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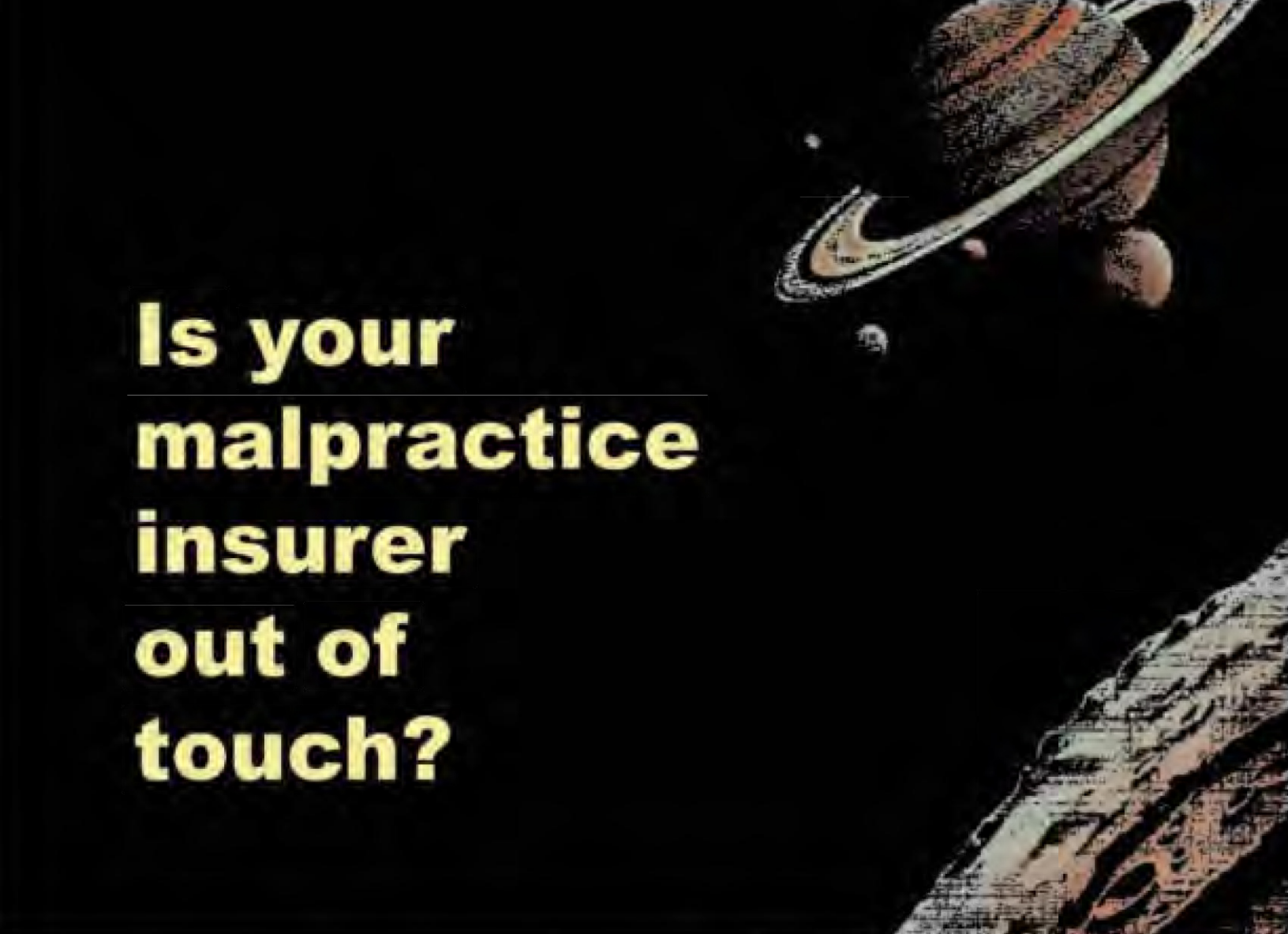
THE ALABAMA LAWYER



2011-12 OFFICERS AND EXECUTIVE COUNCIL MEMBERS

Focusing on Newest Members
of the Profession

Pages 376-412



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2011 Continuing Legal Education Seminars

September

- 23 Developments and Trends in Health Care Law 2011
- 30 22nd Annual Bankruptcy Law Seminar

October

- 7 25th Annual Workers' Compensation Seminar
- 14 Advanced Negotiation Strategies *with* Martin E. Latz
- 21 Professionalism (Prattville)
- 27-28 Southeastern Business Law Institute 2011

November

- 4 Using Google and Social Media to Power Your Law Office *with* Carole Levitt and Mark Rosch
- 11 Professionalism (Birmingham)
- 18 Trends in Commercial Real Estate Law 2011

December

- 2 18th Annual Employment Law Update
- 9 Attacking the Expert's Opinion *with* Robert Musante
- 16 The Amazing Case *with* Thomas A. Mauet and Michael P. Cash
- 28 16th Annual CLE by the Hour

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2011 FALL CALENDAR

SEPTEMBER

- 16 Sustainable Business and the Law —
Bruno Conference Center, St. Vincents Hospital, Birmingham

OCTOBER

- 7 Personal Injury — *Cahaba Grand Conference Center, Birmingham*
14–15 Family Law Retreat to the Beach — *Perdido Beach Resort, Orange Beach*
14 Real Estate Law — *Cahaba Grand Conference Center, Birmingham*
21 Social Security Disability Law — *Cahaba Grand Conference Center, Birmingham*
28 Fundamentals of Will Drafting — *The University of Alabama School of Law, Tuscaloosa*

NOVEMBER

- 4 Appellate Practice — *Bruno Conference Center, St. Vincents Hospital, Birmingham*
11 Healthcare Law — *Cahaba Grand Conference Center, Birmingham*
18 Bankruptcy Law Update — *Wynfrey Hotel, Birmingham*
30 Alabama Update — *Renaissance Hotel, Montgomery*

DECEMBER

- 2 Employment Law — *Wynfrey Hotel, Birmingham*
8 Estate Planning — *Carraway Davie Conference Center, Birmingham*
9 Depositions — *Cahaba Grand Conference Center, Birmingham*
15 Tort Law Update — *Wynfrey Hotel, Birmingham*
16 Trial Skills — *Wynfrey Hotel, Birmingham*
20 Alabama Update — *Wynfrey Hotel, Birmingham*



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—Photo by Robert Fouts, Fouts Commercial Photography, Montgomery, www.photofouts.com

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Among those recognized by President Spruell during the Bench & Bar luncheon were members and sponsors who helped organize and provide legal services and other resources to those hit hardest by the April tornadoes. They included, front row, left to right, Mickey Foshee (Freedom Court Reporting), Clay Lanham, Ted Hosp, Jim Lloyd, Phillip McCallum, and Greg Hawley. Back row, left to right, are Mike Foshee, Othni Lathram, David Rains, John Lloyd, Bo Landrum, and John Pickens.



JAMES R. PRATT, III

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ASB Has Never Been More Consequential or More Needed

During the last several years, the Alabama State Bar has faced numerous challenges. I am proud to report that we have met each challenge with heartfelt generosity and a willingness to find solutions to some of Alabama's most pressing problems. The state bar's activities have included humanitarian responses, educational outreach and a program to support state government.

Humanitarian

As more and more Alabamians were called to military service overseas in the various conflicts which have arisen, Past President **Sam Crosby** devised a program to provide **wills for these heroes** at no cost to these men and women serving their country. Many years ago, **Judge Harold Albritton** started the **Volunteer Lawyers Program**, and during Past President **Tom Methvin's** administration, the VLP was greatly expanded, providing necessary legal services to those most in need and least able to afford them. When the devastating tornadoes struck Alabama in April, Past President **Alyce Spruell** organized an immediate and highly successful **disaster response** effort to provide legal services and other resources to those hit hardest by the storms.

Each program was timely and effective in addressing a real need for the legal community *and* those served by the legal community.

Educational

The **Leadership Forum** program was started by Past President **Bill Clark** and supported by each president since its initiation. Outstanding young lawyers are selected to take part in an educational program designed to improve their leadership skills, as well as educate them about all aspects of the state bar, and introduce them to leaders from all over the state. Included among those donating their time to the LF this year were **Governor Robert Bentley, Lt. Governor Kay Ivey, RSA CEO Dr. David G. Bronner** and **Alabama Power Company President** and **CEO Charles D. McCrary**. Leadership Forum graduates have gone on to become bar commissioners, local bar presidents or committee and task force chairs, serving the legal

The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.

—Martin Luther King, Jr.

PRESIDENT'S PAGE Continued from page 347

community and the bar in many valuable ways. It is hoped that this program can be expanded to train an even larger number of young lawyers to be future bar and state leaders.

Past President Spruell's **iCivics** program supporting and participating in civics education was both timely and necessary. As she pointed out in her "President's Page" last year, the goal was to create original materials and content for schools and community education programs, as well as to lobby for a commitment to an increased civics instruction. iCivics has been a great success, and we plan to continue and expand it in the coming years.

Governmental

Past President **Mark White** had a great vision for the state bar. He saw the need and opportunity to render a valuable service to state government, especially with fewer lawyers than ever in the legislature. During his administration, he created a **Panel of Neutrals** which included numerous distinguished individuals such as former **Governor Albert Brewer, Dean John Carroll, Dean Charles Gamble, Professor Howard Walthall**, attorney **Butch Ellis**, and many others. In recent years, several panel members have been invited to answer questions or provide advice to the legislature.

During the ethics special session, **Governor Bob Riley, Senator Roger Bedford** and **Senator J. T. Waggoner** all independently asked the bar to provide support to the legislative leadership for that session. In response, the bar created a task force that became an integral part of the special session, helping facilitate discussion. This task force was not there to determine

what should be in the legislation, but to be a resource when needed. It was welcomed and fully utilized by the new leadership in both the house and senate, providing valuable service to what has been described as a session resulting in historic ethics reform. The task force has also enjoyed an excellent working relationship with the Ethics Commission in supporting its work interpreting and explaining the new legislation.

In the most recent legislative session, the bar was asked to mediate and facilitate the discussion of several proposed bills, including **tort reform, indigent defense** and the **taxpayers' bill of rights**. We were successful in facilitating the conversation which resulted in agreed-upon bills on virtually all of the issues assigned to the bar. Because of this success, the bar has been requested to participate in constitutional reform and, once again, support the legislative session when it convenes in early 2012.

Conclusion

When our soldiers went to war and needed to have their affairs in order, the bar was there. When disaster struck, the bar was there. When state government expressed a need, the bar was there.

In the coming days and months, we face additional challenges. Our court system is under-funded, and the largest county in the state is facing a serious financial crisis. The legislature passed an indigent defense bill giving rise to a need for a workable indigent defense system. These are just a few of the serious issues facing the legal system and the state. I am confident that, based upon our response in the past, the Alabama State Bar again will answer the call and be there, providing leadership and proposed solutions. ▲▼▲



Once the formal cover photo was taken at the Grand Hotel, slight changes appeared in the group dynamics of the Executive Council.



KEITH B. NORMAN

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Tour of Member Benefits For New Lawyers

With this issue of *The Alabama Lawyer* focusing on the newest members of the legal profession, I felt that a tour of some of our member benefits would be particularly helpful to you as you enter the practice of law. If you are reading this article you are already utilizing one of the many benefits available to you through the state bar. ***The Alabama Lawyer*** magazine, as well as the popular and easy-to-read online newsletter, ***Addendum***, help you stay informed about the profession and provide substantive practice-related information. And practice management and technology news comes to you as a state bar member at no cost each month with ***Law Practice Today***, published by the American Bar Association's (ABA) Law Practice Management Section. Now that you are well-read, there are a number of other services, programs and products to help you succeed in your law practice so let's begin your benefits odyssey.

Confucius reminded us that a journey of a thousand miles begins with a single step. Likewise, your legal practice should begin with some basic steps that can help your career start out on the right foot.

EXECUTIVE DIRECTOR'S REPORT

Continued from page 349

An important first step for a lawyer beginning his or her career is contacting the state bar's **Practice Management Assistance Program (PMAP)**. This program is a clearinghouse for the collection and dissemination of information for the effective management of the modern law office. Important topics include setting up and managing a trust account, billing, business planning, client relations, employee relations, ethics, and professionalism, and make **PMAP** the logical first stop for a new admittee. (See article on page 380.)

The next stop on this journey is equipping a law office. You can receive a discount on legal software for time and billing, trust account management and family and real estate law from **EasySoft** and special pricing for cloud backup and recovery to protect the data stored on your computer from **CoreVault**. And through **Pennywise**, the nation's largest office products network, you can receive substantial savings on a large selection of office supplies and order them online, receiving fast delivery.

With your law office equipped, now you need clients. This is where the **Alabama State Bar Lawyer Referral Service (LRS)** is a big help. The **LRS** offers an excellent way to obtain fee-generating work and ethically market your law firm. Lawyers who join the **LRS** (which requires a \$100 fee, plus a requirement of professional liability insurance) receive referrals of clients who have been screened to determine their legal problem. You can receive referrals in any one of 10 practice areas that you select when joining the service. All referrals are made on a rotating basis. (See article on page 403.)

As the journey continues and you begin seeing clients and addressing their legal problems, you will need access to the **Alabama Code**, the state and federal reporter system and other legal resources. Thanks to **CaseMaker**, you have a powerful Internet-based research tool that is free! As your practice expands, you may encounter situations that raise ethical concerns that you are not sure how to address. You can access **ASB Ethics Opinions** online or consult with

the state bar's Center for Professional Responsibility and receive an **informal ethics opinion** to help you analyze prospective conduct and apply proper rules to reach an ethically sound decision.

Early in your career you need to think about insurance and retirement. **GEICO** provides an additional discount off its already low automobile insurance rates and **ISI Alabama** provides state bar members with special rates for many kinds of insurance, including disability, term life, business overhead, accidental death and dismemberment, and major medical, among others. (See article on page 381.)

Although you may just be getting started in the legal profession, it is not too soon to start planning for retirement. The **ABA Retirement Fund** provides state bar members with full service 401(K) plans and no out-of-pocket expense. By leveraging its size, the **ABA Retirement Fund** can furnish oversight, expertise and institutionally-priced funds that provide solo practitioners and law firms with a retirement option traditionally available to only the largest corporate plans.

As time permits, you will want to consider taking part in one of the more than 24 **practice sections** so you can join colleagues who share the same practice areas as you. Section membership can help you increase your expertise and help keep you informed about recent developments in addition to expanding your professional contacts.

And, if the road becomes a bit too bumpy along the way and you begin to feel overwhelmed with stress or depression or need help for an addiction problem for yourself or a colleague, contact the **Alabama Lawyer Assistance Program (ALAP)**.

I've covered only a few of the many benefits that are available. As you build your law practice, I hope you will remain aware of the services, programs and products that the state bar offers. For a complete listing of all member benefits, go to www.alabar.org. These benefits not only will save you money, but can help you become a better lawyer!





GREGORY H. HAWLEY

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Colleagues:

Welcome to a new bar year. We have a new president, new commissioners, new committee members and new leaders.

The Editorial Board welcomes a new class of board members as well. Each year, members are asked either to write an article for publication or solicit one. If you are interested in having *The Alabama Lawyer* address a particular topic, feel free to let us know. Better yet, contact us and volunteer to write an article for a future issue of *your* bar publication. Below are the publication guidelines.

We hope that you enjoy this issue, which focuses on advice to new lawyers. In late August and September, new lawyers across the state are beginning their careers—judicial clerkships, government positions, first-year associates at law firms. Some may be joining the family law firm. Others may be “hanging out a shingle.” Still others may have jobs that are on hold—contingent on the release of bar exam results in late September. For all new lawyers, no matter what your pursuit, we hope that you find good advice in this issue. We invite senior lawyers, too, to find refreshment in these “advice” articles.

Again, we welcome your thoughts and advice about *your* bar publication.

GHH



The Alabama Lawyer

ARTICLE SUBMISSION REQUIREMENTS

Alabama State Bar members are encouraged to submit articles to the editor for possible publication in *The Alabama Lawyer*. Views expressed in the articles chosen for publication are the authors' only and are not to be attributed to the *Lawyer*, its editorial board or the Alabama State Bar unless expressly so stated. Authors are responsible for the correctness of all citations and quotations. The editorial board reserves the right to edit or reject any article submitted for publication.

The *Lawyer* does not accept unsolicited articles from non-members of the ASB. Articles previously appearing in other publications are not accepted.

All articles to be considered for publication must be submitted to the editor via e-mail (ghawley@whitearnolddowd.com) or on a CD through regular mail (2025 Third Avenue N., Birmingham, AL 35203) in Microsoft Word format. A typical article is 13 to 18 letter-size pages in length, double-spaced, utilizing endnotes and not footnotes.

A brief biographical sketch and a recent color photograph (at least 300 dpi) of the author must be submitted with the article.



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Public Notice for Reappointment Of Incumbent Magistrate Judge

The current term of office of United States Magistrate Judge Susan Russ Walker is due to expire April 22, 2012. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new eight-year term.

The duties of a magistrate judge position include: (1) conduct of most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pretrial matters and evidentiary proceedings on delegation from judges of the district court; (4) trial and disposition of civil cases upon consent of the litigants; and (5) examination and recommendation to the judges of the district court in regard to prisoner petitions and claims for Social Security benefits.

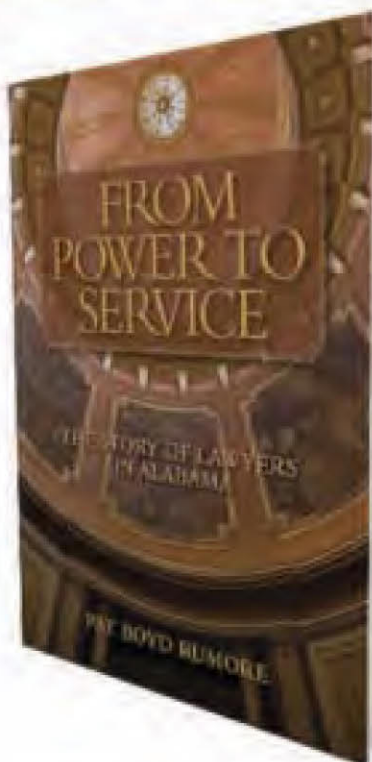
Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the Court and should be directed to:

Chair, Merit Selection Panel
c/o Debra P. Hackett, Clerk
U. S. District Court
P. O. Box 711
Montgomery, AL 36101

Comments must be received by October 24, 2011.



When it comes to a
history of the profession,
we wrote the book.



From Power to Service: The Story of Lawyers in Alabama

Written by attorney-author Pat Boyd Rumore. This hardcover book, filled with pictures, many of which were not previously published, is the ideal gift.

The story of lawyers in the developing history of Alabama opens in Mississippi Territory days with the appointment by President Thomas Jefferson of the first territorial judge in St. Stephens, the earliest settlement in what would become Alabama, and continues to present day Alabama, where the profession has grown to more than 16,000 members.

In these pages you will read about the people who pioneered Alabama's legal profession. The history of the profession in this state comes alive as Pat Rumore tells the Bar's story in the words of those who shaped it. It's a story of lawyers who ended radical reconstruction and founded the state bar. It's a story of federal judges who helped to end the segregated "southern way of life" by their decisions brought by some of this state's great civil liberties lawyers. It's also a story about women in the profession and how their achievements have paved the way for a new generation of lawyers.

Publication of this book is co-sponsored by the History and Archives Committee of the Alabama State Bar and the Alabama Bench and Bar Historical Society. Proceeds from the sale of this book go to the Alabama Law Foundation and the Bench and Bar Historical Society.

The cost is \$40 per copy.

Order your copy today using a credit card, go online to: www.alabar.org/historybook

Claude Mitchell Burns, Jr.

Claude Mitchell Burns, Jr., a longtime member of the Tuscaloosa County Bar Association, died February 7, 2011.

Mr. Burns was born in Southside, Alabama May 6, 1942 and graduated from the University of Alabama with a B.S. degree in 1965 and a law degree in 1968. He later taught at the law school and was a role model for the young students whose lives he influenced.

Mr. Burns was a distinguished attorney and beloved member of the community. He worked tirelessly for the betterment of the legal profession and was a forceful and persistent advocate for his clients.

He was elected to the Tuscaloosa Board of Education in 1974 and served twice as president during his six-year term. Mr. Burns was also a prominent and influential figure in the political arena, working behind the scenes for Democratic candidates and for his beliefs.

Survivors include his wife, Anne A. Burns; daughters Elizabeth Davis and Caroline Hopenwasser; son William J. Davis; sister Harriet Ann McMeekin; and additional devoted relatives, including Edwina E. Miller and Robert David Fuhrman, both members of the Tuscaloosa legal community.

—Judge James Harold Roberts, Jr., president,
Tuscaloosa County Bar Association

Donley, Craig Alan

Montgomery
Admitted: 1978
Died: June 5, 2011

Duke, Nathan Dwight

Scottsboro
Admitted: 1975
Died: May 15, 2011

Johnson, John Will, Jr.

Lanett
Admitted: 1947
Died: February 24, 2011

Lazenby, Robert Blake

Talladega
Admitted: 1981
Died: July 27, 2011

McLaney, Cephas Knox, III

Montgomery
Admitted: 1970
Died: May 26, 2011

Morgan, Jan Tombrello

Birmingham
Admitted: 1981
Died: June 5, 2011

Pitts, Daniel Lassiter Greene

Birmingham
Admitted: 2007
Died: April 11, 2011

Potts, Frank Vines

Florence
Admitted: 1939
Died: May 8, 2011

Robberson, Julie Kathleen

Fairhope
Admitted: 1992
Died: May 15, 2011

Smallwood, Tennant Morton, Jr.

Birmingham
Admitted: 1963
Died: April 30, 2011



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NAVAN WARD

navan.ward@beasleyallen.com

I am extremely honored to serve this year as president of the Alabama State Bar Young Lawyers' Section (YLS). The section is comprised of Alabama attorneys who are 36 years old or younger, or, if over 36, admitted to the bar for three or fewer years. The YLS is one of the few sections in which members are automatically included (upon joining the bar) and at no charge. And membership has its privileges, including a number of great opportunities to meet new people, develop your practice and serve your state bar.

The YLS concluded another great year under the leadership of **President Clay Lanham**, who did a fantastic job, leading the section, through our FEMA Assistance Program, in helping hundreds of Alabama citizens devastated by tornados. Clay, assisted by the YLS, stepped up when it counted and his success will be a tough act to follow.

At the state bar's annual meeting in July, 2011-12 officers were elected:

Navan Ward, Jr., president

Katherine R. Brown, vice president

W. Chris Waller, Jr., secretary

Brandon D. Hughey, treasurer

The YLS Executive Board was also confirmed, including **Marchello D. Gray; Lucy E. Tufts; S. Hughston Nichols; Nathan A. Dickson; Hallman B. Eady; Cleophus Gaines, Jr.; Clifton C. Mosteller; Katie L. Hammett; K. Megan Brooks; Walton W. Hickman; Sancha Howard; Marcus Maples; D. Brian Murphy; Brett A. Ialacci; Charles E. Tait; Louis M. Calligas; Nathan A. Ryan; Andrew S. Nix; William J. Long, IV; Rodney E. Miller; Elizabeth J. Kanter; Jon H. Patterson; Harold D. Mooty, III; Mitesh B. Shah; Kathryn O. Pope; William H. Robertson, V; Scott Tindle; Larkin H. Peters; and J. Bradford Boyd Hicks.**

YOUNG LAWYERS' SECTION

Continued from page 357

We are very excited about the upcoming year and the events planned. Of course, we will be hosting the annual **Sandestin Seminar May 17-20, 2012** so go ahead and mark your calendars to attend. We will also host our annual **Iron Bowl CLE** in Birmingham (**November 18, 2012**) so be on the lookout for e-mails with all the details. And, we will host the bar admissions ceremonies for new admittees in Montgomery in October and May.

Award-winning service projects that we will be hosting this year include the **Minority Pre-law Conferences**, held in Montgomery and Birmingham

in spring 2012, and the **Lawyer in Every Classroom Program**. When Alabama faces another natural disaster, our **FEMA Assistance Program** will be ready to assist victims with their legal needs. Finally, I encourage all young lawyers to get involved in the Volunteer Lawyers Program. This is a great way to gain experience in different areas of law and assist those who are unable to help themselves. Contact Linda Lund at linda.lund@alabar.org for information.

To learn more about your Young Lawyers' Section, visit www.alabamayls.org.



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Will dress. Will inform. Follow us on **facebook**.



WILSON F. GREEN

wgreen@fleenorgreen.com

Each June, the United States Supreme Court concludes its term of court. In most years, the pace of opinion releases is slow and steady until the final two weeks, when a frenzied flurry of decisions tectonically shifts the ground of common and statutory law. This year was no different: the Court's final weeks saw a pair of personal jurisdiction decisions with which we will be grappling for decades, along with other significant opinions. (The Alabama Supreme Court has also released several significant personal jurisdiction decisions in the past few weeks, and they included in this article).

Noteworthy Decisions from the United States Supreme Court

Personal Jurisdiction; "Stream of Commerce"

Goodyear Dunlop S.A. v. Brown, No. 10-76 (U.S. June 27, 2011)

North Carolina plaintiffs sued three Goodyear subsidiaries in NC state court on claims arising from deaths occurring in a bus accident in Paris, France. The defendants manufactured tires for cars in Europe and Asia, though a small percentage of their tires were made for U.S. markets. The subsidiaries contended that there was no personal jurisdiction in NC; the lower courts found "general jurisdiction," based on placing tires in the stream of commerce. The Supreme Court reversed, holding that the stream-of-commerce cases on which the NC court relied relate to exercises of specific jurisdiction in products liability actions. **The takeaway: stream of commerce is not enough for general jurisdiction**

Personal Jurisdiction; "Stream of Commerce"

J. McIntyre Machinery, Ltd. v. Nicastro, No. 09-1343 (U.S. June 27, 2011)

Nicastro injured his hand in New Jersey in his job, using a machine manufactured by McIntyre, an English concern. Nicastro sued McIntyre in New Jersey state court, in the venue where the injury occurred and the machine was being operated. McIntyre claimed lack of personal jurisdiction because at no time had it advertised in, sent goods to or, in any relevant sense, targeted the state, though its representatives had solicited business at trade shows in the U.S. Nicastro claimed there was personal jurisdiction based on "stream of commerce." The state supreme court found personal jurisdiction, but the U.S. Supreme Court reversed. A *plurality* held that the "purposeful availment doctrine" is still required, and, thus, the "stream-of-commerce" doctrine is not enough to establish specific jurisdiction in products-liability cases. **The takeaway: don't rely solely on stream of commerce to support even specific jurisdiction; purposeful availment is required**

First Amendment; Violent Video Games

Brown v. Entertainment Merchants Ass'n., No. 08-1448 (U.S. June 27, 2011)

The Court affirmed the lower courts' striking down of a California law restricting the sale or rental of violent video games to minors. The Court reasoned that the California law violated the First Amendment because it constituted a content-based restriction, thus requiring that it pass "strict scrutiny." The law could not pass the test because psychological studies purporting to show a connection between exposure to violent games and harmful effects on children do not prove that such exposure causes minors

THE APPELLATE CORNER

Continued from page 359

to act aggressively. Because California has declined to restrict other media, e.g., Saturday morning cartoons, its video-game regulation was “wildly under-inclusive.”

Preemption; Pharmaceuticals

PLIVA, Inc. v. Mensing, No. 09-993 (U.S. June 23, 2011)

In a dispute arising from several state products liability actions, the Court held that federal drug regulations applicable to generic drug manufacturers directly conflict with, and thus preempt, state law causes of action.

FELA; Standard of Proximate Causation

CSX Transp., Inc. v. McBride, No. 10-235 (U.S. June 23, 2011)

The Court held that FELA does not incorporate stock proximate cause instruction standards developed in non-statutory common-law tort actions.

Class Actions

Wal-Mart Stores, Inc. v. Dukes, No. 10-277 (U.S. June 20, 2011)

The Court held 5-4 that the putative class lacked Rule 23(b)(2) commonality because the alleged discrimination was perpetrated by individualized decision-makers. It held 9-0 that certification under Rule 23(b)(2) was improper because the monetary relief was not incidental to the injunctive or declaratory relief.

Class Actions; Anti-Injunction Act

Smith v. Bayer Corp., No. 09-1205 (U.S. June 16, 2011)

The Supreme Court reversed a federal district court’s injunction barring a state court from considering a class certification motion, where a federal court had previously denied certification of the same putative class (though with a different representative). The Court held that the representative was not a party to the prior federal suit and was not covered by any exception to the rule against non-party preclusion.

Noteworthy Decisions from the Alabama Supreme Court

Discovery

Ex parte Delta Int’l. Mach. Corp., No. 1091049 (Ala. July 29, 2011)

In AEMLD action involving a saw, the supreme court refused the plaintiff’s request for access to discovery involving a joint venture, of which Delta was a member, which had developed “flesh-sensing” safety technology, because there was no evidence that the technology was available for the saw in the accident, and AEMLD requires proof of a safer alternative design actually being available.

Personal Jurisdiction

Ex parte No. 1 Steel Products, Inc., No. 1091781 (Ala. July 29, 2011)

The court held that contacts solely by e-mail, fax and telephone were insufficient to establish specific jurisdiction in Alabama. The court acknowledged that the parties “hotly disputed” which party had initiated contact, but ultimately determined that the fact was not dispositive under a line of prior law.

Securities; “Holder” Claims; Derivative v. Direct Claims

Altrust Fin. Servs., Inc. v. Adams, No. 1091610 (Ala. July 29, 2011)

In shareholder action, the court held that under *Ala. Code* § 8-6-19(a), a primary remedial statute in the state securities law, only purchasers can sue; there are no “holder” claims. Claims against the corporation’s officers were derivative and, thus, required a demand on the corporation. The court overruled *Boykin v. Arthur Andersen & Co.*, 639 So. 2d 504 (Ala. 1994), holding that only when a shareholder contends that damage was unique to a shareholder, as opposed to damage shared with other shareholders alike, does the claim constitute a direct claim.

Tax Sales; Entitlement to Excess Proceeds

First Union Nat. Bank v. Lee County Comm’n., No. 1090804 (Ala. June 30, 2011)

The issue was whether, under *Ala. Code* § 40-10-28, a mortgagee (lender) which redeemed property sold to a third party at a tax sale was entitled to the excess proceeds of the tax sale. The court held that the mortgagee was not the “owner” entitled to the proceeds under this section, because even though the mortgagee was the legal title holder (Alabama being a “title” state), equitable title vested in the mortgagor and other sections of Title 40 speak of “owner” as the mortgagor.

Toxic Exposure

Jerkins v. Lincoln Elec. Co., No. 1091533 (Ala. June 30, 2011)

This case contains three significant holdings: (1) a plaintiff injured by long-term continuous exposure to a toxic substance is limited to recovering damages attributable to injuries occurring within the period of limitations; (2) a six-year limitations period applies to wantonness claims filed before the court's opinion in *Ex parte Capstone Bldg. Corp.*, No. 1090966 (Ala. June 3, 2011); and (3) a plaintiff injured by long-term continuous exposure to a toxic substance bears the burden of establishing what damages, if any, are attributable to injuries occurring within the limitations period as opposed to injuries occurring outside that limitations period.

Insurance; UM Coverage Forfeiture

Downey v. Travelers Prop. Cas. Ins. Co., No. 1100272 (Ala. June 30, 2011)

Under Alabama law, the failure of an insured to give prior notice to his or her insurer of a proposed settlement and release of an alleged tortfeasor causes the insured to forfeit underinsured motorist coverage,

regardless of the insured's actual knowledge of said coverage and regardless of prejudice to the insurer if the insured has possession of the policy which provides the coverage.

Venue; Corporations

Ex parte Thomasville Feed & Seed, Inc., No. 1100695 (Ala. June 30, 2011)

An AEMLD claim for sale of a defective product occurs in the county where the sale occurred, not where injury resulted.

Personal Jurisdiction; Jurisdictional Discovery

Branded Trailer Sales, Inc. v. Universal Truckload Services, Inc., No. 1090356 (Ala. June 24, 2011)

The plaintiff was entitled to jurisdictional discovery because it had stated plausible theories of personal jurisdiction in Alabama, based on allegations that the defendant agreed to do business with a company in Alabama, claims arose from contact with a company residing in Alabama and the defendant actually went to Alabama to pick up the goods.



It's the future. See page 430 for details.

Rule 54(B) Certification Improper

Loachapoka Water Authority, Inc. v. Water Works Board of the City of Auburn, No. 1091297 (Ala. June 24, 2011)

Rule 54(b) certification was improper because claims subject to appeal were intertwined with claims which remained pending before the trial court.

Wrongful Death; Relation Back

Ex parte Mobile Infirmary Association, No. 1091490 (Ala. June 24, 2011)

The plaintiff filed a wrongful death action within the statute of limitations. Four months later (after the statute of limitations had run), the plaintiff served additional interrogatories specifically requesting, among other things, information regarding the proper identity of the defendant. After answers were provided, the plaintiff amended and added the proper party, which then moved to dismiss based on the statute of limitations. The trial court denied the motion, but the supreme court granted mandamus relief. The plaintiff failed to act with "due diligence in identifying the fictitiously named defendant as the party the plaintiff intended to sue."

Insurance; Fraud; Statute of Limitations

Farr v. The Gulf Agency, No. 1090073 (Ala. June 17, 2011)

The court held that the insured's fraud claims relating to being underinsured were time-barred; such a claim accrued when the insured received his policy schedules showing the amounts of coverage.

Insurance; Cancellation

Nationwide Mut. Ins. Co. v. J-Mar Machine & Pump, Inc., No. 1090685 (Ala. June 17, 2011)

The standard from *Hartford Underwriters Insurance Co. v. Reed*, 57 So. 3d 742 (Ala. 2010) was applied (that the insurer had properly canceled coverage per the policy terms).

Rule 54(B) Certification Improper

EB Investments LLC v. Pavilion Development LLC, No. 1091666 (Ala. June 17, 2011)

The circuit court's Rule 54(b) certification as to redemption of real property was improper because of

competing claims regarding the real property in issue, which were intertwined with the redemption rights of the redemptioner.

Wantonness; Statute of Limitations

Ex parte Capstone Bldg. Corp., No. 1090966 (Ala. June 3, 2011)

The court held that willful and/or wanton torts fall within the two-year statute of limitations under *Ala. Code* 6-2-38(l), rather than the six-year statute of limitations for trespass and related claims. The court overruled *McKenzie v. Killian*, 887 So. 2d 861 (Ala. 2004), which had applied the six-year period to such claims.

Venue; Bessemer Division

Ex parte Ford Motor Co., NO. 1090938 (Ala. May 27, 2011)

Principles of *forum non conveniens* do apply to cases which are properly brought in the Bessemer Division, even though the Bessemer Act uses the term "jurisdiction."

Venue; Forum Non Conveniens

Ex parte Wachovia Bank, NA, No. 1100645 (Ala. May 27, 2011)

The court directed a transfer of action from Macon County to Lee County under the "interest of justice" prong of *forum non conveniens*, because the salient events and the injury occurred in Lee County, even though two individual defendants resided in Macon County.

Noteworthy Decisions of the Alabama Court of Civil Appeals

Amendments to Pleadings for Fictitious Parties; Diligence Shown

Crabtree v. BASF Bldg. Systems LLC, No. 2091044 (Ala. Civ. App. June 30, 2011)

The plaintiff exercised reasonable diligence in ascertaining the identity of the potential defendant in the discovery process, and then timely substituting the defendant for a fictitiously-named party.

Rule 54(B) Certification Improper

Southern Energy Dev. Co., Inc. v. Crane, No. 2100292 (Ala. Civ. App. June 30, 2011)

Rule 54(b) certification was improper under the “intertwining” doctrine.

Premises Liability

Isbell v. Aztecas Mexican Grill, No. 2100333 (Ala. Civ. App. June 30, 2011)

The trial court granted summary judgment in a premises liability action because there was no evidence the restaurant had actual or constructive knowledge of a defective condition. The court of civil appeals reversed, reasoning where an alleged defect is a fixture or otherwise part of the premises, whether the defendant had actual or constructive notice of the defect is for the jury.

Workers’ Compensation; Exclusivity

Hudson v. Renosol Seating LLC, No. 2090878 (Ala. Civ. App. June 17, 2011)

Exclusivity provisions of the workers’ compensation act barred claims stemming from conduct, statements or silence of the corporate defendants as to workplace conditions.

Wantonness; Sufficiency of Evidence

Mandella v. Pennington, No. 2100131 (Ala. Civ. App. June 17, 2011)

The court held in an auto case that the evidence was insufficient as a matter of law to support a claim of wantonness, where the auto guest statute barred negligence claims. Evidence of a “rolling stop” could infer wantonness but was not present.

Wills; Testamentary Capacity

Still v. BankTrust, No. 2100285 (Ala. Civ. App. June 17, 2011)

The will contestants procured substantial evidence of a lack of testamentary capacity based on the testator’s dementia and inability to engage in basic functions at the time of the will. However, summary judgment was proper as to the contestants’ effort to claim undue influence as to a beneficiary (a foundation), which was also the beneficiary of certain *inter vivos* transfers of property.

Noteworthy Decisions of the Eleventh Circuit Court of Appeals

FLSA

Dionne v. Floormasters Enterprises, Inc., No. 09-15405 (11th Cir. July 28, 2011)

An employer who denies liability for nonpayment for overtime work is not required to pay the attorney’s fees and costs pursuant to FLSA, 29 U.S.C. § 216(b), if he tenders the full amount claimed by an employee, where the trial court grants the employer’s motion to dismiss the employee’s complaint on mootness grounds.

Arbitration; Review of Arbitral Award

Cat Charter LLC v. Schurtenberger, No. 10-11674 (11th Cir. July 13, 2011)

The arbitrators’ award was a “reasoned award” under the agreement to arbitrate even though it did not contain findings of fact and conclusions of law, but rather stated its conclusions claim by claim; therefore, it was not subject to vacatur under FAA section 10.

ERISA; Review of TPA Denial of Benefits

Blankenship v. Metropolitan Life Ins. Co., No. 10-10717 (11th Cir. June 30, 2011)

The court reversed Judge Acker’s determination that a TPA acted arbitrarily and capriciously in denying LTD benefits. Pointing chiefly to MetLife’s structural conflict of interest as both administrator and payor of benefits, Judge Acker ruled that MetLife arbitrarily and capriciously denied Blankenship’s benefit requests. The Eleventh Circuit held that a reasonable basis supported MetLife’s benefits decisions and that the conflict of interest did not render the decisions arbitrary and capricious. The case contains a good review of the current multi-step process courts use to review administrator decisions.



Wilson F. Green is a partner in Fleenor Green & McKinney in Tuscaloosa. He is a summa cum laude graduate of the University of Alabama School of Law and a former law clerk to the Hon. Robert B. Propst, United States District Court for the Northern District of Alabama. From 2000-09, Green served as adjunct professor at the law school, where he taught courses in class actions and complex litigation. He represents consumers and businesses in consumer and commercial litigation. Contact him at wgreen@fleenorgreen.com.

Spring 2011 Admittees

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



STATISTICS OF INTEREST

Number sitting for exam	217
Number certified to Supreme Court of Alabama	121
Certification rate*	55.8 percent
Certification Percentages	
University of Alabama School of Law	73.7 percent
Birmingham School of Law	48.1 percent
Cumberland School of Law	57.1 percent
Jones School of Law	78.3 percent
Miles College of Law	16.7 percent

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

For full exam statistics for the February 2011 exam, go to www.alabar.org/admissions/files/stats0211detailed.pdf.

Alabama State Bar Spring 2011 Admittees

Abell, Gary Alan
Allen, Patricia Ann
Arrington, Jason Oliver
Baek, Hyunsoo
Barr, Taylor Noelle
Beaty, Lucas Jeremiah
Bell, Lula Hall
Bradley, Elizabeth Killebrew
Brannan, III James Bernard
Brashier, Andrew England
Brice, Derek Jason
Brown, Avery Wright
Brown, Michael Barrett
Brown, Carly Elizabeth
Burton, Delora Anderson
Burton, Bradley Roger
Cannova, Matthew Joseph
Carr, John Edward
Carroll, Ryan Adin
Castro, Jennifer Halsey
Chasteen, Delisa Michelle
Clark, Elizabeth Adele Zak
Clementz, Richard Jonathan
Clute, III Robert Eugene
Collins, Brandon Eugene
Cooper, James Brandon
Crawford, Amanda Katherine
Curtis, Barry Glenn
Davis, Mary Ann Henderson
Davis, Jordan Sims
Dickens, Benjamin Dale
Douillard, Alison Leigh
Dreher, Jr. George Roland
Duke, Jr. Wayne Alan
Dunavant, Daniel Hunter
Espy, Chase Tristian
Euler, John Kenneth
Frisby, Kayla Wallace
Gladden, Bailey Brigham
Griffin, Adam Vincent
Hamer, Christopher Sean
Handley, Joy Hilda Lucille
Harred, James Kyle
Harris-Daniels, Felicia Deanna
Hawke, John Daniel
Hawkins, Corey Demond
Haywood, Elizabeth Blair
Hazzard, Wakisha Elizabeth
Henry, Kathryn Suzanne
Hines, Danielle DaChar
Hinton, Dennis Boone
Holsclaw, Jeffrey John
Hughes, Anthony Baxton

Huntley, III Willie Julius
Hyche, Ida Tyree
Isbell, Jason Scott
Ivey, Meagan Shell
Jackson, Lorren Bailey
Jackson, Matthew Ryan
Jett, Gwendolyn Alicia
Joiner, Michael Burnett
Jones, III Alexander Williamson
Jones, John Talbot
Kauffman, Robert Lee
Keating, Jessica Michelle
Kiefer, Kristin Brooke
Korubo, Enefaa Saturday
Krell, Matthew Reid
Kubs, Mindy Yoskin
Lee, Samuel Eric
Lee, Keith Robert
Lee, Christopher Edward
Lee, Un Gyeong
Lewis, Jacquelynn Elaine
Livingston, Karen Anne
Long, Christopher Wayne
Massey, Emery Don
McConnell, Jonathan Edward
McCutchen, Mollie Hunter
McGuire, Joseph Mitchell
McKeever, Matthew Tyler
McLean, Sean Douglas
McLeod, Jul Ann
Milam, Kathleen Trachy
Mishkin, Robert Todd
Mitchell, Susannah Gale
Moody, Jonathan Edward
Moss, Sylvion Seffel
Mullican, Jr. Randel Hood
Murray, Patrick Shawn
Murray, Jr. Donald Scott
Murray, LaConya Danyell
Nielsen, William Joseph
Norman, Robert Parks
O'Neal, Joshua Milton
Oats, Jessica Elizabeth
Oldenburg, Shannon Keithley
Ollinger, James Norman
Park, Suyoun
Pendergrass, Joshua Michael
Perkins, Kathryn Haggerson
Pollock, John B.
Rasmussen, III Birger Kristian W.
Ratz, Tara Suzanne
Reed, Courtney Elizabeth
Reid, Patricia Ann Toro

Riche, Quisha Chanese
Rimes, John Wesley
Robinson, James Wells
Ross, Zachary Allen
Rutland, Will Stephens
Rutledge, Sarah Elise
Sharpe, Tamara Denise
Sheeler, Monica Suzanne
Shepherd, Jared Dean
Shirley, Kyle Crosby
Simmons, Ryan Scott
Skelton, Matthew Paul
Skelton, Emily Clare
Smith, Courtney Bradford
Snow, Natalya Victorovna
Solomon, Destini Latrice
Starnes, Jr. William Stancil
Stephens, Laura Elisabeth
Stokes, Craig Alan
Sullivan, Erin Kathleen
Surat, Veronika Namikovna
Swerdlin, Matthew Scott
Swiergula, Jennae Rose
Taheri, Andrew Ashkaun
Tavares, Jonathan Aaron
Taylor, Sr. Anwar Sadaka
Terry, Anna Laura
Thornburg, Todd Martin
Thurston, Leslie Ayers
Tomlinson, VI John Wade
Tomlinson, Alison Lee
Trammell, Jordyn Suzanne
Valeska, Lacey Nicole
Vann, Jr. Richard Kennedy
Velasquez, Amy Lynn
Wadsworth, Stephen Douglas
Wallace, Harold Bryan
Watson, Damon Travelle
Watson, III Joseph Ellis
Watson, Gabriela
Webb, Alyson Marie
Wehby, Jessica Lynn
White, Melissa Maran
Wilkins, Robert Joseph
Wilkinson, Lindsay Jo
Williamson, Erica Leigh
Wilson, James Matthew
Wolfe, Samuel Eugene
Wood, Dennis Brandon
Yoo, Il Hwan
Young, Elizabeth Ann

LAWYERS IN THE FAMILY



*Kayla Frisby (2011) and
Stephen Frisby (2009)
Admittee and husband*



*Gabriela Watson (2011) and
Bradley J. Watson (2010)
Admittee and husband*



*Robert E. Clute, III (2011) and
Robert E. Clute, Jr. (1980)
Admittee and father*



*Alyson Webb (2011), Darryl Webb (1967) and Jeff Webb (1999)
Admittee, father and brother*



*Lacey Nicole Valeska (2011) and
Douglas A. Valeska (1979)
Admittee and father*



*Bradley R. Burton (2011) and
Roger D. Burton (1978)
Admittee and father*



*Carly Elizabeth Brown (2011) and Judge
Sherrie W. Paler (1983)
Admittee and mother*



*Courtney Smith (2011) and
Jeffrey Smith (1979)
Admittee and father*

LAWYERS IN THE FAMILY



*Michael Barrett Brown (2011) and
Michael Burton Brown (1975)
Admittee and father*



*Patricia Allen Williams (2011) and
John D. Norris (1992)
Admittee and brother-in-law*



*Damon T. Watson (2010) and
Cynthia D. Watson (1998)
Admittee and mother*



*Taylor Barr (2011) and
Katherine Barr (1985)
Admittee and mother*



*William Stancil Starnes, Jr. (2011), William Stancil Starnes, Sr. (1972) and
John G. Thompson (2002)
Admittee, father and brother*



*Enefaa Korubo (2011) and
Bola Ene-Korubo (2010)
Admittee and wife*



*Jason Arrington (2011) and
Claude Arrington (2000)
Admittee and wife*



*Richard K. Vann, Jr. (2011) and
Thomas G. Mancuso (1968)
Admittee and uncle*



What Do Leaders Do?

Insights into Why Leadership Development Is So Challenging

By Elizabeth Haney Mills and Herb Rubenstein

Introduction

Successful leadership requires a person be able to analyze a current situation, understand enough of its history to see why the challenging situation is the way it is, and identify and deploy the right kinds of resources to help solve the challenge. If leadership were as easy as these three steps, all of us would be better leaders.

This article describes some of the key behaviors that leaders need to deploy in order to be successful. Leadership can be learned and can be taught. The idea that someone is born a leader is just as sensible as a person is born an Olympic gold medalist. To win a gold medal, one needs to train, have superior coaching and hone their skills. To be a successful leader, one also needs to train. People can train “on the job” or “through the school of hard knocks,” but this form of training is haphazard and takes decades. Excellent leadership training can shorten the time and reduce the pain that people go through in improving their leadership skills. Every element of leadership cannot be learned in the classroom, just as one cannot become successful in any endeavor just by sitting in the classroom. Experience is important, especially those types of leadership experiences that are well-planned and based on a solid strategy.

Leadership Behaviors

Leadership behaviors are multi-dimensional and cannot always be quantified, however, they have three characteristics in common. The leader must be cognitive, active and inspirational. Highly successful leaders are able to recognize their surroundings and circumstances. Accordingly, they are able to take appropriate action or inaction, and then inspire others (sometimes softly and sometimes strongly) to be led.

Key leadership behaviors are identified in the next paragraph. Regarding many of these behaviors, we will list them not as a single behavior, but as a dimension of related behaviors that span the range of behaviors in that particular area. One should not view these as contradictory in any manner. For example, a leader must be persistent, and must be patient. These terms are

to be viewed as complementary, not as opposites. Recognizing and knowing when to be persistent (most of the time), and when to be patient (when the situation dictates a leader to be patient), are both key elements of being a leader. The goal of listing these behaviors is to help raise your consciousness as you seek to become a better leader or to evaluate others who lead in a particular situation. Whether you are mentoring someone, or just yourself, this list can become a checklist for you to observe yourself or others and to guide you to becoming a better leader.

Below are qualities of those who are leaders:

Decisive when appropriate	Patient when necessary
Inspire others to achieve greatness	Motivate themselves constantly
Promote greatness in others	Hold others accountable for actions
Take charge	Delegate
Serve	Pick their battles
Outgoing and energetic	Thoughtful and insightful
Strong and courageous	Wary and doubtful when appropriate
Willing to sacrifice for others	Willing to ask others to sacrifice for them
Aware of their surroundings	Able to ignore/overcome barriers
Desire to control	Willing to work as a team members
Listen to others	Speak to others
Understand the meaning of what is being said	Communicate forcefully
Understand why things occur	Future-centric, not history-centric

Build consensus	Take charge when necessary
Collaborative	Use experts to solve technical problems
Not afraid of failure	Hate failure
Accept responsibility	Share responsibility
Have vision, can set goals	Excellent tactician
Can form strategic plans to achieve goals	Act unilaterally without a plan when necessary
Recognize and accommodate weakness	Do not tolerate weaknesses well
Recognize where group lacks knowledge and skill	Play to the strengths of the group
Are great followers	Are great leaders
Understand and communicate "what is in it for you"	Build high level purpose for the group, others
Have optimism	Are realists
Have and promote credibility	Are able to successfully attack lack of credibility
Can effectuate change	Know not to try to change everything
Can successfully maintain status quo as needed	Can show others benefits of change
Conciliatory	Demanding
Respond well	Are proactive
Garner discoveries and use discoveries	Rely on verified, useful information
Manage conversations and do not dominate them	Lead with probing questions

Conclusion

Leadership is complex. Mastering the categories of behaviors allows leaders to be flexible in building the right kinds of behaviors for the right kinds of situations. This article has laid out many of the behavioral dimensions of leadership behavior but there are many more that leaders evoke to lead themselves and organizations. We hope you find this article useful in improving your leadership aptitude. ▲▼▲



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2004 honors graduate of the Birmingham School of Law and a 2011 graduate of the Alabama State Bar Leadership Forum. Mills serves her local bar association and community in several leadership positions.



Herb Rubenstein is the founder and executive director of THE LEEEGH, a non-profit organization ("leadership in education, energy, environment, governance, and health"). He is also

the CEO of the Sustainable Business Group, Inc., a leadership and management consulting firm. Rubenstein serves as an adjunct professor of strategic management at the University of Colorado Denver in the graduate Global Energy Management Program. He received his law degree from Georgetown University, his master's of public affairs from the LBJ School of Public Affairs and a graduate degree in sociology from the University of Bristol in Bristol, England.



STATEMENTS FROM CLASS 7 ALUMNI

Sherrie Phillips

The Leadership Forum was the best experience I have participated in as an attorney. The speakers, as well as interaction with my classmates, widened my perspective and offered different views and ideas on problems and issues facing the legal community and our state. It renewed my enthusiasm and my commitment to the practice of law, my clients and my community. The Leadership Forum gave me the foundation for making informed decisions about how to be a better citizen, attorney and leader. I had developed a routine in which I worked long hours and never really raised my head to "see" what was going on around me and how I could be a better citizen and leader to address some of those issues. The Leadership Forum changed that attitude and changed me. More than that, I developed a network of 30 new or renewed friends in the Alabama legal community that I genuinely like and respect.

Chess Bedsole

I applied for the Leadership Forum because I had reached a point in my life where I needed a new challenge, both professionally and personally, but I didn't know where to look. The resulting six months exposed me to so many new things within my own community that I was really able to pick and choose with what to get involved. I became not just educated but a passionate consumer of opportunities. That's the real strength of the Leadership Forum: while it's true that you learn leadership skills, what you're really learning is where the opportunities are for you to develop your talents while helping others.

V. J. Graffeo

The Leadership Forum teaches leadership development and awareness of critical Alabama issues that are necessary attributes any great lawyer should have. Few programs provide a small-group setting with such meaningful access to those leading the highest levels of Alabama's government, business and civic communities. The Alabama State Bar has done a tremendous job by not only maintaining this program, but improving it every single year. The ASB Leadership Forum has an extremely bright future. I look forward to watching the Leadership Forum's alumni continue



STATEMENTS FROM CLASS 7 ALUMNI

John DeMarco

In my view, the Leadership Forum program represents the best of our state bar. I believe everyone in the forum class came away with a better understanding of the challenges we face and inspired to make positive practical steps to improve our state and state bar.

Chris Comer

While I knew that the Leadership Forum was a wonderful experience, based upon the testimonials from past graduates, I'm glad that I went into it with no preconceptions about what the class was really about. Personally, I found the experience to be well-conceived and thoughtfully presented. As a person who was not born in the South, but who has called it home for the last 25-plus years, it was a great opportunity to become better educated about our state. It also served to remind me that we, as lawyers and leaders, need to be actively involved in shaping Alabama's future.

Jeremy Taylor

The program was absolutely top notch. I have raved regarding it, not only to other lawyers, but to others outside the legal realm. It presented us not only with an opportunity to learn from excellent speakers, but it also gave us the opportunity to have access to contacts in that regard. I am certainly proud to have been a member of the Leadership Forum, and I feel it a true honor and privilege to have been able to have this wonderful experience. I certainly will recommend this program to other lawyers, and I will be an advocate for it in the future.



First row, left to right, are Clay Lanham, Jennifer Clark, V.J. Graffeo, Charlie Shah, Hope Cannon, Beau Brown, Jr., and Kelvin Howard. Second row, left to right, are John DeMarco, David Johnston, Jr., Angie Cameron, Kira Fonteneau, Candi Peeples, Allison Taylor, and Dana Grimes. Third row, left to right, are David Conner, Stephen Hall, Desiree

Alexander, Tiffany Johnson-Cole, Ben Goldman, and Janine Smith. Back row, left to right, are Jeremy Taylor, Sherrie Phillips, Chess Bedsole, Annette Irons-Parker, Marc Ayers, Elizabeth Mills, George Newton, II, Chris Williams, Matt Beam, and Chris Comer.

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My Experience in the Alabama State Bar's 2011 Leadership Forum

By *Stephen H. Hall*

Leadership is understanding people and involving them to help you do a job. That takes all of the good characteristics, like integrity, dedication of purpose, selflessness, knowledge, skill, implacability, as well as determination not to accept failure.

—Admiral Arleigh A. Burke



I admit that I looked long and hard for a quote to capture the essence of the Alabama State Bar's Leadership Forum, and settled on the one that touched on the cornerstones of what I believe the forum stands for: integrity, dedication of purpose, selflessness, knowledge, skill, implacability, and a determination not to accept failure.

The Leadership Forum is a five-month program, conducted once a month, for 30 members of the Alabama State Bar who have been practicing between five and 15 years. Goals of the forum include:

- Molding a critical mass of lawyers who understand and appreciate the concept of servant leadership, and who will be its ambassadors;
- Form a pool of lawyers who will be leaders both in the state and local bars, as well as their communities;
- Improve the state through active leadership; and
- Build a core of practicing lawyers who better understand the core values of ethics and professionalism and strive to raise the overall standards of the bar.

Leadership Forum class members represent a diverse cross-section of the bar,

from large firms and small firms, from traditional plaintiff's firms and defense firms, and from district attorneys and public defenders. Class members come from all across our great state, ranging from Fort Payne, Cullman, Anniston and Tuskegee, to Birmingham, Mobile, Huntsville and Montgomery, to name a few. Due to the diverse cross-section of individuals, one of the most valuable lessons I received was that the issues facing my firm, my practice and me can be very different from those issues faced by others. Similarly, issues facing my local community and bar can be very different from those other areas of Alabama are experiencing. I gained valuable insight into what is facing all of Alabama.

The benefits of the program, however, don't stop with the collection of ideas and perspectives from fellow classmates. Class members hear from state leaders, and experience, first-hand, the characteristics they rely upon to face and overcome their challenges.

In the first session, **Dr. David G. Bronner**, CEO, Retirement Systems of Alabama, and **Charles D. McCrary**, CEO, Alabama Power Company, both reminded us that simple, but often overlooked, lessons like "Treat others as you wish to be treated" can be an invaluable



tool of a servant leader. **Dr. Wayne Flynt**, one of the most knowledgeable and entertaining educators Alabama has to offer, shared some of the historical reasons Alabama continues to lag in key areas. And presentations by **Alyce Spruell**, 2010-11 ASB president, and current **President Jim Pratt** highlighted their dedication of purpose, selflessness, knowledge and skill.

This year's class also learned more about "Leadership Development for Lawyers" and the "Future of the Legal Profession," as well as a review of skills to draw from to become more effective leaders. The session closed with a challenge from Ed Patterson that "it was our time to lead." This first session allowed class members to form professional and personal bonds and also planted the first seeds of inspiration and motivation to better understand and appreciate the concept of servant leadership.

The forum continued to provide speakers from the "who's who" in Alabama. In the second session, **Governor Robert Bentley** and **Lt. Governor Kay Ivey** spoke about leaders' roles. **Chief Justice Sue Bell Cobb** concentrated on issues facing the legal community, and **Representative Paul DeMarco** highlighted the processes and procedures in the Alabama legislature. Other outstanding speakers included **Kristina Scott**, with the Alabama Poverty Project, and **Stephen**

Black, of the Center for Ethics and Social Responsibility, and particularly moving was **Aldos Vance's** presentation. Vance, with Altec Industries, Inc., shared the story of stepping out of his comfort zone and pursuing something for the greater good.

The third session was held in the U.S. District Court, Middle District of Alabama, and speakers included **Judge Mark Fuller**, **Judge Myron Thompson** and **Judge Joel Dubina**, as well as **Bryan Stevenson**, executive director, Equal Justice Initiative. Stevenson's dedication to the cause he so strongly believes in epitomizes servant leadership.

The fourth session was held in Huntsville, my hometown. Speakers included **Robert Lockwood** (president, Huntsville-Madison County Bar), **Paul Finley** (mayor of Madison), **Mike Gillespie** (chair, Madison County Commission), **Joe Ritch** (chair, Tennessee Valley Base Realignment and Closure Committee), **Chris Newlin** (executive director, National Children's Advocacy Center), **Carter Wells** (external affairs director, HudsonAlpha Institute of Biotechnology), and **Angela Rawls** (executive director, Madison County Volunteer Lawyers Program).

The Leadership Forum closed in Tuscaloosa, just a few weeks after the devastating tornadoes, where a large portion of the class volunteered with local disaster recovery efforts. Speakers for the closing

session were **Cynthia Almond** (Tuscaloosa City Council), **Stephen Black**, **Aaron Beam** (former CFO, Healthsouth) and **Dr. Samuel Addy** (professor, University of Alabama). As an admitted Auburn fan, I admit I really enjoyed presentations by **Mal Moore**, Alabama's athletic director, and **Scott Cochran**, the team's strength and conditioning coach. If you can't set goals after hearing from Scott Cochran, you never will.

This program reaffirmed my belief that Alabama State Bar members render a valuable service to those most in need—not for thanks or recognition, but because it is the right thing to do. Class members will take the lessons we've learned and try to make a difference in our community, our state and our profession.

To my fellow class members, I say thanks, for sharing your time, experiences, opinions and perspectives, but, most importantly, your friendship. Without a doubt, I have made new friends who will be with me throughout my career and beyond, both professionally and personally. I know that Class 7 truly embodies the integrity, dedication of purpose, selflessness, knowledge, skill, implacability, and determination not to accept failure for which we all can strive.

For those considering applying to future Leadership Forum classes, it will be one of the most rewarding decisions of your career. ▲▲



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Law. Hall's practice concentrates on intellectual property and technology issues in state and federal courts.

Leadership Forum Applicant Demographics

2005-2011

Class 7 (2011)

	Applications	Class	Alternates
Number of Applicants	61	30	4
Male	36	16	3
Female	25	14	1
Black	9	5	1

City:

Birmingham	35	14	3
Huntsville	3	2	1
Mobile Area	7	4	0
Montgomery	5	2	0
Tuscaloosa	2	2	0
Other	13	6	0

Class 6 (2010)

	Applications	Class	Alternates
Number of Applicants	75	30	4
Male	49	17	3
Female	26	13	1
Black	16	5	0

City:

Birmingham	44	19	3
Huntsville	2	1	0
Mobile	6	3	0
Montgomery	7	2	0
Tuscaloosa	6	2	1
Other	10	3	0

Class 5 (2009)

	Applications	Class	Alternates
Number of Applicants	75	30	4
Male	52	19	2
Female	23	11	2
Black	4	3	0

City:

Birmingham	31	8	3
Huntsville	2	1	0
Mobile	7	4	0
Montgomery	9	6	0
Tuscaloosa	2	2	0
Other	24	9	1

Class 4 (2008)

	Applications	Class	Alternates
Number of Applicants	78	30	4
Male	51	20	4
Female	27	10	0
Black	7	5	0

City:

	Applications	Class	Alternates
Birmingham	34	13	4
Huntsville	2	2	
Mobile	7	2	
Montgomery	13	5	
Tuscaloosa	5	1	
Other	17	7	

Class 3 (2007)

	Applications	Class	Alternates
Number of Applicants	72	30	4
Male	52	20	3
Female	20	10	1
Black		2	1

City:

Birmingham	33	13
Huntsville	6	2
Mobile	6	2
Montgomery	6	2
Tuscaloosa	5	3
Other	16	8

Class 2 (2006)

	Applications	Class	Alternates
Number of Applicants	71	30	4
Male	52	20	
Female	19	10	
Black	6	6	

City:

Birmingham	34	12
Huntsville	4	1
Mobile	6	2
Montgomery	8	3
Tuscaloosa	2	1
Other	17	11

Class 1 (2005)

	Applications	Class	Alternates
Number of Applicants	42	30	4
Male	25	16	
Female	17	14	
Black	2	2	

City:

Birmingham	18	14
Huntsville	4	3
Mobile	5	2
Montgomery	6	5
Tuscaloosa	4	4
Other	5	2



STATEMENTS FROM CLASS 7 ALUMNI

Benjamin Goldman

Before entering the Leadership Forum, the brochures and pamphlets led me to believe that the one phrase to describe the experience was "servant leadership." Yes, there is a call to servant leadership, but servant leadership is actually just the light given off by the fire that the Leadership Forum ignites, not the fuel for the fire itself. I now realize that the one word to describe the experience (and the fuel for the fire that the forum kindles) is really "hope." Hope for our state. Hope for our profession. Hope that we can actually become the people and lawyers that we are meant to be.

Hope T. Cannon

I am so honored to have been given the opportunity to be a part of Leadership Forum Class 7. Through the program, I got the pleasure of meeting and developing meaningful relationships with other members of the bar whom I might never have otherwise met. Moreover, I learned that as lawyers we are all blessed with a pretty good way of making a living, but along with that we have an obligation to serve our community, our profession, our state and our neighbors. It was truly a humbling experience to hear and learn from people who have created a name for themselves, not because of some amazing trial victory, but because of a passion that led them to go beyond their comfort zone.

Charlie Shah

I found the forum to be a valuable resource to learn about the challenges facing our state. The forum provides an excellent opportunity to meet outstanding lawyers across the state hoping to make a difference and striving working to overcome those challenges. Every lawyer in Alabama seeking a greater purpose beyond the practice of law should join the Leadership Forum.

Tiffany Johnson-Cole

This experience has taught me a great deal about myself and my passion for service. It made me realize that there is a world of wonderful people in the legal profession who care about others just as much as I do and are actively working to make the lives of the disadvantaged better in Alabama, which I believe is at the core of what lawyers should be doing.

Are You Ready to Lead?

Apply Now for Class 8 of the Leadership Forum

By Andrew S. Nix

I am very fortunate to have been asked to serve as the program chair of the Alabama State Bar Leadership Forum since graduating from Class 6 in 2010. Serving as the program chair has allowed me to continue to be involved in a program that I believe is one of the best offered by our state bar.

The Alabama State Bar Board of Bar Commissioners initiated the Leadership Forum in 2005 in recognition of our call, as lawyers, to leadership through service. Since then, the forum has grown and developed into a top-notch leadership training program that provides participants with unique opportunities to learn and improve their leadership skills, encounter and consider the major issues facing our communities and state today, and meet and develop close relationships with other like-minded and energetic lawyers from around the state. With seven successfully completed classes and 202 graduates of the program, the Leadership Forum continues not only to meet, but exceed, its mission.

The overwhelming response from graduates of the program includes praise for the program and enthusiasm about the relationships fostered from it. Graduates include a member of the state house of representatives, judges and other public officials, bar commissioners, local bar leaders, a pastor, and a mayor—many graduates have responded to the call to service in very significant ways. Planning is underway for Class 8, and participants once again will be challenged to learn and think about how to lead and serve those around them.

How can you get involved? Each year, the Selection Committee of the Leadership Forum seeks to draw a broad and representative class of 30 individuals from throughout the membership of the Alabama State Bar. If you have practiced law for not less than five years and for not



more than 15 years as of January 1, 2012 (based on first admission to any state bar), consider applying to become a participant in Class 8 of the Leadership Forum. The application form can be downloaded at <http://www.alabar.org/members/leadership-update.cfm>. In addition to the completed application form, your application should include a personal résumé, a narrative summary and one substantial letter of recommendation, all of which are more fully explained on the application form.

The Selection Committee reviews the applications for the following criteria in making the initial selection decisions, with special emphasis on the first two:

- Leadership ability based on past accomplishments and current engagements;

- An understanding of the importance of servant leadership, as shown in the narrative summary;
- Previous application to the Leadership Forum;
- Practice diversity (criminal, civil, corporate, governmental, etc.);
- Geographic diversity; and
- Racial and gender diversity.

Applicants who are chosen by the committee are then reviewed by the Alabama State Bar Executive Council and ultimately approved by the Board of Bar Commissioners.

We encourage you to consider applying for Class 8 of the Leadership Forum to join the ranks of Leadership Forum graduates who are committed to leading the Alabama legal community—ethically, professionally and charitably—and working to bring about a better Alabama. ▲▼▲



Andrew S. Nix is a shareholder with Maynard, Cooper & Gale PC in Birmingham and practices in the areas of corporate and securities law. He graduated from

Auburn University and the University of Alabama School of Law. A graduate of Class 6 of the Leadership Forum, Nix serves on the Young Lawyers' Section Executive Committee, as well as the board of directors of the Birmingham Bar Foundation and the Birmingham Volunteer Lawyers Program.



Capstone Leadership Project

Leadership Forum Class 7 involved participants in exploring a complex problem that has broad implications for the legal profession. Based on *The Critical Issues Summit*¹, which brought together legal experts to study and respond to the challenges of equipping lawyers to practice in our rapidly changing world, the *Capstone Leadership Project*, as it was named, was designed to challenge the class to explore the recommendations made by summit participants and to recommend a plan of action for the Alabama legal community. One key objective of the *Capstone* was to enhance the growth of individuals in the various teams and increase teamwork and personal involvement.

The *Alabama State Bar Class 7 Leadership Forum Capstone Report* will be published at a later date. Broadly speaking, the report will recommend the development of core skills and competencies needed to practice law in Alabama, the development of leadership skills training courses for attorneys and continuing review of bar governance and related issues. ▲▼▲

Endnote

1. The Critical Issues Summit was sponsored by American Law Institute – American Bar Association (ALI-ABA) and the Association for Continuing Legal Education (ACLEA).

Leadership Forum Section

The Board of Bar Commissioners has approved the creation of the Leadership Forum Section of the Alabama State Bar. The section will include graduates of all Leadership Forum classes and will provide members with the opportunity to reconnect with former classmates and meet members of other classes. The mission of the section is to provide continued leadership education for members, a community within the bar committed to the ideals of servant leadership and a steadfast source of lawyers available to serve the bar. ▲▼▲



SAVE THE DATE

The Alabama State Bar Leadership Forum announces the First Alumni Forum Weekend Retreat at the Grand Hotel Marriott Resort, February 3–5, 2012. Spouse or guest is invited. Complete information will be sent to alumni no later than September 15, 2011.

Going Solo:

*Do You Have
What It Takes?*

By Laura A. Calloway



Each year several hundred recent legal graduates become new lawyers in Alabama. For a small percentage of them, the road ahead is certain. Some know that they will return to their hometowns to join the family law practice. Many of those who graduated at the very top of their classes have managed to snag the relatively few well-paying associates jobs available with the handful of large firms in the state, while others have already lined up prestigious judicial clerkships which they hope may eventually lead to somber black robes of their own. What about the rest?

For many recent graduates, admission to the bar leads to what may feel like a game of musical chairs. They send out countless résumés to every legal employer in the county or counties in which they'd like to remain or settle, hoping to grab a chair of their own before the music stops. In the current environment, though, it often feels like there are far more players than there are chairs. Some will inevitably be left without a chair.

If you have recently passed the bar exam and the admission ceremony seems like a dead end rather than a transition to the exciting new career you were expecting, you may be considering hanging a shingle and starting a practice of your own. If so, there are a few questions you should ask yourself before you plunge in, as not everyone is cut out for solo practice.

Do you have an entrepreneurial spirit?

Many lawyers who decide to start a new solo practice believe that if they build it, clients will come. They approach opening a practice as if they were really law firm associates—just without the middle man in the form of a partner who assigns the work. These lawyers expect clients to come in knowing exactly what they need and to pay them in full at the end of the representation for the number of hours they've worked, regardless of the outcome of the matter, just as if they were on salary. Unfortunately, many of these lawyers spend most of their days sitting by the phone, hoping that it will ring.

As technology has become ubiquitous in the law firm, many types of legal work that used to be “custom-made” have become commodities. Whether it's residential real estate closings, simple wills, uncontested divorces or low- or no-asset consumer bankruptcy filings, experienced lawyers with well-trained clerical staffs and well-honed technology have already devised ways to provide good-quality, standardized legal services at reasonable prices. And they are tough competition for the newcomer whose most obvious assets are enthusiasm, a low hourly rate and the immediate availability to take the case. These days, you

can't count on an abundance of low-hanging fruit to sustain a new practice. You have to be more creative.

The most successful self-employed lawyers are the ones who can recognize emerging problems that other lawyers aren't even aware of yet and devise affordable legal solutions for average, middle-class clients. They use their vision and creativity to carve out and master new niches that other lawyers haven't thought about, and then find ethical ways to target the clients they really want. Much as a good marksman learns to lead a moving target, they are willing to constantly be learning about other industries, professions, products and demographic trends as a way to anticipate legal needs before the competition does.

If you are thinking about starting your own solo practice, have you thought seriously about the type of services you will provide and your cost structure for providing them? Have you considered who your competition is and who your target clients are, whether there are enough of them to sustain your practice, and how you will ethically reach them?

Are you a financial whiz?

You don't have to be a math genius to be successful in solo practice, but you do have to be willing to take responsibility for your own finances. Successful solo practitioners commit to spending a reasonable amount of time each week maintaining their firm and trust account bookkeeping and gaining an understanding of their financial position and the financial trends of their firms.

Many lawyers don't like numbers, and they often turn over bookkeeping responsibilities to a staff member. As many other small business owners have learned the hard way, failing to maintain regular and personal control of your finances is an invitation to the dishonest employee to steal you blind. More importantly, lawyers are responsible for the funds of clients and third parties. Delegating that responsibility is an invitation to pay a visit to the disciplinary authorities for failure to safeguard client funds and adequately supervise employees.

Successful solo lawyers always know how much work in process they have to be billed, how much they are owed and how long it's been outstanding. They know how much they spend, on average, each month, how much it costs them to provide an hour of legal services and how much they must bring in just to break even. They also know how much they must take home each month to meet their personal obligations. If being intimately acquainted with your business and personal finances isn't your cup of tea, you should probably think twice about hanging a shingle.

Are you gregarious, yet can you stand to be alone?

You don't have to be a party animal to be a successful solo lawyer, but liking—even needing—to be around other people from time to time can be very helpful.

Lawyering is, of necessity, a lonely calling and solo lawyering is even more so. In order to get anything done, you've got to put in time—often many hours—alone in your office. Many lawyers love to be alone with their work and don't find this a problem at all! But many solo lawyers tend to find that, after a few months or years in solitary practice, they become isolated. And this is not good for your mental health or your practice.

We all need camaraderie and a sense of belonging in order to maintain a good outlook and meet the challenges of stressful work. New solo lawyers, especially, need the benefit of feedback from other lawyers in order to hone skills and learn how to do the best work for clients, or just figure out how to get something new or unusual filed at the courthouse. If your practice

requires a steady stream of new clients in order to survive, it's also beneficial to be—and to enjoy—constantly meeting new people, allowing you to develop the relationships and referral sources that you'll need to grow your practice.

If you're considering hanging a shingle on your own, think about your personality type and how you relate to others. Will you be able to strike the right balance between working alone yet making the effort to stay connected with other lawyers, and also maintain outside activities with non-lawyers that will help you encounter potential new clients and referral sources?

Can you be a disciplinarian?

I'm not talking about whips and chains here, so get that image out of your mind! Instead, what I'm asking is whether you are willing to set down some rules for your clients and then make sure that they follow them—even when it's not fun—just like Mom and Dad used to do.

Maybe it's because lawyers must be assertive with opposing counsel as a part of their daily work, but I've been amazed to meet many, many lawyers who are extremely reluctant to be assertive with clients when it comes to setting fees and asking for advance fee and cost deposits or in confronting them over unpaid fees.

Lawyers who practice in firms often have one partner, or a stable of staff people, who are responsible for making sure that fee advances are collected and bills are paid when due. Solo lawyers usually have no one else to whom to delegate this task. Before deciding on solo practice, consider whether you can be comfortable asking forthrightly to be paid in full for your services, and kindly but firmly cutting them off—if you can ethically do so—when your clients don't pay their bills. If you're a solo lawyer, no one else will do it for you.

Can you say no?

This is, perhaps, just another part of being a good disciplinarian, but accepting good clients, and turning down the ones you should let go by, is often very hard for solos. After all, if you turn down a client, will another one ever walk through the door?

A lawyer in a firm can survive a bad month or two, as long as he or she has the backup of other firm members to help smooth out the hills and valleys of private practice income. Solo lawyers only have themselves to depend on, unlike those who practice in firms. This often leads them to take cases or clients that they know they shouldn't, just because they need the fee to pay the rent or phone bill.

Successful solo practitioners know the types of cases and clients they are looking for and are comfortable conducting careful screenings and saying no when they should.

Are you willing to learn something new every day?

Do you like working with computers? Are you willing to take the time to thoroughly master the programs you need to know in order to turn out high-quality legal work? Technical skills and a willingness to use them are necessities for the new lawyer looking to hang a shingle.

There is no rule that solo practitioners can't have support staff members, but many lawyers can't afford to pay themselves and a staffer when they first hang a shingle. While I always recommend that anyone starting a practice have a minimum of six



C L E
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 www.alabar.org/cle.

www.alabar.org/cle

months overhead and salary in the bank, for some lawyers it's just not possible. That's why it's so important that new solo lawyers be willing and able to master the nuts and bolts of producing quality legal work, storing it in ways that it can be easily retrieved when needed and filing it electronically with the courts or transmitting it securely to clients and third parties.

Solos must do for themselves many things that other lawyers delegate to staff. Thus, successful solos must be willing to dig in, learn and master technical skills that other attorneys either are not interested in learning or feel are beneath them.

The same is true for new practice areas. While I always recommend that solos and small firms stake out a reasonable number of practice areas, learn them inside and out and don't stray too far from this familiar ground, solo practitioners have to be like sailors, always testing the wind for shifts and staying ready to change when change is necessary. Solo practice depends on maintaining a financially viable mix of clients and practice areas so that the loss of either a single client or a particular type of business won't spell the end of the firm. If you don't like learning new things, solo practice probably is not for you.

Can you multi-task?

One of the best things about being a solo practitioner is that you don't have to consult anyone before making decisions. One of the worst things about being a solo practitioner is that you don't have to consult anyone before making a decision. There is no one else with whom to consult. And in solo practice the decisions often come fast and furious as you try to deal with practice management and financial issues while also keeping your caseload on track and resolving conflicts that require you to be in two or more places at one time.

Successful solos are able to devise systems that can help them keep it all straight. They are willing to take the time to stay until what has to be done today has been done, and then stay a little longer to create a priorities list for tomorrow, because they know the day will get ahead of them if they don't grab it by the neck first.

Are you good with your hands?

I'm sure you're wondering what this has to do with practicing law.

I've met, and even practiced with a few, lawyers who were brilliant in court but couldn't change a light bulb. The truth is, you don't have to be handy, but you do have to be willing to take responsibility for your office if you hang a shingle. Solo lawyers are their own chief cooks and bottle-washers. They are responsible for every maintenance issue that arises in their offices, and these issues often get in the way of doing the work that pays the bills. You can, and probably should, delegate most of that work to others, but, ultimately, you still have to be responsible for finding those people, monitoring their work and paying the bills, and for doing it yourself if they don't show up as planned.

If you don't like learning new things, solo practice probably is not for you.

Has your family bought in?

There is nothing more difficult and time consuming than starting a solo practice. Even if you bring with you knowledge of good management systems, you must build a solo practice from scratch, and you have to be prepared to put in the time to do it right. This often means long days and nights away from your family.

Successful solo lawyers have discussed with their loved ones the realities of starting a practice. They've been honest about the time and financial commitment needed, and the fact that often a solo practice may not generate income for a year or more.

Do you know what you want out of life? What about what your spouse wants? Are you on the same page when it comes to

values and aspirations? Have you come to an agreement about issues of child care, money and time away from home? And, because solos have no one else to depend on in the event of an accident or illness, are you willing to budget and save for a rainy day, even though it may mean doing with less now, just in case?

Going solo can be one of the most rewarding and satisfying ways to practice law. You're in command of your own ship and your own life, and when you turn out the lights at the end of the day, you know that you alone deserve the credit for all you've accomplished. Solo practice offers a new lawyer unrivaled opportunities for immediate learning and enhanced client contact, but it also holds the dangers of financial problems, overwork and loneliness. Before heading down the road alone, consider thoughtfully and plan well. ▲▲▲



Laura A. Calloway is director of the Alabama State Bar Practice Management Assistance Program. Before joining the state bar staff in 1997, she practiced law in Montgomery for 16 years as a solo practitioner and a member of two small firms, concentrating her practice in residential real estate, collections, consumer bankruptcy and family law. She is a member of the American Bar Association, where she participates in the Law Practice Management Section, and has served on the section's governing council since September 2006. She was also a member of the planning board of ABA TECHSHOW® 2006, 2007 and 2008, and served as chair of ABA TECHSHOW 2009. In September 2009, she was inducted into the College of Law Practice Management. She (sporadically) blogs at *The Last Word* (<http://asblastword.wordpress.com/>) on issues of interest to the members of the Alabama State Bar, and you may follow her on Twitter at <http://twitter.com/LCalloway>.

Best Resources for Starting A New Practice from the PMAP

By **Laura A. Calloway**

Alabama State Bar Practice Management Assistance Program

The Alabama State Bar's Practice Management Assistance Program (PMAP) is designed to act as a clearinghouse for information on the four major areas of modern law practice operations: finance, management, marketing and technology. We can help point you to resources that will be useful as you make the decision or move forward with opening a new law practice.

One of the major ways that the PMAP delivers information is through a free checkout library. The following books and materials are especially useful to lawyers who are thinking about starting a new firm.

Featured Books and Materials for New Start-ups

***The Lawyer's Guide to Creating a Business Plan: A Step-by-Step Software Package—2008 Edition* by Linda Pinson (ABA—2008)**

Automate Your Business Plan has been used for years by thousands in the business world to generate comprehensive, effective business plans. Now, Linda Pinson has revised and adapted this award-winning software specifically for lawyers. It's a complete, easy-to-use Windows®-based software package that will help you research and write a winning business plan for a new or existing law firm. The step-by-step, stand-alone program assumes you know nothing about writing a business plan. Create your entire plan while the program sets up and formulates all your financial spreadsheets and does all your calculations for you. The end result is a professional business plan that will be easily digested by potential partners and investors. Also included with the software, in PDF format, is *Anatomy of a Business Plan*, an award-winning book that has helped over one million new business owners to date.

***The Essential Formbook: Comprehensive Management Tools for Lawyers* by Gary A. Munneke and Anthony E. Davis (ABA—2000)**

This four-volume set contains almost anything you'd like to know about law firm management. Volume 1 contains partnership and organizational agreements and client intake and fee agreements. Volume 2 covers human resources and fees, billing and collection. Volume 3 has information on calendar, docket and file management and law firm financial analysis, and Volume 4 covers disaster planning, risk management and professional liability insurance.

***How to Start and Build a Law Practice, 5th Edition* by Jay Foonberg (ABA—2004)**

This is a revised and updated guide for lawyers who wish to start a new practice or bring purpose and re-impose order on an existing one. This useful work has sections on getting started, getting located, getting equipped, getting clients, setting fees, managing the law office, ethics and professional responsibility, resources and advice, and quality of life.

How to Build and Manage series

***How to Build and Manage an Employment Law Practice* by Mindy Farber (ABA—2007)**

Written in a direct and accessible style, this guide instills 20 years of experience into the essentials that every employment lawyer needs to know. You'll avoid the most common mistakes that plague startup practices, and obtain valuable advice that can help you at every stage of your practice's growth. The book covers practically every situation you may encounter in setting up and maintaining an employment law practice. It contains samples of the most common letters (including demand letters), forms, interrogatories, the EEOC charging document, and other legal documents specific to employment law and starting a practice.

***How to Build and Manage an Entertainment Law Practice* by Gary Greenburg (ABA—2001)**

This one offers practical suggestions on how to get your foot in the door; get properly set up, network and market yourself to prospective clients; keep your clients happy; avoid mistakes; and effectively manage your time. Sample forms such as retainer and fee letters, conflict-of-interest waiver, office and computer configurations and more are included.

***How to Build and Manage an Estates Practice* by Daniel B. Evans (ABA—2008)**

Specifically tailored to the unique needs of the estates and trusts lawyers, this updated second edition focuses on making your practice better. Written as a "book of ideas," you'll find guidance on marketing, effective client communications, fee agreements and ethics, including the updates to the American Bar Association's *Model Rules of Professional Conduct*. The author, a veteran attorney, highlights constructive ways to apply ideas that have worked for him to your own practice.

***How to Build and Manage a Family Law Practice* by Mark A. Chinn (ABA—2006)**

A must-read for any family lawyer, this book helps you understand the specialized skills and knowledge necessary to build and manage a successful and rewarding practice.

This helpful guide, the sixth in the popular "practice building" series, takes a no-nonsense, nuts-and-bolts approach in explaining a variety of issues most critical for developing a thriving practice in family law. You'll benefit from the author's many years of experience as he shares a wealth of tips, techniques, forms and checklists that will shorten the learning curve for lawyers starting out in family law and will enhance the knowledge of those with established legal practices. Gain practical experience, understand the specialized business aspects of the family law practice, develop and maintain the ideal client mix, and manage the law office's staff, cases and finances.

***Flying Solo: A Survival Guide for Solo Lawyers—Fourth Edition* (ABA—2005)**

An updated guide to the problems and issues unique to solo practitioners, this volume contains sections on making the decision to leave, what to do before you open the doors, growing the business and issues in the life of a solo such as vacation, sale, merger, illness, and death. This is a must-read

for solos and small-firm practitioners with lots of practical ideas you can implement today.

Collecting Your Fee: Getting Paid from Intake to Invoice by Edward Poll (ABA-2003)

Just as the title suggests, this book is a concise discussion of all the things you can do, from the first day the client walks into the office until the case is concluded, to ensure complete client satisfaction and put your fee collection woes behind you. Included are suggested fee agreements, letters and other forms on disk.

The Lawyer's Guide to Effective YELLOW PAGES Advertising, Second Edition by Kerry Randall and Andru Johnson (ABA-2005)

Love 'em or hate 'em, Yellow Page ads have become a fact of life for most lawyers in metropolitan areas. As long as you're paying for the thing, make sure your ad is generating the best possible return on your investment. This comprehensive guide will tell you how to design an ad which will reach the clients you want. If you are going to spend your money, you ought to read this book first.

Law Office Procedures Manual for Solos and Small Firms, Third Edition by Demetrios Dimitriou (ABA-2005)

This is a fill-in-the-blank staff manual for solos and small firms which you can custom complete to fit your circumstances. All aspects of operation of a small law office are covered and a CD of forms for creating your own manual are included.

ABA Book Discount

In addition to getting the books above, and others, on checkout, the Alabama State Bar has an arrangement with the American Bar Association through which our members receive a 15 percent discount when they purchase them. Go to www.alabar.org and select Programs and Departments | Practice Management Assistance Program | ABA Bookstore, where you'll find information on how to select and order books. *Don't forget to use discount code PAB5EALB.*

ASB Member Benefits

Casemaker

Casemaker is a free, Internet-based legal research service available to all Alabama State Bar members. In addition to Alabama case law beginning with 1 So.2d, the *Alabama Code*, constitution, rules of court and Administrative Code and regulations, Casemaker also contains a federal database with U.S. Supreme Court cases, case law from the federal circuit and many federal district courts, U.S. Bankruptcy Court opinions, Federal Court rules, the *U.S. Code*, and the *Code of Federal Regulations*. And because Casemaker is the product of a multi-state consortium of bar associations, it also contains cases and statutes from all 50 states. Casemaker is continuously adding information to its databases, so it's a great method for doing legal research and allows many lawyers and firms to do without expensive monthly packages from other research providers. *Contact 334-269-1515, ext. 2242.*

Lawyer Referral Service

Many Alabama citizens need and can afford to pay for the services of a lawyer, but don't know how to locate one. We have the answer—the *Lawyer Referral Service*. The Alabama State Bar Lawyer Referral Service (LRS) can provide you with an excellent means of earning fee-producing work, so it's hard to believe that only three percent of Alabama attorneys participate in this service!

The state bar's LRS was created in 1978. Lawyer Referral Service members are private attorneys who charge their regular rates. Beyond the initial

half-hour consultation fee (maximum of \$50 or at no charge), the fee arrangement is between the lawyer and the client. The fee for state bar members who join the LRS is \$100. Panel members are asked to remit five percent of the legal fees they collect on referrals that reach \$1,000 to \$5,000.

Being a member of the LRS is an ethical and inexpensive method of marketing your practice. Qualified attorneys with malpractice insurance and without an ongoing disciplinary case may choose to list up to 10 areas of legal practice. All referrals are made on a rotating basis, with each sub-panel rotating independently. Since clients select the geographical area they prefer, there may be mini-rotations within the overall rotation for some sub-panels. *Contact 334-269-1515, ext. 2140.*

Insurance

Major Medical: The Alabama State Bar endorses ISI Alabama, a division of Insurance Specialists, Inc. (ISI), as its health plan administrator. Through ISI, members may obtain online quoting for all major non-Blue admitted carriers in Alabama which maintain industry ratings of A- or higher. By quoting online, members may self-structure major medical plans to their individual needs, with rates provided in seconds.

Included among member options is access to a new Association Major Medical Program underwritten through the WORLD Insurance Company. This plan offers two products. Both provide catastrophic coverage, but are offered through different funding models, a co-pay plan and a health savings account (HSA) plan. The WORLD Affinity Advantage Co-Pay Plan permits the insured to adjust premiums by varying deductible and co-pay amounts, choosing in-network or out-of-network care providers and adjusting lifetime and/or annual coverage maximums.

The HSA Plan provides a tax-free method for funding health expenditures. It is based on a high deductible insurance package which varies only in lifetime and/or annual coverage maximums. This model is frequently recommended as a financial planning tool. All ASB Major Medical programs are underwritten, meaning that the availability of the insurance is not guaranteed. However, ISI Alabama, as our health plan administrator, assists all members, regardless of insurability issues, in procuring coverage. Although all of these major medical products are offered as catastrophic coverage, optional wellness coverage may be purchased to assist with routine and preventative care. For more information on these products or about ISI Alabama, *contact 334-269-1515, ext. 2242.*

Term Life, Disability, Business Overhead, etc.: Through its administrator, ISI Alabama, a division of Insurance Specialists, Inc. (ISI), the Alabama State Bar endorses a variety of insurance programs including:

- Disability
- Term Life
- Business Overhead
- Accidental Death and Dismemberment
- Medicare Supplement

These plans offer association-based products through which applicants receive discounted rates as a benefit of membership in the Alabama State Bar. Underwriting and coverage issue is simplified, with programs of the highest quality backed by the leading carriers writing in the nation. These endorsed plans are all available to ASB members, and most are also offered to member spouses, employees and eligible family members. ISI Alabama may be accessed toll-free *for sales at (888) ISI-1959 and for service at (800) 241-7753.*

Auto: The GEICO Auto Insurance Program offers members quality car insurance with complete 24-hour sales, policy and claims service. As an ASB member, you may qualify for an additional member discount off GEICO's already low rates. *Call (800) 368-2734 for a free quote.*

Online Backup

CoreVault™ assures ASB members that their important electronic data will be backed up in a secure, reliable and cost-effective manner through their online services. CoreVault™ also offers tiered storage platforms designed to help larger law firms manage their data and costs effectively on a long-term basis. This service is of particular value to solo and small firm practitioners who do not have a dedicated IT department. To obtain a customized quote, e-mail sales@corevault.net or call (866) 609-4ASB. At the ASB, call (334) 269-1515, ext. 2242.

Retirement and Profit-Sharing Plans

ABA Retirement Funds offers tax-qualified retirement plan services to qualified legal professionals. This includes full-service, cost-effective retirement plans such as 401k and profit-sharing. Corresponding services include plan design, administration and fiduciary oversight. Program eligibility is open to any law firm or practitioner who has at least one partner or shareholder who is a member of the ABA, or a state or local bar association represented in the ABA's House of Delegates. To find out more, go to www.abaretirement.com or call (877) 947-2272.

Ethics Opinions from the Office of General Counsel

A library of formal *ASB Ethics Opinions* is available at www.alabar.org. You can search these opinions by number, year issued, ethical rule, subject matter, or keyword. Formal ethics opinions are issued by the ASB to assist members in interpreting their ethical obligations in specific circumstances. Formal opinions are the result of study and analysis in response to requests from members.

An informal ethics opinion is provided by phone and only to the attorney requesting it. These opinions are not published. Such opinions can help members analyze a situation involving their own prospective conduct, apply the proper rules and reach an ethically sound decision. Calls requesting this kind of opinion are confidential and any advice given is intended for the education of the inquirer and does not represent the official position of the Alabama State Bar. *Contact (334) 269-1515, ext. 2184.*

ABA Member Benefits

The American Bar Association offers a variety of both practice-related and personal member benefits. Practice-related benefits include:

- Payroll processing service
- Rewards credit cards
- Credit card processing services
- Insurance
- Online backup
- Discounts on Toshiba, HP, Dell and Xerox products
- Sprint discounts
- Office Depot discounts

Check out http://www.abanet.org/advantage/?ptc=global_member_resources_advantage to see if it's worth your while to join.

Great Links and What You'll Find There

Business Planning and Management

Alabama's Answers

www.ado.alabama.gov/content/ourservices/small_business/alabama_answers.aspx

This site is the mother lode. A partnership of the Alabama Development Office and the Alabama Small Business Development Consortium, this site hosts four downloadable books that are must-haves for anyone considering starting a small business in Alabama. Although none of them is law firm-specific, they all contain information that will help you in planning your own practice as well as advising small-business clients.

Alabama Answers: This guide is intended to provide basic, introductory information to individuals who are considering starting a business in this state. It is organized into five major sections:

1. How to Start a Business in Alabama
2. Start-Up Guidelines
3. Guide to Business Taxes
4. Small Business Assistance
5. Small Business Financing

Sample forms, a feasibility checklist and a readiness checklist are included.

Alabama/SBA Small Business Resource: Included here is information on offerings from the Small Business Administration for starting or expanding a small business. One of the resources is a list of the various Small Business Development centers, often located at a college or university, around the state. Major topics include:

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- Getting Started
- Financing Your Business
- Ideas for Growing Companies

Starting a New Business: This publication brings together information about the different state and local taxes to which a business in Alabama may be subject. While sales and use taxes do not generally apply to law firms, there's good information on individual estimates and withholding taxes, the tax treatment of various business entities and electronically transmitting returns and payments.

Starting and Operating a Business in Alabama by Michael D. Jenkins: This is the book I've been looking for since I joined the Alabama State Bar staff 12 years ago. In addition to providing good information on making the decision to go into business, it contains the best discussion of various business entities available to businesses in Alabama, and which one may be right for your new law practice. Sections are:

1. Starting Your Business
2. Operating Your Business
3. Money and Tax Matters
4. Information and Resources
5. The Alabama Chapter

There's also a start-up checklist and a business plan outline.

Small Business Administration

<http://www.sba.gov/localresources/district/al/index.html>

This site is also a great collection of resources for lawyers who are thinking about starting a new practice. Here's some of what it offers:

SBA Free Online Training: These self-paced training courses cover almost any small-business issue in which you might be interested. The following will be of particular interest to lawyers:

- Small Business Primer: Guide to Starting a Business
- How to Prepare a Business Plan
- Technology 101: A Small Business Guide
- Crime Prevention: A Guide for Small Businesses
- Finance Primer: Guide to SBA's Loan Guaranty Program
- How to Prepare a Loan Package
- Introduction to Accounting
- Marketing 101: Guide to Winning Customers
- Conduct a Marketing Analysis
- Strategic Planning & Execution

SCORE® Counselors to America's Small Business

www.score.org

SCORE is a volunteer organization composed of retired business executives and offers free and confidential counseling and mentoring for small businesses. These professionals can help with business planning, budgeting, setting up a proper accounting system and more.

The Birmingham office is located at:

SCORE Birmingham
Regional Planning Commission of Greater Birmingham
1731 1st Avenue, N., Suite 200
Birmingham, AL 35203
(205) 264-8425

The website offers in-person and online mentoring, online workshops and links to articles and business templates, including sample business plans, bank loan request letters, breakeven analysis, financial forecasting, and profit-and-loss projections, among other things.

Law Practice Today—Suddenly Solo

<http://www.abanet.org/lpm/lpt/archives/july09.shtml>

This recent issue of the ABA Law Practice Management Section's webzine offers great short articles for lawyers who suddenly find themselves in solo practice for whatever reason. They're packed full of quick tips and suggestions for how you can turn lemons into lemonade. Topics include:

- 50 Web Resources for the Suddenly Solo Lawyer
- The Unavoidable Details of Employing Staff
- A Googled, Webbed, Less Papered, Freebie-Based Law Practice
- Twenty Strategies in a Slowdown
- The Key to Success: Preparing a Business Plan and a Budget
- Fast Tips for Marketing when Suddenly Solo

A great article by Erik Mazzone from an earlier issue of **LPT** is "How Much Money Do You Need to Start a Law Firm?"

<http://www.abanet.org/lpm/lpt/articles/ftr05094.shtml>

Software Training

MS Office 2003 and 2007

<http://office.microsoft.com/en-us/training/default.aspx>

The Microsoft Office Online website features free, self-paced online tutorials for all its products.

Individual Software

www.individualsoftware.com

This company offers inexpensive (\$9.95 to \$29.95) training software for office productivity software such as Microsoft Office, Microsoft Operating Systems and Quickbooks.

http://www.individualsoftware.com/software/computer_training/

I've never used it but have been told it's "super simple," so it is probably right for those with almost no computer experience but may be a little too basic for those who are trying to upgrade existing skills. They also offer business planning software.

http://www.individualsoftware.com/software/business_planning/

Again, I don't have any experience with it, but with prices from \$19.95 to \$49.95, it may be worth a try.

Practice-Building CLE Programs

How to Grow Your Law Practice on a Shoestring Budget

<http://www.lawyer meltdown.com/audio-shoestring.html>

Presented by Alison Shields of LegalEase Consulting and Paramjit Mahli of Sun Communications Group, these recorded courses **cannot be approved for CLE in Alabama** because we don't allow home study, but from the testimonials on the website they may be useful to those starting a practice and wanting someone to lead them through the process. You can purchase the whole set or individual sessions. The Premium Package runs \$597 for all eight segments and includes class notes, 101 marketing tips and *Creating Effective Vision and Mission Statements*. I don't have any firsthand knowledge of this material. ▲▼▲



Edge of Glory:

Practical Tips for Young Associates

By Timothy M. Lupinacci

Introduction

The first day a new associate walks into a law firm can be overwhelming. In addition to what often is the first day of “real” work in the attorney’s business career, there are various training, secretarial and other administrative matters to handle. Amidst the onslaught of new information, policies and procedures, and getting involved in work matters, often it is confusing as to what the new associate should focus on first in his or her career development. This article outlines some practical tips for associates to consider as they get their feet under them at a new firm. While none of these tips are fail-safe, they are ideas that have helped other associates succeed.

Let’s Get it Started

It is important at the beginning of your legal career to have your primary focus on learning how to become a lawyer. There will be a lot of pressing items on which to focus your attention, including billing hours, turning around work projects, client development, pro bono, recruiting, and community involvement, all of which are important components of ultimately becoming a well-rounded attorney. However, at the outset, it is critically important to work on how to be a lawyer. This will involve understanding the work that you are doing and becoming good at dealing with such matters. Attention at

this point should be on handling a matter thoroughly as you develop your experience and expertise.

As a corollary during this timeframe, you should also remember that you are a licensed lawyer and not merely a scribe. Law firms hire lawyers who can think, advise and advocate. Shareholders will not always agree with your recommendations or thoughts, but be confident enough to provide them with your recommendations. If you have thoroughly researched and understood a particular problem, go ahead and express your opinion, understanding that the shareholder, with additional years of experience, may have differing views. Typically, however, the shareholder will appreciate your supported reasoning and opinion and can instruct you in how he or she looks at the matter. This will be invaluable training for you. Along these lines, be proactive. If deadlines are approaching in a case, go tell the shareholder on the case. If the deadlines sneak up on everyone, it will make your life the most difficult.

Born this Way

One of the most valuable tools at your disposal in progressing as a lawyer is to watch successful lawyers around you. See how these lawyers interact with opposing counsel, judges, clients, other lawyers in the firm, and staff. Make a determination as to who are the most

successful lawyers in your office and watch how they practice law and how they treat people. Ultimately, you will figure out your own style of how to interact and handle matters; however, you have an invaluable resource to learn from those who have been successful over the years as a model.

In addition, look for examples of good writing that others have done, whether it be a loan document, a pleading or correspondence to a client. Identify some of the key components of these documents and build a form file relevant to the type of practice that you have. Communication is invaluable in the practice of law and learning from effective communicators, both orally and in writing, will be invaluable to you as you progress in your career.

Rolling in the Deep

Make sure you bill all your time. There are times you will think that you are just spinning your wheels and you may feel guilty putting down all your time. Avoid the temptation to reduce your own time before you enter it into your billing system. If you think you spent too much time on something, record how much and then talk to the billing attorney.

Another trap for young lawyers is to figure out how many hours your firm requires of you and then mechanically work each month to “hit” the average. You certainly need to make sure you are diligent and disciplined to meet the firm’s

expectations. However, when I see associates hit the annual billing target exactly on the dot, year in and year out, I wonder whether they are fully engaged in progressing toward ownership of the firm. That is, there are certainly days, weeks and months that will require putting in more than the “average” necessary to beat the number. I recommend developing the work ethic that meets your firm’s expectations, but like any owner of a business, be willing to go the extra mile as necessary.

Irreplaceable

If you end up working on a particular type of transaction or researching and litigating a particular issue of law, and it interests you, become the most informed lawyer in your firm on that type of transaction or matter. Build your expertise now. Seek out opportunities to work on a particular type of case or transaction in several successive matters so that you build confidence in what you are doing (e.g., bankruptcy

preference cases, commercial loan closings, construction lien matters).

Over time, you will develop experience in something that few others can do. It will give you valuable experience, direct client contact and put you before shareholders who will be able to give you more work. The key is to find something you enjoy and become the best at it.

She Works Hard for the Money

Malcolm Gladwell, in his book *Outliers*, talks about people becoming an expert at something after committing 10,000 hours to it. I do not suggest that you work around the clock to get to 10,000 hours of experience, but your expertise and reputation as a lawyer will develop and increase as you work. By way of example, an associate who averages 2,000 hours a year of billable work for five years will have an extra 1,000 hours of experience, learning, client contact and litigation or transactional work than a colleague who works 1,800 billable hours per year. This can be a significant advantage in the progression of your career. Think about all that you have learned and experienced during the past 1,000 hours of work.

Rude Boy

Do not be afraid to ask questions for fear you will be viewed as not knowing everything. Find an experienced colleague of whom to ask questions. This will help you gain insight and learn about the practice of law. When in doubt, a colleague with additional experience can serve as a good sounding board for you. This may be a senior associate or young partner who is invested in you and your success. Occasionally invite this colleague to lunch to talk about questions or issues you are facing. You can take an informal approach and stop by the senior attorney’s office as issues arise.

R-E-S-P-E-C-T

Treat staff as invaluable members of your team. Your legal secretary, paralegal and other support personnel can make or break you early in your career. Treat them with respect and honor and you will develop a loyalty that will carry you to great heights in your practice.

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



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

For further information, contact Kim Martin, staff attorney, Alabama Crime Victims’ Compensation Commission at (334) 290-4420.



Focusing on becoming a responsive, thorough and diligent attorney should be a primary goal of the first few years of practice.

Remember, you are not nearly as important as you think you are (but your secretary and paralegal are important, and they have actually earned it!). The same goes for court personnel and employees of your client. It is supremely important as you build your career and reputation, to approach court personnel and client employees, regardless of their position, years of experience or ability to give you any benefit, with respect. The relationship you build with respect and humility will go a long way to cementing your career and reputation.

Hallelujah, It's Raining Men



Trying to outline a pathway to becoming a rainmaker in your firm may seem overwhelming. One practical step you can take early on to build contacts for future business referrals is to become active in a legal or trade group. It is a valuable tool to choose one or two organizations within your practice area that you are interested in and get involved at some level early in your career. Whether it is the Alabama State Bar, American Bar Association, DRI or local bar, or a trade or industry group, you will benefit on the business development side if you are involved early on and continue to be involved.

You are a professional and are responsible for your own career development. Your firm may provide some help, but you have to take the initiative. The contacts and relationships you build early in your career through the ABA or industry will be excellent referral sources as you grow in your career.

A good way to implement these steps is to prepare an annual written business development plan. My mentor had me do this as a first-year associate when I had no clue how to network or develop business. A few ideas for a business plan: identify a few people that you will take to lunch to discuss the firm; brag on your partners' successes (it is so much easier and credible than bragging on one's own successes); select a bar

program where you can develop your practice and build a network of professional colleagues. A written business plan for the year is critical to building your practice.

Empire State of Mind

Make sure to set aside time in your life to do non-legal things you are passionate about and truly enjoy. The practice of law can become all-consuming if you let it. Make sure to stay grounded in family, community, church/synagogue/mosque, exercise, or other activities. Find avenues to get away from the practice in a meaningful way. Outside activities can reduce stress and will make your work hours more productive in the long run. A career as a lawyer does involve hard work and a lot of stress. It is important to manage these with an outlet that is something you enjoy.

Conclusion

A young attorney has a lot of competing pressures on his or her time and attention. Focusing on becoming a responsive, thorough and diligent attorney should be a primary goal of the first few years of practice. Once you get your feet on the ground, then you can expand your focus and implement some or all of these additional suggestions. These concepts should help you on your path toward developing a successful and thriving law practice.



Timothy M. Lupinacci, managing shareholder of the Birmingham office of Baker, Donelson, Bearman, Caldwell & Berkowitz PC, concentrates his practice in the areas of bankruptcy and restructuring, financial services and transactions, and health law. Lupinacci is Baker Donelson's representative in the CRE Finance Council (formerly CMSA).

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Award recipient **Hon. Joel F. Dubina** (far right), chief judge, U.S. Court of Appeals, Eleventh Circuit, Montgomery, with Andy Pratt, who clerked for Judge Dubina, and Jessica Ash, both of Atlanta

Commissioners' Award



Accepting for **Ken Wallis** of Montgomery are Walter Byars and Rick and Jenifer Wallis, the honoree's son and daughter-in-law

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AMERICAN BAR ASSOCIATION PRO BONO PUBLICO AWARD

Henry A. Callaway, III, a partner with Hand Arendall LLC in Mobile, was selected one of five national recipients of the American Bar Association Pro Bono Publico Award. He is the first Alabama lawyer to receive this award by the Standing Committee on Pro Bono and Public Service. Callaway was recognized for his exceptional leadership and creative legal problem-solving regarding improving the delivery of legal service to Mobile's poor and disadvantaged population. He devoted more than 1,000 hours of volunteer time to serve on the VLP board, and handled 118 lifetime pro bono cases, most of which lay beyond his core expertise and presented challenges, making them difficult to place with other attorneys.



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David Bagwell (**Baldwin County Bar Association**), Jim Lloyd (**Birmingham Bar Association**) and Robert Lockwood (**Huntsville-Madison County Bar**)

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Accepting for **McCallum Methvin & Terrell PC** of Birmingham are Bob Methvin, Jimbo Terrell and Phillip McCallum.

Law Student Award



Accepting on behalf of **Stephen Hudgens** is Dean John Carroll.



Judge Walter P. Gewin CLE Award

Andrew J. Potts accepts the award from Noah Funderburg, director, CLE Alabama.

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WEDNESDAY HIGHLIGHTS



Renowned "legal rebel" Michael Tigar autographs one of his books following a CLE performance of the "Nine Principles of Litigation and Life."



Regular annual meeting attendees former Alabama Supreme Court Chief Justice Perry Hooper, Sr. and wife Marilyn enjoy Family Night Fiesta.



Law practice technology presenters Jack Newton and Stephanie Kimbro check out a demo in the Exhibition Hall.



Was there any doubt that maracas and a sombrero could be way cool?

THURSDAY HIGHLIGHTS



Featured speaker Tom Lyons, III shares a moment with Hope Marshall. In his remarks, Lyons analyzed what the future of the practice of law will look like in the next decade.



By popular demand, Deano Minton was back and busily creating cartoon sketches of children and families. Definitely an annual meeting keepsake!



Baldwin County Bar Association President David Bagwell welcomed and entertained Bench & Bar Luncheon attendees as only he can!



Attending her last annual meeting as Alabama chief justice, Sue Bell Cobb (center) shares a moment with (left to right) Judge Joyce Vance, President Alyce Spruell, Judge Sharon Blackburn and former Supreme Court Justice Janie L. Shores.



Getting in a quick visit before the start of the Women's Section luncheon are Alabama Supreme Court Justice Lyn Stuart, Martha Houston, Penny Davis and Mary Murchison.



A new "draw" for the President's Closing Night Family Celebration was the addition of a horse-drawn carriage and old-fashioned carnival.



Among the many optional events was a cooking demonstration by Grand Hotel Chef Deese Chatwood.



Staff members of ISI Alabama, the bar's insurance member-benefit provider, "became" characters from "TOY STORY 3" and, of course, the children knew exactly who they were. Which one is ISI President Bill Bass?



"Deepwater Horizon: One Year Later" panelists share a lighter moment. Left to right are Greg Hawley, Attorney General Luther Strange, Jeffrey Breit, Rhon Jones, and Cooper Shattuck, Governor Bentley's legal advisor.



President Spruell gets a hug and some encouragement from past President Sam Crosby, who can definitely "feel her pain!"



Commissioner Derrick Mills spent some time with his family at the Build-A-Bear Special Event, choosing a new "best friend."



Fifteen past presidents, legends of Alabama's legal profession, shared breakfast and stories. Attendees included, front row, left to right, Walter Byars, Jim North, Ben Harris, Alva Caine, Phil Adams, Clarence Small, and Broox Holmes. On the back row are Johnny Owens, Wade Baxley, Sam Rumore, Larry Morris, Boots Gale, Sam Crosby, Mark White, and Tom Methvin. Can't wait to see next year's picture and the newest inductee to the "boys club."



Jeanne Rasco of Talladega was the lucky winner of the Grand Prize Getaway sponsored by ISI Alabama, including a week-long retreat and tickets to Disney World. Making the presentation were ISI's Alex Nelson and Bill Bass.



Among those recognized for their many years of service to the legal profession was Robert P. Denniston of Mobile, who has been in practice for 70 years. Presenting a certificate of appreciation from the state bar is Vice President and Commissioner Billy Bedsole.



Fifty-year members were honored for their long-time service to the bar and their communities. In attendance are front row, left to right, Clarence M. Small, George M. Higginbotham, John Earle Chason and Robert A. Beckerle. Back row, left to right, are L. Vastine Stabler, Jr., Robert E. McDonald, Jr., Charles D. Reaves and Judge Patrick E. Higginbotham.



Even accomplished attorneys and bar presidents sometimes have to put up with an older brother.



The Presidential Trifecta includes Immediate Past President Alyce Spruell, President Jim Pratt and President-elect Phillip McCallum.



Getting his term as president off to a great start, Jim Pratt was found at the corner of "Troublemaker Trail" and "King's Court."



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What Tools Are You Missing in Your Marketing Tool Box?

By Renee Avery

You decided to go to law school. You passed the bar. You are now a lawyer. So, what's next?

Sometimes school does not prepare you for the realities of life and business. Like any other profession, being a lawyer means you have to learn a whole barrage of things you didn't pick up in school. Whether you went straight to law school right after college or are older and this is a second career, you have to learn more than just the law. In this struggling economy you have to be adaptive, think outside the box and dig in your heels just to survive.

Young attorneys are facing many adversities. After talking to a couple of new admittees who are also LRS members, though, I believe that if these two are any indication of the future, the legal profession will be fine.

Joseph Fuller hails from Alexander City. He always thought about practicing law, but tried several other jobs before law school. He was a waiter, a bicycle repairman and a sales representative. Fuller added that his retail and service experience have actually proven to be invaluable in his new profession.

His recent hires, **Amy Hampton** and **Michelle Perez**, are also just starting out in the law profession after concentrating on other careers, including teaching and social work.

Areas of specialty the firm handles are diverse: Hampton practices consumer bankruptcy law, Perez works in criminal law and plans on adding immigration law and Fuller concentrates on what he likes to call "threshold law" (a case comes through the door and he practices it).

Their common goal, however, is "to treat people like people, not a case number."

Fuller said they are proactive, not reactive, and explains that he joined the LRS to build up his client base. He has even had two LRS clients who referred him to their family and friends. He believes the Lawyer Referral Service is a valuable and underrated tool offered by the state bar. "It's like having an answering service. Not every call turns into a client, but it doesn't take a lot of time to take the call and just listen."

Cooper Ellenberg hung out his shingle in Tuscaloosa with his partner, **Brett Hamock**. Since then,



Ellenberg



Practicing law in a smaller community such as Alex City, Hampton, Fuller and Perez find handling many different areas of law both necessary and enjoyable.



Experience in other careers before becoming lawyers has been a plus, explained Perez, Fuller and Hampton.

they have had more than their share of adversity as Ellenberg's home and the office were severely damaged in the deadly April tornados. The two have since regrouped and are doing all they can to grow their practice.

Ellenberg says that his father is an attorney in Georgia, so being a lawyer is in his blood. He worked in claims at a major insurance company and then as a project assistant at King & Spalding in Atlanta. Right now, he is working on cases involving criminal defense, family law, juvenile law, wills, and pre-nuptial agreements. He adds that he will gradually be focusing on representing plaintiffs in civil litigation.

Ellenberg knows that for most people hiring a lawyer means they are in a stressful situation, and he and Hamock "take pride in helping those individuals and families resolve their legal issues." The law partners believed that joining the Lawyer Referral Service would provide a great opportunity to grow their client network, and Ellenberg states that "certainly has been the case."

If you are a recent admittee, you have a great tool at your disposal that you may be underutilizing, the state bar's LRS. If you aren't already a member, you're missing an excellent marketing opportunity. Not only do you have the potential to reach a broader potential client base, but also a

chance to do a good service for the public. For the ever-increasing number of fellow citizens who are dealing with the impacts of the current economic crisis, as well as those who live out of state and are simply looking to hire a "local" attorney, often the answer is the LRS. For as little as a \$100 a year, you can have a "live" person versus a recording suggesting you as the potential client's attorney. This year, new admittees receive an even bigger break: your first-year membership fee is waived. You are still required to carry liability insurance, but joining the LRS could offset the cost by potentially helping your practice grow. LRS membership runs from October to September so sign up now.

Thanks go to our 2010-2011 LRS members listed below; without them, over 11,000 people would not have found the attorney they needed.

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Renee Avery joined the Alabama State Bar staff as the Lawyer Referral Service secretary in February 2009.

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—Baz Luhrman



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Ten Basic Rules of Writing For New Lawyers

By Tracy Tuggle Miller

One of the most important skills a lawyer can possess is the ability to write well. Law firms consistently seek new lawyers with exceptional legal research and writing skills. Every day, cases are won or lost based on written briefs and motions submitted to courts. Law firms and judges expect new lawyers to write well upon graduating from law school. If you are not quite there yet, or simply want to improve your legal writing skills, this article is for you.

1. Change your definition of rough draft.

When an attorney gives you an internal deadline that he or she wants to review a document to be filed at a later date, do not submit a draft that is *rough*. Somewhere between college, law school and representing actual clients, the definition of “rough draft” *must change*. Unless you have made other arrangements with your supervising attorney, the draft submitted should be *your very best work*.

Of course, the draft will need input from the supervising attorney before filing with the court, but do not assume a “rough draft” at a law firm equals the “rough draft” submitted for credit in English 101.

Prior to turning in a draft at a law firm, you should make sure you understand what the partner wants so you do not waste time and the client’s money. Before submitting an internal draft, you should have *meticulously* edited and proofread the entire document—not once but several times. Lack of attention to detail is one of the biggest complaints about a young lawyer’s work product. Print the document and review the hard copy to catch formatting and pacing errors not easily detectable on a computer screen. Use a consistent font and typeface throughout the document, or “cut and paste” jobs will be readily apparent. Do not rely completely on spell-check; it will miss words like “statue” when you mean “statute,” or worse, “pubic” policy when you actually mean “public” policy. Correctly spell your client’s

name. Number the pages. Do not expect the partner to correct incorrect grammar, punctuation or other careless errors. Do not tell the partner, “I’ll fix the citations later.” Cite properly before you submit the draft so the partner can check the weight of authority you rely on in the brief. Most importantly, be absolutely certain you understand the law and have applied the law correctly to your case. *Be scrupulously accurate when citing to authority.*

You will make many mistakes during your professional career, especially in the early years. But sloppy, careless errors and inattention to detail will eventually earn you a reputation as a sloppy, careless lawyer. *Follow through on your “follow through.”*

Now, as for the grammar, punctuation and style “basics,” we have tried to simplify the rules as much as possible. However, some lawyers do not know these basic rules (many through no fault of their own), and our goal is to help them become better writers, and in turn, better advocates for their clients.

2. Learn subject verb agreement.

Rule 2.1—Main Rule

The number of the subject must agree with the verb.¹ Use a singular verb with a singular subject and a plural verb with a plural subject.² One of the most common mistakes occurs at the beginning of pleadings and motions with the phrase “comes now.”

Correct:

Comes now the Plaintiff Martin Smith and files this Motion to Compel.

Come now the Defendants Dennis and Mary Martin and file this Motion for Rehearing.

The word “plaintiff” is a singular subject. The word “defendants” is a plural subject. The word “come” is a verb, and it must agree with the subject. If you use “comes now” incorrectly, it can give a judge the impression you have poor grammar skills or did not devote enough time to correct a glaring, careless error. Both are unacceptable in the practice of law.

Interestingly, the modern stylistic trend is to avoid the phrase “comes now” and use plain English.³ Simply begin the pleading “*The Defendants Dennis and Mary Martin submit this Motion...*” or “*The Plaintiff Martin Smith files the following Complaint...*” or some appropriate variation. Thereafter, you should use the names of the parties instead of “plaintiff” and “defendant,”⁴ and be consistent in doing so throughout the document.

Rule 2.2–Singular Subjects

A singular subject remains singular even if other nouns are connected to it by *with*, *as well as*, *in addition to*, *except*, *together with*, and *no less than*.⁵

Correct: *The mayor as well as the committee members is going to jail.*

Incorrect: *The mayor as well as the committee members are going to jail.*

Rule 2.3–Compound sentences with singular subjects

With compound sentences connected by *or*, *nor*, *either...or*, or *neither...nor*, the verb may be singular or plural. When both parts of the sentence are singular, the verb is singular.⁶

Correct:
Pizza or fajitas is a good choice for dinner tonight.
Neither John nor Jacob is going to the dance.

Rule 2.3(a)–Compound sentences with plural subjects

When both subjects are plural, the verb is plural.⁷

Correct:
Dogs or cats are excellent pets.
Either the pigs or the chickens need a bath today.

Rule 2.3(b)–Compound sentences with singular and plural subjects

When one part of the sentence is singular and the other is plural, the verb agrees with the subject closer to it.⁸

Correct:
Neither the cake nor the decorations cost more than \$20.
Neither the decorations nor the cake costs more than \$20.

Rule 2.4–Collective nouns

A collective noun names a group of people or things. Because collective nouns describe a group that is considered a single unit, they usually take singular verbs.⁹

Correct:
The court hears oral argument every other Thursday.
The company manufactures piston engines.
The group meets every other Tuesday.

3. Learn how to make a word possessive.

The possessive form of a word shows ownership or possession. Apostrophes indicate the possessive forms of nouns, as in

the *plaintiff's motion* (singular possessive), or the *defendants' answer* (plural possessive).

Rule 3.1–Singular possessives

Form the singular possessive of a noun by adding an apostrophe plus an “s” (’s).¹⁰ **Follow this rule even if the final consonant ends in “s.”**¹¹ This is one of the most misused rules in writing; yet it is one of the most basic.¹²

Correct: *Burns’s Motion to Compel* (one Burns = singular subject)

Incorrect: *Burns’ Motion to Compel*

Correct: *Adkins’s Motion to Strike* (single company = singular subject)

Incorrect: *Adkins’ Motion to Strike*

If you feel compelled to place an apostrophe at the end of a word ending in the letter “s,” stop and think for a moment. Consider whether the word is singular or plural. If the word is singular (and one company, court, or business is singular) the correct rule is to add an apostrophe plus an “s.”

Rule 3.2–Plural possessives

Form the plural possessive of a noun in two steps. First, make the noun plural, and then make the plural noun possessive by adding “s” plus an apostrophe (s’). Likewise, **follow this rule even if the final consonant of the plural noun ends in “s.”**

Correct: *The Jameses’ lawsuit* (indicating the lawsuit of two or more members of the James family)

Incorrect: *The James’ lawsuit*

Correct: *The Millers’ home* (plural possessive indicating the home of two or more of the Millers)

James Miller’s home (singular possessive)

Rule 3.3–“Grocer’s Apostrophe”

Additionally, avoid the common but “gross” error of using an apostrophe to form the plural of a word.¹³ “The colloquial term *grocer’s apostrophe* refers to the frequency of this error in shop signs.”¹⁴ For example, write *cheeseburgers—\$1.49* instead of *cheeseburger’s—\$1.49*. When you need to make a singular word plural, simply add an “s” or “es” as necessary. There is no need to add an apostrophe.

4. Learn to use commas correctly.

Rule 4.1–Excessive Commas

The comma is the most troublesome punctuation mark for many writers. In the first years of practice, new lawyers sometimes draft long, complex sentences in order to “sound smart” and “write like a lawyer.” Some lawyers believe sticking several commas in the sentence will instantly make the sentence clear to the reader. Not so. The overuse of commas interrupts the flow of writing and causes the reader to pause excessively and abruptly—like a teenager repeatedly tapping on the brakes of a car when first learning to drive. Try to avoid this practice for the reader’s sake.

Tip: Read unusually long sentences aloud. If you have to take a breath before the sentence is finished, it is too long. Adding more commas will not save the sentence. Either re-write the sentence to a length of approximately 20 words,¹⁵ or break the thoughts into two or more sentences. Adding commas is rarely the answer.

Rule 4.2–The Serial Comma

In a series of three or more terms with a single conjunction, place a comma before the last “and.”¹⁶

Clear: *The plaintiff claims negligence, fraud, and suppression in the complaint.*

Not as clear: *The plaintiff claims negligence, fraud and suppression in the complaint.*

Some writers treat the serial commas as optional, including professional writers such as journalists.¹⁷ However, legal writing experts agree that the serial comma should be used in legal writing.¹⁸ Bryan Garner, author of *BLACK’S LAW DICTIONARY* and a host of other well-respected books on legal writing, says: “[t]he serial comma is never incorrect, but omitting it sometimes results in awkwardness, a miscue, or even ambiguity.”¹⁹

Example:

Mr. Smith wants his property divided equally between the following relatives: Michael Thompson, Shannon Berry, David Bonds and Julie Bonds.

Should the property be divided three or four ways? Assume David and Julie are married. Did Mr. Smith intend for the couple to get one-third of the property, or did he intend for each of them to receive a one-fourth share?

Adding a comma before the final “and” tells the reader the property should be divided four ways. Adding another “and” before David Bonds indicates the property should be divided three ways and David and Julie Bonds, as a couple, should receive a one-third share.

Because clarity is necessary for effective legal writing, one can see how dramatic the omission of a serial comma could be. Thus, in legal writing, use the serial comma.

Rule 4.3–A Date with a Comma

Some lawyers frequently misuse commas where dates are involved. Do not use a comma in the month-year format. The correct form is July 2011, with no comma between July and 2011.²⁰ The month wants to be on a “date” with the year alone, not with the third-wheel comma hanging out between them.²¹

Correct:

In a certificate of service, no comma is necessary when writing: *“this the 10th day of November 2011.”*

I need a copy of the August 2011 e-mail.

Unfortunately, the trial will continue through November 2011 and long into December.

In a full, American-style date written in the month-day-year format, place a comma between the day and the year.²² Also, unless the date is being used as an adjective, place a comma after the year if the sentence continues.

Correct:

Please submit a draft of the brief by May 6, 2011, with the appropriate evidentiary exhibits.

The August 13, 2011 correspondence indicated your client is willing to mediate this matter. My client is available on September 30, 2011, or October 5, 2011.

5. Learn proper capitalization.

There are several rules regarding capitalization,²³ but a few words are more problematic for legal writers than others. As a general rule, “capitalize a word used to name someone or something specific; use lowercase when the same word is used as a general reference.”²⁴ Use this quick reference guide for assistance.²⁵

Word	Rule	Example
“Act”	Capitalize the word “act” when it is part of a full title. “Act” is also capitalized when it is used as the short form of a proper name.	<ul style="list-style-type: none"> the Clean Air Act the Act (referring to the Clean Air Act) an act passed by the legislature
“Circuit”	Capitalize “circuit” when it is used as part of a full title or with a circuit number. Use lowercase when	<ul style="list-style-type: none"> “circuit” is part of a general reference. United States Court of Appeals for the Eleventh Circuit the Eleventh Circuit circuit courts
“Code”	Capitalize “code” when it is part of a full title or when it refers to a specific code. Use lowercase for all general references.	<ul style="list-style-type: none"> The United States Internal Revenue Code <i>United States Code</i> the tax code state codes unofficial code
“Constitution”	Capitalize “constitution” when used as part of the full title of any constitution or when used as a short form reference to the United States Constitution. Do not capitalize the adjective “constitutional” unless it is part of a title.	<ul style="list-style-type: none"> The United States Constitution the Constitution (short for United States Constitution) a new state constitution a constitutional issue
“Court”	Capitalize the official and full names of all courts. Always capitalize “court” when referring to the United States Supreme Court—even short form references. Capitalize “court” in a document when referring to the court that will receive that document. ²⁶	<ul style="list-style-type: none"> United States Supreme Court The Supreme Court The Court (referring to the Supreme Court) Alabama Supreme Court Jefferson County Circuit Court In a brief submitted to a court write: This Court should dismiss the claims with prejudice.²⁷
“Federal”	The word “federal” is capitalized only when it is part of a specific name or when the word it modifies is capitalized.	<ul style="list-style-type: none"> Federal Bureau of Investigation Federal Deposit Insurance Corporation federal government federal agents federal court
“Statute”	Use lowercase for “statute” unless it is part of a title.	<ul style="list-style-type: none"> federal statutes state statutes statute of limitations
“The”	In names and titles, capitalize “the” only if it is part of an official name.	<ul style="list-style-type: none"> <i>The Bluebook</i> the United States Supreme Court

6. Avoid writing in the passive voice.

If your law partner tells you to stop writing in the passive voice, you must first recognize it before you can correct the problem. Alternatively, you might have been told you are “too wordy.” Writing in the passive voice may be the culprit.

Many people confuse passive voice and past tense. “Voice” has to do with the “who,” while “tense” has to do with the “when.” Past tense is perfectly acceptable in legal writing. In fact, most of your client’s facts likely occurred in the past. “Voice,” however, means the relationship of the subject to the action expressed in the verb.²⁸ Two “voices” are available in writing: the active and the passive. Readers prefer the active voice over the passive because it is more concise and allows readers to process information more quickly.²⁹ The active voice lets the readers know who did what to whom, in that order. Look at the following example:

Active Voice	Passive Voice
The judge overruled the objection.	The objection was overruled by the judge.
Tells who did what to whom	The subject of the action is having the action of the verb done to it.
Uses a crisp, vigorous verb. Not “watered down” by the word “was”	The subject “objection” is not doing the overruling; rather the verb “was overruled” is being done to the subject.
Writers can usually rephrase most sentences into active voice unless the writer does not want the actor (in this case, the judge) revealed.	In the passive voice, the person or thing doing the verb is either mentioned in a prepositional phrase “by the judge,” or not at all: The objection was overruled.

Examples:

Passive: *The complaint was dismissed with prejudice by the court.*

Active: *The court dismissed the complaint with prejudice.*

Passive: *Brown’s motion for summary judgment should be denied by the court.*

Active: *The court should deny Brown’s motion for summary judgment.*

Passive: *Testimony was heard from the plaintiff on the third day of trial.*

Active: *The plaintiff testified on the third day of trial.*

Spotting the passive voice is usually a writer’s biggest challenge; “[l]ess than 50 percent of lawyers can do it consistently.”³⁰ Thus, all lawyers can benefit from the passive-voice test:

Passive Voice Test

Look for a be-verb + Followed by a past participle = Passive Voice (usually a verb ending in *-ed*)

is	adjourned
are	taxed
was	overruled
were	dismissed
be	overruled
being	dismissed
been	approved

7. Make clear what “it” is.

The word “it” and other indefinite pronouns such as “this” can cause considerable confusion in legal writing. Indefinite pronouns can lead the reader astray, and create doubt where the reader needs certainty. The reader should be able to quickly ascertain what “it” actually is. A writer generally cannot attain a high level of clarity by beginning a sentence with “it.”

Unclear: *It is undisputed that the defendant struck the plaintiff’s car.*

What does “it” refer to here?

Better: *The undisputed evidence indicates the defendant struck the plaintiff’s car.*

Unclear: *It was on January 11, 2011 that the statute of limitations began to run.*

What does “it” refer to here?

Better: *The statute of limitations began to run on January 11, 2011.*

Unclear: *It is clear that the defendant acted with wanton disregard for the plaintiff’s safety.*

What does “it” refer to here?

Better: *The evidence demonstrates the defendant acted with wanton disregard for the plaintiff’s safety.*³¹

Tip: Circle every “it” in the document. Ask yourself whether the noun “it” references is easily and unambiguously identifiable. For example: *The court held the plaintiff in contempt; it also imposed sanctions on the attorneys.* In the preceding example, the reader easily understands “it” refers back to the court.

Also, be sure to use the correct form of “it” when writing. “It’s” means “it is” or “it has.” “Its” is the possessive form of “it.” You should rarely use “it’s” in legal writing because contractions are too informal for professional legal documents.³²

8. Avoid legalese and jargon.

Writing in plain, straightforward English is one of the goals in legal writing. Legalese and jargon are words used almost exclusively by lawyers in place of plain-English words that convey the same thought. Legalese and jargon add nothing “but a phony air

of expertise.”³³ Instead, use the “simplest, most straightforward words available.”³⁴ Doing so will increase the clarity of your legal arguments, and in turn the persuasiveness of your brief.

Instead of:

the instant case
such
pursuant to
notwithstanding
along the lines of
in accordance with
in light of the fact that
in spite of the fact that
notwithstanding the fact that
aforementioned
aforesaid
said (adj.)

Write:

this case; here
this; that
under
despite
like; such as
under; according to
because; since
although; though
although
this; that; named earlier
this; that; named earlier
the; this; that

9. Learn to love topic sentences.

Persuasive briefs and motions contain well-written topic sentences. Often, a bad brief can become *remarkably* better simply with the inclusion of good topic sentences at the beginning of each paragraph. A clear topic sentence “announces what the paragraph is about” while the other sentences in the paragraph merely “play supporting roles.”³⁵ Topic sentences are critical in legal writing because the reader, usually a supervising attorney or a judge, wants you to have a point and get to the point immediately. The reader of a legal brief should be able to flip through the pages, and by reading the topic sentence of each paragraph, have a good grasp of the issues and arguments.

Bad ways to begin topic sentences:

The next thing I am going to talk about is....
The second prong of the four prong test is....
Another case that discusses breach of contract is Walston v.

Winston....
In Smith v. Jones....

None of the preceding examples is a good way to begin topic sentences in a persuasive brief. The first should be self-evident. The second makes the judge refer to other parts of the brief, and the writing style lacks a professional tone. The third does nothing more than mention a case name and tells the judge the court “discussed” breach of contract. Here, the judge says, “So what?” Your job as an advocate is to make the judge’s job easy, not to make the judge figure out why *Walston v. Winston* matters to your case.

Likewise, the last example is frequently used as a topic sentence in legal writing, but is not the best way to begin a paragraph.³⁶ If you must discuss the facts, reasoning and holding of *Smith v. Jones*, **first tell the judge why the case is important in the topic**

sentence. New lawyers tend to avoid making a point or a conclusion about a case until the end of the paragraph, after explaining all the facts. However, if the judge knows why the case is important first, in the topic sentence, then the facts, holding and rationale automatically have more meaning. The paragraph is easier for the judge to comprehend. Comprehension is a prerequisite to persuasion. Good legal writing is not a suspense novel; make the point of the paragraph immediately clear in the topic sentence.

Examples:

Weak:

The following discussion of Smith v. Jones is helpful to the resolution of this breach of warranty case.... [This sentence is a signal to the judge that you are not going to get to the point any time soon.]

Weak:

In Smith v. Jones, the plaintiff filed suit against the defendant for breach of warranty. 999 So. 2d 999 (Ala. 1990). In Smith, the plaintiff purchased a new automobile from the defendant in 1988. Id. According to the plaintiff, the defendant said the car was in “perfect running order” and was “the best car on the lot.” Id. [etc.]. [This is an acceptable recitation of the facts of a case, but the judge still does not know *why* the case is important to the resolution of your case.]

In a paragraph where you wish to discuss a case in detail, begin the paragraph with a topic sentence that tells the judge why the case is important to the disposition of your case.

Stronger:

Statements of opinion by a seller amounting to “sales talk” or “puffery” do not create express warranties. Smith v. Jones, 999 So. 2d 999 (Ala. 1990). For example, a car salesman’s statement that a car was in “perfect running order” and was “the best car on the lot” did not create an express warranty because the evidence indicated the statements were made to get a higher price on the car. Id. at 1000. In Smith, the plaintiff purchased a new automobile from the defendant car salesman in 1988. Id. The plaintiff and defendant had several hours of discussion before the plaintiff decided to purchase the car. Id. The plaintiff finally agreed to purchase the car after the defendant assured the plaintiff the car was “in perfect running order” and “was the best car on the lot.” Id. Two months after the purchase, the plaintiff had major problems with the transmission and filed suit against the defendant. Smith, 999 So. 2d at 1001. The Alabama Supreme Court dismissed the plaintiff’s case on summary judgment. The court said the statements were sales talk and puffery, and could not have created a warranty on which the plaintiff could have reasonably relied. [Then move on to legal analysis of your case.]

Thus, to draft an effective topic sentence, you must do your homework. You must have a good understanding of the cases to ascertain what the holdings are and why the rationale is helpful to the resolution of your case.

Tip: Trouble drafting topic sentences? Draft the paragraph as you normally would. You will likely find a satisfactory topic sentence toward the end of the paragraph where a conclusion is made. Take the “conclusion” sentence and move it to the beginning of the paragraph. Edit and revise the new topic sentence and the remainder of the paragraph accordingly. The new topic sentence should not be repeated verbatim at the end of the paragraph. A new ending to the paragraph should be incorporated.

10. Appreciate the difference between business and personal e-mail.

The last “rule” should be more common sense than a rule. The problem is prevalent enough that it warrants mentioning, though. New lawyers should not confuse personal e-mail with business e-mail etiquette. Follow these rules when communicating by e-mail with a supervising attorney, or in a business setting generally:

Draft short, clear questions to the law partner.

Provide short, clear answers in response to questions.

Do not include all the fluff—“I know you are so busy and I feel bad for asking your opinion on this, but I really would feel better if you looked at this and gave me your input on whether our client can...” Just ask the question.

Do not be offended by short responses from your partner. Do not take short responses personally.

Do not *ever* use emoticons. Emoticons are not appropriate in a business setting.

Correct: I will not be able to attend the docket call on Wednesday.

Incorrect: I will not be able to attend the docket call on Wednesday. ☹



Endnotes

1. Garner, THE REDBOOK, *supra*, at 160-62.
2. *Id.*
3. *See id.* at 192.
4. Garner, THE REDBOOK, *supra*, at 62.
5. Anne Enquist & Laurel Currie Oates, JUST WRITING 184 (3rd ed. 2009).
6. *Id.* at 184-185.
7. *Id.* at 185.
8. *Id.* at 184-185.
9. *Id.* at 187.
10. Strunk & White, *supra*, at Rule 1.
11. *Id.*
12. *Id.*
13. Garner, THE REDBOOK, *supra*, at 110.
14. *Id.*
15. Garner, PLAIN ENGLISH, *supra*, at 19. Certainly, sentence length should vary, but strive to “keep your average sentence length to about 20 words. The length of your sentences will determine the readability of your writing as much as any other quality.” *Id.*
16. Strunk & White, *supra*, at Rule 2.
17. Enquist & Oates, JUST WRITING, *supra*, at 224-226.
18. *Id.*; *see also* Garner, THE REDBOOK, *supra*, at 4.
19. Garner, THE REDBOOK, *supra*, at 3-4.
20. Garner, THE REDBOOK, *supra*, at 10.
21. *Id.*
22. *Id.*
23. *See e.g.*, Garner, THE REDBOOK, *supra*, at 53-68.
24. Laurel Currie Oates & Anne Enquist, THE LEGAL WRITING HANDBOOK 701-705 (5th ed. 2010).
25. *Id.*
26. Some legal writing authorities advise that “court” should not be capitalized when referring to a city or county court: “Despite the agreement among the authorities about not capitalizing ‘court’ if it is part of the name of a city or county court, most practitioners seem to ignore the rule and capitalize ‘court’ in such instances.” Oates & Enquist, THE LEGAL WRITING HANDBOOK, *supra*, at 703. I agree with the practitioners; court should be capitalized in these circumstances. *See also* THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION, Rule B7.3.1, at 22 (Columbia Law Review Ass’n et al. eds., 19th ed. 2010).
27. THE BLUEBOOK, *supra*, at Rule B7.3.1, at 22.
28. Enquist & Oates, JUST WRITING, *supra*, 69-70.
29. *Id.*, at 70-71.
30. Garner, PLAIN ENGLISH, *supra*, at 25.
31. Cite to evidence instead of telling the court something is “clear.”
32. *See, e.g.* Enquist & Oates, JUST WRITING, *supra*, at 108-09
33. Antonin Scalia & Bryan A. Garner, MAKING YOUR CASE: THE ART OF PERSUADING JUDGES Rule 44, at 113 (2008).
34. *Id.* Rule 44, at 119; Garner, THE REDBOOK, *supra*, at 183-191.
35. Bryan A. Garner, THE WINNING BRIEF: 100 TIPS FOR PERSUASIVE BRIEFING IN TRIAL AND APPELLATE COURTS 116 (2nd ed. 2004).
36. Unless the writer has provided the appropriate set-up in the preceding paragraph.



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J. ANTHONY MCLAIN

Billing Client for Attorney's Fees, Costs and Other Expenses

The Disciplinary Commission, in RO-94-02, addressed the issues surrounding a lawyer's billing a client for attorney's fees, costs and other expenses incurred during the representation of the client. Basically, the Disciplinary Commission's opinion adopted ABA Formal Opinion 93-379.

The instant opinion reaffirms the Disciplinary Commission's adoption of and adherence to that referenced formal opinion of the ABA.

DISCUSSION:

One of the primary factors considered by a client when retaining a lawyer is the fee to be paid by the client for the lawyer's providing legal representation to the client. Incidental to the lawyer's fee, for which the client will be responsible, are those expenses and costs incurred by the lawyer during the representation of the client.

Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation. Inherent in this initial consultation with a client would be some discussion of the fee to be charged by the lawyer, and possibly reimbursement to the lawyer for expenses he or she incurs during the representation of the client.

In those situations where there is no pre-existing lawyer-client relationship, Rule 1.5(b), *Alabama Rules of Professional Conduct*, encourages the lawyer to communicate to the client, preferably in writing, the basis or rate of the fee to be charged by the lawyer for representing the client. The rule suggests that this communication occur "before or within a reasonable time after commencing the representation." *A.R.P.C.*, 1.5(b)

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The Comment to Rule 1.5 encourages that "... an understanding as to the fee should be promptly established." The lawyer is also given an opportunity at the outset of representation to fully discuss and address any concerns which the client may have concerning the total fee, which would obviously include costs and expenses to be reimbursed to the lawyer by the client. Additionally, Rule 1.5(c) states:

"Rule 1.5 Fees

(c) ... A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses are to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated."

* * *

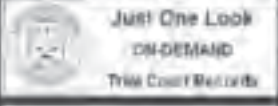
Rule 1.5(a), *A.R.P.C.*, also prohibits a lawyer from entering into an agreement for, or charging, or collecting a clearly excessive fee. In the past, the Disciplinary Commission has reviewed allegations of clearly excessive fees in the disciplinary process. Due consideration is given, in addressing those type of complaints and fee disputes, to the total fee to be charged to the client by the lawyer, which would necessarily include reimbursed costs and expenses.

For that reason, the lawyer should, when assessing the reasonableness of the fee, take into consideration not only the basic attorney fee, but the total amount to be paid by the client, including costs and expenses reimbursed to the lawyer. The primary focus of the assessment should be to determine whether the total charges to the client are reasonable.

The basic costs or expenses incurred by the lawyer in

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representing the client can be broken down into two basis categories: (1) Those costs which are incurred by the lawyer within the firm itself, e.g., photocopying, postage, audio- and videotape creations, and producing of exhibits and the like; and (2) Costs incurred external of the law firm or outsourced by the law firm in further representation of the client, e.g., depositions, production of records from a third party, and travel, lodging and the like.

In ABA Formal Opinion 93-379, charges other than professional fees are broken down into three groups, for discussion: (A-1) General overhead; (B-2) disbursements; and (C-3) in-house provision of services. With regard to overhead, said opinion states:

“In the absence of disclosure to the client in advance of the engagement to the contrary, the client should reasonably expect that the lawyer’s cost in maintaining a library, securing malpractice insurance, renting of office space, purchasing utilities and the like would be subsumed within the charges the lawyer is making for professional services.”

Therefore, that opinion does not consider overhead as an expense which is to be passed along to the client independent of the basic fee for professional legal services.

With regard to disbursements (B-2) above, the opinion points out that it would be improper “... if the lawyer assessed a surcharge on these disbursements over and above the amount actually incurred unless the lawyer herself incurred additional expenses beyond the actual cost of the disbursement item.” This would include, but not be limited to, litigation expenses such as jury consultants, mock trials, focus groups and the like. The opinion also points out that if a lawyer receives any type of discounted rate or benefit points, then those discounted rates or benefit points should be passed along to the client.

With regard to (C-3) above, the opinion states that “... the lawyer is obliged to charge the client no more than the direct cost associated with the service ... plus a reasonable allocation of overhead expenses directly associated with the provision of the service ...”. The obvious reasoning behind this approach is that the lawyer



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OPINIONS OF THE GENERAL COUNSEL Continued from page 415

should not utilize the lawyer-client relationship, beyond the fees for professional services, to “manufacture” a secondary source of income by inflating costs and expenses billed to a client. This approach philosophically agrees with Rule 1.5’s prohibition against clearly excessive fees. Since the basic lawyer’s fee is governed by a “reasonableness” approach, likewise, all fees and expenses which are charged back to a client during the course of the representation should be reasonable, and not considered as a secondary opportunity for a lawyer to generate additional income from the lawyer-client relationship.

In reviewing this aspect of the lawyer-client relationship, it is also necessary to consider possible abuses by lawyers of a lawyer-client relationship with regard to fees charges for the lawyer’s professional services. ABA Formal Opinion 93-379 recognizes two possible scenarios

where a lawyer’s billing practices would contravene the *Rules of Professional Conduct*.

In one situation, the lawyer bills more than one client for the same hours spent. If a lawyer appears on behalf of multiple clients for one docket call, with each client being a separate case file and separate lawyer-client relationship, may the lawyer bill each file for the total number of hours spent at the docket call? The obvious answer to this would be no. Otherwise, the lawyer would be guilty of using a multiplier for his time spent on behalf of a client which not only would be misleading, but, in some instances, rise to the level of fraud. The classic example would be a lawyer appointed to represent indigent defendants in criminal cases. The lawyer receives notices that he has three separate clients on the same morning docket. The lawyer sits and participates throughout the docket which spans some

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two hours. Upon returning to his office, the lawyer then bills each of the client files the two hours expended in court, totaling hours in multiple of the number of client files presented during that docket.

The situation would develop whereby a lawyer would actually be billing more hours than actually expended by the lawyer, which would contravene not only public policy, but also the *Rules of Professional Conduct*.

A second situation involves a lawyer who performs work for one client while engaged in an activity for which he bills another client. The classic example is the lawyer who flies from one city to another for a deposition on behalf of Client A. The time spent by the lawyer in traveling to and conducting the deposition would be billed to Client A.


During the flight, however, the lawyer works on files for Client B. May the lawyer also charge Client B for the same time for which he is billing Client A? Again, the obvious answer would be no. To allow otherwise would constitute double billing by the lawyer for his or her time.

Lastly, there is a possibility that lawyers “recycle” documents and research on behalf of clients. The classic example arises where a lawyer has done a significant amount of research and drafted memoranda, pleadings, or other documents on behalf of a client. The client is billed for this research and these documents.

Later, the lawyer is hired by a new client, but in discussing the case with the new client, the lawyer realizes that he or she may be able to utilize the research and documents created for the predecessor client. May the lawyer now charge the same number of hours billed to the initial client, to this subsequent client, even though the actual time will not be necessary to recreate the research and documents in question? Again, the obvious answer would be no.

The Commission suggests that lawyers review their office practices with regard to fee contracts and letters of engagement to ensure compliance with the above-discussed fee and expense issues. [RO-2005-02] ▲▼▲

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Representative Demetrius Newton recently retired as president of the Alabama Law Institute. During his 10 years of service as president, Representative Newton also served as chair of the Legislative Council and Speaker Pro Tem of the house of representatives. As president of the Alabama Law Institute, the Institute performed unprecedented service to the legislature and the State of Alabama.



Newton

The legislature approved 24 major revisions, including to the Business Entities Code, now a national model; a complete Election Law Revision; and laws to protect senior adults, children and victims of domestic violence.

During his leadership, the Institute staffed 22 house and senate committees with legal analysts. Interns began assisting legislative committees and an office was provided in the State House for committee lawyers and interns.

Representative Newton became personally involved by assuring the Institute's budget was increased to allow the hiring of two more full-time employees (from four to six) and one more half-time employee. This small group of employees regularly managed 10 to 12 drafting committees with 250 volunteer lawyers.

During his leadership, the Institute was recognized as having one of the premier legislative orientation programs in the nation and expanded their training of public officials. Through the extensive use of volunteers, the state has saved millions of dollars in donated legal services to place Alabama in the forefront of other states with up-to-date laws for attracting business, and protecting children and families.

President Cam Ward presided over the annual meeting of the Alabama Law Institute held at the state bar's annual meeting in July. Senator Ben Brooks and Representative Paul DeMarco reviewed the following legislation of interest to the bar:



Ward



Brooks



DeMarco

LEGISLATIVE WRAP-UP

Continued from page 419

Alabama Law Institute Bills

All are effective January 1, 2012 and will be reviewed in the November 2011 *Alabama Lawyer*.

HB 29 (Act 2011-533) Alabama Unsworn Foreign Declarations Act

Bill sponsors: Representative Marcel Black and Senator Cam Ward

HB 28 (Act 2011-532) Alabama Uniform Rule against Perpetuities Act

Bill sponsors: Representative Demetrius Newton and Senator Ben Brooks

SB 53 (Act 2011-683) Alabama Uniform Power of Attorney Act

Bill sponsors: Senators Arthur Orr and Tammy Irons and Representative Bill Poole

SB 54 (Act 2011-295) Alabama Revised Notary Act

Bill sponsors: Senator Tammy Irons and Representative Paul DeMarco

Tort Reform

HB 510 (Act 2011-579) Amends *Ala. Code* § 6-5-332 to apply the **Good Samaritan Law** to any person who, in good faith, renders emergency care at the scene of an accident or emergency to a victim, without charge or compensation

SB 59 (Act 2011-519) Amends *Ala. Code* §§ 6-5-221, 6-5-222, 6-5-225 and 6-5-227, which formally allowed **civil actions against architects, contractors and engineers**, to be commenced within 13 years after the substantial completion of construction. The Act shortens the rule of repose to seven years. Exceptions include: the architect, engineer or builder had actual knowledge of the defect and when the architect, engineer or builder has been the owner or in possession of the property.

SB 90 (Act 2011-685) Provides sheriffs' employees with the same sovereign **immunity as the sheriff** for duties within their line and scope of authority

SB 137 (Act 2011-688) Amends *Ala. Code* §§ 32-17, 20, 22 and 24. In the past, law in Alabama did not allow the Department of Revenue and law enforcement to electronically verify motor vehicle liability insurance or other methods of financial responsibility allowed by law. This Act establishes a pilot program which allows for an **online insurance verification** system on motor vehicles insured under personal and commercial insurance coverage.

SB 184 (Act 2011-627) Alabama Small Business Protection Act: Amends *Ala. Code* §§ 6-5-501 and 6-5-521 to **prohibit products liability lawsuits** against any distributor, wholesaler or seller of a product or any distributor, wholesaler or seller using a product in production or

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delivery of its products or services, unless its actions caused the harm alleged and the distributor is also the manufacturer or assembler of the final product; exercised substantial control over the design, testing, manufacture, or labeling of the product; or altered or modified the product. The section is intended to protect distributors who are merely conduits of a product, and not distributors from independent acts of negligence, wantonness, warranty violations or fraud.

SB 187 (Act 2011-629) Expert Witness Reform: Codifies in outline form the standards for expert testimony enunciated in the 1993 U. S. Supreme Court **Daubert case**. This Act provides that in all civil and criminal actions, if scientific, technical or other specialized knowledge will assist the trier of fact with understanding the evidence, an expert shall be competent if all of the following apply: the testimony is based upon sufficient facts or data, and the testimony is the product of reliable principles and methods reliably to the facts of the case. Alabama courts now follow the *Frye* standard. This standard comes from *Frye v. United States, 293 F. 1013 (D.C. Cir 1923)*, a case discussing the admissibility of polygraph tests as evidence. The Court in *Frye* held that expert testimony must be based on scientific methods that are sufficiently established and accepted. However, *Alabama Rules of Evidence* now follow Federal Rule 702 with respect to the admissibility of expert witness testimony, patterned after the *Daubert* case. This Act resolves the debate as to whether *Frye* should continue as the standard, in favor of Alabama's adopting the *Daubert* test.

SB 207 (Act 2011-511) Post-Judgment Interest: Amends *Ala. Code* § 8-8-10, relating to interest on money judgments other than contract judgments. The Act provides that instead of bearing interest at the rate of 12 percent per year, money judgments other than contract judgments would bear interest at the rate of 7.5 percent per year. The Act applies to all judgments entered after the effective date of the Act.

SB 212 (Act 2011-522) Wrongful Death Venue Reform: Provides that a **wrongful death** action may only be filed in a county where the deceased could have filed a civil action, if living. This Act amends *Ala. Code* § 6-5-410 to provide the venue for a personal representative to bring a wrongful death action. For any cause of action brought by a personal representative, it may be filed only in a county where the deceased could

have commenced an action for the alleged wrongful act, omission or negligence.

Probate

SB 48 (Act 2011-528) In the past, under existing Alabama law, the administration of an estate or a guardianship or conservatorship could only be **removed from the probate court to the circuit court** before a final settlement of an estate. One cannot transfer these actions *back* to probate court from a circuit court. In addition, a trust cannot be transferred from probate court to circuit court. This Act provides for such transfers, when the judge of probate *in the receiving county is required to be learned in the law* by adding sections 12-11-41.1 and 26-2-2.1 to the *Code of Alabama*.

Family

HB 97 (Act 2011-539) Amends *Ala. Code* § 30-3-4.1(e) to provide that a specific **grandparent** cannot file a petition for **visitation** more than once every 24 months, but one grandparent's visitation petition does not preclude a different grandparent from petitioning for visitation within the 24-month period.

HB 108 (Act 2011-541) Provides for the adoption of policies for management of **head injuries in youth sports** and mandates athletic head injury safety training

HB 297 (Act 2011-557) Amends *Ala. Code* § 26-10-20 to provide **subsidy** payments to families for children with **special needs** in cases other than adoption, such as parental relinquishments to the department for child placing agencies. Payments are to be made pursuant to federal law.



LEGISLATIVE WRAP-UP

Continued from page 421

HB 335 (Act 2011-561) Allows a city or county to install **signs on roads** indicating that deaf or blind children live in the area

HB 348 (Act 2011-562) Amends *Ala. Code* § 30-3-4.1. The Act repeals the law which prohibits granting **visitation to a grandparent** where the related parent has given up or lost custody or has financially abandoned the child, unless the grandparent has an established relationship with the child. The new law provides that the court consider whether the grandparent has an established relationship with the child as a factor in determining whether grandparent visitation would be in the best interest of the child.

HB 502 (Act 2011-578) Amends *Ala. Code* § 21-7-4. Currently, a person who is blind or hearing-impaired has the right to be accompanied by a **guide dog** or hearing dog, and interference with that right is a misdemeanor. This law provides that a person with a disability, including a person who is blind, hearing-impaired or autistic, and the animal trainer has the right to be accompanied by a service animal in any public place or conveyance, including a public or private school, and anyone attempting to interfere would be guilty of a misdemeanor.

HB 512 (Act 2011-581) Amends *Ala. Code* §§ 13A-6-130 to -134, relating to **domestic violence** committed against a current or former family member, household member, boyfriend or girlfriend, and adds new domestic violence crimes with a minimum term of imprisonment of 30 days where the defendant violates

a protection order or on a second conviction. A third conviction would be a Class C felony. Convictions in municipal court count as convictions under this section.

SB 211 (Act 2011-691) Amends *Ala. Code* § 13A-6-140 to increase the mandatory term of imprisonment for a person who willfully violates a **domestic violence order** to a minimum of 30 days that cannot be suspended for a second offense, and a minimum of 120 days imprisonment that cannot be suspended for a third offense

Illegal Immigration

HB 56 (Act 2011-535) Concerns enforcement on the state and local levels of **unauthorized illegal immigrants** in Alabama. This will make illegal immigrants felons in some events. It requires verification of immigration status for those who receive public benefits, vote, attend public school, rent property, or employ, transport or otherwise assist aliens. Further, the secretary of state must create a process for county election officers to check whether a voter applicant has American citizenship. Those who violate this law are subject to criminal penalties.

Property

HB 179 (Act 2011-544) Amends the definition of single-family dwellings. In the past, *Ala. Code* § 40-8-1(b)(6) limited the definition to owner's single-family dwellings. Under this Act, the definition is expanded to include a house on a lot under construction and until sold and for a period not exceeding 24 months from the date construction begins. The effect is to expand the **definition of residential property** formerly classified as Class III property that is taxed at 10 percent to include some non-owner single-family lots now classified as Class II property and currently taxed at 20 percent. See *Ala. Code* § 40-8-1(a).

HB 184 (Act 2011-260) Adds Article 18 to Chapter 4 of Title 35 to provide that a private **transfer fee obligation** should not run with the title to property. A private transfer fee obligation recorded *after* the effective date of this act does not run with the title to real property, is not binding on a subsequent owner, is not enforceable at law or in equity and is void and unenforceable.

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Transfer fee obligations made prior to the effective date of this act must contain the following disclosures: the existence of the obligation, the description of the obligation and a statement that such obligations are subject to certain prohibition under this article. If a disclosure is not made, the seller is subject to: all damages, including the actual transfer fee paid, or the difference between the market value of the property if it were not subject to a private transfer obligation and the market value of the property if it is subject to a private transfer obligation, and all attorney fees, expenses and costs. Any language in a contract which seeks to waive the rights of a buyer pursuant to act is void.

SB 20 (Act 2011-618) Amends *Ala. Code* § 11-45-8 relating to **publishing by municipalities of ordinances for planning, zoning or business licensing**. All ordinances of a general or permanent nature shall be published in some newspaper of general circulation in the municipality, but if no such newspaper is published in the municipality, such ordinances may be published by posting a copy of the ordinance in

three public places within the municipality, one of which shall be at the mayor's office.

In towns having a population of less than 2,000 inhabitants as shown by the 1950 federal census, the town shall have the option of publication of the ordinance by posting or in a newspaper.

As an alternative to publishing the entire ordinance, a synopsis of any ordinance relating to planning or zoning or the licensing or franchising of businesses may be published in the newspaper.

In addition, if the municipality maintains a website, the municipality, at a minimum, shall include a copy of the ordinance or notice of the substance of an ordinance on its website for 30 days.

SB 84 (Act 2011-293) Limits **liability of landowners** who lease property for hunting or fishing purposes

SB 158 (Act 2011-689) Allows neighborhood homeowners and businesses to form an **authority in existing neighborhoods** to manage and finance local projects and provides tax credits for assessments paid by the individuals and businesses to the authority

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LEGISLATIVE WRAP-UP

Continued from page 423

SB 316 (Act 2011-700) Amends *Ala. Code* §§ 35-9A-141, -163, -303, -401, -421, -423, and -426, relating to the Alabama **Uniform Residential Landlord and Tenant Act**. The Act provides that the term “day” would mean calendar day, but if the last day falls on a weekend or holiday, the time period would extend to the following business day. Currently, Rule 6 of *ARCP* applies.

The landlord is no longer liable for including unenforceable provisions unless he or she seeks to enforce the provision.

A tenant seeking repairs is deemed to consent to the landlord’s entering the unit to perform the repairs.

It allows a tenant to recover attorney fees for any breach by the landlord of the rental agreement or the Act, rather than only for the bad faith breach by the landlord under the existing law. The Act allows a landlord to recover attorney fees for any breach by the tenant, rather than only for willful noncompliance under existing law.

An intentional misrepresentation of a material fact in a rental application cannot be cured and is grounds for eviction.

The Act also provides that possession or use of illegal drugs, discharge of a firearm or criminal assault (except in self-defense) are non-curable breaches, allowing eviction on seven days’ notice.

It deletes the existing provision that if a landlord fails to make reasonable efforts to rent an abandoned unit or accepts surrender of the unit, the lease would be deemed terminated as of the date of notice of the abandonment. The amendments are effective August 1, 2011.

SB 437 (Act 2011-647) Amends *Ala. Code* § 8-29-3 relating to the payment of **construction contracts** for

improvements to real estate. This provides that the owner who retains funds in a construction contract in an agreement until final completion of all work done shall not withhold more than 10 percent of the estimated work done in the value of goods stored on the site. After 50 percent completion has been accomplished, no further retainage shall be withheld without payment of interest at 1 percent per month. The owner is to release and pay any funds retained no more than 60 days after completion of the contractor’s work as defined in the contract.

SB 506 (Act 2011-710) Amends *Ala. Code* § 40-8-1 to provide that the classification of property for ad valorem tax purposes shall not lose its **classification as residential property for a period of 24 months** because the property is not habitable after being damaged by a natural disaster such as a tornado or hurricane

Crime Bills

HB 51 (Act 2011-534) Amends *Ala. Code* § 13A-6-68 and provides that a third or subsequent conviction for **indecent exposure** is a Class C felony (one to 10 years in prison), rather than a Class A misdemeanor (up to one year in jail) under existing law.

HB 93 (Act 2011-538) Establishes that a **district attorney can appoint investigators** to serve at the pleasure of the district attorney, provided the investigator meets minimum standards for law enforcement officers and holds a current certification from the Alabama Peace Officers’ Standards and Training Commission

HB 106 (Act 2011-612) Amends *Ala. Code* § 22-22A-5 to remove the \$100 minimum penalty and adds a maximum monthly fine of \$25,000 per violation for certain **ADEM violations**. It further limits the assessment of penalties for violations subject to a monthly reporting based on average compliance to not more than once a month.

HB 115 (Act 2011-542) Amends *Ala. Code* § 3-1-29 to provide procedures for **seizing fighting dogs** and requiring the posting of bond by the owner of the dog for the care of the seized dog

HB 219 (Act 2011-550) Amends *Ala. Code* § 13A-6-21 to provide that an assault on a **peace officer**

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employed by a private entity is the same punishment as an assault against a peace officer while on duty.

HB 261 (Act 2011-555) Amends *Ala. Code* § 13A-5-6 to provide that if a defendant is convicted of **first-degree rape**, sodomy or sexual torture (all of which are currently Class A felonies—10 years to life), and the defendant was over 21 years old and the victim was less than six years old at the time of the offense, the defendant will be sentenced to life imprisonment without the possibility of parole

HB 361 (Act 2011-613) Amends § 32-5A-194 to require the installation and operation of an **ignition interlock device** (IID) for persons authorized to drive a motor vehicle after a conviction of driving under the influence. The Act provides for fees and court costs to fund the Alabama Interlock Indigent Fund. The state is indemnified from liability for the operation of the ignition interlock device.

HB 450 (Act 2011-570) Makes it a crime to solicit, persuade, encourage or entice a licensed dealer or private seller of **firearms** to transfer a firearm under

circumstances known to violate state or federal law. It also makes it a crime to deceive a licensed dealer about the legality of a transfer of a firearm.

HB 463 (Act 2011-574) Amends numerous sections in Chapter 15 of Title 36 concerning the **Attorney General's office** relating to the duty of the Attorney General. Makes further provisions for the use of the money the Attorney General collects and retains, as well as allows the Attorney General to carry over funds from a fiscal year; further increases the number of positions the Attorney General may have as assistants

SB 22 (Act 2011-680) Amends *Ala. Code* § 11-45-9 to **re-codify misdemeanor municipal ordinance violations** in one *Code* section. This includes the following:

For general misdemeanor municipal ordinance violations, the maximum fine is \$500 with a maximum sentence of six months.

The maximum penalties for driving while under the influence are \$5,000 fine or one year in jail.

The maximum fine for any person convicted or adjudicated as a youthful offender is \$1,000 for:

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Continued from page 425

Criminal mischief in the second and third degree;
Theft of property in the third degree;
Theft of lost property;
Theft of services in the third degree;
Receiving stolen property in the third degree;
Tampering with availability of gas, electricity or water;
Possession of traffic sign;
Offenses against intellectual property;
Theft by fraudulent leasing or rental;
Identity theft;
Charitable fraud in the third degree; and
Illegal possession of food stamps in the third degree.

SB 47 (Act 2011-681) Amends *Ala. Code* §§ 15-22-23 & 15-22-36, relating to the **Board of Pardons and Paroles**, and adds *Ala. Code* § 15-22-36.2, regarding implementation of a statewide automated victim notification system. Also increases the notice of hearings from seven to 30 days by mail or electronic transaction

SB 67 (Act 2011-621) Amends *Ala. Code* § 32-5A-191 to provide that a person convicted of **DUI**, who has a blood-alcohol reading of 0.15 percent or more within four hours of operating a vehicle, must be sentenced to at least double the minimum DUI punishment, and is required to pay the cost of incarceration in the county jail. (blood alcohol level for DUI is 0.08)

SB 170 (Act 2011-294) Provides that a person who willfully removes or falsifies an **identification number**, or who with intent to misrepresent buys, sells, possesses or disposes of a removed or falsified identification number, or who with intent to misrepresent removes or affixes a registration number or decal, of a vessel, outboard motor, vessel trailer, or other identifiable component part of a vessel, is guilty of a Class A misdemeanor

SB 185 (Act 2011-628) Provides for an **e-ticket for non-traffic misdemeanor offenses** similar to the e-ticket presently in use for traffic offenses and also provides for the issuance of a complaint and summons or notice to appear for persons arrested for misdemeanor non-traffic violations

SB 267 (Act 2011-696) Amends *Ala. Code* §§ 15-22-54 and 15-22-541 to reclassify a technical violation of probation as an administrative violation and further clarifies sentencing for a defendant whose **probation has been**

revoked and defines certain terms as an administrative violation, eligible offender and nonviolent offenders

SB 296 (Act 2011-640) Alabama Sex Offender Registration and Community Notification Act: Repeals *Ala. Code* §§ 13A-11-200 through 13A-11-202 and §§ 15-20-1 through 15-20-38. It addresses deficiencies in the sex offender registration law and corrects portions found unconstitutional in their application to homeless sex offenders. It further provides for limited court discretion to change rules for certain sex offenders.

SB 440 (Act 2011-678) Creates the **Office of Indigent Defense Services** to provide for the defense of indigent defendants found by a court to be unable to pay for their defense or representation in a trial or appellate court proceeding. Each judicial circuit shall have an indigent defense advisory board. Compensation of appointed counsel will be determined by the Alabama Supreme Court. The hourly rate will increase from \$40 for out-of-court work and \$60 for in-court work to a flat rate of \$75 for any non-overhead expense. A flat \$300 rate for expenses may be approved in advance of trial by the court.

The director of the Office of Indigent Defense Services will be selected by the finance director. The director will establish an indigent defense counsel system to provide for contract counsel in circuits choosing this method of representation, or public defenders. For circuits choosing contract counsel system, the director must approve budgets and the payment for contract counsel. For circuits using a public defender model, the director, in consultation with the local advisory board, will select the public defender. The public defender shall serve a term not to exceed six years.

This Act revamps the indigent defense system in Alabama and amends various sections of the *Code* by:

Creating an office (in the Department of Finance) for indigent defense services.

The office shall have a director responsible for:

Providing fiscal responsibility and accountability in indigent defense preparation;

Maintaining and operating indigent defense systems whether appointed counsel, contract counsel or public defender or some combination thereof in all circuits to meet the goals of this Act;

Defining indigent defendant as one in which counsel is constitutionally required or authorized by statute or court rule;

Handling caseload management and performance evaluation;

Defining criteria for determining conflict of interest in cases, and making appropriate alternate appointments. Providing and compensating experts. Attorneys are compensated at a flat \$75 rate. A non-overhead expense charge of up to \$300 may be approved;

Determining indigency. Working with local advisory committees on providing indigent defense services with a preference for contract counsel or public defenders.

Submitting budget requests for state appropriations, collecting statistics on operations and administering operations.

The office does not control indigent services in municipal courts.

An Indigent Defense Review Panel shall hear appeals of challenges by the local advisory board.

Business

HB 3 (Act 2011-529) Amends *Ala. Code* § 5-19-4 to increase the late charges allowed under **Mini-Code**. Also increases the minimum from \$10 to \$18 or 5 percent of the amount of the scheduled payment

HB 61 (Act 2011-155) Provides that qualifying employers are authorized **tax deductions of 200 percent** of the amount paid for **employee health insurance** premiums from the employer's income tax

HB 64 (Act 2011-656) Requires a **secret ballot for all the elections**, including union representation votes

HB 75 (Act 2011-536) Adopts the **Interstate Insurance Product Regulation Compact**, thereby making Alabama a member. This will cover individual and group annuities, life, disability income and long-time care insurance policies.

HB 195 (Act 2011-548) Provides that the regulation of **nutrition and labeling of food** in restaurants, vending machines, etc. is reserved to the legislature and cannot be regulated by administrative act

HB 230 (Act 2011-551) Provides that businesses would receive a **tax credit for up to \$1,000 per job for jobs created that pay more than \$10 per hour** and repeals the 2010 law that only allowed an income tax deduction for the same employees

HB 427 (Act 2011-705) Amends *Ala. Code* §§ 40-2A-3 to -5, -7, -8, -10 and -11, and 40-18-27, repeals *Ala. Code* § 40-2A-9 and adds a new Chapter 2B to Title 40 to be known as the **Alabama Tax Appeals Commission Act of 2011**, relating to appeals of tax and other matters administered by the Alabama Department of Revenue, and adopts the American Bar Association Model State Tax Tribunal Act

The Act abolishes the Administrative Law Division of the Alabama Department of Revenue, effective October 1, 2011, and creates a new independent state agency, the Alabama Tax Appeals Commission, to be funded in the first year from a portion of the Department of Revenue's budget. The commission will also hear appeals of taxes administered by self-administered counties and municipalities unless they opt out of the commission's jurisdiction. It also provides for the powers of the commission and procedures for appeals to the commission. The commission is authorized to issue regulations. An appeal to the commission is *de novo*. An appeal from the commission would be to the circuit court of the taxpayer's business or residence, with payment of taxes determined due or a bond, is also *de novo*. A taxpayer can skip the commission and appeal a final assessment directly to circuit court, with the payment of taxes determined due or a bond. The Act sets forth procedures for the nomination and selection of commission judges.

HB 429 (Act 2011-706) Amends *Ala. Code* §§ 34-36-7 and -16 to extend the time for **electrical contractors** who have passed a national examination to remain licensed without further examining from July 1, 2011 to December 31, 2011.

HB 473 (Act 2011-564) Extends the **unemployment benefit period** for weeks of unemployment beginning after December 17, 2010 and remains in effect until December 31, 2011.

SB 77 (Act 2011-216) Allows for the State of Alabama to make a commitment to a company to provide **economic development funds**. The state and company must enter into a written contract outlining the conditions of the project. The contract is void after five years from the day of commitment.

SB 192 (Act 2011-630) Allows beer brewed in **brew pubs** to be sold in locations other than where manufactured

SB 395 (Act 2011-644) Provides estate income tax deduction to homeowners who **retrofit their homes**

LEGISLATIVE WRAP-UP

Continued from page 427

to resist wind and storm damages. Tax deduction would be the lesser of 50 percent of the retrofitting costs, not to exceed \$3,000.

SB 458 (Act 2011-708) Amends *Ala. Code* § 25-13-8 to allow for the regulation and inspection of **elevators in private residences** and further preempts local regulation

Budgets and State Cost Revisions

HB 56 (Act 2011-535) Establishes the **Education Budget** for the current 2011 year at \$5.347 billion and for 2012 at \$5.587 billion, which is a 4 percent increase over the current year

HB 57 (Act 2011-3) Creates the **education budget rolling reserve** that provides a new way of determining the money available for the calculation of the education budget. The budget estimate will now be based on prior 15-year revenues rather than future expected revenues.

SB 72 (Act 2011-27) Repeals the **Deferred Retirement Option Plan** (DROP) accounts, previously allowed for state employees and teachers who have reached 55 years of age, have 25 years of state service and who elect to end accumulating time for calculating their retirement years. Those currently in the DROP may continue, however, the guaranteed rate of 4 percent return is changed.

SB 133 (Act 2011-679) The **General Fund budget** amount appropriated for 2012 is \$1.764 billion, an increase of 5 percent. The original 2011 budget of \$1.67 billion was later prorated to \$1.587 billion. The new budgets, however, take into account that Medicaid in 2011 was budgeted \$345 million and this year budgeted \$647 million, a 188 percent increase. The Mental Health budget goes from \$99 million to \$117 million. Over 150 organizations that were appropriated funds in 2011 are not in the 2012 budget. This year, the legislature considered the budgets before the session was half-over, an unprecedented effort.

SB 310 (Act 2011-270) Amends *Ala. Code* § 16-24B-7, 16-24-1 to 16-24-22 to make changes in the **Teachers Fair Dismissal Act and the Teacher Tenure Law**

SB 482 (Act 2011-652) Amends, for the next two school years, a decrease in the amount of school days required from **180 full-instructional days to 175 full-instructional days**

Ethics

Special Session, 2010

HB 9 (Act 2010-765) Prohibits the transfer of campaign money between political action committees, also known as **Pac-to-Pac Transfers**

HB 10 (Act 2010-759) Prohibits **pass-through appropriations** from one agency to another

HB 11 (Act 2010-762) Requires **ethics training** for elected officials and their employees in the executive and legislative judicial branches, as well as ethics training for lobbyists

SB 1 (Act 2010-763) Grants the state **Ethics Commission subpoena power**

SB 2 (Act 2010-761) Prohibits **membership dues paid** from payroll deductions for public employee groups (this directly affected the AEA)

SB 3 (Act 2010-760) Prohibits **legislators** from holding other state jobs

SB 14 (Act 2010-764) Amends the Ethics Act to limit **lobbyist gifts**, meals and travel reimbursement to public officials and state employees and requiring mandatory disclosure of gifts. This act has been further tweaked by **SB 222 (Act 2011-632) in the Regular Session** to define the gift must be **"corruptly"** given.

Regular Session, 2011

HB 58 (Act 2011-674) Requires the **name and compensation of any public official** or their spouse for contracts with any city, state or federal agency

HB 62 (Act 2011-259) Grants the Ethics Commission an **automatic budget** of one-tenth of one percent of the state's General Fund amount

Health

HB 18 (Act 2011-672) Prohibits an **abortion on or after 20 weeks** after conception except for the health of the mother. This Act provides both civil and criminal remedies.

HB 60 (Act 2011-617) Prohibits mandatory participation of Alabama citizens in any healthcare system for persons, employers or healthcare providers as may be required in the **Obama Health care plan**

SB 309 (Act 2011-698) Amends *Ala. Code* sections in Chapter 29 of Title 36 regarding **State Employees Health Insurance Plans for retirees** after December 31, 2011 and sets up a sliding scale based on years of service and difference between the age of the employee and the Medicaid entitlement age

SB 419 (Act 2011-704) Amends sections in Chapter 29 of Title 36 regarding **Teachers Health Insurance Plans for retirees** after December 31, 2011 and sets up a sliding scale based on years of service and difference between the age of the employee and the Medicaid entitlement age

Elections

HB 19 (2011-673) **Requires a photo ID** to vote and will no longer accept non-picture identification from voters. The Act further provides that the secretary of state will set up a statewide system for photographing cards to be used for voting in each county. However, this will not become effective until the 2014 elections.

HB 425 (Act 2011-566) Amends *Ala. Code* §§ 17-13-3 and 17-13-100 to change the presidential preference primary election to the second Tuesday in March beginning 2012 and provides that in presidential primary years, the regular primary election will also be the **second Tuesday in March**

SB 55 (Act 2011-819) Provides for **overseas voting** by creating an Alabama Electronic Voting Advisory Committee to determine the liability of alternatives of overseas voting. It further allows for the secretary of state to promulgate rules to implement the overseas voting.

SB 136 (Act 2011-687) Provides that, beginning with the **2012 Election Cycle, filings** will change from 50/45 days and 10/5 days before the election to the last day of each month beginning 12 months before the election. In addition, the reports must be filed with the secretary of state beginning eight days before the general election.

Effective with the 2014 election cycle, **campaign finance disclosures** will be filed electronically and in more frequent intervals before the election.

SB 139 (Act 2011-147) Amends *Ala. Code* §§ 17-16-2 and 17-16-4 by expanding the list of reimbursable election expenses to include the cost of publishing the list of qualified electors, the cost of equipment necessary for election officials to conduct elections and the cost of postage for absentee ballots mailed to voters. Adds a new *Ala. Code* § 17-16-2.1 to create the **Election Expense Reimbursement Committee** to identify any election costs not included in *Ala. Code* § 17-16-2 to be included as reimbursable costs

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LEGISLATIVE WRAP-UP

Continued from page 429

SB 284 (Act 2011-697) Amends *Ala. Code* §§ 17-5-2, 17-5-8 and 17-5-12 by expanding the current law concerning political advertising requiring the **identification of the person or group** that paid for the advertisement to also require disclosure of names of the sources of the funding for that organization

Redistricting

HB 621 (Act 2011-677) Redraws the **State Board of Education districts**. The Justice Department must now approve them before they are implemented.

SB 484 (Act 2011-518) Redraws the **Congressional districts** for the U.S. House of Representatives to have an equal and exact population. The Justice Department must now approve them before they are implemented.

Constitutional Revision

SB 112 (Act 2011-353) Amends *Ala. Code* §§ 256, 259 and 109 of the **Alabama Constitution** to remove references to separation of schools by race and repeals provisions relating to the poll tax and other unconstitutional language

SJR 82 (Act 2011-197) Creates a **Constitutional Revision Commission** and requests the Law Institute to undertake the revisions article by article over a four-year period. ▲▼▲



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Notice

- **James Patrick Logan**, whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of September 15, 2011 or, thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB No. 2006-191(A), before the Disciplinary Board of the Alabama State Bar.

Disbarments

- Tuscaloosa attorney **Donald Leonide Dionne** was disbarred from the practice of law in Alabama, effective May 9, 2011, by order of the Supreme Court of Alabama. The supreme court entered its order based upon the May 9, 2011 order on consent to disbarment of Panel II of the Disciplinary Board of the Alabama State Bar. Dionne consented to disbarment based on a pending investigation concerning the falsification of certain facts in a petition for bankruptcy on behalf of a client. [Rule 23(a), Pet. No. 2011-850; ASB No. 2011-136]
- Huntsville attorney **Billie Boyd Line, Jr.** was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, effective April 18, 2011. The supreme court's order was based upon the decision of the Disciplinary Board of the Alabama State Bar accepting Line's consent to disbarment filed April 14, 2011. The consent to disbarment was based on a pending investigation concerning the misappropriation of third-party and client funds by Line from his trust account.
- Phenix City attorney **Elliot Joseph Vogt** was disbarred from the practice of law in Alabama, effective July 23, 2010, by order of the Supreme Court of Alabama. The supreme court entered its order based upon the Disciplinary Commission's acceptance of Vogt's conditional guilty plea wherein Vogt pled guilty to multiple violations of rules 1.3, 1.4(a) and (b), 1.16(d), 5.5(A)(1), 8.1(b), and 8.4(a), (c), (d) and (g), *Alabama Rules of Professional Conduct*.

DISCIPLINARY NOTICES

Continued from page 431

Suspensions

- Montgomery attorney **Regina Nelson Eng** was suspended from the practice of law in Alabama, effective April 20, 2011, by order of the Supreme Court of Alabama. The supreme court entered its order based upon the April 20, 2011 order of the Disciplinary Commission of the Alabama State Bar. The order was based on a petition filed by the Office of General Counsel evidencing that Eng failed to respond to requests for information during the course of a disciplinary investigation.
- Tuscaloosa attorney **Zondra Taylor Hutto** was intermily 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 July 6, 2011. The order of the Disciplinary Commission was based upon Hutto's consent to interim suspension evidencing that she had pled guilty in the United States District Court for the Northern District of Alabama, Western Division, to a violation of 18 U.S.C. §1029(a)(2), a felony offense. [Rule 20(a), Pet. No. 11-1147]
- Tuscaloosa attorney **Jarrett Nathaniel Tyus** was suspended from the practice of law in Alabama by order of the Supreme Court of Alabama for 91 days, effective April 25, 2011. The supreme court entered its order based upon the Disciplinary Commission's acceptance of Tyus's conditional guilty plea wherein he pled guilty to multiple violations of rules 1.15(a), 1.3, 1.4(a), 8.1(a), 8.4(a), and 8.4(g), *Alabama Rules of Professional Conduct*. Under the terms of the conditional guilty plea, prior to petitioning for reinstatement, Tyus is required to enroll in and complete the Alabama Practice Management Assistance Program, and make restitution to his client in ASB No. 2010-513. [ASB nos. 2009-1543(a), 2010-154, 2010-513, 2010-1737, and 2011-326]



The PHV Application Process Is Paperless (and Painless!)

The Alabama State Bar's Pro Hac Vice (PHV) filing process has gone from paper to online. Instead of sending a check and hard copy of the Verified Application for Admission to Practice Pro Hac Vice to the ASB, an out-of-state attorney can now request that his or her local counsel file their PHV application through AlaFile, including electronic payment of the \$300 application fee.

Once local counsel has filed this motion, it will go electronically to the PHV clerk's office at the Alabama State Bar for review.

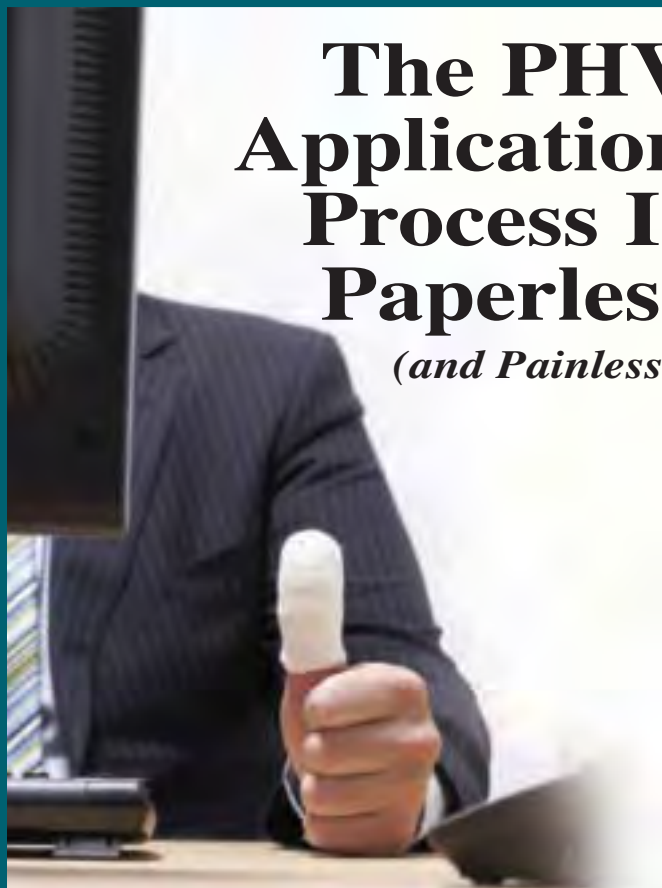
- If all of the information on the application is correct, the motion will be docketed and sent electronically to the judge assigned to the case for ruling.
- If the information in the application is incorrect or incomplete, a deficiency notice will be e-mailed to the filer (local counsel).

A corrected application may be resubmitted by local counsel via AlaFile.

The PHV clerk will then review the corrected application and, once accepted, the motion will be docketed and sent electronically to the judge assigned to the case for ruling.

Please refer to the "Step-by-Step Process" to file the PHV application in the correct location in the Alafile system. (It should no longer be filed under "Motions Not Requiring Fee").

Contact IT Support at 1-866-954-9411, option 1 and then option 4, or applicationsupport@alacourt.gov with questions or comments.





About Members

Kathryn S. Crawford announces the firm's name is now **Kathryn S. Crawford Gentle LLC**.

Cassandra T. Hearn announces the opening of **Cassandra T. Hearn LLC**, and the mailing address is P.O. Box 386, Double Springs 35553. Phone (205) 489-8980.

Mary Lyn Pike, former assistant director of the Alabama State Bar and staff director of the MCLE Commission, recently returned to Alabama after a number of years in

Washington, DC and Denver. Phone (334) 322-5697 or e-mail *marylyn pike@gmail.com*.

Steven M. Stastny announces the formation of **Stastny Law Firm LLC** at 125 Urban Center Dr., Ste. 125, Birmingham 35242. Phone (205) 994-6992.

Among Firms

Adams & Reese announces that **Matt Jackson** has joined as an associate.

Armbrecht Jackson LLP announces that **William R. Lancaster** has joined as a partner.

PLEASE E-MAIL
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marcia.daniel@alabar.org

REMINDER: Due to space constraints, *The Alabama Lawyer* no longer publishes changes of address unless it relates to the opening of a new firm (not a branch office) or a solo practice.

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30	\$230	\$241	\$339	\$523	\$707	\$1,345	

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AGE	30	35	40	45	50	55	60
10	\$163	\$165	\$215	\$310	\$495	\$820	\$1,335
15	\$195	\$200	\$285	\$485	\$725	\$1,150	\$1,850
20	\$255	\$265	\$385	\$620	\$980	\$1,480	\$2,320
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ABOUT MEMBERS AMONG FIRMS

Continued from page 433

Badham & Buck LLC announces that **Richard Dorman** has joined as *of counsel*.

Baker, Donelson, Bearman, Caldwell & Berkowitz PC announces that **Jenna M. Bedsole** and **Rachel E. VanNortwick** are now associated with the firm.

Burr & Furman announces that **Marion A. Quinn, Jr.** has joined as counsel.

Chenault Hammond PC announces that **A. Laura Terry** has joined as an associate.

Chicago Title Insurance Company, Commonwealth Land Title Insurance Company and **Fidelity National Title Insurance Company** announce that **Joseph E. Powell** has been named Alabama state counsel and area counsel.

R. Champ Crocker LLC announces the association of **M. Allison Landrum**.

Cunningham Bounds LLC announces that **William D. Stokes** has joined as an associate.

Fish Nelson LLC announces that **Keith Lee** has joined as an associate.

Harding & Claunch LLC announces that **Meggan M. Huggins** has joined as a senior associate.

Jefferson Title Corporation announces that **Robert S. Caliento** has joined as underwriting counsel.

Johnson & Freedman LLC announces that **N. John Rudd** has joined the firm.

The **Limestone County District Attorney's Office** announces that **Brian C.T. Jones** was elected district attorney and **James C. Ayers, Jr.** and **David T. Puckett** have joined the office as deputy district attorneys. **Claire Tinney Jones** and **Matthew Riley Huggins** have joined as assistant district attorneys.

Katherine Reeves has joined **Ogletree Deakins** as an associate.

Gina Pearson, Dave Cybak and **Lindsey Brown** announce the opening of **Over the**

Mountain Law Center LLC at 1903-A Oxmoor Rd., Birmingham 35209. Phone (205) 870-8480.

Perry Dampf Kingrea Dispute Solutions announces that **John C. Hall** has joined as an associate.

Quinn Walls Weaver & Davies LLP and **Glen Connor** and **Richard Rouco** announce that the formation of **Quinn Connor Weaver Davies & Rouco LLP**.

Radney, Radney & Jackson LLC announces that **David G. Thomas** has joined the firm as an associate.

The Rubio Law Firm announces that **Leslie A. Wright** has joined as an associate.

Larry R. Sasser and **Will O'Rear** announce the opening of **Sasser & O'Rear LLC** at 2860 Zelda Rd., Montgomery 36106. Phone (334) 356-2400.

Andrew M. Skier & Associates announces that **Sady D. Mauldin** has joined as an associate.

The Law Offices of Aimee C. Smith PLLC announces that **Dwight M. Richardson** and **Thomas A. Wheat** have joined as associates.

Stone, Granade & Crosby PC announces that **J. Bradford Boyd Hicks** has been elected as a partner and shareholder.

TEAMHealth, Inc. announces that **E. Dale Nellums** has become vice president, claims and legal risk management. ▲▼▲



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