

BALDWIN COUNTY

September 2007

Vol. 68, No. 5

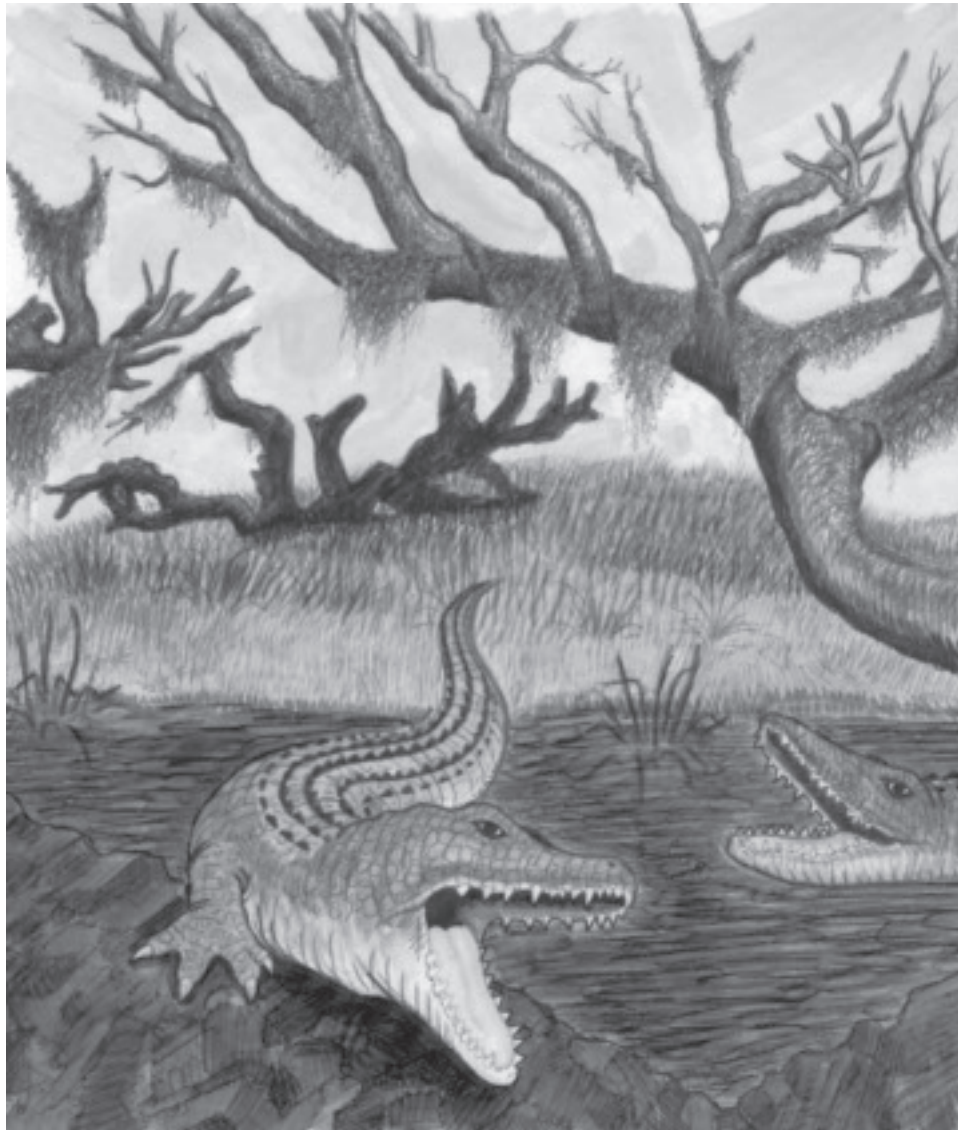
The **Alabama Lawyer**



The **“Plain English”** Project
of the Alabama Pattern Jury Instructions Committee – Civil
page 368

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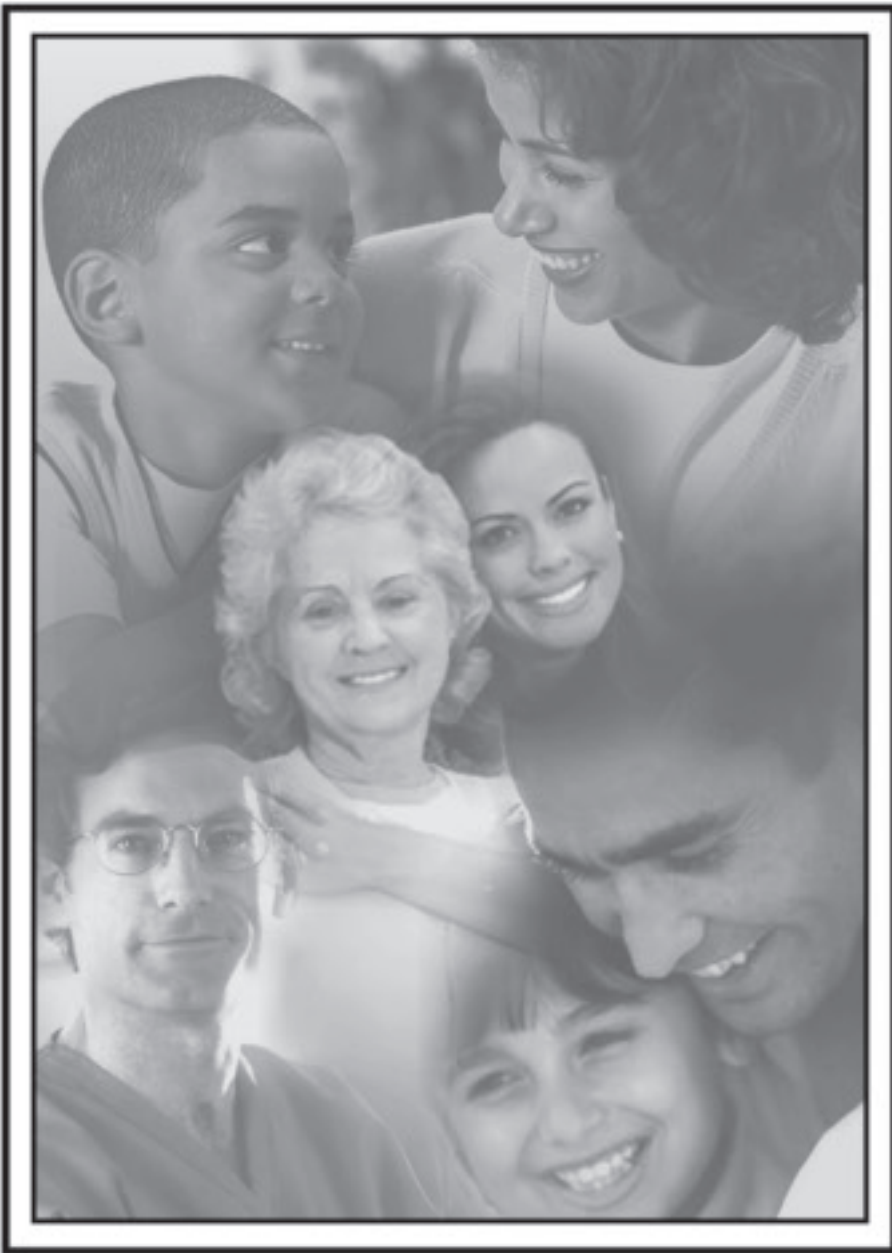
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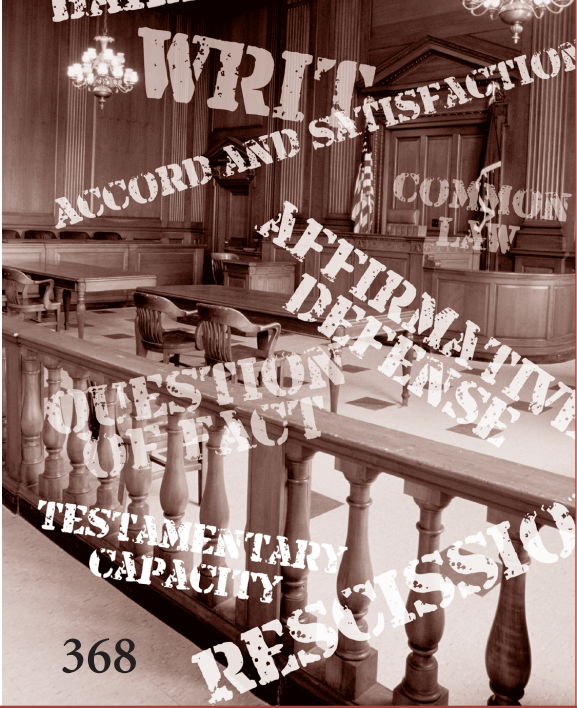
Alabama Bar Institute for Continuing Legal Education

Fall Calendar 2007

| | | |
|-----------|-------|--|
| SEPTEMBER | 21 | Friday, Litigating the Automobile Accident - Tuscaloosa |
| | 28 | Friday, Immigration Law - Tuscaloosa |
| OCTOBER | 5 | Friday, Criminal Defense & DUI - Tuscaloosa |
| | 12 | Friday, Nursing Home Law - Birmingham |
| | 19 | Friday, Real Estate Law - Birmingham |
| | 26 | Friday, Administering the Decedent's Estate - Tuscaloosa |
| | 26-27 | Friday-Saturday, Family Law Retreat - Orange Beach |
| NOVEMBER | 2 | Friday, Social Security Disability - Tuscaloosa |
| | 2 | Friday, E-Discovery - Birmingham |
| | 9 | Friday, Employment Law - Birmingham |
| | 9 | Friday, 15 Years of ADR in Alabama - Tuscaloosa |
| | 16 | Friday, Bankruptcy Law Update - Birmingham |
| | 28 | Wednesday, Alabama Update - Mobile |
| | 29 | Thursday, Alabama Update - Montgomery |
| | 30 | Friday, Estate Planning - Birmingham |
| | 30 | Friday, Technology in the Courtroom - Birmingham |
| DECEMBER | 7 | Friday, Tort Law Update - Birmingham |
| | 7 | Friday, Trial Skills - Montgomery |
| | 12 | Wednesday, Trial Skills - Huntsville |
| | 13 | Thursday, Alabama Update - Huntsville |
| | 14 | Friday, E-Discovery - Tuscaloosa |
| | 19 | Wednesday, Trial Skills - Birmingham |
| | 20 | Thursday, Alabama Update - Birmingham |
| | 20 | Thursday, Video Replays - Tuscaloosa |

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The Alabama Lawyer

September 2007 Vol. 68, No. 5

ON THE COVER

The photograph on the cover of President Samuel N. Crosby and Vice President Alicia F. Bennett was taken in front of the Baldwin County Courthouse in Bay Minette. President Crosby selected this location in honor of Norborne C. Stone, Jr. (the 1982-83 ASB president), Fred K. Granade and the other lawyers and judges of the 28th Judicial Circuit. Bay Minette has been the county seat of Baldwin County since 1901.

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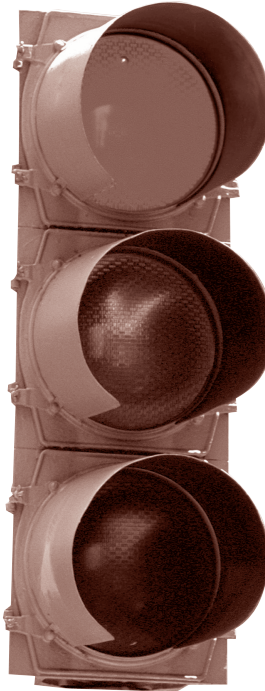
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The Alabama Lawyer (USPS 743-090) is published six times a year by the Alabama State Bar, 415 Dexter Avenue, Montgomery, Alabama 36104. Periodicals postage paid at Montgomery, Alabama, and additional mailing offices. POSTMASTER: Send address changes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

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Riding in the Presidential Limousine



Thank you for giving me the privilege of serving as your president.

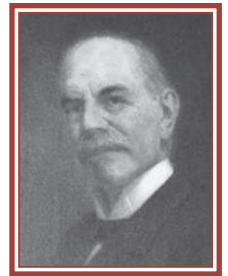
I am looking forward to riding to meetings throughout Alabama in the presidential limousine. In my case this limousine is a Toyota Camry (pictured above) with 156,000 miles on it which was formerly driven by my wife, Ann.

It is an honor that my first act as president was to select **Alicia Bennett** of Chelsea as my vice president. Thanks to the support of the superb lawyers on the board of bar commissioners, she is the first African-American woman to serve as vice president of the Alabama State Bar in its 128-year history.

Specific projects for the year which are consistent with the long-range plan and mission statement of the Alabama State Bar are set out in the outline on the next page.

You and I come from a tradition of greatness as Alabama lawyers.

In 1887, an Alabama lawyer, **Thomas Goode Jones**, drafted the first code of ethics for lawyers which served as the model for the code of ethics of the American Bar Association.



Thomas Goode Jones

In 1937, **Arthur Shores** was admitted to the Alabama State Bar and began his career as a nationally prominent civil rights lawyer using the rule of law to ensure equal protection for all citizens. He courageously ignored the pleas of his wife to leave the state, despite having his home fire-bombed twice, while he fought for justice and equality for all.



Arthur Davis Shores

In 1951, **Annie Lola Price** became the first woman to serve on an appellate court in Alabama *before* women were allowed to sit on juries in our state. At one time this Alabama judge was the highest ranking woman appellate court judge in the country.

In 1957, **Edward Friend**, one of the founding members of the Sirote firm, was promoted to brigadier general for his selfless service to our country.



Annie Lola Price



General Edward Friend

Each of these Alabama lawyers, like most of the great lawyers in the history of this state, had the same clear, simple priorities. They were leaders in their churches, synagogues and families and they put their faith first, their family second and the law third.

My goal for this year is very simple: to encourage each of us as lawyers to do justice, love kindness and walk humbly with God every day of our lives. ■

July 2007–July 2008 Projects

1. Substantially increase funding for civil access to justice for indigent Alabama citizens by implementing an appropriate comparability rule and a mandatory IOLTA program.
2. Become one of the first states in the country to establish a *Wills For Heroes* program statewide to provide free simple wills, durable powers of attorney and healthcare directives through the Volunteer Lawyers Program to Alabama firefighters, paramedics, law enforcement personnel, search-and-rescue squad members, and other first responders.
3. Promote the use of teleconferences for bar committee and task force meetings to increase geographic diversity and participation by members from rural areas.
4. Support legislation both to improve the administration of justice and to create a new Alabama constitution.
5. Become the first state in the country to establish a Financial Planning Partnership between the Alabama State Bar and the Alabama chapters of the

Association of Legal Administrators and SCORE's small business counselors to provide free, one-on-one confidential law firm management assistance and confidential personal budget, debt and financial counseling to lawyers in Alabama who have been in practice less than five years. The partnership is designed to be a model for other state bars.

6. Produce and disseminate a short film to all members to ensure they are aware of benefits available to them through the Alabama State Bar.
7. Complete a five-month *Lawyers Serving Communities* campaign to publish positive contributions by lawyers in communities throughout Alabama.
8. Partner with the Commission on Professionalism to hold a conference at Cumberland Law School promoting professional responsibility.
9. Have videotape interviews conducted and preserved with certain senior members for historical and training purposes.



Keith B. Norman



What Price Education?

In the July 1996 issue of *The Alabama Lawyer*, I reported about the high level of education debt facing recent law school graduates. In that issue's "Executive Director's Report," I wrote that 51 percent of the people sitting for the February bar exam that year had student loans that averaged \$5,000. A year later, we reported that 68 percent of those taking the July 1997 bar exam had student loans averaging \$44,528. Ten years later, 57 percent of bar applicants sitting for the 2007 bar exam had student loans that averaged a staggering \$9,000!

In ten years student loan debt has increased by 79 percent. By comparison, the consumer price index (CPI) has only increased by approximately 28 percent. This should not come as a big surprise because we are regularly reading about annual increases in college and graduate

school tuition. As distressing as these figures are for student loan debt, there appears to be little chance that the steady increase in higher education cost and, thus, student debt will abate anytime soon.

As significant as the average education debt load is, some law school graduates have amassed loan amounts that are astonishing. A number of the July examinees had student loans approaching \$200,000. One examinee had student loans totaling \$280,000! Of course this is not a problem that is confined to Alabama. The April 2007 issue of the *ABA Journal* featured a story entitled, "Redoing the Math," that discussed how paying back large student loans limits career and lifestyle choices of young lawyers. Although the article did not address it, there is a clear concern that the struggle to make large monthly student loan payments may affect a young

lawyer's judgment in prosecuting a client's case or handling a client's funds.

The ASB Committee on Quality of Life has recognized the student loan problem and has recommended a loan forgiveness program. The Alabama Law Foundation is currently considering this idea. The committee has also urged more debt and financial counseling at law schools to better inform students of the consequences of significant education debt. Alabama State Bar President Sam Crosby is addressing this issue as one of his presidential initiatives for this next year. He has arranged to speak to the entering class of every law school in the state about education debt and will work to implement a program of debt and financial counseling for newly admitted lawyers. This will be a big help to many young lawyers who are struggling to make ends meet and pay back their student loans.

This is an area of growing concern that cannot continue to be overlooked, especially when it affects over half of the lawyers who enter the profession each year. Although the legal profession can do little to control the rising cost of education, nevertheless we must take action to help ameliorate the problem. President Crosby's initiative, the work of the Committee on Quality of Life and the Alabama Law Foundation show the seriousness of this problem and that efforts are being made to address it. ■

Endnotes

1. The average student loan debt for *out-of-state law school graduates* was \$86,705; for *Alabama School of Law graduates* was \$62,113; for *Birmingham School of Law graduates* was \$17,467; for *Cumberland School of Law School graduates* was \$102,904; for *Jones School of Law School graduates* was \$80,510 and *Miles School of Law School graduates* was \$25,888.



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Rule 7.2(B), Alabama Rules of Criminal Procedure (“Bail Schedule”)

The Supreme Court of Alabama, by order dated June 21, 2007, amended Rule 7.2(b), *Ala. R. Crim. P.*, “Bail Schedule,” changing the recommended range of bail for scheduled offenses. Rule 7.2(b) has been amended to read as follows:

“(b) Bail Schedule. The following schedule is established as a general guide for circuit, district, and municipal courts in setting bail for persons charged with bailable offenses. Except where release is required in the minimum scheduled amount pursuant to the *Rules of Criminal Procedure*, courts should exercise discretion in setting bail above or below the scheduled amounts.

Bail Schedule

Recommended Range

Felonies:

Capital felony \$0 to No Bail Allowed

Murder \$5,000 to \$75,000

Class A felony \$0 to \$0

Class B felony \$,000 to \$0

Class C felony \$,500 to \$5,000

Drug manufacturing and trafficking \$5,000 to \$,500,000

“Misdemeanors (not included elsewhere in the schedule):

Class A misdemeanor \$300 to \$,000

Class B misdemeanor \$0 to \$,000

Class C misdemeanor \$0 to \$,000

Violation \$0 to \$0

Municipal-Ordinance

Violations \$0 to \$,000

“Traffic-Related Offenses:

DUI \$,000 to \$,500

Reckless driving \$0 to \$,000

Speeding \$0 to \$0

Other traffic violations \$0 to \$0

* \$0 was set as the lower limit in compliance with *Ala. Code* 1975, §5-13-16, providing that in violation and misdemeanor cases the minimum amount of bail shall be \$0 for each offense charged.”

B-ilee Cauley, Reporter of Decisions, Alabama Appellate Courts

Job Opening

Alabama Appleseed Center for Law & Justice, Inc., Montgomery, Advocacy Staff Associate, Immigrant Justice Project (part-time with full-time potential)

Alabama Appleseed is a non-profit, non-partisan organization founded in 1999 to identify root causes of injustice and inequality in the State of Alabama, and craft practical, lasting solutions through legal advocacy, community activism and policy expertise.

A major priority for Alabama Appleseed is to seek policies and practices that promote the integration and full participation of new immigrant populations in the state. Key program areas include: comprehensive immigration reform, immigrant access to mainstream financial services, educational opportunity, due process rights and immigrant detention, access to public benefits, state integration policies, justice system reform, and civic engagement.

The IJP Advocacy Staff Associate will work with and under the supervision of Alabama Appleseed's executive director and the IJP director to carry out the objectives of the project.

Qualifications include being a licensed Alabama attorney (or willing to sit for the

bar exam at the first available opportunity) or college graduate with a BS, BA or master's degree in social work, political science, public affairs and administration, or related fields; bi-lingual with fluency in written and spoken Spanish; experience in immigration law, civil rights, public interest law and/or social work preferred; experience with legislative and administrative advocacy preferred; excellent research, analytical and writing skills; knowledge and awareness of local, regional and national issues facing immigrant communities; strong interpersonal skills and ability to effectively build and maintain community relationships; ability to work in a team-oriented and collaborative environment; experience in or demonstrated commitment to public interest and advocacy; must have own transportation; and daily work based out of Alabama Appleseed's Montgomery office.

This part-time position offers a competitive non-profit salary based on education and experience, with allowance for health insurance. Initial part-time position will be for 20 hours per week. This position is funded for two years. Position could develop within a few months into a full-time position.

Position is open until filled. Send a cover letter, resume, writing sample and three references via e-mail to John Pickens at alaappleseed@bellsouth.net.

Authorized House Counsel Mandatory Registration

Since October 20, the Alabama State Bar has been accepting applications for the new authorized house counsel rule (Rule IX of the Rules Governing Admission to the Alabama State Bar). This rule applies to lawyers who are not admitted to practice in Alabama, but are serving as house counsel to businesses located in Alabama. This is a mandatory registration and the deadline for compliance is October 27, 2007.

Please help by contacting any house counsel you know and informing them of this rule.

A copy of Rule IX, the registration form and instructions are available on the state bar's Web site, www.alabar.org. For more information, contact the bar's membership department at (334) 269-1515, ext. 2120 or e-mail mary.corbitt@alabar.org. ■

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CARRYING HIS LEGACY

John was the most beautiful man I had ever seen. Although he was tall—6'3"—with dark skin, dark hair and the most delightful smile, it was his soul that most attracted me. John always invited strangers into our home, protected those most ridiculed, loved the least fortunate. He was so smart, and I was always wowed by the knowledge and insight he had. He had a huge music collection, memorizing each album so that he could hear those songs even when he did not have access to them. He had so many friends that it was hard for me to keep them all straight. We had 14 groomsmen at our wedding, but he wanted more.

When I met him, he had two cats. Bonnie was named after Bonnie and Clyde for the mischievous side of John. Leah was named after the biblical wife of Jacob who was the less attractive of the two sisters and who would likely have never married, had it not been for their father's tricking Jacob. When John saw Leah at the humane society, he was afraid that because of the way she looked, no one would take her home. He immediately made her part of his family. Today, she is beautiful and has the most wonderful disposition. After we married, John insisted that we get a pug, making our house filled with animals and with love. John truly brought brightness to people's lives, carrying with him laughter and joy wherever he was.

Soon after John passed the bar, he began practicing criminal defense law. He knew that if he had asked, his family would have provided him with a lucrative opportunity to join their business. However, John, knowing that one day he would have to put down his trial lawyer guns to join the ranks of real estate lawyers, decided to use

his first few years out of law school to assist the indigent. Immediately, he made friends with judges and fellow attorneys, impressing many. One man who had recently been elevated to the bench gave John his legal resource collection, after just spending the afternoon in his company. Rarely did a person meet him who was not immediately attracted to his warmth, sincerity and spirit.

He was the life of the party, until one day I realized we were no longer having fun. I knew the night before I married him that he suffered from alcoholism and addiction. We accepted that there may be a problem, committed to changing once the ceremonies subsided and looked forward to our future. I thought that would be enough. What I did not understand at the time was that John was suffering from an illness that could not be cured by a commitment to change.

John had a puzzling lack of control when it came to his alcohol intake. He did absurd, incredible and sometimes tragic things while drinking. He was seldom mildly intoxicated. While drinking, his personality would sometimes be nothing like his normal nature—he was like Dr. Jekyll and Mr. Hyde. He had a positive genius for getting drunk at exactly the wrong moment. He possessed special abilities, skills and aptitudes and had a promising career ahead of him. These gifts kept me confused for a long time about whether there was a problem. But then, he would go on a senseless series of sprees causing danger to himself and those around him. He tried different methods of controlling his drinking: He attempted to limit his number of drinks; did not drink during the workday; stopped drinking

scotch; consulted with doctors, therapists and psychiatrists; switched doctors, therapists and psychiatrists; abstained for periods of time; smoked marijuana instead; exercised; took trips; swore off trips; committed himself to a treatment center; and tried many other attempts at control.

What I have learned is the idea that somehow, someday someone will control his or her drinking is the great obsession of every alcoholic. John thought that he could beat the game, but I suspected that he was down for the count. When John started drinking, he had little control over the amount he took and could not, even in those rare times when he honestly wanted to, quit entirely. During those periods when he would swear it off completely, he became restless, irritable and discontented until he was able to take his next drink.

His disease progressed. After his friends left our small college town, John sought out sordid people in disreputable places. The stories of the people John called his "friends" that last year would be funny, if it was not so sad. Our marriage became a constant struggle with our communications limited to my begging him to stop and the toxic fights that followed.

After several episodes, including being intoxicated in court, the bar suggested that John admit himself into a treatment center. He stayed for a few days, but decided that he would get sober his way. I'll never know whether John was serious about quitting or whether he told me he would stop to pacify me. Frankly, it does not matter either way. What I suspect is that when he realized he could not drink successfully, he turned to other numbing, mind-altering substances. Craig Ferguson, late-night host for CBS, talks about how alcoholics

do not have *drinking* problems—they have *thinking* problems that require them to use alcohol to obliterate those thoughts.

I know that if John had a choice, he would not have continued his quest for oblivion. He was watching it destroy me, his family and some of his most cared-about friends. Sometime in April 20, he sat me down and acknowledged what was happening. He told me that he loved me and promised that things would change. He was serious. However, his sincerity was not enough to keep away the power of alcohol and drugs.

On June 9, 2005, at 11:30 p.m., John was pronounced dead. I lay with him for hours, hoping that I would see a twitch and the doctors would tell me that they had made a huge mistake. John did not intend to leave me that night. He did not want his parents to be childless and his friends to be lost. I would be so angry if I did not know for sure that on that evening, God opened up the gates of hell, and let my husband out. Although we know that it is the combination of the drugs and alcohol he took that night that ultimately caused him to go, we

found out that if things had not changed soon, it was only a matter of time. His grandmother likes to say that John died from having a big heart.

I still think about him every day, mostly in the quiet of the night and the early morning hours when the only sounds I can hear are from our resting animals. They miss him. Bonnie still wanders through his clothes and sleeps on his chair. His parents are still so sad.

Recently, I was with his parents and saw the band that played at our wedding. I went to see them, to celebrate my life with John. What I found out that night was astonishing. The lead singer of that band has not had a drink or any drugs for 15 years. John and I loved him; we thought he was so cool and appreciated how he was able to make everyone have so much fun. When we married, we had no idea that people like him could have that much life and be sober.

I miss my husband. However, lately, I feel so lucky to have known him, to have loved him and to have been loved by him. The thoughts of what could have been

can be overwhelming if I am not careful. It sometimes is excruciating to know that this beautiful, brilliant man will never get a second chance. It also makes me sad that somehow I get to live another day and he does not. I am so thankful to him because, for a few short years, I was able to share his life with him.

I hope the story of John's struggle and my survival can help others. I would hate myself if I let him go without carrying on his legacy of helping those less fortunate.

John and I loved so many people suffering from this debilitating disease and I know there are so many more who share the pain of being an alcoholic or loving one.

There is hope. I have seen many people get sober and many people living with an alcoholic become sane again. If you are unsure what to do, you can call the **Alabama Lawyer Assistance Program (334-834-7576)**. It is a confidential call that may save a life. Or, as Ferguson says, there are people out there who can help, and you can find the organization at the front of any phonebook.

May God give you grace. ■

ALABAMA LAWYER Assistance Program

Are you watching someone you care about self-destructing because of alcohol or drugs?
Are they telling you they have it under control?

They don't.

Are they telling you they can handle it?

They can't.

Maybe they're telling you it's none of your business.

It is.

People entrenched in alcohol or drug dependencies can't see what it is doing to their lives.

You can.

Don't be part of their delusion.

Be part of the solution.

For every one person with alcoholism, at least five other lives are negatively affected by the problem drinking. The Alabama Lawyer Assistance Program is available to help members of the legal profession who suffer from alcohol or drug dependencies. Information and assistance is also available for the spouses, family members and office staff of such members. ALAP is committed to developing a greater awareness and understanding of this illness within the legal profession. If you or someone you know needs help call Jeanne Marie Leslie (ALAP director) at (334) 834-7576 (a confidential direct line) or 24-hour page at (334) 224-6920. All calls are confidential.

DON O. WHITE

Don White passed away February 22, 2007 at the age of 58. He is survived by his wife, Janice White; three sons, Christopher, Corey and Cameron; a daughter-in-law, Candi; and three grandchildren, Shelby, Branson and Isabella. He is also survived by his mother, Hattie White, of Sylacauga and a brother, Horace White, of Marietta, Georgia.

Don graduated from Sylacauga High School in 1967. He graduated with a bachelor of science degree from the University of Alabama in 1971 and received his Juris Doctorate from Cumberland School of Law in 1974. He was a member of the Mobile Bar Association and the Alabama State Bar, practicing in Mobile for over 30 years. He also served in the Alabama National Guard.

Don's hobbies were fishing and supporting the Crimson Tide, and he was a devoted family man.

The Mobile Bar Association honors the life and mourns the death of Don White after a career of faithful service to his family, his country, the legal profession



and his community, and extends its deepest sympathy to his wife, children and other members of his family. ■

*Kathleen Miller, president,
Mobile Bar Association*



Cox, Robert Oliver
Florence
Admitted: 1951
Died: May 29, 2007

Wallace, Jack Wilfred, Sr.
Clayton
Admitted: 1949
Died: July 2, 2007

Keller, Jesse Albert
Florence
Admitted: 1952
Died: June 29, 2007

Yeilding, Newman Manly, Jr.
Birmingham
Admitted: 1954
Died: May 20, 2007



Joining the Alabama State Bar's Lawyer Referral Service

A Great Way to Expand Your Client Base

Lawyers are presented with challenges and opportunities on a daily basis. To help you deal with them, you can take advantage of a major benefit that the Alabama State Bar offers to members—the Lawyer Referral Service (LRS).

The state bar's LRS was created in 1978. The trust and confidence in bar-sponsored lawyer referral services enjoyed by the public stems largely from the three basic requirements: experiential requirements, malpractice insurance and the absence of disciplinary problems.

While you may not have given much thought to joining the lawyer referral service, why not explore the idea a little further? To help you decide, let's clear up some common misconceptions about lawyer referral services:

Misconception 1: Clients referred by lawyer referral services generally require pro bono or reduced-fee services.

Fact: Lawyer referral service members are private attorneys who charge their regular rates. Beyond the initial half-hour consultation fee (maximum-\$50), the fee arrangement is between the lawyer and the client. It should be discussed with, and fully understood by, the client prior to beginning work on the case.

Misconception 2: Lawyer referral service panels generally are made up of inexperienced attorneys seeking to gain the expertise necessary to represent "real" clients.

Fact: Bar-sponsored lawyer referral services have certain standards for all participants.

Misconception 3: Joining a lawyer referral service is too expensive for the typical sole practitioner.

Fact: The fee for state bar members who join the LRS is \$0. Panel members pay five percent of the legal fees they

collect on referrals in excess of \$1,000 which is capped at \$250 per case of additional referral fees.

Being a member of the LRS is the cheapest advertising in town. Lawyer referral service membership also offers a convenient way for you to feel good about the work you do which sometimes is in short supply in the practice of law.

Qualified attorneys with malpractice insurance and without disciplinary problems may choose to belong to up to ten sub-panels drawn from 92 general panels. All referrals are made on a rotating basis, with each sub-panel rotating independently. Since clients select the geographical area they prefer, there may be mini-rotations within the overall rotation for some sub-panels. The LRS has a full-time staff person who handles calls coming into the call center weekdays between 8:30 a.m. and 4:30 p.m. In addition, clients can use the ASB Website at www.alabar.org to apply for an attorney assignment.

Clients who contact the referral service through the call center are assisted by an interviewer who is trained to evaluate the caller's legal issue and recommend the type of attorney best suited to handle it. Clients call the attorney's office to set up an appointment. Each referral is free and clients may receive one referral for any issue. The attorney is also provided with a written or e-mail confirmation of the assignment with information on the client.

To learn more about joining, visit www.alabar.org and click on "Lawyer Referral Service." You may preview the application and related qualification standards and find answers to other questions you have, or you may call us at (334) 269-1515.

If you are interested in becoming a member, but believe you do not yet have all the experience required, check out the requirements on the Web site and begin putting together examples of matters you handle. You'll probably be surprised at how quickly you can become eligible. ■

Notices to Show Cause

- Notice is hereby given to **Deward John Harrison** who practiced law in Montgomery, Alabama and whose whereabouts are unknown, that pursuant to the Disciplinary Commission's order to show cause, dated May 14, 2007, he has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2006. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 07-10]
- Notice is hereby given to **Robert Lee Kreitlein** who practiced law in Birmingham, Alabama and whose whereabouts are unknown, that pursuant to the Disciplinary Commission's order to show cause, dated May 14, 2007, he has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2006. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 07-31]
- Notice is hereby given to **Gary Thomas Ward, Jr.** who practiced law in Jasper, Alabama and whose whereabouts are unknown, that pursuant to the Disciplinary Commission's order to show cause, dated May 14, 2007, he has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2006. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 07-24]
- Notice is hereby given to **Paul Christopher Williams** who practiced law in Roswell, Georgia and whose whereabouts are unknown, that pursuant to the Disciplinary Commission's order to show cause, dated May 14, 2007, he has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2006. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 07-26]
- Notice is hereby given to **Richard Pleasant Woods** who practiced law in Dothan, Alabama and whose whereabouts are unknown, that pursuant to the Disciplinary Commission's order to show cause, dated May 14, 2007, he has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2006. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 07-28]

Reinstatement

- The Supreme Court of Alabama entered an order reinstating Tuscaloosa

attorney **Byron Todd Ford** to the practice of law effective March 22, 2007, based upon the decision of Panel III of

the Disciplinary Board of the Alabama State Bar. Ford had been suspended from the practice of law since November 22, 2006. [Pet. No. 06-0]

Disability Inactive Status

- The Supreme Court of Alabama entered an order confirming the order entered by the Disciplinary Board, Panel III, of the Alabama State Bar transferring Birmingham attorney **Timothy Paul Brunson** to disability inactive status effective April 24, 2007, pursuant to Rule 27(c), *Alabama Rules of Professional Conduct*. [Rule 27(b); Pet. No. 07-15]
- Dothan attorney **Charles David Decker** was transferred to disability inactive status pursuant to Rule 27(c), *Alabama Rules of Disciplinary Procedure*, effective May 1, 2007. [Rule 27(c); Pet. No. 07-27]

Disbarment

- Fort Payne attorney **Charles Alvin McGee** was disbarred from the practice of law in the State of Alabama effective June 14, 2007 by order of the Supreme Court of Alabama. The supreme court entered its order in accord with the terms of the January 22, 2007 order of the Disciplinary Board of the Alabama State Bar.
The Disciplinary Board entered the order based on the fact McGee held himself out as an attorney while on a suspended status with the Alabama State Bar. McGee then failed to respond to requests for information from the bar and failed to file an answer to the formal charges. As a result, the Disciplinary Board deemed the charges admitted and ordered that the matter

be set for a hearing to determine discipline. McGee failed to appear at the hearing. [ASB No. 05-148]

Suspensions

- Birmingham attorney **James Minton Cash** was suspended from the practice of law in the State of Alabama for a period of six months effective June 7, 2007 by order of the Alabama Supreme Court. The supreme court entered its order based upon the decision of Disciplinary Board of the Alabama State Bar.
Formal charges were filed against Cash on September 6, 2006 alleging that Cash agreed to represent a client

and accepted a retainer from the client to file a frivolous motion to obtain a sentence reduction. Cash performed little or no services beneficial to the client, did not explain matters to the client, did not explain matters to the client reasonably necessary to allow the client to make informed decisions about the representation and eventually abandoned the client and the client's case. Formal charges were filed in the matter and were served on Cash's counsel, who subsequently withdrew. Cash was notified that an answer to the formal charges had not been filed. Despite repeated warnings, Cash did not file an answer. Therefore, on August 22, 2006, a default judgment was entered against him finding him

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Developments and Trends in Health Care Law: *September 14*

Annual Bankruptcy Law Seminar: *October 5*

Annual Workers' Compensation Seminar: *November 9*

Employment Law Update: *December 7*

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guilty of violating rules 1.1, 1.4(b) and 8.4(f)) *Alabama Rules of Professional Conduct*. Cash did not appear for his hearing to determine discipline on May 1, 20. [SB No. 0- 181A]

- Prattville attorney **George Pollard Walthall, Jr.** pled guilty to violating Rule 1.15(a), *Ala. R. of Prof. C.* Walthall was suspended from the practice of law in the State of Alabama for a period of three years. The three-year suspension was deferred and held in abeyance pending a two-year period of probation. Walthall admitted that he co-mingled client and third-party funds intended to be held in trust with personal and business funds and that he failed to keep complete and accurate records of all trust account activity.

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[SB No. 0- 115A]

Public Reprimands

- Tuskegee attorney **Albert Clarence Bulls, III** was ordered to receive a public reprimand with general publication for violation of rules 1.2(f)) 1.3, 1.4(f)) 1.4(b) 1.15(b) 1.16(f)) and 8.4(f)) *Ala. R. of Prof. C.* Bulls was also ordered to make restitution in the amount of \$8, 0 to the client. Bulls was retained to represent a client whose 12-year-old son was killed in a motor vehicle accident. The at-fault driver had fallen asleep after working overtime at Wal-Mart. Bulls was hired to represent the client's interests and to investigate a possible claim against Wal-Mart regarding work-hour policies that may have allowed an employee to drive home while sleep deprived. Bulls failed to investigate the possible claim against Wal-Mart and instead only pursued policy limit settlements from the at-fault driver's insurance carrier, Safeway Insurance, and the client's insurance carrier, USAA Insurance. During the representation the client informed Bulls that he no longer wanted him to represent him in matters involving USAA. Despite this request Bulls sent demand letters to USAA and failed to withdraw. The client was later informed by USAA that they had settled the underinsured claim with Bulls. Bulls settled the cases, endorsed the settlement checks and deposited the funds into his trust account, but did not timely notify the client that he had done so. [ASB No. 0- 80 A]
- On May 18, 20, Birmingham attorney **Stephan Willis Guthrie** received a public reprimand without general publication for violation of rules 1.3 and 1.4(a), *Ala. R. Prof. C.* In February 2003, Guthrie was retained by a client to represent her in an uncontested divorce. In March 2003, Guthrie eventually met with the client and her husband to discuss the terms of a final agreement.

In late April 20, Guthrie's client attempted to contact him about the status of the divorce; however, he did not return her telephone call. When the client attempted to contact Guthrie again she was advised that he had moved his office and had failed to leave any forwarding information. Not knowing Guthrie's whereabouts, the client contacted the Jefferson County Domestic Relations Court and was informed that two separate divorce cases had been filed in her name. She finally obtained Guthrie's new telephone number and spoke with his assistant who advised her that additional paperwork needed to be filed. Thereafter, Guthrie's client made numerous attempts to contact him but he failed to return her telephone calls. Again, Guthrie's client contacted the clerk's office and discovered that the divorce paperwork had been rejected by the court. She contacted Guthrie's assistant and set up an appointment to meet with him. When the client appeared at Guthrie's office, Guthrie's assistant gave her a final decree of divorce which did not reflect the terms to which she had agreed. Guthrie failed to appear for the scheduled appointment. When the client was finally able to speak with Guthrie by telephone, she confronted him about the incorrect terms set forth in the final order. Guthrie told her that he would have to charge her additional fees to file a petition to modify. [SB No. 03-264A]

- On May 18, 20, Birmingham attorney **Richard Leslie Jones** received a public reprimand with general publication for violation of rules 8.1(b)) 8.4(c)) and 8.4(g)) *Ala. R. Prof. C.* Jones represented a client in a case against Sagelite Glass Corporation. While settlement negotiations were ongoing, Zurich North America was placed on notice that Nationwide Insurance Company had a \$, 0 lien against any recovery. Zurich agreed to make full payment of the settlement amount directly to Jones's client without naming

Nationwide as a co-payee based on Jones's assurances to the Zurich adjuster that the lien would be satisfied. When the settlement proceeds were disbursed, Jones failed to satisfy the lien. After a complaint was filed in this matter, Jones responded to the Alabama State Bar by letter on September 14, 2010. Jones's letter stated, in part, as follows:

"Upon settlement of that case, it was my understanding that the Settlement Agreement concluded all claims between the parties in that case. I was under the impression that the \$2,000 lien was also included in the settlement of that case. I was not a party to, nor did I have any information about, the dispute between Zurich and Nationwide."

After this grievance was transferred to the Birmingham Bar Association for further investigation, a letter that Jones sent to Zurich North America on November 25, 2010 was obtained. The letter clearly and unequivocally stated that Jones agreed to assume and accept responsibility for any and all liens against the claim that Jones's client filed with Zurich, including the \$2,000 subrogation interest of Nationwide Insurance Company. Jones had also previously stated in a November 23, 2010 letter to the investigator with the Birmingham Bar Association that Zurich had failed to provide Jones with any evidence of the nature of the lien. Jones enclosed a photocopy of a check in the amount of \$2,000 dated November 23, 2010 payable to Zurich. Shortly thereafter, the investigator received a letter from a representative of Zurich informing him that the lien had been satisfied and requesting that Zurich's complaint be withdrawn. Jones's responses to the investigation of this matter were inconsistent with the statement in Jones's November 25, 2010 settlement letter to Zurich. Jones also failed to respond to numerous requests by a disciplinary authority to produce his file in this matter. Jones made a false statement of material fact and failed or refused to respond to a

lawful demand from a disciplinary authority when Jones refused to produce his file. Jones also engaged in conduct involving fraud, deceit, dishonesty or misrepresentation and

conduct that adversely reflects on his fitness to practice of law. [§ SB No. 05-236\(A\)](#) ■

Do you represent a client who has received medical benefits, lost wages, loss of support, counseling, or funeral and burial assistance from the Alabama Crime Victim's Compensation Commission?



When your client applied for benefits, a subrogation agreement was signed pursuant to §15-23-14, *Code of Alabama* (1975). If a crime victim received compensation benefits, an attorney suing on behalf of a crime victim must give notice to the Alabama Crime Victims' Compensation Commission, upon filing a lawsuit on behalf of the recipient.

For further information, contact Kim Z glar, staff attorney, Alabama Crime Victims' Compensation Commission at § 34) 290 4420



Spring 2007 Admittees



Photograph by Fouts Commercial Photography, Montgomery, photofouts@aol.com

STATISTICS OF INTEREST

| | |
|---|--------------|
| Number sitting for exam..... | 256 |
| Number certified to Supreme Court of Alabama..... | 120 |
| Certification rate*..... | 46.9 percent |
| Certification Percentages | |
| University of Alabama School of Law..... | 61.9 percent |
| Birmingham School of Law..... | 34.3 percent |
| Cumberland School of Law..... | 50 percent |
| Jones School of Law..... | 74.2 percent |
| Miles College of Law..... | 10.3 percent |

*Indicates only those successfully passing bar exam and MPRE

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

Alabama State Bar Spring 2007 Admittances

Adams, John Hardy
Adams, Vincent Lee
Akins, Micah Stephen
Arledge, Christopher Andrew
Ashley, Brian
Baker, Jeffrey Ryan
Barnes, Brian Christopher
Bates, Elizabeth Tyler
Beattie, Brian Francis
Berkstresser, IV Gordon Abbott
Bolling, Natalie Renee
Brown, Clint Eric
Brown, Richard Dwayne
Bumpers, Lisa Elaine
Bunch, II Robert Wellington
Bunton, Kendall Downs
Burbank, Rebecca Anzur
Burch, Thomas Vernon
Burson, John Paul
Calhoon, DeAnne Marie Smith
Campbell, Stephen Gale
Carlson, Jeremy Lloyd
Carter, Kristopher Weiss
Casey, Pamela Lynn
Caves, Amanda Nicole
Childers, Christopher Gene
Clayton, Michael Jason
Cooley, Christina Helen
Cooper, Andrew Dennis
Copeland, Jordan McCay
Crawford, Kathryn Smith
Crawford, Lori Lane
Crenshaw, Danny West
Dailey, Gregory George
Dean, Bradley Eugene
Debrosse, Diandra Sima
Diamond, Seth Lawrence
Doxsee, Christopher Douglas
DuBose, Shakeba
Duke, Cullan Brunson
Dunning, Adrian Benjamin
Earle, Edmond DeWayne
Easley, Jennifer Lynn
Eaton, Adrienne Leigh Bennett
Edward, Ric Todd
Eustace, Daryl Ray
Evans, Barton Baxter
Evans, Jennifer Leigh
Evans, Thomas Robert
Eversole, Steven Douglas

Fleming, Noelle Christalena
Forbus, Jason Ashley
Forton, Michael Lee
Foshee, Sharon Stoudenmire
Freeman, Jennifer Gale
Gay, Lana Ruth
George, Miesha Leigh
Glenn, Melody Christina
Haffner, John Walton
Hall, Matthew Bruce
Harvey, Leslie Neeland
Henderson, Leslie Susan
Hernandez, Christine Cassie
Hewlett, Jr. William Kenneth
Hitchcock, Janice Renee
Hoffman, Matthew Carmon
Hollings, Larry Lewis
Horsley, Zachary Kyle
Hutchins, Eric Tavaris
Irby, Laura Michelle
Johnson, Jr. Donald Lee
Johnson, Patsy Lambert
Keane, Aimee Pirone
King, Heather Jamison
King, Kelly Leigh
Learned, Denise Marie
Leonard, Tiffany Threlkeld
Longnecker, Lars Alan
Lucas, Christopher Kelly
Lynam, Christie Michelle
Mack, April Hinson
Marshall, Hope Shemikka
Marshall, Sean Ward
Martin, Jr. Andrew Wayne
Mason, Marsha Carol
Matthews, Brad Rodney
McCombs, III Guy Clifton
McKinley, Kevin O'Neil
McLain, V John Hamilton
Merrell, Jean-Paul Madison
Mezrano, Steven Michael
Miller, Johnny Wade
Milton, Albert Clay
Morris, Amanda Marie
Morro, Scott Thomas
Moseley, Melissa Webb
Muhammad, Anthony Jerome
Murray, Elizabeth Kelly
Myrick, Maxwell Chadwick
Newman, Brandon Lynn

Nicholls, II Wesley George
Nicolau, II Demosthenes Athanasios
Norwood, Maleah Frances Guest
O'Connor, Mary Patricia
Pace, Robert Brian
Palmer, Brentt Earl
Parker, Jeremy Lee
Peacock, Curtis Angelo
Pearson, Pepper Alyce
Pease, Adam Reynolds
Phillips, Eric Fitzgerald
Pinkard, Adam Grant
Pino, Jeffrey Bryan
Potts, Christyn Baldwin
Powell, Tonya Denita
Poynter-Powell, Melissa Ann
Preussel, Robin Marie
Pritchett, II Donald Lee
Rhodes, Gregory Philip
Richardson, Christy Dawn Wallace
Robertson, Brandy Lee
Russo, John Anthony
Ryals, Damon Ralph
Salser, Andrew Ray
Savarese, Jr. Steven Paul
Shannon, Janet Lea
Shannon, Winn Cole
Shuey, Kathleen Megan
Shuleva, Matthew Jordan
Smith, Amanda Mock
Smith, Stuart Kenneth
Smith, Thomas Shane
Sullivan, Eucellis Zness
Syed, Sohaer Rizvi
Tidwell, Steven Richard
Tompkins, Jason Brent
Tracy, Edward Feagin
Vogel, Douglas Mark
Voss, Mickey Jansen
Ward, Thomas Bradley
Warren, Donald Michael
Washington, LeBreon Simone
Weidman, Kyle David
White, James Porter
White, Kathlyn Monroe
Will, Joseph Ryan
Williams, Timothy Joseph
Wright, Thomas Eugene
York, Thomas Stephen
Zeller, Paul William

Lawyers in the Family



*William Kenneth Hewlett, Jr. (2007) and
William Kenneth Hewlett, Sr. (1972),
admittee and father*



*Amanda Mock Smith (2007) and
Charles Blakeney (1992),
admittee and stepfather*



*Patsy L. Johnson (2007) and
Mitzi Johnson-Theodoro (2002),
admittee and daughter*



*Kathryn Smith Crawford (2007) and
David Sims Crawford (1995),
admittee and brother*



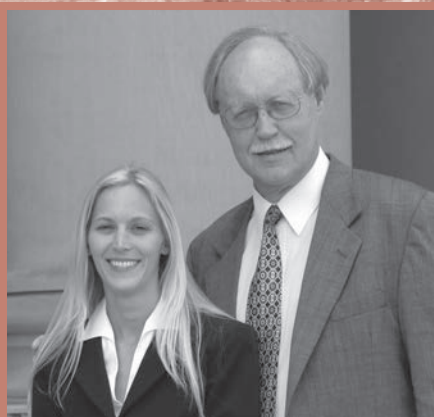
*Maleah Durham (2007) and
Mike Durham (2006),
admittee and husband*



*Andrew D. Cooper (2007) and
Larry G. Cooper (1994),
admittee and brother*



*Jennifer Freeman (2007) and
Warren Freeman (1994),
admittee and father*



*Lori Lane Crawford (2007) and
Mickey Womble (1986),
admittee and father*



*Rebecca Anzur Burbank (2007) and
Kris Dawson Burbank (2005),
admittee and husband*

Lawyers in the Family



*Matthew Jordan Shuleva (2007) and
Richard C. Shuleva (1978),
admittee and father*



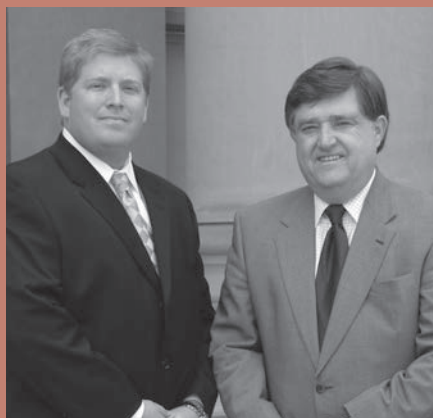
*Brandy Robertson (2007) and
Brian Robertson (2004),
admittee and husband*



*Marsha C. Mason (2007) and
Charles G. Reynolds, Jr. (1982),
admittee and uncle*



*Kendall Downs Bunton (2007) and
Mac Downs (1974),
admittee and father*



*Kyle David Weidman (2007) and
Roger M. Monroe (1973),
admittee and uncle*



*Jeffrey Bryan Pino (2007) and
Jim Pino (1976),
admittee and father*



*Micah Stephen Adkins (2007) and
Archie Lamb (1988),
admittee and father-in-law*



*Robert W. Bunch, II (2007), Robert W. Bunch (1975),
Carol Coil Medley (1996) and M. Keith Medley (1996),
admittee, father, aunt and uncle*

A Perspective on

The Alabama State Bar's

20 Leadership Forum—Class III

BY KIM ERLY TILL POWELL

“If you want to build a ship, don't drum up people to gather wood, divide the work and give orders. Instead, teach them to yearn for the vast and endless sea.”

Antoine De Saint-Exupéry

How do ship-building and longing for the sea relate to the Alabama State Bar Leadership Forum? For Class III, the Leadership Forum was not so much about the nuts and bolts of leadership in the traditional sense of studying principles of leadership or philosophical discussions of traits and qualities shared by great leaders. Instead, the Alabama State Bar and Leadership Forum organizers astutely painted a picture of the “sea” of Alabama that left Class III eager to build a ship and effect change where Alabama’s systems need repair, or in some cases, complete rebuilding.

The Leadership Forum

In January, the 30 members of Class III of the ASB Leadership Forum descended on the Marriott Auburn Opelika Hotel & Conference Center at Grand National for an overnight retreat and orientation. In addition to meeting each other, we were addressed by Dr. Wayne Flynt (*Alabama in the Twentieth Century—The Modern South*), Dr. John Dew (*I Speak Your Language, an Exercise in the Language of Leadership*) and Stephen F. Black (*The Future of Obligations and Progress*).

Between January and May, Class III spent a day each month at the ASB in Montgomery in interactive sessions focusing on four primary leadership pillars and the various styles and approaches of our leaders:

(1) Leadership Principles with Dr. Natalie Davis (Leadership for Lawyers), Dr. David G. Bronner (Leaders and Followers), Jack Edwards (Leadership Choices) and a panel discussion with William J. Canary, Larry W. Morris, Scott A. Powell and Ernestine S. Sapp. The group then visited the Lawyers Hall of Fame.

(2) Service or “Servant” Leadership including a panel discussion with Chief Deputy Attorney General Keith Miller; Judge Jeffrey R. McLaughlin and Judge Myron H. Thompson (Leadership and Service Through Public Office); Chief Justice of the Alabama Supreme Court Sue Bell Cobb (Passion-Driven Leadership); Keith B. Norman (Overview of the Alabama State Bar); John A. Pickens and Shay Farley (Leading Systemic Change: Alabama Appleseed); and Stephen F. Black (Leadership and Service Through Non-Profit Organizations).

(3) Ethics, Justice and Values with State Treasurer Kay Ivey and William B. Sellers (Revenue in Alabama: What Part of \$15 Billion Don't You Understand?) Judge Randall L. Cole (*To Kill A*

Mockingbird: A Case Study on Justice) Orrin K. Ames, III (Striving for Professionalism: Confronting the Root Causes of Professionalism Issues) and Gregory C. Cusimano (Where Do We Go From Here: The Future of Trial Law and General Practice) The group also visited the Rosa Parks Library and Museum in Montgomery.

(4) Professionalism with Professor Steven Hobbs (Legal Ethics); Luther J. Strange, III (“Big Luther” Speaks Out); Kenneth D. Wallis, II (Professionalism in Government); Judge J. Scott Vowell (Professionalism: A View From the Bench); James L. Sumner, Jr. (Alabama Ethics Commission); Governor Albert P. Brewer (Professionalism and Public Service); and a panel discussion with Judge Tracy S. McCooley, Joseph B. Mays, Jr. and Judge J. Gregory Shaw. The group also toured the judicial building and talked with Justice Harold F. See, Jr.

Class III—Who Are We?

Class III demographics reflect the growing depth of the Alabama State Bar. Members include lawyers from law firms, sole practitioners, in-house counsel, a U.S. Attorney, a district judge, and a law school faculty member. Geographically, our class spanned the state from Bay Minette, Birmingham, Carrollton, Demopolis, Dothan, and Enterprise to Huntsville, Mobile, Montgomery, Tuscaloosa, Union Springs, and Vernon. We attended 13 different undergraduate schools and eight law schools, and studied or worked abroad in at least seven different countries.

“Lawyers Render Service” or do they? We serve our clients, regardless of whether we are solo practitioners, work in a large firm or work in-house. But what about rendering service to our



For both his ingenuity and inspiration, Steven F. Black stood out to the members of our class as an incredible example of the persuasive power of successful “servant” leadership. He studied American history at the University of Pennsylvania (graduated *magna cum laude* in 1993) and attended Yale Law School (graduated 1997). After law school, he practiced law at Maynard, Cooper & Gale, served as assistant to the governor and returned to private practice while campaigning for Alabama state treasurer. He then created Impact: An Alabama Student Service Initiative, the state’s first nonprofit organization dedicated to developing and implementing substantive service-learning projects in coordination with universities and junior colleges throughout the state. One service-learning project is FocusFirst, aiming to provide vision-care screening for children ages six months to five years in urban and rural poverty. Black launched his FocusFirst Program in November 2004 and since then more than 550 student volunteers from 15 college campuses have screened over 16,400 children in 45 different counties across Alabama. A potential vision problem was detected in 10.6 percent of those children, all of whom received or are receiving subsidized follow-up vision care. The work Black is doing for our state has a tangible and immediate positive impact for Alabama citizens. He is an example of the power of what one man with good ideas can do to impact the health and wellbeing of the children of our state. Black understands that different types and styles of leadership in Alabama are crucial to advancement and exemplifies a true “servant leader.”

state bar, our communities and our families and individuals on paths quite different from our own? After long days, whether at the office, in court, closing a deal, pouring through a client’s books and records, on conference calls that roll from one to four hours, or traveling home from whatever town your latest case sent you to, how much time is left in any of our days to render service? From Class III applications, it is apparent that the term “servant leadership” was already in play among our group long before we landed in Opelika for our Leadership Forum orientation. Interestingly, there was little overlap in the charities we volunteer for and almost no crossover in the churches we attend.

We are actively involved in leadership positions or donate volunteer time for the following (the list is not exclusive and is intended more as a sample): Alabama Free Clinic, Inc.; Alabama Juvenile Arthritis Initiative; American Heart Association; American Red Cross; Arthritis Foundation; Arts Council of Tuscaloosa; Ballet Guild of Birmingham; Big Brothers/Big Sisters; Birmingham Monday Morning Quarterback Club; Business Council of Alabama; Children’s Art Guild; Children’s Hospital; Children’s Policy Council; Chunnennuggee Fair; Clinton Avenue Advisory Board for Boy’s and Girl’s Club; Crippled Children’s Foundation; Coffee County Family Services; Delta Waterfowl; Emmet O’Neal Library Junior Patrons Board; the Exceptional Foundation; Fayette Park and Recreation Board; Fire House Shelter; First Look; Girls, Inc.; Gordo Chamber of Commerce; Habitat for Humanity; Harriet’s House; Hematology/Oncology Clinic, Children’s Hospital; Jessie’s Place

Shelter for Women and Children; Junior League; Kentuck Museum & Festival; Lamar County Children's Policy Council; Leukemia Society; Magic City Harvest; March of Dimes; Montgomery Academy Alumni Board; Montgomery Club, Auburn Board of Directors; Pickens County Industrial Development Board; Relay for Life, American Cancer Society; Rotary clubs; Ruff Wilson Boys and Girls Club; Susan G. Komen (Race for the Cure and 3-Day 60-Mile walkers); The Partnership for A Drug-Free Community; Turning Point Domestic Violence Center; United Cerebral Palsy of Huntsville and Tennessee Valley; University of Alabama Moody Gallery; Vestavia Hills Civitan Club; Wake Forest University Alumni Board; YMCA Board Boys Work Committee; and September 11th victim representation and Hurricane Katrina relief effort volunteers, to name a few.

coach basketball, swimming, tee-ball and soccer. Give us a couple of years for our children to grow older and that list will grow longer. One Class III member, in addition to adopting four children, serves as a foster parent for several other children.

Each member of Class III plays an active role in numerous bar or other legal associations at the national, state and/or local levels. Any attempt to articulate the academic awards in law school and positions held in various legal organizations and associations since graduation would leave this at dissertation length instead of a short article. To be honest, I tried to make a list on paper, then tried highlighting from resumes and then I attempted an Excel spreadsheet but, in the end, it is obvious that Class III of the Leadership Forum is taking our local, state and national professional legal associations by storm.



Before we ventured down the law school path, Class III work experience included, for example, an immigration inspector for the United States Justice Department in Toronto; a mountain guide in Colorado; a graduate school Spanish teacher; an advisor to a former Alabama governor; a former vice-president of Gideons International; an intern for the Federal Bureau of Investigation; a staff assistant to the United States Senate Committee on the Judiciary; and an assistant director of student life at the University of Alabama. One of our members graduated number one in his class from the United States Coast Guard Academy, was a Coast Guard Assistant Engineer Officer and a military social aide to the President of the United States and served as a coast Guard Intelligence Officer in Washington where he had top secret/SCI clearance and analyzed national security threats.

Class III church involvement finds us serving as children and youth directors, Sunday school and children's church teachers, parish committee members, council members, and counselors. In addition to being a full-time lawyer, husband and father, one Class III member pastors the Bethlehem Primitive Baptist Church. In both former (pre-law) lifetimes and this one, we have several musicians among us, including a former Nashville recording artist. Somehow this group still has time for hobbies such as tournament bass fishing, golf, hunting, ballet, and art. We volunteer our time across racial and gender lines and are actively involved in a broad range of charities for children. We

I would be remiss if I did not point out that approximately 97 percent of our guest speakers, lecturers and panelists made reference to and/or complimented the efforts of Class III member Edward A. (Ted) Hosp during the Leadership Forum. Regarding Ted, suffice it to say that our future governor is among us.

“A community is like a ship; everyone ought to be prepared to take the helm.”

(Henrik Ibsen)

The stakes have been raised for the Leadership Forum to keep pace with a growing community of lawyers who want to dedicate their time and skills to not only improve the practice of law in this state, but the community and condition of humanity around them. We are passionate about access to justice, some version of constitutional reform, improving the quality of education in our state and moving Alabama beyond the storm clouds of our past. Perhaps the following poet efficiently summarizes the path before us: “We pledge ourselves and our resources to seek for you clean and well-furnished schools, safe and non-threatening streets, employment which makes use of your talents, but does not degrade your dignity.” (excerpt, “A Pledge to Rescue Our Youth,” by Maya Angelou 2006). After the great stage was set by the Alabama State Bar in the Leadership Forum, there is no doubt that the members of Class III are eager to build ships for the Alabama State Bar and effect change in Alabama's vast and endless “sea.”

Reflections

Simply put, the Leadership Forum tied together most of our group for a purpose that even we do not yet comprehend. Looking forward, Class III is eager to build accountability and connectivity among all Leadership Forum classes. One important selection criteria for Leadership Forum acceptance is the applicant's narrative summary responding to questions about leadership and goals. Class III comments included:

"We are formed into who we are, and will become, by those who have been our exemplars and mentors." (**Wilson F. Green**)

"Inherent in the practice of law is the responsibility of leadership." (**Shawn T. Alves**)

"I have long held the belief that time is a much more valuable commodity than money because it is so much more limited and once it is gone, there is no replacing it. I try to spend that commodity wisely by using it as much as I can to serve others." (**Christina D. Crow**)

"I am a better lawyer if I am unselfish with my time." (**N. Christian Glenos**)

"It is our sense of community that binds us together, allows us to feel meaning and purpose in our lives, and motivates us to do something today so tomorrow will be better." (**R. Brent Irby**)

"We are poised to shape the profession for the future. I have found that when lawyers come together for the betterment of our profession, leaders emerge." (**Emily C. Marks**)

"I am not naïve enough to believe that the criticisms and attacks against our profession and the legal system will improve without a concerted effort by the legal community." (**M. Clay Martin**)

"I believe we are here to serve, and the fulfillment of our lives is found in serving." (**Tim B. McCool**)

"True leadership requires one to gain and maintain respect from a wide range of individuals." (**Ronald H. Strawbridge, Jr.**)

"Unlike many professions, lawyers are uniquely trained to organize, think critically and find creative solutions to problems. These same talents and skills can also be used to identify problems and craft solutions to a host of issues that arises in our communities." (**William B. Wahlheim, Jr.**)

"Oftentimes, we, as lawyers, lose perspective about our jobs, and forums such as this one allow us to regain the footing we need to focus on what being a lawyer is actually about." (**Lane Hines Woodke**)

Information for Applicants—Class IV

If you are an ASB member who has practiced not less than five and not more than 15 years, I recommend that you apply for membership in the 2008 class of the Alabama State Bar Leadership Forum (Class IV). Applications are available online at www.alabar.org under the link "Leadership Forum." The deadline

for applications will be October 1, 2007 (this is a change from prior years when the deadline was November 1, 2007) and applicants will be notified of acceptance on or before November 15, 2007. Also new this year, applications will be reviewed in the order in which they are received. Mandatory attendance is required for the following: Orientation & Session I—January 17-18, 2008 (Legends in Prattville); Session II—February 21, 2008; Session III—March 27, 2008; Session IV—April 24, 2008; and Session V—May 15, 2008. Locations for sessions II through V will be announced. ■



Kimberley Till Powell

Kimberley Till Powell is a partner with Balch & Bingham LLP in Birmingham. She graduated from Wake Forest University and the University of Alabama School of Law. She is the chair of the Intellectual Property Section of the Alabama State Bar. She was a member of Class III of the Leadership Forum and is co-chair of the 2008 Alabama Leadership Forum.

In Memoriam

"Let the little children come to me, and do not hinder them, for the Kingdom of God belongs to such as these."

(Mark 10 14)

Class III takes this opportunity to once again convey our deepest sympathy and support for our fellow class member and friend, **Emily Marks**, who suffered the tragic loss of her twin sons this spring, both born prematurely, one at 22 weeks and the other at 23 weeks. **Charles Matthews Marks** was born March 29, 2007 and survived almost nine hours. **Lawrence Marks** was born April 4, 2007 and lived 16 days.

"I never really knew what the March of Dimes did and never knew anything about premature births. In fact, most people don't realize what a devastating problem premature labor is. It's the leading cause of newborn death. It has reached epidemic proportions, and the rate is escalating. The March of Dimes is the organization on a mission to fight premature labor." (**Rick Marks**, husband of Class III member **Emily** and father of the twins). For more information about the March of Dimes, visit www.marchofdimes.com or for the story of **Charles and Lawrence Marks**, visit www.shareyourstory.org/marks/.

2008

ALABAMA STATE BAR LEADERSHIP FORUM

BY B. KEITH JACKSON

Update and General Selection Criteria

In 2006, the ASB Board of Bar Commissioners initiated the ASB Leadership Forum. The Leadership Forum's missions are to: (a) Raise the level of awareness of lawyers as to the purpose, operation and benefits of the ASB; (b) Build a core of practicing lawyers to become leaders with respect to ethics and professionalism, resulting in raising the overall ethical and professional standards of lawyers in the community; and (c) Form a pool of lawyers from which the ASB, state and local governmental entities, local bar associations and community organizations can draw upon for leadership and service.

With three years of graduates, the Leadership Forum has quickly grown into its purpose. Leadership Forum alumni include a member of the state house of representatives, bar commissioners, candidates for public office, a former military officer, and a president of a local bar foundation. Ask any graduate of the Leadership Forum about his or her experience, and you will receive an enthusiastic response about the program itself and the relationships formed while a member.

The third class of the Alabama State Bar Leadership Forum graduated May 17, 2007, with **Judge John Carroll**, dean of Cumberland School of Law, as the guest speaker. Graduates **William**

Wahlheim and **Paige Goldman** gave inspired responses. Each graduate received a gift commemorating their participation in the forum. In attendance were 2006-07 ASB President **Boots Gale** (who served as emcee), ASB President-Elect **Sam Crosby** and immediate past President **Bobby Segall**.

For upcoming classes, the Leadership Forum will continue to honor its mission through an expanded program designed to introduce participants to leadership opportunities throughout the state. The program for 2008 is already in the planning stages, and the Leadership Forum Steering Committee is actively exploring opportunities outside the walls of the state bar and in different geographic areas of the state. Currently under consideration are programs intended to introduce applicants to leadership opportunities with varying focuses.

If you have been a member of the ASB for more than five years, but no more than 15, please consider applying to become a member of the 2008 ASB Leadership Forum. Following receipt of all applications, the Selection Committee, appointed by the president of the state bar and comprised of Leadership Forum alumni, reviews the applications for the following criteria in making the initial selection decisions:

1. Demonstrated leadership ability based on past accomplishments and current engagements;
2. Practice diversity (criminal, civil, governmental and corporate);
3. Geographic diversity;
4. Racial diversity;
5. An understanding of the importance of servant leadership as demonstrated in the applicant's narrative; and
6. Previous application to the Leadership Forum.

Each year, the Selection Committee seeks to draw a broad and representative class of between 25 to 30 members from throughout the ASB membership. The initial class suggested by the Selection Committee is reviewed by the Executive Committee of the ASB, and the final selection is made and approved by the Board of Bar Commissioners. Alumni of the Leadership Forum are listed on the next page if you wish to contact one of them concerning their experience. ■



B. Keith Jackson

Keith Jackson is a shareholder in the Birmingham firm of Riley & Jackson, PC. He graduated from the University of Alabama and Emory University School of Law. He is admitted to practice in Georgia and Alabama. He is co-chair of the 2007

Alabama Leadership Forum.

2005 LEADERSHIP FORUM CLASS I

Michael Bradley Almond, Almond & Cheshire LLC, Tuscaloosa

Melissa Kay Atwood, U. S. Attorney's Office, Birmingham

Mary Margaret Bailey, Frazer, Greene, Upchurch & Baker LLC, Mobile

Jennifer McCammon Bedsole, Lloyd, Gray & Whitehead PC, Birmingham

Anna-Katherine Graves Bowman, Huie, Fernambucq & Stewart LLP, Birmingham

Ryan Geoffrey Brake, Carr, Allison, Pugh, Howard, Oliver & Sisson PC, Florence

Kathleen Anne Brown, Montgomery

Anna Funderburk Buckner, Cabaniss, Johnston, Gardner, Dumas & O'Neal, Birmingham

Paul John DeMarco, Parsons, Lee & Juliano PC, Birmingham

John Aaron Earnhardt, Maynard, Cooper & Gale PC, Birmingham

Terry Charles Fry, Jr., Johnston, Barton, Proctor & Rose LLP, Birmingham

Fred Marion Haston, III, Bradley Arant Rose & White LLP, Birmingham

Pamela Robinson Higgins, Montgomery

Christopher Ralph Jones, DCH Health System, Tuscaloosa

Kelly Tipton Lee, Elmore

Heather Fisher Lindsay, Johnston, Barton, Proctor & Rose LLP, Birmingham

Reta Allen McKannan, Huntsville

William J. Miller, Turner & Miller LLC, Anniston

Robert Lake Minor, Church, Minor, Abbott, Furr & Davis PC, Pell City

Teresa Gaston Minor, Balch & Bingham LLP, Birmingham

Paige McCoy Oldshue, Rosen Harwood PA, Tuscaloosa

Anthony Catledge Portera, Birmingham



Gabrielle Reeves Pringle, Alford, Clausen & McDonald LLC, Mobile

David Edwin Rains, Rosen Harwood PA, Tuscaloosa

Richard J. R. Raleigh, Jr., Wilmer & Lee PA, Huntsville

John Albert Smyth, III, Maynard, Cooper & Gale PC, Birmingham

Rhonda Fredericka Wilson, Alabama Dept. of Human Resources, Birmingham

2006 LEADERSHIP FORUM CLASS II

Christopher Fred Abel, Gadsden

Frederick Wendell Allen, Bradley Arant Rose & White LLP, Birmingham

Allison Vernon Barnett, IV, Alabama Dept. of Corrections, Legal Div., Montgomery

Robert Eugene Battle, Battle Fleenor Green Winn & Clemmer LLP, Birmingham

Brannon Jeffrey Buck, Maynard, Cooper & Gale PC, Birmingham

Tracy Wayne Cary, Morris, Cary, Andrews, Talmadge, Jones & Driggers, Dothan

Shayana Boyd Davis, Johnston, Barton, Proctor & Rose LLP, Birmingham

Helen Kathryn Downs, Johnston, Barton, Proctor & Rose LLP, Birmingham

James Fletcher Hughey, III, Lightfoot, Franklin & White LLC, Birmingham

Wyndall Anthony Ivey, Maynard, Cooper & Gale PC, Birmingham

Brian Keith Jackson, Riley & Jackson PC, Birmingham

Tracie Breshun Lee-Roberson, Mobile

Tara Waller Lockett, Carr, Allison, Pugh, Howard, Oliver & Sisson PC, Daphne

Jonathan Marion Lusk, Lusk & Lusk, Guntersville

Champ Lyons, III, King, Horsley & Lyons LLC, Birmingham

Foster Fitzgerald Marshall, District Attorney's Office, Anniston

Kimberly Bessiere Martin, Bradley Arant Rose & White LLP, Huntsville

Robert Gordon Methvin, Jr., McCallum, Methvin & Terrell PC, Birmingham

Matthew Clinton Minner, Hare, Wynn, Newell & Newton LLP, Birmingham

Julie Sorrells Moody, Albrittons, Clifton, Alverson, Moody & Bowden PC, Andalusia

Joseph Edward Powell, Spruell & Powell LLC, Tuscaloosa

Thomas Anderson Radney, Radney & Radney LLC, Alexander City



Patrick Ladd Wheeler Sefton, Sasser, Bolton, Stidham & Sefton PC, Montgomery

Roman Ashley Shaul, Beasley, Allen, Crow, Methvin, Portis & Miles PC, Montgomery

Pamela Beard Slate, Slate Kennedy LLC, Montgomery

Robert Brian Smith, Livingston

Sandra Ingram Speakman, Alabama Dept. of Personnel, Montgomery

Aldos Lamont Vance, Starnes & Atchison LLP, Birmingham

Jon Garrett Waggoner, Auburn University, Auburn

2007 LEADERSHIP FORUM CLASS III

Shawn Tavel Alves, Stone, Granade & Crosby PC, Bay Minette

Reed Robertson Bates, Starnes & Atchison LLP, Birmingham

David Lee Brown, Jr., Huie, Fernambucq & Stewart LLP, Birmingham

Joel Edward Brown, Bradley Arant Rose & White LLP, Birmingham

Laura Gibson Chain, White Arnold Andrews & Dowd PC, Birmingham

Christina Diane Crow, Jinks, Daniel & Crow PC, Union Springs

Leatha Kay Gilbert, Birmingham

Nicholas Christian Glenos, Bradley Arant Rose & White LLP, Birmingham

Carol Paige Goldman, Energen Corporation, Birmingham

Wilson Franklin Green, Battle Fleenor Green Winn & Clemmer LLP, Tuscaloosa

Gregory Scott Griggers, District Attorney's Office, Demopolis

Frederick George Helmsing, Jr., McDowell, Knight, Roedder & Sledge LLC, Mobile

Elizabeth Anne Sikes Hornsby, University of Alabama School of Law, Tuscaloosa

Edward Andrew Hosp, Maynard, Cooper & Gale PC, Birmingham

Robert Brent Irby, McCallum, Hoaglund, Cook & Irby LLP, Vestavia Hills

William Lovard Lee, IV, Lee & McInish, Dothan

William Richard Lunsford, Maynard Cooper & Gale PC, Huntsville

Marshall Clay Martin, Watson Jimmerson Martin McKinney Graffeo & Helms, Huntsville

Timothy Benson McCool, Kirk & McCool, Carrollton

Juan Carlos Ortega, Alford, Clausen & McDonald LLC, Mobile

George Robert Parker, Bradley Arant Rose & White LLP, Montgomery

Kimberly Till Powell, Balch & Bingham LLP, Birmingham

Sandra Beth Reiss, Ogletree Deakins, Birmingham



Braxton Paul Sherling, District Court of Coffee County, Enterprise

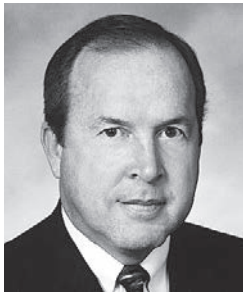
Ronald Howard Strawbridge, Jr., Strawbridge, Strawbridge & Strawbridge LLC, Vernon

Paige Huddleston Sykes, Rogers & Associates, Birmingham

Melton Chad Tindol, University of Alabama Counsel's Office, Tuscaloosa

William Bernhart Wahlheim, Jr., Maynard, Cooper & Gale PC, Birmingham

Lane Hines Woodke, U. S. Attorney's Office, Birmingham



J. Anthony McLain



Liability Insurers Using Staff Counsel to Represent Its Insureds' Insurance Staff Counsel

QUESTION:

The Disciplinary Commission has determined that it would be appropriate to give further consideration to the conclusions reached in RO-1981-533 which addresses the issue of whether and/or to what extent liability insurers may employ staff counsel to represent insureds.

ANSWER:

A lawyer who is a full-time employee of a liability insurer may represent his employer's insured where the interests of the insured and the insurer are fully aligned and where the insurer has a direct financial interest in the outcome of the litigation. At the outset of representation, staff counsel must disclose that he/she is a full-time employee of the insurer and disclose any limitations upon the representation. In representing an insured, a staff attorney should ensure that the insurer does not interfere with the lawyer's independence of professional judgment, and must otherwise comply with the *Rules of Professional Conduct*.

DISCUSSION:

In RO-1981-533, the Disciplinary Commission determined that it was ethically permissible for a liability insurer carrier to prosecute subrogation actions on behalf of the carrier and the insureds' deductible, to handle workers' compensation claims against the carrier's insureds and to represent the insured wherein the carrier is made a direct party to the civil action. At the time RO-1981-533 was released, Alabama was operating under the former *Alabama Code of Professional Responsibility*. Alabama has since adopted a new code based primarily on the ABA's *Model Rules of Professional Conduct*. As such, the Disciplinary Commission feels that it is appropriate at this time to revisit the holding of RO-1981-533 in light of the current *Alabama Rules of Professional Conduct* and evolving standards of ethical conduct.

In doing so, the Disciplinary Commission believes it is first necessary to answer a question that was not addressed in RO-1981-533—whether the utilization of staff counsel¹ by an insurance

carrier constitutes the unauthorized practice of law. Rule 5.5, *Ala. R. Prof. C.*, prohibits attorneys from assisting a non-lawyer entity in the “performance of activity that constitutes the unauthorized practice of law.” The Supreme Court of Alabama has not addressed the issue of whether the utilization of staff counsel by an insurance carrier constitutes the unauthorized practice of law. Therefore, the Disciplinary Commission relies on its own interpretation of relevant case law and statutory authority.

The Supreme Court of Alabama has stated that “the specific acts which constitute the unauthorized practice of law are and must be determined on a case-by-case basis.” *Coffee Cty. Abstract and Title Co. v. State, ex rel. Norwood*, 445 So. 2d 852, 856 (Ala. 1983). As a starting point, § 34-3-6, *Ala. Code* 1975, which defines the practice of law, provides, in pertinent part, as follows:

¶) Only such persons as are regularly licensed have authority to practice law.

b) For the purposes of this chapter, the practice of law is defined as follows:

Whoever,

¶) In a representative capacity appears as an advocate or draws papers, pleadings or documents, or performs any act in connection with proceedings pending or prospective before a court or a body, board, committee, commission or officer constituted by law or having authority to take evidence in or settle or determine controversies in the exercise of the judicial power of the state or any subdivision thereof; or

¶) For a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, advises or counsels another as to secular law, or draws or procures or assists in the drawing of a paper, document or instrument affecting or relating to secular rights; or

¶) For a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, does any act in a representative capacity in behalf of another tending to obtain or secure for such other the prevention or the redress of a wrong or the enforcement or establishment of a right; or

¶) As a vocation, enforces, secures, settles, adjusts, or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense; is practicing law.

(c) Nothing in this section shall be construed to prohibit any person, firm or corporation from attending to and caring for his or its own business, claims or demands, nor from preparing abstracts of title, certifying, guaranteeing or insuring titles to property, real or personal, or an interest therein, or a lien or encumbrance thereon, but any such person, firm or corporation engaged in preparing abstracts of title, certifying,

guaranteeing or insuring titles to real or personal property are prohibited from preparing or drawing or procuring or assisting in the drawing or preparation of deeds, conveyances, mortgages and any paper, document or instrument affecting or relating to secular rights, which acts are hereby defined to be an act of practicing law, unless such person, firm or corporation shall have a proprietary interest in such property; however, any such person, firm or corporation so engaged in preparing abstracts of title, certifying, guaranteeing or insuring titles shall be permitted to prepare or draw or procure or assist in the drawing or preparation of simple affidavits or statements of fact to be used by such person, firm or corporation in support of its title policies, to be retained in its files and not to be recorded.

The Supreme Court of Alabama has repeatedly held that the purpose of § 34-3-6 is to ensure that laymen do not serve others in a representative capacity in areas that require the skill and judgment of a licensed attorney. *Porter v. Alabama Ass'n of Credit Executives*, 338 So.2d 812 (Ala. 1976). Moreover, the *Alabama Rules of Professional Conduct* expressly recognize that corporations may employ in-house to represent their own interests in

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litigation. The term “firm” is defined in the *Alabama Rules of Professional Conduct* to include “lawyers employed in the legal department of a corporation.” Rule 1.13, *Ala. R. Prof. C.*, specifically applies to attorneys employed or retained by a corporation or other organization. As a result, staff attorneys are subject to the same ethical obligations that apply to attorneys in other forms of practice. There is no dispute that properly admitted staff attorneys may practice law in representing their employer and, as such, are subject to the *Rules of Professional Conduct*. The question then becomes whether the staff attorney for an insurance company may also represent an insured.

The Disciplinary Commission notes that the insurer is not employing staff counsel as a means of generating revenue, but as a means of limiting the financial liability of its insureds. Staff counsel are employed to limit costs and losses associated with the employer’s primary business of issuing insurance policies.² In Alabama, the insurer, absent an actual conflict of interest, is traditionally viewed as a co-client with the insured. The Comment to Rule 1.8, *Ala. R. Prof. C.*, states that, “[i]n the normal insurance defense relationship where, for example, there are no coverage issues, appointed counsel has two clients, the insured and the insurer. Hence, the insurer is not a third party.” This position was endorsed by the Disciplinary Commission in RO-1994-08. Moreover, in *Mitchum v. Hudgens*, 533 So.2d 194 (Ala. 1988) the Alabama Supreme Court implied the same thing stating: “When an insurance company retains an attorney to defend an action against an insured, the attorney represents the insured as well as the insurance company in furthering the interests of each.” *Id.* at 198. In most instances, the insured and not the insurer is the one whose financial interest is at risk. As such, the Disciplinary Commission finds that the utilization of staff counsel to represent insureds, where the interests of the insured and the insurer are fully aligned and where the insurer has a direct financial interest in the outcome of the litigation, does not constitute the unauthorized practice of law.

Having determined that the use of staff counsel by an insurance carrier to defend its insureds does not constitute the unlawful practice of law, the Disciplinary Commission must now determine whether the use of staff counsel violates other provisions of the *Alabama Rules of Professional Conduct*. The primary question, as it was in RO-1981-533, is whether an inherent conflict of interest exists when an insurer’s staff attorney represents an insured. In RO-1981-533, the commission found no reason to differentiate—under the former *Code of Professional Responsibility*—between staff counsel and outside counsel when determining whether an inherent conflict of interest exists. Moreover, the American Bar Association and the majority of states who have issued an opinion on the use of staff counsel have held that it is ethically permissible. *Cincinnati Ins. Co. v. Wills*, 717 N.E. 2d 151, 154 (Ind. 1999)

Under the *Alabama Rules of Professional Conduct*, the Disciplinary Commission sees no reason to distinguish between

staff counsel and outside counsel. The potential for actual conflicts of interest remains the same in either arrangement as it was under the former code. An insurer’s use of staff counsel to represent an insured against a third party’s lawsuit does not create an inherent conflict of interest in violation of the *Rules of Professional Conduct*. As discussed earlier, the *Alabama Rules of Professional Conduct* have previously defined the relationship between insurer and insured as one in which the parties are co-clients. There are plainly many situations where representation of both an insured and the insurer are inconsistent with the *Rules of Professional Conduct*. However, where the interests of the insured and the insurer are fully aligned and where the insurer has a direct financial interest in the outcome of the litigation, there is not a conflict of interest that would prevent staff counsel for the insured from representing the insurer.

Staff counsel, however, should be mindful of their unique status when undertaking representation of insureds. The *Rules of Professional Conduct* apply to staff counsel to the same extent as any other attorney.³ As such, the following measures should be taken by staff counsel when undertaking representation of insureds.

1. The staff attorney should disclose, soon after commencing representation of an insured, any and all limitations upon the representation. Rule 1.2(c), *Ala. R. Prof. C.* Examples of such limitations may include provisions in the insurance policy that authorize the insurer to control the defense and/or to settle within policy limits.
2. The staff attorney must disclose that he/she is a full-time salaried employee of the insurer. It is impermissible for in-house attorneys who are employed to represent insureds to state or imply that they practice in a separate independent law firm. The relationship between the attorney and the insurer should be disclosed, in writing, to the client at the outset of representation.
3. A staff attorney may not permit the insurance company to direct or regulate the staff attorney’s professional judgment in rendering legal services to the client. Rule 5.4(c), *Ala. R. Prof. C.*

Rule 5.4(c) *Ala. R. Prof. C.*, provides as follows:

RULE 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER

* * *

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.

4. To comply with the confidentiality requirements of Rule 1.6, *Ala. R. Prof. C.*, staff attorney offices should be maintained in a manner that is physically and organizationally distinct from other offices of the insurer. Where staff attorney offices are housed in the same building as other offices of the insurer,

care should be taken to ensure that only staff attorneys and their administrative personnel have access to an insured's files and confidential information.

5. Where staff attorneys operate under a separate "firm name," the nature of the relationship between the attorneys and the insurer must be clearly disclosed on the letterhead and/or business card of the attorney. The relationship should also be disclosed at office entrances, phonebook listings and when answering the phone.

The American Bar Association and other ethics committees have found that it is unethical and deceptive for salaried in-house attorneys, employed by an insurance company, to represent themselves to be outside counsel. See ABA Opinion 0-430 Rule 7.5(d) Ala.

R. Prof. C., states, in pertinent part, as follows:

RULE 7.5: FIRM NAMES AND LETTERHEADS

(d) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. A trade

name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable organization and is not otherwise in violation of Rule 7.1 or Rule 7.4.

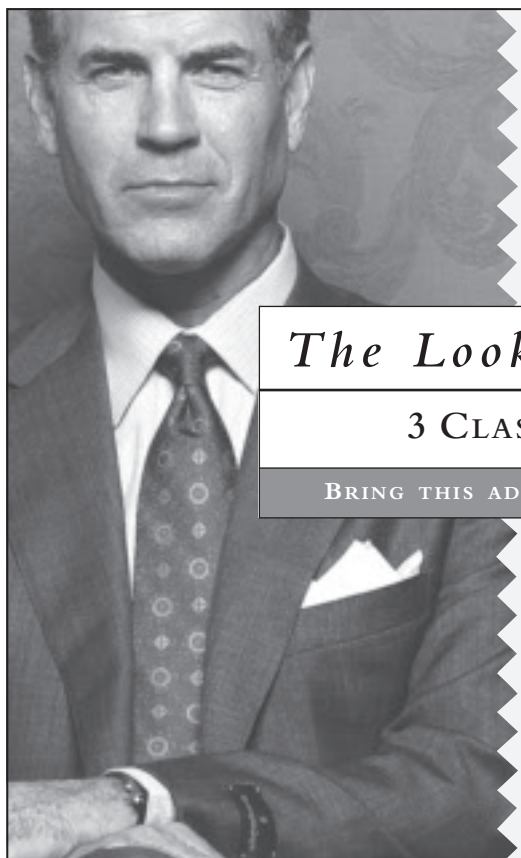
Rule 7.1, provides, in part, as follows:

RULE 7.1: COMMUNICATION CONCERNING A LAWYER'S SERVICES

A lawyer shall not make or cause to be made a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

- (a) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; . . .

Many times, staff attorney offices are operated under "firm names" that do not specifically reference the insurer. For example, a staff attorney's office may operate under the name of "XYZ Law Offices." One justification for the practice of using "firm names" for a staff attorney's office is to prevent the issue



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of insurance from being disclosed to juries or third parties during litigation. However, the use of “firm names” by staff attorneys may constitute a misleading communication about the true nature and independence of the “firm.” As such, all letterhead and/or business cards must clearly disclose that the “firm” is an office of the insurer and its attorneys and staff are employees of the insurer. The relationship between the “firm” and the insurer should also be disclosed at office entrances, phonebook listings and when answering the phone.

6. To avoid loss of a counterclaim, insurance defense counsel should inform the insured about potential counterclaims that may be available to the insured.

The Disciplinary Commission finds it difficult to imagine an instance where an insured, represented by staff counsel, would have the legal acumen to consult with a private attorney concerning potential counterclaims. Rather, an insured would most often, and rightfully so, rely on the staff attorney to advise him of his legal rights, including the potential for counterclaims. As such, by undertaking representation of the insured, staff attorneys also acquire a duty to advise insureds about potential counterclaims. If a staff attorney determines that a potentially valid counterclaim exists, he must advise the insured of the potential counterclaim. In most cases, the staff attorney should recommend that the insured consult with another attorney about the possibility of pursuing the counterclaim on the insured’s behalf.

The Disciplinary Commission does not believe that an insurer’s staff attorney may ethically represent an insured on a counterclaim. First, the potential for conflict of interest between the insured and the insurance company is even greater. For example, if the insurance company desires to settle the case, but the insured wishes to pursue the counterclaim, a conflict would arise. Secondly, the insurer would not have a direct financial interest in the counterclaim. As such, the insurer’s use of staff counsel to pursue a counterclaim on behalf of an insured may constitute the unauthorized practice of law.

If the insured retains private counsel for representation on a counterclaim, the staff attorney representing the insured on the

original claim should not take any action that is detrimental to the insured’s interest in the counterclaim, unless the insured consents.⁴ If the insured refuses to consent because of the effect it will have on his counterclaim, then the staff attorney must either withdraw due to the conflict of interest or forgo the proposed course of action.

Conclusion

In summation, the Disciplinary Commission finds that the utilization of staff counsel to represent insureds, where the interests of the insured and the insurer are fully aligned and where the insurer has a direct financial interest in the outcome of the litigation, does not constitute the unauthorized practice of law and is not prohibited by the *Alabama Rules of Professional Conduct*. At the outset of representation, however, a staff attorney must disclose that he is a full-time employee of the insurer and disclose any limitations upon the representation. In representing an insured, a staff attorney should ensure that the insurer does not interfere with the lawyer’s independence of professional judgment, and must otherwise comply with the *Rules of Professional Conduct*.

To comply with the confidentiality requirements of Rule 1.6, *Ala. R. Prof. C.*, staff attorney offices should be maintained in a manner that is physically and organizationally distinct from other offices of the insurer. Where staff attorney offices are housed in the same building as other offices of the insurer, care should be taken to ensure that only staff attorneys and their administrative personnel have access to an insured’s files and confidential information. Staff attorney offices that employ a “firm” name must disclose that the “firm” is an office of the insurer and its attorneys and staff are employees of the insurer at office entrances, in phone book listings, when answering the phone and on all letterhead and business cards. Finally, a staff attorney has an ethical obligation to notify and advise the insured of possible counterclaims that may be available to the insured. Ordinarily, staff counsel may not represent the insured on the counterclaim, but should, instead, advise the insured to consult with a private attorney. [RO-2007-01] ■

Endnotes

1. In various treatises and opinions, these lawyers have been referred to as “house counsel,” “captive attorneys” and “trial division employees.” The term “staff attorney” is used throughout this opinion to designate such lawyers.
2. In instances where an insured has valid cross- or counterclaims, the insurer should refer the insured to outside counsel.
3. This opinion is not intended to negate any prior formal opinion regarding the ethical obligations of an attorney who is representing the insured on behalf of an insurer. For example, see RO-1990-99, which requires the attorney for the insured to withdraw pursuant to Rule 1.16, *Ala. R. Prof. C.*, if the client refuses to disclose a fraudulent act of the insured to the insurer. RO-1990-99 also held that under Rule 1.6, the lawyer is “impliedly” authorized to disclose the existence of an insurance question and to request separate counsel for the insured with regard to coverage. However, the disclosure is limited to such information “necessary to the purpose.”
4. The insured’s private counsel should be consulted prior to the obtaining of the insured’s consent and waiver.

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ASB ANNUAL MEETING



Laura Calloway visits with Wednesday speaker Stephen Gallagher.



Plenary speaker Tom Mesereau (center) visits with Greg Burge and John Medaris before heading to his roundtable discussion.



Judge Harold Murphy shares a laugh with ASB President Boots Gale while accepting the ASB Award of Merit.



Judge Randall Cole, recipient of the ASB Judicial Award of Merit, and his wife, Barbara



Dean Charles Gamble (right) visits with a fellow attorney between his morning presentation and serving as the featured speaker for Thursday's Bench & Bar Luncheon.



Wednesday evening's "Kids' Night Out" provides a cool break from the 100-degree heat.



Senator Roger Bedford and Rick Manley were thanked for their service to the Alabama Law Institute by receiving their own personalized chairs.



Professor Pam Bucy congratulates Frank McPhillips and the firm of Maynard, Cooper & Gale on receiving the VLP firm award.

PHOTO HIGHLIGHTS



Justice Lyn Stuart and Gwenda and Gary Alidor visit with former ASB President Wade Baxley, former Chief Justice Sonny Hornsby and Lawyer editor Robert Huffaker during the VLP Reception.



Cooper and Christine Shattuck, recent recipients of the Order of the Samaritan award, and Cliff Slaten, at the VLP Reception



Mobile VLP Director Blakely Davis explains the new "Wills for Heroes" program with an ASB member.



ASB Past President Sam Rumore receives instructions before heading off on a segway.



Thursday night's "Family Night at the Grand" had something for everyone—great food, a chance to catch up with old friends, kids' crafts and carnival games, an ice cream sundae bar, cigars and after-dinner drinks, and plenty of fireworks!



ASB ANNUAL MEETING



2007 President-elect Sam Crosby and Friday's plenary speaker Jill Fonte



Recipient of the 2007 Maud McLure Kelly Award Dean Camille Wright Cook



Landon Hamlett takes the captain's helm during his cruise on The Joshua Friday afternoon.



Visitors to the AIM exhibit can always count on getting a smile along with their signature tote.



PHOTO HIGHLIGHTS



Alabama Lawyer Assistance Program administrative assistant Sandra Clements (second from left) and several volunteers from the Women's Section get ready for the Silent Auction.



Former ASB President Johnny Owens dances the night away with granddaughter Terry at Friday night's Presidential Gala.



Obviously, ASB Commissioner Bob Meadows's bottle of Boone's Farm Blue Hawaiian is lucky because...



... that evening, Ruth Meadows is presented with her case of wine by Danny Daniel during the In Vino Veritas wine drawing!



Chief Justice Sue Bell Cobb and 2006-07 ASB President Boots Gale with his "going-away" plaque



Sharing the final moments of Boots Gale's term of office are his legal assistant Peggy Sue Rentz, his wife Louise and 2007-08 ASB President-elect Mark White.



Saturday morning, ASB 50-year members are recognized and congratulated for their service and youthfulness.



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The “Plain English” Project

of the Alabama Pattern Jury Instructions Committee–Civil

BY HON. ARTHUR J. HANES, JR., BERT S. NETTLES AND LEILA H. WATSON

Adapted from a presentation to the Birmingham Bench-Bar Retreat, February 2007

The original Alabama Pattern Jury Instructions (APJI)–Civil was recognized by the Supreme Court of Alabama as a “scholarly” work¹, and indeed this has been its enduring reputation among judges and lawyers in Alabama, who often cite the work as authoritative support in appellate decisions, trial court orders, briefs and even in treatises. The current Pattern Instructions are the result of years of cumulative legal research begun in 1967. As legal principles have been updated or changed by legislative act and appellate decisions, the committee charged with the responsibility of maintaining the instructions has faithfully endeavored to ensure that the published work of the pattern instructions embodies these changes.

The result of the work has been that the pattern instructions are true to the law, but often replete with difficult legal terms and phrases. While technically correct and even “scholarly,” the instructions are complicated definitions and descriptions of legal principles. Since 2004, the APJI Committee–Civil has adopted the premise that jury instructions should be written in plain English so that jurors, in addition to the judges and lawyers involved in the trials, will learn the principles of law that govern the outcome of the case. The law is still researched and studied and the instructions are technically accurate, but now they are drafted without the jargon and no longer sound like legal dissertations more appropriate for appellate argument and law review articles. The instructions themselves are not written to satisfy the intellectual needs of judges and lawyers, but instead are written so that the intended audience, jurors selected from the pool of Alabama citizens, may learn the applicable legal principles they must apply to the facts of the case.

The APJI Committee–Civil has been writing all new charges in plain English, and has begun the process of rewriting the entirety of the Alabama Pattern Jury Instructions–Civil into plain English, in preparation for the publication of a Third Edition, expected to be released in 2010. This article explains the “Plain English” Project of the APJI Committee–Civil.

Brief Historical Background of the APJI Committee–Civil

The original committee was formed in early 1967, at the recommendation of the Honorable Ingram Beasley, who noted that other states had formed committees for this purpose and adopted pattern instructions to integrate, simplify and modernize the jury trial system.² The original committee was comprised of judges and members of the Alabama Plaintiffs’ Lawyers’ Association, the Alabama Defense Lawyers’ Association and the trial bench. In 1973, the committee submitted its final work product of pattern jury instructions for civil cases to the Supreme Court of Alabama. The supreme court, by order dated April 19, 1973, approved the use of the pattern jury instructions.³

With the urging and assistance of Justice Janie L. Shores, the instructions were published by Lawyers Co-op in a single volume available to the bench and bar. As instructions were added and



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changed, the original volume was supplemented annually. In 1993, when the size of the pocket part exceeded the size of the book, the Second Edition of the work was published.

The APJI Committee^C ivil meets monthly to discuss necessary changes and additions to the original instructions. The committee is still composed of seated and retired Alabama appellate and trial judges, and practicing attorneys from both sides of the bar. Professor Laurel R. Clapp, who served as reporter for the committee since 1978, stepped down from these duties in 2007, and they have been assumed by Retired Circuit Judge William R. Gordon of Montgomery, who has been a member since 1994. Pursuant to the original order, the members of the committee are still appointed by the supreme court.

The Objectives of the APJI Committee—Civil

The objectives of the APJI Committee^C ivil are simple and direct:

1. The jury instruction must be legally “accurate;”⁴
2. The jury instruction must be “simple and understandable;”⁵
3. The jury instruction must be fair and balanced;⁶ and
4. The jury instruction must not be merely an abstract statement of the law. It should tell the jury what steps it must take to reach a verdict.⁷

“The completed instruction is ex^a mined by the entire committee before any vote is taken, to ensure that all objectives are met,” eplaⁱ ns Circuit Judge Julian King, of Talladega and vice chair of the APJI Committee^C ivil. “The committee works to obtain a complete consensus, and if any member has a doubt about the instruction, it is re-ex^a mined before final approval.” It may take multiple revisions and hours of legal research for the committee to reach a full consensus and final approval of an instruction.

The Supreme Court of Alabama prescribed these objectives for the committee. The order approving the use of the Pattern Instructions says that “the instructions prepared by the Committee...state the law of Alabama in simple and understandable, yet accurate language.” One year later the supreme court again addressed the Pattern Instructions and reiterated the objectives of the committee, this time *in dicta* in a published decision.⁸

“It is natural that jurors expect trial judges to put technical legal propositions governing the conduct of the trial into simple, understandable, layman’s language. . . . In order to aid trial judges, and lawyers, to reach this goal, a committee of the bench and bar worked for a number of years to promulgate a set of pattern jury instructions. The fruit of these labors is the publication, Alabama Pattern Jury Instructions—Civil, and this court has recommended the use of such pattern jury instructions in civil cases.”⁹

The late Supreme Court Associate Justice Richard L. Jones, Jr., in a special concurrence to encourage the use of the new Pattern Instructions, emphasized that the instruction to the jury must be fair and balanced. The “suggested charges [of the APJI committee] are not weighted for either party and contain a simple, direct and impartial statement of the law... While the law does not prescribe that the trial court in instructing the jury is obligated to give *equal time* to each of the parties in litigation, well-balanced and impartial instructions to the jury are essential to the ends of justice.”¹⁰

If a pattern instruction meets all the objectives with which the committee is charged, it is approved by the committee for publication in the work of the Alabama Pattern Jury Instructions—Civil. Once approved, there is no further approval required by the Supreme Court of Alabama. The supreme court has already recommended the use of the Pattern Instructions by the bench and bar.¹¹ Retired Justice Robert Harwood of the supreme court, who served as a committee member before and again after his service on the court, notes that the meticulous work on the instructions alone merits the recommendation of the supreme court that the Pattern Instructions be used by the bench and bar at trial.

The need for plain English jury instructions

Lawyer jokes have long made fun of the jargon and wordy language used by lawyers and judges. Unfortunately, the jokes are based on some degree of truth. Lawyers use words and phrases that are not included in the vocabulary of the general public. This practice has prevailed whether members of the legal profession are arguing motions to the judge in chambers, or explaining the law to non-lawyer jurors. "Jury instructions present an interesting conundrum: they are the sole vehicle by which judges instruct jurors on the law and on their tasks before the jury begins its deliberation, and yet jury instructions are written and presented in a manner that defy comprehension to those untrained in the law."¹²

Circuit Judge Loyd Little of Huntsville, who has served on the committee since 2008, agrees and points out, "We should be appalled that jurors, whom we trust to make decisions that may be life-altering in some

cases, are asked to do so without learning or understanding what the applicable laws really state." Circuit Judge Scott Donaldson of Tuscaloosa urged the use of plain English jury instructions several years ago because "if jurors do not understand the charge, the verdict cannot be trusted and public confidence in the system will erode."¹³ Another commentator on the

need for plain English charges noted that "[w]hen jurors do not understand the instructions, the rational administration of law under our jury system fails to attain its goals."¹⁴

People cannot follow instructions that they do not comprehend. Although the profession and the bench recognize this problem of incomprehensible jury instructions, resolution has been slow. One legal writer has suggested that it is because "judges and lawyers understand the words and regard them as sacred texts...or a cherished prayer...[or] hallowed formulations."¹⁵

Lawyers and judges do use "legalese." The terms are shorthand expressions and there are clear meanings and importance attached to the terms; it makes sense to use the "legalese" when communicating with members of the bench and bar. However, these technical legal terms are unknown to the general public and the persons selected for

"Legalese" consists of words and terms that have no recognition or usable definition outside of the law.

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jury duty, and it is counter-productive to use them in jury instructions.

“Legalese” consists of words and terms that have no recognition or usable definition outside of the law. Words and phrases such as accord and satisfaction, affirmative defense, bailment, common law, counterclaim, joint and several liability, parole evidence, rescission, question of fact, statute of limitations, strict liability, tenant in common, testamentary capacity, and writ are incomprehensible outside the law. In addition to being unfamiliar, some terms are very confusing, like lessor and lessee, mortgagor and mortgagee, and plaintiff and defendant. Other terms have a different meaning in everyday English, like argument, burden, charge, consideration, count, damages, discovery, durable, ground, performance, privilege, release, satisfaction, surrender, trust, and warranty.

There are phrases in the Alabama Pattern Jury Instructions that lawyers and judges use commonly, which mean nothing to laypersons, or worse, may have an altogether different connotation. Just a few of the phrases pulled from existing pattern instructions are: action for damages, assumption of risk, authoritative document, cause of action, chargeable with knowledge, continuous trespass, conscious disregard, extrinsic facts, future earning capacity, legal presumption, master and servant, monetary interest, pecuniary loss, position of manifest peril, prima facie evidence, and reasonably prudent person. Many of these technically difficult terms are used in the jury instructions

without definitions and divorced from any context that might tell a jury the meaning of the words. Some are accompanied by definitions that are as complex and mind-numbing as the term itself.¹⁶

Fueled by an increased awareness of the complexity of jury instructions, there is a growing body of social science research and a number of major federal and state task forces aimed at debunking the instructions. The consistent recommendations to improve jury comprehension are: remove the legal jargon, simplify sentence and paragraph structure, use enumeration and bulleting and relate the instructions to the case.¹⁷ These study results would not be a surprise to any veteran trial attorney who expressed satisfaction with the final charge, and then cringed upon hearing questions from the jury indicating near complete confusion about the basic legal principles just delivered to them.¹⁸

The “Plain English” Project

In early 2006, the committee began studying the work that had been done in other states, and drew upon the experience of its own members, and concluded that it would be a service to

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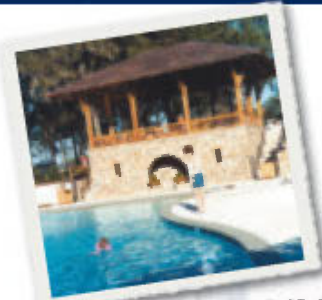


Exhibit A



Exhibit B



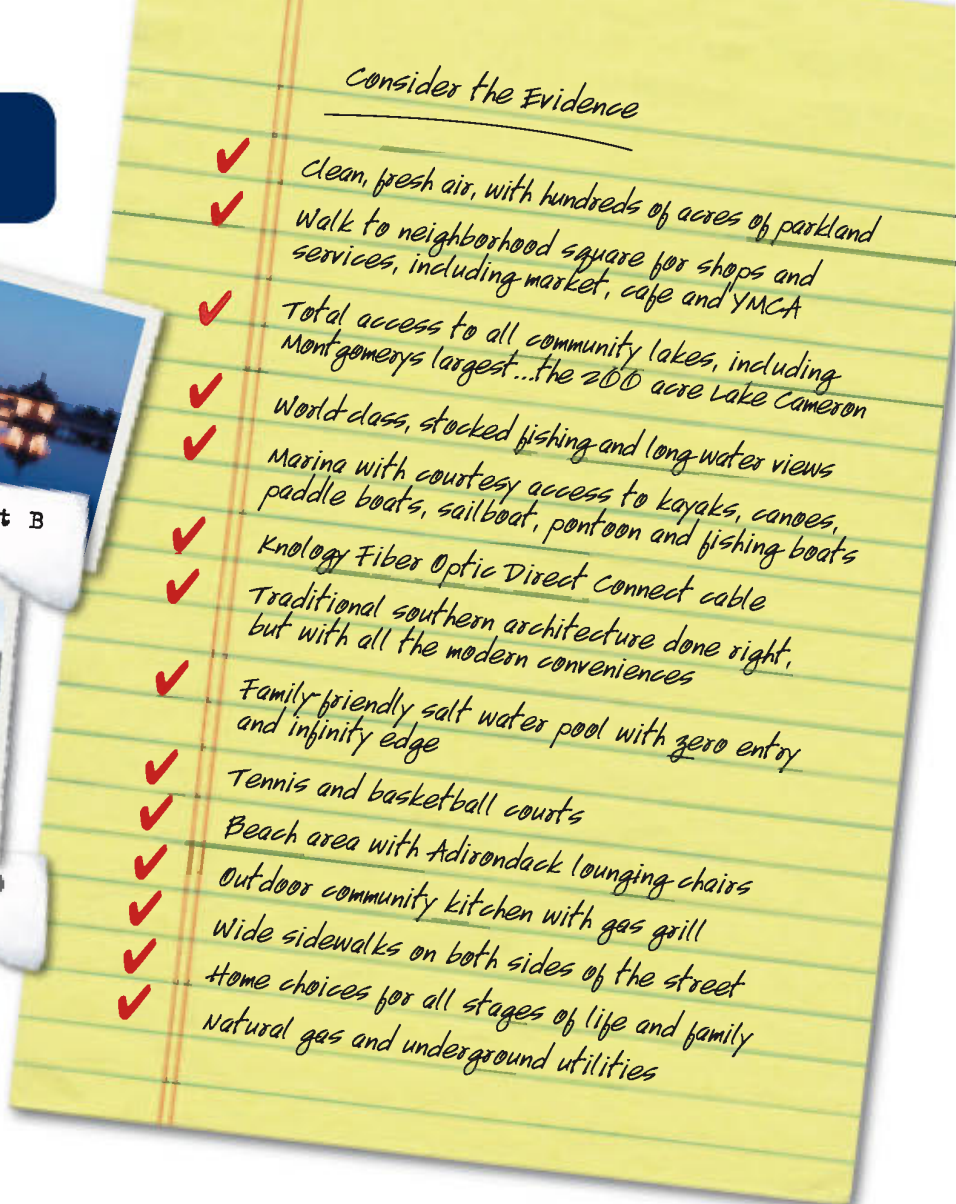
Exhibit C



Exhibit D



Exhibit E

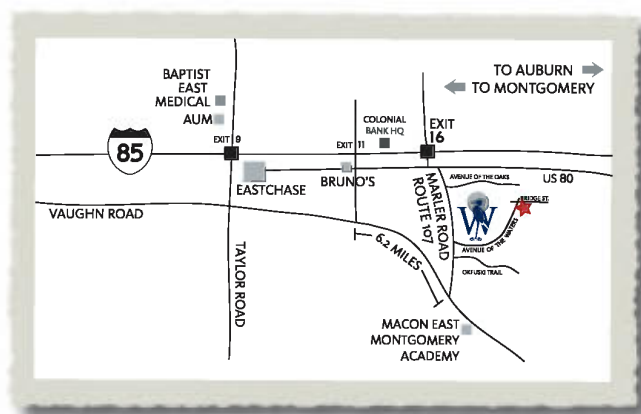


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the Alabama justice system to write the Alabama Pattern Jury Instructions Civil in plain English. The “Plain English” Project would also bring the instructions into compliance with the edict from the supreme court to write “simple and understandable” charges. As a first step in the project, the committee sought the assistance of the Center for Business and Economic Development at Auburn University Montgomery (Auburn Business Center) to provide a working framework for the committee. The Auburn Business Center wrote a style manual specifically for the “Plain English” Project which is still used by the committee to write the charges.

To write in plain English, the committee must remove the legalese and jargon. There are legal terms which are “words of art” and there is no plain English substitute. In those instances, the committee is preserving the language and adding plain English definitions.¹⁹ The committee has reduced the length of the overall charge by removing unnecessary instructions.²⁰

Introductory instructions have been added, outlining the whole charge for the jury, and creating a road map for the court to follow.²¹ Bulleted lists are included in many of the instructions and the trial judges are encouraged to use the enumerations, because it helps organize the lengthy instructions and makes them more understandable.

The “Plain English” project encompasses more than merely removing the legal jargon and organizing the instructions. Judge Vowell, in an earlier report of the project, explained that “The Committee is not only trying to use words in the pattern instructions that can be understood by most jurors, but it is also trying to frame the instructions in a way that will help tell the jury how to return a legal verdict based upon its findings.”²² For example, when the cause of action is defined and the elements enumerated, the jury is also told that the plaintiff must prove all the elements to recover. In the past, the instructions stopped short, and there was nothing said to the jury of the importance of the list to the case, or what it was to do with the list.²³

For the instructions to be understood by the average Alabama citizen, the instructions must be written for the seventh- to ninth-grade reading level.²⁴ The committee uses the Flesch Reading Ease and Flesch-Kincaid Grade Level Scales,²⁵ which are included in the Microsoft Office Toolbar for Word and WordPerfect. These readability scales are now government standards, with many federal and state agencies requiring documents to be written to specified levels on these tests. The Flesch Reading Ease is scaled from 0 to 100. Writing with a score of 90 to 100 can be understood by a fifth-grader; writing with a score of 60 to 70 can be understood by an eighth-grader; and writing with a score of 0 to 30 can be understood by a college graduate. For example, *Reader’s Digest* and *Time* magazines score in the range of 50 to 65, and *Harvard Law Review* scores in the low 30s. The committee aims for a score between 60 and 70 and a Grade Level score of eighth grade.

Sample plain English revisions to Alabama Pattern Jury Instructions

APJI Civil 32.07, the former instruction on design defect under the Alabama Extended Manufacturers Liability Doctrine, reads:

The plaintiff charges that the defendant(s) (is) (are) engaged in the business of (manufacturing) (supplying) (selling) and marketing (name product) that the defendant(s) did (manufacture) (supply) (sell) and market (name product) which was in a defective condition that is, the product was unreasonably dangerous when applied to its intended use in the usual and customary manner. That the plaintiff while (singing) (consuming) (other circumstances) the (name of product) in its usual and customary manner as it was intended to be used (here) (there) was (injured) (damaged) as a proximate result of the defendant(s) placing on the market the (name the product) which was unreasonably dangerous. The plaintiff further charges that the (name the product) was unreasonably dangerous at the time it was placed on the market by defendant(s) that the (name the product) at the time of the alleged (injury) (damages) was in substantially the same condition as it was at the time it was marketed by the defendant(s).

The defendant(s) (denies) (deny) the charges of the plaintiff and further (says) (say) (here outline defenses interposed by the defendant).

In order for the plaintiff to recover against the defendant(s) the plaintiff must reasonably satisfy you as to each of the following elements:

- 1) That the manufacturer, supplier or seller marketed a product which was in a condition unreasonably dangerous to the ultimate user or consumer when placed in the market and which remained in substantially the same condition until (used) (consumed) by the ultimate (user) (consumer);
- 2) That the one injured or damaged may be reasonably expected to (use) (consume) (be affected by) such product when (used for) (applied to) its intended use; and
- 3) That the injury or damage was a proximate consequence thereof.

The burden is upon the plaintiff to reasonably satisfy you by the evidence of the truthfulness of all these elements of (his) (her) claim before (he) (she) would be entitled to recover. If the plaintiff has reasonably satisfied you by the evidence of the truthfulness of each element of (his) (her)

For the instructions to be understood by the average Alabama citizen, the instructions must be written for the seventh- to ninth-grade reading level.

claim, he) is entitled to recover, unless the defendant has proven an affirmative defense.

If the plaintiff has not reasonably satisfied you by the evidence of the truthfulness of each element of (his) (her) claim, he) is not entitled to recover.

This instruction contained 379 words, and scored 38.5 on the Flesch Reading Ease Scale, and 14.9, which would be a college junior, on the Flesch-Kincaid Grade Level Scale. The plain English revision of this instruction has 151 words, and scored 54.7 on the Reading Ease Scale, and 7.9 on the Grade Level Scale. The complex legal jargon is removed, the plaintiff and defendant are identified by their proper names and the first paragraph, which is just duplicative of the list of elements, is eliminated. This is the same charge (APJI Civil 32A.0) rewritten in plain English:

Plaintiff (name of plaintiff) says that the (name the product) was defective, that is, unreasonably dangerous, as designed. To recover damages from Defendant (name of defendant), (name of plaintiff) must prove to your reasonable satisfaction all of the following elements:

- 1) (Name of defendant) was engaged as a [manufacturer/supplier/distributor/seller] of (name the type of product);
- 2) (Name of defendant) did [manufacture/supply/distribute/sell] the (name the product);
- 3) The (name the product) was defective or unreasonably dangerous;
- 4) The (name the product) reached (name of plaintiff) without substantial change in the condition in which it left the possession of (name of defendant);
- 5) (Name of plaintiff/name of deceased) was caused (harm/death) by the defect in the (name the product) and
- 6) There was a safer and practical alternative design that (name of defendant) could have used at the time the (name of product) was manufactured.

Another example of how plain English has improved comprehension levels is the charge on proximate cause. The former instruction read:

The proximate cause of an injury is that cause which in the natural and probable sequence of events, and without the intervention of any new or independent cause, produces the injury and without which such injury would not have occurred.

As written, the Flesch Reading Ease score is 28.7, and the Flesch-Kincaid Grade Level is 19.1, or at a post-graduate level. The same instruction in plain English is now found at APJI-Civil 33.00, and reads:

The cause of harm is that cause that naturally and probably brings about the harm.

The plain English causation instruction scores 73.1 on the Reading Ease Scale, and 6.7 on the Grade Level Scale. The word

“cause” is substituted for “proximate cause,” the duplicative phrase “and without which such injury would not have occurred” is deleted and the poorly-worded definition of intervening cause is removed from the middle of the sentence.

The completed chapters are Contracts, Fraud, Medical Malpractice, Product Liability, and Proximate Cause. The committee is currently working on the plain English revisions to Negligence, Motor Vehicles, Damages and Agency.

Guidelines for writing jury instructions in plain English

When the pattern instructions do not fit the case, trial judges and lawyers will be called upon to write their own jury instructions.²⁶ Some simple guidelines are:

1. Avoid legalese and legal jargon. Don't use the language right out of an appellate decision or statute.²⁷
2. Use short, simple, familiar words.
3. Avoid long, complex sentences. Break long sentences to shorter ones.
4. Use correct spelling, grammar and punctuation.
5. Use the active voice.
6. Use the present tense.
7. Use graphic elements like bulleted lists or numbered steps.
8. Introduce the parties by their names, and tell the jury whether they are the plaintiff or defendant, and thereafter, refer to them by their proper names.
9. Do not instruct the jury on unnecessary issues. A common mistake is including instructions on questions of law which are decided by the trial judge. Avoid instructions about what the law is not.
10. Remember that the intended audience is the jury, not the judge and lawyers.

Conclusion

The committee welcomes comment and corrections on all the pattern instructions. Suggestions and requests for new and additional instructions are also needed.

We would add our voices to those of Judge Vowell and Judge Donaldson and many other authors who have expressed concern that the jury system is compromised when we fail to deliver accurate and understandable instructions to the jury so it may reach a correct verdict. This makes it incumbent upon us to deliver simple and accurate instructions, capable of being understood by the people selected to decide the case. This is the driving force of the “Plain English” Project of the Alabama Pattern Jury Instructions Committee. ■

Endnotes

1. *Order of the Supreme Court of Alabama Approving Use of Alabama Pattern Jury Instructions*, reprinted in *Alabama Pattern Jury Instructions* vii, xvii (2d ed. 1993).
2. For a more detailed history of the APJI Committee, see Bert S. Nettles, *et al*, *APJI's Contributions to the Legal Profession Enrich Law Schools, The Alabama Lawyer* 268 (2000).
3. *Order*, *supra* note 1.
4. *Id*.
5. *Id*.
6. *Wren v. Blackburn*, 293 Ala. 393, 304 So. 2d 187, 193 (1974).
7. *Birmingham-Jefferson County Transit Authority v. Arvan*, 669 So. 2d 825, 829 (Ala. 1995) ("A requested instruction that states an abstract proposition of law without instructing the jury on the effect of the rule on the facts adduced in the trial of the case may be refused without error."). As the court explained in *Grayco Resources Inc. v. Poole*, 500 So. 2d 1030, 1036 (Ala. 1986), "to repeat statutory language is not sufficient unless its meaning and application to the facts are clear without explanation... [A]n academic recitation of the language of a statute without any direction as to how it may be applied to the disputed facts before the jury is too general to furnish guidance to them."
8. *Wren v. Blackburn*, 293 Ala. 393, 304 So. 2d 187, 193 (1974).
9. *Id*.
10. *Id*.
11. *Order*, *supra* note 1.
12. Nancy S. Marder, "Bringing Jury Instructions into the Twenty-First Century," 81 *Notre Dame L. Rev.* 449, 451 (2006).
13. Hon. Scott Donaldson, "Is it Time for the 'Plain English' Jury Charge?," *The Alabama Lawyer* 61, 64 (2005), quoting from Bettina E. Brownstein, "It's Time to Make Jury Instructions Understandable," 37 *Arkansas Lawyer* 24 (2002). See also, Hon. J. Scott Vowell, "Alabama Pattern Jury Instructions: Instructing Juries in Plain Language," 29 *Amer J of Trial Advocacy* 137, 144-45 (2005) ("[A]s more judges give accurate, easily-understood information to juries by using understandable words and phrases, the juries will become increasingly more likely to reach a correct verdict.").
14. Charles M. Cork, "Annual Survey of Georgia Law," 54 *Mercer L. Rev.* 1, 6-7 (2002). The problem with existing jury instructions is multi-faceted. "Many of the words used in a charge are legal jargon, unfamiliar to a jury. Other words are ambiguous, either in general or in the context of other words nearby. Some words are particularly misleading because they are both ambiguous and jargon, as when a common word carries a special legal significance. Sentences are often long and complex, if not convoluted. Many instructions are abstract or overly general, without teaching the jury how to apply them to the case. Many instructions are proposed for a variety of argumentative purposes, such as to suggest that the judge has an opinion about the facts proven or to validate a partisan position. Some instructions present useless information, such as what the law is not. The charge, as a whole, is itself frequently long and complex, often containing disjointed statements of law, conflicting or apparently conflicting principles, and repeated servings of various affronts to ordinary English."
15. Marder at 474-75, *supra* note 12.
16. E.g. Accord and Satisfaction, APJI Civil 2.00; False Imprisonment, APJI Civil 16.00.
17. Bethany K. Dumas, "Symposium: Communicating with Juries: Jury Trials: Lay Jurors, Pattern Jury Instructions and Comprehension Issues," 67 *Tenn. L. Rev.* 701, 701-05 (2000). The introduction of this article lists most of the major social science studies done of jury comprehension, with a brief note on the conclusions of each study. Prof. Dumas lists the major federal and state task force studies at page 709. The task forces have also included recommendations to allow jury note-taking, providing a written copy of the instructions to the jury for use during deliberations, use of multi-media aids and better timing of the final instructions. *Id.* at 711-12.
18. E.g. *Brackett v. Coleman*, 525 So. 2d 1372, 1376 (Ala. 1988) (Jury question about expert witnesses: "How much strength do these three [expert] witnesses' testimony have in saying if the doctor went away from the line?"); *Bains v. Jameson*, 507 So. 2d 504, 507 (Ala. 1987) (Jury question in a motor vehicle negligence case: "What we want to know is if both parties are at fault, both parties were negligent, what would become of it then?"); *Price v. Jacobs*, 387 So. 2d 172, 175 (Ala. 1980) (Jury question in a motor vehicle negligence case: "But there has to be a right or wrong?").
19. E.g. APJI 10A.02 Offer; APJI 10A.03 Acceptance; APJI 10A.04 Consideration; APJI 10A.05 Mutual Assent.
20. E.g. APJI 25.00 Medical Malpractice Elements of Proof (Retitled) (The former instruction included word-for-word the language of § 6-5-548(b) and (c). The committee, in Notes to Form explained: "The revision to the introductory instruction does not include instructions about the necessary qualifications of an expert under § 6-5-548(b) because the trial judge will determine whether the experts are qualified to testify as a matter of law. Ala. R. Evid. 702 Advisory Committee's Notes.").
21. E.g. APJI 32A.00 Products Liability Introduction Multiple Counts; APJI 32A.10 Products Liability Elements- Introduction.
22. Hon. Scott Vowell, *supra* note 13 at pp. 147-48.
23. E.g., in Contracts, compare 10A.13 Action for Breach Elements, the plain English instruction, to 10.12 Action for Breach Elements, the original instruction in the hard-bound volume.
24. Alabama Pattern Jury Instructions Drafting Manual, appendix G.
25. Rudolf Flesch, *How to Write Plain English: A Book for Lawyers and Consumers* (1979).
26. Judge Vowell included excerpts from the drafting rules and Style Manual prepared by the Auburn Business Center in his article, Hon. Scott Vowell, *supra* note 13, pp. 144-45.
27. "It is a mistake to suppose that expressions in judicial opinions, properly there used, can be made to serve as clear, succinct statements of the law in special charges to the jury." *Wear v. Wear*, 76 So. 111, 114 (1916). See also, *Mobile Infirmary v. Eberlein*, 119 So. 2d 8, 15 (Ala. 1960).

Hon. Arthur J. Hanes, Jr.

Judge Arthur J. Hanes, Jr. practices with Dominick, Fletcher, Yeilding, Wood & Lloyd PA in Birmingham. He received his A.B. degree from Princeton University and his J.D. degree from the University of Alabama where he was comment editor of *The Alabama Law Review* and was elected to Farrah Order/Order of the Coif. He continues to serve the university as adjunct professor of law. Judge Hanes was an active trial lawyer for 18 years, and then served 18 years as a circuit judge in Birmingham until his retirement in 2002. He was a member of the Alabama Rules of Evidence drafting committee and the Criminal Code drafting committee, chaired the Alabama Supreme Court Case Management Committee for the 10th Judicial Circuit and presently is chair of the Alabama Pattern Jury Instructions Committee.



Bert S. Nettles

Bert S. Nettles joined Haskell Slaughter Young & Rediker LLC in their Birmingham office in 2003. Nettles was appointed deputy or assistant attorney general by four different Alabama attorneys general. In addition, he has served as counsel to the Alabama Insurance Underwriting Association for over 20 years. A former president of the Alabama Defense Lawyers Association, Nettles has served on the Advisory Committee for the United States Eleventh Circuit Court of Appeals, and was a member of the Alabama legislature from 1969-1974. He is a member of the American Bar Association (chair,

Standing Committee on Legislation, 1978); Alabama State Bar (president, Young Lawyers' Section, 1966-1967; chair, Task Force on Restructuring of Appellate Courts, 1988-1992); Alabama Defense Lawyers Association (president, 1987-1988); Birmingham Bar Association (chair, Continuing Legal Education Committee, 1994); American Law Institute; Defense Research Institute; International Association of Defense Counsel; Alabama Pattern Jury Instructions Committee-Civil, 1991; and Standing Committee on Alabama Rules of Appellate Procedure, 2000.



Leila H. Watson

Leila H. Watson is a shareholder with Cory, Watson, Crowder & DeGaris PC in Birmingham. She graduated from the University of Wisconsin in 1979 and the University of Maryland School of Law in 1983. She is a member of the Alabama State Bar, the Birmingham Bar Association, the Alabama Association for Justice (Executive Committee), the American Association of Justice (Railroad Law Section), and the Alabama Pattern Jury Instructions Drafting Committee.



Alabama Campaign Finance Law

BY EDWARD A. HOSP

There are no campaign finance laws in the State of Alabama. That statement may sound like hyperbole, and perhaps it is slightly overstated. To be sure, there exists an entire chapter in the *Code of Alabama*, titled “The Fair Campaign Practices Act,” that purports to regulate issues related to campaign finance. Additionally, there are code sections or provisions elsewhere in Alabama law, such as in Title 10, and in the Ethics Act (Chapter 25 of Title 36), that make reference to campaign finance. However, to the extent that campaign finance laws are conceptualized as restrictions on the amount of money that can be donated and spent, or concrete requirements to disclose contributions in a manner that allows the general public to know who is supporting a particular candidate, such laws do not exist in Alabama today. Perhaps stated more accurately, the campaign finance laws that do exist are so riddled with holes—some intentional, others no doubt unintended—that they are effectively meaningless. As a result, under current Alabama law, any entity, whether an individual, a political action committee or a

corporation, can legally give any amount of money to any candidate in a manner that makes it nearly impossible to trace.

While this system certainly has its critics, a strong argument can be made that in taking a minimalist approach to campaign finance regulation, Alabama adheres faithfully to the dictates of the First Amendment. And while calls for reform are common, and some opinion polls indicate the public would welcome change, the voters have not demonstrated that this is an issue on which they demand change. Numerous measures have been introduced in the legislature over the past several years without success, and the failure to address these issues has not resulted in any adverse consequences from the voters.

This article sets forth a basic summary of Alabama’s current campaign finance laws and the requirements those laws impose on individuals, candidates, PACs and corporations. The article also examines the various interpretations of those laws and the results that those interpretations have had on campaign finance in Alabama.

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It first may be helpful to divide the subject of campaign finance into several different pieces. Broadly speaking, there are two categories of campaign finance legislation. First, there are restrictive measures that seek to limit what a person or entity can contribute, receive or expend, when contributions can be made, or on what campaign dollars can be spent. These provisions prohibit certain activities, and they are viewed with heightened scrutiny by the courts. Second, there are sunshine-focused measures that attempt to require disclosure of where contributions come from, and on what money has been spent. These provisions do not actually limit activity. Instead, they attempt to require information to be provided to the voters, who then have the option of using it to make a decision about a particular candidate. Disclosure provisions are also viewed with heightened scrutiny, but generally are more likely to be accepted by courts as constitutionally valid. In addition to the different legislative enactments, there are also different entities that must interact with campaign finance laws, specifically individuals, candidates, corporations and political action committees, or PACs. In many instances, the law places different requirements on these entities. Additionally, courts have held that these entities may be entitled to different levels of protections under the First Amendment. Finally, there are different types of elections to which the restrictions apply. Certain contributions or expenditures that are permissible in an issue-based referendum may be prohibited in a race between candidates for an elected office.

The interaction between these areas and entities complicates the issues, and often leads to confusion as to what is permitted. Additionally, the *Code* has been tinkered with several times in the past 15 years, often in reaction to a particular scandal or newly exploited loophole. As a result of the unsettled nature of the field most of the body of law in this area comes from opinions from the Attorney General's office or the Ethics Commission that attempt to clarify particular statutory provisions. In 2002, the Attorney General's Office itself acknowledged Alabama's "piecemeal" approach to campaign finance laws, and indicated that were it writing on a blank slate,

some of the interpretations previously given to provisions might have been rendered differently.¹ Given the reliance by numerous entities on prior opinions, however, the AG wisely thought it best that changes issue from the legislative branch.

Organization Requirements for Political Action Committees

To the extent that Alabama law imposes restrictions on those seeking to play a role in state politics, the registration requirements for all political action committees are arguably the most onerous. All political action committees are required to register with the secretary of state's code section. Because Alabama law defines political action committees very broadly, nearly every combination of two or more people that expends any money in connection with an election is subject to the registration requirements. According to the *Code*, a political action committee is any group or organization that receives contributions or makes expenditures on behalf of any candidate, official, referendum or another political action committee. *Ala. Code* § 17-5-24 (1975). In fact, the definition is so broad that the legislature felt it necessary to expressly state that an individual person who makes a contribution is not a political action committee. *Id.*

The registration requirements for political action committees are set forth at *Ala. Code* § 17-5-5 (1975). A political action committee whose major purpose is to affect elections must file statements of organization within ten days after its creation, or ten days after which it anticipates receiving or expending an excess of \$1,000. The organizational papers must include the address of the committee, the identification of any affiliated organizations, the purpose of the committee, the name of the chairperson and treasurer, the identification of any officers, a description of any constitutional amendments or propositions the committee is

working for or against, and the identity of any candidate it is supporting or opposing, if known. *Ala. Code* § 17-5-5 (1975).

A political action committee must name a chairperson and a treasurer. *Ala. Code* § 17-5-34 (1975). They must have a separate bank account. *Ala. Code* § 17-5-36 (1975). Additionally, a political action committee must “keep a detailed, exact account of” contributions, expenditures and the identification of every person to whom an expenditure is made. *Ala. Code* § 17-5-36 (1975). A receipt must be kept for every expenditure greater than \$0. *Ala. Code* § 17-5-34 (1975).

Case law has relieved organizations that seek to influence the results of referenda or ballot measures (as opposed to candidate elections) and whose primary purpose is not to influence elections, from most of the organizational requirements set forth in § 17-5-5 (1975). *Richey v. Tyson*, 120 F.Supp. 2d 1298 (S.D. Ala. 2000). In *Richey*, the Christian Coalition of Alabama (CCA) sought to have the registration and disclosure provisions declared unconstitutional as applied to it. The court agreed with the CCA as to the registration requirements, finding that they were not narrowly tailored to meet a compelling government interest. However, the court upheld disclosure requirements (discussed below) for issue advocacy so long as the organization expressly advocates the passage or defeat of a particular measure. The *Richey* court did not have before it the question as to whether the registration requirements would be upheld if an organization such as the CCA sought to participate in candidate elections. In general, though, courts have been more willing to let stand laws that impose restrictions on entities participating in candidate elections than those burdening only issue-related measures. The *Richey* court also struck down, as applied to the Christian Coalition of Alabama, the requirements set forth in *Ala. Code* § 17-5-3 and 17-5-6 (1975).² Those sections require the segregation of all political funds and the maintenance of a separate checking account respectively.

Principal campaign committees organized to support a particular candidate differ in few regards from ordinary political action committees. In fact, the *Code* defines a political action committee as

including principal campaign committees. *Ala. Code* § 17-5-24 (1) (1975). Like political action committees, principal campaign committees are required to file organizational papers with the secretary of state. Candidates for office are required to file a statement showing the name of at least two and not more than five individuals serving as the principal campaign committee. *Ala. Code* § 17-5-4 (1975). A candidate may serve as his or her own principal campaign committee and in that case must perform the obligations of both chairman and treasurer set forth in § 17-5-4 (1975).

The statement of organization of a principal campaign committee is required within five days after the person becomes a candidate. A person becomes a candidate once he or she has raised or spent a threshold amount set forth in the *Code*. *Ala. Code* § 17-5-24 (1) (1975). Under this section, then, reporting is required as soon as a candidate for statewide office has either raised or spent \$5,000. *Ala. Code* § 17-5-24 (1) (1975). Candidates for the state senate must file once they have raised or spent \$0. *Ala. Code* § 17-5-24 (1) (1975). Candidates for the Alabama House of Representatives must file once they have raised or spent \$5,000 and candidates for local office must file as soon as they have raised or spent \$1,000. *Ala. Code* § 17-5-24 (1) (1975). Candidates for state judicial offices must file once they have received or spent \$,000. *Ala. Code* § 17-5-24 (1) (1975).

Political Contributions

A. Contributions by Individuals

For the most part, Alabama takes a First Amendment purist’s approach to individual contributions for political purposes. As a result, there are no restrictions on the amount of money that individuals can contribute to candidates or to political action committees. Similarly, there are no limitations on the amount of money that an individual may contribute to influence the result of a referendum or ballot initiative. There are a few minor,

common-sense restrictions on contributions by individuals. For example, the *Code* prohibits individuals from making contributions in another person’s name. *Ala. Code* § 17-5-15 (1975). To allow such contributions would clearly undermine the stated intent of the disclosure provisions of the *Code*. Additionally, § 17-5-7(c) (1975) prohibits an individual from accepting or soliciting a campaign contribution in exchange for official action, in other words as a bribe. This provision roughly parallels a provision in the *Alabama Ethics Code* (*Ala. Code* § 36-25-7 (1975)) which prohibits the receipt, acceptance or solicitation of a thing of value in exchange for official action.

B. Contributions by Corporations

Although the *Code* contains restrictions on the amount that corporations can contribute in order to influence an election, these restrictions have become sufficiently riddled with holes to be of very little practical effect. *Alabama Code* § 10-2A-70.1 and 10-2A-70.2 (1975) restrict corporations to contributions of \$0 to any particular candidate or political committee,⁴ including political parties. The statutes provide that the \$500 restriction applies to each election held in a particular year. Thus, a candidate who is involved in a primary election, a run-off election and a general election can receive \$,500 from any corporation. The corporation can donate the funds before an election, although it is not permissible to include a \$500 donation for elections that a candidate may not be involved in such as a future run-off, which might not be necessary, or a future general election, in which a losing primary candidate will not participate. Alternatively, the corporation may wait and donate \$0 per election to a candidate after the elections have concluded. Attorney General Opinion 99-255. As pointed out, *infra*, though, in order to donate to a candidate after a general election, that candidate must carry on his or her books a debt.

The interpretation of the \$500 restriction as it applies to corporate contributions to non-candidate political committees is even more generous, though. Corporations may contribute \$500 to a political committee for each election held

during a particular year. See Attorney General Opinion 99-255. Every year in Alabama, there are numerous elections—the great majority of which are local, and only have an impact on a very small part of the state. For example, in 2006 the secretary of state certified that there were 21 elections. Thus, for 2006 a corporation could make a donation of \$500 to any political committee. In 2007, the secretary of state certified that there were 32 elections for the purposes of corporate contributions to political committees which would have allowed corporate contributions of as much as \$6,000 to a PAC for 2007.

Additionally, there is no limitation on the number of political committees to which the corporation can donate. Attorney General Opinion 91-135. As stated by the attorney general's office, "[a] corporation may contribute \$500 for each separate election occurring in a given calendar year to as many political committees as it chooses." Attorney General Opinion 90-78. In other words, in 2006 a corporation could make a \$500 donation to as many political committees as it saw fit. As noted above, there is no requirement that corporate contributions be made prior to any particular election, nor is there a requirement that the contributions be spent in the same year that they were made. Attorney General Opinion 90-78.

These "restrictions" apply solely to candidate elections. Pursuant to United States Supreme Court decisions interpreting the First Amendment, as those decisions have been interpreted by the attorney general's office, there are no limitations at all on corporation contributions for issue-related referenda. Thus, corporations may participate fully—including the use of corporate funds—in elections relating to issues such as taxes, so long as it discloses its expenditures.

In addition to participating through contributions, a corporation is also allowed to establish a political action committee of its own, although interestingly it may not donate corporate funds to its own committee. *Ala. Code* § 17-5-14 (1975). As stated in the *Code*,

Notwithstanding the provisions of this section, it shall not be unlawful for any business or nonprofit corporation, incorporated under the laws

of or doing business in this state . . . to give, pay, expend or contribute money, services or anything of value for the purposes of establishing, administering or soliciting voluntary contributions to a separate, segregated fund to be utilized for political purposes as permitted by Section 10-1-2. Provided that no corporate funds will be a part of such segregated fund.

Ala. Code § 10-2A-70 (1975). Thus, a corporation may establish and operate a political action committee, and may pay the expenses necessary to organize and administer that PAC, so long as corporate funds are not placed in the PAC.

C. Contributions by PACs

There are no restrictions on the amount of money that political action committees can contribute to candidates' principal campaign committees or to other political action committees (PAC-to-PAC transfers). Additionally, and perhaps more importantly, the earmarking of contributions made to PACs by an individual for particular candidates is not prohibited. Attorney General Opinion 91-135. In other words, it is permissible for an individual to make a \$1,000 (or any amount) donation to a political action committee with the express instruction that the political action committee transfer that same amount to a particular candidate. Earmarking plays an especially important role in the utilization of PAC-to-PAC transfers to render contributions virtually anonymous, as discussed below in detail.

D. Timing Restrictions

Candidates may begin raising money for an election 12 months prior to election day. *Ala. Code* § 17-5-7(b) (1975). So, for example, candidates planning to run in the June 6, 2006 primaries could begin raising money June 6, 2005. Candidates for state office, including all constitutional offices and state legislative seats, are prohibited from soliciting or accepting contributions while the state legislature is in session. *Ala. Code* § 17-5-7(b) (1975). However, this prohibition on fundraising has an exception of its own that allows fundraising within 120

days of an election. Thus, in 2006, candidates for statewide office and legislative seats were required to cease fundraising on Tuesday, January 10 when the regular legislative session began. They could recommence fundraising on February 6, 2006, the date on which the June primary election was within 120 days. Therefore, the effect of the "ban" on fundraising during the legislative session was to eliminate 27 days during which candidates could ask for or receive money. Note also that informal opinions from the attorney general and secretary of state have indicated that the exemption from the fundraising ban while the legislature is in session also applies to post-election contributions to retire debt. Thus, during the legislature's organizational session in January 2006, candidates from the November 2006 election were permitted to raise funds to retire campaign debt.

Further, the prohibition on fundraising while the legislature is in session does not prohibit a candidate from making a loan to himself or herself. *Ala. Code* § 17-5-7(b) (1975). Thus, a candidate could loan himself or herself funds during the 27-day black-out period in 2006 and then hold fundraisers once the election was less than 120 days away in order to retire that debt. Moreover, the ban on fundraising during the legislative session does not apply to PACs. Thus, a PAC can hold a fundraiser during the 27-day blackout and donate that money to a candidate once the blackout ended.

Finally, the restriction on fundraising while the legislature is in session applies only to candidates for state office and not to candidates for other offices—even if the candidate herself is a member of the legislature. Thus, an Alabama legislator running for the U.S. Congress or the county commission is not affected by the ban on fundraising while the legislature meets. Attorney General Opinions 2002-40, 2003-88.

Funds may also be raised for 120 days after an election, but only to the extent that the campaign carries a debt, plus the threshold amount at which reporting is required under the *Code*. *Ala. Code* § 17-5-7(b) (1975). The threshold amounts at which reporting is required are set forth above. For example, the threshold amount for reporting for candidates for statewide office is \$25,000. Thus, a successful candidate for lieutenant governor

is permitted to raise the amount of his or her debt *plus* an additional \$5,000

The attorney general's office has opined that any debt, even debt that is incurred after the election, can be retired through contributions that are solicited and accepted in the 120-day post-election window. Attorney General Opinion 99-90. More important, there is no requirement that a candidate use cash on hand following an election to retire debt. *Id.*; see also Attorney General Opinion 99-61. Thus, for example, a candidate who concludes the race with more money in the bank than his or her existing debt is not prohibited from raising additional funds.

The 120-day limitation on raising funds after an election appears to be absolute, even if insufficient funds are raised to satisfy outstanding debt. Attorney General Opinion 99-115. Thus, an entity loaning money to a candidate stands to be left without any recourse if the candidate cannot raise the needed funds within the 120-day time period. This has been acknowledged by the attorney general to be "a harsh result for creditors." *Id.* One

possible remedy, under the limited fact circumstances noted in Opinion 98-115, could be the creation of a new principal campaign committee by the candidate for a subsequent election. The debt from the prior committee can be assumed by the second committee, and the first committee can be dissolved. *Id.* The new committee could raise funds to retire the assumed debt beginning 12 months prior to the next election.

Unlike candidates, PACs are not restricted from raising money at any particular time. Thus, a political action committee can raise money at any time of the year, and without respect to whether the legislature is in session. Funds raised by political action committees when candidates are prohibited from raising money can be transferred to principal campaign committees at a later date. In other words, a PAC can solicit and receive money more than 12 months prior to an election, or when the legislature is in session and then later transfer those funds to a candidate when contributions to candidates are permitted.

Expenditures

A. Regular Expenditures

Most obviously, campaign contributions may be made for the necessary and ordinary expenditures of the campaign. *Ala. Code* § 17-5-74 (1) (1975). Unlike laws relating to contributions, which have some restrictions on timing, expenditures can be made at any time, without regard to when an election is or whether the legislature is in session.

Following a campaign, excess funds also may be transferred to other political action committees and they may be used for inaugural or transition expenses. Campaign contributions and contributions to an inaugural fund cannot be converted to personal use. *Ala. Code* § 36-25-6 (1975). This was not always the case. In fact, in 1991, the attorney general's office issued an opinion that specifically stated that excess campaign funds could be converted to personal use. Attorney General Opinion 91-196. This



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interpretation was overruled by the Alabama courts in the course of Governor Guy Hunt's prosecution.

B. Extraordinary Expenditures

1. LEGAL EXPENSES

Legal expenses may, under certain circumstances, be paid for from excess campaign funds. See Attorney General Opinion 98-7; Attorney General Opinion 20 165. In fact, the *Code* specifically allows the use of campaign funds for expenses related to an election challenge. *Ala. Code* § 17-5-76(4) (1975). The allowable expenses include attorneys' fees. *E.g.*, Attorney General Opinion 98-7. Additionally, attorneys' fees associated with the defense of a criminal indictment of an officeholder may be paid with campaign funds so long as "the conduct involved in the criminal prosecution is conduct related to the performance of the duties of the office." Attorney General Opinion 20 165. Clearly this creates a grey area, as actual criminal conduct by an officeholder likely would be considered as outside the scope of his or her duties. There also may be some question as to whether *new* campaign contributions could be used to pay the legal defense costs associated with a prior office. As noted below, however, public officials are also permitted to establish a separate legal defense fund, and contributions to such a fund would not fall under the Fair Campaign Practice Act. Attorney General Opinion 98-10

2. OFFICE-RELATED EXPENSES

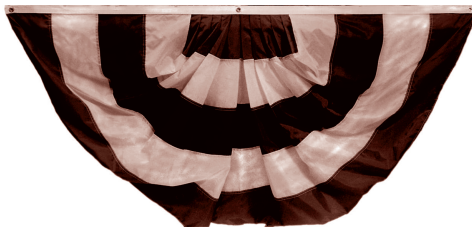
In general, excess campaign funds can be spent in connection with the office the candidate has assumed. *Ala. Code* § 17-5-76(2) (1975). However, the *Code* specifically does not allow the payment of the living expenses of a legislator—presumably rent and meals while in Montgomery. It does allow a new officeholder to purchase items such as computers and office furniture, so long as the purchase is for use in connection with the public office. Attorney General Opinion 200 16.

3. CHARITABLE CONTRIBUTIONS

The *Code* specifically allows excess campaign funds to be donated to the state's General or Education Trust funds.

Ala. Code § 17-5-76(3) (1975). It also allows the funds to be transferred to charities, including, for example, the church the candidate attends. Attorney General Opinion 2005-62. Note, however, that contributions of excess campaign funds to a charity on which the official of a family member sits as a board member or a director likely runs afoul of the state's ethics laws. Ethics Opinion 2005-15.

a. . . If funds raised by a candidate, including those raised after the election to retire debt, must be reported.



Disclosure Requirements

A. Candidates and Political Action Committees

Political action committees, including principal campaign committees, must file a report with the secretary of state 45 days prior to an election. They must also file a report at some point not more than ten days and not fewer than five days prior to an election. In addition to these two reporting requirements, each political action committee, including principal campaign committees, must report annually on January 31st. *Ala. Code* § 17-5-8 (1975).

The report must include the identification of who has made contributions within the reporting period, in an aggregate amount of greater than \$100. *Ala. Code* § 17-5-8(2) (1975). It also must report any loans and any expenditures. Further, it must report each person to whom expenditures have been made in excess of \$100. *Ala. Code* § 17-5-8(7) (1975). These reports are filed with the secretary of state for candidates for state offices and with the judge of probate for local offices and local elected officials. Political action committees that are not limited to influencing elections in a single county file with the secretary of state. *Ala. Code* § 17-5-9(b) (1975). The records are considered public records. *Ala. Code* § 17-5-10 (1975).

Contributions made to the legal defense fund of a candidate or elected official are not subject to the Fair Campaign Practices Act, and therefore need not be disclosed. Attorney General Opinion 98-10. There may be some question as to whether such contributions, depending upon how they are solicited, violate the Ethics Act. *Id.* For example, the state Ethics Act specifically prohibits a public official from asking for anything from a lobbyist other than a campaign contribution. *Ala. Code* § 36-25-23 (1975). The Ethics Act also prohibits the use of one's public office for personal gain, and opinions issued by the Ethics Commission seem to indicate that the solicitation of non-campaign contributions from individuals within an official's "sphere of influence" could be a violation of the law. *Ala. Code* 36-25-5 (1975).

As noted previously, campaigns are allowed to incur debt related to the campaign, and they may raise money for 120 days after the election in order to retire that debt. Interestingly, the attorney general's office opined in 1990 that money raised to retire debt, if raised after the conclusion of the election, need not be reported. Attorney General Opinion 90-221. The reasoning in the opinion was that the law required the reporting of contributions and expenditures during a particular year. *Ala. Code* § 17-5-8 (1975). However, "contributions" are defined as payments "made for the purpose of influencing the result of an election." *Ala. Code* § 17-5-24(2)(a) (1975). Money raised after an election has already been held, the opinion reasoned,

was not raised to be “spent to influence an election” and therefore did not need to be reported. Recall that a campaign “debt” need exist only on paper to allow a candidate to continue raising money after election day. As a result, Opinion 90 221 exposed a significant loophole in the law which would allow large sums of unreported money to be raised after an election. That loophole was closed, though, in the mid-1990 through amendments to the Ethics Act and the Fair Campaign Practices Act. In 1996, Attorney General Opinion 96-120 stated that all funds raised by a candidate, including those raised after the election to retire debt, must be reported. *Id.* The 1996 opinion was based on language contained in new *Code* section 36-25-64) contained in the Ethics Act, which was added in 1995. That section specifically stated that candidates could “only accept, solicit, or receive contributions . . . to influence the outcome of an election . . .” According to the AG, therefore, under new *Code* section 36-25-64) any contribution received by a candidate’s principal campaign committee was, by definition,

for the purpose of influencing an election and therefore was a “contribution” that must be disclosed. In 1997 the legislature again amended the Ethics Act, and deleted subsection 6) of § 36-25-6, however it also placed that language in *Code* section 17-5-7b(1). Thus, the rationale for Attorney General Opinion 96-120 remains valid, and post-election contributions raised to retire campaign debt must be reported under the Fair Campaign Practices Act.

B. Consequences for Failure to Comply

For many years now, the failure to file a campaign finance report as required under the FCPA prior to the date of the election would result in the candidate’s disqualification. Thus, a candidate who files her report on election day will be disqualified. Attorney General opinions 20- 125; 20- 20. In contrast, if a candidate merely files her report late, but even one day prior to the election, the penalty is simply a \$1,000 fine. The date of filing is the date a report is actually

received in the secretary of state’s office, unless it is sent by certified mail, in which case a report is timely filed no matter when it is received as long as it was sent at least two days before the deadline.

In recent months, though, the consequences for the failure to comply with the disclosure provisions of the FCPA have become a hot topic, as a result of a series of lawsuits seeking to disqualify as many as nine state senators and 59 state house members from serving. Those lawsuits were consolidated before the Honorable Charles Price in Montgomery and then later un-consolidated. As of the date of submission, the lawsuits are pending in Montgomery Circuit Court. At issue in those cases are the proper consequences for the failure of an unopposed candidate to report contributions and expenditures pursuant to the deadlines set forth in the FCPA. Prior to 2006, in part as a result of a 1990 attorney general’s opinion, the standard practice was for unopposed candidates not to file campaign finance reports during the course of the election year. However, as

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campaigns for the state legislature became increasingly acrimonious, and as unopposed members sought to influence the outcome of their colleagues' races (both for and against) money raised by unopposed candidates has regularly found its way into the campaigns of others. In September 2006, the attorney general issued a clarifying opinion on this subject. Attorney General Opinion 20-142. In that opinion, the AG made it clear that any candidate who receives contributions or makes expenditures that are intended to influence an election (whether the candidate's or someone else's) must file the reports set forth in the Fair Campaign Practices Act. This result, which the AG indicated would only be applied prospectively, also could have been reached by applying the definition of a political action committee to principal campaign committees, and noting that all political action committees that expend in excess of \$5,000 to influence any election are required to meet the filing requirements of the FCPA. However, the impact is the same, and unopposed candidates who expend money on other races are now required to disclose their contributions and expenditures.

C. PAC-to-PAC Transfers

No issue is cited more often by critics as demonstrating a need for campaign finance reform in Alabama than PAC-to-PAC transfers. As noted above, PACs, for the most part, are unrestricted in Alabama. There is no limit to the amount of money that a PAC can receive from any individual—or from any other PAC. Additionally, because corporate contributions can be aggregated—allowing \$500 to be given to numerous PACs for every election in a particular year—there are only minor limits on corporate contributions. There also are no limitations on the number of PACs any one person can create. In April 2006, *Birmingham News* reporters Brett Blackledge and Tom Gordon wrote several pieces admirably setting forth these issues and the potential problems they cause, but some hypotheticals may assist in understanding the impact of PAC-to-PAC transfers on the information that is available to the public. For example, assume that a particularly controversial individual wanted to

give \$500,000 to a candidate, but was concerned that such a donation, if known, would make an effective advertisement against her candidate. In order to make disclosure more difficult, that person could split the donation into 50 \$10,000 checks and give one check to each of 50 different PACs. That individual also could legally earmark her donations specifically directing each of those PACs to send the contribution to the candidate. The candidate then must report the 50 different \$10,000 donations as having come from the PACs. Additionally, the PACs must report the \$10,000 contributions, but in order to determine the original source of the money, and where it ends up, it takes a second step of unwinding and, in some instances, speculating.⁴

As another example, if a corporation sought to influence the election of a particular candidate, it could legally give \$500 to each of ten PACs, all controlled by the same individual. That person could then turn around and transfer all of that money to the candidate's principal campaign committee, and \$5,000 in legal corporate campaign contributions would have been made in a state that purports to limit corporate contributions to \$500 per election. It must be noted that there is language in an AG opinion from 1990 that indicates that in the corporate context, specifically earmarking the \$10,500 contributions for a particular candidate would violate the \$500 contribution limitation. A specific instruction that aggregated corporate contributions be sent to a particular candidate therefore is likely to be found to be illegal.

The examples given above are actually more simple than what plays out in real life. The money given by the controversial individual or the corporation can be run through several PACs before reaching a candidate, and the checks are written and deposited on different days and for different amounts. As a result, when reports are filed, many contributions are essentially anonymous.

Conclusion

As noted previously, numerous campaign finance proposals have been introduced in each of the last several sessions of the Alabama legislature. A proposed

ban on PAC-to-PAC transfers has been introduced by Representative Jeff McGlaughlin in every regular session of the legislature since at least 2001—so far back as the records are maintained on the Alabama legislature's Web site. That measure has passed the house of representatives in every year—including 2007. However, such proposals thus far have failed to generate sufficient momentum result in their adoption. Given the current state of the law, the trend toward criminal investigations of campaign fundraising, and the ever-increasing importance of money in politics, this area is almost certain to generate more headlines, and further attempts at reform. Attorneys advising clients on campaign spending should generally proceed with extreme caution, and in many instances, consult with the attorney general's office and the secretary of state prior to rendering an opinion. ■

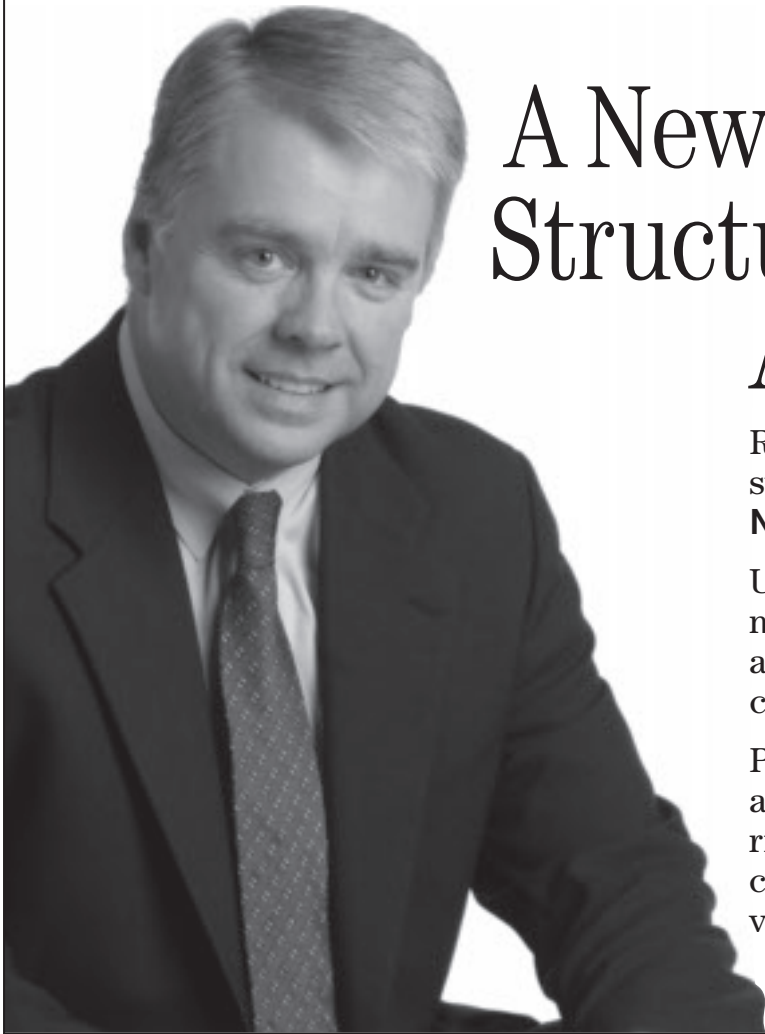
Endnotes

1. Attorney General Opinion 99-255.
2. At the time, the Fair Campaign Practices Act was contained in Chapter 22A of Title 17. In 2006, the *Code* was reorganized such that the FCPA now appears in Chapter 5 of Title 17.
3. Until 2006, the FCPA used the term "political committee" rather than the more common "political action committee." This was changed in 2006, however, Title 10 of the *Code* was not amended and still contains the prior reference to "political committee."
4. The author has no intent to criticize the individuals and groups who are simply operating within the system and rules that have been created. This piece is intended only to describe the current system and illustrate what is permitted. That said, in advising clients, attorneys should approach these issues and practices with extreme caution. Violations of many of the provisions discussed herein are criminal in nature (in some instances felonies), and carry with them the possibility of prison sentences.



Edward A. Hosp

Edward A. Hosp is a shareholder in the Birmingham office of Maynard, Cooper & Gale PC. He received his J.D., *cum laude*, from Fordham Law School in 1994. Following law school, he served as law clerk to the Honorable Harold Albritton, United States District Judge for the Middle District of Alabama.



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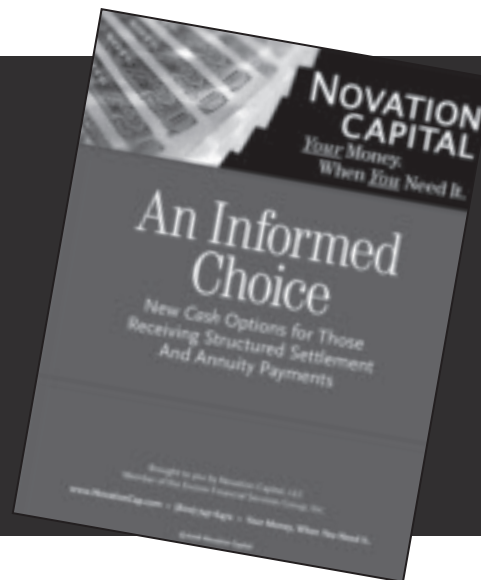
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Judicial Independence and the Lesson of History

BY JUDGE WILLIAM H. PRYOR, JR.

Talk of judicial independence is all the rage. In recent years, leaders of the bench and bar have decried what they describe as unprecedented assaults on the independence of the federal judiciary. The most prominent leader of this chorus has been a distinguished American and public servant, retired Associate Justice Sandra Day O'Connor. At the annual meeting of the American Law Institute in May of last year, Justice O'Connor thanked the Institute for its defense of judicial independence, which she described as under "the most serious attack" in her lifetime.¹ On September 27, 2006, in an op-ed entitled, "The Threat to Judicial Independence," published in *The Wall Street Journal*, Justice O'Connor stated that "the breadth and intensity of rage currently being leveled at the judiciary may be unmatched in American history."² The next day, at a conference jointly sponsored by the Georgetown University Law Center and the American Law Institute, Justice O'Connor complained of the "common mantra" about "activist judges" and "a level of unhappiness today that perhaps is greater than in the past and is certainly cause for great concern."³

Other leaders of the bench and bar also recently have complained of attacks on

judicial independence. Michael Greco, president of the American Bar Association two years ago, addressed the House of Delegates of that association, and declared, "Ironically, while American lawyers—and the American Bar Association—are helping to build independent judicial systems in emerging democracies around the world, our own courts are under unprecedented attack. They are being threatened by extremists, who would tear down our courts for political, financial or other gain."⁴ Last year, Michael Traynor, president of The American Law Institute, wrote in a letter to the membership, "Judicial independence is especially important today because the judiciary and the rule of law are under relentless and severe attacks from various quarters."⁵

I respectfully disagree with the conventional wisdom of the bench and bar. I submit that the independence of the federal judiciary today is as secure as ever. The current criticisms of the judiciary are relatively mild and, on balance, a benefit to the judiciary.

I do not mean to suggest that judicial independence is unimportant. It is indispensable to the rule of law. Thomas Paine explained in *Common Sense*, "[i]n absolute governments the king is law,"

but "[i]n America the law is king."⁶ Judicial independence is now and has always been the primary reason that in America the law is king. The phrase "a government of laws and not of men" is derived from a guarantee of the separation of powers,⁷ which includes an independent judiciary to apply the law. It is right and proper for judges and lawyers to speak often in defense of judicial independence, but talk alone is cheap.

I offer a proposal for maintaining judicial independence. A review of the history of the federal judiciary suggests that there is a tested method of defending our independence: that is, to respect the limits of our authority. From the beginning of this great republic, the federal judiciary, during its most challenging periods, wisely has acted with restraint. When we consider how best to maintain judicial independence, now and in the future, we can learn a lot from history.

To that end, I will address two matters. First, I will address the original understanding of American judicial independence. Second, I will address three moments in American history when the independence of the federal judiciary was seriously challenged and the lesson to be learned from those moments.

The Original Understanding of Judicial Independence

Americans recognized the need for judicial independence from the beginning of our nation. Two of the grievances against King George listed in the Declaration of Independence involved the absence of judicial independence in colonial America. The Declaration charged that the king had “obstructed the Administration of Justice, by refusing his Assent to laws for establishing Judiciary Powers,” and had “made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries.”⁸

At the Constitutional Convention, the Framers widely agreed that our federal government required a judiciary independent of the other branches, and they provided three guarantees for that independence in the first section of Article III. First, the Framers vested the entire judicial power in the federal judiciary.⁹ Second, they provided that judges would have life tenure or, as the Constitution states, tenure “during good behavior.”¹⁰ Third, they provided that the compensation of judges “shall not be diminished during their continuance in office.”¹¹

The Framers believed in judicial independence but not in the literal sense of the word “independent.” The Framers expected the judiciary to be accountable to the people. Judges would be appointed by the President with the advice and consent of the Senate.¹² Judges would be subject to impeachment.¹³ Judges would be bound by oath or affirmation to support the Constitution.¹⁴

Judicial independence, as originally understood and as understood today, refers to two kinds of independence, one strong and the other weak. The first is decisional independence, that is, the ability of an individual judge to decide each case fairly and impartially based on the facts and law.¹⁵ The second is institutional independence, that is, the ability of the judiciary, as a separate branch, to protect its “institutional integrity.”¹⁶ The structure of the Constitution provides strong protections for the decisional independence of the judiciary but weak protections for its institutional independence. As scholars have described this arrangement, we have both “independent judges” and a “dependent judiciary.”¹⁷

This design was explained during the ratification debates by the most eloquent defender of judicial independence: the original Wall Street lawyer, Alexander Hamilton.¹⁸ In *Federalist No. 78*, Hamilton explained the tie between strong decisional independence and judicial review.¹⁹ Hamilton described life tenure as the foremost guarantee of decisional independence²⁰ and protection from cuts in pay as a close second.²¹ When the Anti-Federalists argued that the federal judiciary would be too independent, Hamilton responded that the judiciary would be institutionally weak: the “least dangerous” branch because it “has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society.”²²

We are all familiar with those words from the *Federalist Papers*, but what about Hamilton’s argument in *No. 81* regarding the ultimate check of judicial abuse? Hamilton argued that

Americans could rest assured that the judiciary would not abuse its power because Congress retained the check of impeachment. He wrote, “There never can be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body intrusted with it, while this body was possessed of the means of punishing their presumption, by degrading them from their stations.”²³ I will return to that subject in a moment.

Historical Challenges to Independence and the Lesson of Restraint

After this auspicious beginning, there have been at least three periods of serious challenges to the independence of the judiciary, two in the 19th century and one in the 20th century. The first came during the advent of the administration of Thomas Jefferson. The second came during Reconstruction. The third came during the New Deal period. Each period of challenge was marked with restraint by the judiciary followed by increased respect for its independence.

A. The Jeffersonian Challenge

When Thomas Jefferson and his political party wrested control of both the presidency and Congress, the losing Federalists, during their lame duck session, passed the Judiciary Act of 1801, which created 16 new circuit judgeships and several justices of the peace.²⁴ In the final weeks of his administration, President Adams nominated and the Senate confirmed Federalists to fill the new offices, and in the final hours Adams signed the commissions for the new officers, the so-called midnight judges.²⁵ “[S]ome of the commissions, including that of William Marbury, were not delivered before Adams’ term expired, and the new President refused to honor those appointments.”²⁶

When the Jeffersonian Republicans came to power, they proceeded to undo the work of the Federalists.²⁷ The Jeffersonians repealed the Judiciary Act, abolished the new circuit judgeships and cancelled the June and December terms of the Supreme Court.²⁸ As every law student learns, William Marbury then sued Jefferson’s Secretary of State, James Madison, by filing a petition for a writ of mandamus in the Supreme Court.²⁹ Most scholars believe the Jefferson administration would not have obeyed an order to deliver Marbury’s commission.³⁰

The Supreme Court responded to this controversy with the most celebrated decision in the history of American law, *Marbury v. Madison*,³¹ and that decision was a model of restraint that would help set the stage for the judiciary to weather a dangerous challenge from the Jeffersonians. Rather than order the delivery of the commission, the Court dismissed Marbury’s petition. Before reaching its decision, the Court explained that it would not review any political judgment of the executive, but limit itself to questions of law.³² The Court ruled that the purported grant of original jurisdiction for the Supreme Court to issue the writ was unconstitutional,

because Article III defined and limited the original jurisdiction of the Court. With Chief Justice Marshall writing, the Court, in what some have described as a “political masterstroke,”³³ defended the doctrine of judicial review, declared an act of Congress unconstitutional and avoided a confrontation with the Jeffersonians. A week later, the Court continued its restraint, when it decided *Stuart v. Laird*³⁴ and refused to declare unconstitutional the repeal of the Judiciary Act of 1801, which abolished the new judgeships.

Following these decisions, a dangerous challenge to the judiciary arose on the front that Hamilton had addressed in *Federalist No. 81*: impeachment. In March 1803, the Jeffersonians impeached “a mentally deranged and frequently intoxicated federal district judge in New Hampshire,”³⁵ John Pickering. As the late Chief Justice Rehnquist stated, “There was no question that Pickering was a disgrace to the judiciary and should have resigned,”³⁶ and a year later, the Senate convicted Pickering on a party line vote.³⁷ That same day, the House voted to impeach an associate justice of the Supreme Court, Samuel Chase.³⁸

The charges against Chase concerned his performance of his judicial duties in charging a grand jury and presiding over two trials.³⁹ The House of Representatives charged Chase with using his position to make political speeches and conducting trials as partisan affairs.⁴⁰ The impeachment trial of Chase occurred a year later,

and the evidence of grave misconduct was weak.⁴¹ Had the senators voted along party lines, Chase would have been convicted, but the Senate failed to convict him. As Chief Justice Rehnquist described the conclusion, “It represented a judgment that impeachment should not be used to remove a judge for conduct in the exercise of his judicial duties. The political precedent set by Chase’s acquittal has governed that day to this: a judge’s *judicial* acts may not serve as a basis for impeachment.”⁴² But there was another conclusion of the Chase affair too: The Jeffersonians “successfully made their point, ‘changing expectations of what constituted proper judicial behavior, thereby excluding overt partisan political activity.’”⁴³

Although I do not propose that the senators at the trial of Justice Chase considered the rulings of the Supreme Court in either *Marbury v. Madison* or *Stuart v. Laird* to be a basis for avoiding an escalation of conflict between the branches, I submit that the earlier restraint of the judiciary avoided a worsening of branch relations that could have led to an ominous result in the later trial of Justice Chase. Consider two questions that by necessity are hypothetical: First, what if the Supreme Court in *Marbury* had ruled that Madison was obliged to deliver the commission? Second, what if the Court in *Stuart* had declared the repeal of the Judiciary Act unconstitutional? We will never know the answers to those questions because the Court acted with restraint.



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B. The Reconstruction Challenge

The second period of challenge came during Reconstruction. As a result of the infamous decision of the Supreme Court in *Dred Scott v. Sandford*,⁴⁴ which had declared the Missouri Compromise unconstitutional, the radical Republicans in Congress after the Civil War looked with disdain on the Supreme Court.⁴⁵ That disdain was understandable; *Dred Scott* was not marked by restraint. The Court had exercised jurisdiction, contrary to its precedent with nearly identical facts in *Strader v. Graham*,⁴⁶ and invoked, for the first time, the notion of substantive due process to declare a federal law unconstitutional.

In 1867, a newspaper editor from Vicksburg, Mississippi, William McCordle, was jailed awaiting trial by a military tribunal on charges of inciting insurrection and impeding Reconstruction.⁴⁷ McCordle filed a petition for a writ of habeas corpus in a federal court, which denied him relief. McCordle then appealed to the Supreme Court.⁴⁸ Some believed that the Supreme Court intended to rule that the Reconstruction Acts were unconstitutional.⁴⁹ After the appeal had been orally argued, Congress overrode a presidential veto and repealed the statute that granted the appellate jurisdiction of the Supreme Court to hear McCordle's request for habeas relief.⁵⁰ The Court delayed its decision pending the legislation and then dismissed the appeal for lack of jurisdiction.⁵¹ The Court based its unanimous decision on the express authority of Congress, in Article III, section 2, of the Constitution to make exceptions to the appellate jurisdiction of the Court.⁵² In contrast with *Dred Scott*, the Court in *McCordle* acted with restraint.

That restraint was rewarded. As Charles Gardner Geyh has written, "The Reconstruction-era Congress had a vested interest in preserving and promoting a strong, stable, and expanded federal judiciary that would enforce the statutes that Congress enacted in the teeth of regional resistance."⁵³ The same year that the Court dismissed McCordle's appeal, Congress enacted legislation that "established nine circuit judgeships, added one justice to the Supreme Court, and reduced the circuit-riding responsibilities of Supreme Court justices to one tour of duty every two years."⁵⁴

Again I do not say that this was an instance of cause and effect. My point is that, had the Court acted without restraint, the consequences could have been severe. Judicial independence almost surely would have suffered.

C. The New Deal Challenge

The final challenge came during the 20th century and specifically the New Deal era. At the beginning of his second term, President Franklin Roosevelt was frustrated with the Supreme Court, which had declared major laws of the New Deal unconstitutional.⁵⁵ "On the disingenuous pretext that many federal judges were old and falling behind in their work, Roosevelt settled on a proposal originally developed in 1913 by then attorney general James McReynolds, who, a quarter of a century later, as an aging Supreme Court justice who often voted against New Deal legislation, would be hoisted on the petard of his own invention," as Charles Geyh has described it.⁵⁶ Roosevelt proposed adding a justice to the Supreme Court for every member over 70 years old, which would bring the total on the Court to 15, and was dubbed the "court-packing" plan.⁵⁷ Rehnquist has written, "The proposal astounded the Democratic leadership in Congress and the nation as a whole."⁵⁸

While the court-packing legislation was pending in Congress, the Court decided two cases, *National Labor Relations Board v. Jones & Laughlin Steel Corp.*⁵⁹ and *West Coast Hotel Co. v. Parrish*,⁶⁰ and, in each case, upheld economic legislation. The former decision upheld the Wagner Act based on a broad understanding of the power of Congress to regulate interstate commerce, and the latter decision upheld a state minimum wage law against a complaint that the law violated freedom of contract. Associate Justice Owen Roberts, who had voted in earlier cases with the *laissez-faire* wing of the Court to declare parts of the New Deal unconstitutional, voted in each case to uphold the law.⁶¹ Following these decisions and the announcement of the retirement of Justice Van Devanter, the court-packing legislation failed.⁶²

Justice Roberts's vote to uphold the economic legislation was called "the switch in time that saved nine."⁶³ What was publicly unknown then but is known now is that Justice Roberts, following the oral arguments in the *Parrish* case in 1936, had already voted with the majority to overrule the precedent on freedom of contract and uphold the state minimum wage law.⁶⁴ That decision of restraint had been made even before President Roosevelt proposed the court-packing legislation in 1937.

D. The Lesson of Restraint

One lesson from these episodes in legal history is that the judiciary has a responsibility to safeguard its own independence by being cautious about the exercise of its jurisdiction and power. The judiciary must not abdicate its duty, but not every controversy requires a judicial resolution or trumping of the will of the majority. The judiciary also has a responsibility occasionally to reconsider the correctness of its own rulings and its relationship with its coequal branches. There will always be times when the law and constitutional duty require the judiciary to issue an unpopular ruling, but the exercise of prudence and restraint, as a matter of course, will enhance the general reputation of the judiciary and enable it to weather those difficult storms.

In each of these episodes, the Supreme Court reached defensible rulings, as a matter of law, but in each episode, the Court had the discretion to decide its cases in a different manner. The Jeffersonians learned, for example, that "the principle of judicial

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review of acts of Congress, as Marshall described it in *Marbury*, was not at odds with the limited government persuasion of the Jeffersonian Republican Party.⁶⁵ The *McCardle* Court did not have to wait a year to allow Congress to repeal its grant of appellate jurisdiction.⁶⁶ While the court-packing legislation was pending, Justice Roberts could have declined to reconsider his adherence to *stare decisis*. But in each instance, the Court resisted the temptation to exercise its power and instead respected the provinces of the political branches.

Conclusion

For those who are concerned today about judicial independence, history suggests that we have an opportunity to do something about it, besides complain. It is not too much for judges to look in the mirror and ask whether some criticisms are fair. As Justice Harlan explained in his famous dissent in *Plessy v. Ferguson*, “[T]he courts best discharge their duty by executing the will of the lawmaking power, constitutionally expressed, leaving the results of legislation to be dealt with by the people through their representatives.”⁶⁷ Perhaps, even today, we sometimes fail in that limited and critical duty. Alexander Hamilton explained in *Federalist No. 78* that judges exercise “neither force nor will, but merely judgment.”⁶⁸ Hamilton’s point was that we must depend on the persuasiveness of our written opinions to command the respect of our fellow citizens. In that way, we have the foremost responsibility of safeguarding our independence. ■

Endnotes

1. Sandra Day O’Connor, Remarks at Ceremony for the Honorable Sandra Day O’Connor (May 17, 2006), in 83 *The American Law Institute, Remarks and Addresses at the 83d ANNUAL MEETING*, May 15-17, 2006, at 53, 64 (2006).
2. Sandra Day O’Connor, Op-Ed, “The Threat to Judicial Independence,” *THE WALL ST. J.*, Sept. 27, 2006, at A18; see also Ruth Walker, “O’Connor Assails ‘Pervasive Attacks’ on Judges and Judicial Independence,” *HARV. L. TODAY*, Feb. 2007, at 1.
Remarks of Sandra Day O’Connor, Remarks at the Georgetown University Law Center and The American Law Institute Fair and Independent Courts: A Conference on the State of the Judiciary, Geo. Univ. L. Ctr. & Amer. L. Inst., (September 28, 2006); see also Bill Mears, O’Connor: Don’t Call Us ‘Activist Judges,’ *cnn.worldnews.com*, Nov. 30, 2006.
4. Address of Michael S. Greco, president, of the American Bar Ass’n., Address to the American Bar Association House of Delegates, American Bar Assn. Annual Meeting, Chicago, Ill., (Aug. 8, 2005), at 3.
5. Michael Traynor, *The ALI Reporter*, “The President’s Letter, vol. 29A.L.I. REP., no. 1, at 2 (Fall 2006), at 1.
6. Thomas Paine, “Common Sense,” in *Common Sense and Related Writings* 72, 98 (Thomas P. Slaughter ed., 2001).
7. *Mass. Const.* pt. 1, art. 30; see generally *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting).
8. *The Declaration of Independence* paras 10, 11 (U. S. 1776).
9. *U.S. Const.* art. III, § sec. 1.
10. *Id.*
11. *Id.*
12. *U.S. Const.* art. II, § sec. 2, cl. 2.
13. *Id.* art. I, § sec. 24, cl. 5.
14. *Id.* art. VI, cl. 3.
15. Charles G. Geyh, *When Courts and Congress Collide: The Struggle for Control of America’s Judicial System*, *supra* note 26, at 9 (2006).

16. *Id.*
17. John A. Ferejohn & Larry D. Kramer, “Independent Judges, Dependent Judiciary: Institutionalizing Judicial Restraint,” 77 *N.Y.U. L. Rev.* 962 (2002).
18. Richard Brookhiser, *Alexander Hamilton, American*, at 57 (1999).
19. *The Federalist No. 78*, at 521 (Alexander Hamilton) (Carl Van Doren ed., The Easton Press 1979).
20. *Id.* at 524.
21. *Id.* *The Federalist No. 79* (Alexander Hamilton), *supra* note 19, at 528.
22. *Id.* *The Federalist No. 78* (Alexander Hamilton), *supra* note 19, at 520.
23. *Id.* *The Federalist No. 81* (Alexander Hamilton), *supra* note 19, at 544.
24. William H. Rehnquist, “Judicial Independence,” 38 *U. Rich. L. Rev.* 579, 582-83 (2004).
25. Richard H. Fallon, Jr. et al., Hart & Wechsler’s *The Federal Courts and the Federal System* 63 (5th ed. 2003).
26. *Id.*
27. *Id.*
28. *Id.*
29. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 139 (1803).
30. See, e.g., Richard H. Fallon Jr., et al., Hart & Wechsler’s, *supra* note 250, at 64.
31. 5 U.S. (1 Cranch) 137.
32. *Id.* 5 U.S. at 165-66.
33. Richard H. Fallon Jr., et al., Hart & Wechsler’s, *supra* note 250, at 64.
34. 5 U.S. (1 Cranch) 299 (1803).
35. William H. Rehnquist, *Judicial Independence*, *supra* note 243, at 583.
36. *Id.*

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37. *Id.*
38. *Id.* at 584.
39. *Id.* at 584-85.
40. John A. Ferejohn & Larry D. Kramer, *Independent Judges, Dependent Judiciary*, *supra* note 173, at 979.
41. William H. Rehnquist, *Judicial Independence*, *supra* note 243, at 585-587.
42. *Id.* at 588-89; *see also* William H. Rehnquist, *Grand Inquests: The Historic Impeachments of Justice Samuel Chase and President Andrew Johnson* (1992); William H. Rehnquist, *The Supreme Court* 269-270 (rev. 2d ed. 20013); Charles G. Geyh, *When Courts and Congress Collide*, *supra* note 215, at 53-54, 131-42.
43. John A. Ferejohn & Larry D. Kramer, *Independent Judges, Dependent Judiciary*, *supra* note 173, at 979 (quoting Keith E. Whittington, *Constitutional Constructions: Divided Powers and Constitutional Meaning* 65 (1999)).
44. 60 U.S. (19 How.) 393 (1857).
45. William H. Rehnquist, *Judicial Independence*, *supra* note 243, at 589-90.
46. 51 U.S. 82 (1850).
47. Rehnquist, *supra* note 24, at 590.
48. *Ex parte McCardle*, 73 U.S. (6 Wall.) 318 (18678); *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (18689).
49. William H. Rehnquist, *Judicial Independence*, *supra* note 243, at 590-91.
50. Richard H. Fallon Jr, *et al.*, Hart & Wechsler's, *supra* note 251, at 328.
51. William H. Rehnquist, *Judicial Independence*, *supra* note 243, at 591.
52. *Ex parte McCardle*, 74 U.S. (7 Wall.) at 513.
53. Charles G. Geyh, *When Courts and Congress Collide*, *supra* note 215, at 70.
54. *Id.* at 71.
55. William H. Rehnquist, *Judicial Independence*, *supra* note 243, at 592.
56. Charles G. Geyh, *When Courts and Congress Collide*, *supra* note 215, at 79.
57. William H. Rehnquist, *Judicial Independence*, *supra* note 243, at 592-93.

58. *Id.* at 593.
59. 301 U.S. 1 (1937).
60. 300 U.S. 379 (1937).
61. Charles G. Geyh, *When Courts and Congress Collide*, *supra* note 215, at 80.
62. William H. Rehnquist, *The Supreme Court*, *supra* note 421, at 129-33.
63. Charles G. Geyh, *When Courts and Congress Collide*, *supra* note 215, at 80; William H. Rehnquist, *Judicial Independence*, *supra* note 242, at 593-94.
64. John E. Nowak & Ronald D. Rotunda, *Constitutional Law* § 2.6, at 32 n. 16 (5th ed. 1995); *The Oxford Companion to the Supreme Court of the United States* 454 (Kermit L. Hall ed., 2d ed. 2005); 2 Merlo J. Pusey, Charles Evans Hughes 757 (1951).
65. R. Kent Newmyer, *John Marshall and the Heroic Age of the Supreme Court* 173 (2001).
66. Charles Fairman, *The Oliver Wendell Holmes Devise History of the Supreme Court of the United States: Reconstruction and Reunion, 1864-88*, at 467-78 (1971).
67. *Plessy v. Ferguson*, 163 U.S. at 558 (Harlan, J., dissenting).
68. *The Federalist No. 78* (Alexander Hamilton), *supra* note 19, at 520.



Judge William H. Pryor, Jr.

William H. Pryor, Jr. is a circuit judge for the United States Court of Appeals for the Eleventh Circuit. This address was delivered for the Law Day breakfast sponsored jointly by the Alabama State Bar and the Alabama Trial Lawyers Association on May 1, 2007. It is an excerpt from the Ola B. Smith Lecture, which was delivered at the University of Virginia School of Law on March 19, 2007, and is being published in the *Virginia Law Review*. See William H. Pryor Jr., "Not-So-Serious Threats to Judicial Independence," 93 *VA. L. REV.* (forthcoming Nov. 2007). The lecture expands on themes first published last year in a newspaper op-ed article. See William H. Pryor Jr., Op-Ed, "Neither Force Nor Will, But Merely Judgment," *WALL ST. J.*, Oct. 4, 2006, at A14.

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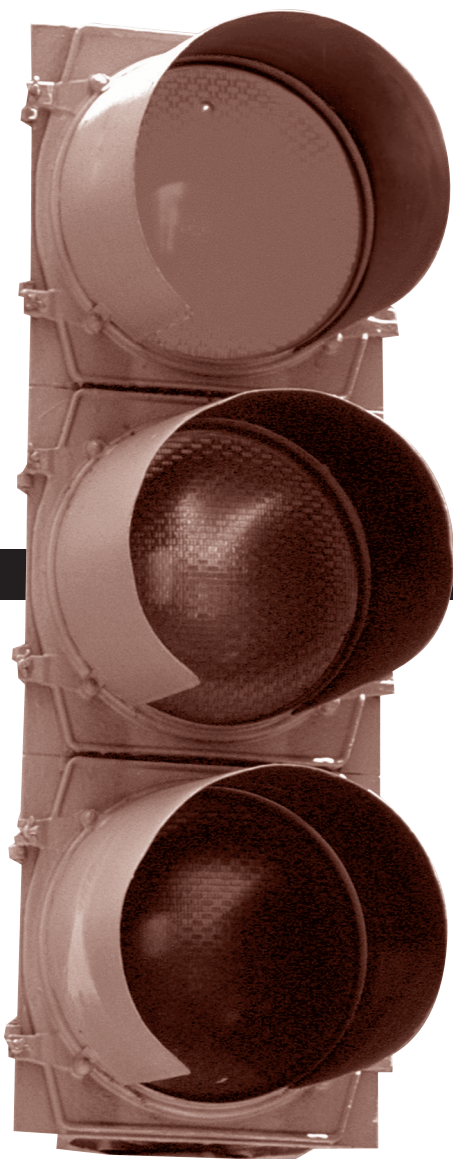
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The Use and Review of the Extraordinary Writs of **Mandamus** and **Prohibition** in Alabama's Appellate Courts

BY MARC JAMES AYERS

The Operation and Use of Mandamus and Prohibition

A. The Writ of Mandamus

The writ of mandamus (literally, “we command”) is used by an appellate court to direct a trial court judge (or an intermediate appellate court) to take some particular action that is his duty to take.² At times, the manner in which this writ operates has been overlooked, leading to confusion. For example, when an appellate court issues a writ with an opinion holding that the trial court had no authority to issue a particular order, the trial court’s order is still in effect and binding on the parties until the trial court vacates the order. The issuance of the writ does not itself vacate the order; the writ merely *directs* the trial court to vacate the order.

The standard for obtaining a writ of mandamus is quite familiar. Because mandamus is a “drastic and extraordinary writ,” the writ will issue “only where there is: (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court.”³ “The right sought to be enforced by mandamus must be clear and certain with no reasonable

basis for controversy about the right to relief. The writ will not issue where the right in question is doubtful.”⁴ When the ruling at issue is appropriate for mandamus review and involves a matter of the trial court’s discretion, this standard is usually encapsulated in a review of whether the trial court has “exceeded its discretion.”⁵ (The old language regarding “abuse” of discretion is now disfavored.)

There is and can be no exhaustive list of situations wherein mandamus review is appropriate. However, rulings for which mandamus has been recognized as the appropriate method of appellate review include:⁶

- Denial of a defense of immunity;⁷
- The denial of a motion for change of venue;⁸ and
- Rulings on discovery matters in certain circumstances:

(a) when a privilege is disregarded; (b) when a discovery order compels the production of patently irrelevant or duplicative documents the production of which clearly constitutes harassment or imposes a burden on the producing party far out of proportion to any benefit received by the requesting party; (c) when the trial court either imposes sanctions effectively precluding a decision on the merits or denies discovery going to a party’s entire action or defense so that, in either

Introduction and Purpose

This article discusses the two extraordinary writs most often sought from Alabama’s appellate courts by parties during litigation in a trial court—the writs of mandamus and prohibition. As discussed below, these writs essentially direct a trial court to do something (mandamus), or to stop doing something (prohibition). Rather than provide a lengthy historical discussion, the following is intended to be something of a quick primer on how these writs operate and how Alabama’s appellate courts currently review petitions asking for this extraordinary relief.¹

event, the outcome of the case has been all but determined and the petitioner would be merely going through the motions of a trial to obtain an appeal; or (d) when the trial court impermissibly prevents the petitioner from making a record on the discovery issue so that an appellate court cannot review the effect of the trial court's alleged error.⁹

The procedure to file a petition for a writ of mandamus involving an order compelling discovery is subject to certain special rules discussed below.

- Rulings on subject-matter jurisdiction.¹⁰
- Issues concerning a trial court's compliance with an appellate court's directions on remand.¹¹
- Refusals to admit an uncontested will to probate.¹²
- Denials of motions to dismiss or for a summary judgment in certain narrow circumstances.¹³

One area of uncertainty is whether a trial court's refusal to certify a ruling for permissive appeal pursuant to Rule 5, Ala. R. App. P., is reviewable by mandamus. While there is some indication that mandamus review might be possible in that circumstance,¹⁴ there is reason to believe otherwise, given the nature of permissive appeal and the high level of discretion the trial court enjoys, to deny such a certification.¹⁵

B. The Writ of Prohibition

The writ of prohibition is more limited in scope than mandamus, as it is directed specifically at whether a lower court has jurisdiction over some matter. The writ is "preventative rather than corrective," and is used by an appellate court to confine a lower court to its jurisdictional limits.¹⁶ Whereas a writ of mandamus might direct a trial court to vacate an order based on a lack of jurisdiction, an accompanying writ of prohibition might direct that court not to take any further action in the case for the same reason.¹⁷

"Like mandamus, prohibition is an extraordinary writ, and will not issue unless there is no other adequate remedy."¹⁸ This writ is "to be employed with

extreme caution and used only in cases of extreme necessity. Prohibition is not a favored writ and will not issue unless there is no other adequate remedy."¹⁹ And, as with mandamus, a petitioner must show that he is clearly entitled to the writ because the writ will issue "[o]nly if the pleadings show on their face that the lower court does not have jurisdiction."²⁰

General Principles and Appellate Procedure

A. Jurisdiction and timing

All petitions for extraordinary writs are to be filed with the Alabama Supreme Court, unless the case from which the petition stems is within the exclusive appellate jurisdiction of one of the intermediate courts of appeal.²¹

Given the nature of the relief sought through these extraordinary writs, the operation of and procedures governing review of such petitions differ in many ways from direct appeals. For example, unlike with an appeal, filing a petition for an extraordinary writ does not shift jurisdiction from the trial court to the appellate court, and does not stay the trial court proceedings.²² If a petitioner seeking an extraordinary writ desires to stay the proceedings, he must act to obtain a stay. The best practice is to follow the procedure for obtaining a stay on appeal and first seek a stay from the trial court before filing a motion for a stay with the appellate court.²³

Additionally, the time for filing a petition for an extraordinary writ challenging a ruling is not tolled by a motion to reconsider²⁴—unlike the time to appeal which is tolled by the filing of a proper post-judgment motion—by filing a motion with the trial court seeking certification of an order for permissive appeal under Rule 5, Ala. R. App. P.²⁵ Instead, under Rule 21, Ala. R. App. P., a petition must be filed with the appellate court "within a reasonable time,"²⁶ and must be in the form prescribed by that Rule.²⁷ The "presumptively reasonable time" is whatever time period would be applicable in an appeal as provided under the appellate rules²⁸ or by statute.²⁹ However,

determining the "presumptively reasonable time" can present difficulties. If there are two or more possibly applicable time frames, a petitioner should select the shortest time frame in order to avoid any problems.³⁰

If a petition is filed outside the "presumptively reasonable time," the petition must include a statement showing good cause for the delay in order for the appellate court to consider the petition notwithstanding that it was filed beyond the presumptively reasonable time.³¹ However, it is possible that the appellate court could find a petition untimely even where it is filed within the presumptively reasonable time, if the circumstances of the filing show prejudice to the opposing party or to the trial court.³²

Another distinction between these writs and appeals is that the denial of a petition for an extraordinary writ "does not operate as a binding decision on the merits" and "does not have *res judicata* effect."³³ And when either of the intermediate appellate courts rules on a petition for an extraordinary writ, that ruling can be reviewed *de novo* by the Alabama Supreme Court.³⁴

B. Rules regarding mandamus review of orders compelling discovery

As noted above, the procedure for seeking mandamus review of an order compelling discovery calls for special attention. Because mandamus relief is inappropriate when there is another adequate remedy, review by a writ of mandamus of a trial court's order compelling discovery cannot be sought unless the petitioner has first sought a protective order from the trial court.³⁵ "[A] party dissatisfied with the trial court's ruling on a motion to compel discovery must first make a timely motion for a protective order, so as to create a record to support the essential allegation that the petitioner has no other adequate remedy."³⁶ Furthermore, "[t]he motion for a protective order...and any subsequent mandamus petition must be filed within the time period set for production by the trial court in its order compelling discovery."³⁷ Thus, a party contesting an order compelling discovery could find himself in a tight situation, especially if under a short time frame for production.

Communication with the appellate court is key: If the trial court has not ruled on the required motion for a protective order within the trial court's time frame for production, the petition for a writ of mandamus should be filed indicating that the motion for a protective order was filed but, as of the date of the filing of the mandamus petition, no ruling had yet been made. Needless to say, the required protective order should be submitted as quickly as possible, in order to give the trial court the best possible chance to rule on that motion before seeking mandamus relief.

C. Internal procedures of the appellate courts

The internal procedures of Alabama's appellate courts in reviewing petitions for extraordinary writs differ from those governing appeals. Indeed, the procedures differ even between the three appellate courts.

Alabama Supreme Court

After the petition is received by the Alabama Supreme Court Clerk's office, a summary of the case is circulated with the petition and any other materials filed on what is known as the "miscellaneous docket." The miscellaneous docket is circulated to the court on a weekly basis, and allows the court to vote on various motions, petitions and other matters. Given the number of petitions filed, including those where expedited relief is requested, it may be a few weeks before the court rules on whether to deny a petition for a writ of mandamus/prohibition or to order answer and briefs. Petitioners seeking expedited review should file a separate motion, with the petition, and communicate their intent to the clerk's office.

Petitions for extraordinary writs are generally put before the court by way of the miscellaneous docket to one of the two five-member divisions³⁸ of the court, or to the court *en banc*, depending on the type of case and relief requested.³⁹ If the court orders "answer and briefs," the court will issue an order setting a briefing schedule, which will provide a specific time frame for the filing of the respondent's brief and the petitioner's reply brief (the petition itself serves as the petitioner's principal brief). Any extensions of time to file briefs must be requested by a written motion to the court; the seven-day extension available without a motion

under Rule 31(d), *Ala. R. App. P.*, does not apply to briefs on petitions for extraordinary writs.

When the court has ordered "answer and briefs" and the answer and briefs have been filed, the case is then assigned to a justice and proceeds in a manner similar to an appeal. The justice to whom the case is assigned will draft a proposed opinion and will circulate that opinion to the court for consideration.

If the court denies a petition for an extraordinary writ off of the miscellaneous docket, there will be no opinion, no "certificate of judgment" will issue and the denial is effective immediately. However, if the court orders "answer and briefs" and resolves the matter through an opinion, a certificate of judgment will issue in approximately 18 days (as with an appeal) pursuant to Rule 41, *Ala. R. App. P.*, and the losing party may file an application for rehearing.⁴⁰

Court of Civil Appeals

The court of civil appeals' procedure for review of extraordinary writs is similar but not identical to the supreme court's procedure. Petitions are received and reviewed by the court of civil appeals clerk's office, which prepares a summary of the case. That summary and the petition are placed on a "motion docket" for the following week. The court of civil appeals will then either (1) deny the petition, (2) call for an "answer"—which is usually a short statement from the respondent as to why the petition should be denied during preliminary review—or (3) call for "answer and briefs." If the court calls for an "answer," it will review the petition and the answer and then will either (1) summarily grant the petition, (2) summarily deny the petition or (3) issue an order calling for a full round of briefing from the parties (three briefs, as with an appeal).

Court of Criminal Appeals

Unlike the supreme court and the court of civil appeals, extraordinary writs received by the court of criminal appeals are not reviewed by the court's clerk's office and are not put on a separate docket *per se*. Instead, any such petition is forwarded to the presiding judge who evaluates the petition, prepares a recommendation and circulates the petition and recommendation to the other court members. The court may dismiss the

petition for procedural reasons, deny the petition on its merits or request a response to the petition. The response must comply with the filing requirements of rules 21(4) and (4) *Ala. R. App. P.* If the petition seeks a writ of habeas corpus,⁴¹ the contents of the petition are governed by *Ala. Code* 1975, § 15-21-4.

Conclusion

Extraordinary writs provide practitioners with useful and powerful tools to manage trial litigation with help from the appellate courts. Remembering precisely how these writs operate and how to present petitions to the appellate courts can help avoid headaches and maximize the effectiveness of this form of relief. ■

Endnotes

1. For a discussion of the historical development of these extraordinary writs in Alabama, see Thomas G. Greaves, Jr. & Robert B. Harwood, Jr., "Availability and Use of Extraordinary Writs" 66 (from ABICLE's *Alabama Appellate Practice*, published in 1979).
2. See, e.g., *State v. Webber*, 892 So. 2d 869, 871 (Ala. 2004) ("The petition for a writ of mandamus, if meritorious, merely prompts the appellate court to exercise its supervisory power to tell the trial judge, as an official, as distinguished from the trial court itself, to do his or her duty when that duty is so clear that there are no two ways about it.") (citing *Ex parte Little*, 837 So. 2d 822, 824 (Ala. 2002)); *State v. Wilson*, 123 Ala. 259, 281, 26 So. 482, 487 (1899) ("Mandamus is a conservative, not a creative, remedy. It enforces existing duties, but does not impose new duties. By it the officer may be coerced to an act which it was his duty to perform without it, but to no act as to which he was under no duty before its issuance.").
3. E.g., *Ex parte Fuller*, 955 So. 2d 414, 415 (Ala. 2006) (internal quotations omitted).
4. *Ex parte Vance*, 900 So. 2d 394, 398-99 (Ala. 2004) (internal quotations omitted) (also stating that a writ of mandamus would not issue "based on mere speculation as to the possible occurrence of future events").
5. See, e.g., *Ex parte CIT Communication Fin. Corp.*, 897 So. 2d 296, 299 (Ala. 2004).
6. For other examples, see Susan S. Wagner, "Appeal Early and Often? Appellate Review of Non-Final Orders in Alabama," 65 *Ala. Law.* 254, 259 (July 2004).
7. See, e.g., *Ex parte Sumter County*, 953 So. 2d 1235, 1237 (Ala. 2006) ("A petition for a writ of mandamus is an appropriate means for seeking review of an order denying a claim of immunity.") (internal quotations omitted).
8. *Ex parte Daniels*, 941 So. 2d 251, 254 (Ala. 2006) ("The proper method for obtaining review of a denial of a motion for a change of venue in a civil action is to petition for the writ of mandamus.") (internal quotations omitted).
9. *Ex parte Norfolk Southern Ry.*, 897 So. 2d 290, 291-92 (Ala. 2004) (quoting *Ex parte Dillard Dep't Stores, Inc.*, 879 So. 2d 1134, 1136-37 (Ala. 2003)) (citations

- omitted); *see also Ex parte Orkin*, [Ms. 1050981, Dec. 15, 2006] ___ So. 2d ___, 2006 WL 3692502, at *2-3 (Ala.) (quoting *Ex parte Norfolk Southern*); *Ex parte Ocwen Fed. Bank*, 872 So. 2d 810, 813 (Ala. 2003) (“[M]andamus will issue to reverse a trial court’s ruling on a discovery issue only (1) where there is a showing that the trial court clearly exceeded its discretion, and (2) where the aggrieved party does not have an adequate remedy by ordinary appeal. The petitioner has an affirmative burden to prove the existence of each of these conditions.”).
10. *Ex parte Williford*, 902 So. 2d 658, 662 (Ala. 2004) (“A petition for a writ of mandamus is a proper means by which to seek review of a question of subject-matter jurisdiction.”) (citing *Ex parte Johnson*, 715 So. 2d 783 (Ala. 1998), and *Forrester v. Putman*, 409 So. 2d 773 (Ala. 1981)).
 11. *Ex parte Williford*, 902 So. 2d at 662 (“Mandamus is ... a proper remedy where a party challenges a circuit court’s compliance with this Court’s directions on remand.”) (citing *Town of Daphne v. City of Fairhope*, 284 Ala. 556, 226 So. 2d 383 (1969)).
 12. *Toler v. Murray*, 886 So. 2d 76, 78 (Ala. 2004).
 13. *See Ex parte Chemical Lime of Ala., Inc.*, 916 So. 2d 594, 596-97 (Ala. 2005) (“One of the ‘narrow exceptions’ to the general rule ... is the denial of a summary-judgment motion when the undisputed evidence shows that the plaintiff failed to act with due diligence in identifying the fictitiously named defendant as the party the plaintiff intended to sue.”) (internal quotations omitted); *Ex parte Alloy Wheels Int’l*, 882 So. 2d 819, 822 (Ala. 2003) (“One of the exceptions is the denial of a motion grounded on a claim of lack of personal jurisdiction.”); *Ex parte Liberty Nat. Life Ins. Co.*, 825 So. 2d 758, 761-62 (Ala. 2002) (plurality opinion) (noting recognition of exception where governmental immunity is involved); *Ex parte Jackson*, 780 So. 2d 681, 684 (Ala. 2000) (“In a narrow class of cases involving fictitious parties and the relation-back doctrine, this Court has reviewed the merits of a trial court’s denial of a summary-judgment motion in which a defendant argued that the plaintiff’s claim was barred by the applicable statute of limitations.”).
 14. *See Ex parte Liberty Nat. Life Ins. Co.*, 825 So. 2d at 762 (plurality opinion) (“The trial court’s action in certifying an order pursuant to Rule 5 is discretionary and is subject to correction by mandamus on a showing of a clear abuse of that discretion.”) (citing *Ex parte Showers*, 812 So. 2d 277 (Ala. 2001)).
 15. *See Ex parte Liberty Nat. Life Ins. Co.*, 825 So. 2d at 766 (Johnstone, J., concurring in the rationale in part and concurring in the judgment) (stating that neither *Ex parte Showers* nor any other decision provides authority that would allow review of a denial of Rule 5 certification by mandamus), and at 766-68 (Harwood, J., concurring in the rationale in part and concurring in the judgment) (agreeing with Justice Johnstone and discussing federal authorities condemning such a use of mandamus).
 16. *Ex parte Maye*, 799 So. 2d 944, 947 (Ala. 2001) (internal quotations omitted).
 17. *See, e.g., Ex parte Sealy, L.L.C.*, 904 So. 2d 1230 (Ala. 2004) (issuing writs of mandamus and prohibition); *Ex parte Maye*, 799 So. 2d 944 (Ala. 2001) (same).
 18. *Ex parte Scrushy*, 940 So. 2d 290, 293 (Ala. 2006) (internal quotations omitted).
 19. *Maye*, 799 So. 2d at 947 (internal quotations omitted).
 20. *Scrushy*, 940 So. 2d at 293 (internal quotations omitted).
 21. *See Ala. Code* 1975, § 12-3-11; *Ex parte Kendrick*, 385 So. 2d 1017 (Ala. Crim. App. 1980); *see also Ala. Code* 1975, § 12-3-9 (defining appellate jurisdiction of the court of criminal appeals), and § 12-3-10 (defining appellate jurisdiction of the court of civil appeals).
 22. *See, e.g., State v. Webber*, 892 So. 2d at 871 (“The filing of a petition for a writ of mandamus against a trial judge does not divest the trial court of jurisdiction, stay the case, or toll the running of any period for obeying an order or perfecting a filing in the case.”); *Ex parte Sharp*, 893 So. 2d 571, 574 n.2 (Ala. 2003) (stating that “the rationale in cases involving writs of mandamus applies to cases regarding writs of prohibition”).
 23. *See* Rule 8(b), *Ala. R. App. P.* Indeed, the Alabama Court of Civil Appeals generally *requires* a petitioner to have first sought a stay in the trial court where possible.
 24. *See, e.g., Ex parte Troutman Sanders, LLP*, 866 So. 2d 547, 550 (Ala. 2003).
 25. *Ex parte Pelham Tank Lines, Inc.*, 898 So. 2d 733, 734-37 (Ala. 2004).
 26. Rule 21(a)(3), *Ala. R. App. P.*
 27. Rule 21(d), *Ala. R. App. P.*
 28. *See* Rule 4(a), *Ala. R. App. P.* (providing for a 42-day deadline to appeal, except in certain specific circumstances that are subject to a 14-day deadline).
 29. *See* Committee Comments to Amendments to Rule 21(a) and 21(e)(4), Effective September 1, 2000 (stating that Rule 21 “adopts as the presumptively reasonable time the 42-day period for appealing from a final judgment in a civil case, unless the time for appeal is shorter, pursuant to a rule or a statute (see, e.g., Rule 4(a)(1)), in which case the shorter time becomes the presumptively reasonable time”).
- Rule 21(a)(3) and the Committee comments interpreting that rule present something of an anomaly. If a particular sort of ruling is by rule or statute given a shorter time frame to appeal than 42 days, then it would appear that review by extraordinary writ would never be appropriate for that sort of ruling. For example, if a party was aggrieved by a ruling on an injunction (14 days to appeal), then the proper remedy would be to *appeal* within 14 days, not to bring a mandamus petition within 14 days. Indeed, mandamus relief would be improper because the party has an adequate remedy through the appeal. However, if the type of ruling at issue is not specifically given a shorter time to appeal by rule or statute, then the 42-day time frame would seem to apply. In short, under the plain meaning of the Rule, it should be impossible for any petition for an extraordinary writ to be governed by anything other than the 42-day time frame. However, in light of *Ex parte Sharp* and *Ex parte Thomas*, cited *infra*, petitioners for extraordinary relief may be required to file their petitions under a shorter time frame if the ruling at issue is sufficiently “analogous” to a ruling that carries, by rule or by statute, an appeal deadline shorter than 42 days.
30. *See Ex parte Thomas*, 828 So. 2d 952, 954-55 (Ala. 2001) (plurality opinion) (holding that a petition for a writ of mandamus stemming from a mid-trial dismissal of an indictment was governed by the more “analogous” seven-day time frame to appeal from a pre-trial ruling under Rule 15.7, *Ala. R. Crim. P.*, than the general 42-day time frame for the defendant to appeal from his conviction); *Ex parte Sharp*, 893 So. 2d at 573-76 (citing *Ex parte Thomas*).
 31. Rule 21(a)(3), *Ala. R. App. P.*; *see Ex parte Children’s Hosp. of Ala.*, 931 So. 2d 1, 6 (Ala. 2005) (holding that petitioner had good cause for filing mandamus petition outside of 42 days); *Ex parte Pelham Tank Lines, Inc.*, 898 So. 2d 733 (Ala. 2004) (holding that mandamus petition was untimely, and noting that statement of good cause was in opposition to motion to dismiss a petition for a writ of mandamus rather than in the petition itself).
 32. Committee Comments to Amendments to Rule 21(a) and 21(e)(4), Effective September 1, 2000 (“In a particular case, an appellate court may find a petition challenging a ruling of the trial court to be untimely even though it is filed within the time for taking an appeal, as, for example, when the petition is filed shortly before trial, yet several days or even weeks after the adverse ruling. Consequently, the better practice is to include in the petition a description of the circumstances constituting good cause for any delay, although the amended rule mandates such a showing only when the petition is filed beyond the time for taking an appeal from the ruling.”).
 33. *Ex parte Shelton*, 814 So. 2d 251, 255 (Ala. 2001) (internal quotations omitted).
 34. Rule 21(e), *Ala. R. App. P.* If rehearing of a ruling on an extraordinary writ is sought in an intermediate appellate court, then review in the supreme court is by certiorari. Rule 21(e)(3), *Ala. R. App. P.*
 35. *Ex parte Reynolds Metals Co.*, 710 So. 2d 897 (Ala. 1998) (mandamus review of discovery order inappropriate because petitioner had another possible remedy through a protective order).
 36. *Ex parte Horton Homes, Inc.*, 774 So. 2d 536, 540 (Ala. 2000).
 37. *Id.* But *see Ex parte Anderson*, 789 So. 2d 190, 195-98 (Ala. 2000) (distinguishing *Ex parte Horton Homes* and *Ex parte Reynolds Metals Co.*, and holding a mandamus petition as timely filed based on the unorthodox circumstances relating to the trial court’s discovery order).
 38. For the sake of convenience and efficiency, the court is divided into two divisions, each led by the two most senior associate justices (currently Justice See and Justice Lyons), with the chief justice sitting in both divisions. *See* Rule 16, *Ala. R. App. P.*
 39. The phrase “answer and briefs” stems from a pre-rules practice and continues to be used as a term of art. However, the phrase can cause some confusion. The petition serves as the initial brief for the petitioner. The answer is simply a brief in response, and there is technically no separate “answer” and “brief” under the Alabama Supreme Court’s practice. Following the respondent’s answer/brief, the petitioner files a reply brief as directed by the order of the court.
 40. By contrast, the court of civil appeals issues a certificate of judgment 18 days after the court’s disposition of any petition for an extraordinary writ, regardless of the basis for the court’s ruling. The court of criminal appeals does not issue certificates of judgment following rulings on petitions for extraordinary writs.
 41. *See* Rule 21(c), *Ala. R. App. P.*



Marc James Ayers

Marc James Ayers practices with Bradley Arant Rose & White LLP. He is a 1998 graduate of the Cumberland School of Law of Samford University and served as clerk and staff attorney to former Alabama Supreme Court Justice J. Gorman Houston, Jr.



Anita Hamlett
MCLE director, Alabama State Bar

An Ounce of Prevention

My husband is extremely sensitive to poison ivy. I mean one drop of the resin on his fingernail and he will be covered from head to heel in the stuff. I, on the other hand, appear to have absolute immunity. I could wear it like a Hawaiian lei and suffer no consequences, but not him. He has to be responsible for taking the necessary precautions to avoid a potentially very dangerous health risk. Likewise, this article warning of two common filing errors will have no effect on the majority of you as readers. Because most of you, fortunately, can find comfort in knowing that you do what is needed to come into compliance and do so in a timely manner. But, for the readers who know that this danger exists for them, it is important that they read and follow these simple instructions to prevent those little irritations this December like getting a pink slip at an old address or the much more serious repercussion of facing an unnecessary suspension.

Of the individuals certified for 2005 and 2006, there were at least two common errors that I have identified that need addressing:

1. Failures to provide the Membership Department with contact information changes and/or
2. Misuse or non-use of MCLE Regulation 2.7 when applicable.

I am hopeful that this short article will prevent you from failing to meet the MCLE requirements for 2007.

Updating contact information

Attorneys are responsible for providing current contact information to the ASB Membership Department. If we do not have a good address on record for you, you will not receive your notice of non-compliance and may be certified for failure to report compliance. Updating your contact information is easy. Simply e-mail your changes to the ASB Membership Department at ms@alabar.org.

Understanding MCLE 2.7

Under Alabama MCLE Regulation 2.7, an attorney *who resides and maintains a principal office for the practice of law in another state that requires Mandatory Continuing Legal Education (MCLE)* and who can demonstrate compliance with the MCLE requirements of his or her principal state of practice is exempt from Alabama's MCLE rules, except as provided in MCLE rules 5 and 9.

How to file under MCLE 2.7

If you have fulfilled the requirements of your home state and expect to claim compliance in Alabama under this regulation, you may complete the affidavit below and return it with CLE verification from your home state.

Claiming compliance under Regulation 2.7 does not affect your status with the



bar, but merely puts you in CLE compliance for that year. If you desire to change your membership status, you will need to contact the membership department.

Once your request for compliance under this regulation has been granted, a code will be documented in the database indicating compliance *rather than your actual hours being posted to your transcript*.

Filing an affidavit under MCLE Regulation 2.7 does not exempt you from the MCLE Rule 9

Note that new admittees claiming compliance under Regulation 2.7 must still comply with the mandatory professionalism requirements of MCLE Rule 9.

As this article goes to print, I will be celebrating my second anniversary with the Alabama State Bar. I appreciate the support (and patience) you have shown me in this

position. July's annual meeting offered a great opportunity for my fellow bar staff members and me to visit with many of you. But, as fall and winter roll around, I know that I can expect to hear from many, many more of you as your attention turns to CLE compliance. It has been my desire since joining the bar to make MCLE regulation as "attorney-friendly" as possible within the confines of the MCLE Rules and Regulations. In 2005, we launched the "Don't Panic" slogan for MCLE urging you to get your CLE and timely report and don't panic at the end of the year. In 2006, we focused on stressing that the deadline for completion is December 31 each year. Both of these efforts proved successful and the number of certified attorneys has dramatically dropped. I am hopeful that this short article will prevent those few of you out there who might need the reminder that there are still some thorns to avoid, even in a rose garden. If not, call us *before* the end of the year and we might let you borrow some Calamine. ■

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Attorney Affidavit for MCLE Regulation 2.7

I am a licensed attorney, residing and practicing in the state of _ . Continuing Legal Education is mandatory in that state. My principal office is located there. I have fulfilled the MCLE requirements of that state.

Pursuant to MCLE Regulation 2.7, I am requesting an exemption from the requirements of MCLE imposed by the Alabama State Bar for the current year. I have attached hereto my latest compliance statement from the above mentioned state.

Signed: _

Date: _

Print: _

ASB: _ _ _ _ - _ _ _ _

Witness: _

Checklist for Claiming Compliance under Regulation 2.7:

- I have completed the above affidavit.
- I have attached written verification of current CLE compliance from the state wherein I practice.
- I have returned this package by January 31, 20__ to:



Wendy Brooks Crew, Judge R.A. Ferguson and Chief Justice Sue Bell Cobb

- **Wendy Brooks Crew** of Crew & Howell PC was recently chosen Lawyer of the Year by the Family Law Section of the Alabama State Bar. This is the third time the award has been given in 23 years. Crew is also president of the American Academy of Matrimonial Lawyers and has been elected to the Board of Managers of the Alabama Chapter of Matrimonial Lawyers. **Circuit Judge R.A. Ferguson** (10th Judicial Circuit, Birmingham) was named the 20th Judge of the Year.
- The Alabama State Bar was represented at the 2007 Eleventh Circuit Judicial Conference in Atlanta in May with a group of Alabama lawyers and judges present for the three-day meeting. **Chief Judge Virginia Granade** (S.D. Alabama) was a member of a panel on

“Professionalism and Ethics.” **Judge Ed Carnes** (Eleventh Circuit) presented “Effective Writing and Editing—from Thomas Jefferson to Hank Williams” and **Judge Joel B. Dubina** (Eleventh Circuit) was a member of a panel discussion on “Effective Appellate Advocacy.” The judges in the Middle District of Alabama hosted a reception on the opening night. **Justice Clarence Thomas** of the United States Supreme Court was a featured speaker at the annual dinner Thursday evening and Sean Carter, dubbed “America’s funniest lawyer,” was the speaker at the Friday luncheon. The 2009 conference will be held in Birmingham. **Judge William H. Pryor, Jr.** (Eleventh Circuit) is chair of the Planning Committee.



Chief Justice Sue Bell Cobb and Justice Clarence Thomas



Visiting at the 2007 Eleventh Circuit Judicial Conference are Debra Hackett, clerk, U.S. District Court, MD; Circuit Judge Joel Dubina, Eleventh Circuit; Beth Dubina; and Dan Hackett.

- Youth Chance High School, a program of the San Francisco YMCA, will be receiving an upgraded computer lab donated by the University of Alabama School of Law, four organizations within the American Bar Association and the Bar Association of San Francisco. The project honors **H. Thomas Wells, Jr.**, who became the ABA's President-Elect at its Annual Meeting in San Francisco in August. Wells is a 1975 graduate of the law school.



H. Thomas Wells, Jr.

“Tommy and Jan Wells have been dedicated volunteers in the YMCA for

30 years. Tommy recently completed a three-year term as chair of the Metropolitan Birmingham YMCA. Rather than have a cocktail party, we felt this would be the ideal way to honor Tommy for his achievement,” said Dean Kenneth Randall, of the law school, which organized the project.

Wells, a founding member of Maynard, Cooper & Gale, was chair of the ABA's House of Delegates from 2002 to 2004. He has two children who are also members of the ASB, Lynlee Wells Palmer and H. Thomas Wells III, both of whom practice in Birmingham.

The computer lab serves the Embarcadero YMCA's Youth Chance High School, a tuition-free private school

where students who have been referred by principles, social workers, friends and probation officers come to study for their GED and prepare for their futures.

- **William R. Sylvester**, managing partner at **Walston Wells & Birchall LLP**, has been elected to the American College of Real Estate Lawyers (ACREL) Membership in ACREL is by invitation only and is limited to persons who have been practicing real estate law for at least ten years and who have contributed substantially to the improvement of real estate law by exercising the highest standards of professionalism and ethics. There are only eight ACREL members in Alabama. ■

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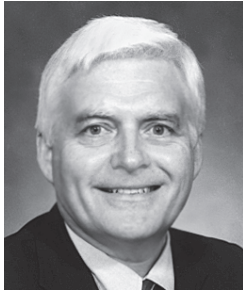
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Robert L. McCurley, Jr.

2007 Regular Session

The session began with a pay raise and ended with a fight. The public saw little in-between. The legislators' pay raise is set by the constitution at \$10 a day, plus one-round-trip-per-session mileage reimbursement at ten cents a mile.

In 1967, legislators received \$0 in expenses per month. This was adjusted four years later to \$0 then the next session to \$0 then in 1987 to \$, 90 where it remained for eight years until it was raised to \$, 280 It remained there until this year when the monthly expenses were increased to \$, 850 per month and will be adjusted annually to reflect the increase in the cost of living as indicated by the Department of Labor and Consumer Price Index.

As indicated in the July 2007 *Alabama Lawyer*, in the first two-thirds of the session the public read little about anything the legislature was doing except to continually hear about the pay raise. It was probably for good reason since the legislature had only passed Sunset bills, an appropriation for Enterprise High School and two other pieces of legislation. On the 28th and 29th days, the senate passed over 20 bills with most of these being local legislation. When the legislature ended, both houses of the legislature had passed 294 bills of the 2,363 bills introduced, with 274 of them becoming law. This amounted to 11.6 percent of the bills introduced actually becoming law.

Of these 274 bills that became law, approximately 90 percent of them were local laws affecting only one county, Sunset bills that continued regulatory agencies, a special appropriation or a bill that affected a limited segment group of individuals, not the state at large.

The legislature addressed several items of general concern to the practicing bar.

HB-68 (Act 20- 147) modification of the 2006 Regular Session Acts that are found in the pocket parts.

HB-180 (Act 20- 455) authorized the issuance of \$0 0 0 in bonds to repair the Judicial Building, specifically to repair the roof and other structural damage to the building.

HB-899 (Act 20- 487) created the Legislative Building Authority to direct the building renovation of the State House. The state is currently renovating the old Department of Public Safety Building in front of the Capitol for the Attorney General's Office. This will leave vacant floors three and four of the State House. The bill conveys the State House to be the property of the Legislative Building Authority.

Of particular interest to lawyers are the following Acts:

HB-51 (Act 20- 281) allows small loan companies to charge a delinquent fee of \$0 or 5 percent of the scheduled payment, not to exceed \$8 or 5 percent of the payment that is in default as an additional late fee.

HB-56 (Act 2007-283A)—Alabama Uniform Estate Tax Apportionment Act for the apportionment of estate taxes. Affects persons receiving an interest in property upon the death of the decedent. The Act does not change the amount of estate taxes, only who will pay the tax. (See *Alabama Lawyer*, July 2007 for a summary of this Act.)

HB-185 (Act 2007-364A)—Amends Section 34-27-30.1 to provide that a real estate company is required to have a license where the company has a place of business within the municipality. It further prohibits a municipality from charging a privilege tax to a real estate sales person who does not have an office in the city but merely comes into the city to sell property.

HB-223 (Act 2007-457F)—The Act amends Section 13A-5-9.1 to provide when the sentencing judge is no longer in office, any circuit judge appointed by the presiding judge can consider early parole of any nonviolent offender.

HB-242 (Act 2007-365A)—Amends Section 34-11-1 to remove the requirement that a professional engineer be licensed in Alabama in order to testify in a civil case.

HB-426 (Act 2007-464F)—The Alabama Uniform Environmental Covenants Act. This provides a way of recording the covenant in the probate record. (See *Alabama Lawyer*, May 2007 for a summary of this Act.)

HB-739 (Act 2007-366)—Amends Section 40-18-21 to provide for an income tax credit for income taxes paid to foreign countries, with respect to business income attributable to the foreign country.

SB-4 (Act 2007-381A)—Amends sections 40-2-18, 40-3-16, 19, 20 and 40-7-25 which extend the time for filing objections to notice of evaluation for taxes from ten days to 30 calendar days from the date of receiving notice of reevaluation.

SB-265 (Act 2007-391)—Amends Section 15-25-2 to allow for videotaped depositions of a victim or witness under 16 years of age out of the presence of the defendant. The following persons are now authorized to be in the room with the child: the prosecuting attorney; an attorney for the defendant, parent or person who contributes to the wellbeing of the child; and other persons at the discretion of the court. Also, when necessary, the operator of the videotaping equipment may be there.

SB-412 (Act 2007-50A)—Amends sections 40-2A-7 and 9 to lower the supersedeas bond required to 125 percent of the amount of the final assessment of the judgment and provide alternatives for filing the supersedeas bond. It also provides the taxpayer who fails to satisfy the requirements of the bond would have 30 days to cure any deficiency.

SB-425 (Act 2007-40A)—Amends Section 7-9A-321 concerning the recording of secured transactions and the form of financing statement which is to be filed with the Secretary of State's Office to protect a security interest in farm products.

Items that particularly affect teachers and state employees:

HB-20 (Act 2007-282F)—The General Fund;

HB-213 (Act 2007-361F)—The Special Education Trust Fund that funds all of education;

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HB-387 ~~A ct 20- 297P~~ ay raise for state employees;

HB-385 ~~A ct 20- 296P~~ ay raise for teachers;

HB-283 ~~A ct 20- 293A~~ llows state employees to donate leave for catastrophic sick and maternity leave from one employee to another. This amended Section 36-26-35.2.

HB-520 ~~A ct 20- 275P~~ rovides for a one-time lump sum addition to retirement benefits for those who retired prior to December 14, 20 in an amount equal to \$ per month for each year of service obtained by the retiree.

Other bills of general interest that may affect the public at large:

HB-60 ~~A ct 20- 224A~~ mends the banking law to restrict who may operate as a bank. This bill sought by the Banking Department, Banking Association and banks.

HB-123 ~~A ct 20- 452T~~ his establishes a center for alternative fuels as an information clearing house for federal grants, alternative fuels, etc.

HB-139 ~~A ct 20- 488P~~ rovides that people seeking to run for county commissioner must have resided in the county for one year, any vacancies shall be filled by an appointment of the governor, appointments shall last only until the next general election and the term of office will begin on the second Tuesday following the general election of which the person is elected. It further provides that a majority of members of the county commission will constitute a quorum, and the county commission may employ a chief administrative officer who carries out the administrative duties of the county and performs specified responsibilities.

HB-141 (Act 2007-133)—Made a supplemental appropriation to the Enterprise City School System to help repair tornado damage and provides that the funds are to be repaid out of insurance or FEMA Funds.

HB-155 ~~A ct 20- 285C~~ concerns the Port Authority by redefining the boundaries of the Port Authority;

HB-244 ~~A ct 20- 291P~~ rovides for community service grants of \$13.8 million to be distributed to communities through the Joint Legislative Oversight Committee on Community Service Grants.

HB-250 ~~A ct 20- 258A~~ mends the law to increase the amount that may be paid as a director's fee for a water, gas or electric system board. The amount may not exceed \$0 per meeting (raised from \$0) and the chair receives up to \$0 per meeting.

HB-423 ~~A ct 20- 463A~~ uthorizes students to be able to give themselves medication as prescribed by the State Department

of Education and the Alabama Board of Nursing Medication Curriculum under certain guidelines.

HB-664 ~~A ct 20- 199E~~ conomic Incentive Act provides for an abatement of taxes for an industry that will employ at least 2,0 full-time on-site employees, provided the company will have a new investment in Alabama of \$2.5 billion.

SB-62 ~~A ct 20- 196A~~ llows for firearms to be sold and delivered to nonresidents from any state which will allow residents of Alabama to sell and deliver rifles, shotguns and ammunition in their state. Any purchaser of firearms or ammunition may send these out of the state or have them delivered to his place of business. Currently, it is only in adjoining states.

SB-244 ~~A ct 20- 279A~~ uthorizes the increase of the revolving loan bond authority from \$2 million to \$24 million dollars for the purpose of making grants to the 12 regional planning and development commissions.

SB-255 ~~A ct 20- 389P~~ equires insurance companies who do business in Alabama to offer coverage for prostate cancer early detection.

SB-313 ~~A ct 20- 395P~~ ermits a person who is 17 years old or older to donate blood without the permission of a parent, and a person who is 16 years old to donate blood with the permission of a parent.

SB-464 ~~A ct 20- 40P~~ rovides that the owners of private land on which there is a cemetery or grave must grant access to a cemetery on their property. Further permits a county or city to establish an authority for the maintenance of neglected cemeteries.

The Governor's veto may have a more lasting effect than most of the bills that passed.

The following bills passed the legislature but were pocket vetoed by Governor Riley:

SB-167I— increased Alabama state employees per diem from \$75 per day to \$25 a day.

HB-122A— mended the state ethics law to include persons who lobby the executive branch of government.

SB-202—Increased the minimum limits for insurance for motor vehicles from \$20,000 to \$50,000 for bodily injury and from \$40,000 to \$100,000 for injury or death to two or more persons. Also, increased property damage from \$10,000 to \$20,000.

The following are local bills that were vetoed:

SB-458—Colbert County Community Development Commission and Community Development Funds established.

SB-199—DeKalb County Community Development Commission and Community Development Funds established.

HB-957—Cullman County Community Development Commission and Community Development Fund established.

HB-959—Franklin County Community Development Commission and Community Development Fund established.

SB-486 and HB-621~~T~~—his provides that a Class 5 Municipality may only change from forms of government consistent with a specific enabling legislation.

SB-49~~D~~—rovides for an election to fill vacancies on the Russell County Commission.

HB-804—Local bill for Perry County to authorize the sale of alcoholic beverages in the county.

HB-817~~R~~—ussell County local bill authorizing the increase in sale and use taxes.

For the first time, the Governor exercised the right to a “*line item*” veto, a provision in an appropriation bill. The Governor lined out \$, 0 0 for roads that were designated in Senator Phil Poole’s district. The legislature was unable to cut off debate to consider overriding the veto.

2007 Alabama Law Institute Bills

HB-56—Apportionment of Estate Taxes, Representative Cam Ward, enacted

HB-426—Uniform Environmental Covenants Act, Representative Jeff McLaughlin, enacted

HB-11~~U~~—niform Satisfaction of Residential Mortgages, Representative Mike Hill, died in committee

HB-12~~R~~—edemption from Ad Valorem Tax Sales, Representative Mike Hill, passed house of representatives—died on senate calendar

HB-926—Uniform Anatomical Gift Act, Representative Demetrius Newton, introduced for familiarization only

HB-927—Uniform Prudent Management of Institutional Funds Act, Representative Demetrius Newton, introduced for familiarization only

HB-928—Uniform Parentage Act, Representative Demetrius Newton, introduced for familiarization only

HB-940—Uniform Revised Lt. Partnership Act, Representative Demetrius Newton, introduced for familiarization only

Institute Annual Meeting

At the Institute Annual Meeting Friday, July 20, 2007, the following were elected:

President-Representative Demetrius Newton

Vice President-Senator Roger Bedford

Executive Committee:

Representative Marcel Black

David Boyd

Jim Campbell

Bill Clark

Peck Fox

Fred Gray

Representative Ken Guin, Jr.

Senator Rodger Smitherman

Representative Cam Ward

Emeritus members:

Richard S. Manley

Oakley W. Melton, Jr.

Yetta G. Samford, Jr.

The institute program, “Incentives for Attracting Industry to Alabama,” was presented by Neal Wade, director of the Alabama Development Office; Richard Cater, general counsel and assistant finance director; and George Howell, retired director of economic development for the Department of Revenue.

Representative Demetrius Newton, Senator Roger Bedford, Representative Jeff McLaughlin and Representative Cam Ward reviewed the 20 legislative session.

Institute Opens Montgomery Office

In September, the Alabama Law Institute opened an office in the State House to assist house committees in their interim studies. **Teresa Norman** will manage the office as assistant director and intern coordinator.

For more information contact Bob McCurley, director of the Alabama Law Institute, at P.O. Box 861425, Tuscaloosa 35486-03, fax 20) 348-8411, phone 20) 348-7411 or at the Web site, www.ali.state.al.us. ■

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.

About Members, Among Firms

The Alabama Lawyer no longer publishes addresses and telephone numbers unless the announcement relates to the opening of a new firm or solo practice.

About Members

Albert H. Adams, Jr. announces the opening of **Law Office of Albert H. Adams, Jr. PC** at 520 S. Eufaula Ave., Ste. E, Eufaula 36027. Phone (334) 687-1326.

John T. Alley, Jr. announces the opening of his office at 1695 E. University Dr., Ste. 101, Auburn 36830. Phone (334) 887-3600.

David O. Carpenter announces the opening of **The Carpenter Law Office**. The mailing address is P.O. Box 55087, Birmingham 35255. Phone (205) 410-2565.

Cheryl D. Eubanks announces the opening of her office at 22787 U.S. Highway 98, Ste. C-4, Fairhope 36532. Phone (251) 928-1555.

Jan Schroeder Grant announces the opening of the **Law Office of Jan Schroeder Grant** at 138 Adams Ave., Ste. 2, Montgomery 36104. Phone (334) 230-9660.

Stuart Luckie announces the formation of **Stuart Y. Luckie PC** at 4137 Moffett Rd., Mobile. Phone (251) 300-3190.

S. Wesley Pipes announces the opening of his office at 107 St. Francis St., Ste. 3200, Mobile 36602. Phone (251) 432-8910.

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| 15 | \$11 | \$11 | \$13 | \$24 | \$37 | \$53 | \$86 |
| 20 | \$13 | \$13 | \$18 | \$30 | \$47 | \$70 | \$118 |
| 30 | \$22 | \$24 | \$33 | \$48 | \$72 | \$140 | |

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| AGE: | 30 | 35 | 40 | 45 | 50 | 55 | 60 |
|------|------|------|------|------|-------|-------|-------|
| 10 | \$15 | \$15 | \$19 | \$31 | \$45 | \$80 | \$130 |
| 15 | \$18 | \$18 | \$23 | \$44 | \$70 | \$103 | \$168 |
| 20 | \$23 | \$23 | \$31 | \$56 | \$90 | \$137 | \$231 |
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Among Firms

Alabama Association of School Boards announces that Sally Howell has been named executive director.

Belt Law Firm PC announces that Francis H. Hare, Jr. has joined as counsel and Chris W. Cantrell has joined as an associate.

Crew & Howell PC announces that Laura Susan Hardin has become a member.

The Crittenden Firm PC announces that Jessica Kirk has joined the firm as a shareholder and that Heather R. Fann has joined as an associate.

Dore Lanier announces that John M. Phillips has been named partner and the firm will now be known as Dore Lanier & Phillips. Phillips is a graduate of the University of Alabama School of Law and is a member of The Florida Bar, the Alabama State Bar and the State Bar of Georgia.

Hand Arendall LLC announces that P. Nicholas Greenwood has become a partner in the firm's Birmingham office.

Heninger Garrison Davis LLC announces that W. Lee Gresham, III has become a member.

Isom & Stanko LLC announces that Drew Senter has joined the firm as an associate.

Judd & Judd PLLC announces that Cyrus C. Barger III has become a member.

D. Barron Lakeman and Zachary J. Peagler announce the opening of Lakeman & Peagler LLC at 30 Office Park Dr., Ste. 30, Birmingham 35223. Phone (205) 871-9990

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About Members, Among Firms

Continued from page 409

The Law Office of Earl H. Lawson, Jr. announces that Thomas J. Segrest has joined as field legal counsel.

Lehr Middlebrooks & Vreeland PC announces that Matthew W. Stiles has become a shareholder.

Jackson Lewis LLP announces the opening of a Birmingham office with Thomas A. Davis, Tammy L. Baker, David T. Wiley and Shannon L. Miller joining the firm as partners.

McDowell Knight Roedder & Sledge LLC announces that M. Kenneth Frank, III has joined as counsel and Stefany L. Bea and William E. Bonner have joined as associates.

Frank L. Parker, Jr. and Thomas M. Rockwell announce the formation of Parker & Rockwell LLC with offices at 107 St. Francis St., Ste. 1950, Mobile 36602. Phone (251) 694-1048. Jason D. Miller and Kathleen Cobb Kaufman have joined as partners.

Jim Pino & Associates PC announces that Jeffrey Bryan Pino has joined the firm.

Pittman, Dutton, Kirby & Hellums PC announces that Michael C. Bradley, C. Carter Clay, J. Chris Cochran and David Hodge have become partners and William T. Johnson has joined the firm as an associate.

Rosen, Cook, Sledge, Davis, Shattuck & Oldshue PA announces that retired Alabama Supreme Court Justice Robert Bernard Harwood, Jr. is rejoining the firm. The firm now will be known as Rosen Harwood PA. He returns after serving six years on the Alabama

Supreme Court and ten years as a circuit judge of Tuscaloosa County.

W. Scott Simpson, Gregory S. Ritchey and Richard S. Walker announce the opening of Ritchey & Simpson PLLC at 3288 Morgan Dr., Ste. 100, Birmingham 35216. Phone (205) 876-1600.

Scott & Dukes announce that Kimberly W. Geisler has become a shareholder and the firm name is now Scott Dukes & Geisler PC, and that Aimee P. Keane has become associated with the firm.

Starnes & Atchison LLP announces that M. Warren Butler has become a partner and Scott D. Stevens has joined as an associate in the Mobile office.

Webb & Eley PC announces that Joseph L. Hubbard Jr. has joined as an associate.

The Westervelt Company announces that Ray F. Robbins III has joined the company as assistant general counsel.

Whatley Drake & Kallas LLC announces the opening of its office in New York at 1540 Broadway, 37th floor, New York, NY 10036. Phone (212) 447-7070.

Wilmer & Lee announce that Lawrence C. Weaver has become a member of the firm, and the firm has opened a Decatur office.

Wolfe, Jones, Boswell, Wolfe, Hancock & Daniel, LLC announces that Joel P. Jaquibino has become associated with the firm. ■



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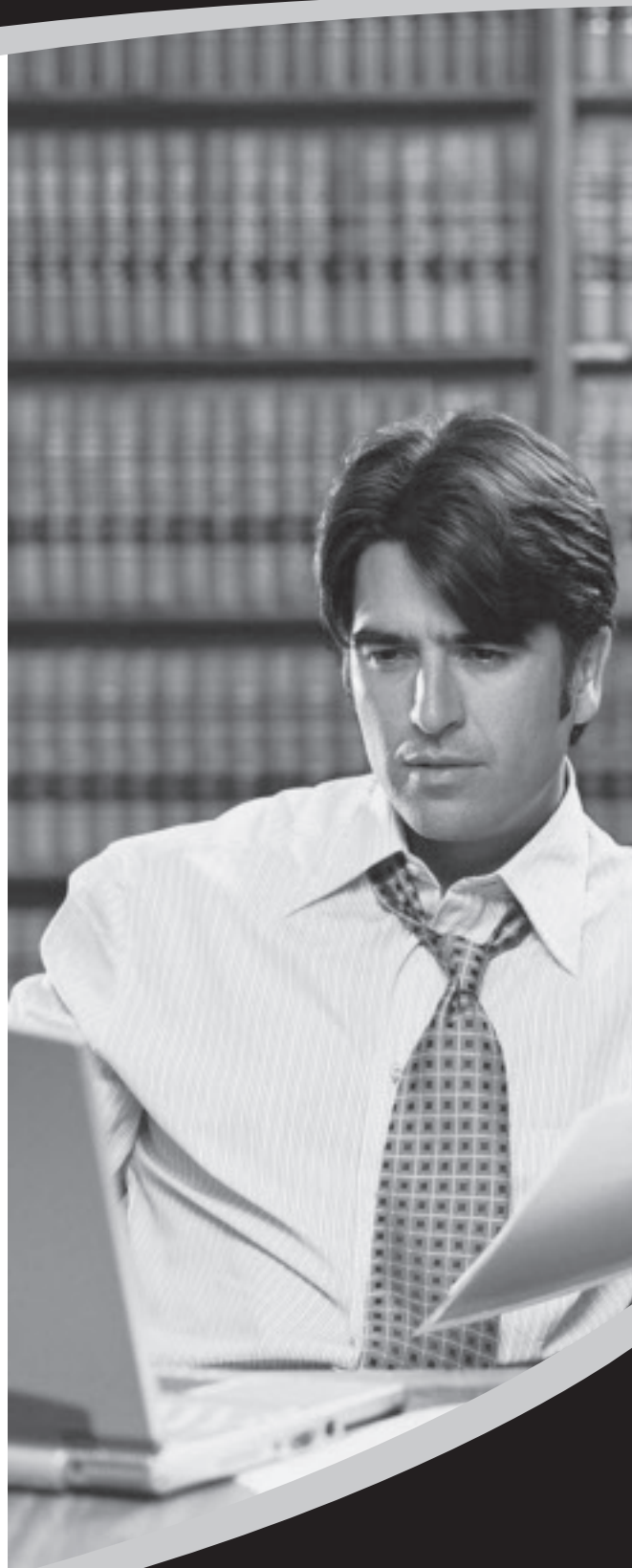
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