

SEPTEMBER 2008 • VOL. 69, NO. 5

# THE ALABAMA LAWYER



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	10	Friday, Immigration Law - Tuscaloosa
	17	Friday, Real Estate Law - Birmingham
	22	Wednesday, Professionalism - Birmingham
	24	Friday, Fundamentals of Will Drafting - Tuscaloosa
	24-25	Friday-Saturday, Family Law Retreat - Orange Beach
	31	Friday, Basic Electronic Discovery - Birmingham
NOVEMBER	6	Thursday, Professionalism - Montgomery
	7	Friday, Social Security Disability - Birmingham
	14	Friday, Bankruptcy Law Update - Birmingham
	20	Thursday, Alabama Update - Mobile
	21	Friday, Alabama Update - Montgomery
	21	Friday, Employment Law - Birmingham
DECEMBER	5	Friday, Estate Planning - Birmingham
	5	Friday, Trial Skills - Montgomery
	9	Tuesday, Alabama Update - Huntsville
	10	Wednesday, Trial Skills - Huntsville
	11	Thursday, Domestic Practice - Birmingham
	12	Friday, Condominium Law - Birmingham
	12	Friday, Tort Law Update - Birmingham
	17	Wednesday, Law Practice and Depositions: Tips From the Masters - Birmingham
	17	Wednesday, Video Replays - Tuscaloosa
	18	Thursday, Trial Skills - Birmingham
	19	Friday, Alabama Update - Birmingham



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*The New Guy with Some Old Friends*  
Pictured on the cover are the “unsung heroes of the Alabama State Bar, proudly joined by the new guy,” according to J. Mark White, of Birmingham. As incoming president, he wished to recognize in some big way “the people who make it all work. The lawyers of Alabama owe this group of people their admiration and respect.”

*Photo by Robert Fouts, Fouts Commercial Photography, Montgomery*

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# CLE COURSE SEARCH

The Alabama Mandatory CLE Commission continually evaluates and approves in-state, as well as nationwide, programs which are maintained in a computer database. All are identified by sponsor, location, date and specialty area. For a listing of current CLE opportunities, visit the ASB Web site, [www.alabar.org/cle](http://www.alabar.org/cle).



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MARK WHITE



*The Raleigh twins, Sarah and Tripp, prove that when it comes to having fun at the annual meeting, age doesn't matter.*

# Thoughts from the New Guy

There's a steep learning curve once you begin your term as the Alabama State Bar president. Although our immediate past President Sam Crosby and I had a wonderful working relationship last year, I didn't fully appreciate just how much I had to learn. One of my early lessons was that your first "President's Page" is due before you are even installed as president. Nothing makes one feel less presidential and powerful than hearing the "sweet voice of charity" Margaret Murphy ask, "Where's your page? It is late and why the delay since you have zero frame of reference?" President-elect Tom Methvin is now officially on notice for next year.

Murphy and the rest of our ASB staff, who join me on the front cover of this issue of *The Alabama Lawyer*, work hard for our bar and its members 365 days a year. They usually are in the background doing the work that guarantees our bar remains professional, respected and organized. In asking the ASB staff to do me the honor of standing with me in this photo, I hoped to recognize the good people who have helped me throughout my career. We all need to remember they are the ASB's most valuable asset.

## PRESIDENT'S PAGE Continued from page 307



*Leon Ashford, Charles Gamble, ASB President J. Mark White, Supreme Court Chief Justice Sue Bell Cobb, Associate Supreme Court Justice J. Gorman Houston, Jr. and Judge U.W. Clemon share a moment in Sandestin.*

If you did not attend the state bar meeting at Sandestin, you made a big mistake. As you have probably heard from your friends and colleagues, it was a great time of learning and fellowship for our state's lawyers. Once again, the ASB staff put together a terrific schedule of events for our bar members and their families. The four days of the annual meeting beautifully showcased their skills and dedication. Ranging from plenary sessions addressing topics that affect all members of our bar to specific discussions addressed to niche practice areas and interests, there were opportunities for all of our lawyer attendees to learn from the best. Receiving CLE credit for learning from the likes of Justice Gorman Houston, Danny Sheridan, Judge U.W. Clemon, Helen Alford, Chief Justice Sue Bell Cobb, and Millard Fuller (note: I only picked out enough to get your attention) was just an added bonus. We celebrated those who have best embodied our pro bono goals at the Bench & Bar Luncheon and reminisced with former classmates at the various school reunion activities. The Volunteer Lawyers Program reception was particularly well-attended. It was a highlight of the convention that I hope will translate into increased participation in VLP activities by our bar members. Our smallest meeting attendees enjoyed ice cream, a carnival night with their families, fireworks and, of course, the promotional items from our vendors and sponsors. Those who attended Saturday's Jazz Brunch were treated



*Attending the annual meeting is serious business as registrants sought to have their vendor cards filled for that chance to win some really nifty door prizes. Special thanks to all of the 2008 exhibitors and their generous donations.*

to Sam Crosby's stylings on the harmonica and Chief Justice Cobb and Judge Annetta Verin singing with the Birmingham Jazz Heritage Band. It was a state bar meeting to remember. You had better go ahead and block your calendar to attend next year's meeting, which will be held at Alabama's beautiful Grand Hotel July 15-18, 2009. We have a "handshake agreement" with the judges that they are going to make every effort to prevent dockets from conflicting with your attendance.



*There's only one state supreme court chief justice who can carry a tune—Hon. Sue Bell Cobb. The chief justice and Judge Annetta Verin combined for a duet of "This Little Light of Mine" during President Mark White's Jazz Brunch Reception. The fabulous Birmingham Jazz Heritage Band provided its unique 'Nawlins sound.*





*State Bar Vice President Alicia F. Bennett and family are getting ready for some fun!*

Between now and next July, we have some work to do. As I shared with you at the state bar meeting, there are several areas where I think your wisdom and work are needed in the next year. First, we must increase resources to improve access to justice for the poor in our state. In the last election cycle, \$17 million dollars were spent on Alabama's judicial campaigns. In the same year, \$7 million dollars were spent providing Alabama's poor access to our system of justice. We simply cannot allow our system to



*ESPN's Danny Sheridan and Chief Justice Cobb are undoubtedly confering about which SEC team will be crowned BCS Champions.*



*President-elect Tom Methvin, President J. Mark White and Immediate Past President Sam Crosby take on their new roles as the 2008 annual meeting comes to a close.*

operate one way for people who can afford an attorney and another for people who cannot. Dedicated members of our bar labored to achieve mandatory IOLTA last year, efforts that have raised Alabama from 52<sup>nd</sup> place in this country in providing resources for access to justice. However, our neighbors and fellow citizens still deserve better. We must do more. For example, we must insist that banks pay fair and competitive interest rates on IOLTA accounts. Anything less is, quite literally, robbing the poor.

Next, we must continue to address issues in our state's indigent defense system. Despite the hard work of members of our bar, most notably Sam Crosby and Chief Justice Cobb, the amount of time it took to forge a bill to address these issues resulted in a shortage of time in the legislative session to achieve its enactment. Chief Justice Cobb has made it a legislative priority for next year, and I have pledged to her that I will do all that I can to see that it is passed into law. In both access to justice and adequate funding for our indigent defense system, we are dealing with ensuring that the "least of these" among us are given fair access to justice.

Third, we must work together, both bench and bar, to continue to improve civility and professionalism and restore pride in our profession. One way to ensure our younger members understand what it really means to be a lawyer, and quite frankly to remind more "seasoned" members of those same

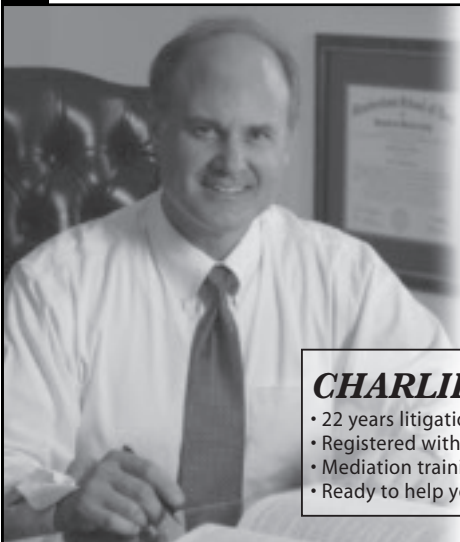
## PRESIDENT'S PAGE Continued from page 309

obligations, is to participate in one of the mentoring opportunities offered by our state bar and various local bar associations. I look forward to the pilot programs that will be implemented by Chief Justice Cobb's Task Force on Professionalism, which is working under Judge Harold Crowe's able leadership. Being involved in these mentoring and professionalism projects and programs not only will make you a better lawyer, it will make you a better person.

Finally, we must work to improve Alabama's system for the selection of its judiciary and our state's reputation for justice. In the words of former Supreme Court Justice O'Connor, "We put cash in the courtrooms, and it's just wrong." The numbers are painful—according to a recent study by the National Center for State Courts, over 75 percent of the public believe that there is a correlation between campaign contributions and judicial decisions. Worse yet, 49 percent of trial judges in this country share the same feeling. I don't know what's worse: a judge being corrupted by partisan politics or a fair and impartial judge being wrongly perceived as corrupted by

partisan politics. We all know that a solution is going to require our bar to display selfless devotion to finding a solution. Chief Justice Cobb and I have pledged that we will work in concert to address the problems associated with the partisan election of judges. We will embark on a course designed to take us to a point where every citizen enjoys not only the reality, but also the confidence and perception that they are dealing with a fair and impartial system of justice. I look forward to sharing with you the details of this effort in the very near future.

As we begin this year together, I welcome and solicit your ideas, complaints and opinions about all of these matters. Please understand that when you bring me a problem, I will ask you for your ideas as to a solution. We have all heard countless times, "Why doesn't the bar do something about this?" YOU are the bar, and I will insist that your question be, "Why aren't WE doing something about this?" It's going to be a busy year for the Alabama State Bar and, with your cooperation, hard work and enthusiasm, we can make it a great one. Buckle up. ▲▼▲



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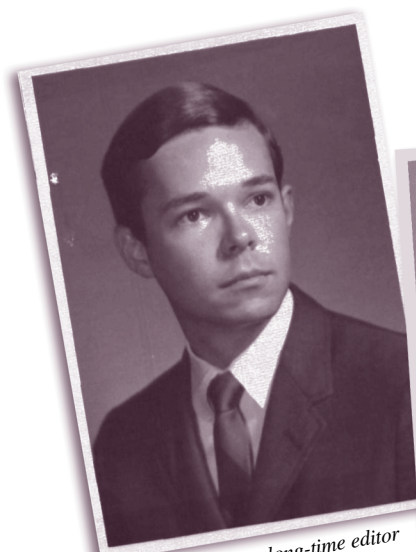
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KEITH B. NORMAN



*Robert A. Huffaker, long-time editor of The Alabama Lawyer, in photo accompanying his application to sit for the bar exam...*



*...when he took over editorial duties in 1983...*



*...and today, after volunteering for over two decades.*

## Robert A. Huffaker: A Quarter-Century of Dedicated Service

It is fitting that the new state bar president, Mark White, appears on this month's cover of *The Alabama Lawyer*. In 1981, Mark chaired *The Alabama Lawyer* Survey Committee that recommended publishing the *Lawyer* six times a year instead of four times and changing the publication's format from a journal to a magazine. The new format of *The Alabama Lawyer* made its debut 25 years ago this past January. Starting with that issue, we have been fortunate to have one editor, Robert A. Huffaker.

The Alabama State Bar began publishing *The Alabama Lawyer* in 1940. Judge Walter B. Jones was the first editor and served until 1964. Robert has now eclipsed Judge Jones's 24-year tenure as editor. Along the way, Richard Neal (1964-1968) and J.O. Sentell (1968-1983) edited the *Lawyer*.

For these past 25 years, Robert has worked as chairman with many different members of *The Alabama Lawyer* Board of Editors. (I had the good fortune to serve on the board of editors with Robert when I was in private practice prior to joining the state bar staff.) As volunteers, the board of editors does a remarkable job of publishing a high-quality, attractive and useful professional

# EXECUTIVE DIRECTOR'S REPORT

Continued from page 311

magazine. State bar staff member Margaret Murphy has done an excellent job for almost 24 years for the magazine in her position as publications director. But, the consistently high marks which the *Lawyer* receives are due largely to Robert's leadership and devotion to the magazine. I am sure that Margaret would agree.

To appreciate the labor of love that the *Lawyer* is for Robert, just consider the following. Since 1983, there have been 150 issues of the magazine totaling more than 10,000 pages! Even though the magazine is published every two months, Robert has worked almost daily with Margaret and the board of editors for the past 25 years to prepare each issue for publication. Robert's commitment of time in reading all the articles and making editorial decisions for each issue is nothing short of incredible.

Having a professional publication the caliber of *The Alabama Lawyer* requires many things, including: quality articles; a hard-working board of editors; diligent staff support; generous advertising sales; a talented graphic designer; and a skilled printer. We have been fortunate to have all these things which have helped make the *Lawyer* a model publication. The most important ingredient, however, has been the long labors of its devoted editor—Robert Huffaker.



Visiting at the reception honoring the 2008 Award Winners are Professor Pam Bucy (front), Anne Stone Sumblin, Wade Baxley, Robert Huffaker, and Sam Franklin.



*This is where it all began and we have come a long way! This is the cover of The Alabama Lawyer magazine, dated January 1983, which is the first issue Robert Huffaker was able to put his indelible imprint on as editor. His craftsmanship as a lawyer, editor and the "voice" of the publication is easy to trace over the past quarter of a century.*

## Education Debt Continues to Increase

The student debt-load of applicants for the July 2008 bar examination increased over last year. Of the 400 first-time applicants for the July exam, 72 percent had student loans. The average debt for all applicants with student loans was \$81,690, an increase of 3.4 percent over last year. The average debt for graduates of the five Alabama law schools and the graduates of out-of-state law schools who applied to take the July bar exam was: University of Alabama, \$62,515; Birmingham School of Law, \$30,733; Cumberland School of Law, \$100,072; Jones School of Law, \$69,289; Miles Law School, \$25,000; and out-of-state law graduates, \$94,397.

**Adams, Non Quincy**

Mobile

Admitted: 1950

Died: October 9, 2007

**Angell, Andrea Christiane Hurt**

Medfield, MA

Admitted: 1988

Died: May 18, 2008

**Crowell, Russell Shannon**

Port St. John, FL

Admitted: 1977

Died: May 25, 2008

**Downey, Stanford Harmon, Jr.**

Moody

Admitted: 1968

Died: May 10, 2008

**Grierson, Harold Edward**

Bremen

Admitted: 1985

Died: February 28, 2008

**Love, Hilliard Wayne**

Anniston

Admitted: 1965

Died: May 9, 2008

**Scales, Ellsworth Poindexter, III**

Mobile

Admitted: 1984

Died: May 15, 2008

**Smith, John Joseph, Sr.**

Homewood

Admitted: 1937

Died: June 16, 2008

**Spencer, Donald Eugene, Jr.**

Montgomery

Admitted: 2000

Died: May 2, 2008

**Taylor, Samuel Wayne, Hon.**

Montgomery

Admitted: 1958

Died: May 21, 2008

**Waites, Rodney B.**

Gulfport, MS

Admitted: 2002

Died: June 18, 2008



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- **Richard Keith** of Montgomery was recently named president of the Alabama Criminal Defense Lawyers Association at its annual meeting in Florida. Keith has been a solo practitioner since 1990.



*Keith*

- **Juanita Sales Lee** was recently named president-elect of the Federal Bar Association. As an FBA member for over 15 years Lee has served in many leadership positions. Lee is a senior attorney with the United States Army, Space and Missile Defense Command in Huntsville where she primarily practices labor and employment law. Although practicing with various Army commands for over 20 years, she has also worked with the Legal Aid Society of Madison County, A&M University and the U.S. Department of Housing and Urban Development, and was in private practice in her hometown of Phenix City.



*Lee*

Lee is a graduate of the University of Alabama School of Law, and has a master of laws degree from The Judge Advocate General's School, U.S. Army. She is admitted to the Alabama State Bar, the State Bar of Georgia, the Supreme Court of the United States and the U.S. District Court, Northern and Middle districts of Alabama.

- Mobile attorney **Jeffrey L. Luther**, of Luther, Oldenburg & Rainey PC, was recently inducted into the Litigation Counsel of America. The Litigation Counsel of America is a trial lawyer honor society composed of less than one-half of one percent of American lawyers.
- Birmingham lawyer **Robert Palmer** has been named winner of the Access to Justice Award by Public Justice Foundation, the national organization of public interest lawyers and advocates. Palmer successfully challenged Alabama's statute of limitations on toxic tort complaints—a limit that required victims to file a complaint within two years of their last exposure to the offending chemical. In *Griffin v. Unocal Corp.*, the Alabama Supreme Court overturned a 30-year-old ruling which had upheld the two-year statute of limitations. ▲▼▲

# Alabama State Bar Spring 2008 Admittees

**Abbott**, Lance Eric  
**Adair**, Jeffrey Reeves  
**Allen**, Judson Barksdale  
**Amari**, John Matthew  
**Anders**, Eric Joseph  
**Baker**, Angela Michelle  
**Banks**, Craig Allan  
**Barker**, Dorothy Allison  
**Beckum**, William Brooks  
**Bell, Jr.** William Anthony  
**Bellville**, Nathan Trent  
**Bence**, William David  
**Bockhold, Jr.** George  
**Bonnici**, Katherine Bolton  
**Brantingham**, Christopher James  
**Burch**, Denise Hammell  
**Carpenter**, Megan Campbell  
**Carroll**, Donald McKinley  
**Cervera**, Richard David  
**Copeland**, Roger Latham  
**Cornelius**, Robert Douglas  
**Cross**, Adam Gregory  
**Cross, Jr.** Richard Ladonne  
**Curry**, LaShanda DeJoy  
**Cutlip**, Jeremy Dale  
**Davis**, Richard Jon  
**Davis**, Charity Maria  
**Delaplane**, Jacob George  
**Doty**, Sara Jones  
**Duffy**, Michael Brian  
**Evans**, Mary Christina  
**Fargarson**, Michael Brandon  
**Fite, IV** Arthur Freeman  
**Florie**, Michael Dupree  
**Fortune**, Maria Clintelle  
**Furgerson**, Kelly Barber  
**Gargis, II** Robert Stephen  
**Garrett**, Patrick James  
**Gentry**, Rachel Ann  
**Gillilan**, Stephanie LeAnn  
**Grant**, Jacquelyn La'Shette  
**Green**, April Elizabeth  
**Greene**, Jay Patrick  
**Gregg**, Yong Ui

**Hall**, Laurie Shoultz  
**Hampton**, Emmett Wade  
**Haralson, IV** Lonnie James  
**Harris**, Jonathan Bobbitt  
**Haynes**, Susan McKinnon  
**Heatherly**, Nickolas Rowland  
**Hill**, Chevene Neel  
**Holtcamp**, Heather Ann  
**Hornsby, III** W Fred  
**Howard**, Todd Robert  
**Huskey**, Whitney Layton  
**Iluonakhamhe**, Joseph Onoshioghie  
**Irwin**, Benjamin Ab  
**Isaak**, Melissa Lee  
**Johnson**, Derry Dean Robbins  
**Jones**, Adam Patrick  
**Jordan**, Amanda Leigh  
**Kearse**, Corey Smith  
**Kisor**, Tyson Kerns  
**Lasseter**, Michael Paul  
**Latino, III** Russell  
**Ledbetter**, Leslie Ann  
**Luck**, Robert Joshua  
**Marlow**, Darrin Ray  
**Marshall**, William Dwight  
**Martin**, Joeletta Jean  
**Mason**, Danielle Ward  
**Massien**, Jeffrey Hal  
**Mauritson**, David Richard  
**McCullars**, Matthew Neal  
**McGee, IV** Clyde  
**Mick, Jr.** James Arthur  
**Mobley**, Belinda Jo  
**Mock**, Lauren Lee  
**Moffett**, Randall Guy  
**Morton**, Carla Verletha  
**Mosteller**, Rondi Ann  
**Myers**, Cindy Frances  
**Nelson**, Kristen Marie  
**Overstreet**, Brian Robin  
**Park**, Karin Ingram  
**Parks**, Amanda Effa  
**Parr**, Judith Ann Brantley  
**Paulk**, Jason Cole

**Pitman**, Charles Garland  
**Powdrill**, Michele Renee  
**Pulliam**, Page Thead  
**Reisinger**, Edward Scott  
**Reynolds**, Leigh Christian  
**Richard**, Rene' Elizabeth  
**Richardson**, Brian Jason  
**Roberts**, Marcella  
**Rodgers**, Robert Allen  
**Sach**, Courtney Amber  
**Schwant**, Troy Thomas  
**Sciple**, Steven Douglas  
**Scully-Clemmons**, Jason Adam  
**Sheldon**, Susan Rhea Hudson  
**Sims**, Johanna Guenther  
**Smallwood**, David Tennant  
**South**, Gina Marella Tur  
**Stetson**, Stephen Anthony  
**Sumerel**, James Keith  
**Surkin**, Katharine McKee  
**Swallows**, Jeremy Richard  
**Taylor**, Billy Ray  
**Thomas**, Aaron Dewayne  
**Thomas**, Frank Clayton  
**Turner**, Jay Phillip  
**Tyus**, Richele Leigh  
**Tyus**, Jarrett Nathaniel  
**Vaughan**, Casey Eugene  
**Walker**, Sophie Claire Riall  
**Walker, IV** Louis Camp  
**Wall**, Jennifer Williams  
**Warrick**, Kevin Scott  
**Washington**, Katrina  
**Whatley**, Joy Thompson  
**Whisenhunt**, Dustin Ryan  
**Williams**, Margaret Younce  
**Williams, Jr.** Andy Joel  
**Williams**, Melissa Ellen  
**Wilson**, Mark Bailey  
**Word**, Christopher Palmer  
**Wright**, Ernest Jack  
**Young**, John David



# Spring 2008 Admittees

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



## STATISTICS OF INTEREST

Number sitting for exam .....	235
Number certified to Supreme Court of Alabama .....	127
Certification rate* .....	54.0 percent
<b>Certification Percentages</b>	
University of Alabama School of Law .....	90.9 percent
Birmingham School of Law .....	44.5 percent
Cumberland School of Law .....	61.1 percent
Jones School of Law .....	70.6 percent
Miles College of Law .....	30.4 percent

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

For full exam statistics for the February 2008 exam, go to [www.alabar.org](http://www.alabar.org), click on "Members" and then check out the "Admissions" section.

# LAWYERS IN THE FAMILY



*Adam Cross (2008), Dell Cross (1989) and  
Jonathan Cross (1993)  
Admittee and brothers*



*Benjamin Ab Irwin (2008), Samuel A. Cherry, Jr. (1976)  
and Christine Cherry Irwin (2006)  
Admittee, father-in-law and wife*



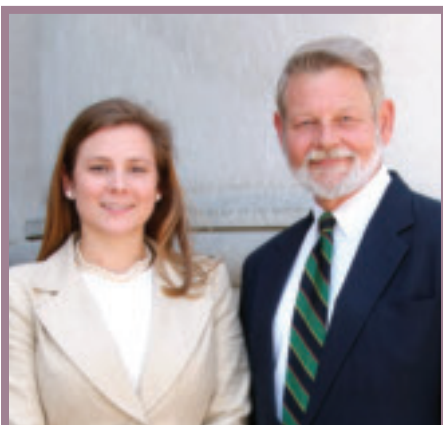
*Robert Stephen Gargis, II (2008) and  
Robert Stephen Gargis (1980)  
Admittee and father*



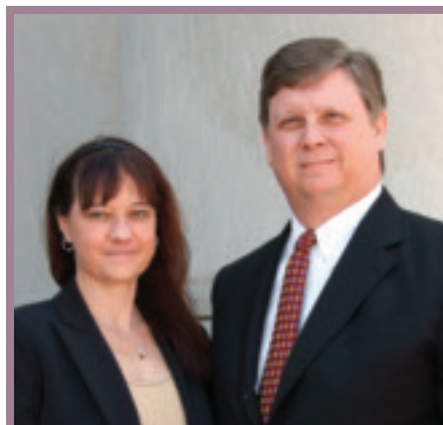
*Marcella Roberts (2008) and  
Kevin Roberts (1999)  
Admittee and husband*



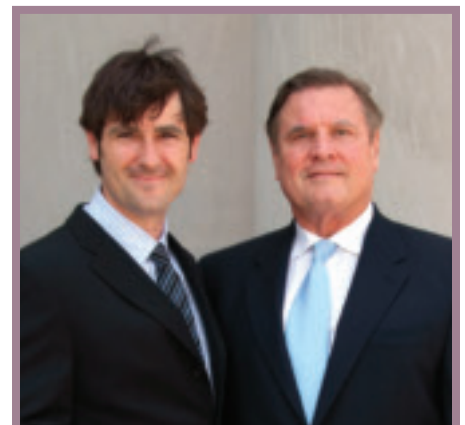
*Maria Fortune (2008) and  
Daniel Fortune (2002)  
Admittee and husband*



*Dorothy A. Barker (2008) and  
Edward Elliott Barker (1972)  
Admittee and father*



*Joy Thompson Whatley (2008) and  
William W. Whatley, Jr. (1984)  
Admittee and husband*

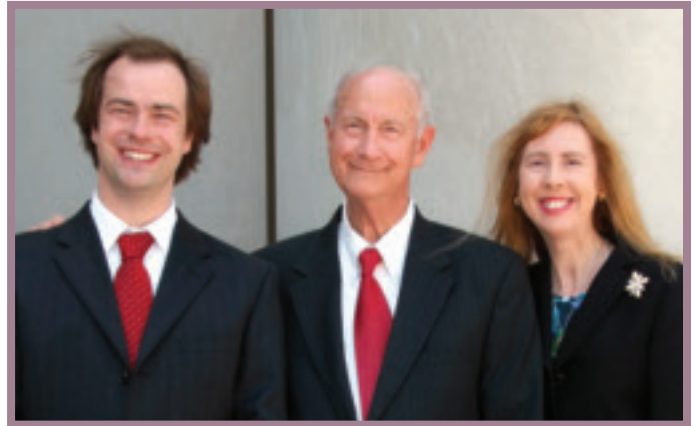


*Whit L. Huskey (2008) and  
Dow T. Huskey (1977)  
Admittee and father*

# LAWYERS IN THE FAMILY



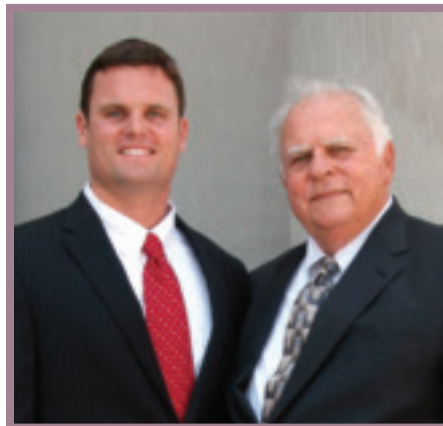
*Julia Gruenewald Bernstein (2008), Chris Gruenewald (1977)  
and John Gruenewald (1973)  
Admittee, father and uncle*



*David Tennent Smallwood (2008), Judge Tennent  
Smallwood (1963) and Sunny Smallwood (1994)  
Admittee, father and sister*



*Katherine Bolton Bonnici (2008) and  
W. Donald Bolton, Jr. (1978)  
Admittee and father*



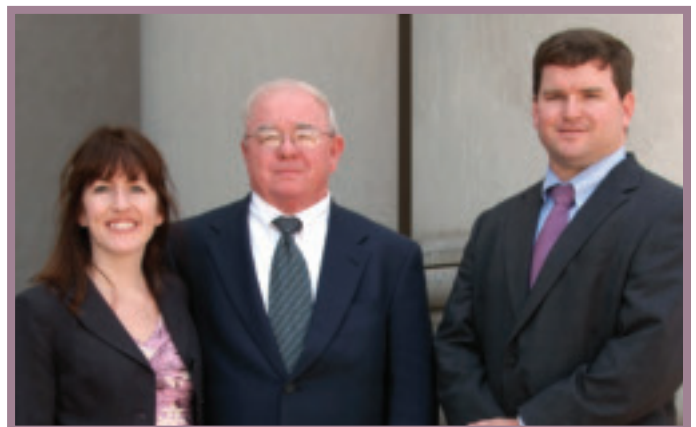
*William David Bence (2008) and  
William J. Benton, Sr. (1960)  
Admittee and grandfather*



*Arthur Freeman Fite, IV (2008) and  
Arthur F. Fite, III (1971)  
Admittee and father*

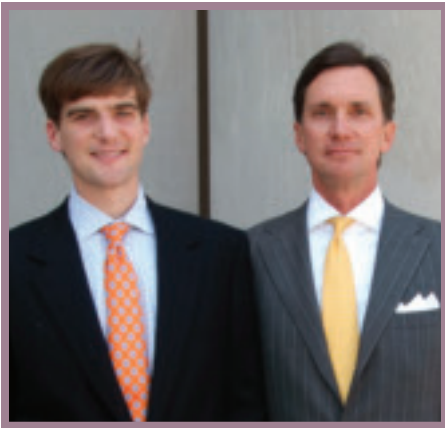


*Megan Lynn Campbell (2008), Harvey B. Campbell (1977)  
and Sandra J. Campbell (1990)  
Admittee, father and mother*



*Leigh C. Reynolds (2008), Dan Reynolds (1968) and  
Matt Reynolds (2000)  
Admittee, father and brother*

# LAWYERS IN THE FAMILY



*Michael Dupree Florie (2008) and  
Michael Anthony Florie (1976)  
Admittee and father*



*Richard David Cervera (2008) and  
N. J. Cervera (1966)  
Admittee and father*

*(Photography by FOUTS  
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Montgomery, photofouts@aol.com)*

**We're Going "Green"**  
**To Save You Time  
And Energy!**

Beginning with the  
October 2008 issue,  
your *Addendum* newsletter  
will become available in an  
electronic format only.

All ASB members will have the bi-monthly newsletter delivered to the e-mail address they provided to the Membership Department. *(Hint: You might want to double-check to see if the information we have for you is correct!)* This is all in an effort to better serve our members and make sure that the information we send you is as correct and up-to-date as possible. The newsletter will still bring you news on cutting-edge technology, nuts-and-bolts practice suggestions, upcoming rule changes or other court announcements, and profiles of other ASB members rendering service in their communities. And, the day we send it is the day you'll get it! So, relax and feel good about the new format –

**You'll be keeping your desk and the environment a little cleaner.**

# 2008 AWARD RECIPIENTS

*During the 2008 Alabama State Bar Annual Meeting, the following awards were presented:*

(Recipients' names in bold)

## Maud McLure Kelly Award

Jane Kimbrough Dishuck  
Louise Ingram Turner

## Local Bar Awards of Achievement

Large Bar—**Mobile Bar Association**  
Medium Bar—**Calhoun/Cleburne County Bar Association**

## Pro Bono Mediator Award

Douglas I. Key

## Awards of Merit



**Millard D. Fuller** and ASB Vice President Alicia Bennett

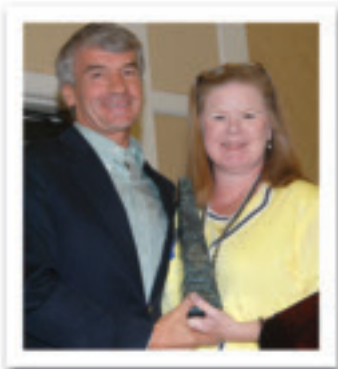


**Barbara Rhodes**



**Beth Carmichael**, right, and ASB Vice President Alicia Bennett

## Chief Justice's Leadership Award



**Samuel N. Crosby** and Chief Justice Sue Bell Cobb

## Walter P. Gewin Award



**Gordon F. Bailey, Jr.**, center, with Sam Crosby and Noah Funderburg

## Commissioners' Award



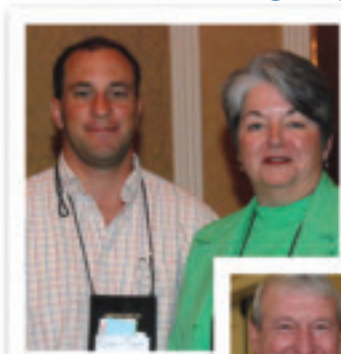
**Fred D. Gray, Sr.**, left, and **Morris S. Dees, Jr.**, right, with President Crosby

## President's Award



Mike and Mickey Turner of **Freedom Court Reporting**, with ASB Vice President Alicia Bennett, left

## Pro Bono Awards



**Firm Award**—Juan Ortega and Helen Alford accept the award on behalf of **Alford, Clausen & McDonald LLC**



**Albert Vreeland Pro Bono Award**—**Sister Lynn Marie McKenzie** with her brother-in-law, ABA President Elect Tommy Wells



**Student Award**—**Sigfredo Rubio**, left, and Ted Hosp, chair, Committee on Access to Legal Services

# 2008 ANNUAL MEETING



Expert Paul Mellor gave tips to improve your memory at Wednesday's plenary session.

Two participants in the mullet toss got up close and personal with their new "friend."



No matter how you looked at it, the Poolside Party was a blast for the whole family!



Tim Jackson provided the musical entertainment while attendees dined on hot dogs and chicken tenders with all the trimmings.



Alex Griffith worked hard to get his marshmallows just the right degree of "done."



All ages were encouraged to join the limbo fun!



David Law's family turned out in force and won the crab-hunting contest. It's not known if the crustaceans went back to Rockford or were set free.



Things got a bit wet 'n' wild at Wednesday evening's volleyball tournaments.

# PHOTO HIGHLIGHTS



*Umm, the idea was to build a sandcastle.*



*The Bass family, including newest member Guy Gardner, along with Nancy Seale, at the Family Night Coastal Carnival.*



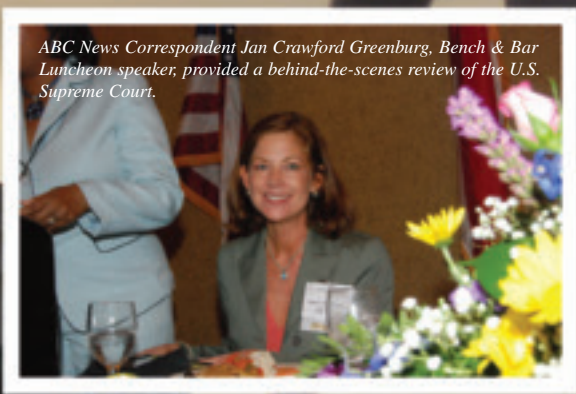
*Bright and early Thursday morning, participants in the sandcastle contest were hard at work.*



*Ray Hinchell was just one reason so many attended the 12<sup>th</sup> Annual VLP Reception.*



*Making a family Bobble Head video was harder than it looked but was great fun for children, parents and even grandparents. Just one of Thursday's highlights!*



*ABC News Correspondent Jan Crawford Greenburg, Bench & Bar Luncheon speaker, provided a behind-the-scenes review of the U.S. Supreme Court.*



*The Alabama Association of Paralegals' exhibit "took the prize" for having the most colorful giveaways at Sandestin!*

# 2008 ANNUAL MEETING



*At the Poolside Ice Cream Social, paralegal volunteers helping at the craft tables stayed busy . . .*



*Turn-about is fair play, as Tim Lewis, with the Alabama Bench & Bar Historical Society, took a photograph.*



*. . . as did Mr. Stiltwalker/Balloon-Maker.*



*Sometimes, eating ice cream can be a group event.*



*Attendees of the Sixth Annual Maud McLure Kelly Award luncheon "set the mood" by donning period chapeaus.*



*Miller Norman worked hard to bring in "THE BIG ONE" during the chartered fishing trip.*



*ASB members and guests conducted due diligence in deciding what to secretly bid on at the Third Annual Silent Auction Fundraiser.*



# PHOTO HIGHLIGHTS



Saturday morning, not-so-bright but still early, volunteers and participants turned out for the Legal Run Around/5k and Fun Run.



Keith Norman congratulated 50-year practitioners Rick Manley (center), Ralph Coleman (right) and Richet Pearson accepting for her father, J. Richmond Pearson (left).



Fun wasn't limited to just any age group!



Montgomery attorney James Anderson and daughters Marjorie (left) and Anna (right) are already making plans to be at the Grand Hotel in July 2009!



Retiring bar commissioners included Everett Price, John Medaris and Roger Bedford.



Winners of the 5k were Hall Copeland of Montgomery and Kim Gordon of Dothan.



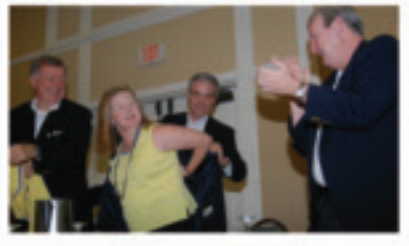
The Birmingham Heritage Jazz Band performed at Saturday's Presidential Reception.



Bob Clute of Mobile, winner of the Grand Prize, was congratulated by Bill Bass, president of ISI Alabama.



Start exercising now to be included this group photo next year!



In an effort to make her feel like "one of the guys" at the Grande Convocation, ASB President-elect Tom Methvin gave Chief Justice Sue Bell Cobb her own navy blazer . . .



. . . which she immediately put on, to the entertainment of those at the Grand Convocation.

# Last Will and Testament of

VICTOR L. QUEST

I, VICTOR L. QUEST, a resident of the County of Tazewell

and of sound and disposing mind and memory, hereby make, publish, ratify and declare this to be my last will and testament, hereby revoking any other wills or testaments made by me.

I hereby direct that all funeral expenses and all expenses in administering my estate, and all estate, inheritance and succession taxes which become due by reason of my estate any right to recovery from any person or persons.

I direct that no security or bond be required of my mother or my father before they are appointed as Executor of my estate.

I give the Executor of my estate full power in each case to be exercised by him or her

(a) To sell at public or private sale all or part of the real and personal property of my estate to borrow money and to execute all such instruments as may be necessary to carry out the purposes of this will.



# The Case of the Vanishing Devise, or in the Alternative, Praise the Lord! It's Not Adeemed

## *A Not-too-Scholarly Overview of Ademption in the Law of Alabama*

**By J. Milton Coxwell, Jr.**

### **Introduction**

Until the following real fact situation was presented to me, I rarely had occasion to consider the subject of ademption. In fact, on those infrequent occasions when the subject arose I often had to resort to my time-worn *Black's Law Dictionary*, 3<sup>rd</sup> Edition (which belonged to my father when he was a law student in the mid-1930s) to refresh myself on the meaning of the word. However, that all changed after these facts were related to me. The names and places have been changed to protect the innocent, and the guilty.

Tom Testator executed a valid will in 1990 which contained the following devise:

"I hereby give and devise unto my beloved daughter Sally my undivided one-fourth interest in Blackacre, my family's ancestral home, which is further described as Section 1, T2N, R3E, Maycomb County, Alabama, consisting of 640 acres, more or less." The will also contained a residuary devise to Dick and Jane, who are Sally's siblings. In 1995, Tom Testator and his three siblings effected a partition of Blackacre, which resulted in Tom's becoming the sole owner of the southeast quarter of Section 1, and conveying to his siblings his entire interest in the balance of Blackacre.

Tom did not make a codicil to his will, and died in 2007, still owning the southeast quarter of Blackacre. Sally wants to know what portion of Blackacre she will receive under her father's will. Several possibilities immediately come to mind: (a) She will receive the entire southeast quarter; (b) She will receive an undivided one-fourth interest in the southeast quarter; or, (c) She will receive nothing and the entire southeast quarter will pass to Dick and Jane under the residuary.

For some reason, my mind drifted back to my days as a law student in Farrah Hall in the classes of Professor John Calhoun Payne, who always began class with the familiar phrase, "At the last hour. . . ." Specifically, I recalled those occasions when some unfortunate classmate had been called upon to recite a case involving a particularly inscrutable issue, while the rest of the class waited anxiously on the edge of their uncomfortable, straight-backed desks in expectation of an epiphany from "Blackjack," only to be deflated with his parting comment, "You see the problem."

I could certainly see Sally's problem, but I was not sure of the answer. Sally was comfortable with allowing me some time to research the issue, and I soon became re-acquainted with ademption in an up-close and personal fashion. My old *Black's*, 3<sup>rd</sup> Edition, defines "ademption" in part as:

"The revocation, recalling, cancellation or extinction of a legacy, according to the apparent intention of the testator, implied by the law from acts done by him in his life, though such acts do not amount to an express revocation of it."

I am not aware if the newer editions of *Black's* provide additional insight, but this was enough to get me started.

Computerized legal research was not a part of my law school training (there were a few computers back then, I think), but I have attained a modest degree of skill in the art through extensive trial and error, mostly the latter. My electronic exploration revealed that only about a dozen Alabama appellate decisions in the last 80 years or so have dealt with the subject of ademption, and the following general principles are derived from these cases.

## Overview of the Law

First, ademption applies only to specific devises, as opposed to general devises. A specific devise is one which is so described and distinguished from all other articles or parts of the same as to be capable of being identified. A general devise is one of quantity merely, and includes all devises not embraced within the definition of a specific devise. *Ullman v. First National Bank of Mobile*, 273 Ala. 154, 137 So.2d 765 (1961).

“I give and devise the sum of \$100” is a general devise and not subject to ademption, as is “any automobile that I might own at the time of my death.” On the other hand, “I give and devise my blind mule named Reuben Bullock to my nephew Ralph” is a specific devise, and subject to ademption if Reuben is not present to become a part of the testator’s estate.

Second, an ademption generally arises under two different circumstances: (a) When the testator has conveyed or transferred the specific property to the devisee *inter vivos*, which is an ademption by satisfaction; or, (b) When the specific property does not constitute a part of the testator’s estate at the time of his death, as the result of the destruction of the property or its *inter vivos* transfer by the testator to one other than the devisee, which is an ademption by extinction.

Armed with these general principles, a consideration of some of the reported Alabama cases dealing with ademption is

instructive and somewhat entertaining (if you like this sort of thing). In *Gilmer’s Legatees v. Gilmer’s Executors*, 42 Ala. 9, the testator executed a will in 1863 which devised “twenty thousand dollars in Confederate States bonds.” The testator died in 1868, and the executors declined to pay the devisee any cash, citing the essential non-existence of the Confederate bonds, as well as their issuing authority. The devisee argued that the testator had an abundant estate, and that the devise should be satisfied in cash from the residue, in order to carry out the intention of the testator. The court ruled that the devise of Confederate bonds was adeemed by extinction, and the unlucky devisee went away empty-handed, muttering something about the South rising again.

In *Willis v. Barrow*, 218 Ala. 549, 119 So. 678 (1929), decided on the eve of the Great Depression, the testator made a devise of “one-third of the money owned by me which is on deposit in the Troy Savings Bank of Troy, New York.” Shortly after executing the will, the testator moved the account from Troy, New York to the First National Bank of Mobile, where the account remained intact on deposit until the testator’s death. The court noted that the intention of the testator is always the controlling factor, and that a supplemental rule favors the upholding of devises whenever possible rather than their defeat. The court ruled that the testator’s keeping the deposit intact preserved its distinct character as a specific

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devise, and that the place of deposit was merely descriptive. The court suggested that a different result might have been reached had the testator later commingled the funds with other accounts. The devisee was happy, and was heard to comment that he intended to make millions by investing his inheritance in the stock market.

Several older ademption cases deal with a fact situation wherein the testator makes a specific devise of real estate, and later during his lifetime sells the real estate to another. As a part of the consideration he takes a purchase money mortgage from the buyer. The testator dies before the mortgage is fully paid. Who is entitled to receive the balance due under the mortgage? Apparently this was a fairly common circumstance, because as early as 1852 the *Code of Alabama* contained a section which provided in substance that such a devise was not adeemed, and devisee of the specific property was entitled to receive the unpaid portion of the purchase price, unless it clearly appeared from the terms of the will or some other writing that the testator intended otherwise. This particular *Code* section was carried forward without change and appeared as §43-1-10 of the 1975 *Code*; however, it was repealed as a part of the new *Probate Code* which became effective January 1, 1983.

In *Sims v. Moore*, 228 Ala. 630, 264 So.2d 484 (1972), the testator made a will which devised a certain 132-acre parcel to his nephew. Subsequent to the execution of the will, the testator conveyed the 132 acres to a third party but reserved a vendor's lien to secure the unpaid balance of the purchase price. The court cited a line of ademption cases addressing the issue, and found that the old *Code* section (then Tit. 61, §13, *Ala. Code* 1940) was controlling. The appreciative nephew was entitled to the unpaid portion of the purchase price.

As a part of the extensive revision of Alabama probate law which became effective January 1, 1983, the legislature repealed old §43-1-0, *Ala. Code* 1975, and replaced it with §§43-8-226 and 43-8-227. Section 226 provides in substance that if the testator

A specific devise is one which is so described and distinguished from all other articles or parts of the same as to be capable of being identified.

intended a specific devise of securities (rather than the equivalent value of the securities), the doctrine of ademption will apply and the devisee will receive only those securities which the testator owned at death, including any additional securities of the same entity which were acquired by the testator as the result of stock dividends, stock splits, merger or reorganization, but not shares acquired by the testator as the result of the exercise of purchase options. Assume the testator makes a devise of "my 500 shares of XYZ stock given to me by Uncle Joe." After executing the will, the testator sells 250 of his shares, and thereafter the XYZ stock splits 3 for 1, leaving the testator with 750 shares at the time of his death. Section 226 dictates that the devisee receives the entire 750 shares.

"Securities" has a broad definition under the *Probate Code*, which includes promissory notes. Assume a testator makes the following devise: "I hereby give the \$10,000 promissory note executed to me by my cousin Fred to my son. Lucky Fred is a deadbeat and has never paid anybody, so it will probably not amount to anything, but it is yours anyway." Fred wins \$50,000 from a \$5 scratch-off card at

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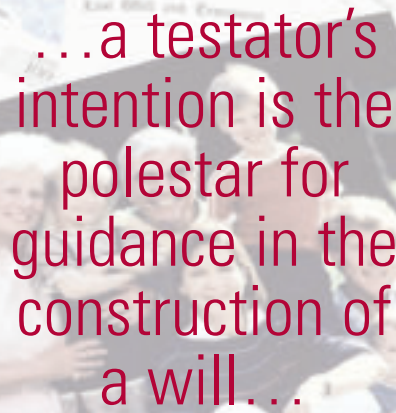
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the State Line Bar, and pays the note in full two days before the testator's death. Does Lucky get the \$10,000 in cash? You see the problem.

Section 227 addresses the sale or disposition of the subject of a specific devise of property during the testator's lifetime, and provides in substance that the devisee will receive the unpaid portion of any purchase price, a condemnation award and any unpaid insurance proceeds for destruction of the property.

Since the advent of the new *Probate Code* in 1983, at least three reported Alabama cases have dealt with the issue of ademption. In *Matthews v. Matthews*, 477 So.2d 391 (1985), the testator made a devise of "150 shares of preferred stock in Litton Industries." However, the 150 shares, which were all of the testator's Litton shares, had been redeemed in their entirety about one month prior to the testator's death for \$3,750. The devisee contended that the devise was general in nature, and that she was entitled to the \$3,750. The court recognized the legal principles that a testator's intention is the polestar for guidance in the construction of a will, and that a general bequest is favored over a specific bequest, but concluded that the Litton



...a testator's intention is the polestar for guidance in the construction of a will...

shares amounted to a specific devise, which was deemed and cancelled under the authority of §43-8-226. The court suggested that a different result would have been obtained had the testator owned additional Litton stock.

In *Parker v. Bozian*, 859 So.2d 427 (2003), the testator made a devise of "my certificate of deposit #1274 with the First Bank of Dothan, Alabama." After the certificate matured, and in order to obtain a more favorable interest rate, the testator split the certificate into two smaller CD's, which were numbered 2843 and 2844. No new money was added to the CD when the

split occurred and no change was made in the will. The residuary devisee contended that the devise of CD #1274 was adeemed, and that he was entitled to the proceeds of the two resulting CD's. The court's opinion contains a lengthy discussion of the law of ademption in Alabama, with reference to the familiar rules of construction and several reported cases from other jurisdictions. The opinion concludes with a finding that the devise of CD #1274 was a specific devise subject to ademption, but that the subsequent split of the original CD into two smaller CD's with different numbers did not change its essential

**NOTICE TO ETHEL ADAIR,  
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ADAIR, THEODORE ADAIR,  
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JOHN QUINCY ADAIR,  
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THEIR CLAIMS**

Philip Taylor, Substitute Administrator of the Estate of John Quincy Adair, deceased, who died on December 13, 2005, and who formerly resided at 887 Perrineville Road, Perrineville, Monmouth County, New Jersey, hereby gives Notice to all heirs of the decedent John Quincy Adair to come forward to submit their proofs of heirship and present their claims against the estate within ninety (90) days of the publication of this notice at the address set forth below:

/s/ Philip Taylor, Substitute Administrator  
Philip Taylor, Substitute Administrator  
Estate of John Quincy Adair, deceased

Lomurro, Davison, Eastman & Munoz, P.A.  
Attorneys for Philip Taylor, Adm.  
100 Willow Brook Road, Bldg. 1  
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character, and the devise was therefore not adeemed. Stated somewhat differently, the court concluded that CD #1274 still existed. The court noted that the testator had not withdrawn, changed or added to the money in the original CD, which remained in its original portfolio, and that the numbering system for CD's was only for the convenience of the bank.

In *Bolte v. Robertson*, 941 So.2d 920 (2006), the testator made a devise of "all right, title and interest I may have in and to any real estate at the time of my death, including all right, title and interest in and to real estate which I derived by inheritance or otherwise from or through my wife. . . ." The testator subsequently sold some of the property he had inherited from his wife, and took a purchase money mortgage, which remained unpaid at his death. The devisee of the real estate claimed the mortgage balance, as did the residuary devisees. The court considered the question of whether the devise was general or specific, and concluded that the portion of the real estate which was acquired from the testator's wife was a specific devise, but that the balance of the real estate passed under a general devise. The court expressly considered the non-ademption provisions of §43-8-227, and its statutory predecessors, as well as the intention of the testator, and concluded that the unpaid balance of the mortgage passed to the specific devisee. The court also noted that the purchase money mortgage was an interest in real estate which the testator owned "at the time of my death."

## Conclusion

This all brings us back to Sally and her quandary. It seems that none of the statutory non-ademption provisions apply to her situation, but she may have an argument similar to the one advanced in the *Parker* case that the southeast quarter of Blackacre is essentially the same as an undivided one-fourth interest in the whole of Blackacre. Her father's will does not contain any express language relating to ademption (and I am not sure that I have ever read one that did), but the will does make generous devises of other property to Dick and Jane. Surely, the testator would not have intended for Sally to be short-changed. However, as a popular comedian and erstwhile Monday Night Football announcer is wont to remark, "But I could be wrong." ▲▲▲


*J. Milton Coxwell, Jr. is a native of Repton and now a resident of Monroeville. A graduate of Birmingham Southern College (cum laude) and the University of Alabama School of Law, he began his practice with his father, John Milton Coxwell, now deceased, (University of Alabama School of Law 1939), when they established the firm of Coxwell & Coxwell in 1974. He is a member of the Monroe County Bar Association, the Alabama State Bar and the American Bar Association.*



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# *EX PARTE FLOWERS:* The Alabama Supreme Court's Most Recent Decision Shaping the Work-Product Doctrine

By **Teresa G. Minor and  
Patrick H. Strong**

Practicing litigators all understand the utility of a timely witness statement. Due to the inevitable delays in the litigation process, depositions sometimes do not take until several years after the relevant events, when a witness's recollection (for better or worse) is not quite what it used to be. Often, a witness statement allows an attorney to safeguard against the unavailability of an important witness at trial and to preserve the testimony of a witness who, for any number of reasons, contracts a bad case of selective memory. Witness statements also can serve as an attractive and cost effective alternative to depositions, especially when an attorney does not know beforehand what the witness's testimony will be. That being said, litigators should be prepared for the discovery fight that typically accompanies these written or recorded statements. Unless such a statement has been obtained from a client, the attorney-client privilege ordinarily does not preclude discovery of the statement by adverse parties. This limits the potential privileges applicable to these statements to the work-product doctrine, a privilege often cited by attorneys but rarely analyzed to ensure its proper application.

Less than three months ago the Supreme Court of Alabama issued its decision in *Ex parte Flowers*, \_\_\_ So. 2d \_\_\_ , 2008 WL 821056 (Ala. Mar. 28, 2008), further clarifying the scope of Alabama's work-product doctrine in the context of witness statements taken by insurance adjusters/claims agents and creating a ripple among the state's legal community. Commentary of this sort seemingly necessitates the next logical question: What is *Flowers* and what does it mean? In order to answer these questions, it is critical to have an understanding of the Alabama's work-product doctrine.

## **Alabama's Work-Product Doctrine**

It has been said that "the work product doctrine exists to protect the integrity of the adversary system by safeguarding the fruits of an attorney's trial preparation materials from discovery by the opposing party." *Fed. Dep. Ins. Corp. v. Cherry, Bekaert & Holland*, 131 F.R.D. 596, 605 (M.D. Fla. 1990) (quoting *In re Subpoena Duces Tecum*, 738 F.2d 1367, 1371 (D.C. Cir. 1984)). Alabama Rule of Civil Procedure 26(b)(3) establishes the scope of discovery in state court and provides the framework for the work-product doctrine:





a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and *prepared in anticipation of litigation or for trial* by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has *substantial need* of the materials in the preparation of the other party's case and that the party is unable *without undue hardship* to obtain the substantial equivalent of the materials by other means.

Ala. R. Civ. P. 26(b)(3) (emphasis added). This language is indicative of the Rules Committee's recognition of the work-product doctrine first announced in the landmark decision of *Hickman v. Taylor*, 32 U.S. 495 (1947), in which the United States Supreme Court refused to extend the attorney-client privilege "to all of the information assembled by the attorney while preparing for his case" but was "unwilling to make discovery proper in all instances." Committee Comments, Ala. R. Civ. P. 26(b)(3). The Alabama Rules of Civil Procedure are patterned after the

Federal Rules of Civil Procedure, *see, e.g., Ex parte BASF Corp.*, 957 So. 2d 1104 (Ala. 2006), including Federal Rule of Civil Procedure 26(b)(3) which "has been described as an accurate codification of *Hickman*". Committee Comments, Ala. R. Civ. P. 26(b)(3).

The Court in *Hickman* held that Federal Rule of Civil Procedure 33 does not permit discovery of "documents prepared by a party's attorney after the claim has arisen". 329 U.S. at 504. The Court further extended this principle in stating that:

[i]t matters little at this late stage whether [the defendant] fails to answer interrogatories filed under Rule 26 or Rule 33 or whether he refuses to produce the memoranda and statements pursuant to a subpoena under Rule 45 or a court order under Rule 34. The deposition-discovery rules crate integrated

procedural devices. And the basic question at stake it whether any of those devices may be used to inquire into materials collected by an adverse party's counsel in the course of preparation for possible litigation.

*Hickman*, 329 U.S. at 505.

These fundamental principles have formed the backbone of the work-product doctrine in both federal and state courts alike, including Alabama appellate courts which have recognized and adopted the rule announced in *Hickman* in crafting Alabama's own work-product doctrine. *See, e.g., Ex parte Alabama Power Co.*, 196 So. 2d 702 (Ala. 1967) (recognizing the work-product doctrine announced by *Hickman* and stating that a lawyer's work product is "discoverable only on a substantial showing of good cause"). In *Ex parte Great American Surplus Lines Insurance Company*, 540 So. 2d 1357,

1360 (Ala. 1989), the Alabama Supreme Court recognized *Hickman* as “[t]he seminal case on the work product doctrine” and stated that the “doctrine announced in *Hickman* remains unimpaired and is clear and definite[.]”

The court quoted extensively from *Hickman*, highlighting the policy concerns underlying the work-product doctrine:

Proper preparation of a client’s case demands that he [the lawyer] assemble information, sift what he considers to be relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and heedless interference. That is the historical and necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to protect their client’s interests. This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways—aptly though

roughly termed by the Circuit Court of Appeals in this case [153 F.2d 212, 223] as the “Work product of the lawyer.” Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney’s thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served.

*Ex parte Great Am. Surplus*, 540 So. 2d at 1360 (quoting *Hickman*, 329 U.S. at 511).

The Alabama Supreme Court has announced the elements necessary to sustain an objection under the work-product doctrine as follows: “(1) the materials sought to be protected are documents or tangible things; (2) they were prepared in

anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party.” *Ex parte Meadowbrook Ins. Group, Inc.*, 2007 WL 44647191 (Ala. Dec. 21, 2007) (quoting *Johnson v. Gmeinder*, 191 F.R.D. 638, 643 (D. Kan. 2000)). As expected, the requisite burden of proof falls squarely on the party objecting to the discovery to establish the aforementioned elements; however, this showing is required “only if the party requesting the discovery first argues that the discovery was not prepared ‘in anticipation of litigation.’” *Ex parte Garrick*, 642 So. 2d 951, 953 (Ala. 1994) (emphasis in original). In *Ex parte Garrick* the Alabama Supreme Court recognized that the party objecting to the discovery bears the burden of proof but announced that “the objecting party is under no obligation to make any evidentiary showing until the parties are at issue as to whether the document sought was, in fact, prepared in anticipation of litigation.” *Ex parte Garrick*, 642 So. 2d at 952-53. The Court then went so far as to cite Alabama Rule of Civil Procedure 11 to support the

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proposition that through their attorney's signature on their response to plaintiff's motion papers, the defendants certified that "if called upon, they were prepared to prove that [the] statement was prepared in anticipation of litigation and was not discoverable." *Id.* at 953. Because the plaintiff had previously moved to compel disclosure of "any statements" and did not then follow up with a specific challenge to the defendants' motion papers, the court held that the trial court prematurely granted plaintiff's motion to compel since the parties were not "at issue" regarding whether the statement was provided "in anticipation of litigation." *Id.*

Once the parties are "at issue," the objecting party "must make an evidentiary showing" that the documents at issue were in fact prepared in anticipation of litigation. *Ex parte Cummings*, 776 So. 2d 771, 774 (Ala. 2000) (quoting *Ex parte State Farm Auto. Ins. Co.*, 761 So. 2d 1000, 1002-03 (Ala. 2000)). Even if the objecting party satisfies his burden, the discovery still may be ordered if the requesting party makes a sufficient showing that he "has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." Ala. R. Civ. P. 26(b)(3) (emphasis added).

### "Prepared in Anticipation of Litigation"

No element of the work-product doctrine receives greater attention or is the subject of more courthouse debate than the phrase "prepared in anticipation of litigation." In *Ex parte State Farm Automobile Insurance Co.* (a case involving statements taken by an insurer), the Alabama Supreme Court first recognized that that "exact meaning of the phrase 'prepared in anticipation of litigation' has never been considered by this Court" and addressed the issue by analyzing various federal precedent construing the phrase. 396 So. 2d 1133, 1135 (Ala. 1980).

The court juxtaposed the apparent majority of federal court decisions that "unless the insurer's investigation was investigated at the request of or under the guidance of an attorney, there is a conclusive presumption that the investigative reports were made in the ordinary course of the insurer's business and not in anticipation of litigation or for trial" against the minority

## No element of the work-product doctrine receives greater attention or is the subject of more courthouse debate than the phrase "prepared in anticipation of litigation."

position generally accepted by state courts that "reports, statements, memoranda, and the like developed by the insurer during its investigation prior to the employment of counsel are prepared in anticipation of litigation and absent a Rule 26(b)(3) showing by the requesting party are not subject to discovery." *Ex parte State Farm*, 386 So. 2d at 1136; compare *Fletcher v. Meaerne*, 20 F.R. Serv. 2d 202 (D. Mass. 1975); *Thomas Organ Co. v. Jadranska Slobodna Plovidba*, 54 F.R.D. 367 (N.D. Ill. 1972); *Atlanta Coca-Cola Bottling Co v. Transamerica Ins. Co.*, 61 F.R.D. 115 (N.D. Ga. 1972); *Universal Vendors, Inc. v. Candimat Co. of America*, 16 F.R. Serv. 2d 1329 (E.D. Pa. 1972); with *Almaguer v. Chicago, Rock Island & Pacific R.R. Co.*, 55 F.R.D. 147 (D. Neb. 1972); *Smedley v. Travelers Ins. Co.*, 53 F.R.D. 591 (D.N.H. 1971); *Fireman's Fund Ins. Co. v. McAlpine*, 381 A.2d 84 (R.I. 1978).

*State Farm* was a declaratory judgment action filed by State Farm which paralleled a wrongful death action filed against State Farm's insured. In determining that the requested documents were in fact protected by the work-product doctrine, the court cautioned any general application of its holding, stating that just "[b]ecause a claims agent may state conclusively that his investigation was conducted in 'anticipation of litigation' will not necessarily make it so. Each case must sit on its own bottom." *Id.* at 1136-37. The court's analysis focused on the evidence that:

State Farm's claims specialist testified, by affidavit, that from the very outset of his investigation, it was obvious to him that State Farm's insured was free from liability, and that he prepared all of the documents from eventual litigation. Even though State Farm did not turn over its file to its attorney

until after the lawsuit was filed ... the investigation was conducted in anticipation of litigation. From the nature of the case, a death claim, State Farm's agent could have reasonably concluded that its insured would be sued. This was not the type of fender-bender case where a settlement with the insured would likely occur without a lawsuit.

*Id.* at 1136. The case was remanded so that the plaintiff could be given an opportunity to make a showing of "substantial need" and "without undue hardship" pursuant to Rule 26(b)(3). *Id.* at 1137. Thus, the Court created an *ad hoc* test for witness

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statements obtained by insurers which seemingly required affidavit testimony from the involved representative yet precluded complete reliance on such testimony in order to avoid completely self-serving statements controlling the issue. At the same time the court acknowledged that the work-product doctrine could apply to statements obtained before suite was filed and before an attorney was involved.

As recognized by the Alabama Court of Civil Appeals, affidavit testimony by the party obtaining the statement is not always required. In *Fomby v. Popwell*, 695 So. 2d 628 (Ala. Civ. App. 1996), the plaintiff suffered a broken back while riding in a boat operated by the defendant. The Alabama Court of Civil Appeals determined that the defendant's insurer reasonably anticipated a lawsuit was forthcoming based on the fact that

the plaintiff's mother had written the insurer and requested reimbursement of various expenses after the accident, including lost wages, medical expenses, and pain and suffering. *Fomby*, 695 So. 2d at 631-32. All this despite the fact that both the plaintiff and her mother submitted affidavits that they had not immediately intended to file a lawsuit at the time the defendant's insurer obtained the requested statements. *Id.* at 631. The Alabama Court of Civil Appeals stated in unmistakable language, "Rule 26(b)(3) protects documents and other tangible things prepared 'in anticipation of litigation' by a party or a party's representative, and specifically includes a party's insurer as such a representative." *Id.* The Court of Civil Appeals' holding in *Fomby* is consistent with the court's application in *State Farm* of an *ad hoc* test which focuses not on the individual representations by the statement-taking party, but rather analyzes the totality of the circumstances to determine whether the statement was obtained "in anticipation of litigation."

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## Recent Developments Preceding *Ex parte* *Flowers*

In 2004, the Alabama Supreme Court decided cases in consecutive months which further shaped Alabama's work-product doctrine and were extensively relied on more recently by the Court in *Flowers: Ex parte Norfolk Southern Railway Co.* and *Ex parte Nationwide Mutual Fire Insurance Co.*

In *Ex parte Norfolk Southern Railway Co.*, 897 So. 2d 290 (Ala. 2004), the plaintiff's husband was killed when his dump truck collided with a train operated by Norfolk Southern at a grade-crossing. During discovery, plaintiff requested "that the railroads produce any written statements prepared by investigators relating to the collision." *Ex parte Norfolk*, 897 So. 2d at 291. The railroad objected on the grounds that the statements were protected by the work-product doctrine and submitted an affidavit of a Norfolk Southern claims agent who testified that:

his department is a part of the legal department at Norfolk Southern and that he reported to both house counsel and outside counsel. The claims agent stated that he had

investigated the accident made the basis of the action, that at the time he was investigating the accident he knew a death had occurred as a result of the accident, and that he expected that a wrongful-death benefit claim would be asserted on behalf of the estate of the decedent. The claims agent then stated that in anticipation of litigation he took a recorded statement from the conductor of the train, that the purpose of taking the conductor's statement was to assist the attorneys for the railroads, and that when he took the statement he expected that the statement would be confidential.

*Id.* After an *in camera* review, the trial court ordered Norfolk Southern to produce the statement. *Id.* On appeal, plaintiff argued that the statement was obtained in the ordinary course of business and analogized the witness statement to an incident report, held to be discoverable by the Alabama Supreme Court in *Sims v. Knollwood Park Hospital*, 511 So. 2d 154 (Ala. 1987). The court directed

the trial court to set aside its order requiring production of the statement, stating that preparing an incident report because an incident "might result in some legal action" was not the same as in this case, where a "likelihood of litigation exists." *Id.* at 295. In an 8-0 opinion, the court held that a recorded statement taken by a claims agent is work product where "the claims agent testifie[s] that based upon his experience and training as a claims agent, when a fatality or serious injury occurs in a grade crossing accident, there is likely to be litigation regarding the accident." *Id.* at 295. In so holding, the Court stated "[t]his case is governed by *Ex parte State Farm* ... in which this Court quoted with approval from *Almaguer v. Chicago, Rock Island & Pacific R.R.* ... as follows:

Statements taken by a claim agent immediately after an accident are taken in anticipation of litigation. ... The anticipation of the filing of a claim against a railroad, when a railroad employee has been injured or claims to have been injured on the

job, is undeniable, and the expectation of litigation in such circumstances is a reasonable assumption.

*Id.* Furthermore, the court reiterated that "the involvement of an attorney as the person taking the statement is not a prerequisite to the qualification of the statement as work product, because Rule 26(b)(3), Ala. R. Civ. P., extends its protection to activities of a party's 'representative' and expands on that term with illustrative references to a party's 'attorney, consultant, surety, indemnitor, insurer, or agent.'" *Id.*

In *Ex parte Nationwide Mutual Fire Insurance Co.*, 898 So. 2d 720 (Ala. 2004), an 8-1 opinion issued just a month after *Norfolk*, the Alabama Supreme Court again issued a writ of mandamus directing the trial court to vacate its order requiring the insurer to produce a written statement of the insured. The insured defendant was involved in a vehicle accident with the plaintiff. *Ex parte Nationwide*, 898 So. 2d at 722. A month after the accident (but before suit had been filed) an adjuster for the insured's carrier contacted the insured to ascertain the details of the accident. *Id.* About 20 minutes after speaking with the insured, the adjuster also spoke with an adjuster for the plaintiff's carrier who reported that the plaintiff was having knee surgery related to the accident and had suffered approximately \$300 in property damage to her vehicle. *Id.* Four days later, after determining that the claim would be litigated due to the plaintiff's physical injuries, the adjuster took a recorded statement from his insured in furtherance of his investigation of the plaintiff's

...preparing an incident report because an incident "might result in some legal action" was not the same as in this case, where a "likelihood of litigation exists."



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...“it is not necessary that statements be made solely in anticipation of litigation to be treated as privileged work product.”

claim and in order to document the insured’s account of the accident for use in any future litigation. *Id.*

After the plaintiff brought suit against the insured, the plaintiff had a subpoena issued to the insured’s carrier seeking “everything that was in its claims file before [the carrier] was notified that [the plaintiff] had retained counsel.” *Id.* The carrier moved to quash the subpoena on the grounds that the information was protected by the work-product doctrine and supported the motion with an affidavit from the adjuster, stating in part that the adjuster “interviewed [the insured] after concluding that litigation by [the plaintiff] against [the insured] was likely to

occur.” *Id.* at 723. The affidavit also stated that the adjuster’s conclusion “was based upon information indicating to him that [the insured] was free from liability, that [the plaintiff’s] vehicle had sustained little damage, and that [the plaintiff] had allegedly sustained a serious knee injury.” *Id.*

On appeal, the plaintiff argued that the adjuster’s “degree of certainty regarding the likelihood of litigation and his anticipation of eventually handing documents over to counsel [were] completely irrelevant ... because an insurer cannot claim the materials are work product unless it can show that the materials would not have been prepared *but for* the litigation.”

*Id.* (quoting plaintiff’s brief) (emphasis in original). In support of her argument, the plaintiff contended that *Ex parte State Farm, supra*, had been implicitly overruled. *Id.* The Supreme Court of Alabama disagreed, citing the Court’s recent reliance on *Ex parte State Farm* in its holding in *Ex parte Norfolk Southern Railway, supra. Id.* at 724.

Justice Johnstone was the lone dissenter, arguing that the Court’s holding in *Ex parte State Farm* focused on the severity of the death claim in that case and therefore was neither dispositive nor persuasive to the facts at hand, a simple car wreck involving non-serious injuries. *Id.*

### ***Ex parte Flowers***

On March 28, 2008, the Alabama Supreme Court, relying extensively on *Norfolk* and *Nationwide*, issued its 8-1 opinion in *Ex parte Flowers*, 2008 WL 821056 (Ala. Mar. 28, 2008). In *Flowers*, the Court firmly established that “it is not necessary that statements be made solely in anticipation of litigation to be treated as privileged work product.” 2008



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WL 821056 at \*6. Further, the Court held that whether or not witness statements are work-product “when there are several motivating causes, other than anticipated litigation, for preparing them turns on whether it was reasonable ... to assume, in light of circumstances, that litigation could be expected.” *Id.* (quoting *Ex parte Alabama Dep’t of Youth Servs.*, 927 So. 2d 805 (Ala. 2005) (applying the same rationale to investigative reports)).

The plaintiff’s mother in *Flowers* was injured when a “deluge of water from the defective roof of the [defendant’s] restaurant” poured down on the plaintiff causing her to break both her legs and suffer injuries which eventually led to her death. *Id.* at \*1. In the course of discovery the plaintiff requested that the defendant produce various statements taken by the defendant’s insurance agent and subsequently filed a motion to compel after the defendant failed to produce the statements. *Id.* The defendant opposed the plaintiff’s motion with an affidavit from the agent which stated that after receiving a letter from plaintiff’s counsel she “initiated an investigation, which she believed to be in anticipation of litigation.” *Id.* The agent stated that she anticipated that there would be litigation “[b]ased on [her] experience and training as a claims agent, when a fatality or severe injury occurs in a premise liability action and the claimant has retained counsel, there is likely to be litigation regarding the accident.” *Id.*

The trial judge ordered the defendant to produce the statements and the defendant

appealed. The Alabama Supreme Court, recognizing the persuasiveness of *Norfolk* and *Nationwide*, held that the agent’s knowledge that the decedent allegedly suffered severe injuries on the defendant’s premise coupled with the fact that the plaintiff was represented by counsel was “sufficient to establish that [the agent] could have reasonably foreseen that her insured would be sued.” *Id.* at \*6. Although the court pointed out that a claims agent’s conclusive statements in an affidavit that an investigation was “conducted in anticipation of litigation” do not necessarily make it so, such statements predicated on an agent’s experience and information regarding a specific claim can satisfy the burden necessary to sustain an objection on the grounds of the work-product doctrine. The court also recognized that “the possibility of usefulness to opposing counsel is not a factor in the initial determination of whether a statement qualifies as work product.” *Id.* at \*6, n.2 (disputing Chief Justice Cobb’s dissenting opinion).

The fallout from *Flowers* appears to be that witness statements (and investigative reports)—even when not prepared solely in anticipation of litigation—can be treated as work-product when there are factors present which make it reasonable to assume litigation can be expected. Furthermore, in order for the privilege to apply, it is not necessary that an attorney be involved (*State Farm*), that suit have been filed (*State Farm*), or that the accident resulting in litigation result in “serious” injuries (*Nationwide*). ▲▼▲



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*Patrick H. Strong is an associate in the Birmingham office of Balch & Bingham LLP. His practice focuses on cases involving personal injury, premise liability, easement rights, contract disputes, insurance coverage, and both real and personal property damage.*



## ASB Lawyer Referral Service

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

The Lawyer Referral Service is not a pro bono legal service. Attorneys agree to charge no more than \$50 for an initial consultation, not to exceed 30 minutes. If, after the consultation, the attorney decides to accept the case, he or she may then charge his or her normal fees.

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

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



## Update and General Selection Criteria— Background and Mission

*By Kimberly Till Powell and  
Sam David Knight*

The Alabama State Bar Board of Bar Commissioners initiated the Alabama State Bar Leadership Forum in 2005. The mission of the Leadership Forum is to: (a) form a pool of lawyers from which the Alabama State Bar, state and local governmental entities, local bar associations and community organizations can draw upon for leadership and service; (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) raise the level of awareness of lawyers as to the purpose, operation and benefits of the Alabama State Bar.

With four years of graduates, the Leadership Forum continues not only to meet, but exceed, its mission. The overwhelming response of former graduates about their Leadership Forum experience includes praise for the program and enthusiasm about relationships fostered during the forum. Leadership Forum alumni include a member of the state house of representatives, bar commissioners, candidates for public office, judges, a pastor, a former military officer, a mayor, and a president of a local bar foundation.

### 2008 Leadership Forum (Class 4)

The fourth class of the Alabama State Bar Leadership Forum graduated in May and attended a banquet at the Capital City Club in Montgomery. Following an invocation by Class 4 member **James B. Perrine**, then ASB President **Sam Crosby** introduced **Gordon G. Martin**, senior vice president and general counsel of Alabama Power Company, as the guest speaker. **Keith Jackson**, a member of Class 2 of the Leadership Forum and co-chair of the 2007 and 2008 Leadership forums, gave comments on behalf of the 2008 Steering Committee. **Kimberly Till Powell**, a member of Class 3 of the Leadership Forum and co-chair of the 2008 Leadership Forum, and **Sam David Knight**, a member of Class 4, were announced as co-chairs for the 2009 Leadership Forum. **President Crosby**, assisted by then **President-Elect J. Mark White**, presented each graduate with a certificate and gift commemorating their participation in the forum. Class 4 graduates **Dana Hill** and **Robert Lockwood** shared their reflections on the Forum. ASB Assistant Executive Director and Leadership Forum Director **Edward M. Patterson** was honored with a gift from Class 4 for his commitment to the forum and his service to the state bar.



Also in attendance at the graduation were **ASB Past President William N. Clark** (in whose term the Leadership Forum was approved by the Board of Bar Commissioners); consultant and facilitator **Kathryn Story**; Balch & Bingham's managing partner, **Alan Rogers**; ASB Leadership Forum Administrative Assistant **Marie Updike**; ASB Director of Communications **Brad Carr**; and **President Crosby's** sister, **Martha Crosby. Mike and Mickey Turner of Freedom Court Reporting Service**, whose support and commitment to Class 4 of the Leadership Forum have been invaluable, were also there. Leadership Forum Alumni in attendance included **Rich Raleigh** (Class 1); **Jim Hughey** (Class 2); **William Lunsford** (Class 3); **Sandra Reiss** (Class 3); and **Patrick Sefton** (Class 2).

## Selection Process and Criteria

The 2009 Steering Committee is already actively involved in planning for Class 5. The Forum will continue to honor its mission through an evolving and expanded program designed to introduce participants to leadership opportunities throughout the state.

Each year, the Selection Committee seeks to draw a broad and representative class of between 25 to 30 members from throughout the qualified Alabama State Bar membership. The initial class suggested by

the Selection Committee is reviewed by the Executive Committee of the Alabama State Bar, and the final selection is made and approved by the Board of Bar Commissioners. Applicants do not require a nomination in order to submit their application. One letter of recommendation must be attached to the application.

If you have been a member of the Alabama State Bar for more than five years, but no more than 15, please consider applying to become a member of the Alabama State Bar's 2009 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 and gender 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.

Alumni of the Leadership Forum are listed on the next page if you wish to contact them concerning their experience. ▲▼▲



*Kimberly 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 chair of the Intellectual Property Section of the Alabama State Bar. She is an alumna of Class 3 of the Leadership Forum and is co-chair of the Leadership Forum Planning Committee for Class 5 (2009).*



*Sam David Knight is a partner with Gordon, Dana, Still, Knight & Gilmore LLC in Birmingham. He graduated from Auburn University and the University of Alabama School of Law. He is an alumnus of Class 4 of the Leadership Forum and is co-chair of the Leadership Forum Planning Committee for Class 5 (2009).*

## Quotes from Class 1

"I was a member of the first class in 2005 and still keep in touch with lawyers I met from other areas of the state. The timing could not have been better as I became chair of the Women's Section just a few months after completing the forum. Through my participation in this program, I gained invaluable knowledge about the workings of the state bar and about leadership in general. It made me a much more effective section leader and should continue to be of benefit to me as I become involved in other areas of the bar and other organizations."

—Mary Margaret Bailey

"The Leadership Forum was an invaluable opportunity to meet lawyers from across the state. Together, we learned about important issues affecting the state and how we, as lawyers, have a duty to make a positive impact. I would highly recommend the Leadership Forum to any lawyer who cares passionately about Alabama."

—Jenna M. Bedsole

## Quotes from Class 2

"The Leadership Forum was an incredible experience, which allowed class members to connect in a meaningful way and learn more about our state's bar. Through the forum, tools were disbursed for the next generation of bar leaders."

—Wyndall A. Ivey

## Quotes from Class 3

"Before applying, I thought I was too busy to participate in the Leadership Forum. After starting the program, I realized that it was too good of an opportunity to miss. I met new people, made new friends and, most importantly, learned how to better serve my law firm, my community and my family."

—Christina D. Crow

"Being a part of the Leadership Forum opened doors to new friendships and new, shared concerns with fellow classmates of which I was previously unaware. I learned about the many issues and needs within our state and got to meet the leaders who are trying to address the needs in both big and small ways. Most importantly, I learned that these leaders are all very different, there is no 'one type' of leader, other than being willing to tackle a problem and stick with it."

—Sandra B. Reiss

**Quotes from Class 4**

"The Leadership Forum Program really helped me; it reminded me that I have a responsibility to others, regardless of the personal costs. It also reminded me that sometimes servant leadership is just a matter of doing. There are opportunities all around us to help others—we just have to be willing to step up to the plate. Sometimes you strike out, sometimes you hit a home run, but the most important thing is that you play in a very important game, the human race."

—Kent M. Lauderdale

"I am so glad a fellow attorney encouraged me to apply for selection to the Leadership Forum Class 4. The whole experience dramatically changed my outlook on our profession, on me and on my fellow attorneys throughout the state. The experience allowed me to create lasting friendships and has given me the ability to make a difference in my personal career and to become involved as a leader in our state bar."

—Jonathan B. Lowe

"The Leadership Forum was one of the best experiences I've had as a lawyer. It reminded me that the law is truly an honorable profession made that way by servant leaders, which is what the forum is all about. That, plus the friendships formed throughout the forum, makes this program excellent and one that I would recommend to all lawyers."

—Chad E. Stewart

"The Leadership Forum provides an opportunity for lawyers to step back from the everyday pressures of our law practices and focus on the larger issues affecting Alabamians. Throughout the course of the program, you will be challenged to identify ways to use your skills as a lawyer to confront these issues in an effort to improve our communities and our state."

—James M. Terrell

**CLASS 4 GRADUATES**

- Margaret Holladay Alves  
T. Leavell & Associates, Inc., Mobile
- Mark Hampton Baxley  
Ramsey, Baxley & McDougle, Dothan
- Anna Kelly Brennan  
Balch & Bingham LLP, Birmingham
- Russell Crandle Buffkin  
Helsing, Leach, Herlong, Newman & Rouse, Mobile
- Valerie Kisor Chittom  
Attorney at Law, Selma
- Jequette Harris Clancy  
Legal Aid Society of Birmingham, Birmingham
- Bradley Williams Cornett  
Ford, Howard & Cornett PC, Gadsden
- Jonathan Samuel Cross  
Attorney at Law, Birmingham
- Anne Lamkin Durward  
Massey, Stotser & Nichols PC, Birmingham
- John Henry England, III  
U. S. Attorney's Office, Birmingham
- Sandra Eubank Gregory  
Attorney at Law, Birmingham
- Erik Stephen Heninger  
Heninger, Garrison Davis LLC, Birmingham
- Dana Bolden Hill  
Boardman, Carr, Hutcheson & Bennett PC, Chelsea
- Adrian Daniel Johnson  
Parnell & Crum PA, Montgomery
- Samuel David Knight  
Gordon, Dana, Still, Knight & Gilmore LLC, Birmingham
- Kent Michael Lauderdale  
Lauderdale & Lauderdale PC, Opelika
- Robert Carter Lockwood  
Wilmer & Lee PA, Huntsville
- Jonathan Blake Lowe  
Lowe, Mobley & Lowe, Haleyville
- James David Martin  
Copeland, Franco, Screws & Gill PA, Montgomery
- James Flynn Mazingo  
Melton, Espy & Williams PC, Montgomery
- James Bruce Perrine  
U. S. Attorney's Office, Montgomery
- Cynthia Ransburg-Brown  
Sirote & Permutt PC, Birmingham
- Clayton Michael Ryan  
Maynard, Cooper & Gale PC, Birmingham
- Christopher Nathan Smith  
Hyundai Motor Manufacturing Alabama LLC, Montgomery
- Chad Edward Stewart  
Marsh, Cotter & Stewart LLP, Enterprise
- Ashley Elizabeth Swink  
Maynard Cooper & Gale PC, Huntsville
- James Michael Terrell  
McCallum, Methvin & Terrell PC, Birmingham
- Reed Thomas Warburton  
Bradley Arant Rose & White LLP, Birmingham
- John Cox Webb, V  
Lloyd, Gray & Whitehead PC, Birmingham
- Tari DeVon Williams  
University of Alabama, Tuscaloosa



## A Perspective on the Alabama State Bar's 2008 Leadership Forum—Class 4

*“Leadership can be thought of as a capacity to define oneself to others in a way that clarifies and expands a vision of the future.” Edwin H. Friedman*

**By Robert C. Lockwood**

**L**ike many people, I’ve always wanted to be a “leader.” Yet, I never thought of myself as a leader because I perceived that I was lacking in “It.” I’m not sure how to define “It” other than to observe that certain people possess a magnetism and charisma that draws others to them. People with “It” tend to naturally wind up in leadership positions. Don’t get me wrong—my wife will be happy to tell you how good-looking and funny I am. But, when other people (who have not taken a lifelong vow of devotion) are looking for an individual to be public face of their cause, the name “Robert Lockwood” doesn’t always leap to mind.

Thus, I was immediately intrigued when a good friend of mine suggested that I apply for the Alabama State Bar’s Leadership Forum. Totally ignorant of the content of the program, I assumed that I would finally receive tutelage that would allow me to develop “It.” I was certain that the forum would teach me and groom those esoteric qualities that would help me attain the status of “Leader” that I so greatly desired. So, I submitted my application and the accompanying inspirational essay to prove that I was leadership material.

Despite the admittedly sappy content of my essay, the selection committee for the forum decided to accept me into a class of individuals who are clearly stars

of the Alabama State Bar. When speaking of these stars, however, it is important to emphasize that the selection committee did not limit itself to “big firm” corporate attorneys. Almost every imaginable legal discipline and practice size was represented in our class: plaintiffs’ attorneys, defense attorneys, corporate attorneys, big firms, medium firms, solo practitioners, in-house counsel, government attorneys, and legal aid attorneys. I am honored to be included in their number. To make sure that they get the recognition they deserve, I am also going to repeat their names: Holly Alves; Hamp Baxley; Kelly Brennan; Russell Buffkin; Valerie Chittom; Jequette Clancy; Bradley Cornett; Jonathan Cross; Anne Durward; John England, III; Sandy Gregory; Erik Heninger; Dana Hill; Adrian Johnson; Sam David Knight; Kent Lauderdale; Jonathan Lowe; David Martin; Flynn Mozingo; J.B. Perrine; Cynthia Ransburg-Brown; Clay Ryan; Chris Smith; Chad Stewart; Ashley Swink; Jimbo Terrell; Tom Warburton; John Webb; and Tari Williams.

I am extremely grateful for an opportunity to meet these outstanding attorneys. I could consider my participation in the Leadership Forum a success simply because of the opportunity to interact with them. Beyond the fellowship and networking opportunities, however, the forum provided an experience which was

the diametric opposite of my pre-conceived expectations, and which unquestionably helped me and all of my classmates to develop our leadership skills.

Most importantly, the forum taught me that leadership is not about “It.” Certainly, every member of my class possesses charisma and charm. More important than their personalities, however, is that each is an incredibly intelligent, hard-working individual who just wants the opportunity to serve his or her community. Through that service these individuals have become leaders.

Indeed, the central theme of Class 4 of the Leadership Forum was “Servant Leadership.” We were exposed to a diverse array of individuals who have sacrificed their own time and welfare for the benefit of their communities. These people did not serve in order to attain the radiance of “leadership.” Instead, they found a passion for a cause, worked for the cause and gradually moved to the forefront of the cause.

If you are looking for a nuts-and-bolts tutorial on how to develop specific leadership skills, the Leadership Forum is not for you. We were not taught how to make friends and influence people, and rightfully so. Dale Carnegie’s courses are extremely adept at teaching those skills, and the state bar has appropriately stayed away from that niche. Instead, the Leadership Forum relies upon a more subtle approach that is

more akin to the Socratic Method that we were supposed to learn in law school.

Every member of Class 4 was presented with a set of problems and offered the opportunity to confront and solve those problems in his or her own manner, if so moved. Each month from January through May 2008, our class gathered in a different location to learn about issues facing the state bar and the State of Alabama. These were not brainstorming sessions to debate the best methods for solving social and political ills. Rather, each session represented an experience and an opportunity. None of our presenters dictated a solution for any issue or mandated that we follow a specific path. Instead, the resolution was left up to us.

In January, we held an orientation retreat at the Marriott Legends in Prattville where we learned about issues surrounding the Alabama Constitution of 1901 and we were inspired by Millard Fuller, one of the founders of Habitat for Humanity. Our February meeting was conducted in Selma and focused upon historic and modern difficulties which confront Alabama's Black Belt. The Alabama Education Association graciously hosted our March session in Montgomery while the state bar offices were undergoing renovation. We learned from leaders who are at the forefront of education in Alabama, including Superintendent of the Alabama Department of Education Dr. Joe Morton, Chancellor of Postsecondary Education

Bradley Byrne and Executive Secretary of the Alabama Education Association Dr. Paul Hubbard. In April, Balch & Bingham hosted our class in their new offices in Birmingham where we learned about access to justice and professionalism. Additionally, we were inspired by presentations from two "everyday" lawyers who are the embodiment of servant leadership: Jim Rotch, who initiated *The Birmingham Pledge*, and Julie Marks, one of the leaders of "The Heart Gallery" in Alabama. Finally, in May, we received "Insiders' Reflections" on current challenges facing the bar, which were highlighted by presentations from Morris Dees and 2007-08 ASB President Sam Crosby.

From the foregoing sessions, the greatest lesson that I learned is that leadership is not always the result of "It." More often, leadership is the result of passion. Individuals feel a passion for a cause and respond appropriately. To me, the Leadership Forum sought to develop that passion in its members. The forum exposed us to a myriad of situations and

sought to light the fire that would result in service and ultimately leadership.

After five months of participation in the Alabama State Bar Leadership Forum, I can't proclaim myself a "leader." No individual can anoint himself or herself with that title. Nevertheless, I am motivated to address some of the issues that were presented in the forum, and I am prepared to work with the bar to bring change. Along the way, I may become a leader, but even without that title, I know that I can make a difference.

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 2009 class of the Alabama State Bar Leadership Forum (Class 5). Applications are available online at [www.alabar.org](http://www.alabar.org) under the link "Leadership Forum." The deadline for applications is November 3, 2008 and applicants will be notified on or before December 8, 2008. Applications will be reviewed in the order in which they are received. ▲▼▲



*Robert C. Lockwood is a partner with Wilmer & Lee PA in Huntsville. He graduated from Birmingham-Southern College and the University of Alabama School of Law. He is member of the Alabama Board of Bar Examiners and the Alabama State Bar Health Law and Labor and Employment Law sections. Lockwood is an alumnus of Class 4 of the Leadership Forum and a committee member of the Leadership Forum Planning Committee 2008-2009.*

## Alabama State Bar Leadership Forum Applicant Demographics 2005-2008

	Class 4 (2008)			Class 3 (2007)			Class 2 (2006)			Class 1 (2005)		
	Applications	Class	Alternates	Applications	Class	Alternates	Applications	Class	Alternates	Applications	Class	Alternates
<b>Number of Applicants</b>	78	30	4	72	30	4	71	30	4	42	30	4
<b>Male</b>	51	20	4	52	20	3	52	20		25	16	
<b>Female</b>	27	10		20	10	1	19	10		17	14	
<b>Black</b>		7	5			2	1	6	6		2	2
<b>City:</b>												
<b>Birmingham</b>		34	13		33	13		34	12		18	14
<b>Huntsville</b>		2	2		6	2		4	1		4	3
<b>Mobile</b>	7	2		6	2		6	2		5	2	
<b>Montgomery</b>		13	5		6	2		8	3		6	5
<b>Tuscaloosa</b>		5	1		5	3		2	1		4	4
<b>Other</b>		17	7		16	8		17	11		5	2

# Class 5

## APPLICATION INFORMATION

Applications are available at [www.alabar.org/members/leadership\\_update.cfm](http://www.alabar.org/members/leadership_update.cfm) or by calling 334-269-1515, ext. 2166. Class 5 will consist of no more than 30 participants. Tuition is \$500 for each participant; a limited amount of scholarship money is available. Completed applications must be received by November 3, 2008. Successful applicants are notified on December 8, 2008.



Applicants must have practiced law for not less than five years and for not more than 15 years as of January 1, 2009 (based upon first admission to any state bar). Mandatory attendance is required for the following: Orientation and Session 5.1—January 15-16, 2009; Session 5.2—February 12, 2009; Session 5.3—March 12, 2009; Session 5.4—April 15, 2009; and Session 5.5—May 14, 2009. Some sessions may require overnight travel. One excused unexpected personal or professional absence is allowed. Applicants are encouraged to apply only if they expect to attend all sessions. Applicants do not require a nomination in order to submit their application.

Your application should contain the following components assembled in this order:

- (1) Application, completed and signed by the applicant;
- (2) Your personal resume (not to exceed three pages) that includes the following information:
  - a. education, work history and a short description of your practice of law (area, etc.)
  - b. bar involvement—state and/or local (include any offices held and section/committee participation)
  - c. business and/or professional organization involvement (include any offices held)
  - d. civic, charitable and/or community involvement (including any offices held);
- (3) A narrative summary (not to exceed three pages, double-spaced) that addresses:
  - a. why you should be selected as a participant in the 2009 Leadership Forum Class 5,
  - b. what you consider to be your most important contribution to the legal profession,
  - c. what you consider to be your most important contribution to the community,
  - d. what you hope to gain from participation in the 2009 Leadership Forum; and
- (4) One letter of recommendation from someone not affiliated with your current organization or employer.

For more information, direct questions to Sam David Knight at 205-874-7961 or [sdknight@gattorney.com](mailto:sdknight@gattorney.com) or

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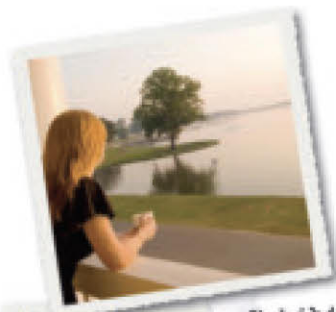


Exhibit A

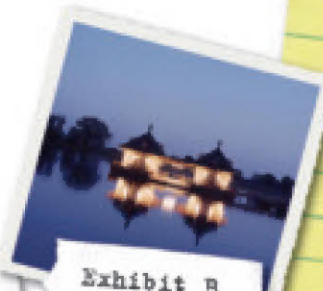


Exhibit B



Exhibit C



Exhibit D



Exhibit E

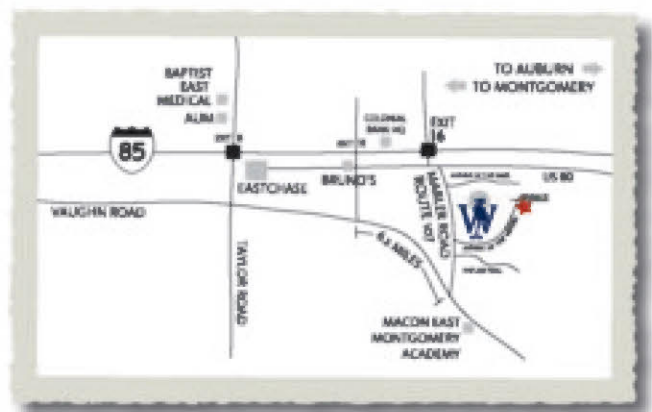
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# THANK YOU

**The Alabama Center for Dispute Resolution thanks the following Alabama State Court Mediator Roster members who conducted pro bono mediations in 2007:**

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Charles Anderson	James Corbett	Christopher Hughes	Terinna Moon	Donna Smalley
Beverly Poole Baker	Samuel Crosby	Anne Isbell	Larry Moore	Jeffrey Smith
Kaye Barbaree	Dan Cushing	John Karrh	Roger Morrow	Donald Spurrier
Mary Lynn Bates	John Davis	Douglas Key	Pamela Nail	Roderic Steakley
Joseph Battle	Lee Davis	Karl Kirkland	Claud Neilson	Bruce Stone
Richard Bell	Todd Derrick	Sammye Kok	Pamala Oliver	John Tate
Betsy Blake	Bernard Eichold	Oliver Latour	Julie Palmer	Robert Thetford
Clyde Blankenship	Robert Faulk	Lionel Layden	Candace Peoples	Randall Thomas
Emily Bonds	Charles Fleming	Blake Lazenby	Ezra Perry	Jerome Thompson
Charles Booth	George Ford	Cheryl Leatherwood	Paul Puckett	Brian Turner
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Paul Brantley	Robert French	Yancey Lott	William Ratliff	Marty Van Tassel
Quentin Brown	Regina Hammond	William Lyon	Ferris Ritchey	Robert Varley
Robin Burrell	Arthur Hanes	Tony Marsal	James Rives	Robert Whittaker
Warren Butler	Robert Harper	David McAlister	William Roedder	Scott Wright
Terry Lucas Butts	Patrick Harris	John McClusky	Sandra Segall	Thad Yancey
John Calhoun	Banks Herndon	Ed Meyerson	Jere Segrest	
Lois Carney	Jerry Hicks	Boyd Miller	Thomas Sherk	



# Understanding Addiction, Helping Clients and Colleagues

By Jeanne Marie Leslie

**D**rugs change the brain—they change its structure and how it works.<sup>1</sup> Many of these changes are responsible for the behaviors we see in individuals addicted to drugs. Neuroscience has made significant advances in our ability to identify and understand the mechanisms involved in the addicted brain. These advancements clearly confirm what many in the addiction medicine field have known for some time: the obsession and compulsion to use drugs in the addicted brain is instinctual and paramount to survival.<sup>2</sup>

Ignorance and stigma have contributed to the confusion, moral judgments and poor understanding of this destructive and often fatal disease. Our courts are overwhelmed by the behaviors, criminal and civil, associated with addiction. Therefore, understanding addiction is essential for lawyers. Lawyers are in unique positions to initiate change, to advocate for medical treatment over traditional sanctions and to refer individuals to appropriate help. Clients are more apt to discuss these issues with their lawyers and lawyers are in a better position to advise and protect their clients' interests. Members of the legal community who understand addiction can be instrumental in guiding their clients toward recovery.

Moreover, lawyers themselves are at a higher risk for the development an addiction problem. Reports now estimate that while 10 percent of the general population has problems with an addiction, the corresponding estimate for lawyers,

according to the American Bar Association, is 15 to 18 percent.<sup>3</sup> Lawyers rank high in the incidences of depression compared to other professions and a disproportionate number of lawyers commit suicide;<sup>4</sup> in Alabama there are about a dozen lawyer suicides every year. And these are only the ones about which we know. Many lawyers, including some you know, may be struggling with an addiction or mental health problem when help is readily available through ALAP.

## Addiction Facts

Dr. Nora D. Volkow, director of the National Institute of Drug Abuse (NIDA), explains how the neuro-chemical mechanisms of drug abuse catalyze and accelerate the onset addiction:

“Recognizing drug addiction as a chronic, relapsing disease characterized by compulsive drug seeking and use is critical to being able to identify and help those who have it. Drugs of abuse affect the brain by mimicking neurotransmitters (e.g., heroin or marijuana) or by altering their regulation and release (e.g., cocaine and amphetamine). In this way, they disrupt normal brain communication. Repeated disruptions in the brain’s normal signaling processes can eventually lead to addiction—affecting the very circuits needed to exert good judgment and inhibitory control over actions. With these abilities ‘seized,’ the drug-addicted person will compulsively choose drugs, even in the face of devastating life consequences.”<sup>5</sup>





The National Council on Alcoholism and Drug Dependence reports that addiction is *America's number one health problem* and the leading cause of both death and disability.<sup>6</sup> The Substance Abuse and Mental Health Services Administration's National Household Survey on Drug Abuse reported an estimated 20.4 million Americans age 12 or older were current users of illicit drugs in 2006, meaning that they used an illicit drug at least once during the 30 days prior to the study interview.<sup>7</sup>

In an article, Alan Leshner, Ph.D., and then director of the National Institute on Drug Abuse, describes the process of addiction as the "oops phenomenon."<sup>8</sup> He explains that individuals who use drugs do not intend to become addicted, just as someone who eats fatty foods does not expect or intend to develop coronary artery disease. The individual who smokes does not plan on developing lung cancer or any of the other illnesses associated with smoking. When most people first use drugs, including alcohol, they do it to feel better and to alleviate feelings of stress. What starts out as a means to feel good a couple of evenings a week can become, for some individuals, the only way they can feel "normal."<sup>9</sup>

The midbrain controls the non-voluntary functions basic to survival such as heartbeat, respiration, appetite and thirst. The mechanisms for pleasure or reward are also a function of the midbrain. The "rush" or the intense feeling of exhilaration associated with drugs of abuse is caused by a rapid release of dopamine in the midbrain. Repeated use of drugs can cause long-lasting changes, which, in turn, affect the pathways used to process information. These changes can impair motor skills, moods and memory processing, many of the same behaviors and symptoms associated with addiction. However, not all individuals who abuse drugs will experience these types of changes nor will they all become addicted.<sup>10</sup>

But for individuals who do become entrenched in addiction, they endure pain and suffering, both physically and psychologically, to a point where the cost of getting high outweighs any benefit using may have once provided. At this point, an individual can no longer exercise the judgment necessary to make a "logical" decision to stop.

## Helping Clients

Addiction-driven behaviors often result in problems involving the legal system. They may show up in any number of courts. The best resolution to your client's case may depend on assisting your client in obtaining an appropriate evaluation and, if necessary, treatment. The ability to demonstrate to the court that your client is taking the necessary steps to address his/her addiction can have a significant impact on your client's case. As a lawyer, assisting your client in obtaining an evidence-based practice assessment is important. This type of assessment is proven to be successful, is backed up with research methodology and is the standard criteria used by most courts. The American Society of Addiction Medicine Patient Placement Criteria is a widely used instrument for placing clients in the appropriate level of care.<sup>11</sup> An evaluation, coupled with your client's being in treatment or scheduled to enter a particular treatment program, goes a long way in demonstrating compliance to the court. It also can prompt your client in initiating the changes necessary for recovery. However, this type of approach is not for every client. The sanctions for non-compliance in drug court diversion programs can be harsh. A clear understanding of what your client's individual needs are will help determine how best to proceed.

## Helping Partners and Other Attorneys

The Alabama Lawyer Assistance Program ("ALAP") is a *confidential* program designed to assist members of the legal profession with impairment issues. A lawyer does not risk sanctions for contacting ALAP about any problem he/she may be experiencing. Referrals can be made anonymously. In Alabama, about 50 percent of all ALAP referrals occur by virtue of a disciplinary order. Obviously, the compliance or non-compliance with the program for these types of referrals is reported back to the appropriate disciplinary authority. Since the majority of grievances filed against lawyers are found to involve a problem with an addiction and/or mental health illness compliance to a recovery program benefits both the lawyer and the public interest. The other 50 percent

of ALAP referrals come from a third party (employer, judge, family member or colleague) and there is no disciplinary involvement. Lawyers call ALAP for any number of reasons, as mentioned above, but also for stress, burnout or other difficult life situations. ALAP provides education, intervention, monitoring and referrals to appropriate treatment when indicated.

Impairment may present itself with an addiction to drugs, alcohol, gambling or other behavioral symptoms. Mental health issues include stress, burn-out, depression, bipolar disorders, and obsessive-compulsive disorders. Other impairment issues may be related to aging, such as dementia or Alzheimer's. Most lawyers do not want to talk about these problems but when they find themselves in the position of having to acknowledge a colleague's impairment, or that a member of their firm is using drugs, all sorts of questions are raised.

As a lawyer, your initial reaction may be liability concerns, for your firm, yourself and your colleague. These are legitimate concerns which will need to be addressed. For most of us, our colleagues are also our friends, and you will naturally have personal concerns for your friend and your friend's family. Remember that lawyers in these situations are sick and full of shame. They need support and help—not judgment. That being said, client safety must be ensured. Impairment issues are serious and if your firm has no policies in place for handling these types of situations ALAP's assistance can be invaluable.

Perhaps most problematic is the situation where a judge is showing signs of obvious impairment. At the present time procedures for reporting possible judicial impairment issues require a signed affidavit. Individuals are not given anonymity. Therefore, early behaviors which may indicate a problem not only are not reported, but are essentially enabled to progress. The Judicial Inquiry Commission will be having hearings on reviewing the Canons of Judicial Ethics and will be addressing these issues in the near future. It is hoped that by instigating changes in how these issues can be reported and, therefore, investigated, there will be reduction the tragic and often public situations we have seen in the past. Unfortunately, when these issues are made public the lawyer or

judge and their families suffer, as does the public perception of the administration of justice. Knowing what to look for and what to do if you or a colleague or judge is in need of help is important. Early intervention can save a life, a family and a career. The chance of ethical violations or harm to clients is greatly reduced the sooner the cycle of the addiction is interrupted. Firms should have established policies in place for handling issues relating to impairment. No other issue is as important nor is a firm more vulnerable than when these issues surface. ALAP will come to your firm and put on a free CLE seminar to assist you in devising policies and procedures appropriate to handle these types of situations. ALAP also assists firms in handling back-to-work issues.

The Lawyers Helping Lawyers Committee is an active committee of the Alabama State Bar comprised of lawyers and judges who are knowledgeable about addiction and mental health issues. The committee members assist ALAP in seeing that bar members in need of assistance are given confidential help.

## Your Obligation to Report Impaired Attorneys

The ASB General Counsel's office published an article in the July 2001 edition of *The Alabama Lawyer* about reporting misconduct, including misconduct relating to lawyer impairment as stipulated by Rule 8.3, *Alabama Rules of Professional Conduct*:

**“(a) A lawyer possessing unprivileged knowledge of a violation of Rule 8.4 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.”<sup>12</sup>**

“[S]elf-regulation requires that lawyers report misconduct, unless the reporting of misconduct violates Rule 1.6, Confidentiality... But less than ten such reports are filed by Alabama lawyers each year... This is [a] sad commentary, when national statistics show that in at least 75-80 percent of matters involving lawyer misconduct, a judge or another lawyer observed, was subjected to, or was personally aware of the miscon-

duct... The requirement to report includes reporting of a lawyer whose conduct indicates that he or she is suffering from addiction (or “chemical dependency,” as termed by the General Counsel's office).”<sup>13</sup>

But more importantly, the General Counsel also concludes “a confidential report to ALAP fulfills the lawyer's reporting obligation.” The General Counsel further stresses that reporting is the best way to help a colleague and to do your duty at the same time.

“In most instances, the reporting of misconduct brings to a head a bad situation which needs to be addressed, both for the benefit of the lawyer and the public. The system itself is improved significantly by ensuring that those who practice law do so in an ethical and competent fashion. When either of these characteristics of representation is lacking, the lawyer's reputation, and that of the legal profession, suffers greatly.”<sup>14</sup>

There is no reason not to call ALAP if you see someone displaying symptoms of impairment whether it is you, a family member or another lawyer. Lawyers do not have to face these issues alone. We have helped hundreds of members of Alabama's legal community and we can help you too. Visit our Web site, [www.alabar.org/alap/](http://www.alabar.org/alap/).

## Treatment

The U.S. Department of Health & Human Services, Substance Abuse and Mental Health Services Administration (“SAMHSA”) funded a five-year study on the impact of treatment of 5,388 clients in publicly-funded substance abuse programs across the United States and found “that drug and alcohol treatment works. That is, the receipt of treatment is associated with significant reductions in drug use, criminal behavior, ill health and associated characteristics, and the best evidence assigns most of these reductions to the therapeutic effects of treatment.”<sup>15</sup>

A study published in 2004 in the *Journal of Addicted Disease* followed lawyers who completed treatment and found that 79 percent of lawyers completed treatment when a lawyer-specific program was initiated compared to 47

percent in non-specific programs.<sup>16</sup> Obviously, completing treatment is an important part of establishing recovery, but authors also concluded that lawyer assistance programs were a significant part of their 85 percent long-term (a year to five years) recovery rate.<sup>17</sup>

A variety of approaches are used in treatment programs to help clients cope, handle cravings and manage their disease. However, not all treatment programs are alike and finding an appropriate program for lawyers or clients can be challenging. Again, contacting ALAP is probably the best solution. When your client enters treatment, make sure the necessary releases are signed in case you need to contact your client while he/she is in treatment. Treatment programs adhere to strict confidentiality laws and if the proper releases are not signed, having access to your client can be difficult.

There may be a waiting list before your client or colleague can enter a treatment program. Therefore, it is important to get recommendations by the evaluator on the things your client can do to remain abstinent while waiting for an opening. The recommendations may include participating in an abstinence-based group, individual therapy or submitting to drug screens while waiting to enter the treatment program. Any one of these behaviors reflects a motivation for change and communicates to the court that these matters are being taken seriously. Make sure your client is also keeping a record of groups and meetings that they are attending.

## Find Resources for Treatment

Below is a list of Web sources to help identify treatment facilities in your area.

- [Findtreatment.samhsa.gov](http://Findtreatment.samhsa.gov)
- [Addiction.com](http://Addiction.com)
- Alabama Department of Mental Health at [ADMH/MR](http://ADMH/MR)
- [www.mh.alabama.gov](http://www.mh.alabama.gov)
- *ALAP* at [www.alabar.org/alap/](http://www.alabar.org/alap/)
- [jeannemarie.leslie@alabar.org](mailto:jeannemarie.leslie@alabar.org)
- The American Bar Association Commission on Lawyer Assistance Programs at [www.abanet.org/legalservices/colap/home.html](http://www.abanet.org/legalservices/colap/home.html).

**Conclusion**

Addiction has become America’s number one public health problem. Lawyers representing clients with addiction problems need to understand the disease and know about the appropriate resources, because they are in the best position to advocate for their clients’ interests. Lawyers are not immune from these problems, and the stressful nature of practicing law—taking on other people’s problems—may contribute to the increased incidence of addiction and depression among members of the legal community. Lawyers provide services to improve lives and families. It only makes sense that when these types of illnesses affect lawyers the same commitment and concern should be extended. ALAP wants to make sure that you know that the ASB Lawyer Assistance Program is concerned for the well-being of the profession *and* the well-being of the individual lawyer: you and your friends, partners and colleagues. The Alabama Lawyer Assistance Program and the state bar’s Lawyers Helping Lawyers Committee are committed to helping members in need. ▲▼▲

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*Jeanne Marie Leslie, RN, M.Ed, is director of the Alabama Lawyer Assistance Program.*



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# Plan B— A Woman's Perspective

*“Hi, I am \_\_\_\_, and I am an alcoholic.”* I never planned on uttering those words in my lifetime. However, that is exactly what I do on a daily basis. Alcoholism is my shadow companion that pushed me to accept a Plan B for my life. To share how I made it to Plan B in my life, I offer a little background.

I was raised in a rural area of the Deep South where being a “big fish in a little pond” was pretty easy. Taking my first drink of alcohol at age 14, I absolutely loved the way it made me feel. It was like being hugged from the inside out. The alcohol made me feel powerful, smart and pretty. Therefore, I drank as much as I could, when I could, throughout high school. I did not entertain other drugs and admonished those who did.

Numerous colleges dotted the landscape of my post-high school education. My choice of college was driven by its proximity to the beach, not its academic rigor. College was an extended party. My junior year of college, I had a roommate who had been watching “Phil Donahue” and told me she thought I was a weekend alcoholic. Oddly enough, at that time, the weekend began on Wednesday night and lasted until Sunday about the time “60 Minutes” came on television. For some

reason, that show began the week for me. So, I did not drink Sunday night, Monday night or Tuesday night. But when I did, the game was on.

I moved to Birmingham when I was almost 20 to finish college. My sister and her family lived about 40 miles outside Birmingham. I did not know a single person upon my entry to life in the “big city.” Therefore, I set out to make friends. I went to the only place I knew to make friends—bars, parties at the apartment complex I lived in and any other party to which I could get an invitation.

Upon completing college, I believed things would change. A new woman would emerge who was secure, mature and successful. I would marry, have two children, celebrate a 50<sup>th</sup> wedding anniversary while living in my two homes, one with a picket fence and one at the lake, gently gliding my way to retirement with complete integrity. This was Plan A.

Fast forward to more drinking. I met my first husband at a party. He was intoxicated and so was I. We were off to the races drinking and partying. The next thing I knew, Plan A needed revision. I was married and pregnant and NOT in that order. Yet, I still thought when my

child was born, I would feel secure and loved. Tiny fingers cradled inside my hand and a heart filled with love for my son failed to erase the restlessness, irritation and discontent inside. Still searching and married with a two-year-old son, I began law school.

Feeling completely inferior to those around me, my excessive drinking continued. I justified my behavior by rationalizing that I deserved the release I felt from the alcohol. Having more to prove than the other students, drinking made me feel as though I could accomplish that goal.

Once again, Plan A needed further tweaking. I was going to slow down when I got a real job practicing law. Fortunate to land a job at a mid-size law firm, I thought I had “arrived.” I loved the people, the area of law I practiced, the opportunities provided me and the chance to meet the clients of other lawyers in the firm. However, there was one nagging downside—billing, working and client development monthly reports that compared each associate. Feeling terribly insecure, yet driven to win, I wanted to out-bill, out-work and out-client develop the other associates.

I gave the firm my all and in the

process lost my marriage. Although consistently receiving accolades for my work, I persisted in my drinking. I kept telling myself “real alcoholics have a morning drink. I’m not an alcoholic, I only drink at night and on weekends.” When I was in a crowd, I could turn *it* on (whatever “*it*” might be); but when I was alone, I could barely move. A couple of partners at the law firm mentioned they thought I was an alcoholic—the nerve of them! I was a single mom working to be a partner at the firm, maintaining a home and friendships with what energy I had left. The stress and my lifestyle took its toll on a pre-existing health problem. Not long after what I considered to be a vicious rumor surfaced, I left the firm to become a solo practitioner. Again, Plan A had to be modified.

Although blessed along the way with wonderful friends and contacts from my time in Birmingham, the tragedy was I only envied them. Everyone around me seemed so organized, happy and successful while I lead a dual life. My soul was empty and I felt dead inside. My health continued to deteriorate. Medical procedures became necessary and painkillers were prescribed. The pain-killers became my best friend and my confidant. Quietly and discretely, my security, power and energy came from a pill instead of a bottle.

I lived for that pill for a while. I stopped paying my bills, and stopped returning friends’ and clients’ phone calls. Plan A was derailed but I was at a loss as to how to fix the problem. I tried to quit the pills on my own and failed miserably in controlling my obsession. In July 2006, I wrote a suicide note to my son and the man with whom I had been in a three-year relationship. I planned the date to take my life.

Locked inside my bedroom one evening, my son, other members of my family and several of my best friends gathered at my home for an intervention. Completely caught off guard, I thought, “How did they know? Who had they told? Was I ruined in the legal community?” Plan A was crumbling. My intervention was not as pleasant as the ones seen on television. Resisting their love and concern for me, I called the police to have them removed from my home. With a remnant of the intervention group still

in my home, I sat alone amidst the darkness and despair of my life. I gave up. Plan A was dead. I called the man I had been dating and agreed to check into the rehabilitation facility recommended to my intervention team.

Now, two years later, Plan B has replaced Plan A. Sober from alcohol and pills, I do not take mood-altering medication. The relationships I have are the best I’ve ever known. There is wonderful, positive support in my life. The legal community has affirmed my journey to recovery. Through the forbearance of the Alabama State Bar, I returned to practice law but not without a deep sense of shame and guilt. However, each day by the grace of God, great sponsorship and the fellowship of Alcoholics Anonymous, I put one foot in front of the other and practice law. My colleagues in the practice of law are remarkable. They could have derided me but, instead, offered me kindness and a helping hand. I stood cry-

ing before judges in whose courtrooms I had practiced law and said, “I am sorry for my actions.” Instead of hearing words of condemnation, I felt warmth of true love and friendship.

Until the intervention, I was always pressing to arrive at a specific destination. Now, I daily enjoy the journey of life. The road of “in recovery” is marked by attending AA meetings, working with four sponsees and following my sponsor’s recommendations. Thank you, God, for second chances and new beginnings for the gift of daily sobriety and serenity, solid supportive friendships and the unwavering love of my son and my boyfriend.

My wholeness and authentic self reside in Plan B, yet I must acknowledge the journey called Plan A. It took living Plan A to give me a heart filled with gratitude and unshakeable desire to appreciate and celebrate Plan B. ▲▼▲

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# The Returned Phone Call

Depending on your age, you probably grew up watching “Perry Mason,” “Matlock” or “Ally McBeal.” By the time you started law school, you may have had already admired Atticus Finch, Clarence Darrow or, more recently, Gerry Spence or Johnny Cochran.

The funny thing about courtroom dramas is that they rarely show law partners who squabble over firm profits, clients who refuse to pay bills, clients who refuse to be happy even after their case has been won, young associates who have others’ mistakes blamed on them, and even judges who truly don’t care that you have cases in three other courtrooms at the same time as theirs.

Those movies also don’t prepare you for that moment when the pride of winning a trial or motion is quickly stifled by the mounting telephone messages, bills and stacks of papers awaiting your return to the office. Sometimes, it seemed that the great moments of practicing law, such as recovering custody of a child, winning a criminal trial or guiding a client successfully

through bankruptcy, were just small moments of escape from the oppressive grind that is the practice of law.

But then it changed.

It all began with the returned phone call.

The voice on the other end of the line was Jeanne Marie Leslie, and I was terribly uncomfortable talking with her. I thought her group, the Alabama Lawyer Assistance Program, only dealt with substance abuse. Since I’m not a big drinker, maybe THAT was the problem. Maybe I needed her to recommend heavy drinking to combat the practice of law. Perhaps she was going to tell me that I should start drinking heavily and also to get something prescribed. I didn’t mention that...since we had never met she might not have thought it was funny at the time.

The conversation went differently from what I expected. I have always enjoyed the amazement of clients as I would listen to the facts of their lives and then recite additional facts that they had not yet shared with me. As we all know, so many divorces, bankruptcies and criminal cases

fall into fact patterns that we often can fill in the blanks and impress clients with our insight and wisdom. This time, the shoe was on the other foot. I was the one discussing the issues of the practice of law and a family member dealing with difficult issues.

Somehow, Jeanne Marie could articulate my issues better than I. I was both impressed and relieved. For a moment, I actually cried. The conversation was cathartic, but I am thankful it was just the beginning. My only regret about Jeanne Marie was that I had not met with her years ago.

She asked me to meet with a counselor to discuss the stresses arising from the practice of law. No trial lawyer alive could spot the critical issues more quickly, precisely and compassionately as the counselor, referred by ALAP. Thankfully, his talent is matched by his wisdom. He gives great advice and provides the right portion of encouragement to enable you to follow that advice. He not only can spot the issues, he asks the right questions and allows you to see the issues for yourself.

The next step was contact with Laura Calloway from the Practice Management Assistance Program. Calls, e-mails, a lengthy meeting in my office, visits to Web sites, and copies of resources and handouts from seminars made me a student and disciple of the program. The contrast with her materials and my practice saddened me, not only for myself but for the lawyers I have practiced with and against through the years. Today's law students would likely disagree, but I believe there should be a brief law office practice test added to the state bar exam.

Even when on the road, Laura is available via e-mail or voice mail. I have even e-mailed her late on a Friday afternoon with an office management question that was not at all critical, but was important to me. I e-mailed her in full confidence that she would respond, and, of course, she did.

I learned a great deal about me and about the practice of law during my time in their programs. It was an experience that has changed my life in several ways. It also caused me to profoundly appreciate every single person I have met with the Alabama State Bar.

But.....there's more.

There is one very specific lesson that was taught to me at one time or another by each person with whom I dealt. It was one of the first things Jeanne Marie Leslie told me. As I later heard my counselor and Laura Calloway tell me, I realized just how universal it is for lawyers. This lesson is simple to recite but terribly difficult to learn.

Lawyers are, by their very nature, excessively self-sufficient. During almost every day of our lives we are presented with other peoples' problems to solve. In our office, people walk in, sometimes unannounced, to present their problems. When we go to school plays for children or grandchildren, someone wants to discuss a problem. When we go to church, someone wants to discuss a problem. When we dine out or even when we are on vacation we are presented with other peoples' problems.

Some problems require only a quick answer, while others may require research or correspondence. Still other problems require sometimes hundreds of hours of meetings, research, depositions,

preparation, and, ultimately, of trial. We are in some ways beasts of burden; people dump their issues on our backs and expect a wonderful result notwithstanding the underlying facts.

The lesson is that we cannot bear the issues of everyone else alone.

It is unhealthy to your body, your law practice and your relationships to bottle up your anxieties and keep them repressed. Conversations, exercise, hobbies, time off, and even counseling, if necessary, should be a way of life for you. Most people in this world think they have stressful jobs, and perhaps they do. But we know that our stresses, burdens, anxieties and challenges are more intense than most.

That's just the way it is.

I challenge you to take an afternoon off and visit the Alabama State Bar office. I also challenge you to make use of their resources. I mistakenly thought that most of their programs were for discipline, substance-abusers and those with discernable

psychological issues. These people are not bureaucrats interested in pushing paper and justifying their jobs; they are real people who genuinely care about lawyers and understand the issues you face.

One last thing.

Sometimes you may hear portrayals of those with the state bar as people analogous to rogue agents from the IRS or FBI. My experience has been that they truly understand that sometimes bad things happen to good people. Although I have always tried to be compassionate and forgiving, my experiences with the state bar have enabled me to listen to and serve clients even more compassionately than before.

Descartes so famously wrote, "I think, therefore I am." The programs at the state bar have helped me change the paradigm of how I think about myself, my family and my practice.

My hope is that you will let them help you, and perhaps your colleagues, as well. ▲▼▲

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# The Fourth Time Around

In 2000, at the age of 38, I had been practicing law for 12 years. You would have thought I was living the “American Dream.” I was married, was blessed with three beautiful children and had a beautiful home and my own firm with three other lawyers. I remember friends telling me I was the luckiest man in the world. Every time I heard those words I would cringe, and rightfully so, because you see I had been living a double life for many years. I gave the impression to those around me that I was on top of the world. The stark reality was that I was moments away from entering my first treatment center.

The truth in 2000 was that I had been hiding the real me, a person who was an alcoholic, addict and compulsive gambler. My life was in shambles. I would like to tell you that after two months in my first treatment center I saw the light and was ready to take the appropriate action suggested. Things didn’t go the way I had hoped once I returned. I put things I thought were more important ahead of my recovery. I started trying to save my marriage and my position with my law firm. I continued to lie to myself. I would tell myself if I could save my marriage and practice I would be okay. If others could only understand what I was going through, then they would understand why I did the things I did. I was still unwilling to look at the truth about me, that I was the problem, not those around me. Around this time a wise man told me anything I put ahead of my recovery I would lose. Unfortunately, I found this to be true the hard way.

The next five years can only be described as hell on earth. I went through a divorce, was fired from my firm, tried two more treatment centers and was in

and out of half-way houses. I would barely manage to maintain my CLE credits and license fees for my law license. I did not practice law during this five-year decline. There were numerous bottoms I reached. My relationship with my children suffered greatly, not to mention the harm I did to family and friends who truly loved me.

For most folks that would be close to the end of the story. Usually at this point is when the addict/alcoholic ends up dead, in jails or in mental institutions. I truly believe without a shadow of any doubt that the prayers of many loved ones and friends are the main reasons I am still here today. That includes Jeanne Marie Leslie, program director of the Alabama Lawyer Assistance Program (ALAP). Lord knows I gave Jeanne Marie countless reasons to walk away from me. I am grateful today that she saw good in me when I was unable to see it in myself. She, like many others, loved me when I was unable to love myself.

In June/July of 2005, the pain of addiction became unbearable. I had been living in a week-to-week motel. Each week was a challenge to pay the \$170 rent. I really don’t know how long I was there. I was scared like I had never been scared before. On August 1, 2005, I am grateful my pain led me to the parking lot of my soon-to-be fourth treatment center.

It was a little after 6 a.m. and I was sitting in my car debating what to do. I called Jeanne Marie and, as always, she was there for me. She instructed me to go inside and admit myself. I stayed there for 18 days and even though I had a better idea of where I needed to go at the end of my 18-day stay, Jeanne Marie, in her unique style, told me that a state-funded program, the one she had sug-


gested on several previous occasions to help me, had a bed waiting for me. She said I had been sick a long time and I needed long-term treatment; she also told me my best thinking is what got me here. This time she wasn’t suggesting I go and I knew it wasn’t up for discussion. Thank God I followed her direction.

While at the state-funded facility, God continued to put people in my life who were willing to guide me in recovery, provided I was willing to do my part. A local lawyer who graciously helps suffering lawyers through ALAP became my sponsor. He spent time with me and helped me look at the truth about me and then guided me in my recovery. He taught me how to live life free from addiction and he continues to be a major influence in my life today. I love him dearly. Through the help of ALAP, the lawyer who guided me, the workers and friends I met at that state-funded facility, friends and loved ones in numerous cities, a 12-step program, and the God of my understanding, I have remained free from my addictions since that time.

Today I have moved back home where my children live and I am a part of their daily lives. Our relationship is better than ever. Words cannot express my gratitude. My children teach me lessons each day on how to live life. I am practicing law once again. I am also able to share my experiences with others who suffer from the disease of addiction in hopes that they may find a new way of life in recovery.

As my lawyer friend told me before I moved back home, as I face life on life’s terms don’t forget to enjoy the journey. Today, thanks to those loved ones I have already mentioned and so many more, I am able to enjoy the journey of life. May God bless you all! ▲▼▲





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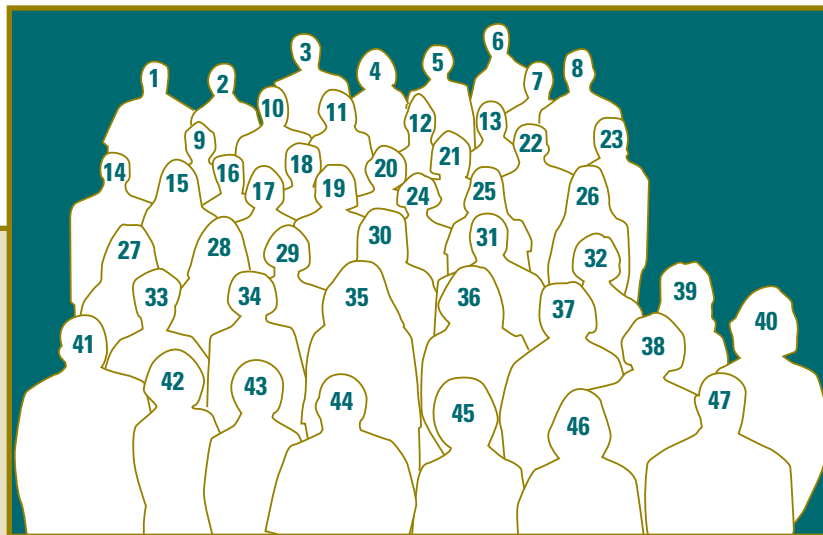
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# Meet Your Alabama State Bar Staff



1. Willie Murphy
2. Wayne Hughes
3. Keith Norman
4. Cheryl Rankin
5. Jeanne Marie Leslie
6. Roderick Palmer
7. Sherry Langley
8. Sam Partridge
9. Margaret Murphy
10. Robert Lusk
11. Judy Keegan
12. Vivian Freeman
13. Tony McLain
14. Ed Patterson
15. Patsy Shropshire
16. Linda Lund

17. Cathy Sue McCurry
18. Bonnie Mainor
19. Marie Updike
20. Sandra Clements
21. Ann Rittenour
22. Dolan Trout

23. Laurie Blazer
24. Kim Ellis
25. Shannon Knight
26. Emily Farrior
27. Carol Wright
28. Kristi Neal

29. Mary Corbitt
30. Katherine Church
31. Brad Carr
32. Gale Skinner
33. Heidi Alves
34. Tracy Daniel

35. Kristi Skipper
36. Tara Allison
37. Carol Thornton
38. Dorothy Johnson
39. Sonia Douglas
40. Stephanie Oglesby
41. ASB President Mark White
42. Laura Calloway
43. Diane Locke
44. Maggie Stuller
45. Rita Gray
46. Marcia Daniel
47. Jeremy McIntire

Not pictured are Angela Parks and Jillian McDonnell.

The talented, dedicated staff of the Alabama State Bar work to expertly provide legal professionals statewide with the high level of multifaceted support they expect and desire, while boosting the professionalism and expanding the access to legal services for all Alabamians.

## Executive Offices

### Executive Director

**Keith Norman**, the executive director, oversees and directs the agency as governed by the *Code of Alabama* and rules created by the Alabama Supreme Court, as well as carries out the policies of the Board of Bar Commissioners. Before becoming executive director, Norman served as the state bar's director of programs for six years. He worked with the firm of Balch & Bingham in Montgomery before joining the state bar staff. Norman's wife, Teresa, is also an ASB member and they have four children.

### Executive Assistant

**Diane Locke** serves as executive assistant to both the executive director and the Board of Bar Commissioners. Locke started working at the Alabama State Bar in 1978 as a part-time student worker; she began full-time work here in 1982. During her 26 years at the ASB, she has worked in almost all areas, including continuing legal education and membership. "After this many years with the state bar, retirement is my goal!" she said.

Locke is married to Jim Locke, president of Sovereign Solutions based in Tifton, Georgia, and attends St. John's Episcopal Church in Montgomery. She is an avid tennis player and also enjoys bike-riding with her husband.

### Assistant Executive Director

**Edward M. Patterson** is currently the assistant executive director for the Alabama State Bar. Until 2007, he was director of programs, a position he held since 1994.

About this work, he says, "The best bar executives realize that their jobs are administrative, legal, and political and act accordingly. Our challenge is to remain rooted in historic principles while serving as agents of change."

A Montgomery native, Patterson is a graduate of the University of Alabama and the University of Alabama School of Law. He served two years as a law clerk to Associate Justice Hugh Maddox on the Alabama Supreme Court, five years as assistant general counsel of the Alabama State Bar and 14 years in private practice in real estate, banking and general business law. He is a 1980 recipient of the Alabama State Bar Award of Merit for outstanding and constructive service to the legal profession in Alabama.

Patterson has held dual careers in law and music. As an accomplished classical pianist, he has written a number of chorale anthems. He was also the organist at Trinity Presbyterian Church in Montgomery for 25 years, serving eight years as organist-choirmaster.

He is married to Beverly Smith Patterson and has two married daughters who live in Birmingham and Charlotte, N.C., and two grandchildren, Wyatt Edward Williams, three, and Bradford Elizabeth Williams, born in August. He and Beverly are expecting another grandchild in November. Among his many passions are mentoring young people and trying to "outrun Beverly" on the treadmill.

## Administrative Assistants

Now an administrative assistant to the assistant executive director, **Rita Gray** brought 22 years experience with her when she started with the state bar in November 1995 as communications/publications assistant. She joined the programs department in 1999 as assistant to director of programs.

Her husband, Bruce, is sales manager for Jay Electric and has been with the company for 38 years. They have one daughter, Gina Buck, who is married to Ben, and they have three children, Breelyn, ten, Todd, eight, and Braxton, five. The family attends New Home Baptist Church in Elmore. The Grays enjoy time at Gulf Shores, deep-sea fishing and teaching the grandchildren ocean fishing and boating.

**Marie Updike** is an administrative assistant to the assistant executive director. She assists with the Leadership Forum Program, scheduling meetings, planning member events, producing timelines and creating budget spreadsheets.

She is a member of two gardening clubs in the Montgomery area.

## Financial Secretary

**Gale Skinner**, the state bar's financial secretary for 22 years, is responsible for all the bar's accounts receivable and payable. She has worked at the state bar for 26 years as of last July, having started out with the lawyer referral service.

Skinner celebrated 26 years of marriage to James in May. Their daughter, Kari, 22, is a senior at Auburn University majoring in English education. Their son, Zach, 17, graduated in May and will be attending Auburn University in the fall. Skinner noted, "I have to get the children through school and in a career before even thinking of retirement!"

## Foundation Administrative Assistant

**Ann Rittenour** oversees maintenance of the state bar building and its assets, and purchases equipment and supplies. She also manages the foundation's accounts and investments.

Rittenour is a graduate of Auburn University. She is married to her high school sweetheart, Jim, and they have three children, Rebecca, 22, a senior at Auburn; James, 19, who just graduated from Alabama Christian Academy and has headed off to college; and Allison, 16, a junior at Alabama Christian Academy. She enjoys her time with the First United Methodist Church hand bell choir and working in her yard.

## Lawyer Referral Service Director

**Shannon Knight** is the director of the Lawyer Referral Service, a statewide program in operation since 1978. She conducts the day-to-day operations of the LRS, managing a computerized program that allows the public to be referred to a member attorney in their geographical area. Each year more than 12,000 referrals are given throughout the state. Some attorneys have been members since the program's beginning, which proves how valuable the program is to attorneys wanting to establish or expand their practice.

Knight received a bachelor of science degree from the University of Montevallo and a master's degree in counseling and human development from Troy University Montgomery. In her free time, she enjoys photography and oil painting some of her favorite pictures. She enjoys starting each day by walking five miles, and when time permits, she visits friends in Mobile and Fairhope and drives over for the day to the beach or New Orleans.

## Senior Application Developer/Database Administrator

**Dolan Trout** provides day-to-day support to the ASB staff and members concerning database-related issues. The database contains more than 16,000 member records, plus associated records, including everything from bar applications to MCLE to disciplinary. He also assists in maintaining the bar's online bar directory and members' password-protected area.

His main objective is to supply the proper tools to the staff so they can serve the members more efficiently and effectively. Dolan is retired from the Air Force (since 1994) and did contract work for the ASB from 1998 until 2004 when he became part of the fulltime staff.

Dolan's main interests outside of work are his wife, Dee, church and music. When he is not busy working on things around the house, he'll either be on a date with Dee, at church or in front of his computer with his guitar in hand, composing and recording blues or jazz.

## Network Administrator

**Wayne Hughes** is the network administrator for the state bar. His main roles are network infrastructure, Internet security and hardware support.

Hughes is a Microsoft Certified Systems Engineer and also holds the Comptia A+ and Network+ certifications, along with over 100 other various vendor-based certifications. Since beginning his professional career in information technologies in 1995, he has worked for several Fortune 500 companies and Nasdaq 5000 companies, including Hewlett Packard, Pitney Bowes and Pomeroy Computer Resources. Hughes first started supporting law-based organizations when he worked with the Southern Poverty Law Center from 1999 to 2001. He has been in a primary information technology support role with the ASB since 2003.

## Scanning Operator

**Kristi Neal** sees herself as working toward making the Alabama State Bar a paperless environment by scanning historical files into a user-friendly system. Neal has been with the Alabama State Bar for three years. In the last year and a half, she scanned over 16,000 membership records and student applications into the system. She's now working with other ASB departments getting their information entered into the system.

Neal is married to MSgt. Richard Neal who is in the 357th Airlift Squadron at Maxwell. They have three boys: Shannon Dean Harris, 16; Richard Alan Neal, 13; and Dustin Oliver Harris, 11. According to Neal, "We are a blended family, but we are a very well-blended family." She attended Reid State Technical College in Evergreen where she received a degree in business administration. In her free time, Neal enjoys spending time with family

and friends in the family's new swimming pool and spa. To help deal with stress, Neal enjoys taking tae kwon do with her boys. They are currently senior blue belts working up to getting their black belts.

## Graphic Arts Supervisor

**Maggie Stuller**, the graphic arts supervisor, oversees jobs printed in-house for high quality and quickness. Her duties include printing, collating and binding different ASB projects, including the bar exam and law-related brochures. She has worked for the Alabama State Bar for about 23 years.

Stuller was an umpire for the Alabama High School Softball Association for about seven years. She enjoys all sports and a good movie.

## Graphic Arts Assistant

**Roderick Palmer**, the graphic arts assistant, helps operate the in-house print shop. He started at the state bar in September 1995.

Palmer has a degree in graphic arts from Trenholm State Technical College and is married with two children. He is an Auburn fan.

## Receptionist

**Stephanie L. Oglesby** is the first voice callers hear when phoning the bar or the first face they see when stopping by. Oglesby runs the switchboard, opens and sorts the morning and afternoon mail, greets the office guests, and assists other ASB departments when time allows.

Oglesby and her husband, Michael, own Double O Farms in Lowndesboro, Alabama and are the parents of three little girls, Helen, seven, Shelby, three, and Sara Beth, two.

## Service Programs Service Programs Director

**Laura Calloway**, director of service programs, is available to assist Linda Lund with the Volunteer Lawyers Program and Shannon Knight with the Lawyer Referral Service. These excellently run programs require very little oversight, however, and the majority of her time is spent as director of the Practice Management Assistance Program.

She has served as PMAP director since 1997, when she joined the bar to establish the program, providing information about the best practices in the administration of the business of the modern law office to

members of the bar. Along with her administrative assistant, Kristi Skipper, she mans the telephone and e-mail help-lines the state bar provides, and works closely with Jeanne Marie Leslie to provide practice management information to her clients. She also helps organize and speaks at continuing legal education programs on practice management and writes occasionally for the *Addendum* newsletter.

Before joining the state bar, she practiced law in Montgomery for 16 years, both as a solo practitioner and as a member of two small firms, concentrating in residential real estate, collections, consumer bankruptcy and family law. She is a graduate of Troy University, where she received her undergraduate degree in finance. She received her juris doctor from the Thomas Goode Jones School of Law. She is a member of the American Bar Association, where she participates in the Law Practice Management Section, has served on the Law Practice Management Section's governing council since September 2006 and serves on the section's Practice Management Advisors' Committee. She has been a member of the planning board of ABA TECHSHOW® for the last three years, and serves as chair of the planning board for ABA TECHSHOW® 2009.

Along with David Bilinsky of the Law Society of British Columbia, she co-authors "Profitability," a regular column on financial issues that appears in the Law Practice Management Section's magazine, *LawPractice*.

She and husband Terry Harris have been married for 20 years. Harris is a pharmacist at Jackson Hospital and, when they're not at work, they continue the unending restoration of an old home built in the 1920s in Montgomery's Garden District. They are also working on two mahogany sea kayaks they hope to have finished by the time they retire. They have four feline children, Whisker, 20, Alice Lee, three, and one-year-old twins Mungojerrie and Rumpoleteazer.

## PMAP Administrative Assistant

**Kristi Skipper**, PLS, the administrative assistant, provides advice to solo attorneys and small firms, including information on trust accounting, and case-management, time, billing and accounting software. She coordinates the library and mans the Casemaker Legal Research helpline. She also assists the

PMAP director in coordinating the Legal Expo at the annual meeting. She began working at the bar in October 2007.

Skipper grew up in Montgomery and attended Troy State University, where she studied English and played piccolo in the Sound of the South marching band. She later attended Auburn University Montgomery, where she majored in legal studies. Skipper worked at Melton, Espy & Williams PC and then at Craddock Davis & Krause LLP. She received the NALS CLE Award in November 2004 and February 2008 for obtaining more than 60 hours of continuing legal education. In September 2004, she received her Certified PLS, the advanced certification for legal professionals, and will sit for the Professional Paralegal exam this month. She is currently serving as president of MALS ... The Association for Legal Professionals. She is married and has one daughter. When she's not working, she enjoys reading, playing flute and piano, camping, having fun with her daughter, and traveling.

## Regulatory Programs Regulatory Programs Director

**Angela Parks** took over recently as the new director of regulatory programs, which includes ensuring members' compliance with the MCLE rules and regulations. Parks also serves as the Alabama State Bar's staff liaison to the MCLE Board of the Bar Commissioners.

Parks was born in Camp Lejeune, North Carolina, and attended Allegheny College in Meadville, Pennsylvania and Duquesne University School of Law in Pittsburgh. She is currently working on her MBA in information technology at the University of Alabama at Birmingham. Parks was admitted to the Pennsylvania Bar Association in 1989 and the Alabama bar in 2005, and is admitted to practice in the Eastern, Western and Middle districts of Pennsylvania, the Northern District of Alabama and the Third and Eleventh circuits.

From 1989 until 1997, Parks was engaged in general litigation practice before working for two years on the insurance churning cases against Met Life and Prudential insurance companies. She then moved to the Philadelphia area where her



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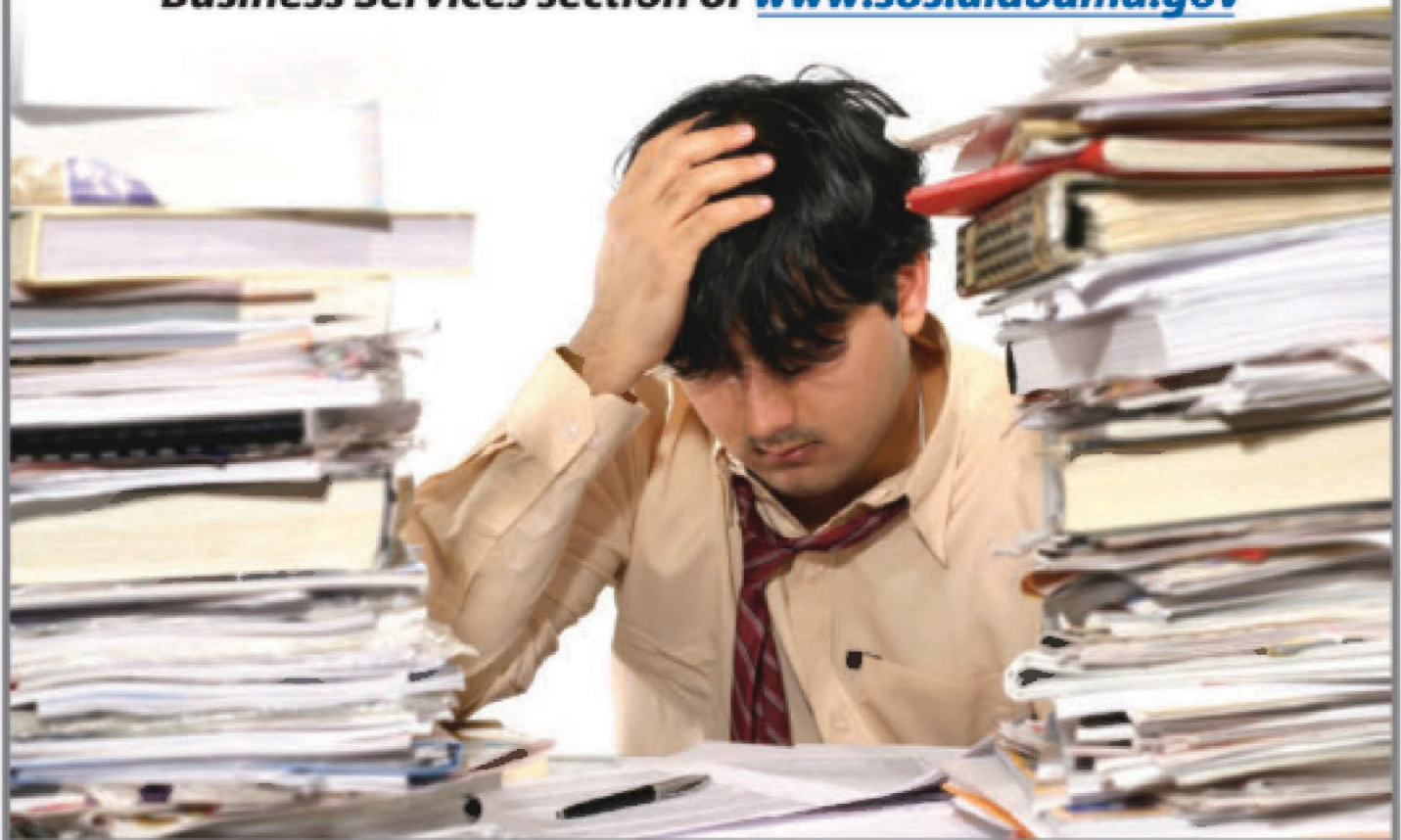
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firm acted as a subclass counsel in the \$4.2 billion Fen-Phen Diet Drugs settlement. She was also involved in the national tobacco litigation and other mass tort and product liability class actions, including latex gloves, Rezulin and Propulsid cases, and she was part of the negotiating team for the national Gammagard settlement.

From 2000 to 2004, Parks was director and counsel of the Office of Plaintiffs' National Liaison Counsel for the MDL-926 Silicone Gel Breast Implant Product Liability Litigation in Birmingham. She joined Gentle, Pickens & Turner in 2004 to assist with the administration of the \$300 million settlement of the Monsanto/Solutia PCB contamination case in Anniston.

## MCLE Administrative Assistant

**Carol Thornton** assists the MCLE director in administering the MCLE rules and regulations for attorneys and providers. She primarily works as a liaison with sponsors who are not pre-approved providers of continuing legal education in the state by informing them of the accreditation standards in Alabama, and helps maintain compliance with the standards. Thornton also works with attorneys on their CLE compliance, helps attorneys and sponsors apply for course accreditation, posts attendance for thousands of attorneys and fields questions regarding MCLE rules and regulations. She notes, "I enjoy working with the attorneys and assisting them in gaining compliance prior to their yearly deadline." She has worked for the ASB for nine years, first with the Lawyer Referral Service for four years and then in the MCLE department for the past five.

She is married to Ray Thornton and lives in Wetumpka. Her daughter, Tara Thornton Allison, works with the Alabama Law Foundation. Thornton's entire family attends Cain's Chapel United Methodist Church in Holtville. She attended Auburn University and will always be a War Eagle fan. Leisure time for her includes enjoying her family, friends, the beach or any other place around water.

## Communications Director of Communications

**Brad Carr**, the director of communications, could be considered the "dean of bar association public relations." For the past

36 years, he has worked in PR capacities for lawyers in four state bars (Missouri, Georgia, New York and now Alabama). He has also worked for the American Bar Association in both its Washington, DC and Chicago offices. At the ASB, he is responsible for developing a positive public image of the state bar through proactive media relations, image campaigns and internal and external communications. Carr is a graduate of the University of Missouri School of Journalism and has been a guest lecturer at journalism schools throughout the U.S. He and wife Kristi are the parents of two sons, Brian and Seth.

## Web Administrator and Graphic Designer

**Willie Murphy**, who joined the state bar staff in March, is responsible for creating, publishing and maintaining the bar's Web content, as well as conceiving and designing graphic projects.

A veteran of the United States armed forces, Murphy studied graphic design at Troy University in Troy, receiving his bachelor's degree in the design, technology and industry program in 2007 and an associate degree in visual communication from Collins College in Tempe in 1996. He has won numerous Gold and Silver ADDY awards from the advertising community. He and his wife have three children.

## Publications Director

**Margaret Murphy**, the publications director, manages the production of two printed bar publications, *The Alabama Lawyer*, an 82-page bimonthly magazine, and *Addendum*, an eight-page bimonthly newsletter. In addition, she serves as managing editor of the ASB Online Directory, located at the bar's Web site, [www.alabar.org](http://www.alabar.org). She serves as staff liaison to the three editorial boards of these different publications. Murphy also answers a wide assortment of general information queries, assists in publicity for the annual bar meeting and serves as the general photographer for the meeting, proofs copy for other departments, and helps out with other communications projects as needed.

Murphy has worked as publications director for the bar for almost 24 years, having started in October 1984. She served in a similar capacity at Regions Bank for three years prior to starting at the ASB. A Montgomery native, she attended Brenau College in Gainesville, Georgia and received a communications degree from

Auburn University Montgomery. She has two sons, Sellers, 23, and Cameron, 16. Murphy loves spending time with them, especially watching SEC football (definitely Auburn), reading anything, gardening, cooking, and visiting family in North Carolina. She also volunteers at her younger son's school, Churchill Academy.

## Communications/Publications Assistant

**Marcia Daniel** provides general office and clerical support for various communications projects, such as handling the display advertising and compiling of "About Members, Among Firm" announcements for *The Alabama Lawyer*. Among her favorite duties are working with the Public Relations Committee and being the staff liaison for the annual Law Day contest for Alabama's K-12 students. She has been employed at the state bar for three years.

Before working for the ASB, Daniel worked in the publications department of Bass Anglers Sportsman's Society (BASS) for 15 years. When the company decided to move to Orlando, Daniel, a Montgomery native, felt the move wasn't for her. She enjoys family, friends, playing with her Siberian huskies, cooking, running, and being heavily involved in her church. She and her husband love to travel to different states on their Honda Goldwing motorcycle.

## Admissions Admissions Director

**Dorothy D. Johnson** coordinates, reviews and administers state bar admissions. The department processes approximately 500 student applications per year and 1,200 bar applications. Each application must be checked for the appropriate documentation, investigated and analyzed for possible Character and Fitness issues. She is the state bar liaison for the Character and Fitness Committee, identifying applicants with character and fitness issues, scheduling them for hearings, attending the hearings and notifying the applicants of the committee's decisions. She coordinates with the Board of Bar Examiners on examination content and the administration of the exam. She is a 16-year veteran of the state bar.

Johnson earned a bachelor's degree in accounting from Alabama State University. She worked as a computer programmer, an auditor and an accountant

for the federal government while traveling with her husband, Dennis, a retired Navy Commander. She has been married for 33 years and has two children, Melissa, who is a second-year law student at Emory Law School, and Dennis Jr., who received his degree in electrical engineering this year and will begin working with Southern Company in this month.

Dorothy enjoys playing tennis, reading, community service and spending lots of time with family and friends.

## Admissions Assistant

**Heidi Alves**, admissions administrative assistant, processes student and Rule III applications, and assists with processing state bar examination applications, the administration of the state bar examination and the monitoring of special accommodation examinees. After serving as a temporary employee for the Alabama Law Foundation, Alves joined the bar in May 1994 as programs secretary. She was promoted to CLE administrative assistant before joining the admissions staff.

A native of Manhattan, Kansas, Alves graduated from Kansas State University in 1993. Before moving to Montgomery, she was stationed at Fort Jackson, South Carolina as a personnel records clerk. She is the proud parent of one teenage daughter.

## Admissions Assistant

**Sonia Douglas** has been with the state bar for nine years as an administrative assistant in the Admissions Office. Her duties include processing applicants to sit for the state bar examination, screening applications, assisting with student registration and flagging applications that require further review.

Originally from Anniston, she received her undergraduate degree in business administration from Alabama State University. She and her husband, Arthur, have two children. She enjoys working with the youth at church, reading and walking outdoors.

## Membership Membership Services Director

**Mary Corbitt**, membership services director, is responsible for the maintenance of all membership files; collecting occupational licenses, special membership and Client Security Fund fees; and tracking Pro Hac Vice applications, Authorized House

Counsel registrations and registrations for the ASB annual meeting. She has worked for the bar for 12 years, beginning as an assistant in the Admissions Office.

Corbitt and her husband, Walter, have been married for 37 years. Walter retired as director of Information Systems with the Alabama Department of Environmental Management and is currently a private computer consultant. They have two married daughters, Stephanie Cook and Melanie Ikerman. They have been blessed with four beautiful grandchildren, Jaren Cook, five; Anna Christine Cook, two; Ellis Ikerman, three; and Hunter Ikerman, two. Besides doting on her grandchildren, she also enjoys playing tennis, reading and traveling.

## Membership Administrative Assistant

**Emily Farrow**, the membership administrative assistant, aids the director in carrying out membership services duties, including maintaining membership files and the collection of occupational license and special membership fees. Farrow also helps process certificates of good standing and collect payment for Client Security Fund dues.

Originally from Dothan, Farrow received her bachelor of arts degree from Auburn University. She is married to Harvey Farrow, an associate broker and certified commercial investment member with Coldwell Banker Commercial-Moore Company Realty in downtown Montgomery. They enjoy being outdoors, especially on the water, reading and cooking. They recently welcomed their first child, Townes.

## Pro Hac Vice Clerk

**Cathy Sue McCurry** serves as the Pro Hac Vice clerk, which involves administering Rule VII, governing admissions to the Alabama State Bar. Duties include processing applications, collecting filing fees and reporting to the judiciary. Explaining Rule VII is a major part of the work. She also serves as the clerk for Rule IX, governing the certification of Authorized House Counsel. McCurry also assists with general membership services responsibilities.

She is married to Doug, who serves as pastor of Legacy Church in Montgomery, and they are the parents of four boys, ages ten to 14. Outside of work, McCurry is involved in her sons' activities, and serves

as a Bible teacher, Women's Ministry Leader and Worship Team Leader. She is a graduate of Baylor University.

## Volunteer Lawyers Program VLP Director

**Linda Lund**, the VLP director, coordinates pro bono legal services to indigent citizens statewide by organizing pro bono projects sponsored by local bar associations, serving 64 of Alabama's 67 counties. She also serves as staff liaison to the Committee on Access to Legal Services. Lund has held this position since 1999. Established in 1991 by the Alabama State Bar Board of Bar Commissioners, the program provides an organized vehicle through which attorneys can volunteer their services on a pro bono basis in civil matters to indigent citizens in their community. Currently more than 1,500 attorneys are registered with the program. The VLP's newest project, "Wills for Heroes," allows volunteer attorneys to serve their community by providing first-responders (law enforcement, fire and emergency medical personnel) with basic estate planning services.

A graduate of Auburn University with a bachelor of science degree in political science and economics, Lund received her law degree in 1989 from the University of Alabama School of Law. She worked as a staff attorney and senior staff attorney in the Dothan office of Legal Services Corporation of Alabama for seven years. She also serves as Alabama's Access to Justice Partner for the National Legal Aid and Defenders Association, the State Planning and Assistance Network and for the ABA Center for Pro Bono.

Although her allegiances seem torn, Lund is an Auburn fan. She and husband Jimmy celebrated their 20<sup>th</sup> wedding anniversary last year. She enjoys gardening, traveling, reading and watching old movies. Her favorite time of year is Christmas.

## VLP Administrative Assistant

**Katherine Church** joined the ASB staff in 1992 as director of the Lawyer Referral Service and was also responsible for the publication and citing of Southern 2<sup>nd</sup> cases to subscribers to the *Alabama Bar Reporter*.

In 1999, Church "jumped ship" to work with the Volunteer Lawyers



Program as administrative assistant. Having knowledge of the legal system and legal case management, she records client information and case notes and manages case files for all Alabama counties except Madison and Mobile and the city of Birmingham. When possible, Church assists the VLP director with senior citizen clinics, “Wills for Heroes” workshops, CLE programs for volunteer attorneys, and getting the VLP hotline up and running after natural disasters.

Church has one daughter and is better known as “Kit Kat” to her three beautiful grandchildren, whom she calls Tweet, Tootsie and Trooper. The only additional “significant other” in her life is named Fisher (born at a fish hatchery) and he rules the backyard. She loves the beach and anything to do with the University of Alabama football.

## Alabama Lawyer Assistance Program

### ALAP Director

**Jeanne Marie Leslie**, RN, M.Ed., MLAP, implements, administers and manages the Alabama Lawyer Assistance Program. Established in 1998 in response to a proposal by the Lawyers Helping Lawyers Committee, the program provides education, identification, intervention and referral for recovery and support services to the legal profession for lawyers, judges and law students experiencing impairments resulting from alcohol and drug dependency and other types of mental illness. The director handles this program in coordination with the Lawyers Helping Lawyers Committee and the Alabama Lawyer Assistance Foundation with the direction from the board of directors.

Leslie received an undergraduate degree in nursing from the University of South Alabama in 1985 and a master’s degree in counseling from Auburn University in 1990. She serves on the advisory board for the Alabama Alcohol and Drug Abuse Association, and is an appointed member of the Chief Justice’s Drug Court Task Force. Leslie is currently active with the American Bar Association Commission on Lawyer Assistance Programs. She is married to Arthur Leslie, a Montgomery attorney, and they have two children, Henry

Arthur Leslie III, a junior at Tulane, and Culle Leslie, a freshman at Auburn University Montgomery. When not at work, Leslie loves to shop, decorate, read good books and watch old movies with her husband.

## ALAP Administrative Assistant

**Sandra Clements** handles ALAP’s administrative functions, including documenting member contact and, when necessary, compliance, processing requests for information and managing funds received by the respective programs in connection with the state bar’s financial secretary.

Previously, she worked for the firm of Gidiere, Hinton & Herndon. Clements attended David Lipscomb College in Nashville and the University of Alabama in Montgomery. She has three children and four grandchildren. Her favorite pastime is spending time with her grandchildren. After retiring, she plans on traveling and reading more.

## Alabama Center for Dispute Resolution

### ADR Director

**Judy Keegan** is the executive director of the Alabama Center for Dispute Resolution. The center, which serves as the state office of dispute resolution, is designed to “develop, implement, administer, assist and manage alternative dispute resolution programs in the courts, neighborhoods, educational facilities and government agencies within the State of Alabama.” It was established by Supreme Court order in 1994, and is supported by the Alabama Supreme Court, their Commission on Dispute Resolution and the state bar.

Keegan received her undergraduate degree from Florida State University and her master’s and juris doctor from Catholic University in Washington, D.C. She was a mediator and practiced law in the D.C. area before coming to Montgomery in 1994 with her husband, Barry Schneider, who is on the faculty of the Air War College and the director of the Air Force Counter-Proliferation Center at Maxwell Air Force Base.

She is a member of the Christian Legal Society and the Alabama Academy of

Attorney Mediators, the secretary for the Alabama Supreme Court Commission on Dispute Resolution, and was appointed to the Chief Justice’s Family Law Evidenced Based Practices Task Force. When not in the office, she enjoys being active, walking, gardening, a little dancing and yoga. She also enjoys the theater, music, reading, travel, interior design, cooking, shopping with girlfriends, and lots of chocolate.

## ADR Administrative Assistant

**Patsy Shropshire** serves as administrative assistant to Judy Keegan, director of the Alabama Center for Dispute Resolution. Shropshire has had the challenging and rewarding experience of assisting Keegan for three years. She manages the mediator and arbitrator roster database, published annually, but accessible at [www.alabamaadr.org](http://www.alabamaadr.org), the Dispute Resolution Web site. She also maintains the Center’s financial records and helps manage the calendar, office communication and various projects.

Shropshire is a native Texan who began “distant” travels when her husband, David, was commissioned as an officer in the Air Force. Their travels took them to Havre, Montana, Denver, Colorado and Washington, DC. David retired from the Air Force at Gunter AFB in Montgomery.

Their three adult children, Susan, Jason and Amy, are married and have provided six grandchildren. Shropshire says, “If anyone had told me how much fun grandchildren would be, I would have started earlier.”

Shropshire and her husband enjoy gardening, working in the yard, biking and taking road trips. They are planning a road trip to New Hampshire this fall.

## Alabama Law Foundation

### ALF Executive Director

**Tracy Daniel**, executive director of the Alabama Law Foundation, oversees the day-to-day administration of the foundation and assists the board in planning for its future, including administering scholarships, access to justice issues and monitoring investments.

A native of Hurtsboro, Daniel received a bachelor’s degree in marketing from

business administration from Auburn University. She is a lifelong Auburn fan. She lives in Montgomery with her border collie Nicholas, her Australian shepherd Chip, her toy poodle Polly and the cats, Sally and Max.

## ALF Assistants

**Tara Allison** assists the executive director with all daily operations of the foundation, including development, grantmaking and special events. This includes updating the Interest on Lawyers Trust Accounts and Kids Chance.

She has been working with the Alabama Law Foundation as an administrative assistant since June 2006. Once IOLTA became mandatory for all attorneys who hold client funds in the state of Alabama, she became the IOLTA operations coordinator, and is available to help any attorneys who still need to set up their accounts. She also helps coordinate the Kids' Chance Golf Tournaments and the Kids' Chance Tennis Tournaments.

She and husband Andy, an operator/electrician for Alabama Power currently employed at Martin Dam, are in the process of moving to the Holtville area. They have two sons, two-year-old Drew, and newborn Brady, who arrived in August. She attended Troy University School of Nursing. In her spare time she enjoys shopping, being with friends and family, cooking and anything that involves being around the lake, beach or pool.

**Jillian McDonnell** is a Montgomery native. She attended Macon East Montgomery Academy and graduated in May 2007. She was a cheerleader there for nine years. McDonnell is currently attending Troy University in Montgomery and has been accepted into the nursing program. Prior to joining the Alabama Law Foundation she worked for Melton, Espy & Williams. She has also worked for the YMCA Goodtimes program as a counselor, as well as a certified tanning instructor and an ice cream scooper!

McDonnell lives in the Pike Road area with her mother, who is a registered nurse employed by Baptist Health. They share their home with three dogs and a cat. McDonnell's father is an associate commissioner for the Department of Corrections. Her brother is a graduate of the Auburn University School of Veterinary Medicine and lives in Georgia.

# Office of General Counsel/Center for Professional Responsibility

## General Counsel

**Tony McLain**, the general counsel of the state bar, oversees the operations of the Center for Professional Responsibility, which investigates and prosecutes bar complaints, issues ethics opinions to lawyers, represents the bar in state and federal litigation, and provides legal advice and assistance to the Board of Bar Commissioners, and the leadership and staff of the Alabama State Bar. He also serves as a frequent lecturer on ethics and professional responsibility at CLE seminars, as well as local and specialty state bar meetings and conferences. He has worked for the state bar for 20 years.

McLain grew up in Headland and graduated from Auburn University with a bachelor degree in history. He obtained his juris doctor from the Cumberland School of Law, Samford University. Upon graduation from law school, he worked as an assistant attorney general during the administrations of attorneys general Bill Baxley and Charlie Graddick. He then practiced law in the firm of McLain & Hampton for nine years. In 1988 he began work with the bar as assistant general counsel, and was hired as general counsel by the Board of Bar Commissioners in July 1995. He recently completed a two-year term as president of Cumberland's national alumni association, and received the school's distinguished alumnus award for 2007. He has served as adjunct faculty for Auburn University Montgomery and Huntingdon College. He has also been invited to teach at Cumberland Law School's studies abroad programs in Durham and Cambridge, England, and has been guest faculty at Bahcesehir University in Istanbul, Turkey.

McLain and wife Leah live in Montgomery, and he has a son, Ben, who attends Trinity Presbyterian School. He enjoys golf, Japanese maples, bonsai, and collecting U.S. commemorative stamp plate blocks.

## General Counsel's Secretary

**Vivian Freeman**, secretary to the general counsel, performs all administrative duties in support of the general counsel.

Her hobbies include all sports, traveling, playing cards and horseback riding. Her favorite city is Las Vegas and she also loves dogs, cats and horses.

## Assistant General Counsel

**Robert Lusk**, an assistant general counsel, has worked at the state bar since 1995. Lusk serves as staff liaison to the Family Law Section of the ASB. He is a frequent speaker on ethics and recently served on the Alabama Law Institute Parentage Act Committee. He is also an advocate for adoptive families.

Previously, Lusk served as deputy district attorney in Montgomery County, assistant attorney general for the State of Alabama and law clerk to Circuit Judge H. Randall Thomas.

Lusk earned a bachelor of science from Auburn University Montgomery and a juris doctor from the University of Alabama. He and his wife, Cathy, have been married for 24 years and have three daughters. They live in Millbrook where he grew up and are active members of Coosada Baptist Church. Lusk and his family enjoy camping, bicycling and running.

## Assistant General Counsel

**Sam Partridge**, an assistant general counsel, serves as the staff liaison to the Unauthorized Practice of Law Committee and pursues some of the complaints by acting as a special prosecutor in those matters where criminal prosecution is necessary. He has been employed with the office since 2005.

Partridge received his bachelor's degree in 1990 from the College of Charleston and his juris doctor degree in 1996 from the Jones School of Law. He served as an assistant district attorney from 1997 to 2001 and chief assistant district attorney for the 19<sup>th</sup> Judicial Circuit from 2001 to 2005. He is married to Blake, a computer application analyst, and they enjoy boating and spending time at the lake.

## Assistant General Counsel

**Jeremy McIntire**, an assistant general counsel, investigates and prosecutes complaints alleging attorney misconduct. In addition, he provides informal ethics

opinions to attorneys and also serves as a CLE speaker on ethics and professional responsibility.

McIntire received his undergraduate degree in 1996 and his juris doctor in 2002, both from the University of Alabama. Before attending law school, he was a police officer for the City of Tuscaloosa, where he enjoyed high-speed car chases and the occasional foot chase. Despite his youthful appearance, Jeremy has been married to Keri for ten years and has two daughters, seven and four, who love when he spins them around one more time.

## Bar Complaints Intake Coordinator/Discipline Closing Clerk

**Kim Ellis** is an administrative assistant and the complaints intake coordinator for the Center for Professional Responsibility. She is responsible for inputting all complaints filed against lawyers licensed in Alabama and assigning all bar complaints for initial screening and investigation. When a formal investigative file is opened, she assigns that investigation to the Office of General Counsel or one of eight local

grievance committees. Ellis also performs administrative duties for the Disciplinary Commission, including setting meetings and hearings and distributing final determinations of all disciplinary cases. She has served at the state bar for 15 years.

She has been married to Wade, for 27 years and has three sons. Taylor, 24, attends Troy University majoring in science with a geomatics concentration; Parker, 22, attends Faulkner University majoring in education, and Cody, 16, attends Robert E. Lee High School and plays baseball and football. Wade is a senior project manager for Halstead Contractors. She enjoys scrapbooking, gardening, her two-year-old Yorkie, Madeline May, and staying busy cheering for her boys on the football and baseball fields. The Ellises attend Eastmont Baptist Church.

## Investigator/Paralegal


**Laurie Blazer** is an investigator/paralegal. Each investigator/paralegal with the general counsel's office is paired with an attorney in that office with whom all of their work is coordinated. She works with Assistant General Counsel Jeremy McIntire in the Center for Professional Responsibility,

which involves investigating complaints filed and assisting with appropriate disciplinary matters. Blazer handles intake of claims filed to the Client Security Fund, schedules meetings of the Client Security Fund Committee, administers payments of approved claims and handles non-compliance issues with the Client Security Fund Assessment fee. Laurie has been working at the state bar for eight years.

She and husband Joe have been married for 20 years, and they have two children. Todd, 18, graduated from high school this year, and played the snare drum in the high school band. He plans to attend Faulkner University to pursue an education career. Her daughter Kelsey, 14, just finished the eighth grade, is a member of the dance team, and has performed in two plays this past year with the drama club. As a result, Blazer's spare time is usually spent at extracurricular activities with her kids. Her family is very involved in their church, Dalraida Church of Christ in Montgomery.

## Investigator/Paralegal

**Cheryl Rankin**, an investigator/paralegal, works with Assistant General Counsel



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Robert Lusk. Her responsibilities include screening and investigating complaints, preparing reports for the Disciplinary Commission and for the Client Security Fund, handling referrals of those attorneys who are noncompliant with CLE requirements and working on any civil litigation pleadings with which the bar is involved. She has been with the state bar for 20 years, beginning in 1988 when she moved to Montgomery from Hattiesburg, Mississippi.

Rankin attended Mississippi State College for Women and William Carey College. When not working, she enjoys playing with her Shih-Tzu, Bear, cooking, going to the beach and spending time with her niece, Layton. When she retires, she hopes to spend time traveling.

### Investigator/Paralegal

**Carol Wright**, an investigator/paralegal, primarily works with Assistant General Counsel Sam Partridge. Her duties include summarizing complaints filed against attorneys; conducting investigations and writing reports involving the ethical conduct of attorneys to be presented to the Disciplinary Commission; assisting in the drafting of reprimands administered to attorneys; and drafting pleadings. She also serves as a liaison to the Unauthorized Practice of Law Committee. In this role, she investigates

possible UPL, assists the committee members in preparing reports and agenda and transcribes the committee meeting minutes.

Wright has a degree from Faulkner State University in Baldwin County. She is currently in the third year of a four-year Sewanee University of the South Education for Ministry course. She and her husband, Gary, who is retired, have three grown children, Kelley, Amber and Matt, and two grandsons. When commuting between the state bar and her home in Eclectic, she enjoys listening to audio-books. She also enjoys spending time at home with her family and pets. She is active in her church and is a member of the Altar Guild.

### Disciplinary Clerk

**Bonnie Mainor**, the disciplinary clerk, maintains the official court files for all disciplinary matters and works closely with the Disciplinary Commission, the six Disciplinary Hearing officers and panels and the Office of General Counsel. She schedules and coordinates disciplinary hearings, prepares disciplinary history letters for the public and other jurisdictions, and handles all records on appeal before the Board of Disciplinary Appeals and the Alabama Supreme Court.

Mainor has more than 23 years of experience with the state bar. She worked

with the grievance committees from 1976 to 1981, and was the administrative assistant to the general counsel and assistant general counsel. She returned to the state bar in 1989 and worked for Tony McLain, who, at that time, was an assistant general counsel. She has also worked with the Unauthorized Practice of Law Committee and the Client Security Fund Committee. In 2001, with the adoption of the new rules, she became the disciplinary clerk for the Alabama State Bar.

She has two children, Chris and Kimberlee, and a four-year-old grandson, Preston.

### Receptionist/Clerk

**Sherry Langley** serves as receptionist for the Office of General Counsel. Her duties include answering the telephone and routing calls for the Office of General Counsel, and opening and distributing the mail. She also replies to letters for complaint forms, maintains files and is responsible for making sure the Center for Professional Responsibility is properly stocked with supplies, forms and other necessary equipment. She also prepares papers for shredding, scanning and other processing and inputs attorney advertising filing into the OGC database. ▲▼▲

## A commitment to service

As responsible members of the community, state bar employees are dedicated to making a difference through volunteer work.

Among them:

**Edward Patterson**, assistant executive director, has been active in community activities, including serving on the board of directors of the Capital City Kiwanis Club, the Montgomery Council on Aging, the Montgomery Ballet, and a member of many YMCA-related activities. He is on the board of directors of Christian Heritage USA Foundation, a foundation which supports the work of Christian Heritage at Cambridge University, Cambridge, England, and as a result, travels frequently to Cambridge. He is also a member of the American Bar Association, the National Association of Bar Executives, the Alabama State Bar, the Montgomery County Bar Association, and the Montgomery Rotary Club. He is also an ordained deacon in the Presbyterian Church.

Through her church, **Marie Updike** volunteers with the Family Promise network, a program of 15 Montgomery churches that assists the homeless.

**Linda Lund** is currently training for the 2008 Susan G. Komen Breast Cancer three-day, 60-mile "Walk for the Cure." She will be walking to honor her aunt, Susan White, and her mother-in law, Helen Ann Dunn.

**Tracy Daniel** is southeastern regional coordinator for Australian Shepherd Placement Helpline, a national organization that works to find new homes for Australian shepherds who have been abandoned or given up for adoption.

## Decades of experience at your service

Quite a few of staff have a decade or more of experience at the state bar. Among those:

Vivian Freeman	27 years
Diane Locke	26
Gale Skinner	26
Bonnie Mainor	23
Margaret Murphy	23
Maggie Stuller	23
Tracy Daniel	20
Keith Norman	20
Cheryl Rankin	20
Tony McLain	19
Edward Patterson	18
Dorothy Johnson	16
Kim Ellis	15

# Workers' Compensation and the Amendment of Alabama's Intestacy Statute

By Sandra Payne Hagood

Many of you may recall reading about the senseless shooting of a clerk at a hotel near the airport on Thanksgiving Day a few years ago. In representing the children of the one of the clerks killed in that shooting in their Workers' Compensation claim, I learned that the 1990 amendments to Alabama's intestacy statute had caused a probably unintended effect on who could be a dependent under Alabama's Workers' Compensation laws.

In this case, the deceased worker, "Tracey," was the natural mother of two minor children who were partially dependent on her for their support. However, because she was very young when her first child was born and because she subsequently developed a drug addiction, Tracey had allowed her own mother, "Carol," to adopt Tracey's two children. Thus, the two children had been adopted by their maternal grandmother. The grandmother filed a Workers' Compensation complaint for death benefits as the children's guardian and next friend.

During her lifetime, Tracey had maintained a close relationship with her children. She made regular visits; she occasionally had them over to spend the night with her; and most importantly, she made significant, if somewhat erratic, financial contributions for their clothing and other needs. Tracey's financial support was a significant contribution to what Carol was able to provide for the children. Carol sought to recover this financial support for the children in their Workers' Compensation claim.

However, Tracey's employer argued that the children could not be her Workers' Compensation dependents because they had been adopted by their grandmother. The employer based its argument on a change made in Alabama's Intestacy Statute effective in 1991. However, we obtained a settlement on behalf of the children by arguing that the same change meant that, if the two children were not Tracey's "children," then they were her *siblings*. In either event, they were Tracey's Workers' Compensation dependents.

The Alabama's Workers' Compensation statute defines "children," in relevant part, as those "entitled by law to inherit as children of the deceased." Ala. Code 1975 § 25-5-1. By defining "children" as those "entitled by law to inherit," the Workers' Compensation statute incorporates Alabama's intestacy statute, Ala. Code § 43848, by reference. Thus, a change in Alabama's intestacy law also potentially changes who can be a Workers' Compensation dependent.<sup>1</sup>

In 1990, Alabama's intestacy statute was amended, in relevant part, as follows:

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person . . . [then] [a]n adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the right of the child to inherit from or through either natural parent;

Ala. Code § 43848. Thus, under the amended statute, an adopted child is "entitled by law to inherit" only from his adoptive parents and not his natural parents, unless the child has been adopted by a step-parent. At the time of our case, no Alabama court had recognized this change in Alabama's intestacy statute. However, since that time, the Alabama Supreme Court has done so in *Ellis v. West*, 971 So.2d 20 (Ala. 2007) (holding that the unambiguous language of § 43848 means that "an adopted child is not the child of its natural parents 'for purposes of intestate succession' [unless] the adoptive parent is 'spouse of a natural parent.'")

Several Alabama cases prior to the amendment of Ala. Code § 43848 had indicated that a worker's natural children were still his Workers' Compensation dependents in spite of adoption. For instance, in *Ragsdale v. Altec Industries, Inc.*, 456 So.2d 54 (Ala.1984), the Alabama Supreme Court held that every child under the age of 18 is conclusively presumed to be wholly dependent upon its natural parent, even if at the time of death of the parent, the child has been adopted by and is living with adoptive parents. See also, *Central Foundry Co. v. Brown*, 381 So.2d 635 (Ala. Civ. App.1979) (holding adopted child was still workers' compensation dependent of his natural parent).

Even after the amendment of § 43848, Terry Moore's treatise on Alabama Workers' Compensation does not indicate that the rule has changed:

Finally, the adoption of the child by another does not terminate the child's right to inheritance from the natural parents' estate. Accordingly, a child who comes within the conclusive presumption statute can receive death benefits based on a natural parent's death, and, in addition, receive death benefits upon the industrial death of the adoptive parent.

Terry A. Moore, 2 Alabama Workers' Compensation § 18:27 (online edition updated September, 2007) (internal citations omitted).

However, fortunately for the children in this case, under the logic of Ala. Code § 43848, if the two children were not Tracey's

“children” under the Workers’ Compensation law, then they were her *siblings*. Under Ala. Code § 43848, the two children ceased to be their natural mother’s “children” on the day that they were adopted. However, under the same statute, when the children lost their status as Tracey’s children, they became Tracey’s siblings because, by operation of law, Tracey and the two children would now all have the same parent. The intestacy statute legally terminated Tracey’s status as the two children’s mother because of their adoption; but at the same time, it made Tracey and the two children siblings.

As Tracey’s brother and sister, the two children could be entitled to benefits as Tracey’s partial dependents under § 25562. The fact that the two children were Tracey’s siblings by *adoption* rather than by birth would have no impact on their right to claim their status as partially dependent siblings under the Workers’ Compensation statute. *See Bass v. Bass*, 434 So. 2d 280 (Ala. Civ. App. 1982) (natural relationship of grandfather and grandson had no legal effect after the grandfather adopted the grandson as his son). See also, 2 Am. Jur. 2d ADOPTION § 172 (“[T]he policy of adoption statutes is . . . that no legal distinction [be] drawn between adopted children and natural born children once the adoption process is complete, and that the rights and status of an adopted child are the same as those of a natural child.”). Thus, the fact that Tracey was the two children’s natural mother would not bar her from becoming their sister by means of the adoption.

The Workers’ Compensation statute recognizes that a sibling may sometimes contribute significantly to his or her siblings’ financial support, and thus allows for siblings, on a showing of actual dependence, to recover as Workers’ Compensation dependents. Under § 25-5-64, siblings of a worker killed in a job-related accident are “partial dependents” for purposes of Workers’ Compensation benefits. *Mobile Water & Sewer Bd. v. Wilson*, 555 So. 2d 1081 (Ala. Civ. App. 1989); see also, Terry A. Moore, Alabama Workers’ Compensation § 18:28 (Actual Dependency).

Thus, although the children’s adoption by their grandmother caused them to lose their status as Tracey’s *children*, they were still her Workers’ Compensation dependents as her *siblings* because the undisputed testimony indicated that Tracey’s contributions to the children’s mode of living were relied on by the grandmother for the children’s support.

Thus, in this case, a settlement resulted, and the natural children received some Workers’ Compensation benefits. However, if Tracey’s children had been adopted by an unrelated friend, or

by strangers through DHR, then they could have received nothing. It seems unlikely that the legislature intended this result.<sup>2</sup>

If they did not, an amendment to either Alabama’s Workers’ Compensation code or intestacy statute is needed.<sup>3</sup> It seems particularly against the public interest to cut off inheritance rights for children adopted by grandparents because this arrangement is often necessitated by circumstances such as those in this case, and such adoptions should not be discouraged by the legislature.<sup>4</sup> In the meantime, practitioners need to be aware of this issue when an adoption is involved in a Workers’ Compensation matter. ▲▼▲

## Endnotes

1. There is nothing in the legislative history to indicate that, in amending the adoption code, the legislature had any intention of altering the Workers’ Compensation statutes. *See* 1990 Alabama Laws Act 90554. In fact, the legislature seems to have intended to retain the previously existing law followed in *Ragsdale*, 456 So.2d 54 (Ala.1984) and *Central Foundry*, 381 So.2d 635 (Ala. Civ. App.1979) allowing an adopted child to be a workers’ compensation dependent of his natural parent. *See Raley v. Spikes*, 614 So.2d 1017, 1020 n.3 (Ala. 1993).
2. See note 1, *supra*.
3. “[I] do not believe that in enacting ‘ 43848 the legislature intended to disinherit children in the situation presented, . . . [and] I call upon our legislature to consider modifying the exception in ‘ 43848(1) for adoptions by the spouse of a natural parent to include adoptions by relatives, as noted in ‘ 2610A28.” *Ellis v. West*, 971 So.2d 20, 23 (Ala. 2007) (*Cobb, C.J., concurring specially*).
4. “In the past ten years alone, the number of grandparents raising their grandchildren has doubled [according to U.S. Bureau of Census, Current Population Reports (P20-514). Marital Status and Living Arrangements: March 1998 Update. Washing, DC.]. These . . . caregivers provide a vital safety net for vulnerable children who might otherwise be channeled unnecessarily into the foster care system.” *Healthy Ties: Ensuring Health Coverage for Children Raised by Grandparents and Other Relatives: The Results of a National Survey by the Children’s Defense Fund*. Appendix C, p. 115, citing n. 1. <<[http://www.childrendefense.org/site/DocServer/healthyties\\_fullreport.pdf?docID=638](http://www.childrendefense.org/site/DocServer/healthyties_fullreport.pdf?docID=638)>>



*Sandra Payne Hagood practices with Haskell Slaughter Young & Rediker LLC in Birmingham. Before joining Haskell Slaughter, Hagood served as law clerk to Judge Joel F. Dubina of the United States Court of Appeals for the Eleventh Circuit and practiced at Hare, Wynn, Newell & Newton. Hagood graduated from Cumberland School of Law, where she served as a member of the Cumberland Law Review. Before beginning her legal education, she taught English at the junior high, high school and college levels. She is an active member of Cathedral Church of the Advent in Birmingham, where she teaches church school.*



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JAMES M. TERRELL

The Young Lawyers' Section recently concluded an extremely successful year under the leadership of **Past-President George R. Parker**. Thanks go to George for his tremendous commitment to the Young Lawyers' Section during his term and for the guidance and wisdom that he has provided to me. At the Alabama State Bar's Annual Meeting in July, officers were elected for 2008-2009. They are:

**President:** James M. Terrell (Birmingham)  
**Vice President:** Robert N. Bailey, II (Huntsville)  
**Secretary:** Clay A. Lanham (Mobile)  
**Treasurer:** Navan Ward, Jr. (Montgomery)

We have an exciting list of events planned for the upcoming year. We will host the bar admission ceremonies for new admittees in Montgomery in October and May, we will conduct our annual Iron Bowl CLE in Birmingham in November and we will return to Sandestin for our annual seminar in May. Stay tuned for more information on these events.

If you have been practicing law for more than five years but less than 15 years, please consider applying to be a member of the Alabama State Bar's Leadership Forum program. Many of our section's members have graduated from the four previous classes of the Leadership Forum, and the program has been a tremendous success. For more information or for an application, visit [www.alabar.org/members/leadership-update.cfm](http://www.alabar.org/members/leadership-update.cfm). The application deadline is **October 1, 2008**.

Finally, we plan to continue our service projects this year. We will again be working with schools in our communities through our **Lawyer in Every Classroom** program and through our **Minority Pre-Law conferences**. I am pleased to report that our YLS received an Award of Achievement from the American Bar Association's Young Lawyers' Division for the work performed through our Minority Pre-Law conferences. This award was given to the state or local young lawyers' section who performed the best minority service project. We won first place in the mid-size bar category. Special thanks to **Navan Ward** and **J.R. Gaines** for their hard work in coordinating and planning these conferences. Without their leadership, our section could not have won.

With hurricane season approaching, we will also be prepared to assist victims of natural disasters should an unfortunate event strike our state. Through our **FEMA Assistance Program**, we provide *pro bono* legal services to Alabamians affected by these disasters. We will also be undertaking a new service project in conjunction with the **Alabama Appleseed Center for Law and Justice**. More details regarding this exciting new project will be provided in the next issue of *The Alabama Lawyer*.

If you would like more information about any of these events or programs, or if you want to get more involved with your Young Lawyers' Section, please contact me. ▲▼▲

# Fall 2008 Continuing Legal Education Seminars

## SEPTEMBER

- 12** Developments and Trends in Health Care Law 2008

## OCTOBER

- 3** 19th-Annual Bankruptcy Law Seminar
- 10** Recent Developments, Mobile
- 17** The Life of a Product Liability Lawsuit
- 24** The Cybersleuth's Guide to the Internet: Search Engine Strategies & Investigative Research featuring Carole A. Levitt & Mark E. Rosch

- 30-31** Business Law 2008

## NOVEMBER

- 7** 22nd-Annual Workers' Compensation Seminar featuring Prof. Samuel D. Hodge, The Anatomy of a Back Injury
- 14** DUI: The Law in Alabama The Arrest, Prosecution and Defense of DUI Cases
- 21** Collections Law

## DECEMBER

- 5** 15th-Annual Employment Law Update
- 11** Trials: Tips, Tactics and Tales featuring Michael P. Cash
- 19** Recent Developments, Birmingham
- 30-31** 13th-Annual CLE by the Hour

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## Notices to Show Cause

- Notice is hereby given to **Pamela Whitworth Davis**, who practiced in Athens, Alabama and whose whereabouts are unknown, that pursuant to the Disciplinary Commission's order to show cause, dated May 16, 2008, she has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2007. Noncompliance with the MCLE requirements shall result in a suspension of her license. [CLE No. 08-01]
- Notice is hereby given to **Valerie Rana Meredith**, whose whereabouts are unknown, that pursuant to the Disciplinary Commission's order to show cause dated May 16, 2008, she has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2007. Noncompliance with the MCLE requirements shall result in a suspension of her license. [CLE No. 08-04]
- Notice is hereby given to **Brett Scott Sheedy**, who practiced in Hoover and whose whereabouts are unknown, that pursuant to the Disciplinary Commission's order to show cause dated May 16, 2008, he has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2007. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 08-05]
- Notice is hereby given to **Amy L. Thompson Thomas**, who practiced in Pelham and whose whereabouts are unknown, that pursuant to the Disciplinary Commission's order to show cause dated May 16, 2008, she has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2007. Noncompliance with the MCLE requirements shall result in a suspension of her license. [CLE No. 08-09]

# DISCIPLINARY NOTICES

Continued from page 373

- Notice is hereby given to **Angela Clay Weir**, who practiced in Adamsville, Alabama and whose whereabouts are unknown, that pursuant to the Disciplinary Commission's order to show cause dated May 16, 2008, she has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2007. Noncompliance with the MCLE requirements shall result in a suspension of her license. [CLE No. 08-10]
- Notice is hereby given to **Linda Sue Wellman**, who practiced in Montgomery and whose whereabouts are unknown, that pursuant to the Disciplinary Commission's order to show cause dated May 16, 2008, she has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2007. Noncompliance with the MCLE requirements shall result in a suspension of her license. [CLE No. 08-11]
- Notice is hereby given to **Tillery Delquon Wilhite**, who practiced in Montgomery and whose whereabouts are unknown, that pursuant to the Disciplinary Commission's order to show cause dated May 16, 2008, she has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2007. Noncompliance with the MCLE requirements shall result in a suspension of her license. [CLE No. 08-12]

## Suspensions

- Saraland attorney **George Wayne Arnold** was suspended from the practice of law in Alabama by order of the Disciplinary Commission of the Alabama State Bar for 91 days effective May 21, 2008. The Disciplinary Commission also ordered that the suspension be held in abeyance and Arnold be placed on probation for two years. The Disciplinary Commission's order was based on the acceptance of Arnold's conditional guilty plea wherein he pled guilty in ASB No. 08-15(A) and ASB No. 08-35(A). He was retained by two clients to represent them in divorce cases. Both clients retained Arnold in 2006 and paid him a flat fee for his representation. Arnold failed to properly communicate with the clients about their cases and failed to timely file the cases with the court. Arnold also failed to respond to repeated requests from a disciplinary authority. Arnold pled guilty to violations of rules 1.3, 1.4(a), 1.4(b), 8.1(a), 8.1(b), and 8.4(a), *Ala. R. Prof. C.* [ASB nos. 08-15(A) and 08-35(A)]
- Troy attorney **Randy Scott Arnold** was summarily suspended from the practice of law in Alabama pursuant to rules 8(e) and 20(a), *Alabama Rules of Disciplinary Procedure*, by order of the Disciplinary Commission of the Alabama State Bar effective June 25, 2008. The order of the Disciplinary Commission was based on a petition filed by the Office of General Counsel evidencing that Arnold had failed to respond to requests for information from a disciplinary authority during the course of a disciplinary investigation. [Rule 20(a); Pet. No. 08-42]
- Birmingham attorney **Todd Houston Barksdale** was suspended from the practice of law in Alabama for one year by order of the Disciplinary Commission of the Alabama State Bar, effective April 11, 2008. The Disciplinary Commission based its order on Barksdale's guilty plea to violations of rules 8.4(a), (b), (c), (d), and (g), *Alabama Rules of Professional Conduct*. Barksdale admitted to forging the signature of his client's wife to mortgages. Barksdale then fraudulently notarized the signature, falsely attesting that she, in fact, signed the documents. He then executed the mortgages and recorded them at the courthouse. [ASB No. 08-057(A)]
- Selma attorney **Robert Roland Blair** was suspended from the practice of law in Alabama by order of the Alabama Supreme Court for three years, effective April 21, 2008, with credit for time served during the period of his summary suspension which became effective May

20, 2005. The supreme court entered its order based upon the decision of the Disciplinary Board of the Alabama State Bar accepting Blair's conditional guilty plea.

Between April 2003 and January 2006, more than 30 grievances and Client Security Fund claims were filed against Blair. Most of the claims alleged that Blair, who primarily handled bankruptcies, would undertake to represent a client, then do little or no work on the case, fail to communicate with the client and fail to account for and refund unearned fees. Blair agreed to make restitution totaling in excess of \$57,000 as a condition precedent to eligibility for seeking reinstatement. [ASB Nos. 03-169(A) *et al*]

- Alabama attorney **Gary M. Kornman**, who is also licensed in Texas, was suspended from the practice of law in Alabama for two years. The supreme court entered its order based upon the April 16, 2008 order of the Disciplinary Commission of the Alabama State Bar wherein Kornman conceded that his conviction for violating 18 U.S.C. § 1001 was a serious crime as defined by Rule 8(c)(2), *Alabama Rules of Disciplinary Procedure*. Kornman pled guilty to making false statements to the Securities and Exchange Commission. The effective date of the suspension was made retroactive to July 13, 2007 to run concurrently with his court-ordered probation. [Rule 22(a); Pet. 07-52] ▲▼▲

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## Unclaimed Client Trust Funds—Escheat to State

### QUESTION:

A solo practitioner with an active trust account died. Attorney A was appointed executor and undertook to wind up the practice and distribute the funds from the trust account. The solo practitioner maintained an accounts ledger of the trust account but the balances did not reconcile with the bank account. After several years, Attorney A was able to determine the clients who owned the various accounts and appropriate disbursements were made. He was unable, however, to determine the owners of some of the funds or the whereabouts of certain clients. What distribution should Attorney A make in order to close the account?

### ANSWER:

There are two categories of funds in the account. The first category involved those funds that cannot be attributed to a particular client. After a reasonable and good-faith effort is made to determine the ownership of the funds, and after holding the funds as long as necessary to assure that no unidentified client could make a successful claim against the account, Attorney A may distribute the funds to the solo practitioner's estate. The second category of funds in the account is that which can be attributed to a client but the location of that client is unknown. After making a good faith and reasonable effort to locate the client, Attorney A must hold the funds until they are presumed abandoned under state law, at which time he should turn them over to the state.

### DISCUSSION:

Attorney A should first make every reasonable effort to ascertain the identity and location of the clients entitled to the funds. This would include publication of a notice in a newspaper of general circulation, not only in the area where the decedent practiced but also in the last known area where the client or clients reside or do business.

Regarding the funds that cannot be attributed to a client or clients, several state ethics committees have held that after reasonable and good faith attempts to ascertain the ownership and after holding the funds long enough to ensure that no unidentified client could make a claim against the funds

# OPINIONS OF THE GENERAL COUNSEL Continued from page 377

within any applicable statute of limitations, they may be distributed to the attorney's personal account or his estate.

Unidentified funds in a trust account could properly be funds deposited to pay service charges [DR 9-102(A)(1)] or to avoid any possibility of a shortage in the account or fees earned but not withdrawn [DR 9-102(A)(2)].

The Michigan Bar Committee on Professional and Judicial Ethics held that funds that could not be associated with any particular client or file, or that were presumed to belong to attorneys formerly with the firm or to be interest earned on an account, after notifying former clients of the existence of the funds and providing them an opportunity to substantiate any claim, could be retained by the attorneys involved [Opinion CI-947 (1983) and CI-752 (1982)].

Similarly, in Virginia, it was held that such unidentifiable funds must be placed in an interest-bearing account for a

sufficient length of time to determine that no successful claim by an unidentified client could be made. If no owners or claims are found, the lawyer may then transfer the funds to his own account [Virginia Opinion 548 (3/1/84)].

In another Virginia opinion, it was held that unidentifiable funds in a trust account could be distributed to a deceased lawyer's estate or distributed according to law to meet the deceased lawyer's non-trust obligations, provided a good-faith effort to determine ownership is made and the funds are retained a sufficient length of time to assure that a successful claim could not be made.

The Alabama Disciplinary Commission addressed a similar question in RO-82-649. In that case there were several thousand dollars in a deceased attorney's trust account that could not be "traced to its rightful owner." The Commission held that:

"Some type of legal proceeding should be instituted whereby notice by publication could be given to potential claimants. Although other proceedings may be available, we suggest that the property could be disposed of under the Alabama Uniform Disposition of Unclaimed Property Act, Section 35-12-20, *Code of Alabama*, 1975."

In this case, the Commission assumed that the funds were client funds and were "not earned attorney's fees which [the attorney] deposited in a trust account pursuant to the provisions of DR 9-102(A) and failed to withdraw therefrom." The opinion then cites an earlier opinion where the client was known but could not be located.

In the case at hand, we make no such assumptions and hold that where it cannot be determined that the funds are client funds by reasonable, diligent and good-faith efforts, including public notice in a newspaper of general circulation, and after holding the funds long enough to assure that no successful claim will be filed by an unknown client, the funds may be distributed to the deceased attorney's estate.

The second category of funds in the trust account is that which can be attributed to a client but the whereabouts of the client are unknown. In this situation, Attorney A does not have the option of distributing the funds to the deceased

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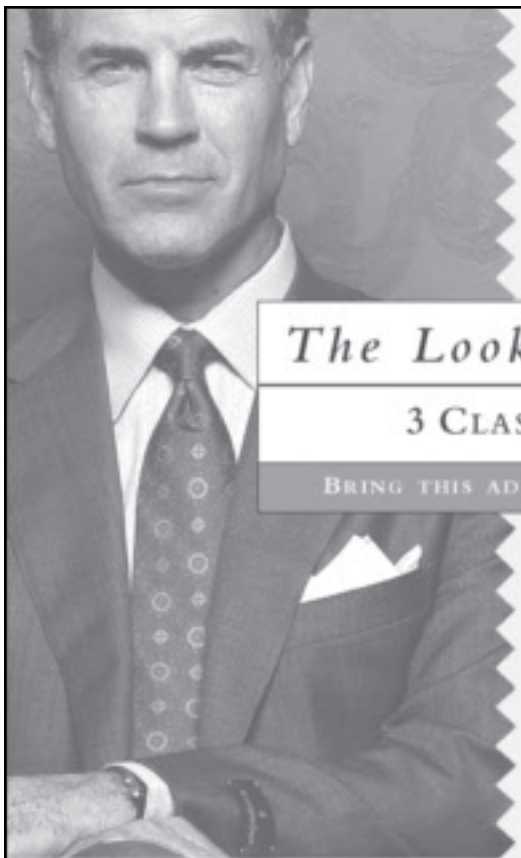
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attorney's estate because the money clearly does not belong to the deceased attorney. In situations such as this, numerous opinions of state bar ethics committees, including the Disciplinary Commission of the Alabama State Bar, have held that the funds must be retained until presumed abandoned under state law at which time the funds must be turned over to the state [Mississippi State Bar Ethics Committee Opinion 104 (6/6/85); State Bar of New Mexico Advisory Opinions Committee, Opinion 1983-3. (7/25/83); North Carolina State Bar Association Ethics Committee Opinion 372 (7/25/85); Michigan Committee on Professional and Judicial Ethics of the State Bar of Michigan, Opinion CI-1144 (4/9/86); Committee on Professional Responsibility of the Vermont Bar Association, Opinion 87-9 (8/87)].

The Office of General Counsel and the Disciplinary Commission have held, in a number of opinions, that where funds in a trust account may be attributed to a client but the location of the client is not known, some type of legal proceedings should be instituted whereby notice by publication could be given to the owner of the deposited

funds. The opinions also hold that although other proceedings may be available, the property could be disposed of under the Alabama Uniform Disposition of Unclaimed Property Act, §35-12-20, *Code of Alabama*, 1975, [RO-82-649, RO-83-14, RO-84-26, RO-84-48, RO-83-146, and RO-84-106]. In situations where the client is known but cannot be found the money clearly does not belong to the attorney. Consequently, the lawyer has no alternative but to retain the funds on the client's behalf at least until such time as the funds may be considered legally abandoned.

Consequently, in the case at hand, we hold that Attorney A must make every reasonable effort to locate the client, including public notices in a newspaper of general circulation in the area where the deceased lawyer practiced as well as in the area where the client maintained his last known address or business. If these efforts are unsuccessful then Attorney A must hold the funds until such time as they may be considered abandoned under the Alabama Uniform Disposition of Unclaimed Property Act, Chapter 12, Article II of Title 35, *Code of Alabama*, 1975. [RO-1988-92] ▲▼▲



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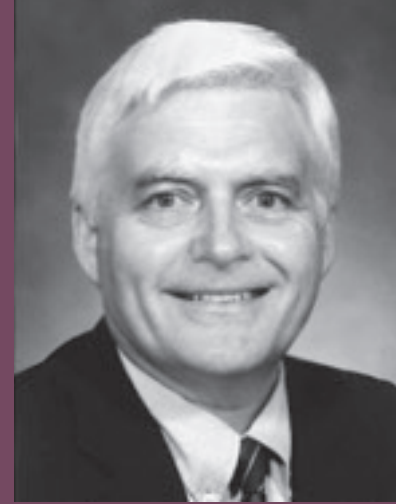
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*For more information about the Institute, contact Bob McCurley at (205) 348-7411 or visit [www.ali.state.al.us](http://www.ali.state.al.us).*

The 2008 Legislative Session began February 5, 2008 and ended on the 105<sup>th</sup> day, May 19, 2008, at midnight when the clock ran out. Hundreds of bills were poised to pass, only to die on the house and senate calendars when the senate failed to take up the education funding budget. There were 1,606 bills introduced in the legislature. Four hundred ninety-five passed one of the houses but only 205 made their way into law.

From the total of 205 bills, after subtracting those that were only local bills affecting only one county, "Sunset" bills which continued a state regulatory agency and bills affecting only one segment of the community, 29 bills remained and I have listed them below.

## Law Institute Bills

### **HB. 8 (Act No. 2008-270) — Prudent Management of Institutional Funds**

This Law Institute-prepared bill governs the investment of funds of charitable organizations and total return expenditure of these funds. It establishes a prudent management investment policy that was derived from the Uniform Prudent Investor Act that applied only to trusts that were passed in Alabama in 2006. See *Alabama Lawyer*, January 2008.

### **HB. 39 (Act No. 2008-376) — Uniform Parentage Act**

This act modernizes the law determining the parents of children and facilitates modern methods of testing for parentage. With the rising incidence of children born to unmarried parents, parentage determinations must be improved for the enforcement of child support. See *Alabama Lawyer*, January 2008.

### **HB. 476 (Act No. 2008-453) — Anatomical Gift Act**

Revises Alabama's Anatomical Gift Act to keep in line with the Uniform Act of 2006 that has been adopted in 30 states. See *Alabama Lawyer*, January 2008.

# LEGISLATIVE WRAP-UP

Continued from page 381

## General Legislation

### **HB. 28 (Act No. 2008-277) — Alabama Juvenile Justice Act**

This revision, proposed by Chief Justice Sue Bell Cobb, revises and reorganizes the law dealing with juveniles that was previously scattered in both Title 12 and Title 26 but is now in one place in the *Code*.

### **HB. 43 (Act No. 2008-377) — Prepaid College Tuition Program**

Allows up to \$5,000 income deduction for contributions to Alabama's pre-paid college tuition program beginning January 1, 2008.

### **HB. 59 (Act No. 2008-382) — Short-Line Railroads**

Provides for the Department of Transportation to develop a statewide program for rehabilitation of short-line railroads for economic development.

### **HB. 124 (Act No. 2008-460) — Maximum Assessment for Workers' Compensation**

Amends *Alabama Code* Section 27-42-8.1. An increase in the maximum potential assessment for workers' compensation insolvency is limited to 2 percent of the insurer's net direct written premiums on the workers' compensation sold in this state for the calendar year preceding the assessment.

### **HB. 172 (Act No. 2008-271) — Pre-Need Contracts**

When the purchaser or beneficiary of a pre-need contract agrees, the trustee has an insurable interest in the life of the purchaser. Amends *Ala. Code* sections 27-14-3 and 27-70A-32.

### **HB. 234 (Act No. 2008-275) — Alternative and Renewable Energy Act**

This Act provides a \$1,000 annual refund to farmers of a portion of the state motor fuel tax when they use vehicles in farming to transport bio-mass to a generating plant, along with a ten-year income credit for the production of electricity by photo voltaic system.

### **HB. 296 (Act No. 2008-383) — Real Estate for Sale Signs**

City cannot impose a license fee on signs advertising real property for sale.

### **HB. 357 (Act No. 2008-504) — Non-Residents Withholding Tax on Real Property Sales**

Requires non-residents to have withholding tax on the sale of real property in Alabama. It is new—Section 40-18-86.

### **HB. 395 (Act No. 2008-151) — Recyclable Materials Management Act**

Statewide program for solid waste management and fee collection. Previously only taxed by cities and counties.

### **HB. 398 (Act No. 2008-281) — Provisional Teaching Certificates**

Revises Provisional Teaching Certificates issued by the State Department of Education by removing certain requirements necessary to obtain a provisional certificate.

### **HB. 417 (Act No. 2008-272) — Crime of Recording Motion Pictures**

Creates the crime of unlawful operation of a recording device in a motion picture theater.

### **HB. 427 (Act No. 2008-500) — Unemployment Weekly Maximum Benefits**

Unemployment compensation weekly benefits increase the maximum employment by \$20 after July 6, 2008 and an additional \$10 a year later. This will increase the maximum of first year from \$235 to \$255 and on July 5, 2009 to \$265.

### **HB. 428 (Act No. 2008-501) — Workers' Compensation Assessment**

The special assessment for workers' compensation was to end March 31, 2008 but it has been extended to September 30, 2010.

### **HB. 442 (Act No. 2008-379) — Competitive Bids**

This raises the maximum where one can purchase goods for the state without a competitive bid, from \$7,500 to \$15,000, effective January 1, 2009. It further exempts from competitive bidding requirement purchases made by city and county boards of education under joint-purchasing agreements.

### **HB. 590 (Act No. 2008-450) — Oil and Gas Rules**

The Alabama Oil and Gas Board may establish special field rules for production of shale natural gas and coal-bed methane reservoirs.

## **HB. 677 (Act No. 2008-384) — Hunting and Fishing Fines**

The Changes the fines and penalties for fishing and hunting.

## **SB. 3 (Act No. 2008-381) — Captive Insurance Companies**

Amends *Alabama Code* Section 27-31B-3 to remove the prohibition for a captive insurance company providing personal motor vehicle or homeowner's insurance coverage.

## **SB. 4 (Act No. 2008-393) — Mandatory Automobile Liability Coverage**

Raises mandatory automobile liability coverage from \$20,000 to \$50,000 for one person, \$40,000 to \$100,000 for two or more persons, and property damage from \$10,000 to \$20,000. This is effective on new policies and renewals.

## **SB. 133 (Act No. 2008-387) — Mediator Privilege**

Creates a privilege for mediators. Mediators may not be compelled to testify or produce documents concerning the mediation.

## **SB. 147 (Act No. 2008-396) — Unemployment Compensation for Business Transfers**

(Amends *Ala. Code* Section 25-4-8) When an employer transfers the business to another, with substantially the same ownership, the recalculation of benefits will be in accordance with the date of transfer.

## **SB. 296 (Act No. 2008-392) — Beach Pool**

Codification of the Administrative Procedures Act 482-1-052 for Alabama Insurance Underwriting Association, which is known as "Beach Pool."

## **SB. 344 (Act No. 2008-483) — Terminology for Developmental Disabilities**

Directs the Code Commissioner to replace the words "disabled, mentally ill and handicapped" with "individual with developmental disabilities" and "mental illness," etc.

## **SB. 354 (Act No. 2008-389) — Unlicensed Hospital Penalties**

Amends *Ala. Code* Section 22-21-33 to increase the penalties for operating an unlicensed hospital.

## **SB. 358 (Act No. 2008-390) — Unlicensed Hospital Time for Moving Persons**

Court may enter and grant additional time to move persons from unlicensed hospitals to appropriate facilities.

## **SB. 368 (Act No. 2008-395) — Workers' Compensation Exemptions**

Amends *Ala. Code* Section 25-5-50 exemptions from the workers' compensation law which provides "an employer who regularly employs less than five employees in any one business, other than the business of constructing or assisting on-site in the construction of single family, detached residential dwellings."

## **SB. 385 (Act No. 2008-467) — Gill Nets Prohibited**

Prohibits the use of gill nets in salt and brackish waters after phase-out period.

# 2008 First Special Session

Because the legislature did not pass a funding bill for higher education, the governor called the legislature back into special session to pass the education budget. Immediately, there were 215 bills introduced and the legislature proceeded to pass 20 of them, including the education budget. Only bills in the governor's "call" were considered. The following are some of the non-appropriations bills passed.

## **SB. 15 (Act No. 2008-550) — Medical Furlough Act**

The Department of Corrections may establish a medical furlough for inmates convicted of a non-capital offense who suffer from a life-threatening illness or chronic debilitating disease.

## **SB. 109 (Act No. 2008-555) — Out-of-State CPA's**

Authorizes CPA's licensed in another state to practice in Alabama following the provisions set forth in *Ala. Code* Section 34-1-7 and not be required to register in Alabama.

## **HB. 56 (Act No. 2008-507) — Tax Off Federal Rebates**

Excludes the 2008 federal rebate from Alabama State income tax.

## **HB. 61 (Act No. 2008-559) — Deductibility of Health Insurance**

For the tax years beginning January 1, 2009, it provides health insurance premiums to employees who are entitled to deduct 150 percent of the amount they pay as health insurance premiums from their Alabama income tax.

## **HB 62. (Act No. 2008- 543)—REITS**

To amend the corporate income tax, taxable income dividends received from certain real estate investment trusts

## LEGISLATIVE WRAP-UP

Continued from page 383

(REITS) and certain management administrative fees paid to the related entity, included in add-back provisions and added back to taxable income from the state. Amends *Ala. Code* §§ 10-13-21, 40-18-1 and 40-18-35. This is effective only for the tax years of 2007 and thereafter.

Other items in the legislature included 17 bills, though in the call by the governor for the Special Session and concerned primarily with budgeting items.

## Institute Annual Meeting

The Institute's annual meeting was July 11, during the Alabama State Bar's Annual Meeting. This year's meeting was in Sandestin.

The following officers and members of the Executive Committee were elected:

President: Representative Demetrius C. Newton

Vice President: Senator Roger Bedford

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The Alabama Law Institute Web site has been updated and reworked. Check out [www.ali.state.al.us](http://www.ali.state.al.us) to get Institute legislation, with both the official bill and the ALI draft with Comments, along with our legislators and any bills pending in the legislature. ▲▼▲



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**Bruce N. Adams** announces the opening of his office at 22 East 12th St., Anniston 36201. Phone (256) 237-3339.

**Michael Allsup** announces the opening of his office at 2229 First Avenue N., The Black Diamond Building, Birmingham 35203. Phone (205) 241-9621.

**Corrie Collins (Crowder)** announces the opening of **Corrie Collins, Attorney at Law** at 116 Jefferson St. S., Ste. 211, Huntsville 35801. Phone (256) 536-9590.

**Laurel Farrar** announces the opening of **Laurel Farrar LLC** at 225 N. Memorial Dr., Ste. 10, Prattville 36067. Phone (334) 220-3022.

**Craig P. Niedenthal** announces the opening of **Niedenthal Law Firm PC** at 2015 Stonegate Trail, Ste. 101, Birmingham 35242. Phone (205) 977-8999.

**Douglas H. Scofield** announces the opening of his office in Chelsea. The mailing address is P.O. Box 275, 35043. Phone (205) 678-6222.

**Thomas J. Skinner, IV** announces the opening of **Law Offices of Thomas J. Skinner, IV LLC** at 2700 Highway 280, Ste. 245, Birmingham 35223. Phone (205) 802-2545.

**John Young** announces the opening of **Law Office of John D. Young LLC** at One Chase Corporate Center, Ste. 400, Birmingham 35244. Phone (205) 313-6525.

## Among Firms

**Armbrecht Jackson LLP** announces that **C. Britton Bonner** and **Richard O. Kingrea** have joined the Foley and Fairhope offices as partners. **David R. Anderson** has been named an associate in the Foley office and the Mobile office has added **Andrew W. Martin**,

**Lacey D. Smith, Mark B. Roberts** and **Jason C. Botop** as associates.

**Bradley Arant Rose & White LLP** announces that **Glenn E. Glover** has joined as a partner in the Birmingham office.

**Burgess & Hale LLC** that announces that **J. Michael Keel** has joined as a member.

**Carr Allison** announces the addition of new associate **P. Vaughan Russell, Jr.**

**Christian & Small** announces that **James B. Carlson** and **Christopher S. Berdy** have joined the firm as partners and that **Michael D. Florie** has joined as an associate.

**Eyster, Key, Tubb, Roth, Middleton & Adams LLP** announces that **Julia Smeds Roth** has joined as a partner.

**Gordon, Dana, Still, Knight & Gilmore LLC** announces that **J. Brannon Maner** has become associated with the firm.

**Graves & Associates LLC** announces that **Corey S. Kearse** has become a member of the firm.

**Bufkin Frazier** recently joined **Harbert Management Corporation's** legal department as assistant general counsel.

**Hill, Hill, Carter, Franco, Cole & Black PC** announces that **John M. Bolton, III, Charlanna W. Spencer** and **Joana S. Ellis** have joined the firm as shareholders; **Scott M. Speagle** has been named a shareholder; and **W. Mike Hill** and **Royal C. Dumas** have joined as associates.

**Jackson, Fikes, Hood & Brakefield** announces that **Judson B. Allen** is an associate at its office in Jasper.

**Lewis & McAtee PC** and **Feldman & Lehane LLC** of Birmingham have merged to form **Lewis, Feldman, Lehane & McAtee LLC**.

**Richard Boyles** and **Blake Liveoak** announce the opening of **Liveoak & Boyles LLC** at 821 39th Place S., Birmingham 35202. Phone (205) 599-6822, 599-6823.



PLEASE E-MAIL  
ANNOUNCEMENTS TO  
MARCIA DANIEL  
[marcia.daniel@alabar.org](mailto:marcia.daniel@alabar.org)

# ABOUT MEMBERS, AMONG FIRMS

Continued from page 385

**Lusk, Lusk, Dowdy & Caldwell PC** has changed to **Lusk, Caldwell & Dean PC**.

**Stuart M. Maples** and **Charles A. Ray, IV** announce the opening of **Maples & Ray PC** at 401 Holmes Ave., Ste. H, Huntsville 35801. Phone (256) 489-9779. **Deanna Smith** has joined the firm as an associate.

**Gina H. McDonald & Associates LLC** of Birmingham announces that the firm has opened an office in Oneonta and that **Heather Ballew** and **Robin Mahan** have joined as associates.

**Adam M. Milam** and **Shelley Howton Milam** announce the opening of **Milam & Milam LLC** at 104 S. Section St., Fairhope.

**Matthew J. Landreau** has joined **Page, Scrantom, Sprouse, Tucker & Ford** as a partner.

**Phelps, Jenkins, Gibson & Fowler LLP** announces that **Jessica M. Garrison, Clay A. Tindal** and **Terri O. Tompkins** have become partners in the firm.

**Tom Radney, Thomas A. Radney** and **Jason M. Jackson** announce the formation of **Radney, Radney & Jackson LLC**, at 56 Court Square, P.O. Box 819, Alexander City 35011. Phone (256) 234-2547.

**Redden, Mills & Clark LLP** announces that **Keith E. Brashier** has become a partner and **Glory R. McLaughlin** has joined as an associate.

**Samuel D. Payne** announces his association with **Rudy, Wood & Winstead PLLC** of Nashville.

**Janet Schroeder-Grant** and **Jennifer Joyce Tompkins** announce the formation of **Schroeder-Grant &**

**Tompkins LLC** at 138 Adams Ave., Ste. 2, Montgomery 36124. Phone (334) 230-9660.

**Renee Blackmon Hagler** has been appointed an administrative law judge for the **Social Security Administration** in the Mobile Office of Disability Adjudication and Review.

**Edward E. Blair** has joined the Huntsville firm of **Spurrier, Rice & Forbes LLP**.

**Sasser, Sefton, Connally, Tipton & Davis** announces that **Jim Davis** has joined as a partner, **Sherrie Phillips** has become *of counsel* and **Tripp Vickers** and **Baron Coleman** have joined as associates.

**Stroud & Harper PC** announces that **S. Andrew Scharfenberg** has joined the firm in Southaven, Mississippi.

The Birmingham firms of **Morse & Dolan PC** and **Waldrep Stewart & Kendrick LLC** have merged, and the new firm will practice as **Waldrep Stewart & Kendrick LLC**.

**Webb & Eley PC** announces that **C. Richard Hill, Jr.** and **Gary L. Willford** have become shareholders and **Jamie K. Hill** and **William J. N. Coxwell** have become associates.

**Whatley Drake & Kallas LLC** announces that **Thomas J. Butler** has joined the firm.

**Whitaker, Mudd, Simms, Luke & Wells LLC** announces that **Sara L. Williams** has joined as an associate.

**Wilmer & Lee PA** announces that **Chad W. Ayres** has become a shareholder and **Angela Slate Rawls, Lisa Davis Young, Katie L. Granlund, Ellen C. Wingenter, Jeffrey D. Maynor**, and **S. Dagnal Rowe, Jr.** have joined as associates.

**Frank M. Wilson PC** announces that **Matthew E. Munson** has joined as an associate.

**Wilson Price** announces that **Kristan Pryor** and **Adam Stephenson** have been admitted as shareholders. ▲▼▲

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AGE:	30	35	40	45	50	55	60
10	\$9	\$9	\$11	\$18	\$25	\$42	\$67
15	\$11	\$11	\$13	\$24	\$37	\$53	\$86
20	\$13	\$13	\$18	\$30	\$47	\$70	\$118
30	\$22	\$24	\$33	\$48	\$72	\$140	

\$500,000 Level Term Coverage Male, Super Preferred, Non-Tobacco Monthly Premium							
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
30	\$39	\$44	\$62	\$91	\$139	\$276	

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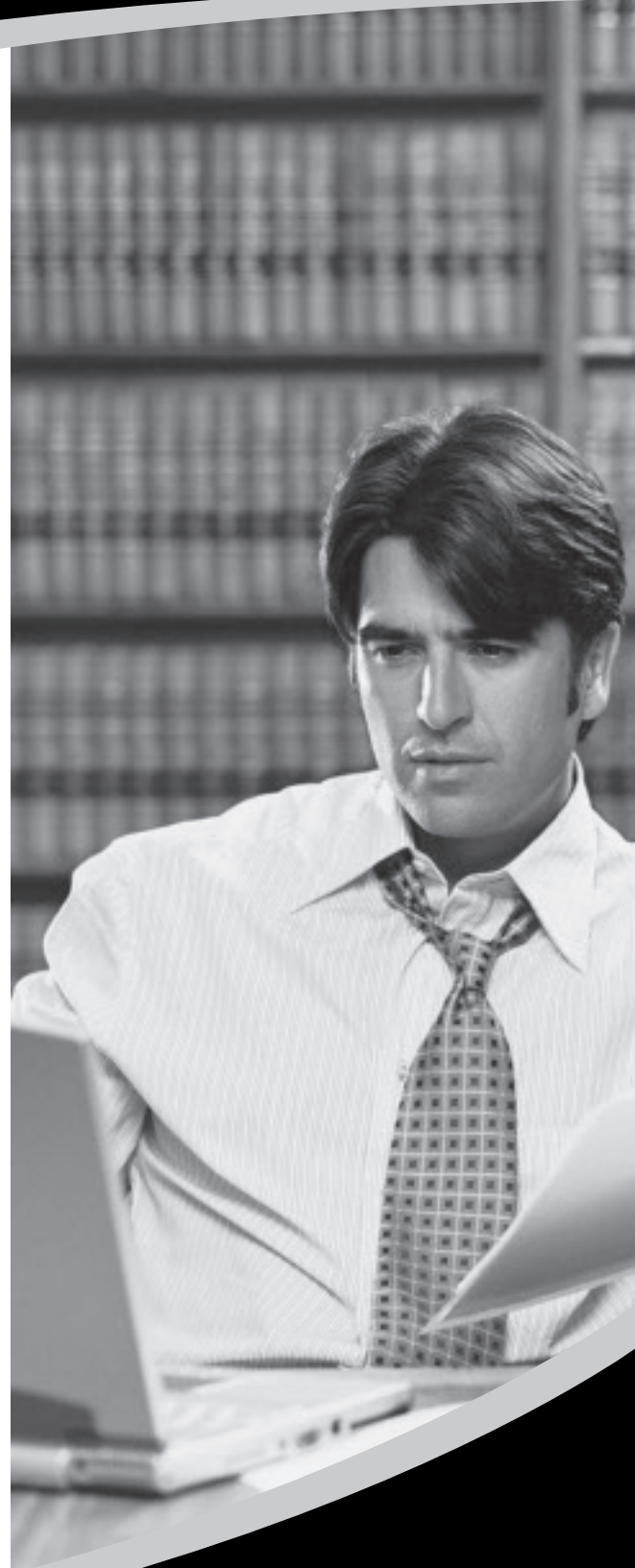
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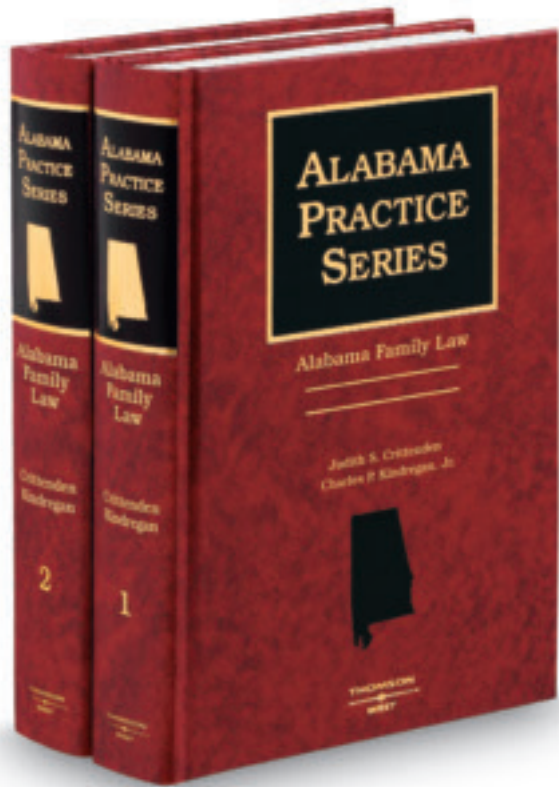
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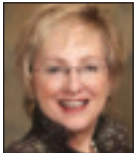


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