Gulf Shores.

It took almost 20 years before Reggie was able to negotiate enough hotel space in Gulf Shores so it could host the convention. At the first Gulf Shores convention, the buffet line featured a whole roast pig. Ed Turner was heard to remark, "In Chatom we don't butcher hogs until after the first frost. This must be a road kill." Gulf Shores brings a new dimension to our annual meetings.

In his 25 years Reggie has had to work with 26 bar presidents. Different personalities, different objectives, and different work schedules. To each of these was the task of education. For at least one of these presidents, Reggie had to go so far as to ghost write the presidential letters for *The Alabama Lawyer*. These were the only presidential letters to meet Reggie's full approval.

The bar exam jumped from a trickle to a flood when the Legislature did away with the diploma privilege. There were 619 applicants to sit for the exam in July 1994. That equals 6 percent of the present bar and 31 percent of the membership of the bar when Reggie took over as executive secretary. This, in a small measure, is indicative of the increase in the workload over the past 25 years.

As did Judge Scott, Reggie leaves us with tangible evidence of his stewardship in the additions to the bar headquarters. Thanks largely to his work, we have the space to carry out the functions of the bar in eye-pleasing surroundings, a signature tribute to a man who has meant so much.

What this bar and its individual membership have received from Reggie is not just executive leadership, although it is that. Here we have a man who has loved the legal system and the lawyers and has devoted the prime of his life to make both better. That he was able to do so in the face of explosive change is proof positive that we were blessed with a remarkable individual. ■

William B. Hairston, Jr.
William B. Hairston, Jr. was a member of the state bar's board of bar commissioners from 1973 to 1979. He served as president of Birmingham Bar Association in 1970 and the Alabama State Bar in 1983. He has been a member of the Judicial Inquiry Commission since 1979. He is a member of the Birmingham Bar Association, the Alabama State Bar and the American Bar Association.

THE CONSTANT PROFESSIONAL

REGGIE HAMNER WAS AND IS THE PROFESSIONAL WHO DESIGNED THE MODEL BAR ASSOCIATION.

By William D. Scruggs, Jr.

The French lawyer and essayist, Montaigne, made an observation in his essays (1691). Montaigne suggested if we want a true and accurate report of say, what a fountain looks like in Rome, that one should not employ a person who knows all about fountains, but instead should send to make inquiry a person who has never seen any fountains at all. Montaigne concluded that an expert on the subject would only come back and report how that fountain was like another fountain in Milan, or how that fountain was different from another fountain in Florence. A person previously ignorant of the subject would give a more accurate report.

When called upon to record the times and retirement of Reggie Hamner, Montaigne would classify me as a poor observer, because I was a member of the Board of Bar Commissioners of the Alabama State Bar for the last 20 years of Reggie's tenure as executive director. However, I can report and record for the history of this bar, that all the good and precious few of the bad aspects of the state bar in the last 25 years can be laid to Reggie Hamner. Although it is not well known here, the Alabama State Bar is looked upon by the rest of the bar associations in the United States as the model bar association. Our structure, our disciplinary rules, CLE rules, and all of the rest of the framework of the Alabama State Bar is widely recognized as the right way to do it.

The American Bar Association conducts an annual training session for presidents-elect of the various states and large metropolitan bar associations. One of the topics at an intensive session was structure and reorganization of bar associations. The prototype displayed on the poster board was the Alabama State Bar. At the conclusion of the presentation given by a former ABA president from the Midwest, he gave this advice, "You can appoint committees and hire consultants about the way to reorganize your bar association, or you can save time and call the Alabama State Bar and steal from it with confidence."

Reggie Hamner was and is the professional who designed the model bar association. Every year there is a turnover in the board of bar commissioners, and every year there is a change in presidents, but Reggie was the constant professional who kept the amateurs out of trouble. The policy and direction are established by amateurs, some gifted, some mediocre, but amateurs nevertheless. The organization, staff, rules and framework that safely and successfully conducted those amateurs, the gifted and mediocre, were the handiwork of Reginald T. Hamner.

I love lawyers and I am proud of this state bar. I know the hundreds of calamities that have been avoided and the hundreds of successes that can be recorded, due to the skill and work of Reggie Hamner and his predecessor, the late Judge John B. Scott. ■

William D. Scruggs, Jr.
William D. Scruggs, Jr. is the senior partner in the firm of Scruggs, Jordan, Dodd & Dodd in Fort Payne, Alabama. He was a member of the Alabama State Bar Board of Bar Commissioners for 20 years and also served as the first chair of the Mandatory Continuing Legal Education Commission. He was an incorporator of Attorneys Insurance Mutual, a member of the Supreme Court Liaison Committee from its creation until 1993, and has served the state bar as second vice-president, vice-president and president. He was a member of the Standing Committee on the Alabama Rules of Appellate Procedure and is a member of the Alabama Law Institute. He currently serves as a judge of the Court of the Judiciary.

CALLING A SPADE A SPADE

By Champ Lyons, Jr.

A LIFELONG FRIEND

Lifelong friends, by definition, are made while we are young. Over the course of a lifetime, they are the people with whom you laugh and, sad but true, with whom you must at times cry. Law school is a special place in my judgment because, for many of us, it was the last opportunity to form such relationships. As we learned in "Future Interests" about the creation of a class, certain events must also occur in order for a class to be deemed closed. As I look around at this convention I see several familiar faces from law school days who entered that class of lifelong friends as the relentless march of time pushed us into an age where for us that class closed.

One of those friends was Reggie Hamner. Back when we were in law school in the early '60s, the overwhelming majority of our classmates was both male and married. Reggie and I were both bachelors at the time and, without spousal responsibilities, we few bachelors tended to congregate. Reggie came from nearby Northport and during my law school years his wonderful mother added generously to my girth as I was a frequent guest at their table. We often studied together in marathon sessions on the eve of exams. Later, we were in each other's wedding and have remained good friends over the years.

The Reggie I met then possessed character and personality traits that have served him well in his service to the bar and the public. Reggie has a gift of instant recall of a vast forest of family trees and with ease can reconstruct the lineage of people from all over the state. His elephant-like memory permits him to store and recall deeds, both honorable and questionable, of all who cross his path. Fortunately for Reggie and for us, he has a strong sense of right and wrong that he unhesitatingly applies. Reggie has a frankness that I find refreshing in these times when superficiality and saccharine are often a cover for a different attitude behind one's back. If you pass his test he will let you know on the spot and the same rule applies if you fail.

Under the heading of the penchant for calling a spade a spade, I remember the story about the very prominent lawyer-legislator who many years ago wrote Reggie to protest the bar meeting taking place in Biloxi, Mississippi rather than here in Alabama. Reggie did not recall this letter-writer having attended previous bar conventions and, as you might expect Reggie to do, he went to the attendance records and found confirmation. Reggie's reply recited how pleased he was to learn of the writer's strong interest in bar convention attendance, contrary to what one might otherwise conclude from a review of the records. The confronted complainant, I am told, responded nobly with a one-word reply, "Touché."

Another classmate has said that he first recalls Reggie as a cheerleader for Tuscaloosa County High School. In many respects the spirit that led Reggie to that early role has marked his activities over a lifetime. Time and again he has brought his enthusiasm to bear on us as he worked to increase our level of professionalism. I will not here list the galaxy of outstanding lawyers and national figures that he has brought to conventions over the years for our inspiration and education. Nor will I recite the many significant accomplishments of the Alabama State Bar under his leadership. That same cheerleader spirit propelled him to the presidency of the University of Alabama National Alumni Association a few years ago.

As the bar has grown, many younger than us have come to know Reggie only as the man who somehow should be blamed for the bar examination. Also, Reggie's keen sense of right and wrong makes him play by the rules. Thus, for others, Reggie is known only as the one who had to say that some special treatment or requested favor was simply unavailable. These circumstances remind me of the old saying that the ancient Greeks always killed the messenger when he brought bad news. I suppose his successor, Keith Norman, is close enough to the scene by now to know that these difficulties simply "come with the turf."

There is another side of Reggie that merits mention. For his friends he has a fierce loyalty that does not wax or wane with circumstance or popular view or power or influence. Those of us close to Reggie can recount tales of a fraternity brother fallen on hard times whom Reggie has never deserted, the son of a secretary who received Reggie's help in getting the University to look with favor on a scholarship application, the son or daughter who needed a recommendation, a judge under criticism for unpopular rulings for whom Reggie repeatedly spoke up, a controversial football coach that Reggie supported to the end, and the anecdotes could go on and on.

My role today was described to me a few weeks ago as one who was to roast Reggie as an old friend from the rank and file of the bar as opposed to a former bar president. I have failed to build a fire big enough for this roast as I look back over these remarks and realize that they lack the requisite scorch. I know that the bar will be in good hands with Keith Norman, but, for me, it will never be the same without Reggie. ■

Champ Lyons, Jr.
Champ Lyons, Jr. is a graduate of the University of Alabama School of Law, where he was editor of the *Alabama Law Review*, and a member of the Mobile firm of Helmsing, Lyons, Sims & Leach. He received the Walter P. Gewin Award for Service to Continuing Legal Education in 1990.

A GENTLEMAN FROM ALABAMA

It was January 19, 1983. I had assumed the position of executive director of the Tennessee Bar Association only two days before. It was a rainy, depressing morning, made worse by the fact that I had to quickly get accustomed to new programs and new personnel. Things were not going well.

Shortly after ten o'clock, the receptionist notified me that "a gentleman from Alabama is on the line." When I picked up the receiver a distinctly southern voice said, "This is Reggie Hamner. Welcome to bar association management. I just wanted you to know that the Alabama State Bar is ready to do anything it can to help you. I'm anxious to meet you." After that conversation ended, I suddenly felt a lot better. Another professional seemed to care and even though we had not met, Reggie Hamner was already a friend.

When we did meet in New Orleans the following month, I realized that Reggie and I had a lot in common. Not only do we share a profession—we both truly enjoy it. We are both lawyers and derive a great deal of satisfaction from promoting the positive aspects of the legal system.

And we are both great fans of college sports. We agreed early in our friendship that if the SEC had a mumble-peg tournament, we'd be there. Reggie is probably the biggest Alabama fan I have known and, since I grew up in Knoxville three blocks from the UT stadium, I have met a multitude of Alabama supporters. While the rivalry has lost some of its luster, we both can still get rather excited about it. I remember the year that Reggie was president of Alabama's national alumni association. He had many duties including, of course, compulsory attendance at all the Alabama football games. I called Reggie the week before the Tennessee-Alabama game and said, "I hate to rain on the parade of the national president but something tells me this is the Vols' year." Alas, it wasn't, and when I was told I had a call at 8:30 the following Monday morning, I knew who it would be. Reggie simply said, "Your weather forecast got substantially revised about 4:00 p.m. Saturday."

...HE CARES NOT ONLY FOR THOSE WHO DIRECTLY SUPPORT HIM BUT ALSO FOR THOSE WHO HAVE A SIMILAR PROFESSIONAL RESPONSIBILITY

By Gilbert R. Campbell, Jr., CAE

In order to be successful in association management, one has to be a "people person" and Reggie Hamner is a people person *non pareil*. He genuinely likes people from all backgrounds. He is equally at home with the support staff of a convention hotel or the partners in a silk stocking law firm. He truly enjoys hearing from his members about their families, their successes and, indeed, their concerns. This is why he is so widely respected in our business—because he cares not only for those who directly support him but also for those who have a similar professional responsibility.

When I was faced with a major career decision several years ago, I sought Reggie's advice. He said, "It all boils down to your basic instincts. If this is the right move for you, you already know it. But remember, Gil, you also know that this is the era of artificial turf and that grass truly may not be as green out yonder as you think it is." I didn't take the job and I have never regretted it.

The final thing I will always remember about Reggie Hamner is his vast knowledge of cities and their attractions, both in the United States and the rest of the world. In my vain moments I used to think of myself as cosmopolitan...and then I met Reggie. I sincerely believe if I were going to San Luis Obispo and I asked Reggie to recommend a good restaurant, he would simply say, "You should try the Majestic just west of the courthouse. Ask for the prime rib. Oh, and Gil, tell them Reggie Hamner sent you."

My professional association with Reggie is nearing its end but it's been a super ride. We've shared much, laughed much, and had some truly great times together. Reggie once told me, "You'll live a lot longer and be a lot happier if you always take your profession seriously but never take yourself too seriously." That is now my adopted creed and I believe it completely.

I'll miss my association with him but I'm sure that we'll continue to visit occasionally. I'll continue to seek his counsel and will value his insight into politics, management, southern philosophy and life in general. I know we will remain good friends...except, of course, on that third Saturday in October. ■

Gilbert R. Campbell, Jr., CAE
Gilbert R. Campbell, Jr. has served as the executive director of the Tennessee Bar Association since 1983. Prior to that, he was the executive vice-president of the DeKalb Chamber of Commerce in Decatur, Georgia from 1963-82. He is a graduate of the University of Tennessee, where he received both his undergraduate and law degrees.

"COPY REGGIE HAMNER"

By Bert H. Early

A STATESMAN, A FACILITATOR, A VISIONARY

A few weeks ago a candidate for the position of executive director of the American Bar Association telephoned to ask, "What does an executive director do?" For the ensuing hour and a half I shared with the inquirer my experience and my thoughts about the role of the executive director of a bar association. It later occurred to me that I might have shortened the conversation substantially with a two-sentence answer: "The ideal executive director does what Reggie Hamner has been doing for the past 25 years on behalf of the Alabama State Bar. Copy Reggie Hamner!"

There are three special qualities that have been the hallmark of Reggie Hamner's unstinting service to the lawyers of Alabama and to those whom the profession serves:

—A statesman who has been a catalyst and a self-effacing leader. Reggie's efforts led to the initiation of the bar leadership conferences to train local bar officers, section leaders and state bar committee heads. During his tenure the governance procedures for the state bar have been revised to enlarge the size of the board of bar commissioners according to the population of each judicial circuit and to allow for the election of the president-elect by mail ballot. He led the Alabama State Bar's successful efforts for the adoption of a new judicial article to the Alabama State Constitution. For this effort, the Alabama State Bar received the annual "Award of Merit" of the American Bar Association. Under his direction and leadership, the Alabama Legislature was prevailed upon to change a system by which probate judges collected occupational license fees from members of the bar. The chaos of the former system gave way to a plan by which the state bar receives the annual license fees and was thereby enabled to maintain tighter fiscal control and more accurate records.

—The ultimate facilitator who is a rare combination of executive, manager, organizer and financial counselor. Under Reggie's leadership, the bar staff has grown from four to 30 employees and the annual budget from less than $500,000 to nearly $3 million. He directed the regulatory, administrative, licensing, membership services and legislative affairs during a period of growth from fewer than 1,500 lawyers in 1969 to its present membership in excess of 10,000 lawyers. The state bar's headquarters has been extensively remodeled and enlarged to provide more than five times the space available in 1969. All state bar operations and records have been fully computerized and a growing list of membership services includes life and disability insurance, professional liability insurance, discounted computer assisted legal research, reduced costs of overnight mail service, and a host of other innovations responding to the needs of the members of the state bar.

—A visionary with boundless energy and the highest level of creativity. Over the past 25 years, the grievance system and the admissions operations of the bar have been revised, a new Code of Professional Conduct has been adopted, a Mandatory Continuing Legal Education program has been put in place, the Attorney's Insurance Mutual of Alabama has been created to provide professional liability insurance for members of the bar, and a statewide lawyer referral service has been created. The Alabama State Bar Foundation has been created and the Alabama Law Foundation was founded in 1987 to administer funds generated from interest earned on lawyers trust ac-counts, thereby providing funds for legal services to the poor, the enhancement of the administration of justice and student scholarships.

In 1969, Reggie Hamner, at the age of 29, became the youngest person ever named to head a state bar professional staff. Today, 25 years later, he is the senior state bar executive in point of service in the United States. He has, through his statesmanship, his leadership and his vision, achieved and exceeded the highest standards of professional service and is the embodiment of what an executive director can do. ■

Bert H. Early
Bert H. Early was the executive director of the American Bar Association from 1964 to 1981. He currently is president of the American Bar Endowment and a member of the board of directors of the American Bar Foundation. He is president of Early Cochran & Olson, a Chicago-based executive search firm that focuses on retained searches for senior level lawyers for corporations and law firms.

LEGISLATIVE WRAP-UP

By ROBERT L. McCURLEY, JR.

Constitutional amendments

In 1901, Alabama passed its current constitution which is the sixth and latest of Alabama's constitutions. Previous constitutions were approved in 1819, 1861, 1865, 1868, and 1875. In 1969, a constitutional commission was created by the Legislature. Out of that came Amendment 328, the "judicial article", which was approved in 1973. The balance of the proposal is yet to be acted on. In 1983, the Legislature passed a "cleaned up" version of the 1901 Constitution only to see it taken off the ballot by the supreme court when it ruled that the entire constitution could not be amended by one amendment.

In 1993, the Alabama Legislature passed a joint resolution, Act 93-845, directing the Alabama Law Institute to study and present to the judiciary committees of the Legislature recommendations for amendments to the constitution on an article-by-article basis.

The 1901 Alabama Constitution currently has 554 amendments. In June the people of Alabama approved the last three of these amendments; a fourth amendment that was proposed was rejected.

During the 1994 legislative term, 28 constitutional amendments were approved by the Legislature and are awaiting a statewide vote of the people in November.

Statewide amendments

Act 94-349 is a constitutional amendment which would give basic rights to crime victims. The amendment provides that the Legislature can pass legislation to give crime victims the right to be present at all stages of criminal proceedings and the right to be consulted at the hearings.

Another amendment prohibits the establishment of a supernumerary position for certain officials and allows those affected to participate in the employees' retirement system. An additional

amendment provides that certain county ad valorem tax officials may participate in a retirement system in lieu of a supernumerary program.

Court costs

Three amendments allow counties to impose additional court costs. The amendment for Barbour County is specifically for jails, and the other two are for Sumter and Tallapoosa counties.

Fire protection and emergency medical services

Four counties (Covington, Tallapoosa, Blount and Elmore) have amendments dealing with raising taxes within their jurisdiction to provide for fire protection and emergency medical services.

Bingo games

Two counties, Covington and Houston, have constitutional amendments to allow for bingo games to be played in their county.

Miscellaneous topics for counties

Eleven counties have constitutional amendments dealing with various subjects from compensation of the probate judge to the election of the county board of education and other matters.

Miscellaneous topics statewide

An amendment increases the size of the Judicial Inquiry Commission and the Court of the Judiciary to add a district judge to both.

Another constitutional amendment amends the "Callahan Amendment", Amendment No. 425, which was an alternate way of amending the Alabama Constitution that required only the county affected to vote on the constitutional amendment. The constitutionality of this procedure was questioned by the United States Justice Department under §5 of the Voting Rights Act of 1965. The Attorney General, in an opinion to Governor Jim Folsom on April 10, 1994, recommended the repeal of Amendment 425 and that a new amendment be proposed. This constitutional amendment (Act. 94-611) meets the objectionable parts and will again allow only the county affected to vote without the necessity of a statewide vote on every issue.

Alabama has long been cited to have the longest constitution in the United States. It appears that it is only going to get longer.

For further information, contact Bob McCurley, Alabama Law Institute, P.O. Box 1425, Tuscaloosa, Alabama 35486, or call (205) 348-7411, FAX (205) 348-8411. ■

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.

The
Garrison Barrett Group

ARCHITECTURE
INTERIOR DESIGN

Functional and aesthetic offices for law firms, carefully designed to reflect the desired image of a particular practice, requires the sensitivity of an experienced architecture and interiors firm. The Garrison Barrett Group has provided design services, including facility programming and space planning, for prominent legal firms throughout the Southeast and has been recognized by the ABA JOURNAL for its design awards.

820 SHADES CREEK PARKWAY • SUITE 2400 • BIRMINGHAM, AL 35209 • 205-870-3090

About Members, Among Firms

ABOUT MEMBERS

Vickie E. House announces the relocation of her office to 8051 Highway 31, Calera, Alabama. The mailing address is P.O. Box 160, Calera 35040. Phone (205) 668-2800.

Braxton Wagnon announces the relocation of his office to 2153 14th Avenue, South, Birmingham, Alabama 35205. Phone (205) 933-0031.

Ginette A. Dow announces the relocation of her office to 1821 Third Avenue, North, Bessemer, Alabama 35020. Phone (205) 425-2223.

Steven L. Cochrun announces the relocation of his office to 3928 Montclair Road, Suite 217, Birmingham, Alabama 35213. Phone (205) 879-7228.

David B. Karn, formerly assistant attorney general for the Alabama Attorney General's Office, announces the opening of his office at 402 Lay Dam Road, Clanton, Alabama 35045. Phone (205) 280-0940.

Jonathan E. Ozmint, formerly on active duty in the U.S. Navy Judge Advocate General's Corp, announces he is assistant solicitor for the **Tenth Judicial Circuit** in South Carolina. The mailing address is 100 S. Main Street, Anderson, South Carolina 29621. Phone (803) 260-4046. Ozmint is a 1990 admittee to the Alabama State Bar.

Luther J. Strange, III, formerly director, federal affairs, Sonat Inc., announces the opening of his offices in Birmingham, Alabama and Washington, D.C.

E. Britton Monroe, formerly with Burr & Forman, announces the opening of his office at 205 20th Street, North, Suite 410, Birmingham, Alabama 35203. Phone (205) 252-0844.

AMONG FIRMS

Stanley K. Smith, formerly of Porterfield, Harper & Mills, and **Robert C. Thomas** announce the formation of **Smith & Thomas, L.L.C.** Offices are located at 132 First Street, South, Alabaster, Alabama 35007. The mailing address is P.O. Box 586, Alabaster 35007. Phone (205) 663-6929.

Curtis Wright, II announces his association with the firm of **Dortch, Wright & Wright**. Offices are located at 239 College Street, Gadsden, Alabama 35902. The mailing address is P.O. Box 405, Gadsden 35902-0405. Phone (205) 546-4616.

Sirote & Permutt announces that **Rodney A. Max** has joined the firm as a shareholder and that **Lynda L. Hendrix, Charles I. Middleton, J. Scott Sims, Matthew A. Vega,** and **Gail C. Washington** have joined the firm as associates. The firm has offices in Birmingham, Huntsville, Montgomery and Mobile, Alabama.

Miller, Hamilton, Snider & Odom became a Limited Liability Company under the provisions of Alabama law and is now **Miller, Hamilton, Snider & Odom, L.L.C. E. Barry Johnson, Eric J. Dyas** and **Jean M. Powers** have become associates with the firm's Mobile office. Offices are located in Mobile and Montgomery, Alabama and Washington, D.C.

Johnston, Barton, Proctor, Swedlaw & Naff announces that **Lee M. Pope** has joined the firm as an associate. Offices are located at 2900 AmSouth/Harbert Plaza, Birmingham, Alabama 35203-2618. Phone (205) 458-9400.

Olschner & Associates announces that **Ann L. Witherspoon** has become an associate with the firm. Offices are located at #17 Office Park Circle, Suite 100, Birmingham, Alabama. The mailing address is P.O. Box 531228, Birmingham 35253. Phone (205) 879-9905.

Alva M. Lambert, formerly a deputy district attorney for the Fifteenth Judicial Circuit, and **Branch D. Kloess,** formerly of Glassroth & Associates, announce the formation of **Lambert & Kloess**. Offices are located at 115 Goldthwaite Street, North, Montgomery, Alabama 36104. Phone (205) 263-5282.

Lee & Sullivan announces that **Ann Goodner** has joined the firm as an associate and **William L. Mathis, Jr.** is no longer affiliated with the firm. Offices are located at 2001 Park Place, North, Suite 500, Park Place Tower, Birmingham, Alabama 35203. Phone (205) 323-1061.

Parker, Brantley & Wilkerson announces that **Darla T. Furman** has joined the firm as an associate. Offices are located at 323 Adams Avenue, Montgomery, Alabama 36104. The mailing address is P.O. Box 4992, Montgomery 36103-4992. Phone (205) 265-1500.

Anthony L. Cicio, Sr. announces that **Anthony L. Cicio, Jr.** has become an associate with the firm, and the firm name has changed to **Cicio & Cicio**. Offices are located at Cicio Professional Building, 2153 14th Avenue, South, Birmingham, Alabama 35205. Phone (205) 939-1327.

Jay Waller, formerly a partner with Haskell, Slaughter, Young & Johnston, announces his association with **Don Springmeyer** of Reno, Nevada and the formation of **Springmeyer & Waller**. Offices are located in Reno, Nevada and Birmingham, Alabama. The Birmingham office is located at The Park Building, 2140 11th Avenue, South, Suite 422, Birmingham 35205. Phone (205) 933-9983.

Barry S. Marks, formerly of Haskell, Slaughter, Young & Johnston, has become a shareholder with **Berkowitz, Lefkovits, Isom & Kushner**. Offices are located at 1600 SouthTrust Tower, 420 N. 20th Street, Birmingham, Alabama 35203. Phone (205) 328-0480.

Rives & Peterson announces that **Valerie T. Kisor** has become an associate. Offices are located at 1700 Financial Center, 505 N. 20th Street, Birmingham, Alabama 35203. Phone (205) 328-8141.

Owens & Carver announces that **Alyce Manley Spruell**, formerly assistant dean

and director of Law Development at the University of Alabama School of Law, has joined the firm. Offices are located at 2720 6th Street, Tuscaloosa, Alabama 35401. The mailing address is P.O. Box 031707, Tuscaloosa 35403-1707. Phone (205) 750-0750.

Douglas J. Fees announces that **Jeffrey K. Grimes** and **L. Caroline McGehee** have become associates with the firm. Offices are located at 401 Madison Street, Huntsville, Alabama. The mailing address is P.O. Box 508, Huntsville 35801. Phone (205) 536-1199.

John A. Russell, III announces the association of **Patrick J. Anderson.** Offices are located at 202 Broad Street, Aliceville, Alabama. The mailing address is P.O. Box 333, Aliceville 35442. Phone (205) 373-8714.

Harwell E. Coale, Jr. and **Gilbert F. Dukes, III** announce the formation of **Coale & Dukes**. Offices are located at 51-D Tacon Street, Mobile, Alabama 36607. Phone (205) 471-2625.

Eyster, Key, Tubb, Weaver & Roth announces that **John R. Baggette, Jr.** has become an associate. Offices are located at 402 E. Moulton Street, S.E., Decatur, Alabama 35601. The mailing address is P.O. Box 1607, Decatur 35602-1607. Phone (205) 353-6761.

Bell Richardson announces the association of **Tammy L. Frazier**. Offices are located at 116 S. Jefferson Street, Huntsville, Alabama. The mailing address is P.O. Box 2008, Huntsville 35804. Phone (205) 533-1421.

Holberg & Holberg announces that **Michael Ralph Holberg,** formerly law clerk to the Hon. Edward B. McDermott, has become associated with the firm. Offices are located at 804 Commerce Building, 118 N. Royal Street, Mobile, Alabama 36601. The mailing address is P.O. Box 47, Mobile 36601. Phone (205) 432-8863.

Wilmer & Shepard announces that **Walter A. Kelly** has become a partner. Offices are located at 100 Washington Street, Suite 302, Huntsville, Alabama 35801. Phone (205) 533-0202.

Woodall & Maddox announces that **Morton Brian Slaughter** has become an associate. Offices are located at 3821 Lorna Road, Suite 101, Birmingham, Alabama 35244. Phone (205) 733-9455.

T. E. Buntin, Jr., formerly of Buntin, Cobb & Shealy, **Stephen T. Etheredge** and **Lexa E. Dowling** announce the formation of **Buntin, Etheredge & Dowling**. Offices are located at 185 N. Oates Street, Dothan, Alabama 36303. The mailing address is P.O. Box 1193, Dothan 36302-1193. Phone (205) 793-3377.

Barker, Janecky & Newell announces the firm's name has been changed to **Janecky, Newell, Potts, Hare & Wells,** and that **E. B. Strong** has become an associate. Offices are located in Mobile and Birmingham, Alabama.

M. Clay Ragsdale announces that **E. Ansel Strickland,** formerly an associate with Johnston, Barton, Proctor, Swedlaw & Naff, has become an associate. Offices are located in the Farley Building, 1929 Third Avenue, North, Suite 550, Birmingham, Alabama 35203. Phone (205) 251-4775.

Webb & Eley announces that **Frank E. Bankston, Jr.** has become an associate. Offices are located at 166 Commerce Street, Suite 300, Montgomery, Alabama 36101. The mailing address is P.O. Box 238, Montgomery 36101-0238. Phone (205) 262-1850.

B. Judson Hennington, III announces his promotion to assistant general counsel, **Intergraph Corporation.** The mailing address Mail Stop HQO34, Huntsville, Alabama 35894-001. Phone (205) 730-2521.

Frank Howard Hawthorne, Sr., formerly of Balch & Bingham, and **Frank Howard Hawthorne, Jr.** announce the formation of **Hawthorne & Hawthorne, L.L.C.** Offices are located at 207 Montgomery Street, Suite 1100, Montgomery, Alabama 36104. Phone (205) 269-5010.

William Wiley Horton, formerly a shareholder with Haskell, Slaughter, Young & Johnston, has joined **HEALTHSOUTH Rehabilitation Corporation** as group vice-president, legal services. Offices are located at Two Perimeter Park, South, Birmingham, Alabama 35243. Phone (205) 967-7116.

Sasser & Littleton announces that **Clifton E. Slaten** and **Michael Brady O'Connor** have become members of the firm. Offices are located at Colonial Financial Center, One Commerce Street, Suite 700, Montgomery, Alabama 36104. Phone (205) 834-7800.

Derrell O. Fancher and **David O. Gatch** announce the formation of **Fancher & Gatch,** with offices located at 407 Lay Dam Road, Clanton, Alabama 35045. The mailing address is P.O. Box 185, Clanton 35045.

McGlinchey Stafford Lang announces that **Elena A. Lovoy**, formerly with Compass Bank, has joined the firm as an associate in their New Orleans office. The mailing address is 643 Magazine Street, New Orleans, Louisiana 70130-3477. Phone (504) 596-2865. Lovoy is a 1987 admittee to the Alabama State Bar.

Morgan, Lewis & Bockius announces that **John E. Daniel** has joined the firm in its Washington office as *of counsel.* Daniel is a 1964 admittee to the Alabama State Bar. ■

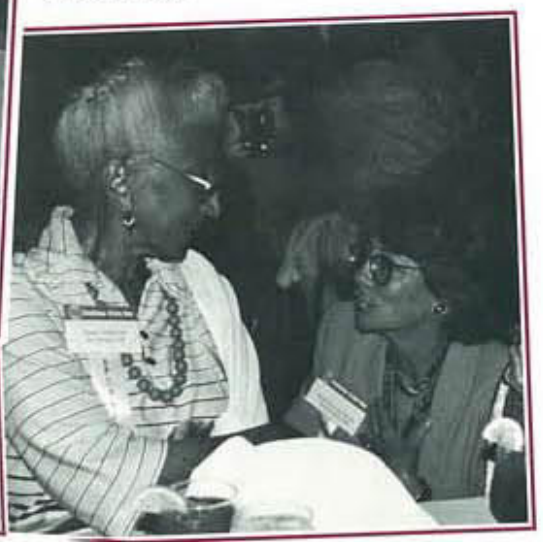
ALABAMA STATE BAR
ANNUAL MEETING

July 18-21, 1994
Perdido Beach Resort · Orange Beach, Alabama

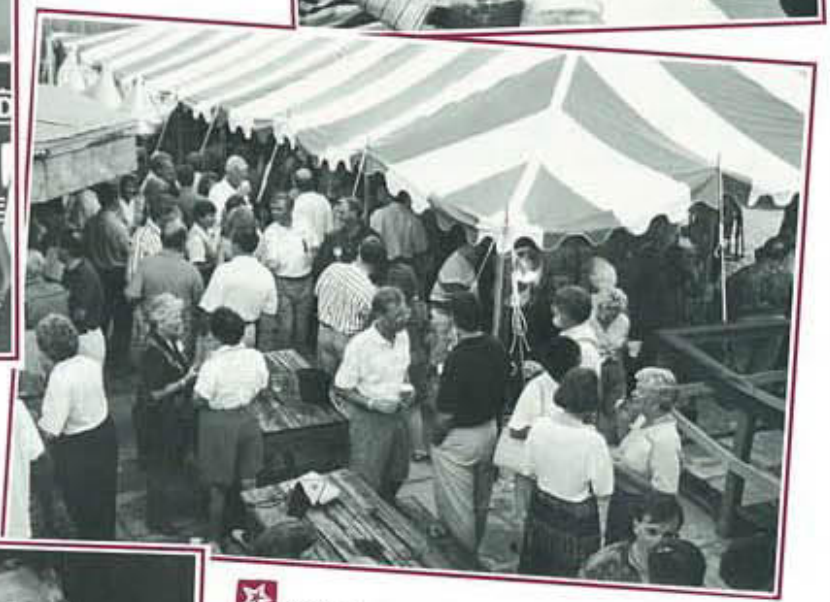
Plenary session speaker Dr. Bowen F. White, who discussed managing stress, with President Spud Seale

Roberta Cooper Ramo, president-elect nominee of the ABA, keynote speaker of the Bench & Bar Luncheon

Mrs. Ramo (right) with Grande Convocation speaker Ashley Dickerson of Anchorage



The Harmon Drew Group entertains at the Flora-Bama.



Members enjoy reception at the famous "Redneck Riviera", the Flora-Bama

President and Mrs. Seale (center) with Judicial Award of Merit recipient Judge William R. Gordon and his wife, Hester, of Montgomery.

ALABAMA STATE BAR
ANNUAL MEETING

Members enjoy visiting booths at Legal Expo '94

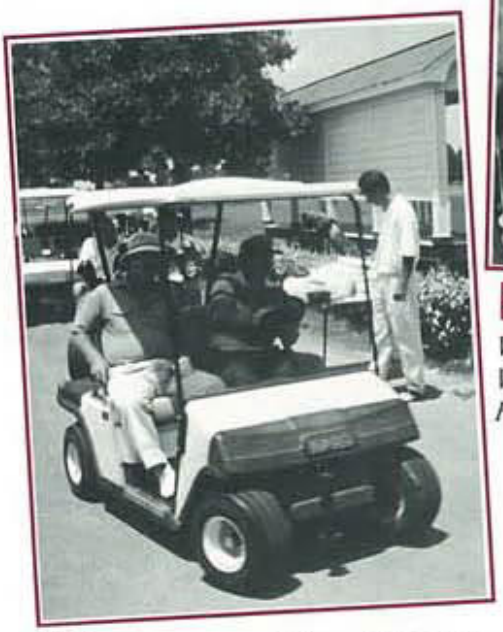
The beachside Membership Reception was held Tuesday evening at the Perdido Beach Resort.

Tuesday's featured speaker, Michael Josephson, discusses "Ethics Beyond the Code."

Children played games and won prizes at the Children's Carnival sponsored by Insurance Specialists, Inc. of Atlanta.

ALABAMA STATE BAR ANNUAL MEETING

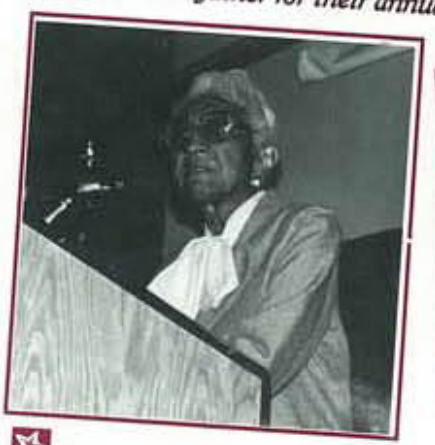
Panel members, left to right, Judge Inge Johnson, Martha Barnett, Cathy Wright and Virgina Granade gathered for breakfast before their presentations Wednesday for "Women in the Legal Profession." Not pictured is panel member the Hon. Vanzetta Penn McPherson.



Participants of the golf tournament at the Cotton Creek Course, Craft Farms

Past presidents gather for their annual breakfast.

Richard Bell and Rodney Max, two of the participants in Wednesday's "How to Present a Case in Mediation"



Featured speaker Ashley Dickerson at Thursday's Grande Convocation

Robert P. Denniston of Mobile, recipient of the Award of Merit

ALABAMA STATE BAR
ANNUAL MEETING

Reggie and Anne Hamner with humorous portrait reflecting his 25-year career at the state bar

Alva Lambert of Montgomery presents "remarks" from noted Alabamians in honor of Reggie Hamner's upcoming retirement.

Tutt Barrett of Opelika wins the grand prize Thursday, an IBM laptop computer.

Reggie Hamner reflects on his time as executive director and thanks bar members.

Past President Spud Seale of Montgomery, '94-95 President Broox Holmes of Mobile and President-elect John Owens of Tuscaloosa

NOTICE TO ALL ALABAMA STATE BAR MEMBERS

ARE NOW AVAILABLE!

ALTERNATIVE DISPUTE RESOLUTION HANDBOOK WITH MEDIATION MODEL

The Alabama State Bar's Task Force on Alternative Dispute Resolution has prepared a handbook addressing alternative dispute resolution (ADR) procedures currently available in Alabama with a focus on mediation. The purpose of the handbook is to provide a useful tool for judges and attorneys in utilizing ADR in Alabama. (All judges will be provided a copy through the Alabama Judicial College.)

The handbook can be purchased by sending the order form below with your check, payable to Alabama State Bar ADR Center.

ALTERNATIVE DISPUTE RESOLUTION HANDBOOK WITH MEDIATION MODEL ORDER FORM

Name _____

Address _____

City _____ **State** _____ **Zip** _____

Telephone No. _____

For orders of less than 20 - **Send _____ copies of the ADR Handbook at $10.00 per copy for a total of** **$_____**

For orders of 20 or more - **Send _____ copies of the ADR Handbook at $8.00 per copy for a total of** **$_____**

Make check payable to: **Alabama State Bar ADR Center**

and mail to

Alabama State Bar
c/o Keith Norman
P.O. Box 671
Montgomery, AL 36101

BUILDING ALABAMA'S COURTHOUSES

SUMTER COUNTY COURTHOUSE

By SAMUEL A. RUMORE, JR.

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

Side entrance, Sumter County Courthouse

SUMTER COUNTY

The area that is now Sumter County has an extremely colorful past. It is located in the middle of what were once the Choctaw Indian lands, and the territory was a center for trade. The European powers, France, England, and Spain, all competed for influence there.

The first significant and continuing European contact in the area took place in 1735 when the French began construction of Fort Tombecbe as a trading and military outpost. It was located on the Tombigbee River near present-day Epes in Sumter County. In 1763, the French lost their North American holdings, and the fort came under British control. They renamed it Fort York. It was never successful in British hands because they failed to win Choctaw friendship. The British subsequently abandoned the fort. In 1780, the Spanish claimed the area, rebuilt the fort, and renamed it Fort Confederation. It remained in Spanish hands only briefly because the Treaty of Versailles of 1783 awarded the land north of 31 degrees of latitude, which included the fort, to the United States.

In 1786, the United States government made the first of several treaties with the Choctaw nation whose land covered most of present-day Mississippi and a portion of western Alabama. Each treaty guaranteed hunting rights, promised protection, and provided for trading posts. However, the Choctaw lands, including the territory that became Sumter County, are fertile, agricultural areas, which attracted cotton planters whose lands in the east were being depleted. Settlers kept pressing southwestward, violating Indian treaty rights and pressuring the government to open up Indian lands for settlement.

In 1801, the Choctaws ceded land on the Mississippi River to the United States. In 1802, they gave up some of their land in southwest Alabama. In 1805, five million more acres were ceded by the treaty of Mt. Dexter. In 1816, they signed another treaty giving up all of their lands east of the Tombigbee River. This treaty was signed at the trading post of George Gaines, a United States Indian agent, about 100 yards from where Fort Tombecbe once stood. In 1820, a further land cession took place, leaving the Choctaws only a fraction of their former lands in Mississippi and only the areas of present-day Sumter and Choctaw counties in Alabama.

The final act in the disappearance of the Choctaw nation from the southeast took place in 1830. The United States Congress passed the Indian Removal Act that year authorizing President Jackson to force the Indians to move west of the Mississippi River. By the Treaty of Dancing Rabbit Creek, September 27, 1830, the Choctaws signed away the rest of their lands. They moved to Oklahoma and Arkansas between 1831 and 1833. The stage was now set for the creation of Sumter County, Alabama.

As a direct result of the Indian removal law, a vast amount of territory came under Alabama control. The Alabama Legislature created ten new counties on December 18, 1832. Nine of the counties were in the eastern part of Alabama and

were derived from Creek and Cherokee lands. These counties were Barbour, Benton (later called Calhoun), Chambers, Coosa, Macon, Randolph, Russell, Talladega, and Tallapoosa. One county was created in west Alabama from the Choctaw lands: Sumter County. When the former Indian lands came on the market for sale and homesteading in 1832, many of those attracted to its fertile promise were from the Carolinas and Virginia.

Sumter was named for General Thomas Sumter, a Revolutionary War hero in South Carolina, who had died on June 1, 1832, just as the Indian lands were opening up. Sumter had been born near Charlottesville, Virginia on August 14, 1734. As a young man he was involved with military expeditions against the Cherokees. He married a South Carolina woman in 1767.

Sumter gained great fame during the Revolutionary War, earning the nickname "Gamecock of the Revolution". He kept the largest body of militia under arms in the colonies and used them to fight British regulars. He also waged warfare through surprise raids against the British in South Carolina. His efforts forced the British to withdraw from the Carolinas, and this directly led to the ultimate British surrender at Yorktown.

After the war, Sumter was elected by South Carolina to the first United States Congress. He later served from 1801 to 1810 in the United States Senate. He lived to the very old age of 97 and still rode horseback until the day of his death. Fort Sumter, South Carolina was named in his honor, and the athletic teams of the University of South Carolina to this day are called the "Fighting Gamecocks" in memory of the old general.

On January 12, 1833, an act of the Alabama Legislature set up a seven-member commission which was appointed to organize county government and to select a site for the new county's courthouse. At its first meeting, only six members attended. Four locations were placed in nomination for county seat: Fisher's Store; Hickory Hill, which was also called Sumterville; the Chile's Place; and an old Choctaw site where Livingston stands today. On the next day all seven members attended the meeting, and the Livingston site received a majority of votes. It has remained the only county seat for Sumter County.

The town of Livingston was named for Edward Livingston of New York, who was Secretary of State under Andrew Jackson at the time Sumter County was created. Livingston was a lawyer, born in 1764, who served as United States Congressman from New York from 1794 to 1800. While in Congress he became friends with Andrew Jackson, then a Congressman from Tennessee. A highlight for Livingston's congressional career took place when he voted for Thomas Jefferson over Aaron Burr in the first presidential election decided by the House of Representatives.

Livingston left Congress to become United States Attorney for the District of New York, and he was appointed mayor of New York City. In December 1803 he left New York in the midst of a financial scandal where a trusted friend had stolen money from the city.

Livingston decided to start a new life for himself in the Louisiana Territory. He arrived in New Orleans in February 1804. He immediately became a person of influence. During the war of 1812, Livingston assisted Andrew Jackson at the Battle of New Orleans. It was Livingston who brought Jean Lafitte to the aid of Jackson in securing victory over the British in 1815.

Livingston practiced law and became prominent for his work in simplifying the Louisiana Code. In 1820, he was elected to the Louisiana Legislature. In 1822, he returned to Congress, this time as a Representative from Louisiana. In 1828, he was chosen to serve in the Senate. In 1831, his old friend Andrew Jackson appointed him Secretary of State. It was at this time that Livingston, Alabama was named in his honor. In 1833, he became Minister to France, and in 1836 he died in New York state, five days short of his 72nd birthday.

Sumter County Courthouse front entrance

The first courthouse in Sumter County was a log structure erected under the direction of the original commission, most likely in 1833. It was located near the intersection of West Main and Spring streets. The floor consisted of logs planed off to form a smooth surface. The walls had cracks between the logs. Spectators often took advantage to observe proceedings from the outside.

Early county records indicate that the building cost $149.50 to construct and $40 to finish on the inside. On January 23, 1834, the county treasurer was authorized to pay Jacob Allen for his services. These figures were well within the statutory limit of $800 that was set for this purpose by the Legislature.

The first court held at the courthouse was organized by Judge Sion L. Perry of Tuscaloosa. Tradition in Livingston also

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.

recounts that several of the early religious denominations in the town used the courthouse as their meeting place from 1833 to 1836 until they could construct their own church buildings. Thus, this structure was important to the political, religious and social life of early Livingston.

The log courthouse served Sumter County until 1837 when a new brick structure was built. This building was a great visual improvement. However, the builder had constructed a defective building, and in 1838 the foundation of the courthouse gave way one day while the building was unoccupied. No one was injured as the walls of the new structure collapsed. This building had to be torn down.

A third courthouse was constructed in 1839. This edifice was a two-story white frame building of Colonial design. It had chimneys two stories high that served as fireplaces on both floors, and it contained large windows flanked by double shutters. Later the county erected two other frame buildings for the circuit clerk and county treasurer.

Despite the fact that Sumter County was less than ten years old, it had a number of surprising distinctions by 1840. Sumter was a very fertile county, and planters with slaves rushed to this land. In 1840, approximately 30,000 persons lived in Sumter County making it the largest county in population in Alabama. One plantation, owned by Jeremiah Brown, had 11,000 acres and more than 1,000 slaves. The black population in Sumter County significantly outnumbered the white.

Cotton was the chief farm product of Sumter County, and Gainesville on the Tombigbee River became a principal cotton shipping port. In 1840, Gainesville had a population of 4,000 and was the third largest city in the state. Today it is little more than a village.

By 1840, Livingston had become the center for antebellum civilization in Sumter County. Its streets were lined with sumptuous homes. Its civic life was marked by elegance, culture and refinement. A school for girls was founded there in the 1830s. It evolved into a Normal School for teachers and ultimately became today's Livingston University. By tracing its roots, Livingston claims the title of third oldest college in Alabama.

In 1880, a fire destroyed the separate circuit clerk's building, and many early

records were destroyed. A special tax was levied to build a fireproof brick building on the southwest corner of the public square for a probate office, and the county rebuilt the circuit clerk's structure at the same time.

The third courthouse served Sumter County until November 2, 1901, when it was destroyed by a fire. The circuit clerk's office was razed shortly thereafter in 1902. On July 10, 1902, the cornerstone was laid for a new courthouse which still serves Sumter County today. The cornerstone laying was a gala event, attended by many public officials, including Dr. Russell M. Cunningham, lieutenant governor of Alabama.

Architects for the new courthouse were Ausfeld & Chapman. The builder was C. H. Dabbs & Company.

The building is constructed of brick, terra-cotta, and stone. It contains two stories, an attic, and a clock tower. The dimensions of the building are 140 feet long by 80 feet wide. It has four entrances. The structure was built in the Greek Revival style and contains an eight-sided domed cupola. It was placed on the National Register of Historic Places on March 24, 1972. A courthouse annex was constructed in 1977.

A final sidenote on the courthouse concerns the well on the courthouse grounds. It was bored in the 1850s and the water from the well was found to have a significant mineral content. Many people came from far away places to sample the water from the courthouse well at Livingston. A wooden pavilion containing a pagoda-like roof was placed over the well to provide shade for visitors. This pavilion was replaced in 1924 with a brick structure that presently shelters the well on the courthouse grounds. ■

BAR BRIEFS

• **David A. Garfinkel**, a partner in the Jacksonville, Florida firm of Datz, Jacobson, Lembcke & Garfinkel, has been designated by The Florida Bar as a board-certified marital and family law lawyer. Garfinkel is a 1983 admittee to the Alabama State Bar.

• **William Burton Hairston, III** and **Edgar Meador Elliott, III**, both of Birmingham, were recently elected Fellows of the American Bar Foundation.

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

Hairston, of the firm of Engel, Hairston & Johanson, is a 1983 graduate of the University of Alabama School of Law.

Elliott, of the firm of Rives & Peterson, is a 1953 graduate of the University of Alabama School of Law.

• **The Greater Birmingham Criminal Defense Lawyers Association** recently elected new officers. The new president is Albert C. Bowen, Jr.; president-elect, Virginia A. Vinson; executive vice-president, John A. Lentine; secretary, John C. Robbins; treasurer, Donald L. Colee, Jr.; and immediate past president, C. Tommy Nail.

• **Judith F. Todd,** with the Birmingham firm of Sirote & Permutt, was recently elected a Regent (a member of the governing board) of the American College of Trust and Estate Counsel. The American College of Estate and Trust Counsel is an international organization of lawyers who are skilled and experienced in the preparation of wills and trusts; estate planning; probate procedure; and administration of trusts and estates of decedents, minors and incompetents.

• Birmingham attorney **Alva C. Caine** recently became the president of the National Alumni Association, Cumberland School of Law, Samford University.

A 1970 Cumberland graduate, Caine is a former Alabama State Bar president and practices with Hare, Wynn, Newell & Newton.

• **Boyd F. Campbell** of Montgomery was recently appointed chair of the Immigration Law Committee in the General Practice Section of the American Bar Association.

The Section represents approximately 13,000 lawyers throughout the country, and has 60 committees. Campbell is with the firm of Campbell Warner McBryar of Montgomery.

• **Henry H. Self, Jr.**, a partner with the Florence firm of Self & Self, recently became a Fellow of the American College of Trial Lawyers. The College is a national association of 4,700 Fellows in the United States and Canada. ■

Notice

Proposed Alabama Rules of Evidence

The Alabama Supreme Court has pending before it a proposed set of Alabama Rules of Evidence. Those rules as first proposed were published in the So. 2d Advance Sheet dated May 13, 1993 (special Alabama edition). Following that publication, the court accepted and considered comments to those proposed rules.

Those proposed rules have been revised, and as revised, are again pending before the court. A full-text publication of those revised proposed rules appears in a So. 2d Advance Sheet dated on or about August 18, 1994 (special Alabama edition).

The court again invites comments regarding those proposed Alabama Rules of Evidence (as revised). Comments should be in writing and should be filed with Robert G. Esdale, clerk of the Alabama Supreme Court, Judicial Building, 300 Dexter Avenue, Montgomery, Alabama 36104-3741; comments must be filed no later than December 30, 1994.

George Earl Smith
Reporter of Decisions
Alabama Appellate Courts

OPINIONS OF THE GENERAL COUNSEL

By ROBERT W. NORRIS, general counsel

Q "In June of 1988 C. S. came to me for advice in regard to her work-related injury while in the employ of S.A.C. on or about February 4, 1988. During the course of my representation of Ms. S., facts came to my attention which would indicate that she was harassed by the employer and more particularly, its plant nurse. I had a number of conversations with the attorney for S.A.C., the personnel manager for S.A.C., a rehabilitation nurse hired by the workmen's compensation carrier, and two employees of the workmen's compensation carrier concerning my client's medical condition and the fact that I thought she was being harassed by the plant nurse. On two or three occasions I was contacted by the personnel manager of the company who desired to know when my client would be returning to work. He was quite insistent upon obtaining this knowledge because he said he needed to make provisions for replacing her if she would not be back and needed to take care of administrative matters. Based on information that I obtained I wrote the personnel manager a letter stating that my client would not be returning to work because of the recommendations of her doctors concerning her medical and mental condition resulting from her injury. I have enclosed with this letter a copy of the letter that I sent to the personnel manager.

"Upon receiving my letter the personnel manager mailed to me a letter stating that he considered that my client had quit. To my knowledge I had no further contact with the personnel manager after this point. On August 28, 1989, I, along with co-counsel, brought a suit against S.A.C. on behalf of C.S. in the circuit court. The suit alleged injuries compensable under the workmen's compensation law of the State of Alabama and also stated a claim for wrongful discharge or termination under the same workmen's compensation act. These two causes of action were later severed for separate trial. A jury trial was requested by the plaintiff for the cause of action based upon wrongful termination.

"During the course of discovery the deposition of the personnel manager, R.G., was taken by the plaintiffs. At the deposition Mr. G. made the following statement when asked about a conversation that he had with me:

Page 132, Lines 13 & 14:
Question: 'Okay. Do you recall anything else that was said in those discussions?'

Page 132, Lines 15 & 16:
Answer: 'The only thing that I remember specially that Mr. G. told me was when she quit.'

Page 132, Lines 17, 18 & 19:
Question: 'And what was that?'

Answer: 'That , in essence, Ms. D. has quit and she will not be returning to work.'

"Subsequently the defendant, S.A.C., noticed my deposition and it was taken in part but not concluded on the 6th of March, 1991.

"At my deposition counsel for the defendant raised questions about the propriety of me continuing to represent my client and testifying at the trial of the case and cited Disciplinary Rule 5-101 (B) of the CODE OF PROFESSIONAL RESPONSIBILITY OF THE ALABAMA STATE BAR. I have consistently maintained to the attorneys for the defendants and the court that based upon the discovery that we have had to date that it would not be necessary for me to testify in the case unless the personnel manager for the defendant or the workmen's compensation nurse or the employees of the insurance carrier testified as to matters that were discussed between us prior to the instigation of the lawsuit and that such testimony was contrary to my understanding of our conversation. I have not heard anything to date that would lead me to believe that I would be called as a witness for the plaintiff in the case in chief or for impeachment purposes

against Defendants' witnesses. My feeling is that the only testimony I might give would be for impeachment of one of the defense witnesses previously mentioned if they were to change their testimony or testify to facts that were contrary to my memory of said communications.

"Because the defendants have made various remarks concerning the propriety of me representing my client and testifying as a witness at the trial I would appreciate it very much if you could answer the following questions:

1. First, can I continue to represent C.S. throughout the remaining discovery procedures in this case?
2. Can I represent C.S. at the trial of the wrongful discharge action and/or workmen's compensation action?
3. If I am called upon to give testimony to impeach defendants' witnesses concerning my communications with them would I be required to withdraw?
4. If it becomes apparent that I may be called upon for the sole purpose of impeaching testimony given by the defendant's witnesses concerning whether or not the plaintiff voluntarily terminated her employment, may I continue as her attorney and give such testimony or am I required to withdraw at that point?
5. If the Defendants call me as a witness, would I be required to withdraw?"

ANSWER, QUESTION ONE:

Yes, the lawyer witness rule is not applicable to the pre-trial phase of litigation.

ANSWER, QUESTION TWO:

You may represent C.S. at the trial of the workmen's compensation action since it is "unlikely" that you would be a "necessary witness". The answer to your question concerning the representation of C.S. at the trial of the wrongful discharge action is contained in 3, 4 and 5 below.

ANSWER, QUESTIONS THREE, FOUR & FIVE:

You must withdraw from the representation of C.S. in the wrongful discharge action, if, at trial, you are called upon to testify concerning whether or not the plaintiff voluntarily terminated her employment, *unless* withdrawal at that point would work a substantial hardship on your client. Your withdrawal in this instance would be mandated without regard to which party called you as a witness. Your disqualification in this matter, however, would not extend to co-counsel or other members of your firm.

DISCUSSION:

Rule 3.7 of the Rules of Professional Conduct of the Alabama State Bar, effective January 1, 1991, continues the traditional and well-established proposition that a lawyer who represents a client in a litigated matter may not also appear in that matter as a witness. Rule 3.7 provides as follows:

"3.7 Lawyer As Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness, except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness, unless precluded from doing so by Rule 1.7 or Rule 1.9."

The prior lawyer witness rules DR 5-101(B) and DR 5-102 contained the somewhat vague language regarding the conditions that would lead to disqualification, i.e., when a lawyer "knows or it is obvious that he or a lawyer in his firm ought to be called as a witness." The effect of this language in some instances caused counsel to be disqualified on mere speculation. The language in new Rule 3.7 is more carefully drawn requiring withdrawal only when the lawyer is "likely" to be a "necessary" witness. Consequently, the decision to withdraw can, in good faith, be delayed to a time closer to the date of the

trial. At that point, the lawyer would then determine whether his continued representation at trial would be permitted under any of the three exceptions in 3.7 (a).

The third exception [3.7(a)(3)] to the lawyer witness rule is the most important because it permits an equitable balancing of the interest of the parties. Consequently, a lawyer may continue as an advocate at trial even though he is a witness if the harm to his client caused by his withdrawal is not outweighed by the harm to the opposing party. This exception is similar to the exception found in DR 5-101(B) (4) but less restrictive. The language in DR 5-101(B) (4) permitted a lawyer to continue as an advocate at trial if his disqualification would "work a *substantial hardship* on the client because of the *distinctive value* of the lawyer or his firm as counsel in a particular case." (emphasis added) The new language permits a balancing of the equities without tieing substantial hardship to the *distinctive value* of the lawyer.

Finally, Rule 3.7 (b) makes it clear that the disqualification is personal and is not imputed to other members of the lawyer's firm. Thus, a solution, and a factor, in balancing the equities involved in disqualification, is to permit another lawyer in the firm to continue the trial should that become necessary.

In the fact situation that you pose you state, "I have consistently maintained to the attorneys for the defendants and the court that based upon the discovery that we have had to date that it would not be necessary for me to testify in the case unless the personnel manager for the defendant or the workmen's compensation nurse or the employees of the insurance carrier testified as to matters that were discussed between us prior to the instigation of the lawsuit and that such testimony was contrary to my understanding of our conversation." In view of your uncertainty concerning whether it will be necessary that you be a witness, you may delay a withdrawal decision to such time that any uncertainty is resolved. It should be noted that it does not become "necessary" that a lawyer be a witness simply because the opposing party asserts that the lawyer has knowledge that might be relevant. If, in fact, it does become "necessary" that you be called as a witness, whether before trial or during trial, then you must withdraw as counsel at the trial unless your testimony relates to an uncontested issue or withdrawal would cause a substantial hardship on your client. In this regard, if possible, you should prepare co-counsel to proceed with the trial should it become necessary for you to be a witness. ■

[RO-91-19]

Notice

Rule 70A (Interim), Alabama Rules of Civil Procedure Rule 33, Alabama Rules of Criminal Procedure

By an order effective July 1, 1994, the supreme court amended Rule 33, Alabama Rules of Criminal Procedure, so that it no longer applies to contempts arising in civil cases. By an order effective July 11, 1994, the court adopted Rule 70A (Interim), Alabama Rules of Civil Procedure, to provide a rule governing contempts arising out of civil cases. Those rules have been published in Southern 2d advance sheets date July 7, 1994 and July 14, 1994.

The supreme court now has pending before it extensive proposed amendments to the Rules of Civil Procedure. When the court acts on those proposed amendments, Rule 70A (Interim) may be incorporated into the rules as a permanent rule. In the meantime, the court invites comments from members of the bar and other interested persons regarding the substance of this interim rule. The court also invites comments regarding whether it would be good to incorporate the substance of Rule 33, Alabama Rules of Criminal Procedure, and the substance of Rule 70A (Interim), Alabama Rules of Civil Procedure, into one rule dealing with all aspects of contempt and to be placed in the Alabama Rules of Judicial Administration. Any comments should be in writing and should be filed with Robert G. Esdale, clerk of the Alabama Supreme Court, Judicial Building, 300 Dexter Avenue, Montgomery, Alabama 36104-3741; comments must be filed no later than October 31, 1994.

George Earl Smith
Reporter of Decisions
Alabama Appellate Courts

C·L·E OPPORTUNITIES

The following programs have been approved by the Alabama Mandatory Continuing Legal Education Commission for CLE credit. For information regarding other available approved programs, contact MCLE Commission office at (205) 269-1515 or 1-800-354-6154, and a complete CLE calendar will be mailed to you.

SEPTEMBER

13 Tuesday

ASSET PROTECTION PLANNING IN ALABAMA
Birmingham, Ramada Inn Airport
National Business Institute
Credits: 6.0 Cost: $138
(715) 835-8525

15 Thursday

ALABAMA FORECLOSURE AND REPOSSESSION
Mobile, Adam's Mark Hotel
National Business Institute
Credits: 6.0 Cost: $138
(715) 835-8525

16 Friday

FEDERAL PRACTICE UPDATE: RULES OF CIVIL PROCEDURE
Birmingham, Civic Center
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

16-17

FAMILY LAW RETREAT
Orange Beach, Perdido Beach Resort
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

22 Thursday

REAL ESTATE
Montgomery, Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

23 Friday

REAL ESTATE
Birmingham, Sheraton Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

PRACTICAL TIPS FOR A SMALL OFFICE
Birmingham
Birmingham Bar Association
Credits: 3.0
(205) 251-8006

NEGOTIATION: THE LAWYER'S ESSENTIAL SKILL
Birmingham, Sheraton Civic Center Hotel
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

INSURANCE LAW: BAD FAITH CLAIMS
Birmingham
Lorman Business Center, Inc.
Credits: 3.8 Cost: $149
(715) 833-3940

30 Friday

DEPOSITIONS
Birmingham, Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

BANKRUPTCY LAW
Birmingham, Pickwick Center
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

ENVIRONMENTAL & BUSINESS ISSUES FOR THE GENERAL PRACTITIONER
Auburn, Auburn University Hotel and Conference Center
Auburn University Bar Association and Cumberland Institute for CLE
Credits: 5.0 Cost: $85
(800) 888-7454

OCTOBER

4-5

LABOR REQUIREMENTS OF THE SERVICE CONTRACT ACT
Huntsville, Holiday Inn Research Park
Federal Publications, Inc.
Credits: 8.3 Cost: $525
(202) 337-7000

7 Friday

MEDICAID ELIGIBILITY IN NURSING HOMES
Birmingham, Medical Forum
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

INSURANCE LAW
Birmingham, Pickwick Center
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

14 Friday

NON-TAXABLE ESTATES
Birmingham, Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

CRIMINAL LAW
Birmingham, Carraway Conference Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

MEDIATION
Birmingham, Mountain Brook Inn
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

CONFIDENTIALITY OF MEDICAL RECORDS
Birmingham
Lorman Business Center, Inc.
Credits: 6.0 Cost: $115
(715) 833-3940

20 Thursday
NEW ALABAMA RULES OF EVIDENCE
Huntsville, Marriott
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

ALABAMA SALES & USE TAX
Montgomery
Lorman Business Center, Inc.
Credits: 6.0
(715) 833-3940

21 Friday
NEW ALABAMA RULES OF EVIDENCE
Birmingham, Pickwick Center
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

27 Thursday
NEW ALABAMA RULES OF EVIDENCE
Montgomery, Ramada Inn East
Cumberland Institute for CLE
Credits: 6.0 Cost: $150
(800) 888-7454

28 Friday
JURY SELECTION
Birmingham, Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

NEW ALABAMA RULES OF EVIDENCE
Mobile, Holiday Inn Downtown
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

REVISED ALABAMA BUSINESS CORPORATION ACT
Birmingham, Sheraton Civic Center
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

NOVEMBER

3 Thursday
TORTS
Montgomery, Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

4 Friday
TORTS
Birmingham, Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

WORKERS' COMPENSATION
Birmingham, Medical Forum
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

11 Friday
BANKRUPTCY
Birmingham, Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

FAMILY LAW
Birmingham, Carraway Conference Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

ERISA
Birmingham, Pickwick Center
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

14 Monday
WINNING TRIAL ADVOCACY PLUS WINNING ON APPEAL
Birmingham
Lorman Business Center, Inc.
Credits: 6.0 Cost: $139
(715) 833-3940

Health

Major Medical. Provides personalized comprehensive coverage to Lawyers, employees, and eligible family members. The Southern Professional Trust is totally underwritten by Continental Casualty Company, a CNA Insurance Company.

Life

Family Term Life. Provides benefits for Lawyers, spouses, children and employees. Coverage through Northwestern National Life Insurance Company.

Security

Disability Income. Features "Your Own Specialty" definition of disability with renewal guarantee and benefits available up to 75% of your income for most insureds. Coverage through Commercial Life, a subsidiary of UNUM.

Peace Of Mind

Business Overhead Expense Insurance. A financial aid to keep your office running if you become disabled. Coverage through Commercial Life, a subsidiary of UNUM.

All from ISI

If you're a Lawyer practicing in the State of Alabama, Insurance Specialists, Inc. offers the finest insurance coverage anywhere. We're here to help with all your insurance needs.

ISI

EST. 1959

INSURANCE SPECIALISTS, INC.

33 Lenox Pointe NE
Atlanta, GA 30324-3172
404-814-0232
800-241-7753
FAX: 404-814-0782

KIDS' CHANCE SCHOLARSHIPS AWARDED

John J. Coleman, III and William P. Cobb present Kids' Chance chairman Charles Carr with a copy of their book, **Alabama Workers Compensation Practice Book**, *1994 Edition. The proceeds from the book are being donated to the Kids' Chance Scholarship Fund. Books may be purchased by sending a check for $63.95 to*

The fundraising efforts of numerous volunteers paid off when five young people received Kids' Chance scholarships totalling $30,000 at the annual meeting of the Alabama State Bar. Kids' Chance was set up to provide scholarships for high school, college or technical school student who are children of workers killed or permanently and totally disabled in an on-the-job accident. The scholarships were the second set awarded since the fund was established in December 1992 by the Workers' Compensation Section. The fund is administered by the Alabama Law Foundation, Inc., which is a charitable tax-exempt organization. Kids' Chance has been enthusiastically supported by all those involved in workers' compensation: attorneys, businesses, rehabilitation professionals, medical providers, insurance agents, and organized labor.

Chris and Tim Basselin of Birmingham are the first siblings to receive scholarships. Chris will be a junior at University of Alabama at Birmingham where he is majoring in mathematics. Tim will be a freshman at Evangel College in Springfield, Missouri and plans to enter the ministry. Their father was a heavy equipment mechanic who became permanently disabled when the bucket of a machine being prepared for delivery fell and struck his head.

Melissa Parker of Mobile is the first repeat recipient of a Kids' Chance scholarship. Melissa attended the University of South Alabama last year and has transferred to Bishop State Community College. Her father was injured when the floor of a silo he was working in gave way beneath him. Melissa plans to become a physical therapy assistant because she has seen the help her father has received from his physical therapists.

Tim Browning of Ethelsville received a scholarship to attend Mississippi State University. Tim will be a sophomore and is studying forestry. He chose to attend Mississippi State so that he can live at home and help his father. Mr. Browning worked as a millwright for a paper company and became disabled when the housing blew on a valve he was repairing and soaked him with a wood treatment chemical.

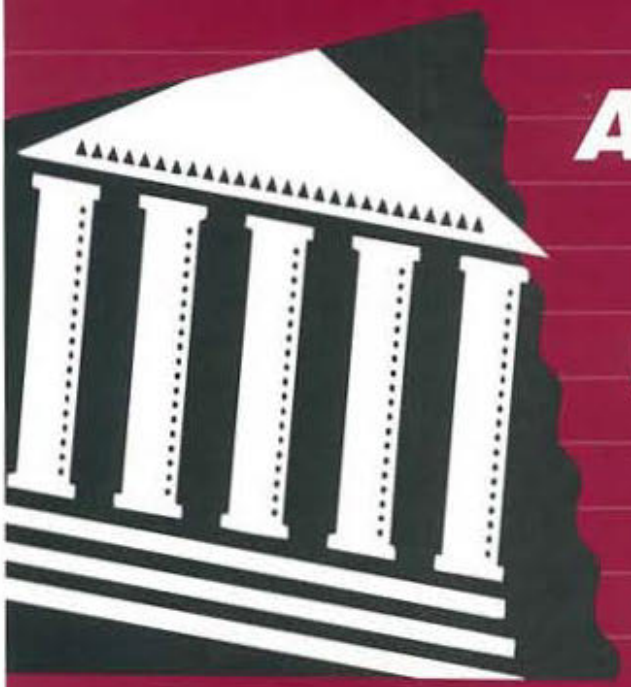
Kelly Spence of Mobile received a scholarship to attend the University of South Alabama. Kelly will be a freshman and plans to become a teacher. Her father worked for a tree service and became permanently disabled in a fall.

Many lawyers and law firms have

contributed to Kids' Chance. John Coleman and Pete Cobb of Balch & Bingham have written a book on workers' compensation law with the proceeds being donated to Kids' Chance. HealthSouth, Alabama Power, Birmingham Steel and Aetna have been the program's major corporate sponsors. The Alabama Self Insurers Association (ASIA), an association of self-insured employers, has adopted Kids' Chance as its major charitable cause. In May ASIA sponsored a golf tournament that raised $9,000 for Kids' Chance at Cherokee Ridge Golf Club in Huntsville. The Alabama Department of Industrial Relations provides information about the fund at workers' compensation seminars.

Many individuals have contributed both time and money to Kids' Chance. Thanks to their dedication $80,000 has been raised to provide scholarships to young people whose opportunity to pursue an education was greatly diminished through an injury to a parent. If you would like to contribute to the scholarship fund, please mail your contribution to: Kids' Chance Scholarship Fund, Alabama Law Foundation, P. O. Box 671, Montgomery, Alabama 36101. ■

L-R, Christopher Paul Basselin, Timothy Jay Basselin, Wayne Wolfe, Melissa R. Parker, William Timothy Browning and Kelda T. Spence



A Practitioner's Guide To Setting Aside Default Judgements

By Gregory C. Buffalow

There are two procedural grounds in the Alabama Rules of Civil Procedure for a request that a trial court set aside a default judgment. These are set forth in Rules 55(c) and 60(b). With respect to each, there are different standards applied by the trial court, although quite similar standards for appellate review. A brief survey will be provided here of recent Alabama Supreme Court case law concerning successful efforts to set aside default judgments.

While no grounds are described in Rule 55(c), Rule 60(b) specifies that default judgments may be set aside for the following reasons:

> 1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

As will be shown, regardless of the designation as a Rule 55(c) or Rule 60 motion, case law focuses on three primary areas of inquiry in evaluating the grounds asserted. The three-factor analysis requires a showing of a meritorious defense, consideration of potential prejudice to the non-moving party, and culpable conduct of the moving party.

The initial grounds specified in Rule 60(b)(1) permits a default judgment to be set aside based on a showing of mistake or excusable neglect. Various illustrations from case law of the "excusable neglect" grounds include successful efforts to set aside a default judgment where the summons and complaint were misplaced, *Bailey Mortgage Co. v. Gobble-Fite Lumber Co., Inc.*, 565 So. 2d 138 (Ala. 1990), where the movant was unaware his attorney had withdrawn from the case, *Kirtland v. Fort Morgan Authority Sewer Service, Inc.*, 524 So. 2d 600 (Ala. 1988), or where the attorney responsible for the default had a "heavy workload" and "serious illness in his family." *Ex Parte Lang*, 500 So. 2d 3 (Ala. 1986). Other successful excuses have been based on the moving process and accidental loss of a file by a claims adjuster, *Lee v. Martin*, 533 So. 2d 185 (Ala. 1988) or by counsel, *Storage Equities, Inc. v. Kidd*, 579 So. 2d 605 (Ala. 1991).

Rule 60(b)(2) requires a showing of newly discovered evidence "which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)." An illustration from a Rule 59(b) case is an admission that a slip and fall was staged. *Strange v. Gregerson's Foods, Inc.*, 608 So. 2d 721 (1992). The newly discovered evidence must be material, not merely cumulative or impeaching, and "such as will probably change the result...." *Id.* at 722.

The next ground in Rule 60(b)(3) involves fraud or misconduct of an adverse party. For example, in *Warren v. Riggins*, 484 So. 2d 412 (Ala. 1986), Rule 60(b)(3) relief from a judgment dismissing a case for lack of prosecution was upheld where the fraud of an adverse party consisted of reneging on an agreement to execute a note for settlement of the case. It is noteworthy, also, that the Rule 60(b)(3) motion was granted, and the trial court action upheld on appeal, despite the fact that the motion was filed more than four months after judgment. The Alabama Supreme Court reasoned that the plaintiff's motion was timely since it was well

within the three-year period for an independent action to set aside a judgment. *Id.* at 414.

A recent discussion of the Rule 60(b)(4) grounds for attack on a void judgment may be found in *Fisher v. Amaraneni,* 565 So. 2d 84 (Ala. 1990). The judgment was set aside for lack of personal jurisdiction based on improper service by publication. The court defined a judgment as void "only if the court rendering it lacked jurisdiction of the subject matter or of the parties, or if it acted in a manner inconsistent with due process." *Id.* at 86 (citing *Wonder v. Southbound Records, Inc.,* 364 So. 2d 1173 (Ala. 1978)). It should be noted here that a Rule 60(b)(4) motion involves a different standard of review than the other Rule 60(b) subsections since the court held "[w]hen the grant or denial turns on the validity of the judgment, discretion has no place for operation. If the judgment is void it must be set aside ...." *Fisher,* 565 So. 2d at 87.

Rule 60(b)(5) requires a showing that the judgment has been satisfied, released, discharged or that "it is no longer equitable that the judgment should have prospective application ...." While no recent Alabama cases were located construing the provisions of Rule 60(b)(5), the situation in *Hannah v. Blackwell,* 567 So. 2d 1276 (Ala. 1990) is analogous. Although the case involved a Rule 55(c) motion, the defendant was successful on appeal in overturning a default judgment based on allegations of accord and satisfaction. *Id.* at 1279.

The Alabama Supreme Court has held that the "any other reason" grounds in Rule 60(b)(6) is reserved for "extraordinary circumstances" involving cases of extreme hardship. *City of Birmingham v. Fairfield,* 396 So. 2d 692 (Ala. 1981). The court has also held that Rule 60(b)(6) is exclusive of the grounds in 60(b)(1) through (5) so that "relief cannot be obtained under (b)(6) if it would have been available under one of the other five clauses." *Cassioppi v. Damico,* 536 So. 2d 938, 941 (Ala. 1988). The analysis of the catchall provisions in Rule 60(b)(6) as exclusive of other grounds, should be reconsidered, since the type of extraordinary circumstances that would justify a Rule 60(b)(6) motion would necessarily involve a showing of excusable neglect, meritorious defense or any number of other reasons which might have been argued earlier. Such a reading of Rule 60(b)(6) as an equitable supplement to the preceding subsections was expressed by Judge Learned Hand in *United States v. Karahalias,* 205 F.2d 331 (2d Cir. 1953) in which the grounds for relief was "excusable neglect" although subsection (6) was the basis to reopen the judgment. *See* 11 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure,* § 2864 at p. 218 (1977). Considering Rule 60(b)(6) as an extraordinary circumstances supplement to the grounds enumerated in the preceding subsections of the analogous Federal Rules, would be consistent with the intent that subsection (6) provide a further basis for equitable relief. According to Learned Hand:

> It seems to us that subsection (6) must be read, not only as to subsection (1) but as to (2) and (3). It is extremely difficult to imagine any equitable grounds for relief that these three subsections do not cover, for subsections (4) and (5) are not really for equitable relief at all. Subsection (6) on the other hand is itself clearly for equitable relief, and, if confined to situations not covered by the first three subsections, would be extremely meager, even assuming that we could find any scope for it at all. Moreover, if we could, it would be a strange purpose to ascribe to the Rule to say that, although subsection (6) was no more than a kind of receptacle for vestigial equities, it should be without any limit in time, while the other and the usual equitable grounds for relief were narrowly limited. We do not believe that this was its purpose; we think that it was meant to provide for situations of extreme hardship, not only those, if there be any, that subsections (1), (2) and (3) do not cover, but those that they do. In short—to put it quite badly—we read the subsection as giving the

> court a discretionary dispensing power over the limitation imposed by the Rule itself on subsections (1), (2) and (3). . . .

Karahalias, 205 F.2d at 333.

The use of Rule 60(b)(6) to expand the operation of the excusable neglect grounds in subsection (1) is also supported by the result in *Lee v. Martin*, 533 So. 2d 185 (Ala. 1988) in which the trial court was reversed for failure to set aside a default judgment involving excusable neglect (loss of a file during the process of moving). Relief was apparently based on subsection (6) since the Rule 60(b) motion was filed beyond the four month limit. The concurring and dissenting opinion also analyzed the result in terms of subsections (1) and (6).

The Rules specify that a Rule 55(c) motion must be filed within 30 days after the entry of judgment. Rule 60 motions must be filed "within a reasonable time," but for the enumerated reasons (1), (2) and (3) within four months after the judgment. A Rule 55(c) motion does not automatically become a Rule 60 motion if not ruled on within 30 days, since it is denied by operation of law pursuant to Rule 59.1, *Kirtland*, 524 so. 2d at 603. A Rule 55(c) motion, amended after the 30-day period, but within the 120-day period, may be treated as a timely filed Rule 60(b) motion. *Ex Parte Lang*, 500 So. 2d 3 (Ala. 1986). The *Lang* decision is further significant since it recognized "that under our Rules of Civil Procedure the nomenclature of a motion is not controlling." *Id.* at 4. *See also Ex Parte Hartford Ins. Co.*, 394 So. 2d 933 (Ala. 1981). Despite the stated 120-day limitation for filing a Rule 60(b)(1) motion based on excusable neglect, there is also precedent for successful Rule 60(b)(6) attack on a default judgment based on loss of a file by the insurance adjuster, in which the motion was filed beyond 120 days. *In Lee v. Martin*, although the judgment was entered August 19, 1986 and the motion filed December 24, 1986, the trial court was nevertheless reversed for failure to set aside the default. While the dissent in *Lee v. Martin* points out the motion to set aside was filed "beyond the four-month limit", 533 So. 2d at 187, the majority presumably based the exercise of leniency on Rule 60(b)(6) or the further provisions of Rule 60(b) which preserves the trial court's discretion to reopen a judgment within three years:

> This rule does not limit the power of a court to entertain an independent action within a reasonable time and not to extend three years after the entry of the judgment. . . .

Ala. R. Civ. P. 60(b). It should also be noted that there is no time limit if the judgment is attacked for subject matter jurisdiction since Rule 12(h)(3) pro-

vides "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Similarly, there is Alabama precedent recognizing that "the only limitation with regard to attacking a void judgment is that it be done within a reasonable time." *Marshall v. Mid-State Homes, Inc.*, 468 So. 2d 131, 133 (Ala. 1985) (judgment void due to defective service of process). Also, with respect to a void judgment, it should be unnecessary to allege and prove a meritorious defense. *AAA Sewing Machine Co. v. Shelby Finance Co.*, 384 So. 2d 126, 129 (Ala. Civ. App. 1980) (citing *Raine v. First Western Bank*, 362 So. 2d 846 (Ala. 1978)). The analogous provisions of Rule 60(b) of the Federal Rules extend the four-month period to one year for reasons (1), (2) and (3) and, it is suggested, that future revisions of the Alabama Rules should delete the four-month limitation altogether, to allow equitable relief pursuant to Rule 60(b) within a reasonable time.

As a general rule, default judgments are not favored in the law and, if the failure to file an answer was unintentional or the defendant can make a valid showing of a meritorious defense, there should be a preference in favor of setting aside the default. As the Alabama Supreme Court has stated on numerous occasions, "it is axiomatic that the law favors fair trials on the merits of cases," *Crosby v. Avon Products, Inc.*, 474 So. 2d 642, 644 (Ala. 1985), and there is further support in the Alabama Constitution for the "liberal exercise of a trial court's discretion in favor of setting aside default judgments." *Williams v. Colonial Bank*, 626 So. 2d 1247, 1249 (Ala. 1993), citing Article 1, Sections 6 and 13, Alabama Constitution of 1901. While the *Williams* decision considered denial of a Rule 55(c) motion, the court noted that there had been no appeal of a subsequent Rule 60(b) motion. The following general language stressed the disfavor in which default judgments should be held:

> We, therefore, emphatically hold that a trial court, in determining whether to grant or to deny a motion to set aside a default judgment, should exercise its broad discretionary powers with liberality and should balance the equities of the case with a strong bias toward allowing the defendant to have his day in court.

Williams, 626 So. 2d at 1249. The reference to broad discretionary powers, it is suggested, should also operate in favor of a liberal exercise of discretion to set aside defaults pursuant to Rule 60(b) since, on other occasions, the Alabama Supreme Court has also emphasized that "a trial court's discretionary authority under Rule 60(b) is much broader than it is under Rule 55(c)." *DaLee v. Crosby Lumber Co., Inc.*, 561 So. 2d 1086, 1090 n. 3. (Ala. 1990). Given the constitutional guarantees and the preference for trial on the merits, a fair interpretation of the case law is that there is a presumption for trial on the merits so that doubts should be resolved in favor of the defaulting party. It is suggested that the trial court should therefore begin an analysis of a default with the "presumption that cases should be decided on the merits whenever practicable." *Bailey Mortgage Co.*, 565 So. 2d at 140.

Also the decision in *Kirtland v. Fort Morgan Authority Sewer Service, Inc.*, 524 So. 2d 600 (Ala. 1988), indicates a strong judicial policy of resolving doubts in favor of the defaulting party:

> We have repeatedly held that the trial court's use of its discretionary authority should be resolved in favor of the defaulting party where there is doubt as to the propriety of the default judgment.

Kirtland, 524 So. 2d at 604-605.

The *Kirtland* decision, as noted, has adopted a "three-factor analysis" that should be undertaken by a trial court when determining whether to grant or deny a motion to satisfy a default judgment. The supreme court in *Kirtland* found that since it may, in some instances, be difficult to balance the need to promote judicial economy and the need to preserve an individual's right to defend on the merits, the three-factor analysis should offer proper guidelines to the trial court in making such a determination. Although the tests in *Kirtland* addressed such a determination in the context of Rule 55(c) motions, the Alabama Supreme Court has subsequently cited *Kirtland* as authority in the Rule 60(b) context as well, though the trial court would have broader discretion under Rule 60(b) than under Rule 55(c). *See Lee v. Martin*, 533 So. 2d 185 (Ala. 1988); *DaLee v. Crosby Lumber Co., Inc.*, 561 So. 2d 1086 (Ala. 1990). Consequently, the reasoning in *Kirtland* should also apply to a Rule 60(b) motion seeking relief from a default judgment, since the balancing of judicial economy with an individual's right to defend on the merits would still be required of the trial court.

The *Kirtland* three-factor analysis is set forth as follows:

> To alleviate the difficulty involved in deciding Rule 55(c) motions and to ensure that justice will be served, clear guidelines need to be established and then implemented by trial courts. Thus, we hold that a trial court's broad discretionary authority under Rule 55(c) should not be exercised without considering the following three factors:
>
> 1. whether the defendant has a meritorious defense;
> 2. whether the plaintiff will be unfairly prejudiced if the default judgment is set aside; and
> 3. whether the default judgment was a result of the defendant's own culpable conduct.

524 So. 2d at 605. Each of the three *Kirtland* factors will be briefly considered.

The first factor is the meritorious defense. In discussing whether a party has a sufficient meritorious defense, the Alabama Supreme Court in *Kirtland* stated that the defense "must be of such merit as to induce the trial court rea-

Gregory C. Buffalow

Gregory C. Buffalow received his undergraduate degree in 1976, *cum laude*, from the University of Alabama and his law degree in 1979 from the University's School of Law. He received a master of laws degree in 1980 from New York University. He has published several articles about the Longshore and Harbors Workers' Compensation Act in *The Alabama Lawyer* and the *Journal of Maritime Law and Commerce*. He is a member of the Mobile, Alabama and American bar associations.

sonably to infer that allowing the defense to be litigated would foreseeably alter the outcome of the case." *Id.* at 606. The trial court need not be convinced that the defense set forth by the defaulting party would result in prevailing at trial, it is only required "that the movant is prepared to present a plausible defense." *Id.* at 605 (quoting *Ex Parte Illinois Central Gulf R.R.*, 514 So. 2d 1283, 1288 (Ala. 1987)).

Illustrations of meritorious or plausible defenses accepted by the court include a mere question of fact as to the standard of care, *Prescott v. Baker,* 28 ABR 2535 (Ala. May 6, 1994) (medical malpractice), a lack of personal jurisdiction, *Creel v. Gator Leasing, Inc.*, 544 So. 2d 936 (Ala. 1989), or a disputed settlement, *Hannah v. Blackwell,* 567 So. 2d 1277, 1278 (Ala. 1990).

With regard to the second prong of the court's three-factor analysis in *Kirtland*, it is clear that any prejudice to the plaintiff in setting aside a default must be substantial. Recently, the Alabama Supreme Court, in applying the *Kirtland* test with respect to prejudice, has held that the possible loss of evidence due to the passage of time would not be substantial prejudice. *Hannah,* 567 So. 2d at 1276. In addition, the court has also held that a showing of delay of the litigation and additional costs which would result, are also insufficient to establish substantial prejudice to the non-moving party. *Storage Equities, Inc. v. Kidd,* 579 So. 2d 605 (Ala. 1991).

In the most recent decision considering prejudice, *Prescott v. Baker*, 28 ABR 2535 (Ala. May 6, 1994), the court reasoned there was no prejudice demonstrated by plaintiff that could not be remedied by an order imposing on the movant the additional costs occasioned by the delay in trial. The court indicated that costs of depositions of additional expert witnesses could be imposed on the movant. With respect to alleged fraudulent transfers by the defaulting party, the court indicated that sufficient relief would be afforded by the Alabama Uniform Fraudulent Transfer Act, Section 8-9A-1 *et seq.* Ala. Code 1975 indicating "any delay caused by setting aside the default judgment and conducting a trial on the merits to obtain another judgment would not substantially prejudice the plaintiffs in any effort to avail themselves of the remedies afforded by the Fraudulent Transfer Act. *Id.* at 2541.

With respect to the third factor, the trial court looks at the culpability of the defendant's conduct. "Conduct committed willfully or in bad faith constitutes culpable conduct for purposes of determining whether a default judgment should be set aside." *Kirtland,* 524 So. 2d at 607. The *Kirtland* decision indicates that negligence by itself is insufficient and to preclude setting aside a default, culpable conduct must be characterized by "flagrant disrespect for court rules, deliberate and knowing disregard for judicial authority or intentional non-responsiveness." *Id.* at 608. Consequently, the courts have rejected an argument of culpable conduct in situations, for example, in which a *pro se* litigant, although failing to appear at trial, attempted to obtain a continuance, *Prescott,* 28 ABR at 2546; and in which a defendant had intentionally avoided service of process, *Fries Correctional Equip., Inc. v. Con-Tech, Inc.*, 559 So. 2d 557, 562 (Ala. 1990). The reasoning in the *Fries* decision, in part, was due to the size of the judgment, which was $750,000. *Id.* at 563. Successful efforts to avoid the characterization of conduct as culpable, include the *Kirtland* decision, in which the defendant did not appear at trial and asserted that he did not know his attorney had withdrawn as counsel. In *Bailey Mortgage Co. v. Gobble-Fite Lumber Co., Inc.,* 565 So. 2d 138 (Ala. 1990), it was considered neglect rather than culpable conduct in which the summons and complaint had been misplaced. Likewise in *Storage Equities, Inc. v. Kidd,* 579 So. 2d 605 (Ala. 1991), the Alabama Supreme Court held that the trial court's denial of a motion to set aside a default judgment was an abuse of discretion where service papers were lost by an attorney. Also, in *Lee v. Martin*, the Alabama Supreme Court held that the trial court's denial of a Rule 60(b) motion for relief from a default judgment was an abuse of discretion where the defendant had "been in the process of moving his insurance office from one location to another, and that the summons and complaint were accidentally put in a box with closed files." 533 So. 2d at 185.

Notwithstanding differences in

treatment of Rule 55(c) and Rule 60(b) motions at the trial level, the same standard of review applies to each. With respect to denial of a Rule 55(c) motion, "the applicable standard of review and appeal stemming from a trial court's granting or denying a motion to set aside a default judgment is whether the trial court's decision constituted an abuse of discretion." *Williams*, 626 So. 2d at 1248. The abuse of discretion standard is also applicable in Rule 60(b) cases. *DaLee*, 561 So. 2d at 1091. *But see Fisher*, 565 So. 2d at 87, recognizing a trial judge has no discretion under subsection (4), ("if the judgment is void it must be set aside"). Situations in which an abuse of discretion have been found include, for example, a substantial dollar amount in considering the $750,000 default judgment in *Prescott v. Baker*, the potential for inconsistent judgments against multiple defendants in which the defaulting party was held liable while a non-defaulting defendant was not held liable, *Ex Parte Threatt*, 28 ABR 2985 (June 10, 1994); and a consideration of Alabama constitutional guarantees and the litigant's "paramount" right to a trial on the merits, *Williams*, 626 So. 2d at 1249.

In considering the deadline for and timing of an appeal, it should be noted that a Rule 55(c) motion, if not granted within 90 days, is automatically denied by operation of law pursuant to Rule 59.1. *Id.* at 1248. A Rule 60 motion, however, is not limited by the 90-day limitation in Rule 59.1. *Cockrell v. World's Finest Chocolate Co., Inc.*, 349 So. 2d 1117 (Ala. 1977). Further, an order granting a motion to set aside a default judgment is interlocutory and not appealable, *Evans v. Sharp*, 617 So. 2d 1039 (Ala. Civ. App. 1993); *Fisher v. Bush*, 377 So. 2d 968 (Ala. 1979). Conversely, the denial of a motion to set aside a default judgment is appealable. *Leonard v. Leonard*, 560 So. 2d 1080 (Ala. Civ. App. 1990). It should also be noted that "the denial of a Rule 60 motion is usually appealable and that a motion to reconsider cannot take the place of an appeal." *Id.* at 1083 (citing *Ex Parte Dowling*, 477 So. 2d 400 (Ala. 1985)). The basis to seek review of an interlocutory order granting a motion to set aside a default judgment would thus be by means of a petition for writ of mandamus. *Ex Parte Lang*, 500 So. 2d 3 (Ala. 1986) (writ denied).

The practitioner should emphasize the Alabama constitutional guarantees and presumption in favor of trial on the merits in presenting an attack on a default judgment. Particular care should be exercised to comply with the 30-day and 120-day limitations periods set forth in the rules. While there is precedent for successful attack on default judgments "made within a reasonable time" beyond the 120-day period, the exercise of trial court discretion is much broader in appellate review of motions filed beyond the 120-day period. It also appears that the case law places primary emphasis on a consideration of the meritorious defense and the reasons asserted for excusable neglect in failing to file a timely answer. While the defaulting party could be heartened by the fact that all current members of the Alabama Supreme Court have in recent years voted at least once in favor of reversal of a trial court for refusal to set aside a default judgment, *see*, e.g., *Prescott v. Baker*, 28 ABR 2535 (Ala. May 6, 1994) (Hornsby, C.J., Almon, Houston, Kennedy, Cook, JJ.); *Ex Parte Threatt*, 28 ABR 2985 (Ala. June 10, 1994) (Hornsby, C.J., Almon, Shores, Kennedy, Cook, JJ.); *Bailey Mortgage Co. v. Gobble-Fite Lumber Co., Inc.*, 565 So. 2d 138 (Ala. 1990) (Hornsby, C.J., Maddox, Almon, Shores, Houston, Steagall, and Kennedy, JJ.); *Cunningham v. Gibson*, 618 So. 2d 1342 (Ala. 1993) (Hornsby, C.J., Shores, Steagall, Ingram, JJ.), a successful attack on a default judgment is by no means automatic. Despite the statements of the presumption for trial on the merits and constitutional guarantees, there are a number of recent cases affirming the trial court's refusal to set aside defaults. *See*, e.g., *Dobson's Petting Zoo v. Goens*, 611 So. 2d 257 (Ala. 1992); *Hughes v. Cox*, 601 So. 2d 465 (Ala. 1992); *Baker v. Jones*, 614 So. 2d 450 (Ala. 1993); *Barber v. Fairbrun*, 618 So. 2d 1327 (Ala. 1993).

While no attempt is made to evaluate case law sustaining the entry of default judgments, it is sufficient to observe that the entire subject is governed by considerable judicial discretion. The same abuse of discretion standard is applied for review of the trial court ruling regardless whether the default judgment is set aside. As noted above, it is also recommended that the Advisory Committee on the Alabama Rules consider removal of the four month time period in Rule 60(b), which is inconsistent with case law which has properly extended the 120-day period, and inconsistent with the general provisions of the rules which require filing only within a reasonable time or within the three-year period for an independent attack on a judgment. Imposing only a "reasonable time" limitation on Rule 60(b) motions would also be consistent with the considerable discretion already vested in the trial court. ■

COMMITTEES AND TASK FORCES, 1994-95

COMMITTEE ON ACCESS TO LEGAL SERVICES

Chair:
F. Luke Coley, Jr., *Mobile*—460-0555

Vice-chair:
R. David McDowell, *Huntsville*—534-2436

Board of Bar Commissioners Liaison:
Caine O'Rear, III, *Mobile*—432-5511

LSCA Liaison:
Merceria L. Ludgood, *Montgomery*—832-4570

Young Lawyers' Representative:
Stewart G. Springer, *Birmingham*—324-4000

Staff Liaison:
Melinda M. Waters, *Montgomery*—269-1515

Members:
Ken W. Battles, Sr., *Birmingham*
Cynthia W. Clinton, *Montgomery*
Lawrence B. Voit, *Mobile*
Leslie M. Proll, *Birmingham*
Ernestine S. Sapp, *Tuskegee*
Robert S. Hill, III, *Montgomery*
Daniel R. Farnell, Jr., *Montgomery*
Pamela H. Bucy, *Birmingham*
Otis R. Burton, Jr., *Talladega*
Rebecca G. Brooks, *Tuscaloosa*
Joseph D. Lane, *Dothan*
Anne W. Mitchell, *Birmingham*
John Mark Englehart, *Montgomery*
Floyd Sherrod, Jr., *Florence*
Raymond L. Johnson, Jr., *Birmingham*
Cordelia A. Bodie, *Huntsville*
Courtney W. Tarver, *Montgomery*
Henry L. Thompson, *Birmingham*
Katherine Elise Moss, *Huntsville*
Fred D. Gray, Jr., *Tuskegee*
Al L. Vreeland, *Tuscaloosa*
Robert D. Segall, *Montgomery*
Stanley Weissman, *Montgomery*
Shelbonnie Coleman-Hall, *Mobile*
Tamara Young Lee, *Montgomery*
Phillip D. Mitchell, II, *Decatur*
Ted L. Mann, *Birmingham*

TASK FORCE ON ADULT LITERACY

Chair:
Lynne B. Kitchens, *Montgomery*—242-4347

Vice-chair:
Mark N. Chambless, *Montgomery*—264-7300

Board of Bar Commissioners Liaison:
Edward T. Hines, *Brewton*—867-6063

Young Lawyers' Representative:
William Sidney Haynes, *Montgomery*—834-8480

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Elizabeth Smithart, *Union Springs*
Polly D. Enger, *Anniston*
Jerome A. Hoffman, *Tuscaloosa*
Charles L. Miller, Jr., *Mobile*
Wylynn Gilmore-Phillippi, *Grove Hill*
Connie Jill Hall, *Montgomery*
Leslie M. Allen, *Montgomery*
Jon K. Turner, *Montgomery*
Amy M. Shumate, *Dothan*
Barrie B. Stokes, *Birmingham*
Gina M. Miller, *Birmingham*
Maureen K. Berg, *Birmingham*
Chris Eagan, *Birmingham*
Anna Blair, *Sheffield*
Hon. Annetta Verin, *Bessemer*
William H. Roe, *Oneonta*
Bonnie C. Rowe, *Huntsville*
Gina L. Thomas, *Jasper*

ALABAMA FIRST CAMPAIGN TASK FORCE

Chair:
Michael L. Edwards, *Birmingham*—251-8100

Chair Emeritus:
Walter R. Byars, Jr., *Montgomery*—832-8800

Sub-committee: Plan of Action and Implementation

Chair:
Michael L. Edwards, *Birmingham*—251-8100

Members:
Phillip E. Adams, Jr., *Opelika*
Hon. Albert P. Brewer, *Birmingham*
Edward M. Friend, III, *Birmingham*
Hon. Sonny L. Hornsby, *Montgomery*
Hon. Sarah M. Greenhaw, *Montgomery*
James Timothy Smith, *Birmingham*
Hon. Inge P. Johnson, *Tuscumbia*
William D. Scruggs, Jr., *Fort Payne*
Willie J. Huntley, Jr., *Mobile*
Sidney W. Jackson, III, *Mobile*
John A. Owens, *Tuscaloosa*
John Edward Thornton, *Mobile*
Jack Michael Conaway, *Dothan*

Sub-committee: Programs for Lawyer Involvement

Chair:
Sabrina A. Simon, *Birmingham*—592-0006

Members:
Robert L. Potts, *Florence*
Lawrence D. Redden, *Birmingham*
John D. Snodgrass, *Huntsville*
Frank J. Tipler, Jr., *Andalusia*
Jacquelyn E. Shaia, *Birmingham*
James L. North, *Birmingham*
Gary C. Huckaby, *Huntsville*
Norborne C. Stone, Jr., *Bay Minette*
Helen Shores Lee, *Birmingham*
Harold V. Hughston, Jr., *Tuscumbia*
Emily B. Gassenheimer, *Montgomery*
E. T. Brown, Jr., *Birmingham*
Joe C. Cassady, *Enterprise*

Sub-committee: Outreach Sub-committee to Promote Alabama First

Co-chairs:
William B. Alverson, Jr., *Andalusia*—222-3177

Courtney A. Loftin, *Montgomery*—240-3131

Members:
Laveeda M. Battle, *Birmingham*
Wade H. Baxley, *Dothan*
Hon. David McKay Enslen, *Fayette*
Benjamin H. Harris, Jr., *Mobile*
John David Knight, *Cullman*
William B. Matthews, Sr., *Ozark*
Frank B. McRight, *Mobile*
Oakley W. Melton, Jr., *Montgomery*
Jon H. Moores, *Decatur*
Merton R. Nachman, Jr., *Montgomery*
Hugh A. Nash, *Oneonta*
John Tom Radney, *Alexander City*
Hon. David A. Rains, *Fort Payne*

THE ALABAMA LAWYER, EDITORIAL BOARD

Chair:
Robert A. Huffaker, *Montgomery*—834-8480

Vice-chair and Associate Editor:
Susan Shirock DePaola, *Montgomery*—262-1600

Vice-chair of Finance:
Richard F. Allen, *Montgomery*—241-8000

Board of Bar Commissioners Liaison:
Samuel A. Rumore, Jr., *Birmingham*—323-8957

Staff Liaison and Managing Editor:
Margaret L. Murphy, *Montgomery*—269-1515

Members:
Raymond L. Johnson, Jr., *Birmingham*
Shirley D. Howell, *Montgomery*
Jeff Kohn, *Montgomery*
Forrest Latta, *Mobile*
Hon. Hugh Maddox, *Montgomery*
J.W. Goodloe, Jr., *Mobile*
C. MacLeod Fuller, *Columbus*
Gregory C. Buffalow, *Mobile*
Benjamin B. Spratling, III, *Birmingham*
William J. Underwood, *Tuscumbia*
Andrew P. Campbell, *Birmingham*
Alex L. Holtsford, Jr., *Montgomery*
Alan T. Rogers, *Birmingham*
James G. Stevens, *Montgomery*
Robert W. Bradford, Jr., *Montgomery*
Deborah Alley Smith, *Birmingham*
Nancy L. Franklin, *Leeds*
John Q. Somerville, *Birmingham*
Mike Druhan, *Mobile*
Robert Sellers Smith, *Huntsville*
Charles Cleveland, *Birmingham*
Glenda Cochran, *Birmingham*
Lisa Huggins, *Birmingham*
Debra H. Goldstein, *Birmingham*
Pamela L. Mable, *Montgomery*
Sherri T. Freeman, *Birmingham*
William G. Gantt, *Birmingham*

COMMITTEE ON ALTERNATIVE METHODS OF DISPUTE RESOLUTION

Chair:
William D. Coleman, *Montgomery*—241-8000

Vice-chair:
Katherine O. Wilburn, *Birmingham*—822-2744

Board of Bar Commissioners Liaison:
M. Dale Marsh, *Enterprise*—347-2626

Young Lawyers' Representative:
Brian Patrick McCarthy, *Mobile*—423-5511

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Helen J. Alford, *Mobile*
Samuel N. Crosby, *Bay Minette*
Hon. John N. Bryan, Jr., *Birmingham*
Michael C. Quillen, *Birmingham*
Griffin Sikes, Jr., *Montgomery*
William C. Carn, III, *Dothan*
Jack Clarke, *Tuscaloosa*
Keith Watkins, *Troy*
C. Winston Sheehan, Jr., *Montgomery*
John L. Quinn, *Birmingham*
L. Landis Sexton, *Montgomery*
Hon. Aubrey Ford, Jr., *Tuskegee*
K. W. Michael Chambers, *Mobile*
David P. Martin, *Tuscaloosa*
Mary E. Murchison, *Foley*
Helen Currie Foster, *Birmingham*
Roger C. Allen, *Birmingham*
Marshall Timberlake, *Birmingham*
Charles H. Durham, III, *Montgomery*
Pamela P. Robinson, *Montgomery*
Hon. Walter G. Bridges, *Hueytown*
Ben Locklar, *Montgomery*
John B. Barnett, III, *Monroeville*
William Alexander Moseley, *Mobile*
Andra D. Sparks, *Birmingham*
Frank H. McFadden, *Montgomery*
Broox G. Holmes, Jr., *Mobile*

THE ALABAMA LAWYER, BAR DIRECTORY COMMITTEE

Chair:
Teresa R. Jacobs, *Montgomery*—223-7355

Vice-chair:
W. Ronald Waldrop, *Vestavia Hills*—979-5210

Staff Liaison and Publications Director:
Margaret L. Murphy, *Montgomery*—269-1515

Members:
John W. Sharbrough, III, *Mobile*
Graham L. Sisson, Jr., *Montgomery*
Dorothy F. Norwood, *Montgomery*
David B. Champlin, *Birmingham*
Joseph S. Ammons, *Montgomery*
Brian W. Moore, *Montgomery*

TASK FORCE ON *BATSON* ISSUES

Chair:
James Starnes, *Birmingham*—328-3869

Vice-chair:
William D. Melton, *Evergreen*—578-2423

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Kenneth L. Thomas, *Montgomery*
Anthony A. Joseph, *Birmingham*
Bryan A. Stevenson, *Montgomery*
Thomas W. Sorrells, *Montgomery*
Thomas M. Goggans, *Montgomery*
Ollie Blan, Jr., *Birmingham*
Emit L. McCafferty, III, *Mobile*
Wade H. Baxley, *Dothan*
John Percy Oliver, II, *Dadeville*
Hon. Samuel Welch, Jr., *Monroeville*
Tori Adams-Burkes, *Montgomery*
Russell J. Drake, *Tuscaloosa*
Bruce McKee, *Birmingham*

TASK FORCE ON BENCH AND BAR RELATIONS

Chair:
Hon. Joe Phelps, *Montgomery*—832-1370

Vice-chair:
Elizabeth Ann McMahan, *Birmingham*—581-6240

Board of Bar Commissioners Liaison:
James E. Williams, *Montgomery*—263-6621

Young Lawyers' Representative:
Cecil H. Macoy, Jr., *Birmingham*—252-8800

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
K. Rick Alvis, *Birmingham*
Duane A. Wilson, *Tuscaloosa*
Kenneth M. Schuppert, Jr., *Decatur*
Hon. Ben McLauchlin, *Ozark*
Hon. William R. Gordon, *Montgomery*
Mary Beth Mantiply, *Mobile*
Hon. Samuel H. Monk, II, *Anniston*
John C. Clements, *Birmingham*
Hon. Hugh Maddox, *Montgomery*
Hon. Aubrey Ford, Jr., *Tuskegee*
William T. Coplin, Jr., *Demopolis*
Hon. Donald H. Patterson, *Florence*
Hon. Hardie B. Kimbrough, *Grove Hill*
Hon. C. Lynwood Smith, *Huntsville*
Hon. William A. Jackson, *Birmingham*
W. Michael Atchison, *Birmingham*
Joe R. Whatley, Jr., *Birmingham*
Steven W. Ford, *Tuscaloosa*
Caryl P. Privett, *Birmingham*
Wally Walker, *Montgomery*
Harold F. Herring, *Huntsville*
Hon. Edward B. McDermott, *Mobile*
Hon. Robert G. Kendall, *Mobile*
Hon. Tamara O. Mitchell, *Birmingham*
Hon. William H. Steele, *Mobile*
C. Redding Pitt, *Montgomery*
Hon. Carnella Greene Norman, *Birmingham*
J. Don Foster, *Fairhope*

SPECIAL LIAISON COMMITTEE WITH THE BIRMINGHAM OFFICE OF THE IRS

William Lee Horn, *Tuscumbia*—718-0120

Bradley J. Sklar, *Birmingham*—930-5152

ADVISORY COMMITTEE TO THE BOARD OF BAR EXAMINERS

Chair:
Rick Manley, *Demopolis*—289-1384

Staff Liaison:
Reginald T. Hamner, *Montgomery*—269-1515

Members:
Cathy S. Wright, *Birmingham*
Richard B. Garrett, *Montgomery*

CHARACTER AND FITNESS COMMITTEE

Chair, Panel I:
W. H. Albritton, IV, *Andalusia*—222-3177

Chair, Panel II:
Maibeth J. Porter, *Birmingham*—254-1000

Chair, Panel III:
Carol H. Stewart, *Birmingham*—458-5219

Board of Bar Commissioners Liaison:
Wade H. Baxley, *Dothan*—793-6550

Staff Liaison:
Dorothy D. Johnson, *Montgomery*—269-1515

Members:
Richard N. Meadows, *Montgomery*
Charles A. Powell, III, *Birmingham*
R. Blake Lazenby, *Talladega*
Mark E. Fuller, *Enterprise*
J. Douglas McElvy, *Tuscaloosa*
J. Michael Conaway, *Dothan*
Judith D. Holt, *Birmingham*
E. Terry Brown, *Montgomery*
Gwendolyn Bulger Garner, *Montgomery*
Howard Mandell, *Montgomery*
Sue Willis, *Birmingham*

COMMITTEE ON CITIZENSHIP EDUCATION

Chair:
H. Jerome Thompson, *Moulton*—974-3007

Vice-chair:
Donna Smalley, *Tuscaloosa*—758-5576

Board of Bar Commissioners Liaison:
J. Tutt Barrett, *Opelika*—749-2222

Young Lawyers' Representative:
Charles L. Anderson, *Montgomery*—832-4202

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Victor L. Hayslip, *Birmingham*
James G. Whiddon, III, *Montgomery*
Thomas C. Tankersley, *Montgomery*
Christ N. Coumanis, *Mobile*
Kenneth R. Raines, *Bay Minette*
William B. Woodward, Jr., *Huntsville*
Hon. Walter G. Bridges, *Hueytown*
Donald R. Harris, Jr., *Birmingham*
Michael L. Cumpton, *Mobile*
Michael J. Gamble, *Dothan*
Linda Dukes Connor, *Birmingham*
Corinne T. Hurst, *Auburn*
Deborah S. Ashe, *Sheffield*
Deborah S. Braden, *Birmingham*
S. Sanford Holliday, *Roanoke*
Stephen T. Blackburn, *Brookwood*
Mark A. Sanderson, *Florence*
Diane Leigh Dunning, *Odenville*
Christopher Knight, *Mobile*
William N. Clark, *Birmingham*

CLIENT SECURITY FUND COMMITTEE

Chair:
John A. Owens, *Tuscaloosa*—750-0750

Vice-chair:
James S. Ward, *Birmingham*—879-5959

Board of Bar Commissioners Liaison:
Mac Greaves, *Birmingham*—326-4116

Staff Liaison:
Bonnie Mainor, *Montgomery*—269-1515

Members:
Michael E. Ballard, *Mobile*
Lowell Womack, *Birmingham*
Woodford W. Dinning, Jr., *Demopolis*
A. Stewart O'Bannon, III, *Florence*
Thomas L. Rountree, *Auburn*

CORRECTIONAL INSTITUTIONS AND PROCEDURES COMMITTEE

Chair:
Mark D. Wilkerson, *Montgomery*—265-1500

Vice-chair:
Abigail P. Van Alstyne, *Montgomery*—264-0286

Board of Bar Commissioners Liaison:
Donna Pate, *Huntsville*—535-1100

Young Lawyers' Representative:
Johnny Brutkiewicz, *Mobile*—433-1866

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Douglas Scofield, *Birmingham*
Hugh Davis, *Montgomery*
Wanda B. Rahman, *Mobile*
Joe Carl Jordan, *Mobile*
Marcus L. Whatley, *Alabaster*
Roberta L. Fulton, *Birmingham*
L. Byron Reid, *Panama City, FL*
William H. Broome, *Anniston*
Hon. T. Michael Putman, *Birmingham*
L. Dan Turberville, *Birmingham*
Jon M. Spechalske, *Mobile*
Margaret Y. Brown, *Auburn*
Peggy Werdehoff, *Fairfield*

DISABILITY LAW SECTION TASK FORCE

Chair:
Victoria A. Farr, *Tuscaloosa*—348-6915

Vice-chair:
Lexa Dowling, *Dothan*—793-3377

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Pam Agee, *Birmingham*
Don Blankenship, *Birmingham*
Bob Goodwin, *Birmingham*
Laura Gregory, *Tuscaloosa*
Tom Leonard, *Birmingham*
Deborah Mattison, *Birmingham*
Joe Morrison, *Tuscaloosa*
Rick Newton, *Tuscaloosa*
Paul Phillips, *Birmingham*
David Schoen, *Montgomery*
Michael L. Simonetti, *Birmingham*
Graham Sisson, *Montgomery*
Edward H. Stevens, *Troy*
Stephen M. Tunstall, *Mobile*
Judi M. Alexander, *Birmingham*
Denise B. Azar, *Montgomery*
James A. Hall, Jr., *Tuscaloosa*
G. Milton McCarthy, *Jasper*

ETHICS EDUCATION COMMITTEE

Chair:
Alyce M. Spruell, *Tuscaloosa*—750-0750

Vice-chair:
Clarence McDorman, *Birmingham*—871-3800

Board of Bar Commissioners Liaison:
Ben Rowe, *Mobile*—433-6961

Young Lawyers' Representative:
Barry A. Ragsdale, *Birmingham*—879-3737

Staff Liaisons:
Gil Kendrick, *Montgomery*—269-1515
Keith B. Norman, *Montgomery*—269-1515

Members:
Clifton Perry, *Auburn University*
John F. Janecky, *Mobile*
Michael Fraser Ford, *Tuscumbia*
Robert Baugh, *Birmingham*
William Scott Donaldson, *Tuscaloosa*
Glenn G. Waddell, *Birmingham*
Thomas A. Nettles, IV, *Tuscaloosa*
E. J. McArthur, *Tuskegee*
Charles P. Miller, *Montgomery*
Ayn Traylor-Sadberry, *Birmingham*
Judson W. Wells, *Mobile*
Thomas R. Elliott, Jr., *Birmingham*
Mark Vaughan, *Elba*
John N. Randolph, *Birmingham*
Sydney Albert Smith, *Elba*
Anne R. Moses, *Birmingham*
Atley A. Kitchings, Jr., *Birmingham*
Bobby N. Bright, *Montgomery*
Jenelle M. Marsh, *Tuscaloosa*
Mary Abbott Harkins, *Birmingham*
Gary Farris, *Birmingham*
Charles N. McKnight, *Mobile*
James E. Malone, *Talladega*
Robert F. Northcutt, *Montgomery*
Jock M. Smith, *Tuskegee Institute*
Robert W. Norris, *Montgomery*
William B. Hairston, III, *Birmingham*
Lavon Warren, *Birmingham*

FEDERAL TAX CLINIC

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Ronald Levitt, *Birmingham*
Louis H. Anders, *Birmingham*
Richard Woods, *Dothan*
Judith L. McMillin, *Mobile*
H. Hank Hutchinson, III, *Montgomery*
Scott E. Ludwig, *Huntsville*
J. William Rose, Jr., *Birmingham*
Thomas F. Garth, *Mobile*
W. Wendell Cauley, *Montgomery*

INDIGENT DEFENSE COMMITTEE

Chair:
William R. Blanchard, Jr., *Montgomery*—269-9691

Vice-chair:
Theresa Dean, *Opelika*—745-6348

Board of Bar Commissioners Liaison:
George Higginbotham, *Bessemer*—425-3214

Young Lawyers' Representative:
Jason Knight, *Cullman*—734-0456

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Earl E. Cloud, Jr., *Huntsville*
Mannon G. Bankson, Jr., *Oxford*
H. Wayne Love, *Anniston*
Roland Sledge, *Valley*
Robert C. Mann, *Guntersville*
Robert L. Williams, Jr., *Columbiana*
William N. Clark, *Birmingham*
Gordon G. Armstrong, III, *Mobile*
Michael D. Mastin, *Albertville*
Joe C. Cassady, Jr., *Enterprise*
E. Hampton Brown, *Birmingham*
Alice H. Martin, *Florence*
William J. Paul, *Geneva*
Paul W. Copeland, *Montgomery*
Paul D. Brown, *Mobile*
Teresa L. Cannady, *Albertville*
Donald L. Colee, Jr., *Birmingham*
Bryan Stevenson, *Montgomery*
Randy B. Brooks, *Anniston*
John Knowles, *Geneva*
Bruce A. Gardner, *Huntsville*
Frances C. French, *Auburn*
Brenda J. Pierce, *Mobile*
Robert V. Wooldridge, III, *Tuscaloosa*
Eric C. Davis, *Dothan*
Joel L. Sogol, *Tuscaloosa*
Jeff Duffey, *Montgomery*
Stephen R. Glassroth, *Montgomery*
Wilson Dinsmore, *Birmingham*

INSURANCE PROGRAMS COMMITTEE

Chair:
J. Bentley Owens, III, *Birmingham*—868-6000

Vice-chair:
Elizabeth C. Bookwalter, *Montgomery*—269-3561

Board of Bar Commissioners Liaison:
James S. Lloyd, *Birmingham*—967-8822

Young Lawyers' Representative:
David A. Elliott, *Birmingham*—458-5324

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Cheryl Price, *Montgomery*
Lyman H. Harris, *Birmingham*
Mary Lynn Campisi, *Birmingham*
Timothy P. Donahue, *Birmingham*
James Flint Liddon, *Birmingham*
Bill Roedder, *Mobile*
L. Joel Collins, *Phenix City*
Donald McCabe, *Daleville*
Claire Black, *Tuscaloosa*
Henry Henzel, *Birmingham*
Charles Simpson, *Bay Minette*
Michael L. McKerley, *Birmingham*
C. William Gladden, Jr., *Birmingham*
John Earl Paluzzi, *Carrollton*
Robert E. Paden, *Bessemer*
Christopher G. Hume, III, *Mobile*
Rocco J. Leo, *Birmingham*
Jeffery W. Kelley, *Elba*
Fred W. Sington, Jr., *Birmingham*
Liz McAdory, *Opelika*
Stuart E. Smith, *Huntsville*
Clifford L. Callis, Jr., *Gadsden*

TASK FORCE TO STUDY CREATION OF INTERNATIONAL LAW SECTION

Chair:
Robert J. Cox, *Birmingham*—934-0361

Vice-chair:
Boyd Campbell, *Montgomery*—272-7092

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Debra C. White, *Birmingham*
Bruce Leland Jaffe, *Birmingham*
Chandler Kite Stanard, *Spanish Fort*
June Wang, *Huntsville*
Thomas L. Douglas, Jr., *Montgomery*
Robert E. L. Gilpin, *Montgomery*
Curtis L. Rosser, *Centre*
Hubbard Henry Harvey, Jr., *Demopolis*
Walter J. Sears, III, *Birmingham*
Guy Louis Burns, Jr., *Birmingham*
Beall D. Gary, Jr., *Birmingham*
James C. Wilson, Jr., *Birmingham*
Knox McMillan, *Huntsville*
Clifton E. Slaten, *Montgomery*

JUDICIAL CONFERENCE FOR THE STATE OF ALABAMA

Members:
Edgar M. Elliott, III, *Birmingham*—328-8141
Charles B. Paterson, *Montgomery*—834-7000
William L. Lee, III, *Dothan*—792-4156

TASK FORCE ON JUDICIAL SELECTION

Chair:
Robert P. Denniston, *Mobile*—344-7744

Vice-chair:
Carol Sue Nelson, *Birmingham*—252-9321

Board of Bar Commissioners Liaison:
Richard S. Manley, *Demopolis*—289-1384

Young Lawyers' Representative:
Archibald T. Reeves, IV, *Mobile*—432-5511

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
L. Drew Redden, *Birmingham*
James C. Barton, Sr., *Birmingham*
Richard F. Ogle, *Birmingham*
David Bagwell, *Mobile*
Joe R. Whatley, Jr., *Birmingham*
John B. Tally, Jr., *Birmingham*
Robert T. Meadows, III, *Opelika*
George C. Simpson, *Ashland*
Gregory O. Griffin, *Montgomery*
Oakley W. Melton, Jr., *Montgomery*
Michael A. Figures, *Mobile*
C. Neal Pope, *Columbus, GA*
James L. Klinefelter, *Anniston*
Hon. L. E. Gosa, *Vernon*
Julian D. Butler, *Huntsville*
Wayman G. Sherrer, *Oneonta*
J. Fairley McDonald, III, *Montgomery*
Conrad M. Fowler, *Lanett*
Carol Ann Smith, *Birmingham*
James D. Pruett, *Birmingham*
George Walker, *Mobile*
Marshall Timberlake, *Birmingham*

LAW DAY COMMITTEE

Chair:
Julie Palmer, *Birmingham*—967-6160

Vice-chair:
Tameria Driskell, *Guntersville*—582-0133

Board of Bar Commissioners Liaison:
Samuel H. Franklin, *Birmingham*—581-0700

Young Lawyers' Representative:
John N. Bolus, *Birmingham*—254-1000

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Glenn Parker, *Montgomery*
Donald R. Harris, Jr., *Birmingham*
Linda G. Flippo, *Birmingham*
Sandra K. Meadows, *Mobile*
Stephen W. Shaw, *Birmingham*
Thomas Eric Ponder, *Montgomery*
Hon. Annetta H. Verin, *Bessemer*
Lesley Smith Deramus, *Birmingham*
Charles D. Langford, *Montgomery*
Deborah A. Griffin, *Mobile*
Teddi Lane Carte, *Montgomery*
Trudie A. Phillips, *Anniston*
Stewart G. Springer, *Birmingham*
Charles Reeder, *Mobile*
Kathy E. Segler, *Dadeville*
William E. Bright, Jr., *Birmingham*
Jon K. Turner, *Montgomery*
Charles Amos Thompson, *Birmingham*
R. Scott Colson, *Birmingham*
Larry B. Eliason, *Birmingham*
Kristi Dowdy, *Montgomery*
Marianne Cosse, *Montgomery*
Selma L. D. Smith, *Mobile*

COMMITTEE ON LAWYER ADVERTISING AND SOLICITATION

Chair:
Gregory S. Cusimano, *Gadsden*—547-6328

Vice-chair:
Tony G. Miller, *Birmingham*—254-1000

Board of Bar Commissioners Liaison:
Frederick Kuykendall, III,*Birmingham*—328-9576

YLS Representative:
Steven A. Martino, *Mobile*—433-3131

Staff Liaisons:
Milton Moss, *Montgomery*—269-1515
Kim Ellis, *Montgomery*—269-1515

Members:
Ishmael Jaffree, *Dothan*
J. Foster Clark, *Birmingham*
Gary A. Hudgins, *Dothan*
Charles J. Lorant, *Birmingham*
Keith Veigas, *Birmingham*
William F. Smith, II, *Birmingham*
Lisa Huggins, *Birmingham*
Douglass Culp, *Birmingham*
David B. Norris, *Birmingham*
Jackie O. Isom, *Hamilton*
Stewart M. Cox, *Birmingham*
Allen A. Ritchie, *Mobile*
Vanessa Thomas, *Birmingham*
L. Vastine Stabler, *Birmingham*
Ernest H. Hornsby, *Dothan*
G. Scott Frazier, *Tuscaloosa*
Randy W. Ferguson, *Huntsville*
Prof. Charles D. Cole, *Birmingham*
Thomas B. Albritton, *Andalusia*
Jack W. Selden, *Birmingham*
James T. Baxter, III, *Huntsville*
Robert C. Dillon, *Anniston*
Stevan K. Goozee, *Birmingham*
Irvin Grodsky, *Mobile*
John Pennington, *Birmingham*
Arthur Lee Tucker, *Sumiton*
J. Donald Banks, *Mobile*

LAWYERS HELPING LAWYERS COMMITTEE

Chair:
J. Sanford Mullins, III, *Birmingham*—581-6222

Vice-chair and ALA-PALS Chair
Hank Hawkins, *Tuscaloosa*—339-3215

Board of Bar Commissioners Liaison:
John Hollis Jackson, *Clanton*—755-2004

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Albert E. Byrne, *Dothan*
L. Kenneth Moore, *Bessemer*
Thomas M. Wilkinson, *Eufaula*
J. Massey Relfe, Jr., *Birmingham*
James O. Standridge, *Tuscaloosa*
Douglas J. Fees, *Huntsville*
Robert H. Adams, *Birmingham*
Paul A. Phillips, *Birmingham*
Geary A. Gaston, *Mobile*
David Cherniak, *Mobile*
Timothy M. Grogan, *Mobile*
Robert F. Clark, *Mobile*
Robert Gwin, Jr., *Birmingham*
Thomas R. Jones, Jr., *Tuscaloosa*
Terry Bullard, *Dothan*
John C. Kelsey, *Centre*
Charles B. Hess, *Ozark*
J. Victor Bowman, *Anniston*
Samuel G. McKerall, *Gulf Shores*
Robert B. Aderholt, *Haleyville*

LAWYER PUBLIC RELATIONS, INFORMATION AND MEDIA RELATIONS

Chair:
Mary Lynn Bates, *Birmingham*—823-9459

Vice-chair:
Lily M. Arnold, *Birmingham*—870-0555

Board of Bar Commissioners Liaison:
Abner Powell, III, *Andalusia*—222-4103

Young Lawyers' Representative:
William B. Ogletree, *Gadsden*—547-0023

Staff Liaison:
Margaret L. Murphy, *Montgomery*—269-1515

Members:
Donna Ward Black, *Mobile*
Christopher Kern, *Mobile*
Suzanne H. Mills, *Tuscaloosa*
Frank B. Potts, *Florence*
Benjamin H. Albritton, *Tuscumbia*
Gerald R. Paulk, *Scottsboro*
Constance S. Aune, *Mobile*
Ashley Watkins, *Birmingham*
Michael N. McIntyre, *Birmingham*
Mitch Shelly, *Mobile*
James D. Smith, *Tuscaloosa*
Walter Allen Kelley, *Huntsville*
Stephen V. Hammond, *Decatur*
Hon. J. Gorman Houston, Jr., *Montgomery*
Alicia K. Haynes, *Birmingham*
Ralph Loveless, *Mobile*
J. Edward Thornton, *Mobile*
Woodrow E. Howard, III, *Mobile*
I. Drayton Pruitt, *Livingston*
Michael Dennis Rogers, *Anniston*
Mark Allen Treadwell, III, *Dadeville*
Andrew J. Rutens, *Mobile*
John Gunn, *Roanoke*

LAWYER REFERRAL SERVICE BOARD OF TRUSTEES

Chair:
Gregory Allen Reeves, *Decatur*—355-4956

Vice-chair:
John C. Gullahorn, *Albertville*—878-1891

Board of Bar Commissioners Liaison:
Stephen K. Griffith, *Cullman*—734-0456

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Secretary, Lawyer Referral Service:
Katherine Creamer, *Montgomery*—269-1515

Members:
Cliff Wright, *Florence*
Jack Booker Weaver, *Monroeville*
Jimmy B. Pool, *Montgomery*
John David Knight, *Cullman*
Ruth Stone Ezell, *Gadsden*
Thomas A. Smith, Jr., *Cullman*
James Albert Hall, Jr., *Tuscaloosa*
Phillip M. Leslie, *Mobile*
James A. Kee, Jr., *Birmingham*
John F. Jones, Jr., *Andalusia*
Joe C. Cassady, Jr., *Enterprise*
James R. Bowles, *Tallassee*
Roger Pierce, *Auburn*

TASK FORCE ON LEGAL EDUCATION

Chair:
Steve Rowe, *Birmingham*—250-5000

Vice-chair:
Kathryn Miree, *Birmingham*—326-5333

Board of Bar Commissioners Liaison:
Wanda Devereaux, *Montgomery*—262-6801

Young Lawyers' Representative:
Taylor Thomas Perry, Jr., *Demopolis*—289-1384

Staff Liaison:
Robert W. Norris, *Montgomery*—269-1515

Members:
Orrin K. Ames, III, *Mobile*
Robert W. Rieder, *Huntsville*
Perryn Godbee Carroll, *Birmingham*
Joseph A. Colquitt, *Tuscaloosa*
Wendy Brooks Crew, *Birmingham*
Michael R. Silberman, *Birmingham*
J. Gusty Yearout, *Birmingham*
James J. Bushnell, Jr., *Birmingham*
Jim Vickery, *Montgomery*
Susan J. Walker, *Montgomery*
Joel H. Pearson, *Montgomery*
William H. Pryor, Jr., *Birmingham*
C. Mike Benson, *Auburn*
Prof. Charles D. Cole, *Birmingham*
C. Peter Bolvig, *Birmingham*
Steven A. Benefield, *Birmingham*
Joel Williams, *Troy*
Douglas Lanford, *Tuscaloosa*
Jenelle Mims Marsh, *Tuscaloosa*

TASK FORCE ON LEGISLATIVE ACTIVITIES OF THE ALABAMA STATE BAR

Chair:
Gregg B. Everett, *Montgomery*—293-8737

Vice-chair:
Beth Marietta Lyons, *Mobile*—476-7857

Board of Bar Commissioners Liaison:
Richard Gill, *Montgomery*—834-1180

Young Lawyers' Representative:
Chris Coumanis, *Mobile*—433-7600

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Robert E. Cooper, *Birmingham*
Alva M. Lambert, *Montgomery*
Robert W. Lee, *Birmingham*
Richard J. Brockman, *Birmingham*
James A. Bradford, *Birmingham*
James M. Sizemore, Jr., *Montgomery*
Kenneth H. Millican, *Hamilton*
William V. Neville, Jr., *Eufaula*
Charles D. Langford, *Montgomery*

COMMITTEE ON LOCAL BAR ACTIVITIES AND SERVICES

Chair:
Thomas E. Bryant, *Mobile*—432-4671

Vice-chair:
Julia C. Kimbrough, *Birmingham*—991-6367

Board of Bar Commissioners Liaison
Steve Kennamer, *Scottsboro*—259-5809

Young Lawyers' Representative:
Judson W. Well, *Mobile*—432-8786

Staff Liaisons:
Keith B. Norman, *Montgomery*—269-1515
Melinda Waters, *Montgomery*—269-1515

Members:
Ray Noojin, *Birmingham*
Linda McKnight, *Tuscaloosa*
Richard Ramsey, IV, *Dothan*
Banks Smith, *Dothan*
William Lee Horn, *Tuscumbia*
Trudie A. Phillips, *Anniston*
Cynthia M. Calhoun, *Anniston*
Susan Conlon Ruester, *Huntsville*
Joseph M. Ayers, *Birmingham*
Venessa Vann Campbell, *Birmingham*
Katherine L. Reynolds, *Huntsville*

TASK FORCE ON MEMBERSHIP SERVICES

Chair:
Edward M. Patterson, *Montgomery*—262-6450

Board of Bar Commissioners Liaison:
Conrad Fowler, Jr., *Columbiana*—669-6783

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Michael McNair, *Mobile*
L. Bernard Smithart, *Union Springs*
Joan Rickels, *Birmingham*
Calvin M. Whitesell, Jr., *Montgomery*
George B. Harris, *Birmingham*
Ann Marshall, *Birmingham*
William B. Woodward, Jr., *Huntsville*
Salem Resha, *Jasper*
R. Graham Esdale, Jr., *Birmingham*
Michael S. Sealy, *Montgomery*
S. Alec Spoon, *Montgomery*
James Jerry Wood, *Montgomery*
Maryanne Melko, *Montgomery*
Gerald B. Taylor, Jr., *Birmingham*
Roy W. Granger, III, *Montgomery*

MILITARY LAW COMMITTEE

Chair:
Frank M. Caprio, *Huntsville*—517-5158

Vice-chair:
Hon. Cain Kennedy, *Mobile*—690-8488

Board of Bar Commissioners Liaison:
Robert M. Hill, Jr., *Florence*—767-0700

Staff Liaison:
Robert W. Norris, *Montgomery*—269-1515

Members:
William C. Tucker, Jr., *Birmingham*
J. Donald Banks, *Mobile*
John J. Park, Jr., *Birmingham*
Robert T. Meadows, III, *Opelika*
A. David Fawal, *Charleston, SC*
Andrew J. Coleman, *Birmingham*
Jack W. Wallace, Jr., *Montgomery*
Wesley Schuessler, *Auburn*
Richard F. Allen, *Montgomery*
Donald C. Rasher, *Montgomery*
B. Boozer Downs, *Birmingham*
Victor Kelley, *Birmingham*
William H. Roe, *Oneonta*
Everett M. Urech, *Daleville*
Thomas E. Jones, *Auburn*
Richard A. Thompson, *Tuscaloosa*
William E. Scully, Jr., *Mobile*

TASK FORCE ON MINORITY PARTICIPATION AND OPPORTUNITY

Chair:
Walter McGowan, *Tuskegee*—727-4830

Vice-chair:
Rodney A. Max, *Birmingham*—250-8400

Board of Bar Commissioners Liaison:
J. Mason Davis, *Birmingham*—930-5134

Young Lawyers' Representative:
Fred D. Gray, Jr., *Tuskegee*—727-4830

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Hon. Charles Price, *Montgomery*
John James Coleman, Jr., *Birmingham*
John C. Falkenberry, *Birmingham*
Beverly Poole Baker, *Birmingham*
Houston L. Brown, *Birmingham*
Cleophus Thomas, Jr., *Anniston*
Delores R. Boyd, *Montgomery*
Tyrone Carlton Means, *Montgomery*
Kenneth J. Mendelsohn, *Montgomery*
Thomas R. DeBray, *Montgomery*
Thomas Henry Figures, *Mobile*
William Harold Albritton, IV, *Andalusia*
Robert Simms Thompson, *Tuskegee*
Jerrilee P. Sutherlin, *Huntsville*
Renee Blackmon-Hagler, *Birmingham*
Stewart G. Springer, *Birmingham*
Patricia T. Mandt, *Birmingham*
Hon. Kenneth O. Simon, *Birmingham*
Demetrius C. Newton, *Birmingham*
Hon. Vanzetta P. McPherson, *Montgomery*
Tamara Young Lee, *Montgomery*

PERMANENT CODE COMMISSION

Chair:
William B. Hairston, III, *Birmingham*—328-4600

Vice-chair:
E. Alston Ray, *Birmingham*—251-1000

Board of Bar Commissioners Liaison:
W. N. Watson, *Fort Payne*—845-0410

Young Lawyers' Representative
John S. Bowman, Jr., *Montgomery*—269-3158

Staff Liaisons:
Tony McLain, *Montgomery*—269-1515
Robert W. Norris, *Montgomery*—269-1515

Members:
James D. Pruett, *Birmingham*
David Wirtes, Jr., *Mobile*
William W. Watts, *Mobile*
Patrick H. Tate, *Ft. Payne*
Douglas J. Centeno, *Birmingham*
John D. Saxon, *Birmingham*
Deborah P. Fisher, *Birmingham*
Sharon A. Woodard, *Birmingham*
Robert L. McCurley, Jr., *Tuscaloosa*
William C. Wood, *Birmingham*
J. Robert Faulk, *Prattville*
Charles Crook, *Montgomery*
William H. Mills, *Birmingham*
John P. Scott, *Birmingham*
Michael E. Upchurch, *Mobile*
John N. Pappanastos, *Montgomery*

PREPAID LEGAL SERVICES COMMITTEE

Chair:
Charles L. Anderson, *Montgomery*—832-4202

Vice-chair:
Y. D. Lott, Jr., *Mobile*—432-6555

Board of Bar Commissioners Liaison:
John E. Chason, *Bay Minette*—937-2191

Young Lawyers' Representative:
Thomas J. Methvin, *Montgomery*—269-2343

Staff Liaison:
Milton Moss, *Montgomery*—269-1515

Members:
Beverlye Brady, *Auburn*
James A. Philips, *Mobile*
James A. Tucker, Jr., *Jackson*
Robert H. Allen, *Mobile*
Michael Simonetti, *Birmingham*
William K. Rogers, *Birmingham*
Glen M. Connor, *Birmingham*
R. Mike Conley, *Birmingham*
David G. Holmes, *Brundidge*
Angela D. Long, *Montgomery*
Gerald L. Miller, *Birmingham*
Mark E. Ellis, *Cleveland*
W. Terry Bullard, *Dothan*
Thomas Lewis Davis, *Mountain Brook*
H. Marie Thornton, *Montgomery*

TASK FORCE ON SOLO AND SMALL FIRM PRACTITIONERS

Chair:
Paul A. Brantley, *Montgomery*—265-1500

Vice-chair:
Elizabeth Nash, *Oneonta*—625-3911

Board of Bar Commissioners Liaison:
John Russell, *Aliceville*—373-8714

Young Lawyers' Representative:
Mitchell G. Allen, *Birmingham*—254-1000

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
W. Greg Ward, *Lanett*
William O. Kirk, Jr., *Carrollton*
Leon Bernard Smithart, *Union Springs*
Billy L. Carter, *Montgomery*
Sarah L. Thompson, *Tuscaloosa*
Wade K. Wright, *Guntersville*
Mary Kay Laumer, *Birmingham*
Thomas H. Boggs, Jr., *Demopolis*
J. Frank Head, *Columbiana*
Janie B. Clarke, *Montgomery*
Kendall W. Maddox, *Birmingham*
Julian L. McPhillips, Jr., *Montgomery*
John M. Kennemer, *Tuscumbia*
Andrew J. Sinor, Jr., *Birmingham*
Mary L. Campisi, *Birmingham*
Dan C. King, III, *Bessemer*
Sam Maples, *Birmingham*
Edward L. D. Smith, *Mobile*
Carter A. Robinson, *Huntsville*
Mary Beth Mantiply, *Mobile*
W. D. King, IV, *Carrollton*
Mark E. Ellis, *Cleveland*
Marla Y. Newman, *Dothan*
Marcus W. Reid, *Anniston*

SPECIAL LIAISON TAX COMMITTEE FOR THE SOUTHEAST REGION

Members:
Thomas J. Mahoney, Jr., *Birmingham*—226-7324
D. Kyle Johnson, *Montgomery*—241-8000
Stuart J. Frentz, *Birmingham*—521-8000

COMMITTEE ON SUBSTANCE ABUSE IN SOCIETY

Chair:
John Ott, *Birmingham*—731-1785

Vice-chair:
Pamela P. Robinson, *Montgomery*—242-7300

Board of Bar Commissioners Liaison:
Jerry Porch, *Russellville*—332-3900

Young Lawyers' Representative
Mark C. Wolfe, *Mobile*—433-7766

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Dr. Arthur C. Sweeney, *Montgomery*
John E. McCulley, *Northport*
Heidi Harp, *Birmingham*
C. Paige Williams, *Birmingham*
Raymond J. Hawthorne, *Montgomery*
Jeffrey H. Roberts, *Cullman*
Elizabeth R. Beaver, *Birmingham*
Ben M. Baxley, *Tuscaloosa*

Emily S. Bonds, *Birmingham*
Robert E. Lee, *Montgomery*
Robert H. Bowron, Jr., *Birmingham*
Betsy Martin Harrison, *Double Springs*
Denise Jones Pomeroy, *Birmingham*
Stephen W. Guthrie, *Birmingham*
Ashley Albert Ayers, *Birmingham*
William Roy Farmer, *Birmingham*
John A. Bivens, *Tuscaloosa*
William S. Halsey, III, *Hoover*

UNAUTHORIZED PRACTICE OF LAW COMMITTEE

Chair:
L. Bruce Ables, *Huntsville* —533-3740

Vice-chair:
William R. King, *Montgomery*—241-8000

Board of Bar Commissioners Liaison:
Lynn Robertson Jackson, *Clayton*—775-3508

Young Lawyers' Representative:
Melanie Bass, *Birmingham*—252-8800

Staff Liaisons:
Robert W. Norris, *Montgomery*—269-1515
Tony McLain, *Montgomery*—269-1515
Bonnie Mainor, *Montgomery*—269-1515

Members:
Jackie D. Ferguson, *Huntsville*
Steven A. Thomas, *Jasper*
David L. Beuoy, *Arab*
Randal S. Ford, *Moulton*
David D. Shelby, *Birmingham*
James W. Porter, II, *Birmingham*
Marc Brakefield, *Tuscaloosa*
Rufus E. Elliott, III, *Birmingham*
Neva Conway, *Greenville*
Charles E. Crumbley, *Montgomery*
Janice Boyd Neal, *Opelika*
Daniel Benton, *Fairhope*
Charles L. Miller, Jr., *Mobile*
George A. Tonsmeire, *Mobile*
Jim Fernandez, *Mobile*
Charles N. McKnight, *Mobile*

TASK FORCE ON WOMEN IN THE PROFESSION

Co-chairs:
Cecilia J. Collins, *Mobile*—432-7682
Margaret Young, *Florence*—767-0700

Board of Bar Commissioners Liaison:
Cathy S. Wright, *Birmingham*—254-1000

Liaison:
Delores R. Boyd, *Montgomery*—264-8005

Staff Liaison:
Keith B. Norman, *Montgomery*—269-1515

Members:
Beverly P. Baker, *Birmingham*
Claire A. Black, *Tuscaloosa*
Karen Bowdre, *Birmingham*
Pamela H. Bucy, *Birmingham*
Robin L. Burrell, *Birmingham*
Wanda D. Devereaux, *Montgomery*
Susan S. DePaola, *Montgomery*
Victoria J. Franklin-Sisson, *Birmingham*
Dawn Wiggins Hare, *Monroeville*
Lynn Robertson Jackson, *Clayton*
Merceria L. Ludgood, *Montgomery*
Dixie T. Martino, *Mobile*
Marla Y. Newman, *Dothan*
Hon. Deborah B. Paseur, *Florence*
Maibeth J. Porter, *Birmingham*
Sarah S. Stewart, *Mobile*
Jerrilee P. Sutherlin, *Huntsville*
Ann E. Taylor, *Mobile*
Cary D. Tynes, *Birmingham*
Hon. Sharon G. Yates, *Montgomery*

DISCIPLINARY REPORT

Disbarments

• Huntsville attorney **David C. Craddock** was disbarred by order of the Supreme Court of Alabama, effective March 18, 1994. The supreme court disbarred Craddock based upon the Disciplinary Board of the Alabama State Bar ordering said disbarment in three separate disciplinary files.

In one matter, Craddock was paid a $1,000 retainer to file suit on the client's behalf. However, Craddock failed to file suit as promised, and also failed to refund to the client the $1,000 retainer. Craddock failed to reply to any of the client's written correspondence as to the status of the case and failed to respond to any telephone calls of the client. The Disciplinary Board found Craddock guilty of willful neglect of a legal matter entrusted to him (Rule 1.3), of failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (Rule 1.4(b)), of failing to keep the client reasonably informed about the matter and promptly comply with reasonable requests for information (Rule 1.4(a)), and of engaging in conduct that adversely reflects on his fitness to practice law.

In the second matter, a client contacted Craddock about possibly filing a medical malpractice action. Craddock agreed to handle the matter on a contingency fee basis. Craddock misrepresented to the client that he had filed the malpractice action. Subsequently, the client discovered that Craddock had not filed a suit but had merely written a letter to the physician in question. Craddock failed to keep appointments with the client to discuss the case, and failed to respond to letters from the client. The client filed a grievance against Craddock. Craddock failed to respond to three separate requests of the Huntsville-Madison County Bar Association seeking a response to the client's complaint. The Disciplinary Board found that Craddock's actions constituted a violation of Rules 1.3, 1.4(a), 8.4 (g) and 2(e), Alabama Rules of Disciplinary Procedure (failing to respond to a request for a response or for information in a matter involving lawyer conduct from the Disciplinary Commission).

In the third matter, Craddock was hired by an individual to probate the estate of the individual's deceased mother. Contrary to the instructions of the client, Craddock pursued a wrongful death action concerning the mother's death. In pursuit thereof, Craddock received a check for $40,000 payable to the former executors of the mother's estate. Craddock failed to timely pay over to the necessary parties the funds entrusted to him. Eventually Craddock wrote a check to the client in the amount of $34,754. However, when the check was presented by the client for payment it was returned marked "Insufficient Funds". Craddock failed to make good on the trust account check in question. The Disciplinary Board found that Craddock's actions constituted violations of Rule 1.4(a), 1.5(b) (failure to communicate to the client the basis or rate of his fee), 1.5(c) (failure to provide the client with a written statement stating the outcome of the matter and the recovery obtained); 1.15 (b) (failure to promptly deliver to the client the funds that the client was entitled to receive); 1.15(c) (commingling of funds); 8.4(b) (commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); and 8.4(g), and Rule 2(e), Alabama Rules of Disciplinary Procedure.

Formal charges were filed against Craddock in each of these matters. Although properly served in each case, Craddock failed to respond in any way, with a default judgment being entered in each of these three cases. Even though receiving notice to appear for a hearing as to discipline, Craddock failed to appear at said hearing. The Disciplinary Board, upon adjudication of guilt of all formal charges against Craddock, ordered that he be disbarred. [ASB Nos. 92-415, 93-002, 93-056]

• **Jerry DeWitt Baker**, a Huntsville lawyer, was disbarred from the practice of law by order of the Supreme Court of Alabama effective May 17, 1994. Baker failed to respond to 14 formal charges and a default judgment was entered on February 1, 1994. On April 1, 1994, a hearing to determine discipline was held before the Disciplinary Board of the Alabama State

Bar and, although Baker was duly noticed as to the time and place of the hearing, he failed to appear. The Disciplinary Board considered the charges "deemed admitted" pursuant to Rule 12(e) (4) of the Rules of Disciplinary Procedure and matters in aggravation and determined that Baker should be disbarred from the practice of law. The Disciplinary Board also ordered that Baker make restitution in the amount of $20,860.87 in various amounts to 12 former clients. [ASB Nos. 92-159, 93-150, 93-185, 93-186, 93-211, 93-213, 93-236, 93-248, 93-285, 93-291, 93-292, 93-294, 93-320, and 93-333]

Suspensions

• The Supreme Court of Alabama temporarily suspended Auburn attorney **Jack Ferrell Saint**, effective April 22, 1994. Saint's suspension was pursuant to Rule 20(a), Alabama Rules of Disciplinary Procedure.

Saint was previously noticed to appear before the board of bar commissioners to receive a public reprimand with general publication for multiple violations of the Rules of Professional Conduct of the Alabama State Bar. Contrary to express directions of the president of the Alabama State Bar, Saint failed to attend the board of bar commissioners' meeting as ordered. He thereafter failed to provide satisfactory documentation as to the reason for his absence from that meeting. Due to Saint's failure to comply with orders of the Disciplinary Commission and the president of the Alabama State Bar, an interim suspension of Saint was sought by the Office of General Counsel of the Alabama State Bar.

The Disciplinary Commission entered a restraining order prohibiting Saint from practicing law. This restraining order was acknowledged and made effective April 22, 1994, by order of the Supreme Court of Alabama. [Rule 20(a) Pet. 94-01]

• Effective July 1, 1994, Birmingham attorney **Dwight Lee Driskill** has been suspended from the practice of law for non-compliance with the Mandatory Continuing Legal Education Rules. [CLE No. 94-05]

• Florence attorney **Dennis Neal Odem** was suspended by order of the Supreme Court of Alabama for a period of 90 days, said suspension effective beginning July 6, 1994. The Disciplinary Commission of the Alabama State Bar had ordered Odem's suspension pursuant to Rule 22(a)(2), Alabama Rules of Disciplinary Procedure, based upon the fact that Odem was convicted of a felony in the United States District Court for the Northern District of Alabama. Odem's conviction was for a violation of 31 U.S.C. Sec. 5324(3), and 18 U.S.C. Sec. 982. Odem's crime involved his depositing funds of $10,000 or less in an attempt to avoid the bank's reporting the amounts in question to the federal government. [Rule 22(a) (Pet. No. 93-03)]

•**Michael Stanley Sheier**, a Birmingham lawyer, was temporarily suspended from the practice of law effective June 27, 1994, by order of the Disciplinary Commission, pursuant to Rule 20(a) of the Rules of Disciplinary Procedure. Sheier, by his actions, was causing or was likely to cause immediate and serious injury to his clients and to the public as evidenced by the large number of serious complaints filed against him and by the fact that Sheier refuses to respond or cooperate with the disciplinary authorities of the Alabama State Bar and has, by his actions, attempted to thwart the process. [Rule 20(a) (Pet. No. 94-02)]

• **Richard Lee Taylor**, a Birmingham lawyer, was suspended from the practice of law for 120 days by order of the Disciplinary Board, Panel III. The Disciplinary Board, after hearing, found Taylor guilty of willfully neglecting a legal matter entrusted to him in violation of DR 6-101(A) and Rule 1.3; for failing to seek the lawful objectives of his client, failing to carry out a contract for professional services and for damaging his client during the course of the professional relationship in violation of DR 7-101(A)(1), (2) and (3); for failing to provide competent representation to a client in violation of Rule 1.1; and for failing to respond to a demand for information by disciplinary authorities of the bar in violation of Rule 8.1. Taylor, after being retained to defend a client in a lawsuit, failed to respond to a request for admissions and interrogatories and failed to comply with an order of the circuit court to respond to the request for admissions and interrogatories. This failure caused a $500,000 default judgment to be entered against his client. Taylor took no action to have the default judgment set aside, thus causing his client to lose his home. Taylor failed to respond to requests for information from the Birmingham Bar Association Grievance Committee. The Alabama Supreme Court ordered Taylor suspended, effective June 27, 1994. [ASB No. 92-540]

Public Reprimands

• Montgomery attorney **Keith Ausborn** was publicly repri-

manded, with general publication, by the Alabama State Bar on May 13, 1994.

Ausborn represented a party defendant in litigation concerning an auto loan. In representing the defendant, Ausborn also filed a counterclaim. The matter proceeded to a trial with a judgment being awarded in favor of the plaintiff against Ausborn's client, and a judgment against Ausborn's client on the counterclaim. Ausborn then appealed the case on behalf of his client to the Alabama Court of Civil Appeals.

The opposing party sought sanctions under Rule 38, Alabama Rules of Appellate Procedure, and/or the Alabama Litigation Accountability Act for Ausborn's filing of a frivolous appeal. The court of civil appeals affirmed the action of the trial court in a written opinion. Although the court of civil appeals denied the Rule 38 relief requested by the opposing party the court did order $500 in attorney's fees against Ausborn pursuant to the opposing party's claim under the Alabama Litigation Accountability Act. The court in its opinion criticized Ausborn's actions stating specifically,... "[S]hould this case not meet the criteria for an assessment of costs against an offending attorney pursuant to ALAA, it is difficult to imagine a case that would." The court further determined that the appeal, as well as Ausborn's brief, were both "groundless in fact and in law."

Formal charges were filed against Ausborn. Ausborn tendered a guilty plea admitting violations of three separate provisions of the Alabama Rules of Professional Conduct, specifically, Rule 4.4, in that he failed to respect the rights of a third person in filing the frivolous proceedings, that he violated Rule 8.4(a), in that he violated the Rules of Professional Conduct, and a violation of Rule 8.4(d), by engaging in conduct prejudicial to the administration of justice.

The reprimand administered to Ausborn by the bar noted that since Ausborn's date of admission in 1991, he has received two other public reprimands without general publication. [ASB No. 93-403]

• Tuscaloosa attorney **John Alan Bivens** was publicly reprimanded, without general publication, by the Alabama State Bar on May 13, 1994. A complaint had been filed against Bivens by a client. Bivens failed to timely respond to investigatory requests from the Tuscaloosa County Grievance Committee, as well as the Office of General Counsel of the Alabama State Bar.

Bivens entered a guilty plea to violating Rule 2(e), Alabama Rules of Disciplinary Procedure, which Rule requires that discipline be imposed upon a lawyer who fails to respond to a request of a disciplinary authority for a response to a bar complaint. [ASB No. 91-134]

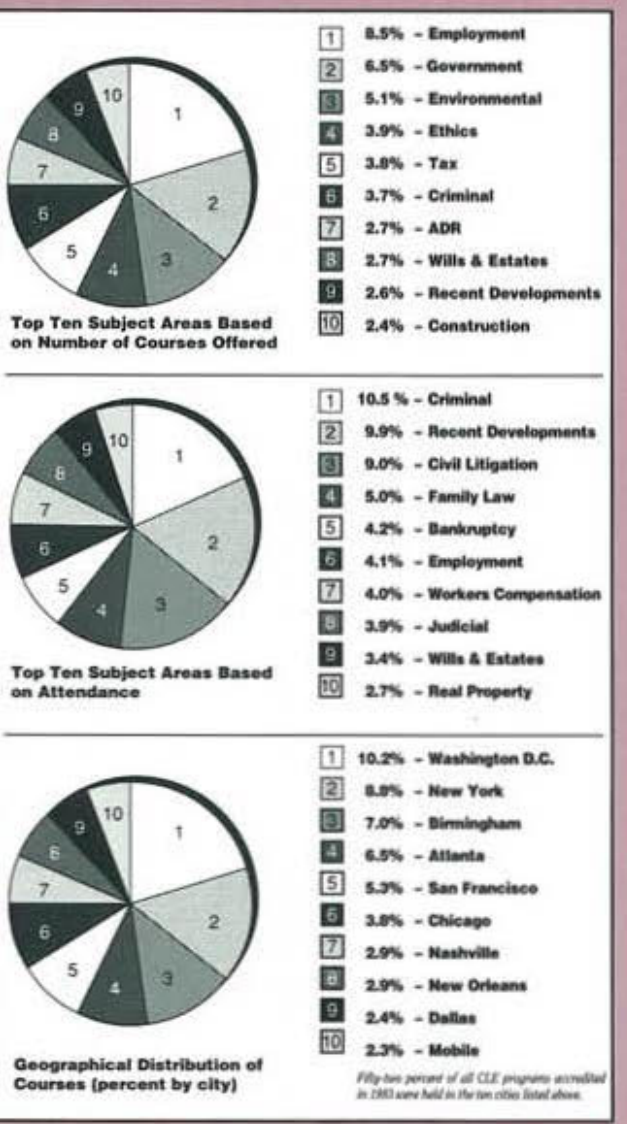
• On February 28, 1994, the Disciplinary Board of the Alabama State Bar accepted a conditional guilty plea from attorney **David M. Tanner**, pleading guilty to a violation of Rule 1.15(b) which states that "...lawyer shall promptly deliver to the client...any funds or other property that the client ...is entitled to receive...." On October 18, 1991, the circuit court ordered interpleaded funds to be paid to Tanner's client. Tanner did not notify his client of this order, and picked up the funds without authority to do so. He kept the money until the client filed a grievance against him. [ASB No. 92-334] ■

A BRIEF LOOK AT

Continuing Legal Education for the 1993 Compliance Year

By Keith B. Norman

In 1993, the MCLE Commission received a total of 3,560 programs seeking CLE accreditation. This was a 9 percent increase from the year before. Of the total number of programs reviewed in 1993, 3,470 were accredited. Five hundred and fifty-six of the accredited programs were offered in-state, while the remaining 2,913 were held outside the state. Ten in-state sponsors, however, accounted for 51 percent of the total CLE hours attended by state bar members in 1993. Bar members attended a total of 86,950 hours of CLE for the year.



Finally, 7,510, or 99.0 percent of the lawyers subject to the CLE rules complied within a timely fashion or filed a deficiency plan as permitted under Rule 6 of the MCLE Rules and Regulations. Only 49 lawyers' names have been certified to the Disciplinary Commission for 1993 noncompliance.

YOUNG LAWYERS' SECTION

By HERBERT HAROLD WEST, JR.

I am honored to have the privilege of serving as president of the Young Lawyers' Section of the Alabama State Bar for the upcoming year. One purpose for which the YLS was organized is to provide a program of activities attractive to the members of the section and helful to the legal profession. In fulfillment of this mission, the section has many ongoing projects, including the annual Sandestin Seminar (a two-day seminar at Sandestin, Florida), the Youth Judicial Program (a joint program with the YMCA to stage mock trial competitions for high school students), the bar admissions ceremonies for spring and fall admittees, and a Minority High School Pre-Law Conference (a conference for minority high school students across the state who are interested in attending law school). Unfortunately, many young lawyers are unaware of the section's activities and the opportunities to get involved in bar activities. In the upcoming year, I will focus on increasing young lawyers' awareness of and involvement in YLS activities. If you are interested in becoming involved in any of the projects or have an idea for a new project, contact me at (205) 716-5200 or any of the officers of the section: President-elect Buddy Smith; Secretary Andy Birchfield; or Treasurer Robert Hedge.

HAL WEST

As president of the YLS, I also want to improve the communication between the section and the local affiliates. In the past, the presidents of the local affiliates were often members of the YLS Executive Committee and an overt attempt to communicate was not necessary. In recent years, however, this has not always been the case, and both the YLS and the affiliates have missed several opportunities to work together. As a beginning, I invite the president of each local affiliate to attend all YLS Executive Committee meetings.

Finally, I thank Les Hayes for his outstanding leadership as president the past year and for his leadership as a YLS officer and member of the Executive Committee in prior years. I also thank Barry Ragsdale for his service as secretary, treasurer and a member of the Executive Committee. Les and Barry's energy and leadership proved to be invaluable and will be sorely missed. ■

RECENT DECISIONS

By DAVID B. BYRNE, JR. and WILBUR G. SILBERMAN

SUPREME COURT OF THE UNITED STATES–CRIMINAL

Uncounseled misdemeanor convictions may be used to enhance punishment

Nichols v. United States, Case No. 92-8556, 62 USLW 4421 (June 6, 1994). May judges determining the length of prison sentences consider defendants' prior misdemeanor convictions even if the defendants had no legal help (counsel) in the earlier case? The Supreme Court said yes by a six-to-three vote.

Nichols pleaded guilty to federal felony drug charges; he was assessed criminal history points under the United States Federal Sentencing Guidelines, including one point for a state misdemeanor conviction for driving while under the influence (DUI), for which he was fined but not incarcerated. That criminal history point increased the maximum sentence of imprisonment under the guidelines from 210 to 235 months. Nichols objected to the Court's use of his uncounseled DUI conviction to enhance punishment relying upon *Baldasar v. Illinois,* 446 U.S. 222 (1980).

Chief Justice Rehnquist, writing for the majority, held that such consideration does not violate a defendant's Sixth Amendment right to counsel if the earlier conviction did not result in imprisonment. The decision overturned the splintered 1980 Supreme Court ruling in *Baldasar v. Illinois.*, which had been construed by lower federal courts to ban consideration of uncounseled misdemeanors in enhancing sentences. Specifically, the Supreme Court held that, consistent with the Sixth and Fourteenth Amendments, a sentencing court may consider a defendant's previous uncounseled misdemeanor conviction in sentencing him for a subsequent offense so long as the previous uncounseled misdemeanor conviction did not result in a sentence of imprisonment. The high court expressly rejected the petitioner's due process contention that a misdemeanor defendant must be warned that his conviction might be used in the future for enhancement purposes.

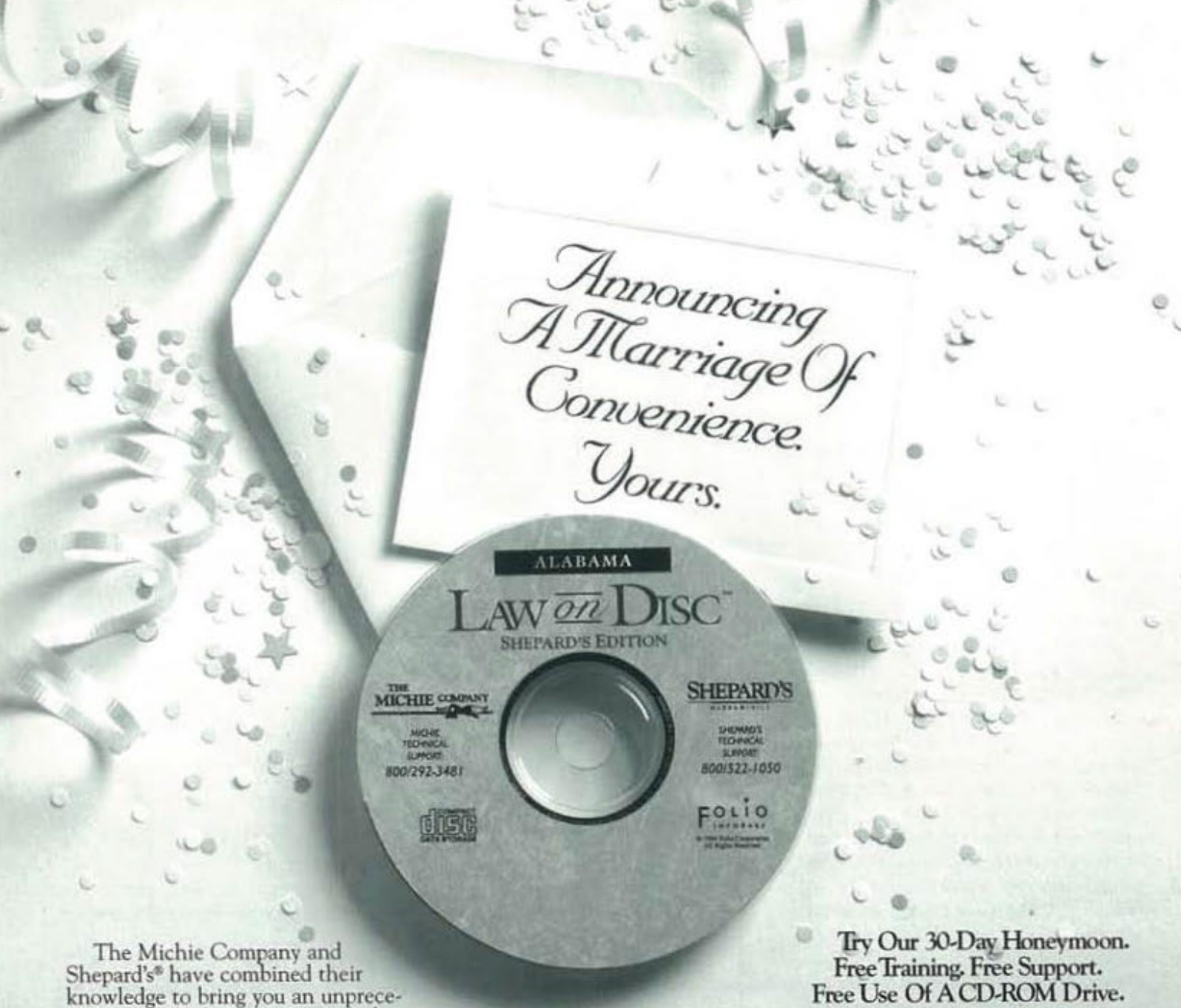
State drug tax can trigger double jeopardy provisions of Constitution

Montana Department of Revenue v. Kurth Ranch, Case No. 93-144, 62 USLW 4429 (June 6, 1994). May the state impose drug-possession taxes on a defendant who already had been subjected to criminal penalties? A sharply divided Supreme Court (five-to-four) said no.

Montana law enforcement officers raided the Kurth family farm; the officers arrested the Kurths, and confiscated and later destroyed their marijuana plants. After the Kurths pleaded guilty to drug charges, the Montana Department of Revenue attempted, in a separate proceeding, to collect a state tax imposed on the possession and storage of dangerous drugs. The Montana Act expressly provided that the "tax" is to be "collected only after state or federal fines or forfeitures have been satisfied."

The issue present on certiorari was whether the tax, an assessment equal to eight times the product's market value, was a form of double jeopardy invalid under the federal Constitution.

Justice Stevens, writing for the majority, held that the Montana tax violates the constitutional prohibition against successive punishments for the same offense. The decision is significant because it marks the first time that the Supreme Court has concluded that imposition of a tax can amount to double jeopardy. The Court reasoned that taxes are usually motivated by revenue-raising rather than punitive purposes. Montana's tax departs far from normal revenue laws. Its high rate and deterrent purpose, in and of themselves, do not necessarily render it punitive, but other unusual features set it apart from most taxes. It is conditioned on



The Michie Company and Shepard's® have combined their knowledge to bring you an unprecedented level of conven-ience and reliability in researching state law. It's **Alabama Law On Disc™, Shepard's® Edition.**

One high-speed CD-ROM contains Michie's complete library of Alabama law plus Shepard's comprehensive citations coverage. Shepard's covers all relevant federal and state decisions, allowing you to:

- understand the actual status of your precedent
- find additional cases, and
- learn instantly if a reversal has destroyed your precedent.

This marriage of two respected law libraries saves time and cost, further increases your productivity, and provides greater assurance when you go to court.

Search And Shepardize® Alabama Law With One Easy-To-Use CD-ROM.

With just a keystroke, you can automatically Shepardize® material of interest, switching at will between the full text and Shepard's Citations.

You'll save time and cost finding law on point and validating your research. And you'll have an offensive weapon to better answer opposing arguments.

Each month you'll receive a new disc that contains monthly updates of Shepard's Citations and quarterly updates of Law On Disc. At the low monthly cost, even small practices can afford this unlimited time-saving research.

Try Our 30-Day Honeymoon. Free Training. Free Support. Free Use Of A CD-ROM Drive.

We're so confident **Alabama Law On Disc, Shepard's Edition** will make your research time more productive, we'll supply the disc and a loaner CD-ROM drive for 30 days at no cost or obligation. If you're not completely satisfied, return the system and you'll owe us nothing.

Call 800/356-6847 and ask about **Alabama Law On Disc, Shepard's Edition.** Make this marriage of convenience the perfect match for you and your practice.

THE MICHIE COMPANY
Law Publishers Since 1855

SHEPARD'S

* Law On Disc is a trademark of The Michie Company. ® Shepard's and Shepardize are registered trademarks of McGraw-Hill, Inc.

the commission of a crime, which makes it penal rather than the mere gathering of revenue. It is also exacted only after the taxpayer has been arrested for the precise conduct that gives rise to the tax obligation in the first place. In summary, Justice Stevens called the Montana tax ..."a concoction of anomalies too far removed in crucial respects from a standard tax assessment to escape characterization as punishment." The predictable result was a violation of the Fifth Amendment's double jeopardy provision.

Sentencing argument in capital cases

Simmons v. South Carolina, Case No. 92-9059, 62, USLW 4509 (June 17, 1994). Does a capital defendant have the right to tell a sentencing jury that the only alternative to a death sentence is a life prison term without chance of parole?

During the penalty phase of Simmons' South Carolina trial, the State argued that his future dangerousness was a factor for the jury to consider when deciding whether to sentence him to death or life imprisonment for the murder of an elderly woman. However, the trial judge refused to give the jury the defendant's proposed instruction that under state law he was ineligible for parole. When asked by the jury whether life imprisonment carried with it the possibility of parole, the court instructed the jury not to consider parole in reaching its verdict and that the terms life imprisonment and death sentence were to be understood to have their plain and ordinary meaning. The jury returned a sentence of death.

Justice Blackmun wrote a plurality opinion joined by Justices Stevens, Souter and Ginsburg. Justice O'Connor wrote a more narrowly worded concurring opinion, joined by Chief Justice Rehnquist and Justice Kennedy. Justice Blackmun reasoned that state courts may not bar jurors, many of whom might think a "life sentence"

does not really mean a lifetime behind bars, from hearing about the impossibility of parole. The petitioner's jury reasonably may have believed that he could be released on parole if he were not executed. To the extent that this misunderstanding pervaded the jury's deliberations, it had the effect of creating a false choice between sentencing him to death and sentencing him to a limited period of incarceration. The trial court's refusal to apprise the jury of information so crucial to its determination, particularly when the State alluded to the defendant's future dangerousness in its argument, cannot be reconciled with this court's well-established precedents interpreting the due process clause.

Moreover, the trial court's instruction that life imprisonment was to be understood to have its plain and ordinary meaning did not satisfy Simmon's request for a parole ineligibility charge, since it did nothing to dispel the misunderstanding reasonable jurors may have about the way in which any particular state defines "life imprisonment."

Gender-based strikes prohibited

J.E.B. v. Alabama, Case No. 92-1239, 62 USLW 4219 (April 19, 1994). Does a lawyer violate the 14th Amendment's equal protection clause when using a peremptory challenge to exclude a prospective juror based only on the person's gender? The Supreme Court answered yes in a six-to-three decision.

"Gender, like race, is an unconstitutional proxy for juror competence and impartiality," wrote Justice Harry A. Blackmun.

In a series of decisions dating back to 1986, the Supreme Court has again extended the rule in *Batson* which originally barred lawyers from excluding black potential jurors because of their race. *J.E.B.* resolved a split among the circuits as well as conflicts between various states over extending the rule in *Batson* to gender-based strikes.

Custodial interrogation - request for counsel must be unequivocal

Davis v. United States, Case No. 92-1949, 62 USLW 4587 (June 24, 1994). Is a suspect's remark, "Maybe I should talk to a lawyer," a request for counsel?

Davis, a member of the United States Navy, initially waived his rights to remain silent and to counsel when he was interviewed by Naval Investigative Services agents in connection with the murder of a sailor. About an hour and a half into the interview, Davis said, "Maybe I should talk to a lawyer." However, when the agents inquired if he was

asking for a lawyer, he replied that he was not. The NIS agents took a short break. The petitioner was again reminded of his rights and the interview continued for another hour until the seaman asked to have a lawyer present before saying anything else. The military judge denied his motion to suppress the statement made at the interview holding that his mention of a lawyer during the interrogation was not a request for counsel. He was convicted of murder and, ultimately, the Court of Military Appeals affirmed.

Justice O'Connor delivered the opinion of the Court affirming the conviction. The Supreme Court held:

> After a knowing and voluntary waiver of rights under *Miranda v. Arizona*, 384 U.S. 436, law enforcement officers may continue questioning until and unless a suspect clearly requests an attorney. A suspect is entitled to the assistance of counsel during custodial interrogation even though the Constitution does not provide for such assistance. *Id.*, at 469-473. If the suspect invokes that right at any time, the police must immediately cease questioning him until an attorney is present. *Edwards v. Arizona*, 451 U.S. 477, 484-485. The *Edwards* rule serves the prophylactic purpose of preventing officers from badgering a suspect into waiving his previously asserted *Miranda* rights, and its applicability requires courts to determine whether the accused actually invoked his right to counsel.

Justice O'Connor reasoned that this is an objective inquiry, requiring some statement that can be reasonably construed to be an expression of a desire for an attorney's assistance. If the reference is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, *Edwards* does not require that officers stop questioning the suspect.

Bankruptcy Decisions

Attorney's fees allowed bank in interpleader suit in bankruptcy court

In re Mandalay Shores Cooperative Housing Assn., 11th Cir., (Fla. May 23, 1994) 21 F. 3d 380; 25 B.C.D. 1094. In a housing cooperative, which later filed a Chapter 11 bankruptcy case, $1 million was deposited by the tenants with a bank. The tenants divided into two factions, which resulted in a frenzy of litigation. In the bankruptcy case, the trustee filed an adversary proceeding against the bank. The bank counterclaimed against the trustee, and also filed an interpleader in the bankruptcy court as to third-party claims. The main bankruptcy case was dismissed, but the adversary proceeding concerning the deposit remained. The bankruptcy court rejected the bank's claim for legal fees incurred in the main case, the adversary proceeding, and in a federal court case involving the parties. Both the bankruptcy and district courts held that the legal fees were a cost of the bank's business, and that the bankruptcy law furnished no basis for an award. However, the Eleventh Circuit reversed holding that an award was an equitable matter wholly within the discretion of the bankruptcy court and that the bankruptcy court abused its discretion in failing to consider that as the bank was an innocent stockholder, it was entitled to attorneys' fees in controversies in which it had no interest in the outcome.

Comment:

The Eleventh Circuit distinguished this interpleader from one in which a bank is in the business of acting as a fiduciary. Here the bank was acting solely as a depository. Apparently, had it been acting in a fiduciary capacity as part of its trust business, the bank would not have been allowed the fees.

U.S. Supreme Court rules that debtor motor carrier cannot collect for filed, but void, rates

Security Services, Inc. v. K-Mart Corp., 114 S.Ct. 1702, 25 B.C.D. 1026, (U.S. Pa., May 16, 1994). In this case, the debtor motor carrier contracted to carry goods at a price lower than the rate on file with the ICC. After filing under Chapter 11, the debtor sought to recover the difference under the doctrine that the contract was not binding, and that the shipper was responsible for the filed rates. In a divided decision, the Supreme Court rejected the debtor's

argument and held the filed tariff rates were void, thereby concluding that there were no rates on file. The debtor had contended that to hold contra to its view would contravene the 1989 *Maislin* case (497 U.S. 116, 121), which held that the ICC could not by non-enforcement allow parties to agree to a lower rate, which practice would cause price discrimination. The opinion concluded:

> Trustees in bankruptcy and debtors-in-possession may rely on the filed rate doctrine to collect for undercharges..., but they may not collect for undercharges based on filed, but void, rates.

Eleventh Circuit holds interest accruing during Chapter 11 on trade creditors' post-petition was accorded administrative expense priority up to time of conversion to Chapter 7; however, Bankruptcy Court did not abuse discretion in not allowing immediate payment

In re *Color-Tex Industries*, 19 F.3d 1371, 25 B.C.D. 929, (11th Cir. (Ga.) May 2, 1994). This original Chapter 11 case converted to Chapter 7. The trustee's final report at the time of conversion reflected over $150,000 in unpaid debts. The trustee contended that Chapter 7 administrative claims, super-priority claims, and Chapter 11 administrative claims militated against immediate payment. The bankruptcy court allowed claim of performance of requested carpet-finishing services to a creditor as a Chapter 11 administrative claim but denied a request for interest and immediate payment. On appeal, the district court allowed the interest claim

Notice
United States District Court
Northern District of Alabama

In Re:
The Matter of The Reappointment of T. Michael Putnam as a United States Magistrate Judge

The current term of the office of United States Magistrate Judge T. Michael Putnam at Birmingham, Alabama is due to expire February 8, 1995. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new eight-year term.

The duties of a magistrate judge position include the following: (1) conducting most preliminary proceedings in criminal cases, such as initial appearances, bond and detention hearings, and arraignments; (2) the trial and disposition of misdemeanor cases; (3) conducting various pretrial matters and evidentiary proceedings on reference from the judges of the district court, including civil discovery and other non-dispositive motions; (4) conducting preliminary reviews and making recommendations regarding the disposition of prisoner civil rights complaints and habeas corpus petitions; and (5) trial and disposition of civil cases upon consent of the litigants.

Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court and should be directed to:

Perry D. Mathis, Clerk of Court
U.S. District Court for the Northern District of Alabama
140 Hugo L. Black U.S. Courthouse
1729 Fifth Avenue, North
Birmingham, AL 35203
Comments must be received no later than Friday, October 7, 1994.

up to the time of conversion, after which it determined that it would have only a fifth priority under §726(a) (5).

The Eleventh Circuit, in reviewing under the "clearly erroneous" standard, determined that the bankruptcy court had not abused its discretion in delaying payment. Insofar as interest is concerned, it noted the §503(b) (1) does not specifically provide for the right of an administrative claimant to interest, but that since as the section uses the term "including" there was no prohibition against such allowance. In a detailed discussion in which the Eleventh Circuit recognized the ambiguity in legislative history, and the conflict in decided cases, the Court relied upon *In re Allied Mechanical Service*, 885 F.2d 837 (1989) and *Nicholas v. United States*, 86 S.Ct. 1674 (1966) that interest in ruling on trade debts incurred during the pendency of a Chapter 11 proceeding should be accorded administrative expense priority similar to interest on tax claims, but that upon conversion to Chapter 7, accrued interest thereafter is only fifth priority under §726(a) (5).

David B. Byrne, Jr.

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

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.

Adversary proceeding required to "reinstate automatic stay"

In re Stacy, 167 B.R. 243, 1994 WL 182908 (N.D. Ala., April 19, 1994). The bankruptcy court granted the holder of a first mortgage on debtor's property relief from the automatic stay as of a future date. More than ten days after the entry of that order, a creditor filed a motion seeking to reinstate the automatic stay or in the alternative, to stay the first mortgagee's foreclosure of the debtor's real property. Finding that the movant had failed to seek reconsideration of the court's prior order granting relief from the automatic stay and concluding that the movant must initiate an adversary proceeding to obtain injunctive relief, the bankruptcy court struck the motion. On appeal to the district court, Judge Acker dismissed as untimely the appeal of the prior order granting relief from the automatic stay since the appeal was perfected more than ten days after the entry of that order. After agreeing with the bankruptcy court's conclusion that the Bankruptcy Code does not authorize the reinstatement of the automatic stay once it has terminated, Judge Acker affirmed the bankruptcy court's striking a motion seeking injuctive relief on the ground that such relief must be sought in the form of an adversary proceeding. ■

• M·E·M·O·R·I·A·L·S •

Winston F. Groom, Sr.

Whereas, Winston F. Groom, Sr., a distinguished member of this association, passed away on February 15, 1994;

Now, therefore, be it resolved that this association notes that Winston F. Groom, Sr. was born in Mobile, Alabama where he attended public schools. He was a member of one of the last graduating classes of Barton Academy where he played football, baseball and basketball. Mr. Groom attended Auburn University and Spring Hill College.

During World War II, Mr. Groom was commissioned as a captain in the United States Army where he served in the Judge Advocate General's Corps. Returning to Mobile following the war, he remained active in the Army Reserve from which he retired in 1965 having attained the rank of lieutenant colonel.

Mr. Groom worked in the legal office of the GM&O Railroad during the 1920s, and in the 1950s he was appointed a referee for the U.S. Bankruptcy Court. He resumed his private practice several years later, and his practice of law in Mobile spanned almost 60 years. A man of many interests, Mr. Groom was an organizer and served as president in 1935 of the Mobile Little Theater which was the forerunner of several local theater groups. An avid sailor, he was an active member of the Mobile Yacht Club for many years. A man who enjoyed life and people, Mr. Groom derived immense satisfaction from the practice of law. His greatest joy was in serving the interests of his clients. As a lawyer who practiced in all courts and handled a wide variety of matters, both civil and criminal, his practice exemplified that of a vanishing breed in this age of specialization.

As were many of his generation, Mr. Groom was an excellent storyteller. He passed on this skill to his son, the distinguished author, Winston F. Groom, Jr. of Point Clear. Winston reports that the inspiration for the main character in his popular novel, Forrest Gump, which was recently released as a movie, came from a story his father shared with him about a neighborhood acquaintance.

Now, therefore, be it further resolved by the members of the Mobile Bar Association that while we mourn with his family the passing of Winston F. Groom, Sr., we also celebrate the memory of our friend and fellow member who exemplified throughout his long career the highest professional principles of this association.

—D. Richard Bounds
President
Mobile Bar Association

Gilbert E. Johnston, Sr.

WHEREAS, Gilbert E. Johnston, Sr. was an active member of the bar of this City and the State of Alabama and departed this life May 17, 1994; and,

WHEREAS, Gilbert E. Johnston came from Chicago to Birmingham with his parents as a child. He attended Ramsay High School and was class president. He graduated from the University of Alabama, where he was a member of Phi Beta Kappa, ODK and was Cadet Colonel of R.O.T.C. He graduated from Yale Law School and was called into the Army in 1941; and,

WHEREAS, Gilbert E. Johnston, during the war years, served two and a half years in India and one year as a lieutenant colonel on the staff of General Marshall; and,

WHEREAS, he began the practice of law in 1945 in Birmingham, retiring in 1986. His firm was Johnston, Barton, Proctor, Swedlaw & Naff. Gilbert Johnston, as senior partner, and this firm were outstanding throughout Alabama and this country; and,

WHEREAS, he was a member of the Southside Baptist Church serving as a deacon, trustee, chairman of the board of Baptist Hospitals of Birmingham, was on the board of trustees of Samford University for over 15 years; he was past president of Birmingham Country Club, The Club, Redstone Club and Willow Point Country Club; and,

WHEREAS, Gilbert E. Johnston is survived by his wife, Katherine Estes Johnston; daughter Katherine J. Myatt; and three sons, Gilbert E. Johnston, Jr., Merrill E. Johnston and Claude E. Johnston.

—William N. Clark
President
Birmingham Bar Association

Lindsay Clay Callaham, Jr.

Lindsay Clay Callaham, Jr. was born November 12, 1947 and died June 11, 1994. He was admitted to the Alabama State Bar May 26, 1987. His voice is silent now, but Clay still remains with us in the mind's eye: Standing there with his head to one side, an expectant grin on his face, ready to laugh with us, his curly hair like a Brillo® pad, patiently waiting to hear our side - a worthy adversary pursuing life and his profession with gentle intensity - ready to advocate his position with wit and knowledge. We will miss him.

—Frances H. Smith
Montgomery, Alabama

Please Help Us

The Alabama Lawyer "Memorials" section is designed to provide members of the bar with information about the death of their colleagues. The Alabama State Bar and the Editorial Board have no way of knowing when one of our members is deceased unless we are notified. Please take the time to provide us with that information. If you wish to write something about the individual's life and professional accomplishments for publication in the magazine, please limit your comments to 250 words and send us a picture if possible. We reserve the right to edit all information submitted for the "Memorials" section. Please send notification information to the following address: **Margaret L. Murphy, *The Alabama Lawyer*, P.O. Box 4156, Montgomery, AL 36101**

• M·E·M·O·R·I·A·L·S •

Douglas W. Stockham, III

WHEREAS, Douglas W. Stockham III, a member of the Birmingham Bar Association since 1983, died at the age of 45; and,

WHEREAS, Douglas W. Stockham III had been a member of the Alabama State Bar since 1982; and

WHEREAS, Douglas W. Stockham III was a graduate of Indian Springs School, the University of Arizona, and the Birmingham School of Law; and,

WHEREAS, Douglas W. Stockham III used his legal skills as an employee of Alabama Power Company after his admission to the bar; and,

WHEREAS, Douglas W. Stockham III was a member of First United Methodist Church, Sylacauga, Alabama; and,

WHEREAS, Douglas W. Stockham III gave freely of his time to his community; and,

WHEREAS, we wish to express our deep regard for Douglas W. Stockham III and our profound sense of loss in the passing of our colleague who served our profession and community well.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Executive Committee of the Birmingham Bar Association, that this resolution be spread upon the minutes of this committee and that copies thereof be sent to his sons, Douglas W. Stockham IV and Lewis Stockham.

—William N. Clark
President
Birmingham Bar Association

Gabrielle U. Wehl

WHEREAS, the Huntsville-Madison County Bar Association comes together to pay tribute to Gabrielle Urbanowicz Wehl, who passed away on April 9, 1994; and,

WHEREAS, Gabrielle Urbanowicz Wehl was born in Syracuse, New York, and attended college at Sweet Briar College, and the University of Alabama School of Law in Tuscaloosa, Alabama, graduating with a Juris Doctor degree; and was admitted to the Alabama State Bar in 1977; and,

WHEREAS, Gabrielle Urbanowicz Wehl served a one-year clerkship with Circuit Judge John David Snodgrass, in Madison County, Alabama; served as a staff attorney with the Legal Aid Society of Mobile; and with the Legal Services Corporation of Alabama, in Mobile, Alabama; and practiced with the firm of Bell, Richardson & Sparkman in Huntsville, Madison County, Alabama, until accepting the position of general counsel for DP Associates, with offices in Huntsville, Madison County, Alabama, which position she held at the time of her death; and,

WHEREAS, Gabrielle Urbanowicz Wehl established a reputation as a person of integrity and dignity, and distinguished herself in all aspects of community and professional life; and earned the respect of her fellow lawyers and all who knew her; and

WHEREAS, Gabrielle Urbanowicz Wehl is survived by her husband, Marvin J. Wehl, Jr., a respected member of our bar; and a son, Marvin J. Wehl, III, age seven years; and,

WHEREAS, Gabrielle Urbanowicz Wehl was a valued and respected friend, and was a distinguished citizen of this community; and it is in grateful memory and appreciation of her contributions to this community, to her profession, and to this association that this resolution is adopted.

—John D. Snodgrass
President
Huntsville-Madison
County Bar Association

Joe G. Barnard
Birmingham
Admitted: 1956
Died: July 18, 1994

Charles Houston Beaumont
Birmingham
Admitted: 1944
Died: March 1994

Lindsay Clay Callaham, Jr.
Wetumpka
Admitted: 1987
Died: June 11, 1994

Robert E. Carter
Birmingham
Admitted: 1968
Died: March 30, 1994

Cecil Maxwell Deason
Birmingham
Admitted: 1930
Died: July 8, 1994

Richard Owen Fant, Jr.
Tuscaloosa
Admitted: 1948
Died: July 10, 1994

Harry Whitehead Gamble, Sr.
Selma
Admitted: 1923
Died: July 19, 1994

Milton Guy Garrett
Birmingham
Admitted: 1967
Died: March 28, 1994

Horace Everett Garth, III
Huntsville
Admitted: 1950
Died: March 17, 1994

Julia Huey Griswold
Enterprise
Admitted: 1941
Died: June 16, 1994

William Cannon Irby, Jr.
Opelika
Admitted: 1947
Died: March 16, 1994

Charles Mitchell Kidd
Atlanta, GA
Admitted: 1962
Died: June 9, 1994

James Russell McElroy
Birmingham
Admitted: 1924
Died: June 28, 1994

Warren S. Reese, Jr.
Montgomery
Admitted: 1929
Died: June 21, 1994

William Winfred Watson
Fort Payne
Admitted: 1950
Died: June 5, 1994

Benjamin Lawrence Wesson
Madison
Admitted: 1949
Died: March 18, 1994

CLASSIFIED NOTICES

RATES: Members: 2 free listings of 50 words or less per bar member per calendar year EXCEPT for "position wanted" or "position offered" listings — $35 per insertion of 50 words or less, $.50 per additional word; **Nonmembers:** $35 per insertion of 50 words or less, $.50 per additional word. Classified copy and payment must be received according to the following publishing schedule: **September '94 issue** — deadline July 31, 1994; **November '94 issue** — deadline September 30, 1994; no deadline extensions will be made.

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

FOR SALE

- **LAWBOOKS**: William S. Hein & Co. Inc., serving the legal community for over 60 years. We buy, sell, appraise all lawbooks. Send want lists to: Fax (716) 883-5595 or phone 1-800-828-7571.
- **LAWBOOKS**: Save 50 percent on your lawbooks. Call National Law Resource, America's largest lawbooks dealer. Huge inventories. Lowest prices. Excellent quality. Satisfaction guaranteed. Call us to sell your unneeded books. Need shelving? We sell new, brand name, steel and wood shelving at discount prices. Free quotes. 1-800-279-7799. National Law Resource.
- **LAWBOOKS:** Numerous slightly damaged lawbooks for sale from Alabama commercial/bankruptcy/plaintiff firm. Generally updated as of 1993. Contact Mike Hennigan at (205) 933-9207.
- **LAWBOOKS:** Supreme Court Reports, volumes 1-70; 72-75; 89-109B; 110-111B interim editions; 127 volumes, $1,500. So.2d Series, volumes 1-132 with ten missing volumes, $600. Phone Myron Allenstein at (205) 546-6314.
- **CODE:** Complete up-to-date set annotated *Code of Alabama*, 1975, $300. Phone (205) 543-2435, attn: Latham Inquiries.
- **LAWBOOKS:** Complete law library. Excellent condition. Will separate. Ala. Digest; Ala. App. Rep.; Ala. Reports; Ala. Reporter; AmJur Trials; POF 1st, 2nd & 3rd; Legal Forms; Ala. Codes; Shepards. All up to date. Contact Don Hardeman, Cullman, at (205) 739-5087.
- **LAWBOOKS**: The Lawbook Exchange, Ltd. buys and sells all major lawbooks, state and federal, nationwide. For all your lawbook needs, phone 1-800-422-6686. MasterCard, VISA and American Express accepted.

FOR RENT

- **OFFICE SPACE:** Downtown Birmingham. Two offices fronting on 20th Street, North (Birmingham Green), plus secretarial office and storage. Receptionist, copier and fax machine available. Ideal for attorney in private practice. Call (205) 328-7240 for information.
- **LAKE CABIN:** Lake Martin cabin. On point with lots of privacy, with large dock, great view, sleeps six, perfect for family, fully furnished, CATV, central air. Phone (205) 857-2251 or (205) 857-2653.
- **OFFICE SPACE:** Beautiful, newly remodeled suite of two offices located within 1-2 minutes of Montgomery County Courthouse. Perfect for solo practitioner. Competitive terms are negotiable. Call (205) 265-2002 for information.
- **OFFICE SPACE:** AmSouth/Harbert Plaza, Birmingham, sublease opportunity. Exquisite 5,554 square feet, 28th floor, thoughtfully planned with conference, library and six corner offices. Views to the east, south and west. For a personal inspection call Bill Gunn or Carey Gilbert at (205) 252-6999, J.H. Berry & Molton Property Company, Inc.

POSITIONS OFFERED

- **ATTORNEY JOBS:** National and Federal Employment Report. Highly regarded monthly detailed listing of attorney and law-related jobs with the U.S. Government, other public/private employers in Washington, D.C. throughout the U.S. and abroad. 500-600 new jobs each issue. $34 for three months; $58 for six months. Federal Reports, 1010 Vermont Avenue, NW, #408-AB, Washington, D.C. 20005. Phone (202) 393-3311. VISA and MasterCard accepted.

SERVICES

- **EXPERT CONSULTANT:** Child abuse consultant with extensive investigative and case experience currently employed at state level will provide case assistance and/or educational programs in abuse areas of Factitious Disorder by Proxy, Munchausen by Proxy Syndrome, and sexual abuse. Non-Georgia cases only. Reasonable. References. Louisa J. Lasher, P.O. Box 737, Conyers, Georgia 30207. Phone (404) 785-7608.
- **PARALEGALS**: Attention attorneys and personnel directors. The National Academy for Paralegal Studies has qualified paralegals in your local area ready for employment in law offices and corporations. Our paralegal graduates are trained in areas of law, such as family, real estate, torts, criminal, probate, and corporate law. Student interns are also available. There are no fees for these services. For additional information, call the Placement Office at 1-800-285-3425, ext. 3041.
- **PROFESSIONAL LEGAL INVESTIGATOR:** Licensed and bonded. Specializing in financial and securities related cases. Extensive experience in white collar investigations and case prepara-

tion for trial. For confidential consultations or copy of C.V. and references, contact Wyman O. Higgins at (205) 260-8892 or P.O. Box 211071, Montgomery, Alabama 36121.

- **DOCUMENT EXAMINER:** Examination of Questioned Documents. Certified Forensic Handwriting and Document Examiner. Twenty-seven years experience in all forensic document problems. Formerly, Chief Questioned Document Analyst, USA Criminal Investigation Laboratories. Diplomate (certified)—British FSS. Diplomate (certified)—ABFDE. Member: ASQDE; IAI; SAFDE; NACDL. Resume and fee schedule upon request. Hans Mayer Gidion, 218 Merrymont Drive, Augusta, Georgia 30907. Phone (706) 860-4267.

- **LEGAL RESEARCH:** Legal research help. Experienced attorney, member of Alabama State Bar since 1977. Access to state law libary. WESTLAW available. Prompt deadline searches. Sarah Kathryn Farnell, 112 Moore Building, Montgomery, Alabama 36104. Phone (205) 277-7937. *No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.*

- **DOCUMENT EXAMINER**: Certified Forensic Document Examiner. Chief document examiner, Alabama Department of Forensic Sciences, retired. B.S., M.S. Graduate, university-based resident school in document examination. Published nationally and internally. Eighteen years trial experience, state/federal courts of Alabama. Forgery, alterations and document authenticity examinations. Criminal and non-criminal matters. American Academy of Forensic Sciences. American Board of Forensic Document Examiners, American Society of Questioned Document Examiners. Lamar Miller, 3325 Lorna Road, #2-316, P.O. Box 360999, Birmingham, Alabama 35236-0999. Phone (205) 988-4158.

- **FORENSIC DOCUMENT EXAMINATION:** Handwriting, typewriting, altered documents. Criminal and civil matters. Medical records, wills, contracts, deeds, checks, anonymous letters. Court qualified. Thirty years combined experience. ABFDE certified. Members, American Academy of Forensic Science, American Society of Questioned Document Examiners, International Association for Identification. Carney & Nelson Forensic Document Laboratory, 5855 Jimmy Carter Boulevard, Norcross (Atlanta), Georgia 30071. Phone (404) 416-7690.

- **AUDIO TAPE EXPERT**: Enhancement, authentication, analysis and investigation of audio and tape-related matters. Twenty years professional audio experience. James Griffin, Forensic Tape Services, 518 E. Capitol Street, #410, Jackson, Mississippi 39201. Phone 1-800-TAPE-SERV. Fax (601) 353-7217.

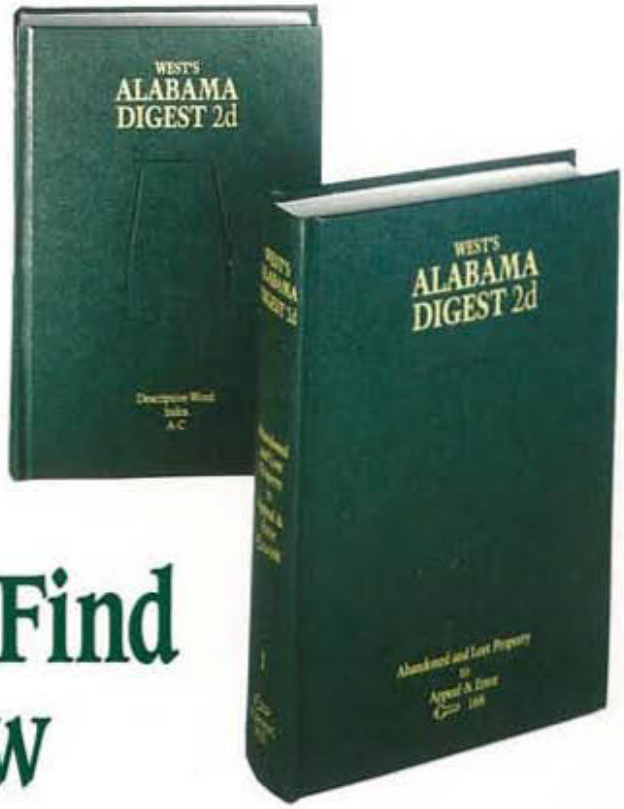
- **EXPERT WITNESS:** Trust witness. Forty years trust experience, multibillion dollar bank. Former manager, trust division. Contact Lowell F. Stephens, L.L.B., (601) 948-3305. *No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.*

- **DEPOSITION SUMMARIES:** Paralegals trained in all areas of law work on computerized program in our office saving you valuable review time and paperwork, cost effective, strict confidentiality. Guaranteed case conflict check with each summary, meets your schedule, even overnight. Customized to your needs, finished product is user-friendly, converts to your computer system. One hundred pages summarized free with first order. Phone 1-800-DEPO-786 (1-800-337-6786).

- **EXPERT WITNESS:** Professional engineer and attorney with a practice of expert testimony in construction, safety, highway and structural design. Thirty years experience in highway, railroad, commercial buildings and power plant construction. Call or write for resume, fees: Lamar T. Hawkins, 601 Vestavia Parkway, Birmingham, Alabama 35216. Phone (205) 823-3068. *No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.*

- **MEDICAL EXPERT TESTIMONY:** HCAI will evaluate your potential medical/dental malpractice cases for merit and causation gratis. If your case has no merit or causation is poor, we will provide a free written report. State affidavits are available. Health Care Auditors, Inc., 2 Corporate Drive, Clearwater, Florida 34622. Phone 813) 579-8054. Fax (815) 578-1333.

NEW!
Second Edition
Available Now



Absolutely the Best Index To Find Alabama Case Law

West's® ALABAMA DIGEST, 2d The Modern Index to Alabama Case Law

In recent years, whole new areas of case law have emerged in Alabama and other jurisdictions. In addition, earlier questions and issues are being redefined and expanded daily.

With all these changes in the law, every Alabama lawyer faces a growing challenge to find relevant case law in such areas as banks and banking, employers' liability, insurance, products liability, and pensions.

West's ALABAMA DIGEST, 2d Meets That Challenge!

West's **Alabama Digest, 2d** makes every facet of case law accessible for your research. New and revised topics and greatly expanded key numbers have been added to the Key Number Classification System, providing you with an unparalleled index to case law.

This Single Reference Indexes Both State and Federal Reported Cases

West's **Alabama Digest, 2d** covers reported state cases and federal cases arising in Alabama from 1820 forward, enabling you to research Alabama case law with one reference.

You Get Five Different Routes to Cases On Point

Start your research with the information immediately available to you. West's **Alabama Digest, 2d** provides five different routes to cases on point: Descriptive Word Index, Words and Phrases Index, Topic Analyses, Table of Cases, and the Defendant/Plaintiff Table. Each route is quick and each will usher you to an exact area of law.

Plus West's **Alabama Digest, 2d,** can be used with WESTLAW® and West CD-ROM Libraries™ for even more efficient and productive research.

Contact your local West Representative now to learn how easy it is to own and to use West's **Alabama Digest, 2d**—the complete, fast index to Alabama case law. If you prefer, call 1-800-328-9352.

West Publishing
More ways to win

620 Opperman Drive
Eagan, MN 55123-1396

3-9239-5/10-93

402161