
The Alabama
Lawyer
Vol. 54, No. 6

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IN BRIEF

November 1993 Volume 54, Number 6

ON THE COVER:

Calm water silhouettes fall foliage on a lake at Oak Mountain State Park, south of Birmingham, Alabama.

Photo by Butch Guier, Montgomery

INSIDE THIS ISSUE:

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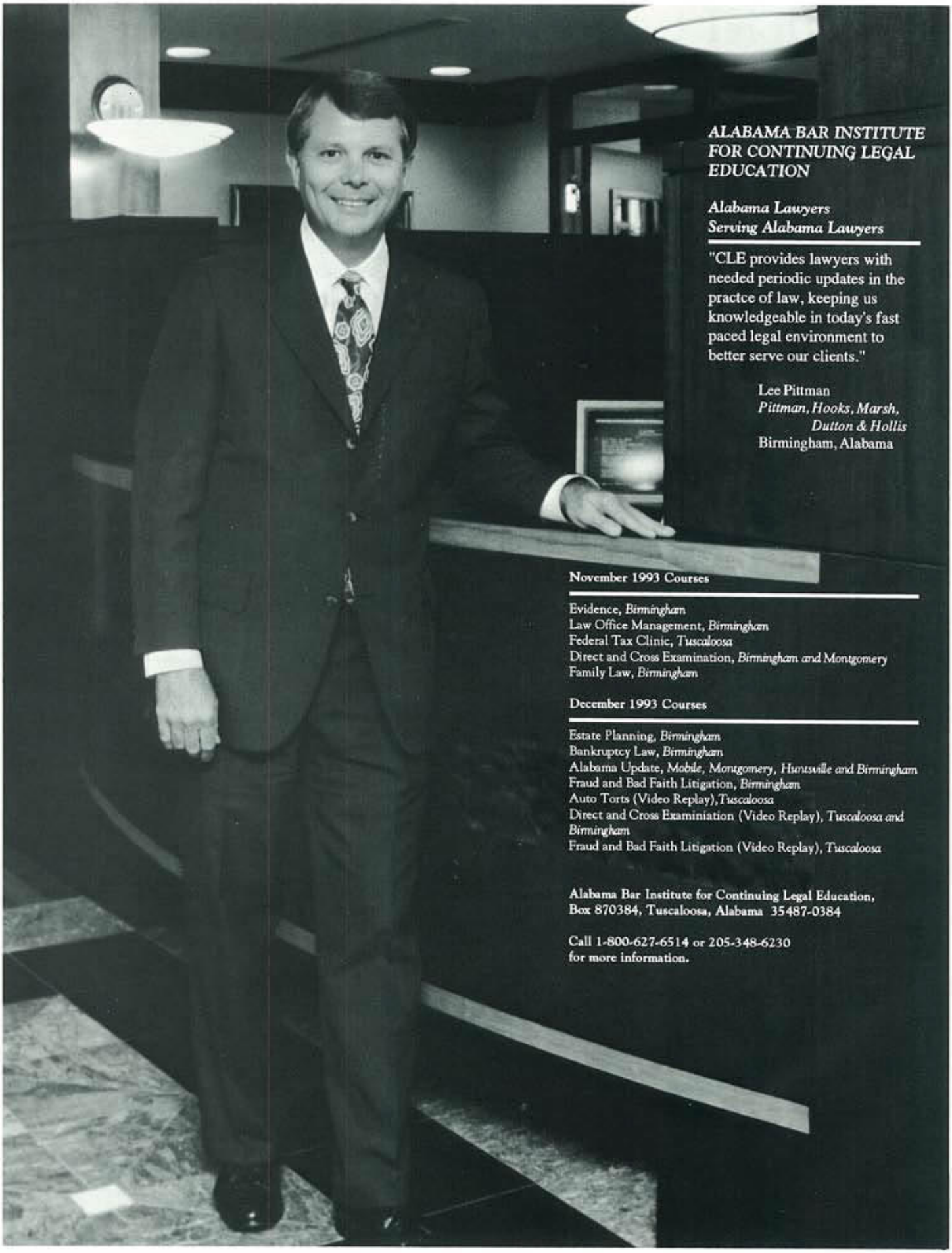

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PRESIDENT'S PAGE

"EQUAL JUSTICE UNDER LAW" — *Inscription on West Portico of United States Supreme Court Building, Washington, D.C.*

Our nation's legal profession has traditionally supported the position that its members have a special duty and obligation to ensure "equal justice under law" for all citizens without regard to their financial circumstances. Private bar projects for volunteer pro bono legal services in civil matters have existed in this country since the beginning of the 20th century. However, with the advent in the 1970s and 1980s of federally funded Legal Services and its national network of free attorneys for indigents, the rate of growth of bar-organized pro bono programs slowed dramatically. Since that time, the commitment by members of our profession to pro bono work has been inconsistent, at best, with some attorneys giving generously of their time and skills to help the less fortunate among us and many others entirely disregarding their special responsibility to the poor.

This decline in private bar participation in pro bono activity has occurred as the number of individuals living below the poverty level in this country has increased. During the past decade, a number of state bar associations, including the Alabama State Bar, conducted legal needs surveys of low income citizens. These surveys revealed that, despite federal efforts and existing private bar initiatives to ensure minimum access to the legal system, the legal needs of the poor remain largely unmet by present delivery systems. National debate in our profession is focusing once again on solving this dilemma to keep our judicial system open to all.

In recent years, many attorneys around the country have concluded that converting our voluntary duty to render pro bono services to a mandatory one is the means of choice to ensure access to legal services for those in need but unable to pay for them. Compelling arguments, which will be discussed briefly in this article, exist on both sides of this important issue and have generated heated debate throughout the organized bar nationally and at the state and local levels as well.

As a point of fact, few states have adopted mandatory pro bono plans of any nature, and no state has adopted rules requiring lawyers to participate in pro bono activities as a condition of licensure and/or subject to disciplinary sanctions. According to information compiled by the American Bar Association Pro Bono Center, West Virginia may soon become only the eighth state to consider mandatory pro bono, joining Arizona, Connecticut, Hawaii, Maryland, New York, North Dakota, and Texas. The Florida Supreme Court has recently approved a voluntary pro bono plan submitted by The Florida Bar that includes a mandatory annual reporting requirement. Texas and Kentucky have similar reporting mandates.

The debate on this issue continues, and I thought you might be interested in a brief overview of arguments on both sides, as we are sure to be caught up in national debates on this important matter throughout the 1990s.

Mandatory Pro Bono—No

Arguments against making the duty to provide pro bono services mandatory tend to fall into at least three broad categories: the purported unconstitutionality of mandatory pro bono; the objections to imposition of such a duty upon lawyers alone and not other licensed trades or professions; and the anticipated administrative and functional problems of implementing and effectively managing a mandatory system.

Those who believe mandatory pro bono to be unconstitutional include, briefly stated, the following objections in their arguments: (1) mandatory pro bono involves involuntary servitude precluded under the Thirteenth Amendment of the Constitution; (2) mandatory pro bono results in denial of equal protection under the Fifth and Fourteenth amendments; (3) mandatory pro bono is a taking of property without just compensation under the Fifth and Fourteenth amendments; and (4)

mandatory pro bono is an interference with free speech and right to association under the First Amendment.

Although much has been written in law reviews, journals and related materials on this subject, as of yet no court has held any mandatory pro bono proposal to be violative of any lawyer's constitutional rights. For those who would like to review an in-depth analysis of these various constitutional arguments as they relate to mandatory pro bono, *Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296 (1989), might prove instructive.

Regarding the second broad category of argument against mandatory pro bono, opponents believe that poverty and attendant legal problems of the poor are the result of broad-based societal ills. Accordingly, the nation collectively, through government, should have the duty to provide appropriate legal services to indigents, rather than placing such a duty upon the private bar alone.

Finally, many attorneys opposed to mandatory pro bono point out that such plans and programs require the creation of a huge bureaucracy to administer them, provide accurate record-keeping systems and monitor compliance, all of which require additional funds. Functional difficulties also exist. For example, unwilling lawyers, forced to accept indigent clients, have insufficient incentives to serve such clients well. Further, most private practitioners have little expertise in handling problems of typical pro bono clients. Therefore, mandatory pro bono promotes incompetence and malpractice claims. Thus, substantial funding would be needed to provide adequate training and support for such reluctant and/or unskilled participants.

Spud Seale

Mandatory Pro Bono—Yes

At least three common themes run through arguments of those who favor mandatory pro bono. The first, and most often cited, is the extent to which the needs for legal services among indigents are unmet by present delivery systems. The conclusion of these attorneys is that mandatory pro bono is a viable way for beginning to meet those needs. At the very least, mandatory pro bono would free up resources within the Legal Services community of lawyers which then could be used to further increase access for the poor.

A second theme in most pro-mandatory arguments is a general concern over the public's perception that professionalism among lawyers is declining and that the practice of law has become too commercialized and business-oriented. These attorneys believe that we need to reaffirm our commitment to law as a noble, caring profession with public service as its heart and soul. Further, we hold a monopoly on the provision of legal services; pro bono service is the *quid pro quo* for our having such status. Besides, pro bono work is simply good for the "professional soul." It provides a great deal of self-satisfaction, opportunities for personal growth, good legal experience and client contact, and a welcome change of pace to everyday practice.

In addition to arguments based on need and principle, those who favor mandatory pro bono point out that widespread, publicized pro bono service would greatly enhance the much maligned image of our profession. Some even believe that if the bar fails to impose this duty upon itself, lay persons, concerned over the current business-like nature of law practice, may well attempt to impose this duty upon us through the courts and legislatures, resulting in a diminution of our right to self-regulation.

Alabama's Answer—The Volunteer Lawyers Program

As Alabama attorneys, we have, and may be proud of, a longstanding commitment to voluntarily providing pro bono legal services. In 1854, Judge George Sharswood, writing what was to become the antecedent for the Code of Ethics adopted by our state bar in 1887, stated as follows:

> . . . There are many cases, in which it will be [the lawyer's] duty, perhaps more properly his privilege, to work for nothing. It is to be hoped, that the time will never come, at this or any other Bar in this country, when a poor man with an honest cause, though without a fee, cannot obtain the services of honorable counsel, in the prosecution or defence (sic) of his rights. G. Sharswood, *An Essay on Professional Ethics,* 5th Edition, 1907, p. 151.

Judge Sharswood's sentiments were carried forward in our original Code of Ethics 1887 in Section 48 which states that a "client's ability to pay can never justify a charge for more than the service is worth; though his poverty may require a less charge in many instances, and sometimes none at all." Of course we are all familiar with Rule 6.1 of our present Rules of Professional Conduct which provides, in part, that a lawyer "should render public interest legal service" and that a lawyer "may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations." Thus, it is clear that our ethical roots in Alabama are entwined with the public interest, service to our community and concern for the less fortunate among us.

However, following an analysis of the 1989 Legal Needs Survey commissioned by the board of bar commissioners, many attorneys in Alabama were surprised to learn that only about 20 percent of the civil legal needs of our poorer citizens were being met by present delivery systems. During the bar presidency of Judge W. Harold Albritton, III, the Committee on Access to Legal Services of the Alabama State Bar successfully proposed and established a statewide, state-bar-level pro bono program—the Alabama State Bar Volunteer Lawyers Program—through which attorneys could volunteer their services to meet the

needs of low income persons in their communities. Melinda Waters, a member of the Alabama State Bar, was hired in 1991 as full-time attorney/director of the project which is now housed in the new state bar headquarters building.

In June 1991, the board of bar commissioners unanimously passed a resolution encouraging each regular member of the Alabama State Bar to voluntarily accept not less than two civil case referrals, or 20 hours of legal work, whichever comes first, from an organized pro bono project. Special members were also encouraged to volunteer not less than 20 hours to a pro bono effort. Under this resolution, qualifying legal work includes not only direct representation of indigent clients, but also serving on governing or managing boards or committees of organizations whose main purpose is assisting the poor, recruiting for a pro bono program, serving as an instructor at a poverty law seminar, mentoring another volunteer attorney, performing intake at a Legal Services office, or assisting with an "advice only" clinic for the poor.

Since the initiation of the Volunteer Lawyers Program at the 1991 Annual Convention, close to 1,500 private attorneys have participated in organized pro bono initiatives. The local bar associations of Mobile, Montgomery, Tuscaloosa and Huntsville have projects which were developed prior to the state bar program, and attorneys in these cities may be proud of their continuing commitment to equal access to the judicial system. As of this writing, attorneys in Birmingham and close to 40 other counties have also joined in the pro bono effort and we hope to have volunteers in all 67 counties by the end of my presidency.

I hope every lawyer in Alabama shares my concern about the provision of legal services to all citizens in Alabama. In this connection, I encourage you to join us in the Volunteer Lawyers Program. Melinda Waters handles all administrative details of certifying income eligibility for these potential clients and works closely with Legal Services attorneys throughout the state to ensure that our services are being donated to the truly needy among us. Only cases in an area of law selected by you will be referred to you through the project. Very little paperwork is involved, and malpractice coverage can be provided at no extra cost to you for all work performed on a case referred by the program. You may even join and receive credit for work you are already performing for charitable organizations or indigent clients.

If you are interested in this most worthwhile bar-sponsored effort to expand pro bono legal services in civil, non-fee-generating cases, **contact Melinda at the Alabama State Bar, (205) 269-1515, P.O. Box 671, Montgomery, 36101.** She will be pleased to answer any questions you may have or to provide you with further information. ■

Notice

Dean
The University of Alabama School of Law

The University of Alabama School of Law invites nominations and applications for the position of dean of the school of law. The dean serves as the chief academic and administrative officer of the law school. The dean has academic rank as professor of law.

The school of law has approximately 500 students and 25 members of the full-time faculty and clinical staff.

The law school has a long history of service to the people of Alabama and a commitment to national prominence. It is the only state-supported law school in Alabama. The law school receives additional support from its own $14 million endowment and an annual giving program.

All candidates must possess the following qualifications: the J.D. or LL.B. degree from an ABA-accredited law school, and a record of teaching, research, public service, experience in practice, or judicial service appropriate for appointment as a tenured professor in the law school. Experience in academic administration is desirable, but not necessary.

Although the position will remain open until filled, the evaluation of nominations and applications will begin December 1, 1993. The successful candidate will be expected to assume the position on July 1, 1994 or shortly thereafter.

Nominations and applications should be sent to Professor James D. Bryce, chair, Dean Search Committee, University of Alabama School of Law, Box 870382, Tuscaloosa, Alabama 35487.

The University of Alabama is an Equal Opportunity Affirmative Action Employer.

EXECUTIVE DIRECTOR'S REPORT

BEFORE THE WHEELS COME OFF—

There is seldom a day that I do not see an article or hear about the difficulties that stress and/or dependency problems are reaping within our profession. I do not have to look beyond our own news coverage or the Client Security Fund claims in our headquarters.

Two recent incidents have caused me to wonder, "Why didn't these friends and associates who readily acknowledge their awareness of problems do something before the wheels came off?"

The Birmingham News has given substantial coverage to the personal difficulties of a former judge. The articles contain comments of courthouse associates and lawyers describing conduct that at times seemed so extraordinary that it would be hard to view as other than a cry for help. The judicial system and the profession have to appear somewhat negligent or indifferent to those who read the coverage without any personal familiarity with the individuals involved. I have been asked more than a few times, "How could the bar let such a pattern of conduct go unchecked?" It is of little comfort that the only answer I had was the Judicial Inquiry Commission, and not the bar, would have been the proper forum to address judicial conduct. The real tragedy I see is that with early intervention, the current situation, it is hoped, could have been avoided.

Reginald T. Hamner

The meter is running on the number and the amount of likely claims involving a lawyer who has been placed on a disability suspension. Current claims total $17,065 with known claims of a least another $10,000 in the system. The maximum any one individual can receive is $10,000 and a limited aggregate of $20,000 is all the Client Security Fund will pay on behalf of one lawyer.

Members of the local bar were aware of dependency problems long before the suspension action was taken and a trustee appointed to minimize further damage to clients. Apparently plans to arrange a "support group" to encourage the attorney to get help for himself and in his practice never materialized because of the concerns of "ruining" long-term relationships.

Even after the attorney was hospitalized, the trustee appointment process was delayed because of concerns for family and personal relationships having an impact on the appointing authority. Ultimately, a special appointment was made to allow the process to continue.

Again, courageous action early on when an obvious problem existed could have minimized the current and escalating problem for the lawyers and the profession.

The bar can only do so much on its own initiative. A mechanism is in place to allow skilled interveners to answer a call for help without subjecting the attorney in trouble to disciplinary action for seeking help where the circumstances were otherwise unknown to the responsible parties within the professional responsibility arena.

I know how difficult it is to confront a friend or relative with a behavioral or dependency problem. I have done both at the risk of permanently ending long-term friendships. I am very glad I did, because in those instances, the friendships are intact and the individuals are far removed from their troubled conditions exisiting when I decided—albeit reluctantly—to get involved.

It is not easy to be "one's brother's keeper," but I am convinced it is better to try than witness the havoc "when the wheels do come off." ■

YOUNG LAWYERS' SECTION

By Les Hayes III, president

ETHICAL RESPONSIBILITIES — *WATCH OUT FOR DISTRACTIONS!*

I'm sitting in my office on a beautiful, sunny Sunday afternoon. This article is due tomorrow. Our second child is due any day, our two-year-old is sick and I've got a rotten cold. To make matters worse, I'm a nervous wreck over the pennant race between the Braves and the Giants and on top of that, it's college football season, which everyone knows is akin to a religious experience in this state. Needless to say, it's difficult to get focused on writing this article.

Life is full of distractions, and so is the practice of law. All too often, it seems that undue emphasis is placed on doing whatever it takes to make money, winning at all costs or getting the other person before he or she gets you. These misguided principles can create problems for young attorneys. They can lead us astray or distract us from our ethical duties and responsibilities as lawyers.

The Alabama Rules of Professional Conduct set forth the ethical guidelines to which all attorneys adhere. They contain rules governing such matters as the relationship between the client and attorney, maintaining the integrity of the profession and dealing with other attorneys and the judiciary. The Rules should not be taken lightly; violators are subject to disciplinary action by the Alabama State Bar, which may include suspension or revocation of an attorney's license to practice law.

We, as young lawyers, have a responsibility to follow and uphold the Alabama Rules of Professional Conduct. Many attorneys fresh out of law school are unfamiliar with the rules. Once they begin the practice of law, they are immediately subjected to the "pressure cooker" legal arena. We have all either heard of or experienced situations where the young attorney feels pressure to send out those extensive, potentially harassing, interrogatories to the opposing side, to take exhaustive depositions, or to simply take the position of disagreeing with opposing counsel on everything so as to give the impression of playing "hard ball." All too often, young lawyers feel that such tactics

Les Hayes III

are necessary in order to gain acceptance from their peers and/or senior partners. Unfortunately, such tactics do nothing to bolster the civility that attorneys should extend to other attorneys and, instead, only serve to further damage and support the unfavorable opinion of attorneys that a large segment of society seems to have. Additionally, these debilitating attitudes and practices are directly contradictory to the ideals and principles we as attorneys should follow, particularly in light of the Alabama Rules of Professional Conduct.

The first sentence of the Preamble to the Rules states, "A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." Certainly, while this is a heavy burden, it is also a special one. Few people have an opportunity to practice a profession through which so many lives can be influenced or changed. The Alabama Rules of Professional Conduct are designed to make sure that our influence on not only our clients but the legal system and the public, will be a positive one. Consequently, they are written and designed in an effort to enhance and improve the practice of law.

When was the last time you were concerned about maintaining the integrity of your profession? Indeed, when was the last time you even looked at the Alabama Rules of Professional Conduct to make sure that what you did or were about to do was not in violation of the Rules? We need to think more in terms of what's right, what's ethical, not just whether our conduct will allow us to win or lose. Certainly, it's important that we try to win since attorneys are compensated for winning and we owe it to our clients. However, we can still "win" and stay within the guidelines of the Alabama Rules of Professional Conduct. As young lawyers, we should make an extra effort to ensure that we follow the Alabama Rules of Professional Conduct in our dealings with our clients, the courts and our peers. Take time to read the Rules; if you have any questions about them ask another attorney. If you can't find the answer to your question, contact the Alabama State Bar Center for Professional Responsibility, located at the state bar headquarters in Montgomery. The phone number is 269-1515. The staff is friendly and eager to help you in resolving any questions or conflicts that you have. It's much better (and safer) to take five minutes and make one telephone call to solve a potential ethics problem. Not only will you be doing what's best for your own interests, but you'll also be doing what's best for your client and your profession. ■

BAR BRIEFS

The late **Francis H. Hare, Sr.** was inducted into the ATLA Hall of Fame during its annual convention in San Francisco. His name joins those of previous inductees—Robert E. Cartwright, Sr.; Samuel B. Horowitz; Theodore I. Koskoff; Perry Nichols; and Alfred S. Julien—carved on a commemorative in the lobby of ATLA headquarters in Washington, D.C.

Hall of Fame members are lawyers who made outstanding contributions to the civil justice system, to the public good, to trial advocacy, and to the legal profession in general. In addition, they possessed unrivaled integrity and character.

Francis H. Hare, Sr. was a man whose wisdom, wit, charm, dedication, and eloquence are legendary among all who knew him and many who simply knew of him. He was one of the first attorneys in the United States to commit his practice wholly to representing injured individuals.

Hare participated in the founding of the National Association of Claimants' Compensation Attorneys (now known as ATLA) and the Alabama Trial Lawyers Association. He served as president of the Alabama association for two years.

Hare graduated from the University of Alabama School of Law and began working with Harsh & Harsh. The present firm of Hare, Wynn, Newell & Newton, established by Hare, took its tenure with and from Harsh & Harsh. Hare died in 1983.

Charles A. Powell, a partner in Powell, Tally & Frederick of Birmingham, has been named chair-elect of the Section of Labor and Employment Law of the American Bar Association. He will assume his position in August 1994. This section has more than 17,000 members and its "jurisdiction" includes all legal matters affecting the workplace.

Powell is a 1961 graduate of Birmingham-Southern College and a 1964 graduate of Duke University School of Law.

James R. Pratt, III, of the Birmingham firm of Hogan, Smith, Alspaugh, Samples & Pratt, was recently selected a Fellow in the International Society of Barristers. Pratt is a graduate of Auburn University and Cumberland School of Law, Samford University.

Manning

Glenn F. Manning's contribution to legal services for poor people was recognized recently when he was presented a new award established in his name. The board of directors of Legal Services of North Central Alabama created the Glenn F. Manning Legal Services Award as a tribute to the longtime bar leader. The presentation ceremony was held August 27.

Twenty-five years ago, Manning began serving on the first board of directors of the state's first legal aid office, which opened in Madison County. He continued to serve on the board, which became LSNCA, until his retirement last year.

The program now has nine full-time lawyers and handles between 3,000 and 3,500 cases each year, partly with help from private attorneys who currently are referred about 8 percent of LSNCA cases on a pro bono basis.

Manning was a partner in the firm of Lange, Simpson, Robinson & Somerville. He has served as a state district attorney, local bar president, state bar commissioner, state bar executive committee member, and U.S. magistrate.

The Glenn Manning Award will be presented annually by LSNCA to an outstanding local lawyer in recognition of contributions to the low-income community. Its purpose is to encourage lawyers to be active in representing indigent clients and to reward them for their public assistance.

The Mobile firm of **Adams & Reese** is one of five businesses in the nation to receive the 1993 Award for Excellence in Corporate Community Service. The award is made annually by the Washington-based Points of Light Foundation. The presentation of the award was made to Adams & Reese at the Lincoln Center in New York City on September 23, and was presented by U.S. Secretary of Commerce Ronald H. Brown and Chairman of the Points of Light Foundation and the Executive Committee of Time-Warner, Inc., J. Richard Munro.

Adams & Reese was recognized in the medium-sized company category for its community involvement program known as H.U.G.S.—Hope, Understanding, Giving, Support. That program involves most of the firm's employees who volunteer to work with those in need in the community. The H.U.G.S. program is multifaceted, ranging from

"adopting" children and families and grandparents on special occasions, to working with pediatric AIDS projects, to feeding the homeless, to providing social activities for the mentally handicapped.

Other recipients include Tampa Electric Company, Shell Oil, The Security Benefit Group of Companies, and Farmers Bank & Trust Company of Kentucky. The award winners were chosen by a panel of judges comprised of the leaders of the American Bar Association, the American Business Conference, the American Society of Association Executives, The Business Roundtable, The Center for Corporate Community Relations at Boston College, the U.S. Chamber of Commerce, The Conference Board, Inc., The Drucker Foundation, Junior Achievement, Inc., the National Alliance of Business, and the Public Affairs Council.

The Points of Light Foundation, a nonpartisan, nonprofit organization located in Washington, D.C., was founded in 1990. The Foundation motivates leaders to mobilize people for service directed at solving serious social problems; works with volunteer centers, corporations and nonprofit organizations nationwide to provide leaders with ideas and tools for mobilizing volunteers; and works through the media to shape popular attitudes about community service.

In addition to Mobile, Adams & Reese has offices in New Orleans and Baton Rouge, Louisiana, Houston, Texas and Washington, D.C.

Adams

Former Alabama Supreme Court Associate Justice Oscar W. Adams of Birmingham and state **Senator Charles D. Langford** of Montgomery were among the 16 1993 inductees into the National Bar Association Hall of Fame. The inductees were honored at a luncheon during the National Bar Association's 68th Annual Convention in Boca Raton, Florida.

Langford

The Association's Hall of Fame was started in 1986 under the direction of Alabama State Bar member Fred D. Gray, Sr. of Tuskegee. Gray served as president of the National Bar Association that year. The National Bar Association is the nation's largest and oldest voluntary bar association for African-American lawyers.

Other Alabamians active in the Association include **Ernestine S. Sapp** of Tuskegee, who is serving as the 1992-93 chair of the National Bar Institute Board of Directors. The Institute is the philanthropic arm of the National Bar Association. Fred Gray, Sr. also serves as a member of the Institute's Board of Directors.

H. Thomas Wells, Jr. has been named a director of the American Judicature Society, a national organization of judges and lawyers whose goal is to promote the effective administration of justice in the state and federal courts. He is with the Birmingham firm of Maynard, Cooper & Gale.

The Birmingham Bar Association once again is working with local retailers to make this season bright for some senior citizens and children in its community. The bar association is asking members to donate $10 each to raise money to purchase turkeys provided by Western Supermarkets. Recipients of the turkeys will be chosen based on criteria developed by bar committee members. The $10 donation is tax deductible as a charitable contribution.

In addition to the turkeys provided during the holiday season, the Elderly Committee has an on-going project providing rocking chairs to the new addition to the county home at Ketona.

To make a donation, please make checks payable to "Birmingham Bar Memorial Fund" and mail it to the Birmingham Bar Association, Bar Project, 109 N. 20th Street, Second Floor, Birmingham, Alabama 35203. ■

NEW SAVINGS PROGRAM ON OFFICE SUPPLIES FOR MEMBERS OF THE ALABAMA STATE BAR

The Alabama State Bar has made arrangements with **Penny Wise,** a major office supplier, that will give law firms an opportunity to save money on office supplies.

Penny Wise offers a large selection of office supplies in addition to low prices and fast, free delivery. The state bar progam will enable members to save an additional 4 to 11 percent off the Penny Wise already discounted prices. Brands like 3M, IBM, Rolodex, Bic, and hundreds more are offered at a fraction of their regular selling price. If a member purchases an item from Penny Wise, sees it advertised for less and sends the ad to Penny Wise within 30 days, Penny Wise will send the member a check for the difference or credit the account.

Penny Wise also offers the largest office product network in the nation. The electronic catalog allows members to order 24 hours a day, seven days a week. Members can also order by mail, toll-free phone or fax.

As a special introduction, Penny Wise is offering Alabama State Bar members $10 off their first order. For more information on the program and a full color catalog, call 1-800-942-3311. ■

About Members, Among Firms

ABOUT MEMBERS

Joel C. Marsh announces the opening of his office at 3000 Riverchase Galleria, Suite 800, Birmingham, Alabama 35244. Phone (205) 985-3696.

Michael Edward Lee, formerly of Bell Richardson, announces the opening of his office at 200 West Court Square, Suite 752, Huntsville, Alabama 35801. Phone (205) 536-8213.

Robert M. Pears announces he has left Trimmier, Atchison & Haley, and opened his office at 2326 Highland Avenue, South, Birmingham, Alabama 35205. Phone (205) 320-0333.

Kendall Walton Maddox announces a change of address to 250 Farley Building, 1929 3rd Avenue, North, Birmingham, Alabama 35203. Phone (205) 251-7717.

Mark Bishop Turner announces a change of address to 198-B Main Street, P.O. Box 121, Trussville, Alabama 35173. Phone (205) 655-3792.

William E. Siniard, Jr. announces a change of address to 1736 Oxmoor Road, Suite 201, Birmingham, Alabama 35209. Phone (205) 879-6464.

Scott A. Rogers announces a change of address to 101 Bob Wallace Avenue, Suite C, Huntsville, Alabama 25801. Phone (205) 533-9991.

Robert Land announces the opening of his office at 1649 N. McFarland Boulevard, Suite 202, Tuscaloosa, Alabama 35406. Phone (205) 345-8730.

Ray-Lynn Snowden announces a name change from Ray-Lynn Snowden McAlpine, effective March 31, 1993. Her address is 1870 Schillinger Road, Mobile, Alabama 36695.

William H. Kennedy, formerly of the Office of General Counsel, Redstone Arsenal, Alabama, announces the opening of his office for the practice of law at 2716 8th Street, Tuscaloosa, Alabama 35401-2106. Phone (205) 752-0761.

AMONG FIRMS

Mark S. Boardman, Brent A. Tyra and **Perryn S. Godbee**, formerly of Porterfield, Harper & Mills, announce the formation of **Boardman, Tyra & Godbee**, with offices at 104 Inverness Center Place, Suite 325, Birmingham, Alabama 35242-4870. The mailing address is P.O. Box 59465, Birmingham 35259-9465. Phone (205) 980-6000.

Burnham, Klinefelter, Halsey, Jones & Cater announces that **Cynthia M. Calhoun** has become associated with the firm. Offices are located at 1000 Quintard Avenue, P.O. Box 1618, Anniston, Alabama 36202. Phone (205) 237-8515.

Dominick, Fletcher, Yeilding, Wood & Lloyd of Birmingham announces the celebration of its 50th year. The firm was formed in 1943 by James M. Gillespy and Sara Dominick Clark. Sara Clark's brother, Frank Dominick, joined the firm in 1948, followed by Walter Fletcher (1949) and Walter's nephew, Manly Yeilding (1956). The firm currently has 19 attorneys.

M. Mort Swaim announces that **Deven Moore** has become an associate, with offices at 235 West Laurel Avenue, Foley, Alabama 36535. Phone (205) 943-3999.

William B. McGuire, Jr. and **J.P. Sawyer** announce the formation of **McGuire & Sawyer**. Offices are located at 2910 7th Street, Tuscaloosa, Alabama 35401. The mailing address is P.O. Box 020996, Tuscaloosa, Alabama 35402. Phone (205) 752-6002.

Robison & Belser announces that **Martha Ann Miller**, formerly of Lanier Ford Shaver & Payne in Huntsville, has become associated with the firm. Offices are located at 210 Commerce Street, Montgomery, Alabama 36104. Phone (205) 834-7000.

Kerry R. Gaston, formerly senior staff attorney for the clerk of the supreme court, and **Boyd F. Campbell**, formerly a member of Blanchard, Calloway & Campbell, announce the formation of **Campbell & Gaston**. The address is Executive Park, 2421 Presidents Drive, Suite B-11, Montgomery, Alabama 36116. The mailing address is P.O. Box 230238, Montgomery 36123-0238. Phone (205) 272-7092

Stokes & McAtee announces **J. Paul Clinton** has become an associate with the firm. Offices are located at 1000 Downtowner Boulevard, Mobile 36691. The mailing address is P.O. Box 991801, Mobile 36691. Phone (205) 460-2400.

Herbert E. Browder, formerly with Tanner & Guin, has become an associate with **Rosen, Cook, Sledge, Davis, Car-**

ALABAMA STATE BAR BUILDING FUND HONOR ROLL

Between August 1,
and
September 30, 1993,
the following attorney made a pledge to the Alabama State Bar Building Fund.

Walter Michael Gillion

His name will be included on a wall in the portion of the building listing all contributors.

His pledge is acknowledged with grateful appreciation.

For a list of those making pledges prior to August 1, 1993, please see previous issues of *The Alabama Lawyer*.

roll & Jones. The office address is 1020 Lurleen Wallace Boulevard, North, Tuscaloosa, Alabama. The mailing address is P.O. Box 2727, Tuscaloosa 35403-2727. Phone (205) 345-5440.

Knight & Griffith announces **D. Todd McLeroy**, formerly staff attorney to Justice Maddox, has become an associate with the firm. Offices are located at the Griffith Building, 409 1st Avenue S.W., Cullman, Alabama. The mailing address is P. O. Drawer M, Cullman 35056. Phone (205) 734-0456.

Karen P. Chambless and **Mark N. Chambless** announce the formation of **Chambless & Chambless**, with offices located at 234 S. Hull Street, Montgomery, Alabama 36104. The mailing address is P.O. Box 4839, Montgomery 36103-4839. Phone (205) 264-7300.

W. Donald Bolton, Jr. announces **Charlotte Adams Stubbs** has become associated with the firm. The firm's address is 307 S. McKenzie Street, Foley, Alabama 36535. The mailing address is P.O. Box 259, Foley 36536. Phone (205) 943-3860.

Dillard & Ferguson announces that **Lawrence T. King** has become a partner. The address is 290 21st Street, North, The Massey Building, Suite 600, Birmingham, Alabama 35203. Phone (205) 251-2823.

Rives & Peterson announces **Sharon Donaldson Stuart** has become an associate with the firm. She was formerly a judicial clerk of the Honorable Sharon Lovelace Blackburn. The address is 1700 Financial Center, 505 N. 20th Street, Birmingham, Alabama 35203-2607. Phone (205) 328-8141.

Parker, Brantley & Wilkerson announces **Leah Snell Stephens** has become associated with the firm. The firm's new location is 323 Adams Avenue, Montgomery, Alabama 36104. The mailing address will remain P.O. Box 4992, Montgomery 36103-4992. Phone (205) 265-1500.

Sirote & Permutt announces that **Frances Heidt, Donna K. Bowling, Annette M. Carwie, Candace L. Hemphill, C. Randal Johnson, Stephen B. Porterfield,** and **Jeffrey H. Wertheim** have become shareholders. The firm has offices in Huntsville, Mobile, Montgomery and Tuscaloosa.

Lucas, Alvis & Kirby announces **R. Bradford Wash**, formerly a member of Emond & Vines, has become a partner. The firm's name has been changed to **Lucas, Alvis, Kirby & Wash.** Offices remain at 250 Park Place Tower, 2001 Park Place, North, Birmingham, Alabama 35203. Phone (205) 251-8448.

Bradley, Arant, Rose & White announces that **Joan Crowder Ragsdale** has joined the firm as a partner. Offices are located at 2001 Park Place, Suite 1400, Birmingham, Alabama 35203. Phone (205) 521-8000.

Burnham, Klinefelter, Halsey, Jones & Cater announces that **Polly D. Enter,** formerly of Nelson, Mullins, Riley & Scarborough in Columbia, South Carolina, has become associated with the firm. Offices are located at 1000 Quintard Avenue, Anniston, Alabama. The mailing address is P.O. Box 1618, Anniston 36202. Phone (205) 237-8515.

Maddox, MacLaurin, Nicholson & Thornley announces **Charles E. Sanders, Jr.** has become associated with the firm. Offices are located at First National Bank Charter Building, Jasper, Alabama 35501. The mailing address is P.O. Box 248, Jasper 35501. Phone (205) 384-4547.

Gorham & Waldrep announces **Kay L. Cason** has become a shareholder in the firm, and **Mary H. Thompson, Nancy E. Khalaf, Michelle B. Wales** and **Robert E. York** have become associates with the firm. Offices are located at 2101 6th Avenue, North, Suite 700, Birmingham, Alabama 35203. Phone (205) 254-3216.

Jim Pino & Associates announces the relocation of their offices to Suite 202, Shelby Medical Building, Alabaster, Alabama. The mailing address is P.O. Drawer 623, Alabaster 35007. Phone (205) 663-1581.

Diamond, Hasser & Frost announces their relocation to 1325 Dauphin Street, Mobile, Alabama 36604. The mailing address is P.O. Drawer 40600, Mobile 36640. Phone (205) 432-3362.

Tallapoosa Title Research announces the relocation of their offices to 207

Columbus Street, Dadeville, Alabama. The mailing address is P.O. Box 115, Dadeville 36853. Phone (205) 825-9150.

Robert P. Reynolds announces he has relocated to Huntsville and **Katherine L. Reynolds** has become an associate with the firm. Offices are located at 101 North Side Square, Huntsville, Alabama. The mailing address is P.O. Box 18605, Huntsville 35804. Phone (205) 534-6789. The firm also has offices in Tuscaloosa.

Feld & Hyde announces the relocation of their offices to 2100 SouthBridge Parkway, Suite 590, Birmingham, Alabama 35209. Phone (205) 802-7575. The firm also announces that **John F. Lyle, III** has become an associate of the firm and **E. Kirk Wood** has become *of counsel* to the firm.

Regina B. Edwards and **Thomas R. Edwards**, formerly with Joe A. Macon, Jr. & Associates, announce the formation of **Edwards & Edwards**. Offices are located at 116 E. Bridge Street, Wetumpka, Alabama 36092. Phone (205) 514-1011.

Bert P. Taylor and **William F. Smith, II** of Taylor & Smith and C. William Gladden and Andrew J. Sinor, Jr., formerly of Balch & Bingham, announce the formation of **Taylor, Gladden & Smith**. Offices are located at 300 N. 21st Street, Title Building, Suite 600, Birmingham, Alabama 35203. Phone (205) 252-3300.

Lonnie D. Wainwright, Jr. and **Linda Winkler Pope** announce the formation of **Wainwright & Pope**. Offices are located at 100 Union Hill Drive, Suite 100, Birmingham, Alabama 35209. Phone (205) 802-7455.

Bell, Carson & Brock announces that **Victor A. DuBose** has become a member, with offices at 860 C. River Place, Suite 209, Jackson, Mississippi 39202. Phone (601) 352-3050. DuBose is a 1992 admittee to the Alabama State Bar.

Corrections: In the September 1993 issue of *The Alabama Lawyer*, it was incorrectly reported that the firm of **Lange, Simpson, Robinson & Somerville** had *relocated*. It should have stated that the firm has a new *mailing address*, which is Lange, Simpson, Robinson & Somerville, 417 20th Street, North, Suite 1700, Birmingham, Alabama 35203-3272.

Also, **Lloyd, Bradford, Schreiber & Gray** has been changed to **Lloyd, Schreiber & Gray**, not Schreiber & Gray, as was incorrectly reported in the September issue of the *Lawyer*. Offices are still located at 2 Perimeter Park South, Suite 100, Birmingham, Alabama 35243. Phone (205) 967-8822. ■

Notice – Rule 7.2(c)

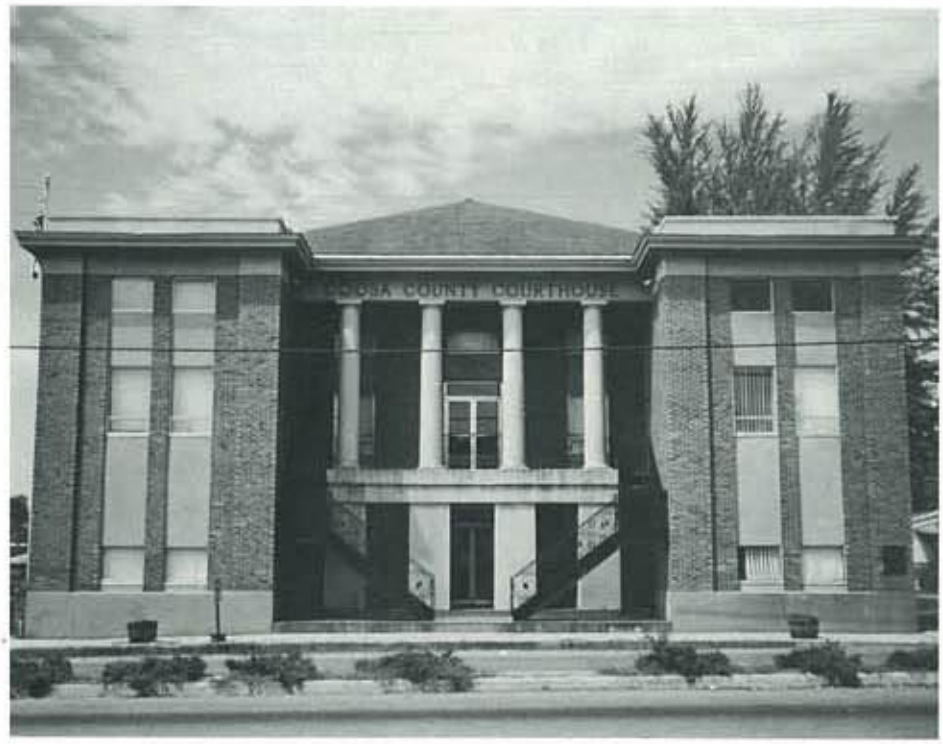
Rule 7.2(c) of the Alabama Rules of Professional Conduct prohibits lawyers from giving anything of value to a person for recommending the lawyer's services. A lawyer cannot pay another person or entity for channeling professional work. Likewise, a lawyer cannot ethically participate in a "for-profit" referral service which requires payment of a fee from those who join or participate. However, Alabama lawyers may participate in "not-for-profit" referral programs, such as those operated by the state and local bar associations. The lawyer can pay the customary charges associated with the operation of those programs.

BUILDING ALABAMA'S COURTHOUSES

COOSA COUNTY COURTHOUSE

By SAMUEL A. RUMORE, JR.

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



Coosa County Courthouse

COOSA COUNTY

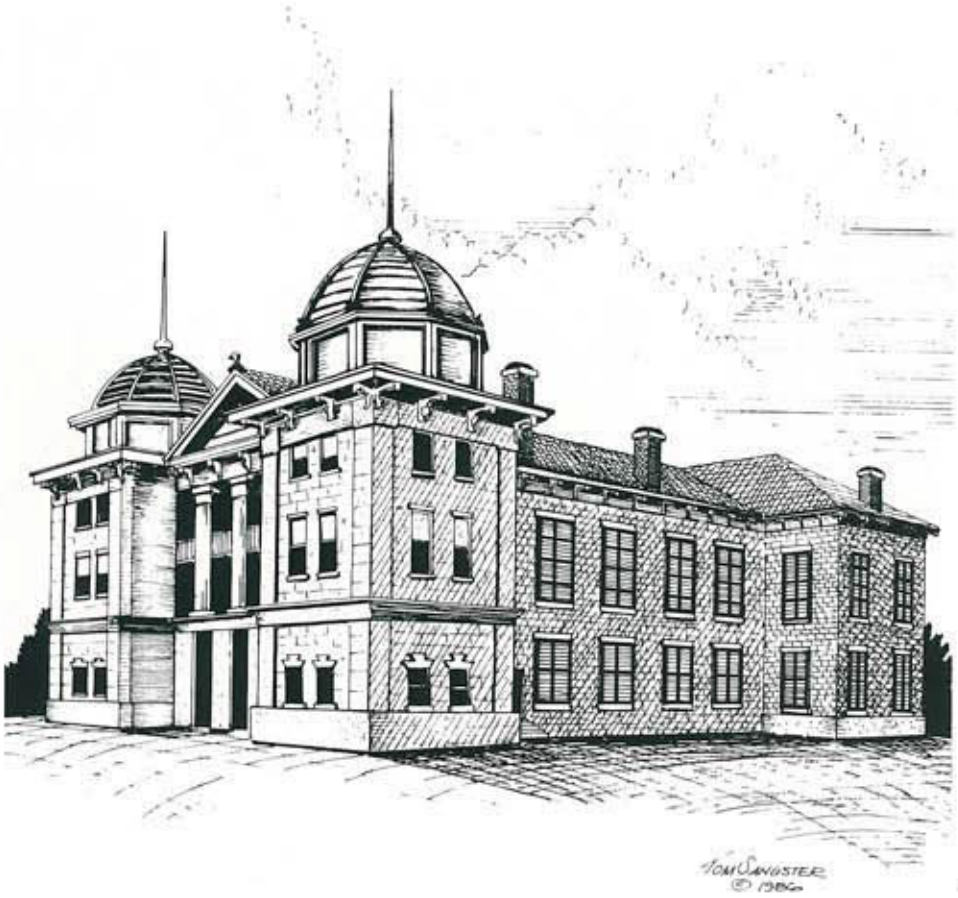
Coosa County, like its neighbor, Tallapoosa County, has a rich Indian heritage. Both counties were created December 18, 1832 from the Creek Indian land cession of that year. Also, like Tallapoosa, Coosa County was named for a river in East Alabama. The name itself is said by some sources to mean "rippling" and by others to mean "cane break." The two rivers are significant because they join at the site of Fort Toulouse, once located in Coosa County but now in Elmore County, and form the Alabama River. This river system drains the entire state of Alabama from north to south.

The early Indian inhabitants of the county left much evidence of their presence. An extensive collection of Indian artifacts gathered in the county by the late John K. McEwen is exhibited in the State Department of Archives and History at Montgomery. It is believed that DeSoto came to the county in 1540, and stayed over a week with the native inhabitants before moving on. The Indians left many mounds and burial sites in the county, but most have been levelled over the years for cultivation.

The Alabama Legislature initially appointed three commissioners when the county was established to organize the new Coosa County. However, little was done at that time because of disputes between the Indians and the Unites States Government over terms of the 1832 Treaty.

On November 28, 1833, the Legislature appointed four new commissioners and gave them the task to locate a seat of justice within eight miles of the center of the county. They were authorized to acquire 160 acres of land and to lay it out into lots after reserving land sufficient for public buildings. The legislation further mandated that the place would be called Lexington. The location was probably named for either Lexington, Virginia or Lexington, Massachusetts, the site of the first battle in the Revolutionary War.

The commissioners chose a site on the south side of Hatchemadega Creek, approximately 25 miles north of Wetumpka. The first term of the Commissioner's Court was held in May 1834. A subsequent term followed in August of that year. Existing records do



Coosa County Courthouse, c. 1906

not reflect that any public buildings were ever built in Lexington. One account claims that the first court was held outdoors under an oak tree because there were no houses in the town except for a single Indian shanty.

By late 1834, the commissioners decided that they had made a mistake in selecting the site of Lexington for their county seat. Records do not reflect why the change took place, but on January 9, 1835, the Legislature approved a new location. Lexington was abandoned and soon became a portion of the Albert Crumpler plantation. Nothing remains today of the town of Lexington, the first county seat of Coosa County.

The new county seat was originally named Pondelassa, for Ebenezer Pond, an early resident and later a county judge. A post office was established there in 1834. The name was changed to Rockford around July 1835. This name probably referred to the rocky countryside, and it is likely that a ford existed on a nearby creek. This site had been the location of the Indian village of Unifulka and was approximately four miles north of Lexington.

There is no record of the very first court building in Rockford. In all likelihood it was a log structure. However, the first known courthouse was built in 1838. At the August 1838 term of the Commissioner's Court, Richard Plunkett was paid $525.75 for building the courthouse. The county had furnished him the building materials. This building was a two-story wooden structure. The courtroom was located on the second floor with county offices located on the ground floor. A pair of steps on each side of the front of the building ascended to the second floor. This structure stood near the location of the present courthouse.

In 1842, the citizens of Coosa County authorized the construction of a stone jail which was built of local granite. This jail replaced an earlier log jail. The cost of the structure was $2,745. It was constructed by a Mr. Miller and a Mr. Heard. This old stone three-story jail stands in Rockford today and is the oldest structure once used as a county jail still in existence in Alabama. It now houses a county museum and memorabilia for the Coosa County Historical Society.

The present Coosa County Courthouse was constructed in 1858. It was built by Patrick Coniff of Wetumpka for $10,434.35. The building consisted of brick and stucco with marble trimmings.

The 1858 courthouse was originally designed in the Second Empire style. The only other example of this type of courthouse architecture in Alabama is the Bullock County Courthouse built in 1871. This style came from France and was named for the reign of Napoleon III, who ruled France from 1852 to 1870.

A painting of this old courthouse reveals a symmetrical, two-story structure with twin three-story towers on either side of the front entrance. The entrance-way was recessed with a portico on both the first and second levels. Two domes topped the front towers. The building was constructed of handmade local brick. It served the county without change for more than 45 years.

Initially, Coosa County was bounded by Tallapoosa on the east, Montgomery on the south, Autauga on the west, and Talladega on the north. In 1866 Elmore County was formed from lands taken from Coosa, Tallapoosa, Autauga and Montgomery counties. The new boundary lines substantially reduced Coosa County from about 1,000 square miles to under 660 square miles. At that time the county lost much of its richest agricultural land. The county is now bounded on the east by Tallapoosa, on the south by Elmore, on the west by Chilton and Shelby, and on the north by Talladega and Clay counties.

In 1906, the courthouse was substantially renovated. The building was enlarged to provide more usable work space and the exterior brick was covered with a thin coat of concrete. These improvements cost more than $10,000. However, less than 20 years later, the courthouse faced its greatest challenge when the building burned.

On January 29, 1925, a fire officially of undetermined origin greatly damaged the building. Unofficially, it is believed that a gambling and drinking party attended by a group of surveyors in an upstairs office was the real cause of the blaze. In any event, the interior was gutted, and the roof and domes were lost. Despite this damage the outside walls remained intact. Fortunately for the county, a few years before the fire officials had installed a fire-proof steel vault in the courthouse. All of the important county records were saved.

While the courthouse was being repaired, county offices were scattered throughout Rockford. The sheriff moved his office to the jail. The county clerk and the probate judge conducted business in the unburned vault. The tax collector and assessor moved to a store. Chancery court was located at the bank. Circuit court trials were held at the county high school building. On March 16, 1925, the Commissioner's Court made a contract with Walker Brothers and Company for rebuilding the courthouse for the sum of $37,500. Ben Price was the architect.

In 1970 another major renovation on the courthouse was completed. The building was remodeled inside and out. Improvements included wood paneling, new carpets, central heat and air, private offices, and a courtyard. A new brick veneer was installed over the original bricks. This resulted in the wall of the courthouse now being 18 inches thick. The project, including furnishings, cost approximately $350,000. Birmingham architects Elliott and Bradford, Inc. designed the renovation, and Hugh M. Motes of Sylacauga served as contractor. The entire project was supervised by probate judge Mack Thomas. He presided at the dedication program on Sunday, December 20, 1970. ■

Old stone jail in Coosa County, 1842

The author thanks the probate office of Coosa County, Mrs. Inez S. Warren of the Coosa County Historical Society, Rockford attorney John Johnson and his wife, Linda, and Judge Gary Pate of Birmingham for their help in obtaining material used in this article.

Samuel A. Rumore, Jr.

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

BOOK REVIEW

Reviewed by Judge Dale Segrest

Faith and Order The Reconciliation of Law and Religion

Emory University Studies in Law and Religion
By Harold J. Berman (1993)

At a time when the mere mention of faith and order produces a knee-jerk reaction about separation of church and state, this 1993 publication from Emory University Studies in Law and Religion is most refreshing. Through the media, we are so saturated with information about the Jim Bakkers, Jimmy Swaggarts, and David Koreshes of the world, that we tend to forget the strong and historic connection between faith systems and orderliness in society. Against this distorted public image, Harold Berman's new book is a most refreshing change.

Faith and Order is a sampling of a lifetime of work by one of the foremost scholars in the United States in the area of law and religion. It is a collection of essays written over a 50-year period by Professor Berman, many of them delivered at some of the most distinguished law schools in the United States as special lectures or on special occasions.

With remarkable insight and precise historical scholarship, Berman displays the intricate way in which our legal order arises from our system of beliefs. Each essay is a rifle-shot exposure of a particular facet of the relationship between law and religion. In the aggregate, a picture emerges of a history of constant interplay between the various movements in the Judeo-Christian tradition and the development of law in western civilization. Judaism, Roman Catholicism, Lutheranism, Calvinism and other forms of Protestantism have played their parts. Topic include "The Religious Foundations of Western Law," "The Transformation of Western Legal Philosophy in Lutheran Germany," and "Law and Belief Through Three Revolutions." Berman argues:

> "It is a profound mistake, I submit, though one that is very frequently made, to consider the relation of law to religion solely from a legal point of view, that is solely in terms of the legal foundation of religious freedom. It is also necessary to consider that relation in terms of the religious foundation legal freedom."

Although each essay is complete in itself, there is an overall theme that shows modern law arising in the Roman Catholic Church during the Investiture Struggle (1075-1122). Rediscovery of Roman law—Justinian's Code—at Pisa led to a broad-based study of law, particularly at the University of Bologna. This study had significant impact in the development of all modern legal systems in western civilization. Likewise, there were powerful theological issues affecting social order embodied in the teachings of Luther and Calvin. These, in turn, had an impact on English Puritanism and the Deism of the French Enlightenment. Faith unquestionably has affected the development of our social order. That faith continued in the founding of our own country.

> "In other words, the authors of the Consitution, including those who were personally skeptical of the truth of traditional theistic religion, did not doubt that the vitality of the legal system itself depended on the vitality of religious faith, and more particularly, of the Protestant Christian faith that predominated in the New American Republic."

After a thorough treatment of various aspects of the historical connection between law and religion, Berman skillfully exposes the connection between law and religion through sociological and philosophical themes. He exposes certain false premises of the widely held Weberian sociology of law in Part II.

In Part III, he deals with theological, prophetic and education themes, including a timely and insightful discussion of the crisis in legal education in America. Among the problems facing the legal system is the fragmentation of legal philosophy because of our failure to recognize the contribution of belief systems.

Berman is a recognized expert on the Soviet legal system, and the closing section contains four essays dealing with Russian and Soviet themes germane to religion and law. The essays, mostly written before the downfall of the Soviet system, identify the problems inherent in the system: (1) Atheism as a faith system; (2) unwarranted exaltation of materialism; and (3) unwarranted exaltation of rationalism, among others. They show how Christian faith survived the onslaught of communism. It is clear that Christian faith will significantly affect the emerging social order in the former Soviet states. There is an ominous message for our own system in the failure of the Soviet system.

> "The radical separation of law and religion in twentieth century American thought—I am speaking now not of Constitutional law but of jurisprudence, of legal philosophy— creates a serious danger that law will not be respected. If law is to be measured only by standards of

expedience, or workability, and not by standards of truth or rightness, then it will be difficult to enforce it against those who think that it does not serve their interest."

The Emory University Studies in Law and Religion relates the study of law and the study of religion at Emory University. Other books published as part of the occasional book series include *The Theology of Law and Authority in the English Reformation* by Joan Lockwood O'Donovan and *Political Order and the Plural Structure of Society*, edited by James W. Skillen and Rockne M. McCarthy. All of these books are books of exquisite scholarship and provide important ideas for those of us who are interested in finding meaning in the processes of law. *Faith and Order* is mandatory reading for anyone who is interested in the interface between law and religion. *Faith and Order* may be ordered directly from Scholars Press Customer Service Dept. at P.O. Box 6966, Alpharetta, Georgia 30239-6966. The special cloth price is $24.95, and the special paper price is $16.95. When ordering specify Code 70 03 03. ■

Judge Dale Segrest

Judge Dale Segrest has served on the Fifth Judicial Circuit since 1983. He is a graduate of Huntingdon College and the University of Alabama School of Law. Judge Segrest is the author of *Conscience and Command*, which explores the relationship between law and faith, and currently is teaching a seminar on that topic at Huntingdon College.

Update on Appellate Procedure/Jurisdiction

Amendment to Section 12-2-7, *Code of Alabama* (1975)

Legislation was enacted this year which grants authority to the Alabama Supreme Court to transfer cases within its appellate jurisdiction to the court of civil appeals, subject to particular exceptions.

Section 12-2-7, *Code of Alabama* (1975), was amended to provide that the Alabama Supreme Court may, as of October 1, 1993, transfer to the court of civil appeals any civil case appealed to the supreme court and within its appellate jurisdiction except for the following:

"(a) A case that the Supreme Court determines presents a substantial question of federal or state constitutional law.

"(b) A case that the Supreme Court determines involves a novel legal question, the resolution of which will have significant statewide impact.

"(c) A utility rate case appealed directly to the Supreme Court under the provisions of Section 37-1-140.

"(d) A bond validation proceeding appealed to the Supreme Court under the provisions of Section 6-6-754.

"(e) A bar disciplinary proceeding."

To alert appellants that their case may be subject to transfer pursuant to §12-2-7(6), the supreme court has approved a revised docketing statement which gives notice that the case may be transferred to the court of civil appeals.[1] The docketing statement notifies counsel that the supreme court will consider, within its discretion, the following categories of cases for transfer, subject to the exceptions listed in §12-2-7(6):

(1) Cases involving an amount in controversy of $50,000 or less, regardless of the basis of the claim appealed;

(2) Cases where the dispositive legal issue turns on the law of post-judgment enforcement procedures, including garnishments and executions;

(3) Cases where the dispositive legal issue turns on the law of mechanics' or materialmen's liens;

(4) Cases where the dispositive legal issue turns on commercial contract law; and

(5) Cases where the dispositive legal issue turns on real property law.

The docketing statement provides a space for counsel to indicate why the case should not be transferred, assuming it falls within one of the categories to be considered for transfer.

Amendment to Rule 4(a), Alabama Rules of Appellate Procedure

Appellate practitioners should be advised that the Alabama Supreme Court has approved an appellate rule amendment which will alter the procedures established in Ex parte Andrews, 520 So.2d 507 (Ala. 1987); *Owens v. Coleman*, 520 So.2d 514 (Ala. 1987); and *Herring v. Shirah*, 542 So.2d 271 (Ala. 1989).

The court has amended Rule 4(a), Alabama Rules of Appellate Procedure, effective December 1, 1992 to provide that a notice of appeal filed after the announcement of a decision but before the entry of judgment will be treated as filed after the entry of judgment and on the day thereof. The rule was further amended to provide that a notice of appeal filed after the entry of a judgment but prior to the disposition of a post-judgment motion filed pursuant to Rules 50, 52, 55 and 59, Alabama Rules of Civil Procedure, will be held in abeyance until all post-judgment motions are ruled on. In such a case, the notice of appeal will become effective on the date of disposition of the last of such post-judgment motions. The appellant should notify the appellate court clerk upon discovery that the notice of appeal is being held in abeyance. ■

—Robert G. Esdale
Clerk, Supreme Court of Alabama

1. The Docketing Statement is a form that is completed by appellant or appellant's counsel at the time the notice of appeal is filed. This form requires information relating to the finality of the case, information concerning the appropriate appellate jurisdiction, and brief summaries of the facts and issues. It is designed to alert the appellate court of possible jurisdictional problems early in the appeal. Filing of the docketing statement is not jurisdictional, as is the notice of appeal, but failure to file may subject the appellant to sanctions, including dismissal of the appeal.

TASK FORCES 1993-94

TASK FORCE ON ADULT LITERACY

Chair:
Lynne B. Kitchens, *Montgomery* 242-4347
Vice-Chair:
Barrie B. Stokes, *Birmingham* 326-5945
Board of Bar Commissioners Liaison:
George Higginbotham, *Bessemer* 425-3214
Young Lawyers' Representative:
Amy Slayden, *Huntsville* 533-7178
Staff Liaison:
Keith B. Norman, *Montgomery* 269-1515
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Leslie M. Allen, *Montgomery*
William Richmond Stephens, *Leeds*
Willie A. Maise, *Birmingham*
Jim Sears, *Tuscaloosa*
Richard Eldon Davis, *Birmingham*
Nick Roth, *Decatur*
William H. Reece, *Mobile*
Ina B. Leonard, *Birmingham*
Blair M. Haddock, *Sheffield*
Annetta Verin, *Bessemer*
Dorothy F. Norwood, *Montgomery*
Gordon T. Carter, *Montgomery*
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There are many employments in life not unfit for female character. The profession of the law is surely not one of these. The peculiar qualities of womanhood, its gentle graces, its quick sensibility, its tender susceptibility, its purity, its delicacy, its emotional impulses, its subordination of hard reason to sympathetic feeling, are surely not qualifications for forensic strife. Nature has tempered woman as little for the juridical conflicts of the courtroom, as for the physical conflicts of the battlefield.

In re the Motion to Admit Miss Lavinia Goodell to the Bar of This Court, 39 Wis. 232 (Wis. 1875).

WOMEN IN LAW

By Leah Taylor

When the Wisconsin Supreme Court refused to admit Lavinia Goodell to the Wisconsin bar in 1875, no one could have foreseen the progress which women would make in the legal profession in the next 118 years. The 1875 census listed only five female attorneys in the United States.[1] And in April of 1873, the United States Supreme Court had rejected Myra Bradwell's claim that the right to practice law should be acknowledged as one of the privileges and immunities of United States citizenship.[2] Today, women are entering the state's law schools in numbers almost equal to men.[3] These women will learn the law from a growing number of female law professors and deans. Women are becoming increasingly involved in all areas of legal practice, from the traditional areas of domestic relations and child custody disputes to personal injury and corporate litigation. Today women comprise almost 19 percent of the members of the Alabama State Bar.

This article provides a small glimpse into the lives of nine women lawyers in Alabama. This article does not chronicle the lives of Alabama's most noted women lawyers; such a task would indeed be impossible. There are many, many women not mentioned here who have contributed greatly to our profession and to the progression of Alabama women in the practice of law. The following nine women are simply examples of those who have quietly, yet earnestly, paved the way for the women lawyers of today.

Their stories are not filled with complaints of mistreatment. They refuse to describe themselves as pioneers in a man's world. In her own unique way, each woman accepted the situation presented to her and did her part to ensure that the paths of future women lawyers would be smoother.

All of these women had male mentors or role models who encouraged and supported their efforts to join the legal profession. All of these women faced the ever-present dilemma of balancing their careers with the needs of their families. They all entered the world of law with a different perspective — not simply because they are women, but because their lifetime experiences differed from those of men. The injection of this different perspective into the legal profession can only strengthen it. The Alabama State Bar is stronger for its 1,854 women members. The following nine women at least partially explain why.

Maude McLure Kelly

"The only thing of which I am very proud is that I opened the door to the active, actual practice of law here [in Alabama] to women. All other things I did were minor. They were to be done and usually it was easier and quicker to do them than to get out of doing them."[1]

Born in Mountain Spring, Alabama in 1887, Maud McLure Kelly was the paternal granddaughter of Colonel Samuel Camp Kelly, who commanded a unit known as Kelly's Infantry during the Civil War. Colonel Camp quickly restored his family fortune after the war and his son, Richard Bussey Kelly, enjoyed a fine education, attending Oxford College in Oxford and receiving a law degree with highest honors from the University of Alabama.

Leona Bledsoe's widowed mother had sold the family plantation in Sylacauga to enable her to educate her daughters. Leona met Richard Kelly at Oxford College and they married. Maud Kelly was one of their nine children. She grew up surrounded by servants, good books, and many other luxuries. From age five to 17, Maud attended Noble Institute, a private school in Anniston.

Meanwhile, Richard Kelly was enjoying political success as a member of the Alabama Legislature from 1894-1895 and as chancellor of the Northeastern Chancery Division from 1898-1904. In 1904, Kelly lost an election for associate justice of the Alabama Supreme Court.

Maud Kelly graduated from Noble in 1904. Because Judge Kelly had allowed his financial situation to deteriorate, he moved his law practice and family to Birmingham in 1905. When her father opened his new office, 18-year-old Maud began to work as his stenographer. Quietly, she began to study law in her spare time. She read law with her father until the fall of 1907, when she took the entrance examination for the law department at the University of Alabama. She did so well on the test that she was placed in the senior class.[5] As the second woman admitted to the law department, Kelly was elected vice-president of the Kent Club (the debating society) and class historian. At the end of the year, she graduated third in her class of 33. She had a class average of 95 percent and received her degree with highest honors.

At the time she entered the law department, Kelly did not know whether she would be allowed to practice after her graduation. At that time, the *Code of Alabama* stated that anyone who presented *his* diploma from the University of Alabama would be permitted to try cases. On November 26, 1907, Kelly's friend and classmate, John McDuffie, introduced a bill before the Alabama Legislature that changed the wording of the code section to read "his or her" diploma. The bill passed despite heated opposition.[6]

Women had been attending law school in the United States since 1869.[7] And even though many women graduated from accredited law schools, many state bar associations refused to admit women lawyers until years later. The American Bar Association did not admit a female lawyer until 1902, and this was only after the Association postponed consideration of her application for one year because the members needed time to consider "the grave consequences of admitting a woman."[8] When Kelly won the right to practice law in Alabama, the states of Texas, Virginia, Arkansas, Georgia and Mississippi still forbade women to practice law.[9]

Kelly established an office next to that of her father and began the practice of law. Immediately after being admitted to the Alabama State Bar on October 7, 1908, Kelly appeared in court to represent her first client. When that client did not pay her fee, Kelly withdrew her representation of him.

One of the most serious problems Kelly encountered was the reluctance of jailers to allow her to see clients. Kelly thus began to wear a long black robe and a black mortarboard which seemed somehow to give her authority. She began to take on more serious cases, and in 1909, the *Montgomery Messenger* reported a case in which Kelly assisted the state's attorney:

> On yesterday, there appeared in the courthouse for the first time in the history of Montgomery County a woman lawyer, actually engaged in trying a case before a jury.
>
> This unusual distinction fell to Miss Maud McLure Kelly of Birmingham, a vivacious young woman who has chosen the exacting profession of law for her life's vocation....
>
> First of all it must be said that her manner in addressing was most seemly and gracious, touched with enough embarrassment to mark her womanliness. Old habits of the court complimented her handling of the facts very highly. After the jury retired and while waiting for a verdict, Miss Kelly was asked for an interview for the Woman's Page of the *Advertiser*. In a businesslike manner she offered her card and it carries the earmarks of businesslike directness, phone number, suite of offices, and so forth.[10]

In July 1909, Kelly was presented to the Alabama State Bar as the only woman member and as the only woman lawyer practicing in the state.[11] Encouraged by this acceptance, Kelly decided to apply for admission to the bar of the United States Supreme Court. With the help of her father's good friend, William Jennings Bryan, then Secretary of State, Kelly became admitted to practice before the U.S. Supreme Court on February 22, 1914, thus becoming the first woman admitted to that bar as a practicing lawyer in the South.[12]

Kelly often became frustrated by the inequality she observed in the legal system. Describing her early years in practice she wrote:

> A man may be able to get by with a poorly prepared case, without subsequent ill effect but a woman cannot because she is more closely observed.... I knew if I went into court with a poorly prepared case, or was not so well prepared for every possible eventuality that I could not be caught "off base," the penalty would also be paid by the women who came after me to the bar.[13]

Kelly's interest in women's rights was reflected by her participation in the Birmingham Equal Suffrage Association which she organized along with Ethel Armes and Dr. Annie M. Robinson in Birmingham. She later became a charter member of the Alabama Equal Suffrage Association. In 1915 the Alabama Association intensely lobbied a bill before the Alabama Legislature which would have allowed the people of Alabama to vote on the suffrage issue. This legislative campaign was unsuccessful.

Believing somehow that her working in Washington would keep

her closer to her brothers fighting in World War I, Kelly obtained a job with the War Department in 1917. Shortly thereafter, she accepted a job in the Department of the Interior, working on the legal staff of the Oil Division in the Land Office. She returned to Birmingham in April 1924. Upon her return, she was forced to care for her father, aunt and two disabled brothers. She also reestablished her legal practice, and became a member of the Alabama Women's Lawyer Association. After a brief partnership with her brother, she retired from the practice of law in 1931. She later would write about the sense of responsibility which motivated her in her law practice:

> For such a long time I was the only woman practicing law in the state that I had to be a model of femininity as well as the best possible lawyer, since whatever way I acted would involve the women after me. That their paths have been smoother because I was so careful, I am confident . . . . I used to wonder, if, when I passed on my way, the later comers would even realize how much I thought of them, and how I tried to so conduct myself that things would be easier for them than they have been for me.

Kelly's retirement from the legal profession did not slow her down however. She became actively involved in Democratic politics. She devoted hundreds of hours to a number of clubs and service organizations. She became the historical librarian in the Alabama Department of Archives and History. In that capacity, she drafted two bills which gave the Archives authority over the disposal of all public records in the state.

In 1956, she moved to Huntsville to care for the four children of a niece who had died suddenly. By the early 1960s, Kelly had immersed herself in genealogy. She was listed in the handbook of *American Genealogy* as a professional researcher who specialized in courthouse records in southern states, court records and difficult genealogies of the South.[14]

Kelly donated her papers to the Samford University Library where they are known as the *Bledsoe-Kelly Collection* in honor of her parents. The collection occupies 79 linear feet in the manuscripts section of the Special Collections Department and is a treasure house of information on such subjects as Southern history and genealogy. Kelly died April 2, 1973.[15]

Annie Lola Price

A native of Cullman, Annie Lola Price was forced to seek employment at age 18 after her only surviving parent died. She worked as a stenographer in the law office of Griffith & Brown. It was during this period that she read law, which was still an accepted method of legal education. She passed the Alabama bar in 1928, and actively practiced law in Cullman until 1935. After work each day she took pilot lessons at the Cullman School of Aviation and received her pilot's license in the early '30s.

From 1935 to 1947, Price served as Circuit Judge Griffith's court reporter. She moved to Montgomery in 1947 as assistant legal advisor to Governor Jim Folsom. Three years later she became the first woman to ever serve as legal advisor to the Governor.

Just three days prior to the expiration of his term, on January 12, 1951, Governor Folsom appointed Price to the Alabama Court of Appeals to fill the vacancy caused by the death of Judge Charles R. Bricken. She, thus, became the first woman in Alabama to serve in a high judicial position. Her appointment came approximately 15 years before women in Alabama could serve on juries. Because her appointment created quite a stir among the bar and the general public, Price asked that her "swearing in" be done in private.

One of her favorite stories involved Governor Person's opening address to the Legislature. Great preparation had been made for the seating of dignitaries and high-ranking officials. The supreme court was ushered into the House Chamber followed by the court of appeals. When Judge Price entered to take her seat next to judges Carr and Harwood, the doorkeeper jumped up and shouted: "Halt, you can't go in there. These places are reserved for the judges!"

Judge Price was re-elected for three consecutive six-year terms. In 1969, she was sworn in as the first presiding judge of the newly-created court of criminal appeals, a post she held until her death in 1972. Justice Robert B. Harwood paid the following tribute to Judge Price:

Sometimes fate decrees that a particular climate is nec-

essary for one's talents to flower and attain full growth. In the climate of appellate court work, Judge Price found her natural metier . . . . Her gracious dignity and gentle ways, reinforced by a fine legal mind, sound judgment and common sense, cast a beneficent influence on the entire court . . . . She quietly assumed her responsibilities, and quietly she surrendered them . . . . Her influence will long linger in these halls — and our memories of her will remain spring green.[17]

Ellene Winn

Ellene Winn was born in 1911 in Clayton, Alabama. Her grandfather had served in the Confederate Army as a surgeon, and her father was a well-known lawyer and state senator from Barber County. Winn was tutored at home and later attended Agnes Scott College in Atlanta. She then received a master's degree in English literature at Radcliffe College.

Even with her sterling academic record, Winn was unable to find a job which suited her. Determined to help her family through hard financial times, she decided to become a lawyer. She attended the Birmingham School of Law and soon established herself as the most outstanding student at the school. In 1942 she joined Bradley, Baldwin, All & White, thus becoming one of the first women in Alabama to join a large law firm. She concentrated her practice in the areas of real property, estates and public securities. Away from the office Winn enjoyed reading Greek, Latin, French and German. She died in 1986.

Mabel Yerby Lawson

Mabel Yerby Lawson graduated from the University of Alabama School of Law in 1920. She was raised by her father, William E. Yerby, who was a lawyer and publisher of the *Greensboro Watchman* newspaper. After completing law school, Miss Yerby practiced law with her father in Greensboro. She became the first woman lawyer to defend an accused murderer in Alabama. (He was acquitted). She married James Lawson in 1925. She retired from the practice of law to raise three children. Her daughter remembers her mother as being devoted to her family, yet torn between her home and her career. In addition to practicing law, she also taught English and public speaking at Auburn University, and in her later years tutored students in English.[18]

Janie Ledlow Shores

Justice Janie Shores was born in 1932 in Butler County. As a very young child she picked strawberries alongside her mother, sister and many others, black and white, in the fields of Butler County. After Pearl Harbor, her family moved to Loxley in Baldwin County. At the age of eleven, she and her sister, Verla, picked potatoes for a nickel a basket, earning as much as $3 a day. Her mother, Willie, worked as a waitress and later as a telephone operator, earning $30 to $50 a week. Her father, John, was sent by the Navy for basic training in Michigan and was later shipped out to the Pacific, where he stayed until the end of the war.

Justice Shores continued to work during her teenage years, first in the potato shed as a sorter and later as a server, then as a waitress. Her father returned from the war and went back to work at the shipyards. In 1948, her brother, Larry, was born and she and her sister left school at noon to babysit him while their parents worked.

In 1950, before graduating from Robertsdale High School, Justice Shores boarded a bus to Mobile every Saturday to look for a job in a law office. In April of that year, she was offered a job by Vincent Kilborn at the law firm of Outlaw, Seale & Kilborn in Mobile. She worked full-time for Kilborn for four years, and she now states that those four years were the most significant years of her life.[18]

It was Vincent Kilborn who encouraged Justice Shores to attend law school. She graduated from Samford University and graduated with honors from the University of Alabama School

of Law in 1959. While many outstanding students have walked the halls of the University's law school, Justice Shores is reputed to be the very best. Her summaries were prized possessions of law students for at least a decade.

Justice Shores practiced law in Selma until 1961 and in Birmingham from 1962 until 1966. In 1962 she married James L. Shores, a Birmingham attorney, and in 1964 daughter Laura Scott Shores was born. For nine years beginning in 1966, Justice Shores was a professor at the Cumberland School of Law.

In 1974, Janie Shores was elected the first woman supreme court justice of Alabama. She was re-elected to this position in 1980, 1986 and 1992. While Justice Shores has reached the pinnacle of the Alabama judiciary, her judicial ascension may not yet be complete. Her brilliant legal mind and long-time service to her state make her an ideal nominee for the United States Supreme Court. Justice Shores was prominently mentioned as a possible nominee for the position vacated by Justice Byron White, and she will no doubt remain a serious contender for the next available space on the Court. The little girl who picked strawberries in Butler County has surely come a long way.

Nina Miglionico

Nina Miglionico ventured to the University of Alabama Law School from her hometown of Birmingham in the early 1930s. Her family was very supportive of her decision. She was a member of the graduating class of 1936, which even today ranks as one of the most outstanding female classes at the University. She was joined in this class by Katheryn Rossback of Tuscaloosa, who practiced in Washington, D.C., for many years, and Irene Feagin Scott, the first female judge of the U.S. Tax Court in 1960.

Miglionico has practiced law in Birmingham since 1936, concentrating her practice on probate and estate matters, domestic relations, tax, and general commercial law. In 1963 she entered the political arena and was elected to the Birmingham City Council. She was re-elected to five more terms, serving until 1985. She also served as president of the Birmingham Parks and Recreation Board. Her participation on numerous local, state and national committees and associations has been extensive. She is a past president of the National Association of Women Lawyers, the Alabama League of Municipalities, the Alabama Joint Legislative Council, the Alabama Merit System League, the Alabama Federation of Business and Professional Women's Club, the Alabama Women Lawyers' Association, and Zonta Club (executive women's club).

She actively continues to practice law with Samuel A. Rumore, Jr. in the firm of Miglionico & Rumore in Birmingham.

Eleanor Oakley Gordy

Eleanor Oakley Gordy graduated from the University of Alabama School of Law in 1931. She and her husband practiced law together in Dothan, but she left active practice after two years to raise their two children. She returned to the active practice of law in 1965. At that time there were 35 lawyers in Dothan.

In 1966 she became a U.S. Magistrate. After being asked by long-time lawyer friends whether they should address her as "Madame Magistrate," Gordy replied that they should just call her "Eleanor." "I never did care much for pomp," she stated. She was forced to retire as U.S. Magistrate in 1978 upon reaching the age of 70.

Gordy was well-accepted among her peers and was elected president of the Houston County Bar Association. She was awarded Dothan's Woman of Achievement in 1971-1972. She believes that being a woman has allowed her to enjoy the "best of two worlds." She has enjoyed the good-natured teasing by her male colleagues and has never been aware of any negative treatment of her because of her sex. Gordy has been working out of her home since her now-deceased husband became incapacitated six years ago. At the age of 85, she is one of the oldest practicing attorneys in the state. She continues to prepare wills and deeds for her friends in Dothan.

RIDING THE CIRCUITS

New officers of the Russell County Bar Association are:

President:
Jeffrey Ezell
Phenix City

Vice-President:
Charles Floyd, II
Phenix City

Secretary–Treasurer:
Melissa B. Thomas
Phenix City

Janella Jackson Wood

Her father's fatal accident inspired Janella Wood to become a lawyer. Born in Livingston, Wood attended the University of Alabama Law School, despite the objections of the dean who insisted she was too young. Nevertheless, she graduated in 1935. Wood practiced law only one year before she retired to spend more time with her daughter. She taught school at Mae Eanes School after her husband died in 1955.

In the late 1960s, Thomas A. Hamilton asked Wood to handle collection cases for the oldest law firm in Alabama, Hamilton, Butler & Riddick in Mobile. Her practice later expanded to include bankruptcy and probate matters. She earned a partnership with the firm and continued to practice until 1985. A partner remembers her as "a lady in the finest sense of the word" who nonetheless "could more than hold her own." Wood died in 1989.

Jennie Lee Kelley

Jennie Lee Kelley was born near Florence in 1917. Following her graduation from Athens College, she began working in the law office of Sim and Elizabeth Wilbanks in Dadeville. The law firm moved from Dadeville to Alexander City after World War II.

Kelley had many responsibilities in the Wilbanks' firm. Determined that she could be more help with a law degree, she began commuting to Jones Law School. She graduated from Jones Law School and became a member of the Alabama State Bar in 1970. Following her graduation, she formed a partnership with John Dillon in Alexander City. She concentrated her practice in the areas of domestic relations, estates and property law. She continues to work full-time for the firm of Morris, Haynes & Ingram in Alexander City where her practice centers on real property law. ■

Endnotes

1. U.S., Department of Interior, *Ninth Census of the United States*, 1870. Population 1,706, *cited in* Nancy Gilliam, "A Professional Pioneer: Myra Bradwell's Fight to Practice Law," 5 *Law and History Review* 105, 107 (1987).
2. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1873).
3. Thirty-six percent of the 1992-93 entering class at the University of Alabama School of Law were female; Cumberland School of Law saw 42 percent female in that same class.
4. Interview with Maud McLure Kelly, 1968, *reprinted by* the Alabama Women's Hall of Fame.
5. Luelle Allen was admitted to the University of Alabama law department in the early part of 1907. Allen graduated from the law department but never applied for admission to the bar.
6. Acts of the Special Session of 1907, p. 201.
7. Lemma Barkeloo and Phoebe W. Couzins attended the University Law School in St. Louis in 1869. It is possible that Elizabeth Peckham attended a law school in Milwaukee, Ada Kepley attended the University of Chicago Law Department, and Sarah Kilgore Wertman attended the University of Michigan Law School in 1869.
8. Grace H. Harte, "The Right of Women to Practice Law," *Women Lawyers' Journal* 33 (Summer 1947): 145, *cited in* Cynthia Newman, *Maud McLure Kelly: Alabama's First Woman Lawyer* (Samford University Library Research Series 1984).
9. M.W. Cottle, "Query Column," 2 *Women Lawyers' Journal* 48 (1912).
10. "Lady Lawyer in Alabama," *Montgomery Messenger*, January 27, 1909, *reprinted in* Newman, *Maud McClure Kelly*, p. 12.
11. Interview with Evelyn Kelly, *cited in Maud McLure Kelly*.
12. Newman, *Maud McLure Kelly*, p. 13.
13. Maud Kelly to Elizabeth Wilbanks, October 30, 1950, uncatalogued material, *Bledsoe-Kelly Collection, reprinted in* Newman, *Maud McLure Kelly*, pp. 13-14.
14. *Bledsoe-Kelly Collection as reprinted in* Newman, *Maud McLure Kelly*, p. 38.
15. The information on the life of Maud McLure Kelly is derived from the senior honors thesis of Cynthia Newman entitled, *Maud McLure Kelly: Alabama's First Woman Lawyer* (Samford University Library Research Series 1984) and the files of the Women's Alabama Hall of Fame.
16. The information on the life of Mabel Yerby Lawson was obtained from Ellen Turner of Mobile, who, for a project during her third year, compiled a history of female law students at the University of Alabama Law School.
17. The information on the life of Judge Annie Lola Price was drawn from the files of the Alabama Women's Hall of Fame.
18. A publication entitled *An Alabama Scrapbook* is the source of much of the information reported on the life of Justice Janie L. Shores.

Leah Oldacre Taylor

Leah Oldacre Taylor is from Prattville, Alabama. She attended Vanderbilt University School of Law from 1980-1981, and graduated from the University of Alabama School of Law in 1983.

As a partner in the firm of Taylor & Roberson, Taylor maintains offices in both Prattville and Birmingham. She is a member of the Autauga County Bar Association, the Birmingham Bar Association, and the American Bar Association. She is a member of the Executive Committee of Alabama Trial Lawyers Association and The Association of American Trial Lawyers.

OPINIONS OF THE GENERAL COUNSEL

By ROBERT W. NORRIS, general counsel

Question:

"This letter is in follow-up to my telephone conversation with Milton Moss of your office. In our conversation, we discussed the usage of the Alabama Limited Liability Company by lawyers who are licensed to practice law in the state of Alabama. Based on this discussion, Mr. Moss suggested that I write this letter to you and request a formal written opinion from the Disciplinary Commission concerning this matter.

"Basically, Section 45 of the Alabama Limited Liability Company Act allows professionals to render professional services as a member or as an employee of a Limited Liability Company. Paragraphs (d) and (e) of Section 45 appear to limit this authority to the discretion of the licensing authority. Paragraphs (d) and (e) read as follows:

> "(d) Nothing in this act shall restrict or limit in any manner the authority or duty of a licensing authority with respect to individuals rendering a professional service within the jurisdiction of the licensing authority. Nothing in this act shall restrict or limit any law, rule, or regulation pertaining to standards of professional conduct.
>
> "(e) Nothing in this act shall limit the authority of a licensing authority to impose requirements in addition to those stated in this act on any limited liability company or foreign liability company rendering professional services within the jurisdiction of the licensing authority.

"Based upon the foregoing, we are concerned that without the issuance of a formal opinion by the Disciplinary Commission, lawyers attempting to utilize the Alabama Limited Liability Company in the delivery of legal services, either as members or as employees, may be subject to disciplinary procedures. Therefore, we would appreciate your providing us with a written declaratory ruling as to the following question:

> "Under the Alabama Rules of Professional Conduct, Rules of Disciplinary Procedure, Alabama Standards for Imposing Lawyer Discipline, and any other rules of the Alabama State Bar which may be applicable, may lawyers who are licensed to practice law in the State of Alabama practice law, either as members or as employees, using the Alabama Limited Liability Company under the new Alabama Limited Liability Company Act?
>
> "This question appears to be a relatively simply question; however, a written opinion would be helpful to allow us to advise our clients concerning the usage of Alabama Liability Companies."

Answer:

It does not violate the Alabama Rules of Professional Conduct or any other disciplinary rule of the Alabama State Bar for two or more lawyers to organize a law firm as an Alabama Limited Liability Company (hereinafter "LCL") under the Alabama Limited Liability Company Act (Act 93-724) which was effective October 1, 1993.

Discussion:

Section 45 of the Alabama Limited Liability Company Act contains special rules for LLCs performing professional services. With regard to licensing, §§45(d) and (e) maintain the authority of the Alabama State Bar to regulate lawyers and the practice of law pursuant to the inherent authority of the Alabama Supreme Court. With regard to liability, §45(a) provides that an individual who renders professional services as a member of an LLC shall be liable "for any negligent or wrongful act or omission to the same extent the individual would be liable if the individual renders the services as a sole practitioner".

Section 45 also subjects an LLC that renders professional services to all of the restrictions imposed on professional corporations by the revised Alabama Professional Corporation Act.

(*Code of Alabama,* 1975 §§10-4-380 through 10-4-440). Section 45 also limits an LLC to rendering only one specific type of professional service, and also contains provisions for transfer of member's interests.

In view of the above, it is the opinion of the Disciplinary Commission of the Alabama State Bar that Alabama lawyers may organize a law firm in the form of limited liability company. The entire text of §45 is attached to this opinion.

PROFESSIONAL SERVICES

Section 45. Special Rules for Limited Liability Companies Performing Professional Services.

(a) Every individual who renders professional services as a member or as an employee of a limited liability company shall be liable: for any negligent or wrongful act or omission in which the individual personally participated to the same extent the individual would be liable if the individual rendered the services as a sole practitioner.

(b) The personal liability of a member, manager, or other employee of any limited liability company engaged in providing professional services shall be no greater than that of a shareholder, employee, director, or officer of a corporation organized under the Alabama Business Corporation Act or any successor act.

(c) The personal liability of a member, manager, or employee of a foreign limited liability company shall be determined under the law of the jurisdiction in which it is organized.

(d) Nothing in this act shall restrict or limit in any manner the authority or duty of a licensing authority with respect to individuals rendering a professional service within the jurisdiction of the licensing authority. Nothing in this act shall restrict or limit any law, rule, or regulation pertaining to standards of professional conduct.

(e) Nothing in this act shall limit the authority of a licensing authority to impose requirements in addition to those stated in this act on any limited liability company or foreign limited liability company rendering professional services within the jurisdiction of the licensing authority.

(f) A limited liability company organized to render professional services under this act may render only one specific type of professional services, and services ancillary to them, and may not engage in any business other than rendering the professional services which it was organized to render, and services ancillary to them. In addition, a limited liability company organized to render professional services shall be subject to the restrictions imposed on professional corporations by the Revised Alabama Professional Corporation Act Sections 10-4-380 through 10-4-404 inclusive, *Code of Alabama* 1975, as amended from time to time.

(g) A limited liability company organized to render professional services, domestic or foreign, may render professional services in Alabama only through individuals permitted to render those services in Alabama; but nothing in this act shall be construed to require that any individual who is employed by a limited liability company rendering professional services be licensed to perform services for which no license is otherwise required or to prohibit the rendering of professional services by a licensed individual acting in an individual capacity, notwithstanding that the individual may be a member, manager, employee or agent of a domestic or foreign limited liability company rendering professional services.

(h) A member's interest in a limited liability company organized to render professional services may be voluntarily transferred only to a person who is licensed or registered to render the professional services for which the company was organized.

(i) If a membership interest is transferred by gift or inheritance to person who is not licensed or registered to render the professional services for which the limited liability company was organized or if a member's license or registration to perform the professional services for which the limited liability company was organized is terminated or suspended for a period of more than 12 months, the person or member shall not be treated as owning a financial interest or an ownership interest in the limited liability company and shall be entitled only to receive the buyout price of the membership interest in accordance with Section 30. ■

An Old Tradition with a New Mission

The American Inns of Court

By Justice Hugh Maddox

Some of today's most popular television shows, films and books are about lawyers and the law. Yet a paradox exists. The same public that reads the books and views the films and the television shows has a perception of lawyers that remains very low, and many lawyers are becoming increasingly concerned about this public perception of them and of their profession. They are also becoming increasingly concerned about the emergence of "lawyer bashing," sometimes by those who occupy high public office, but they are probably more concerned about an insidious disease that afflicts the profession from within, not from without — the stridency of advocacy and the incivility of lawyers that is so prevalent and sometimes applies also to judges. Many are increasingly perplexed by the destructive competitiveness and "Rambo-type tactics" that too frequently invade not only the courtroom, but also the boardrooms and the law offices.[1]

Studies have shown that many lawyers, if they could start over, would enter another profession; that lawyers who have been in practice for several years are not enjoying the practice of law as much now as when they started; and that there is much less civility among lawyers now than there used to be. A past president of the American Bar Association noted that there is a "tournament" going on in some of the large law firms, beginning when a student selects the appropriate prestigious law school he or she will attend, and that this "tournament" continues after the young lawyer joins a firm, when the young lawyer is faced with a large student loan to repay, and competition to make partner, and the "billable hour" syndrome sets in.[2]

It was against this backdrop of concern for the future of the profession that the concept of the American Inns of Court was perceived in 1977, when then Chief Justice Warren Burger discussed the idea with Judge J. Clifford Wallace of the United States Court of Appeals for the Ninth Circuit, who was visiting in London as a member of the American Team of the Anglo-American Exchange.[3] Chief Justice Burger thought that many of the positive values of the English Inns, such as integrity, civility, and collegiality, integral concepts of the English Inns, could be transported to America. He took immediate steps to organize a pilot program.

The first American Inn of Court (AIC) was organized in 1980 in Provo, Utah, in association with Brigham Young University, under the leadership of United States District Judge A. Sherman Christensen, chairman of the ad hoc committee on the American Inns of Court of the Judicial Conference of the United States, who had been appointed to the post by Chief Justice Burger. The second AIC was also in Utah, and the third was the William C. Keady AIC in Oxford, Mississippi, of which Dean Parham Williams of the Cumberland School of Law was an organizer.

From this small beginning, and with an extremely small staff at the American Inns of Court Foundation office in Washington, D.C., the movement blossomed. At the Ninth Annual Meeting of the American Inns of Court held in Chicago in June 1993, the 210th American Inn of Court was chartered, and new Inns are being organized each year.

There are now Inns in every state except two, and there are now three Inns in Alabama — the first in Montgomery, the second in Tuscaloosa, and the third

• Legal Excellence • Civility •
• Professionalism • Ethics •

in Mobile. A fourth Inn is being organized in Birmingham, and lawyers in Decatur, Huntsville, Gadsden, and Dothan have expressed interest in forming an Inn.

An AIC is patterned after the English Inns of Court, but is adapted to the American legal system. It is an intimate amalgam of no more than 65 members — judges, experienced lawyers, less experienced lawyers, new lawyers, or law students, who come together once a month for nine months of the year, for the purpose of enhancing the professional and ethical quality of legal advocacy in America through programs uniquely designed for this purpose. The essence of each Inn is its relatively small size and the personal contact among the members, especially the sharing of the experiences of the older judges and lawyers with the less experienced and younger lawyers. An AIC is not a fraternal order, a social club, a course in continuing legal education, a lecture series, an apprenticeship system, or an adjunct of a law school's program, although it contains some element of each of these. Its aim, scope, and effect is solely to promote legal excellence, civility, professionalism, and ethics in the legal profession.

The reason for the AIC movement's phenomenal growth is probably the result of the passion that judges and lawyers have for their legal profession, and their desire to recapture the professionalism that was so prevalent in the profession in the past. Many of the organizers of Inns and some of the leaders in the Inns movement have been, and are, federal judges. The founder of the first Inn of Court, Judge Christensen, is a federal judge, and in the 1992 annual report of the American Inns of Court, he described his passion for the American Inns of Court in an article entitled "The Passion of the American Inns of Court":

> "Someone once described a corporation as an aggregation of human beings without a body, parts, or passions. I submit that the American Inns of Court Foundation, with its constituent Inns, has all three. The central purpose of the American Inns of Court concept is to raise the standards of the legal profession by promoting excellence in professionalism, civility, ethics, and legal skills for lawyers practicing in, and judges presiding over, the courts and administrative proceedings at all levels. The American Inns of Court do this by encouraging the ingress of varied experiences, talents, and insights for interaction and enrichment; the egress of products worthy of high personal, professional, and institutional purposes; and, above all, a deep feeling, a passion, that the process is of extreme importance."

Judge Christensen then enumerated what he called the ten "essential elements of the passion of the American Inns of Court": (1) "Inspiration" of the English Inns of Court; (2) "Core Concept" of the small professional group of judges and lawyers of single mind and purpose; (3) "Uniqueness" of an Inn that provides a service that is similar to that provided by law schools, by continuing legal education programs, and by bar organizations, but that is also different; (4) the "Methodology" of an Inn in presenting and exchanging ideas in a unique atmosphere and format; (5) the "Conviviality" that breeds "good humor, collegiality, civility, tolerance, consideration, honesty, and mutual respect in our associations, however marked or vigorous our differing professional views may be"; (6) the "Excellence" that applies to ethical and moral values, as well as to professional preparation and

performance, and that encourages lawyers to use professional and ethical codes of behavior as the floor, rather than the ceiling, that should govern behavior; (7) the "Service" to each other through the sharing of ideas and experiences, and being the conscience of the public good; (8) the "Unification" of federal and state judges, organized bars, and law schools into a group guided by a spirit of cooperation and purpose; (9) the "Faith" that all things are being accomplished, and that, in time, all dreams will be realized; and (10) the "Dreams" that "every dedicated trial attorney, trial judge, or trial-oriented student seeking these special measures of skills, insights, and ideals for participating in the processes of justice can have the opportunity of the American Inn experience."

Judge Christensen concluded his article by expressing his dream:

> "Our dreams should not end here. They well can include the prospect that the American Inns of Court will continue on increasingly as a quasi-official sounding board for professional and judicial policies and practices until the American Inns achieve a status comparable in moral power, while not in specie, to that of the English Inns in their best day. In fact, as [Chairman of the American Inns of Court Foundation, The Honorable Howard T. Markey, Dean of the John Marshall School of Law, Chicago, Illinois] has observed, 'the day may come in the United States when no lawyer will think of entering a courtroom to try a case, or indeed, will think of negotiating a contract, who is not a member of an American Inn of Court—not by law, not by rule, and not by force...but solely by choice.'"

Judge Christensen's dream is realized by many Inn members. Dean Howard T. Markey, chairman of the board of the AIC Foundation, in a message in the 1992 annual report, entitled "The Cathedral of the American Inns of Court," wrote:

> "In his essay, 'Some Suggestions for Effective Case Presentation,' Justice Jackson tells a parable of three stonemasons. A questioner asks each of the stonemasons what they are doing. The first replied, without looking up, 'earning my living.' And the second answers, 'I am shaping this stone to pattern.' But the third stone mason pauses and responds, 'I am building a Cathedral.' Since its creation, the American Inns of Court has been about a vision of legal excellence. This is our Cathedral.
>
> "When we visit our counterparts in England and stand in the monumental Great Halls of the Inns of Court, we are humbled by the vision of those who, 800 years ago, gave birth to the Anglo-American practice of law and first set forth the ideals we aspire to. From this inspiring design, former Chief Justice Warren Burger and other members of the Anglo-American exchange drafted a blueprint for legal excellence: The American Inns of Court. With this blueprint, Judge A. Sherman Christensen and others began building a strong foundation with the formation of the first American Inns in the early 1980's. The continued success of the American Inn movement we owe to the vision of these early architects.
>
> "The members of each American Inn of Court carry on this vision. Like the third stonemason, when Inn members across the country come together each month in a continued and collective commitment to excellence, each is placing another stone in our Cathedral. In essence, the American Inns of Court is a group of legal professionals whose vision extends beyond simply earning a living or shaping a single stone to the pattern of those around them, it is a vision of what law can and should be. Cathedrals aren't built by cynics."

The first American Inn of Court organized in Alabama was the Montgomery County, Alabama, American Inn of Court, which was chartered as the 92nd AIC in the country. Keith Norman, director of programs of the Alabama State Bar, who later served as the Montgomery Inn's first administrator, was the catalyst for the organization of the Inn. Keith had heard about the Inn movement from a judge of the United States Court of Claims who was a member of a Washington, D.C., Inn. Keith contacted Judge Joseph Phelps and me about starting an Inn in Montgomery, and an organizational committee was

formed and the first meeting of the Inn was held November 27, 1989 at the Capitol City Club, when United States Circuit Judge Frank M. Johnson, Jr., now an emeritus member of the Montgomery Inn, introduced Fifth Circuit Court of Appeals Judge Patrick Higginbotham, who was the keynote speaker at the dinner meeting.[4]

The Montgomery Inn is now comprised of its full complement of 65 lawyers and judges, and the membership has been divided into seven pupilage groups, each group composed of three master benchers, three barristers and three pupils. The president and counselor do not serve on a pupilage group while they are in office. The office of president is filled annually, with the counselor for the prior year moving into the president's position each year. The Inn has nine monthly meetings during the year, beginning in September and ending in May. The first meeting is an organizational meeting, changing officers, assigning membership to pupilage groups, and providing a schedule of which pupilage group has responsibility for the monthly programs. The December meeting is set aside for a special program, a black-tie event, to which spouses or guests of members are invited. At one of these December meetings, Senior Court of Appeals Judge John C. Godbold was the featured speaker. At a typical Inn meeting, members engage in mock trials, demonstrate appellate arguments, or share insights about such topics as how to take a deposition, settle a case, argue a case to the jury, with emphasis on competence and civility. There have been programs on how to select a jury in view of the requirements of *Batson v. Kentucky*, 476 U.S. 79 (1986), and how to argue a case before an appellate court, with role players making some of the actual arguments made in *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. ___, 111 S.Ct. 1021 (1991), a case argued before the Supreme Court of the United States. One of the most interesting programs was one in which jurors who had served on a Montgomery jury in a case that had been videotaped by consent, told Inn members what portions of the opening arguments impressed them the most and what evidence was most persuasive and least persuasive.[5] Several programs have emphasized the importance of competence and civility. Pupilage groups are encouraged to present programs in a unique manner, keeping in mind that the goal of the Inn is to promote legal excellence, civility, professionalism, and ethics. Some Inns arrange for continuing legal education (CLE) credits for attendance at the programs. In fact, a majority of Inns throughout the country apply for continuing legal education credits for the sessions, but some local Inns, like the Montgomery Inn do not; that is a matter of choice of the local Inn. The Montgomery Inn promotes collegiality by sharing dinner and refreshments at the monthly meeting, and the Master Benchers have held some of their meetings during the lunch hour at a local restaurant.

While the English Inns of Court were the examples after which the American Inns are patterned, the civility that is the hallmark of the English Inn was not always the case. The English bench and bar may have faced some of the same concerns that now face the bench and bar in America. In a speech delivered to the American Law Institute on May 18, 1971 on ethics and civility, the speaker quoted a great 19th century English barrister, Odgers, who, writing at the end of that century, observed the following:

> "... Of all the mighty changes that have taken place in the nineteenth century, the greatest change has been in the tone of the administration of both the civil and the criminal law. The manners of our law courts have marvelously improved. Formerly judges browbeat the prisoners, jeered at their efforts to defend them-

selves, and censured juries who honestly did their duty. Formerly, too, counsel bullied the witnesses and perverted what they said.

"Now the attitude and temper of Her Majesty's judges toward parties, witnesses, and prisoners alike has wholly changed, and the Bar, too, behave like gentlemen. Of course if a witness is deliberately trying to conceal the truth, he must be severely cross-examined; but an honest and innocent witness is now always treated with courtesy by counsel on both sides. The moral tone of the Bar is wholly different ... they no longer seek to obtain a temporary victory by unfair means: they remember that it is their duty to assist the Court in eliciting the truth. This is due partly to the improved education of the Bar; partly no doubt to the influence of an omnipresent press; but still more to Her Majesty's judges."

As an active member of the Montgomery Inn, I can highly recommend it as being the best legal group with which I have been associated. Because of the nature of our roles as lawyers and judges, and in view of the fact that the practice of law is becoming increasingly more competitive, it is imperative that we practice civility, both in and out of court. When we were admitted to practice law, we each took the following oath:

"I do solemnly swear (or affirm) that I will demean myself as an attorney, according to the best of my learning and ability, and with all good fidelity, as well to the court as to the client; that I will use no falsehood or delay any person's cause for lucre or malice and that I will support the Constitution of the state of Alabama and of the United States, so long as I continue a citizen thereof, so help me God."

That short oath echoes the goal of each American Inn of Court — to promote legal excellence, civility, professionalism, and ethics.

As the Right Honorable The Lord Goff of Chieveley said in an address at the Sixth Annual meeting of the American Inns of Court: "Freedom in the world depends upon the dispensing of practical justice and the belief in the rule of law."

The essence of the Inn movement may be summed up by a quote read by one of the speakers at the Inn's 1992 annual meeting and taken from *In re Williams*, 50 P.2d 729 (Okla. 1935) (lawyer was disciplined because he accepted employment in a matter that he had investigated and passed upon while he was in public employ):

"Professional ethics is not a distinct system of morality, but it is the application of the accepted standards of right and wrong to the conduct of professional men in the business relations peculiar to their professional employment. It is not important what the profession may be or the nature of the relations resulting from it, for under all circumstances the first duty of every businessman is to conduct his business with integrity. In the general treatment of this subject it has sometimes happened that too much stress has been put on the adjective 'professional,' so that the substantive 'ethics' has been lost

Attention!
Pro Hac Vice

Attorneys who have associated with out-of-state attorneys on pro hac vice applications

In order to avoid disciplinary action, attorneys listed as local counsel (those who have associated with out-of-state attorneys) on pro hac vice applications should take note of the procedures they should follow for compliance with Rule VII, Rules Governing Admission to the Alabama State Bar.

It is the responsibility of the local counsel to notify the bar as to the disposition by the court of the application for admission. Specifically, the rule states that the court should not rule on the application until a statement is received from the Alabama State Bar.

"Once this statement is received, the court or administrative agency shall issue an order granting or denying the application. A copy of each order granting or denying the application shall be mailed by the local counsel to the Alabama State Bar at its Montgomery, Alabama office."

If the case was settled or dismissed prior to the order being issued on the pro hac vice application, the bar must *still* be notified of its disposition.

A. If the petitioner participated in the case in *any* way (i.e., discovery work, depositions, filings, etc.), an order must be issued either granting or denying the application.

B. If the petitioner did *not* participate, please make the bar aware of this fact in writing.

Any questions should be directed to Christie Tarantino, PHV Admissions, at (205) 269-1515 or 1-800-354-6154 (in-state wats).

sight of. * * * There is no difference between personal and professional ethics."

The American Inn of Court movement has been described by those who have participated in a local Inn as being the most productive and enjoyable lawyer organization of which they are members. Typical of the comments is one made by Mr. Justice Anthony M. Kennedy when he was a member of the American Inn of Court in Sacramento, California: "The American Inns of Court promote collegiality of lawyers and judges without regard to the profit motive."[6] Senior U. S. Circuit Judge John C. Godbold, an Alabama lawyer, spoke to the Montgomery Inn in December 1991, and probably summed up the success of the Inn movement in a letter to former Chief Justice Warren E. Burger:

"This is to give you a progress report about one of your special interests.

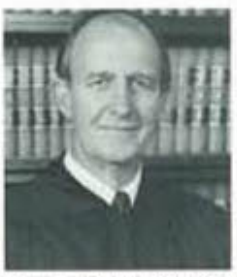
"I was a member of the Judicial Conference when you first presented the idea of the Inns of Court.... A month ago I spoke to the Inn here in Montgomery. The experience was proof that the idea has succeeded. The Inn is vital and lively, pursuing splendid objectives in an appropriate manner. Many of the younger lawyers who have not been admitted to membership are anxious to get in.

"I thought that you would like to have this good report...."[7]

For more information about the American Inns of Court, contact the Executive Director, American Inns of Court Foundation, 1725 Duke Street, Suite 630, Alexandria, Virginia 22314. Phone (703) 684-3590, Fax (703) 684-3607. ■

Endnotes

1. See, *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1486 (5th Cir. 1990), where the Court described a lawyer's behavior as "an all-too-common example of the sort of 'Rambo-tactics' that have brought disrepute upon attorneys and the legal profession." See, also, Fitzwalder, "Toward a Renaissance of Professionalism in Trial Advocacy," 20 Tex.Tech.L.Rev. 787, 789 (1989), in which United States District Judge Sidney Fitzwater wrote, "Those whose legal careers are of sufficient length to give them the perspective of time observe that today's advocacy is marked by attorney acrimony," and that "they note the proliferations of litigation tactics that are characterized as 'hardball', 'Rambo-like actions,' 'composed of uncivil, discourteous, combative, harassing and rude behavior.'"
2. A statement made by former ABA President Sandy D'Alemberte, who participated at the Eighth Annual Meeting of the American Inns of Court held in Washington, D.C. in June 1992, the theme of which was: "It's a Matter of Ethics: Responsible Practice in an Increasingly Competitive World." At that meeting, a panel, composed of the president, president-elect or a representative of the American Bar Association, the Association of Trial Lawyers of America, the Federal Bar Association, the National Bar Association, the Hispanic Bar Association, the American Judicature Society, the National Institute of Trial Advocacy, the National Judicial College, the National Association of Women Judges, and the National Association of Women Lawyers, discussed some of the ethical problems facing the legal profession from the panel members' own perspective. Most of these leaders of the nation's legal organizations stated that the public's perception of lawyers is inaccurate, but several did acknowledge that there are problems facing the profession.
3. James A. George, *The American Inns of Court—"A Quiet Crusade" Whose Time Has Come*, 40 La.Bar.Jour. 82 (1992).
4. United States District Judges Truman Hobbs and Joel Dubina and attorneys Maury Smith, Delores Boyd, John Matthews, Jr., and David Byrne were invited to an organizational meeting on August 16, 1989. Initially, the organizing committee decided to recruit at least 24 senior lawyers and judges, both state and federal, to be master benchers, and that the master benchers would then decide on the lawyers who would comprise the barrister and pupil membership categories. The organizing committee also decided to invite Judge Patrick Higginbotham of the Fifth Circuit of Appeals, and an active member of a Dallas, Texas Inn of Court, to be a keynote speaker at the first meeting of the Inn. On November 9, 1989 the master benchers who had been contacted by members of the organizing committee met in the chambers of Judge Phelps for the purpose of selecting the barristers and pupils who would be invited to be members of the Inn. At this meeting, the master benchers decided on the following membership categories: master benchers would be judges and lawyers with 15 or more years of practice or admission to the bar; barristers would be lawyers with five-15 years of practice or admission to the bar; and pupils would be lawyers with less than five years of practice or admission. A deliberate effort was made to ensure that a cross-section of the Montgomery bar would be included. The master benchers selected Judge Joseph Phelps to be the first president, Justice Hugh Maddox as counselor (vice-president) and John Matthews, Jr. as treasurer. Keith Norman served as the Inn's first administrator.
5. The case was settled by the parties before the jury reached a verdict; therefore, it served as a good example of what average jurors liked and disliked about an actual case presentation.
6. Justice Kennedy's opinion about the value of the Inns movement did not change when he became a member of the Supreme Court. While he was in Alabama in connection with the commemoration of the Bicentennial of the Bill of Rights, he commented favorably on the concept of "Inns of Court" and encouraged the establishment of the chapters in the state and was an active participant at the 1990 annual meeting of the Inns in Washington, D.C.
7. Letter to Honorable Warren E. Burger, dated January 3, 1992 from Senior U.S. Circuit Judge Godbold.



Justice Hugh Maddox

Justice Hugh Maddox received his undergraduate and law degrees from the University of Alabama. Before becoming an associate justice on the Supreme Court of Alabama in 1969, he served as legal advisor to three governors. He was chosen the Montgomery County YMCA Man of the Year in 1988.

Delinquent Notice

Licensing/Special Membership Dues 1993-94

All Alabama Attorneys

The dual invoice for licenses or special memberships was mailed in mid-September and was to be paid between October 1 and October 31. If you have not purchased an occupational license or paid special membership dues, you are now delinquent!

In Active Private Practice:

Any attorney who engages in the active private practice of law in Alabama is required to purchase the occupational license. The practice of law is defined in Section 34-3-6, *Code of Alabama*, 1975, as amended. (Act #92-600 was passed by the Alabama Legislature and amended Section 40-12-49, *Code of Alabama*, 1975, effective October 1, 1992.)
Occupational License...$287.50 (includes automatic 15 percent late penalty)

Not in Active Private Practice:

An attorney not engaged in the active private practice of law in Alabama may pay the special membership fee to be a member in good standing. Judges, attorneys general, United States attorneys, district attorneys, etc., who are exempt from licensing by virtue of a position held, qualify for special membership. (Section 34-3-17 & 18, *Code of Alabama*, 1975, as amended)
Special Membership Dues...$125 (penalty not applicable)

Direct any questions to:

Alice Jo Hendrix, Membership Services Director, at 1-800-354-6154 (in-state WATS) or (205) 269-1515 ***immediately!***

C·L·E OPPORTUNITIES

The following programs have been approved by the Alabama Mandatory Continuing Legal Education Commission for CLE credit. For information regarding other available approved programs, contact Diane Weldon, administrative assistant for programs, at (205) 269-1515, and a complete CLE calendar will be mailed to you.

November

9 Tuesday

LAWYERS PROFESSIONAL LIABILITY
Birmingham
CNA Insurance Companies
Credits: 4.0 Cost: $35
(312) 822-1548

VOCATIONAL & ECONOMIC EVALUATION OF A PERSONAL INJURY CASE
Birmingham, Sheraton Perimeter Park South
University of North Alabama
Credits: 8.0 Cost: $175
(205) 760-4862

11 Thursday

BAD FAITH LITIGATION IN ALABAMA
Mobile, Ramanda Resort & Conference Center
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

12 Friday

LAW OFFICE MANAGEMENT
Birmingham, Edna Merle Carraway Center
Alabama Bar Institute for CLE
Credits: 2.8
(800) 627-6514

ELDER LAW
Birmingham
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

BUSINESS TORTS & ANTITRUST LAW
Birmingham
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

BAD FAITH LITIGATION IN ALABAMA
Montgomery, Riverfront Inn
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

16 Tuesday

HOW TO DRAFT WILLS AND TRUSTS IN ALABAMA
Birmingham, Radisson Hotel
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

17 Wednesday

HOW TO DRAFT WILLS AND TRUSTS IN ALABAMA
Huntsville, Holiday Inn Research Park
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

18 Thursday

DIRECT & CROSS EXAMINATION
Birmingham, Medical Forum
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

ALABAMA SALES AND USE TAX UPDATE
Mobile
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

18-19

FEDERAL TAX CLINIC
Tuscaloosa, Bryant Conference Center
Alabama Bar Institute for CLE
Credits: 13.0
(800) 627-6514

19 Friday

DIRECT & CROSS EXAMINATION
Montgomery, Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

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

ISSUES IN EMPLOYMENT LAW
Birmingham
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

ALABAMA SALES AND USE TAX UPDATE
Montgomery
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

December

1 Wednesday

BUSINESS TAXATION AND YEAR-END PLANNING
Birmingham
Lorman Business Center, Inc.
Credits: 6.0 Cost: $135
(715) 833-3940

2 Thursday

NEW FORECLOSURE AND REPOSSESSION IN ALABAMA
Birmingham
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

3 Friday

ESTATE PLANNING
Birmingham, Pickwick Conference Center

Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

BANKRUPTCY LAW
Birmingham, Medical Forum
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

APPELLATE PRACTICE
Birmingham
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

7 Tuesday

CONSIDERATIONS IN BUYING & SELLING A BUSINESS
Birmingham
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

9 Thursday

ALABAMA UPDATE
Mobile, Riverview Plaza Hotel
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

COLLECTION LAW
Birmingham
Lorman Business Center, Inc.
Credits: 6.0 Cost: $135
(715) 833-3940

10 Friday

INTRODUCTORY ARBITRATOR SKILLS
Birmingham
American Arbitration Association
Credits: 3.0 Cost: $60
(404) 325-0101

INTERMEDIATE ARBITRATOR SKILLS
Birmingham
American Arbitration Association
Credits: 4.0 Cost: $60
(404) 325-0101

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

FRAUD AND BAD FAITH LITIGATION
Birmingham, Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

RECENT DEVELOPMENTS FOR THE CIVIL LITIGATOR
Mobile
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

PRODUCT LIABILITY
Birmingham
Cumberland Institute for CLE
Credits: 6.0
(800) 888-7454

WORKERS COMPENSATION
Montgomery
Lorman Business Center, Inc.
Credits: 6.0 Cost: $125
(715) 833-3940

CONSIDERATIONS IN BUYING AND SELLING A BUSINESS
Huntsville
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

11 Saturday

ADVANCED ARBITRATOR SKILLS
Birmingham
American Arbitration Association
Credits: 3.0 Cost: $60
(404) 325-0101

14 Tuesday

AUTO TORTS (VIDEO)
Tuscaloosa, Law Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

15 Wednesday

DIRECT & CROSS EXAMINATION (VIDEO)
Tuscaloosa, Law Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

16 Thursday

ALABAMA UPDATE
Huntsville, Civic Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

FRAUD AND BAD FAITH LITIGATION (VIDEO)
Tuscaloosa, Law Center
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

MASTERING THE 1994 TAX SEASON—AN ANNUAL UPDATE
Huntsville, Holiday Inn
Alabama Society of Certified Public Accountants
Credits: 8.0 Cost: $165
(205) 834-7650

17 Friday

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

DIRECT & CROSS EXAMINATION (VIDEO)
Birmingham
Alabama Bar Institute for CLE
Credits: 6.0
(800) 627-6514

27-31

SKI & CLE
RECENT DEVELOPMENTS FOR THE CIVIL LITIGATOR
Crested Butte, Colorado, Grand Butte Hotel
Alabama Bar Institute for CLE
Credits: 20.0
(800) 627-6514

An Overview of the Application of the Family and Medical Leave Act of 1993 to Employees of Private Employers

by Mark Strength

Introduction

The Family and Medical Leave Act of 1993 (FMLA) became effective on August 5, 1993. In a nutshell, the FMLA requires private employers who employ 50 or more employees to provide their employees with a maximum of 12 weeks of unpaid leave upon the birth of a child, placement of a child through adoption or foster care, when an employee is needed to care for a family member, or when an employee is unable to work due to a serious health condition. This article provides a general overview of the provisions of Title I of the FMLA applicable to employees of private employers. Title I of the FMLA is codified at 29 U.S.C. §§ 2601-2619. At the time of the writing of this article, the Department of Labor (DOL) had issued its Interim Regulations pertaining to Title I.[1] The regulations implementing the FMLA are to be codified at 29 C.F.R. Part 825.

Employees Eligible For Leave [29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110-825.111]

An employee may be eligible for leave under the FMLA if he or she (1) has been employed by a covered employer for at least 12 months, (2) has been employed for at least 1,250 hours of service during the 12-month period prior to the commencement of the leave, and (3) is employed at a worksite where the employer has at 50 or more employees within 75 miles of the worksite (as measured in surface miles on public roads) on the date the employee requests leave.

The FMLA does not require that an employee requesting leave have worked 12 consecutive months to be eligible for leave. Employees included on an employer's payroll for any part of a week are counted as having worked an entire week. In cases of intermittent or occasional employment, 52 weeks is deemed to be equal to 12 months.

In calculating the number of work hours for an employee, an employer should, for those employees covered by the Fair Labor Standards Act (FLSA), count work hours as they are defined by the FLSA. Employees for whom no work hour records are kept because they are exempt from the FLSA and who have worked for at least 12 months are presumed to meet the 1,250 hours of service requirement for FMLA leave eligibility.

An employee's "worksite" ordinarily will be the site to which the employee reports, or if there is no such site, the location from which the employee's work is assigned. In the case of employees such as salespersons and construction workers who have no fixed worksite, the worksite will be considered to be the employees' home base, the site from which work is assigned, or the site to which the employees report. A worksite may be a single location or a group of contiguous locations, and separate buildings or areas are a single worksite if they are in reasonable geographic proximity, are used for the same purpose, and share the same staff and equipment. If an employer, for example, manages several warehouses within a city and routinely shifts employees from one warehouse to another, the warehouses would be considered a single worksite.

Coverage Of Private Employers [29 U.S.C. § 2611(4)(A); 29 C.F.R. §§ 825.104-825.107]

Employers who have employed 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or proceeding calendar year are subject to the FMLA.

The Interim Regulations state that a private employer is covered by the FMLA if the employer maintained 50 or more employees on its payroll during 20 or more calendar workweeks (not consecutive workweeks) in either the current year or the preceding year.

A part-time or full-time employee whose name is included on an employer's payroll is considered to be employed on each working day of the calendar week and must be counted regardless of whether compensation is paid for the week or whether the employee actually performs any work. An employee who is out on paid or unpaid leave (*e.g.*, FMLA leave, leaves of absence, disciplinary suspensions, etc.) is counted so long as the employer has a reasonable expectation that the employee will later return to active employment. Employees on temporary, long-term or indefinite layoff are not counted. An employee who does not begin to work for an employer until after the first working day of a calendar week or who terminates employment before the last working day of a calendar week is not counted as having been employed on each working day of the calendar week.

The legal entity that employs an employee normally is the employee's employer under the FMLA. A corporation is an employer, not its divisions and/or other separate establishments. Two or more separate legal entities, however, will be deemed to be the single "integrated employer" of an employee under the FMLA if the integrated employer test is satisfied. The elements of the integrated employer test include the following: (1) Common management; (2) Interrelation between operations; (3) Centralized control of labor relations; and (4) Degree of common ownership/financial control. No element of the integrated employer test is considered in isolation; rather, the relationship between entities is examined in its entirety. If the integrated employer test is met, then the employees of all the entities making up the integrated employer are counted in determining both employee eligibility and employer coverage.

The relationship between two or more businesses, when viewed in its totality, may give rise to joint employer status under the FMLA where the businesses exercise some control over the work or working conditions of employees. If two or more businesses are deemed to be joint employers, then each jointly employed employee must be counted by each business in determining employee eligibility and employer coverage. For example, an employer who has 40 permanent workers of its own and who employs 15 workers from a temporary help agency is covered by the FMLA. The following factors are to be considered in determining whether a joint employer relationship exists: (1) Nature and degree of control over employees; (2) Degree of direct or indirect supervision of work; (3) Power to determine pay rates or methods of payment; (4) Indirect or direct right to hire or terminate employees or alter employment conditions; and (5) Preparation of payroll and payment of wages. The DOL's Interim Regulations state that a joint employer relationship often exists in the following situations: (1) When there is an agreement to share an employee's services or to interchange employees; (2) When one employer indirectly or directly acts in the interest of the other employer with regard to the employee; or (3) When the employers are not disassociated with regard to an employee's employment and are deemed to share control of the employee because one employer controls, is controlled by, or is under common control with the

other employer. A primary joint employer (authority/responsibility to hire, fire, make assignments, and make payroll) is responsible for providing leave and fulfilling other obligations under the FMLA. A secondary joint employer with 50 or more employees, including joint employees, is prohibited from discriminating or retaliating against employees exercising rights under the FMLA.

In cases where an employer is a "successor in interest" under the FMLA, employees' entitlements are the same as if the employment by the predecessor and successor were continuous employment by a single employer. The following factors will be considered to determine whether an employer is a successor in interest: (1) Substantial continuity of the same business operations; (2) Use of the same plant; (3) Continuity of the work force; (4) Similarity of jobs and working conditions; (5) Similarity of supervisory personnel; (6) Similarity in machinery, equipment, and production methods; (7) Similarity of products or services; and (8) The ability of the predecessor to provide relief. No one factor is to be singled out, and the circumstances are to be viewed in their totality.

Situations In Which Leave is To Be Made Available By Private Employers [29 U.S.C. § 2612(a); 29 C.F.R. §§ 825.112-825.118]

Employers covered by the FMLA are required to grant leave to eligible employees under the following circumstances: (1) The birth of a "son" or "daughter," and to care for a newborn child;[7] (2) Placement with an employee of a son or daughter through adoption or foster care; (3) The employee is "needed to care for" a "spouse," son, daughter, or "parent" with a "serious health condition"; or (4) Inability of an employee to perform the functions of his or her job due to a "serious health condition."

The terms "son" and "daughter" refer to a biological, adopted or foster child, a stepchild, a legal ward, or a child of person standing *in loco parentis* who is (1) under 18 years of age or (2) 18 years of age or older and "incapable of self-care" because of a "mental or physical disability." A child is "incapable of self care" when the child requires active assistance or supervision to provide daily self-care in several of the activities of daily living, including grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, or using a post office. A child has a "mental or physical disability" if the child's major life activities[8] are limited by (1) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems—neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Alabama State Bar Recent Admittees

August 1993

Maureen Kane Berg
Birmingham, Alabama

Peter Welch Collery
Madison, Alabama

Jeffry Barry Gordon
Birmingham, Alabama

Kimberly Goldfarb Gordon
Birmingham, Alabama

Alvin Floyd Harris, Sr.
Eight Mile, Alabama

Elizabeth J. Hubertz
Montgomery, Alabama

Elizabeth Barry Johnson
Mobile, Alabama

John Charles Kelsey
Centre, Alabama

Krystin Lindstrom
Mobile, Alabama

Pamela Lauren Sumners
Montgomery, Alabama

Everett McRae Urech
Charlottesville, Virginia

An employee is "needed to care for" a family member when there is a need for psychological and/or physical care, and includes the following: (1) Caring for a family member when a serious health condition makes a family member unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to a physician; (2) Providing psychological comfort and reassurance to a seriously ill child or parent receiving inpatient care (*i.e.*, an overnight stay); (3) Filling in for others who are providing care for a family member; and (4) Making arrangements for changes in care, such as a transfer to a nursing home.

A "spouse" is a husband or wife as defined or recognized under applicable state law for purposes of marriage, including common law marriage in states where it is recognized.

A "parent" is a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child. The term "parent" does not include parents "in law."

A "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves one or more of the following: (1) Any period of incapacity or treatment in connection with inpatient care for any period in a hospital, hospice or residential medical care facility; (2) Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by, or under the supervision of, a health care provider; (3) Continuing treatment by, or under the supervision of, a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, likely would result in a period of incapacity of more than three calendar days; or (4) Continuing treatment by, or under the supervision of, a health care provider for prenatal care.[3]

A "health care provider" is either a doctor of medicine or osteopathy who is authorized to practice medicine or surgery in the state in which the doctor practices or any other person determined by the DOL to be capable of providing health care services (*e.g.*, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, and nurse midwives).

"Continuing treatment by, or under the supervision of, a health care provider" means one or more of the following: (1) Two or more treatments (normally during an office visit) by a health care provider for an injury or illness; (2) Two or more treatments by a provider of health care services (*e.g.*, a physical therapist) under orders of, or on referral by, a health care provider; (3) One treatment for an injury or illness by a health care provider that results in a regime of continuing treatment under the supervision of a health care provider (*e.g.*, a course of medication or therapy to resolve the health condition); or (4) Continuing supervision of, but not necessarily being actively treated by, a health care provider due to a serious long-term or chronic condition or disability which cannot be cured (*e.g.*, Alzheimer's patients, persons who have suffered a severe stroke, or persons in the terminal stages of a disease who may not be receiving active medical treatment).

An employee is unable to perform the functions of his or her position where a health care provider has found that the employee is unable to perform any work at all or is unable to perform any of the "essential functions" of the employee's position. "Essential functions" means the fundamental job duties of the employment position the employee holds and does not include the marginal functions of the position.[4]

Types And Duration Of Leave [29 U.S.C. § 2612(a), (b), (c) & (f); 29 C.F.R. §§ 825.200-825.205 & 825.207(a)]

The FMLA entitles eligible employees, under the circumstances defined in Part IV, above, to a minimum of 12 total workweeks of *unpaid* leave during any 12-month period.

Employers are permitted to select one of the following methods for determining the beginning and end of a 12-month period: (1) The calendar year; (2) A fixed 12-month "leave year," such as a fiscal year or a year starting on an employee's "anniversary" date; (3) 12 months measured forward from the date the employee's first FMLA leave begins; or (4) A "rolling" 12-month period measured backward from the date leave is used (each time FMLA leave is taken the remaining leave entitlement would be any balance of the 12 weeks that has not been used during the preceding 12 months).[5]

An employer desiring to change its method of calculating the 12-month period must give at least 60 days notice to all employees, and the transition must take place in such a way that employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefits to the employees.

Besides allowing employees to take 12 consecutive weeks of leave during a 12-month period, the FMLA allows, under certain circumstances, for (1) intermittent leave or (2) a reduced leave schedule. Intermittent leave or a reduced leave schedule may be used when medically necessary in cases where leave is taken due to a serious health condition of the employee or the employee's spouse, child or parent. An employee is not entitled to intermittent leave or a reduced leave schedule in connection with the birth or placement of a child, unless the employer and the employee agree otherwise. Moreover, if a husband and a wife are both eligible for FMLA leave and are employed by the same employer, they are permitted to take only a combined total of 12 weeks of leave during any 12-month period if the leave is taken in connection with the birth of a child, placement of a child through adoption or foster care, or the care of a sick parent (the limitation applies even if the spouses are employed at different worksites or in different operating divisions of the same company).

Intermittent leave is to be taken in separate blocks of time due to a single

injury or illness. Examples of cases in which intermittent leave may be taken are (1) leave taken on an occasional basis for medical appointments and (2) leave taken several days at a time over a period of months for chemotherapy treatment.

A reduced leave schedule facilitates the reduction of an employee's usual number of hours per workweek or hours per workday. Normally a reduced leave schedule will involve a shift from full-time to part-time employment. Examples of situations in which a reduced leave schedule may be utilized are (1) when an employee, with the employer's consent, works part-time after the birth of a child and (2) when an employee recuperating from a serious health condition is not strong enough to work full-time.

The FMLA imposes no limit on the length of a leave period when an employee takes intermittent leave or takes leave on a reduced leave schedule. Employers, however, may restrict leave increments to the smallest amount of time that the employer's payroll system uses to account for absences. For example, if an employer's payroll system uses time periods of an hour or less to account for absences, then an employee may be able to take two hours of leave for a doctor's appointment or work a reduced day of four hours while recuperating from an illness.

If an employee requests intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment, the employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates the employee's recurring periods of leave. The alternative position must have equivalent pay and benefits, but is not required to have equivalent duties. Employers may increase the pay and benefits of an existing alternative position so that the pay and benefits are equivalent to those of an employee's regular job. Employers may also transfer an employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary.

When an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be deducted from the employee's entitlement to a total of 12 weeks of leave. For instance, a full-time employee who normally works eight-hour days and begins a reduced leave schedule of four hour days will be deemed to have used one-half a week of leave for each week the employee works on the reduced schedule.

The amount of leave for employees who normally work on a part-time schedule or have variable work hours is determined on a pro rata or proportional basis. The employee's new schedule is compared with the employee's old schedule. For example, an employee who usually works a 30-hour week and begins working a 20-hour week on a reduced leave schedule will be deemed to have used one-third of a week of FMLA leave for each week worked on the reduced schedule.

Paid Leave, Unpaid Leave And Substitutions Thereof [29 U.S.C. § 2612(c) & (d); 29 C.F.R. §§ 825.207-825.208]

Employers are not required to provide paid leave by the FMLA. Under certain defined situations, the FMLA allows an employee to choose to substitute paid leave for FMLA leave. Moreover, an employer in some cases may require an employee to substitute paid leave for FMLA leave.

When an employee takes FMLA leave due to the birth or placement of a child or to care for a family member, the employee may substitute accrued paid vacation leave, accrued paid family leave (subject to the terms of the employer's family leave plan), or accrued paid personal leave for all or part of any unpaid FMLA leave.

When an employee takes FMLA leave needed to care for a seriously ill family member or the employee's own serious health condition, the employee may substitute accrued paid vacation leave, accrued paid medical/sick leave (subject to the terms of the employer's leave plan), or accrued paid personal leave for all or part of any unpaid FMLA leave. It should be noted, however, that the FMLA does not require an employer to allow the substitution of accrued paid medical/sick leave in any situation where the employer would not normally allow such paid medical/sick leave to be taken in the first place.[7]

Paid vacation leave or paid personal leave, earned or accrued under plans allowing for paid time off, may be substituted for FMLA leave at either the employee's or employer's option, and employers may not limit the amount of paid vacation leave or paid personal leave substituted by employees.

If neither the employee nor the employer elects to substitute paid leave for unpaid FMLA leave, the employee will remain entitled to all the paid leave which is accrued under the terms of the employer's plan(s). And when an employee uses paid leave in a situation where the employee does not qualify for FMLA leave, the paid leave taken by the employee does not count against the employee's entitlement to 12 weeks of FMLA leave.

An employee requesting unpaid FMLA leave must explain the reasons for the needed leave so as to allow the employer to determine whether the leave qualifies under the FMLA. An employee giving notice of the need for unpaid FMLA leave is not required to expressly assert rights under the FMLA or even mention the FMLA— the indication of a qualifying reason for the needed leave is sufficient.

Employees requesting or notifying employers of an intent to use accrued paid leave also are not required to expressly invoke or mention the FMLA. Yet, in a case where an employee requests to substitute paid leave for FMLA leave and provides no explanation for the leave request and there is a subsequent denial of the leave request by the employer based on the employer's own policies and practices, the employee must then state a basis for the leave under the FMLA so that the leave will not be denied and can be counted against the 12-week FMLA leave entitlement.

It is the employer's responsibility, on the basis of information provided by the employee, to designate whether paid leave or unpaid leave constitutes FMLA leave and to immediately notify the employee of its determination. The employer may designate leave *only* on the basis of information provided by the employee.

If the employer requires paid leave to be substituted for unpaid leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, this decision must be made by the employer at the time the employee requests or gives notice of the leave, or when the employer later determines that the leave qualifies as FMLA leave. The employer must decide how the leave will be counted *before* the leave starts or *before* an extension of leave is granted, unless the employer has insufficient information as to the reason for the leave until after the leave starts. In no event may an employer designate leave as FMLA leave after the leave has ended.

If either the employer or employee designates leave as FMLA leave after leave has begun (*e.g.*, a case where an employee requests to extend a leave period by taking FMLA leave after a period of paid leave), the entire leave period or some portion of the paid leave period may be retroactively counted as FMLA leave to the extent that the leave period qualifies as FMLA leave.

Job Protection [29 U.S.C. § 2614(a)-(b); 29 C.F.R. 825.214-825.219]

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when FMLA leave started, or to an "equivalent position" with "equivalent benefits," "equivalent pay," and "equivalent terms and conditions of employment." An employee has no right to return to the same position he or she held prior to taking FMLA leave. In addition, an employer, under certain circumstances and by following the procedures set out in the DOL's Interim Regulations, may deny restoration to a salaried FMLA-eligible "key employee" who is among the highest paid 10 percent of all the employees within 75 miles of the employee's worksite.[8]

An "equivalent position" is a position that has the same pay, benefits and working conditions, including privileges, perquisites, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

At the end of an employee's FMLA leave, "equivalent benefits" (all benefits provided by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, pensions, etc.) must be resumed in the same manner and at the same level as provided when the leave began. Upon return from FMLA leave, an employee cannot be required to requalify for any benefits the employee enjoyed before FMLA leave

began (employers may have to modify benefit programs in order to restore employees to equivalent benefits upon return from FMLA leave). Although an employee is not entitled to accrue any additional benefits or seniority during unpaid FMLA leave, benefits accrued at the time leave began (*e.g.*, paid vacation, sick or personal leave to the extent not substituted for FMLA leave) must be made available to an employee upon return from leave. With regard to pensions and other retirement plans, any period of FMLA leave will be treated as continued service (*i.e.*, no break in service) for purposes of vesting and eligibility to participate.

So as to allow for "equivalent pay," the DOL's Interim Regulations provide that an employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases that are conditioned upon seniority, length of service, or work performed do not have to be granted unless it is the employer's policy or practice to grant such increases with respect to other employees on "leave without pay" (in such cases, any pay increase would be granted based on the employee's seniority, length of service, or work performed, excluding the period of unpaid FMLA leave). Finally, employees are entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential.

For a position to have "equivalent terms and conditions of employment," it must have substantially similar duties, conditions, responsibilities, privileges, and status as the employee's original position. Moreover, the employee must be (1) reinstated to the same or a geographically proximate worksite where the employee previously had been employed, (2) returned to the same shift or the same or equivalent work schedule, and (3) have the same opportunity for bonuses, profit sharing, and other similar discretionary and non-discretionary payments.

Maintenance Of Employee Health Care Benefits [29 U.S.C. § 2614(c); 29 C.F.R. 825.209-825.213 & 825.800]

During a period of FMLA leave, an employer must maintain an employee's coverage under any group health plan on the same conditions as coverage would have been provided had the employee been working during the entire leave period. The terms "group health plan" refer to any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees.

If family member coverage is provided to an employee under a group health plan, family member coverage must be maintained during the time an employee is on FMLA leave. Furthermore, benefit coverage during FMLA leave for dental care, eye care, mental health counselling, and substance abuse treatment must be maintained during an employee's leave period. If the employer provides a new health plan or changes benefits under an existing plan while an employee is on leave, the employee is entitled to participate in the new plan and/or changed plan/benefits. Employers must give notice of opportunities to change plans or benefits to employees who are on leave. Where a multi-employer health plan exists, the employer must continue to make contributions on behalf of an employee using FMLA leave as though the employee had been continuously employed, unless the plan contains an explicit FMLA provision for maintaining coverage, such as through pooled contributions by all employers who are parties to the plan.

Any share of health plan premiums paid by an employee prior to taking FMLA leave must continue to be paid by the employee during the leave period. In the event premiums are raised or lowered, the employee must pay according to the new rates. If FMLA leave is substituted for paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave.

Employers may require employees to pay their share of premium payments in any of the following ways: (1) Payment would be due at the same time as it would be made if by payroll deductions; (2) Payment would be due on the same schedule as payments made pursuant to the provisions of the Consolidated Omnibus Budget Reconciliation Act of

1985; (3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option; (4) The employer's existing rules for payment by employees on "leave without pay" would be followed, provided that such rules do not require prepayment of premiums that will become due during a period of FMLA leave; or (5) Another system voluntarily agreed to between the employer and the employee, which may include prepayment of premiums. The employer must provide the employee with advance written notice of the terms and conditions under which these payments must be made, and the employer is not permitted to require more of an employee using FMLA leave than what is required of other employees on leave without pay.

Although an employer is obligated to maintain coverage during an employee's FMLA leave period, the employer's obligation ceases if an employee's premium payment is more than 30 days late. In cases where the employer maintains health coverage while the employee is on FMLA leave and when the employee has missed payments, the employer may recover the employee's share of any premium payments. If coverage lapses because an employee fails to make premium payments, the employer still is obligated to restore coverage to the employee the level of coverage the employee would have had if leave had not been taken.

An employer also may recover its share of health plan premiums paid during a period of paid or unpaid leave if an employee fails to return to work (employees who return for at least 30 days are considered to have "returned" to work) after the employee's FMLA leave expires, unless the employee fails to return due to (1) the continuation, recurrence, or onset of a serious health condition that would entitle the employee to FMLA leave or (2) where there are other circumstances beyond the employee's control. Examples of circumstances beyond an employee's control include the following: (1) Where an employee's spouse is unexpectedly transferred to a job location more than 75 miles from the employee's worksite; (2) A relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; (3) The employee is laid off while on leave; or (4) The employee is a "key employee," *see* Part VII, above, who decides not to return to work upon being notified of the employer's intention to deny job restoration. Circumstances that are within the employee's control include the following: (1) Cases where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care or (2) a parent's decision not to return to work in order to stay home with a newborn child.

Obligtions Of Employees [29 U.S.C. § 2612(e) & 2613; 29 C.F.R. § 825.302-825.312]

An employee must provide his or her employer at least 30 days advance notice before FMLA leave is to begin if the need for the leave is *foreseeable* based on an expected birth, placement of a child for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member. If 30 days notice is not practicable (*i.e.*, lack of knowledge of when

♦ Art Donations ♦

◆ Executive Director Reggie Hamner, left, with district court judge and former bar commissioner William B. Matthews, Sr. of Ozark. Judge Matthews and his wife, Florence, donated "Southern Elegance," by Jack Deloney of Ozark. The painting will hang in the new portion of state bar headquarters.

◆ Charles Wampold of Montgomery, center, presents Hamner and state bar president Spud Seale, left, with a painting by his daughter, Carolyn Beller of Chicago.

◆ Other recent donations include: "Cottage Hill", a watercolor by B. Frank Loeb of Montgomery; "Reflections", an oil painting by Hilda Brown, donated by Mr. and Mrs. William B. Melton of Evergreen; and "4th of July" in Mobile, donated by Helmsing, Lyons, Sims & Leach of Mobile.

leave will be required to begin, a change in circumstances, a medical emergency, etc.), notice must be provided as soon as both possible and practical under the facts of the case. Where it is not possible to give 30 days notice, ordinarily verbal notification should be given to the employer within one or two days of when the need for leave becomes known to the employee.

When the need for leave is *not foreseeable*, an employee should give notice to his or her employer of the need for leave as soon as both possible and practical under the facts of the case (usually no more than one or two working days of learning of the need for leave). The employee should provide notice to his or her employer in person, by telephone, or by other electronic means. Notice may be given by an employee's spouse, family member, or an other responsible party if the employee is unable to do so personally.

An employee is not required to expressly assert rights under the FMLA when requesting leave, and the employer should make further inquiries if necessary to determine whether FMLA leave is being requested by the employee. An employer may require employees to follow the employer's own procedures for requesting leave; however, failure to follow such procedures will not permit the employer to deny[9] FMLA leave where the employee has fulfilled his or her obligations under the FMLA for requesting leave. Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment to work out a schedule that best suits the need of the employer and the employee.

An employer may require the employee to support a leave request with certification issued by the employee's health care provider or the health care provider of a family member when leave is requested by the employee to care for a seriously ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform the functions of the employee's position. The request for certification must be written, but a request for subsequent medical certification may be verbal. The employer must allow at least 15 calendar days for the employee to respond to a request for certification, and the employer must advise the employee, at the time leave is requested, of the anticipated consequences of failure to provide certification.[10] Employers also are obligated to advise employees when certification is incomplete and to allow employees a reasonable opportunity to cure deficiencies.

A certification obtained by an employee from a health care provider (the DOL's Interim Regulations include an optional form for employees' use in obtaining required medical certifications from health care providers) is sufficient if it includes the following information: (1) The date on which the serious health condition commenced; (2) A diagnosis of the serious health condition; (3) The health care provider's best medical judgment as to the probable duration of the condition; (4) A brief statement of the regimen of treatment prescribed for the condition; and (5) An indication as to whether inpatient hospitalization is required. Where intermittent or reduced schedule leave is requested, the certification should set out the expected duration and schedule of the

leave is required to include (1) a statement of the necessity for such leave or (2) a statement that the leave is necessary to care for a family member who has a serious health condition or will assist in the family member's recovery. If the employee seeks leave due to his or her own serious health condition, the certification must also state that the employee is unable to perform work of any kind or contain a statement that the employee is unable to perform the essential functions of the employee's position. If the employee requests leave due to the condition of a seriously ill family member, the certification must state that the family member requires assistance or that the employee's presence will be beneficial.

information that casts doubt on the validity of the certification.

As a condition of restoring employees to work whose FMLA leave was necessary due to the employees' own serious health condition, the employer may implement a uniform policy requiring all such employees to present certification from a health care provider stating that they are able to return to work. The fitness-for-duty certification may only be requested as to the serious health condition that caused the employee to take the leave.

Compliance By Private Employers [29 U.S.C. §§ 2615-2616 & 2619; 29 C.F.R. §§ 825.220, 825.300-825.301, 825.402-825.404 & 825.500]

employee who fails to give advance notice of the employee's need to take FMLA leave.

In addition to posting notices, employers also are required to include information concerning FMLA entitlements and employee obligations in employee handbooks or in other materials explaining employee benefits or leave rights. If an employer has no written policies, manuals, or handbooks explaining employee benefits and leave provisions, the employer nevertheless is obligated to provide written guidance to an employee concerning the employee's rights and obligations under the FMLA whenever the employee requests FMLA leave (an "FMLA Fact Sheet" is available from the DOL).

If an employee submits a complete certification signed by his or her health care provider, the employer may not request additional information from the employee's health care provider. Rather, an employer who doubts the validity of a medical certification may require the employee to obtain a second opinion at the employer's expense. The employer may select the health care provider who will provide the second opinion, but the health care provider must not be employed on a regular basis by the employer. If the opinion of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain a certification from a third health care provider at the employer's expense. The third opinion is final and binding, and the health care provider rendering the third opinion is to be jointly approved by the employer and the employee.[11]

An employer may request recertification at any reasonable interval, but not more often than 30 days unless (1) the employee requests an extension of leave, (2) circumstances described by the original certification have significantly changed, or (3) the employer receives

An employer is prohibited from (1) interfering with, restraining, or denying the exercise of (or attempts to exercise) any right provided for under the FMLA or (2) discharging or in any other way discriminating against any person (whether or not an employee) for opposing or complaining about any unlawful practice under the FMLA or filing a charge or taking part in a proceeding under the FMLA. Employers may not discriminate against employees who take FMLA leave, and employers cannot use the taking of FMLA leave as a negative factor in employment actions. The FMLA provides an employee with various avenues of relief in the event the employee believes he or she has been discriminated against. *See* Part XI, below.

Employers are required to post in conspicuous places on their premises a notice explaining the FMLA's provisions and the procedures for enforcing rights under the FMLA. The DOL's Interim Regulations contain a notice that may be reproduced and posted by employers (no reproduction of the notice may be smaller than 8 1/2 inches by 11 inches). If an employer fails to post a notice, the employer may be liable for a civil money penalty and may not take any adverse action against an

Besides posting notices and providing information in handbooks or "fact sheets," employers have the additional obligation to provide an employee, at the time leave is requested, with a notice explaining the obligations of the employee, as well as the consequences of a failure to meet the obligations. The notice should include the following information, as appropriate: (1) A statement that the leave will be counted against the employee's annual FMLA leave entitlement; (2) Requirements for furnishing medical certification and the consequences of failing to do so; (3) The employee's right to substitute paid leave, whether the employer will require substitution of paid leave, and the conditions relating to any substitution; (4) Requirements for the employee to make any premium payments to maintain health benefits and the applicable payment arrangements; (5) Requirements pertaining to a fitness-for-duty certification; (6) The employee's right to restoration to the same job or an equivalent job; (7) The employee's status as a "key employee" and an explanation that job restoration potentially may be denied; and (8) The employee's potential liability for health insurance premiums paid by the

employer if the employee fails to return to work after taking FMLA leave.

Employers are obligated to make, keep and maintain records pertaining to compliance with the FMLA. The employer must retain such records for no less than three years. An employer is not required to submit records to the DOL, unless specifically requested by the DOL, and such a request may not be made more than once during any 12-month period, unless the DOL has reasonable cause to believe a violation of the FMLA exists or is investigating a complaint.

Although employers have an obligation to make, keep and preserve records pertaining to their obligations under the FMLA, no particular order or form of records is required. An employer is not required to alter its method of maintaining payroll or personnel records. Nevertheless, records must disclose the following: (1) Basic payroll and identifying employee data; (2) Dates FMLA leave is taken by employees (available from time records, requests for leave, etc.), which must be designated as FMLA leave; (3) If FMLA leave is taken in increments of less than one full day, the hours of the leave; (4) Copies of employee notices of leave furnished to the employer under FMLA, if in writing, and copies of all general and specific notices given to employees as required under the FMLA (copies may be maintained in employee personnel files); (5) Any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; (6) Premium payments of employee benefits; and (7) Records of any dispute between the employer and an employee regarding designation of leave as FMLA leave.

Records and documents relating to medical certifications, recertification, or medical histories must be maintained in separate files and be treated as confidential medical records, with the exception that (1) supervisors and managers may be provided such information to the extent necessary to accommodate necessary restrictions of an employee's duties and (2) first aid and safety personnel may be provided such information so as to facilitate emergency treatment for an employee's physical or medical condition. Government officials investigating compliance with the FMLA also may be provided with relevant information upon request.

Legal Proceedings Under The FMLA [29 U.S.C. § 2617; 29 C.F.R. §§ 825.400-825.401]

Employees who believe that their rights under the FMLA have been violated may file a complaint with the DOL or file private lawsuits. If an employee chooses to file a complaint with the DOL, the complaint should be filed within a reasonable time, and in no event may such a complaint be filed more than two years after the action alleged to have been violative of the FMLA (three years in the case of a willful violation). An employee may file a private lawsuit within two years of the last action alleged to be a violation of the FMLA (three years in the case of a willful violation).

If an employer is found to have violated one or more provisions of the FMLA, the employee may receive one or more of the following: (1) Wages, employment benefits or other compensation denied to or lost by the employee; (2) Where there has been no tangible loss of wages, benefits, etc., compensation for actual monetary loss incurred by the employee (*e.g.*, the cost of providing care), up to a sum equal to 12 weeks of wages for an employee; (3) Interest on awarded sums at the prevailing rate; (4) Liquidated damages in an amount equal to awarded sums; (5) Employment, reinstatement, and promotion; and (6) Reimbursement for the cost of the action, reasonable attorney fees, and reasonable expert witness fees.

The DOL's Interim Regulations state that the FMLA is "intended and expected to benefit employers as well as their employees" and is designed "to balance the demands of the workplace with the needs of families."[12] The Interim Regulations also observe that there is a direct correlation "between stability in the family and productivity in the workplace" and that the "FMLA will encourage the development of high performance organizations."[13] On August 30, 1993, the period for the filing of written comments with the DOL by interested parties regarding the Interim Regulations was extended to December 3, 1993.[14] Readers who are concerned with either the substantive goals the FMLA was intended to achieve or any of the procedural matters discussed in this Article should direct their concerns to the DOL. ■

Endnotes

1. 58 Fed. Reg. 31812-31839 (June 4, 1993).
2. In some cases leave may begin before the actual birth of a child, as in a case where an expectant mother takes leave before the birth of a child for prenatal care or when her condition makes her unable to work. Leave may also start prior to the placement or adoption of a child in the event the leave is necessary to proceed with placement for adoption or placement for foster care.
3. "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
4. Restorative dental surgery after an accident, removal of cancerous growths, treatments for allergies or stress, and treatments for substance abuse may be considered serious health conditions. Routine physical examinations, voluntary treatments, or cosmetic treatments not requiring hospitalization that are not medically necessary are not "serious health conditions."
5. A job function may be essential if the job exists to perform the function, there is a limited number of employees among whom performance of the function can be distributed, and/or the function is highly specialized and the employee was hired to perform the function.
6. If an employee used four weeks of leave beginning on February 1, 1994, four weeks beginning on June 1, 1994, and four weeks beginning on December 1, 1994, the employee would not be entitled to additional leave until February 1, 1995. On February 1, 1995, the employee would be entitled to four weeks of leave, on June 1, 1995 the employee would be entitled to four weeks of leave, etc.
7. Paid leave under an employer's plan covering temporary disabilities is deemed to be paid medical/sick leave for FMLA substitution purposes. For instance, paid disability leave provided by an employer for the birth of a child could be considered FMLA leave for a serious health condition and could be counted as part of the 12 week leave period provided by the FMLA.
8. *See* 29 C.F.R. § § 825.216-825.219.
9. A list of circumstances in which an employer may deny leave or reinstatement to an employee due to the action, or inaction, of the employee is set out at 29 C.F.R. § 825.312.
10. In cases involving foreseeable leave, the leave request may be denied if timely certification is not provided within 15 calendar days after certification is requested by the employer. When leave is not foreseeable, the employer must allow the employee at least 15 calendar days to obtain certification, or, in the alternative, the employee is entitled to obtain the certification as soon as reasonably possible under the circumstances.
11. The employer and employee are to each act in good faith to reach an agreement on the identity of the third opinion provider. If the employer does not act in good faith, the employer is bound by the first certification. If the employee does not act in good faith, the employee is bound by the second certification.
12. 29 C.F.R. § 825.101(a) & (c).
13. 29 C.F.R. § 825.101(c).
14. 58 Fed. Reg. 45433 (August 30, 1993).

Mark Strength
Mark Strength is a 1985 graduate of the University of South Alabama and a 1988 graduate of the University of Alabama School of Law. He is an associate with the Birmingham firm of Maynard, Cooper & Gale.

DISCIPLINARY REPORT

Show Cause Order

• **Kevin Michael Manning**, attorney at law, whose whereabouts are unknown, must answer the Alabama State Bar's Rule 25(a), Order to Show Cause, within 28 days of November 15, 1993 or, thereafter, the allegations contained in the Petition for Reciprocal Discipline shall be deemed admitted and appropriate discipline shall be imposed against him in Rule 25(a). Pet. #92-002 before the Disciplinary Board of the Alabama State Bar

Notice to Appear

• **D. Michael Sawyer,** attorney at law, whose whereabouts are unknown, is hereby notified to appear for a hearing to determine discipline to be held December 10, 1993 at 1 p.m. at Alabama State Bar headquarters.

Suspensions

• The Alabama State Bar has suspended Montevallo attorney **Vivian Marie Hernandez** for a period of six months effective August 25, 1993. This suspension was the result of her conduct in two separate cases where she accepted money from clients and then failed to perform the services requested. One case involved the preparation of joint wills, where Hernandez collected $3,750 and never produced a document of any kind. In the second case, Hernandez collected $600 for a Rule Nisi and then took no action to finalize the matter. In both instances, Hernandez consciously failed to communicate with the clients about the status of their files or their funds. She did not cooperate in the investigation of either complaint and ultimately had default judgments entered against her on the substantive charges filed by the bar. The six-month suspension was imposed after a hearing to determine discipline before the Disciplinary Board. The Disciplinary Board's order made restitution in both these cases a condition of reinstatement. Hernandez appealed, but her appeals were dismissed for non-prosecution. [ASB Nos. 92-061 & 92-193]

• Effective September 2, 1993, the Disciplinary Board suspended Jasper attorney **Marlin V. MacLaughlin, Jr.** from the practice of law for a period of 90 days and placed him on probation for two years. MacLaughlin served as hearing officer for the Alabama Surface Mining Reclamation Commission. MacLaughlin also served as treasurer of the Conference of Government Mining Attorneys, a nonprofit educational and professional organization of attorneys employed by state and federal agencies in the area of coal mining regulation. While serving as treasurer, the respondent misappropriated and converted to his own use $4,950 which was designated to be used to finance the annual seminar of COGMA. When the shortage was discovered, MacLaughlin repaid the money and no criminal charges were brought against him. MacLaughlin resigned from this position with COGMA and as hearing officer for the Alabama Surface Mining Reclamation Commission.

• Effective July 1, 1993, Dothan attorney **Richard H. Ramsey, III** was suspended by the Supreme Court of Alabama for a period of 45 days after an unsuccessful appeal of the Disciplinary Board's order of August 12, 1992 imposing the suspension. The Disciplinary Board found him guilty of making false statements at a juvenile proceeding in which he was called to testify as a witness. [ASB No. 88-129]

Public Reprimands

• On September 17, 1993 Jasper attorney **H. Edward Persons** was publicly reprimanded by the Alabama State Bar for willfully neglecting a legal matter entrusted to him, for failing to keep his client reasonably informed about the status of the client's case, and for engaging in conduct that adversely reflected on his fitness to practice law.

Persons was retained by an individual to process an uncontested divorce. The client paid Persons an agreed-upon amount, with the remainder due in installments. However, Persons thereafter closed his office without notifying the client.

The client experienced substantial difficulty in locating Persons and making final payment to him for the uncontested divorce. The client eventually located Persons, and tendered to him the balance due on the account. The client paid by money order, which Persons promptly cashed. However, Persons thereafter notified the client that since full payment had not been made within the 60 days as required by his employment contract, he would be unable to process the matter to its conclusion. Even though Persons eventually completed the uncontested divorce for the client, court records reflect that it took almost one year from the time the client initially retained Persons until such time as the final divorce decree was granted. [ASB No. 93-081]

• Birmingham attorney **William T. Denson** was given two public reprimands without general publication on September 17, 1993 for a violation of rules 1.1, 1.3 and 1.4(a) of the Rules of Professional Conduct of the Alabama State Bar. In June and July 1992, Denson was employed by two clients to represent them both in related worker's compensation cases against their employer. After having been employed by the clients, Denson failed or refused to investigate the circumstances surrounding the clients' injuries or to file a worker's compensation claim or to otherwise take any action on their behalf. As a result, the statute of limitations ran precluding recovery by both clients. Furthermore, the clients made repeated attempts to contact Denson, but he failed or refused to return their telephone calls or to otherwise communicate with them concerning the status of their cases. [ASB Nos. 93-058 & 93-059]

• Selma attorney **J. Patrick Cheshire** received a public reprimand with general publication on September 17, 1993 for violating Rule 1.3 of the Rules of Professional Conduct. The reprimand was given for Cheshire's neglect of two separate cases.

In ASB No. 92-490, Cheshire was employed in May 1989 by a client to represent her in an EEOC case. The client paid Cheshire a $500 attorney's fee and $120 filing fee to file suit on her behalf in federal court. Thereafter, Cheshire falsely represented to the client that the suit had been filed, but that he had been unable to obtain service on the defendant. In April 1991, the client contacted federal court and discovered that the suit had never been filed. Thereafter, Cheshire again falsely represented to the client that suit had been filed. In March 1992, the client asked for a copy of the suit, which Cheshire represented to her had been filed on her

behalf. Finally, in April 1992, Cheshire filed the lawsuit, but it was dismissed because it was not filed within the applicable statute of limitations.

In ASB No. 92-491, Cheshire was employed by a client in May 1990 to represent her in an EEOC case. Cheshire filed suit on the client's behalf in federal court but failed to obtain service on the defendant. Cheshire did not attempt to obtain service on the defendant by certified mail or by publication. In August 1992, the lawsuit was dismissed for failure to obtain service. [ASB Nos. 92-490 & 92-491]

• **Oscar William Adams, III**, a Birmingham attorney, was publicly reprimanded by the Alabama State Bar on September 17, 1993. Adams had entered into an employment contract to represent an individual against corporate defendants. Adams had the case continued several times, and failed to timely file pleadings in the matter. The case was eventually settled for $500, with costs taxed against the defendants.

Adams's client thereafter contacted him requesting a copy of the file. Adams refused this request, stating that he would only do so if the client paid him for said copying.

The client failed to receive any of the settlement proceeds. The client thereafter filed a complaint against Adams. In defense to the complaint, Adams contended that the amount of costs and expenses exceeded the $500 received from the defendants, and that the client, therefore, was not due any proceeds. This was contrary to the court's finding that all costs be taxed against the opposing party.

Further investigation in this matter disclosed that Adams apparently signed his client's name, as well as the client's wife's name, to the check from the defendant. Adams failed to provide any accounting to his client of the funds collected and disbursed by him.

In so doing, the Disciplinary Commission determined that Adams willfully neglected a legal matter entrusted to him, failed to properly communicate with his client concerning the matter he was handling for the client, failed to immediately disburse to his client monies due the client, and misrepresented facts to the client as to the taxing of costs and expenses in the matter. The facts also disclosed that Adams violated yet another rule of professional conduct in that he required his client to sign a release subsequent to his representation, which release was designed to relieve Adams from any and all liability concerning his representation of the client. [ASB No. 92-416]

• On September 17, 1993, Warrior attorney **Janice C. Hart** was publicly reprimanded by the Alabama State Bar for willfully neglecting a legal matter entrusted to her, for failing to keep a client reasonably informed about the status of a matter, and for engaging in conduct that adversely reflected on her fitness to practice law.

Hart agreed to undertake representation in a possible medical malpractice action on behalf of the patient's family. However, Hart failed to communicate with members of the family about the status of the case, and failed to respond in any way to their attempts to communicate with her about the case.

Prior to Hart's undertaking any specific legal action in the matter, the patient died. Hart thereafter informed members of the deceased's family that any cause of action which they possi-

ADDRESS CHANGES

Complete the form below ONLY if there are changes to your listing in the current *Alabama Bar Directory*. Due to changes in the statute governing election of bar commissioners, we now are required to use members' office addresses, unless none is available or a member is prohibited from receiving state bar mail at the office. Additionally, the *Alabama Bar Directory* is compiled from our mailing list and it is important to use business addresses for that reason. NOTE: If we do not know of an address change, we cannot make the necessary changes on our records, so please notify us when your address changes. **Mail form to: Alice Jo Hendrix, P.O. Box 671, Montgomery, AL 36101.**

_____ - _____ - _____ Member Identification (Social Security) Number

Choose one: ☐ Mr. ☐ Mrs. ☐ Hon. ☐ Miss ☐ Ms. ☐ Other _____

Full Name _____

Business Phone Number _____ Race _____ Sex _____ Birthdate _____

Year of Admission _____

Firm _____

Office Mailing Address _____

City _____ State _____ ZIP Code _____ County _____

Office Street Address (if different from mailing address) _____

_____

City _____ State _____ ZIP Code _____ County _____

bly had was lost due to the death of the patient. [ASB No. 93-088]

• Birmingham attorney **Richard Lee Taylor** was hired by a couple to initiate adoption proceedings. Taylor quoted and received the fee of $500 to process the adoption.

Thereafter, the couple experienced substantial difficulty in communicating with Taylor about the status of the case. Taylor failed to respond to written communications as well as telephone calls from the couple.

Taylor also failed to respond to the first two written requests for a response to the bar's complaint filed against him in this matter. In his response to the complaint, Taylor admitted that he had received the $500 fee, but had failed to process the adoption matter in a timely manner.

The Disciplinary Commission ordered that Taylor receive a public reprimand without general publication, and that he make full restitution of the $500 fee. It was determined that Taylor's conduct violated certain provisions of the Rules of Professional Conduct, specifically, that he willfully neglected a legal matter entrusted to him, that he failed to keep his clients reasonably informed about the status of the adoption matter, and that he engaged in conduct that adversely reflected on his fitness to practice law. [ASB No. 92-402]

• On September 17, 1993 Montgomery attorney **David Coleman Yarbrough** received a public reprimand with general publication. Yarbrough took on a personal injury client in June 1988. Yarbrough failed to file action within two years of the accident, while advising the client that he had done so on a number of occasions. At one appointment in March 1990, he gave his client a copy of the complaint, which he said had been filed in Montgomery County Circuit Court. On December 4, 1990, he told his client that the complaint had not been filed, but would be filed that day. On January 2, 1991, another attorney contacted by the client confirmed that nothing had been filed. The client sued Yarbrough and he settled the case, but after an initial payment, he became delinquent. The public reprimand imposed on Yarbrough was conditioned upon his payment of $16,697.70 to his ex-client by August 1, 1993. Yarbrough complied with that condition. In addition to his conduct surrounding the neglect of a legal matter, Yarbrough failed to cooperate or provide information during the investigation of the grievance. After the bar filed formal charges, he allowed a default to be taken against him. [ASB No. 92-333]

• On September 17, 1993, Birmingham attorney **Henry L. Penick** received a public reprimand with general publication for having violated Rule 8.1(b) of the Rules of Professional Conduct. At a hearing before the Disciplinary Board, Penick was found not guilty of neglecting an appellate matter, but guilty of failing to respond to a disciplinary authority in a timely manner. In addition to the reprimand, Penick was ordered to attend three hours of CLE in appellate practice and three hours in legal ethics. [ASB No. 92-101]

• On September 17, 1993, Pell City attorney **Talmadge H. Fambrough** received a public reprimand without general publication. Fambrough agreed to represent a client in connection with a motor vehicle accident which occurred on July 1, 1987. He filed suit on June 29, 1989, but held up service of the summons and complaint. The defendant had been a divorce client of Fambrough's at some time in the past. The case was continued at docket calls in July 1990 and January 1991. The court warned that it would dismiss if service was not made and on June 27, 1991, the case was dismissed. Fambrough never notified the client and he only found out about it when another lawyer advised him about it. As late as October 1992, Fambrough told the client that he was "working on it." Fambrough's actions constituted a violation of Rules 1.3, 1.4(a) and 1.7 of the Rules of Professional Conduct. [ASB No. 92-541]

• On September 17, 1993, Huntsville attorney **H. Coleman Burton** received a public reprimand without general publication for having violated a prior order of the Disciplinary Board. In an earlier disciplinary proceeding in 1992, Burton received a public reprimand and probation for one year. One of the special conditions of that probation was that he submit quarterly status reports on his active caseload. Burton submitted the first quarterly report and neglected to send any others to the General Counsel's office. He also failed to respond to two compliance letters from the General Counsel. Burton's probation and the conditions thereof were extended for another year in connection with the recently imposed discipline. [ASB No. 93-021]

• On September 17, 1993, Anniston attorney **James Almwick Mitchell** received a public reprimand with general publication for having violated Rule 1.3 of the Rules of Professional Conduct. Mitchell was representing a client in a Chapter 13 bankruptcy. The client's only asset was an automobile financed by GMAC. When some payments to the client's Chapter 13 plan were not credited, GMAC filed a petition for relief from stay. Mitchell failed to take any action and the motion was granted, whereupon the bankruptcy was dismissed. GMAC repossessed the vehicle and began to pursue the client for a large deficiency. At that point, Mitchell began to prepare an objection to the dismissal, but was terminated by the client. [ASB No. 91-672] ■

LEGISLATIVE WRAP-UP

By ROBERT L. McCURLEY, JR.

Special Session
August 12-14, 1993

Only the Governor may call the Legislature into special session and specify the purpose for the session. The Governor's legislation in "The Call" may pass with a simple majority of each house; any other bill must pass with a two-thirds majority.

Governor Folsom in the first Special Session designated ethics reform, campaign spending limits and business incentives to attract the Mercedes plant as prime importance. The Legislature passed versions of them all. The Governor vetoed both the ethics bill and the bill on campaign spending limits.

There were 105 House bills and 97 Senate bills introduced. Fifty-six percent (59) of the House bills passed and became law, and 13 percent (14) of the Senate bills were approved by both houses. Some of these bills are:

Act 93-843 changed the name of the State Highway Department to Department of Transportation.

Act 93-844 proposes an amendment to the Constitution to allow bingo games in Covington County.

Act 93-850 permits non-sectarian, non-proselytizing student-initiated voluntary prayer on public school or other public property and at school-related activities.

Act 93-880 authorizes personalized or distinctive motor vehicle license tags for veterans and active reserve members of the armed forces.

Act 93-882 created a new circuit judgeship for Tuscaloosa County.

Act 93-890 revises sections 26-14-1 and 26-14-3 relating to the definition of child sexual abuse or neglect and to provide further for investigations of suspected child abuse.

Act 93-891 amended sections 22-35-3 *et seq* relating to the Underground and Aboveground Storage Tank Trust Fund.

Act 93-899 proscribes standards for investments for governing boards of educational institutions in the "Uniform Management of Educational Institutional Funds Act".

Act 93-901 amended the bail bond reform act passed during the 1993 Regular Session so as to delay the effective date of the act to July 1, 1994. Several judicial circuits had ruled the earlier act 93-677 as unconstitutional.

Act 93-903 amended the Motor Vehicle Safety Responsibility Act to raise proof of financial responsibility in § 32-7-2 from $5,000 -$10,000 -$1,000 to $20,000 bodily injury to one person, $40,000 for more than two people and $10,000 property damage.

Further, § 32-7-8 is amended to suspend one's license for two years (up from one year) where no proof of financial responsibility is made. Finally, proof of financial responsibility under § 32-7-27 which must be filed with the State Treasurer is increased from $11,000 to $50,000.

Act 93-905 amended Criminal Code § 13A-7-23.1 concerning desecration of tombs to raise the penalty from a Class A Misdemeanor to a Class C Felony.

Act 93-911 amends Section 16-8-10 to delete the requirement for a local school board to file their policies with the State Department of Education. Act 93-912 specifies when school board members take office.

Other bills provided additional funding for various agencies, while numerous local bills were approved. Copies of each act are sent to the probate judge's office. The 1993 pocket parts to the Code include only acts passed through the 1993 Regular Session.

Several additional sessions will probably be called before the 1994 Regular Session begins January 11, 1994.

For more information, contact Bob McCurley, Director, Alabama Law Institute, P.O. Box 1425, Tuscaloosa, Alabama 35486, or phone (205) 348-7411. ■

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

How to Avoid MCLE Problems

1. **Stay current.** The deadline for completing each year's MCLE requirement is December 31. An extension until March 1 may be requested if a deficiency plan is submitted by January 31. The deficiency plan must be requested in writing and must state the sponsor, title, date, location and credits of the program you are planning to attend between January 1 and March 1. Early selection of each year's seminars enhances the opportunity to select the CLE that best matches lawyers' areas of practice. Those who wait until the last minute find decreased availability of the seminars they would prefer to attend.
2. **File the Annual Report of Compliance timely.** The deadline is January 31. Otherwise, a $50 late filing fee results.
3. **File the deficiency plan on time and complete all CLE before the deficiency plan deadline.** Otherwise, a $100 late CLE fee results.
4. **Correct non-compliance at once.** The MCLE Commission regrets that the Supreme Court of Alabama has to suspend some lawyers each year for not completing MCLE requirements or not paying late fees. If this occurs, the lawyer loses at least one or more months of practice, must make up all seminar and late fee deficiencies, and must pay a reinstatement fee.
5. **Verify the accuracy of the Annual Report of Compliance.** As a service to lawyers, the MCLE Commission obtains attendance records from sponsors and lists each lawyer's record on the transcript. However, each attorney is responsible for filing an accurate record of his or her CLE attendance. Any needed correction to the Annual Report of Compliance should be made before the attorney signs it and, thereby, attests to its accuracy. It is the policy of the MCLE Commission to report to the disciplinary board all instances of false affidavits. The MCLE Commission is pleased to report that a vast majority of Alabama lawyers do comply fully with their MCLE requirements and, thereby, avoid the foregoing problems. ■

BAR LEADERSHIP CONFERENCE

Tricia Shaner, Montgomery, chair, Substance Abuse in Society Committee

Terrell Wynn, Birmingham, chair, Lawyers Helping Lawyers Committee

Some of the participants at the well-attended '93 Bar Leadership Conference

Will Lawrence, Talladega, chair, Task Force on Specialization

RECENT DECISIONS

By WILBUR G. SILBERMAN

Bankruptcy Decisions

Eleventh Circuit rules bankruptcy attorney is entitled to lodestar amount in absence of other factors

Resolution Trust Corp. v. Hallmark Builders, et. al., 996 F.2d 1144; 24 B.C.D. 895 (11th Cir. (Fla.), Aug. 4, 1993)

RTC was successful in an action against Hallmark to collect on two loans made by its predecessor, Duval. In the bankruptcy court, Hallmark did not dispute the indebtedness to Duval or its status as a secured creditor, and in its final plan of reorganization, agreed to pay Duval over a three-year period, but it did not do so. Duval filed suit, RTC succeeded Duval, and the case ultimately was tried in the U.S. District Court with a final judgment for RTC for approximately $51,000 plus interest and costs, with the court retaining jurisdiction to award reasonable attorneys' fees for the plaintiff's attorneys. The matter was referred to the magistrate who found the amount of $147,131 to be due under the lodestar principle of multiplying the number of hours reasonably spent times a reasonable hourly rate. However, the magistrate decided that this fee was excessive with relation to the amount involved and rules regulating The Florida Bar. Under this theory, the magistrate reduced the fee to $60,431.30. Over objection, the district court affirmed and appeals were then taken to the Eleventh Circuit.

The Eleventh Circuit, in rejecting the reduction, first stated that a promissory note upon which the judgment was based provided for reasonable attorneys' fees. Florida follows the lodestar approach as developed by federal case law and the following steps are to be taken in determination of fees under the lodestar analysis:

(1) Establish the reasonable number of hours for which the attorneys are entitled to compensation with the admonition that the attorneys should exercise their own billing judgment to exclude excessive, redundant or otherwise unnecessary time and any hours which would not be billed to the client should not be charged to the adversary.

(2) Determine reasonable hourly rates.

(3) Determine whether there should be any rejection of the lodestar under controlling case law. As a corollary, there should be a downward adjustment only if the prevailing party is partially successful in its efforts.

Under the above criteria, the Eleventh Circuit reversed the district court judgment and remanded the case for the court to award attorneys' fees in the lodestar amount previously calculated without reduction.

Comment: This case appears quite favorable for attorneys in bankruptcy or other federal courts, but let it be noted that it was a case based upon a promissory note with a provision for attorneys' fees. The Eleventh Circuit specifically held that in determining the fees, it looks to the law of the state in which the security instruments were executed, and as Florida followed the lodestar approach developed under federal case law, so should the court here. For Alabama lawyers, the question arises as to the Alabama law on attorneys' fees on security instruments, and where this is any different from the determination of attorneys' fees in other matters.

The Alabama State Bar Announces the Formation of the

Disability Law Section Task Force

The Disability Law Section Task Force has been charged with the responsibility of surveying members of the Alabama State Bar to determine whether there is sufficient interest to create a Disability Law Section of the bar. Interested attorneys are invited to contact Victoria Farr, chairperson of the task force by March 1st, 1994.

Ms. Victoria Farr, Chairperson
Disability Law Task Force
The Alabama Disabilities Advocacy Program
The University of Alabama
School of Law Clinical Law Programs
Box 870395
Tuscaloosa, Alabama 35487-0395
Phone: (205) 348-4928 (Voice) / (205) 348-9484 (TDD)

Quick kiss on the cheek

Date of appointment of trustee is the date the court approves the selection by the U.S. Trustee (in Alabama, selection is by the court administrator), the earlier date of appointment by the U.S. Trustee. Also in avoidance actions, Bankruptcy Rule 9006(a) as to computation of time applies in computing the two-year deadline under §546(a) citing the 11th Circuit case of *Maahs v. U.S.*, 840 F2d 863, 866 that Rule 6(a) applies to determining two-year time limitations for presenting notice under the Federal Tort Claims Act. *In the Matter of Sutera, Boatman v. Furnia*, 24 B.C.D. 925; ____B.R.____, (1993 W.L. 312701, (Bankr. D. Conn.) August 10, 1993).

The Eighth Circuit in dismissing an appeal of an order denying confirmation held it did not have jurisdiction because a confirmation denial is not a final order. It is not final because there are duties left for the bankruptcy court, such as consideration of amended or other plans, winding up the case. *In re Pleasant Woods Associates Limited Partnership v. Simmons First National Bank*, ____F.3d____; 24 B.C.D. 930 (1993 W.L. 306913) (8th Cir. U.S. Ct. of Appeals, August 13, 1993).

It is unfair discrimination in Chapter 13 to propose priority for full payment of a student loan, but nothing for other unsecured creditors. To allow this separate classification because of non-dischargeability of the student loan would be tantamount to making it a preferred debt. Congress did not afford priority to such debt, and neither should the court. *In re JoAnn C. Smalberger*, ____B.R.____, 1993 WL 310418, ((Bankr. D.Or.) Aug. 12, 1993) (No. 393-32040-H13).

So that you do not get caught in computing time, read about this Chapter 13 case where the court set the bar date ten days after the §341 meeting. Creditors' counsel relied on Fed. R. Civ. Pro. 6 which does not count weekends and holidays for periods of less than 11 days, but he (or she) forgot to review Bankruptcy Rule 9006 which omits such days only for periods of eight days or less. The court said there was no excusable neglect, and disallowed the objection filed after the eighth day. *In re Jessie Waggoner*, ____B.R.____, 1993 WL 307753 ((Bankr. E.D. Ark.) August 4, 1993). (No. 93-40375).

You decide if the following is correct. The debtor received a $100,000 line of credit without furnishing a financial statement. On an increase to $150,000, of which debtor used only $10,000, a financial statement was given, later held to be false. The bankruptcy and district courts held only $10,000 non-dischargeable. The First Circuit reversed by determining the entire debt to be non-dischargeable. *In re Goodrich*, 999 F.2d 22, 62 USLW 2130, Bankr. L.Rep. P.75, 353, (First Circuit, July 26, 1993).

Effective October 25, 1993

the new address for the

Alabama Court of Civil Appeals

is

300 Dexter Avenue

P.O. Box 301560

Montgomery, Alabama

36104-3741

The Eleventh Circuit reversed the lower courts in deciding that a guarantor's obligation was released when the creditor released the primary obligor's collateral. The bankruptcy court had held that as the guaranty was unconditional, the release of collateral would not affect the guaranty. The Eleventh Circuit said "not so"; unless rights against the guarantor are reserved, it is discharged. *In re Fred Wines*, 11th Cir., Aug. 10, 1993, 997 F.2d 852; ____B.C.D.____.

The question of whether unpaid workers' compensation premiums are excise taxes entitled to priority under §507(a)(7)(E) is discussed by the Sixth Circuit which held it was in the particular instance, but not in every instance where there is a monetary obligation to the governmental authority. *In re Suburban Motor Freight, Inc.*, 998 F.2d 338, 24 B.C.D. 750, (6th Cir. June 29, 1993).

In Chapter 13, contrary to Chapter 11, post-petition debts incurred in ordinary course of debtor's business were determined as necessary to preserve debtor's assets and, thus, entitled to administrative priority. (This appellate court admitted there is opposing authority.) *Security Bank of Marshalltown, Iowa v. Neiman*, ____F.3d____, 62 USLW 2102, (8th Cir. (Iowa), August 2, 1993).

A joint check given to a contractor and supplier may be excepted from the voidable preference rules of §547 by reason of the earmarking doctrine which prevents the payment from theoretically coming into possession of the debtor. *In re Winsco Builders, Inc.*, 156 B.R. 98, 24 B.C.D. 768, (Bankr. M.D. (Fla.), July 12, 1993). ■

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

• M·E·M·O·R·I·A·L·S •

Cooper, Kenneth
Bay Minette
Admitted: 1940
Died: June 26, 1993

Ferrell, Archer Bradford
Phenix City
Admitted: 1939
Died: August 4, 1993

Godwin, Richard Carlton
Birmingham
Admitted: 1949
Died: July 28, 1993

Glasgow, Robert S., Jr.
Adamsville
Admitted: 1933
Died: August 7, 1993

Keeling, Frank Marion
Mobile
Admitted: 1968
Died: June 16, 1993

Pitts, Jon Will
Clanton
Admitted: 1956
Died: August 22, 1993

Smyly, William Allen, Jr.
Birmingham
Admitted: 1980
Died: August 28, 1993

Widemire, Miller Arrington
Mobile
Admitted: 1958
Died: August 26, 1993

Williams, Elliott Tuttle, Jr.
Birmingham
Admitted: 1947
Died: August 27, 1993

Williams, L. Morgan
Birmingham
Admitted: 1985
Died: September 18, 1993

Please Help Us

The Alabama State Bar and *The Alabama Lawyer* have no way of knowing when one of our members is deceased unless we are notified. Do not wait for someone else to do it – if you know of the death of one of our members, please let us know. Send the information to:

Alice Jo Hendrix
P.O. Box 671
Montgomery, Alabama 36101

• M·E·M·O·R·I·A·L·S •

Charles E. Shaver

Charles E. Shaver, a native of Huntsville, was born December 6, 1907 and attended public schools in Huntsville. He received both his undergraduate and law degrees from Vanderbilt University where his legal scholarship was recognized by his election to Order of the Coif. He was admitted to the bars of the states of Alabama and Tennessee in June 1931 and thereafter continuously practiced his profession in Huntsville until his death on January 11, 1993.

He was an active member of the Huntsville-Madison County Bar Association and the American Bar Association. In fact, he served as president of the Huntsville-Madison County Bar Association, and from 1966 through 1972 was bar commissioner from the 23rd Judicial Circuit. He served in the Alabama House of Representatives from 1935 to 1939 and in the Alabama State Senate from 1939 to 1947, where he served on the Code Committee that revised the Alabama Code of 1923 and wrote the Alabama Code of 1940. He was a charter member and president of the board of directors of the University of Alabama-Huntsville Foundation and was instrumental in guiding numerous gifts to the University of Alabama-Huntsville. For his contributions to the university, he was awarded an Honorary Doctor of Law Degree on May 25, 1975.

Charles E. Shaver

He was an active member and elder of the First Presbyterian Church of Huntsville. He was known for his unselfish service to his state and community, his knowledge of and devotion to the practice of law, and his demonstrated love and loyalty for his church and his family. He was a role model and example to those privileged to be associated with him in the practice of law in Huntsville. At the time of his death, he had been practicing law in Huntsville for 62 years. He is remembered not only for his ability in the practice of law and his contributions to the community but also for his wit and good humor. He is sorely missed by us all.

J.R. Brooks
Lanier Ford Shaver & Payne
Huntsville, Alabama

Charles Baker Arendall, Jr.

Whereas, Charles B. Arendall, Jr., a distinguished member of this association, passed away on June 25, 1993; and

Whereas, the Mobile Bar Association desires to remember his name and recognize his contributions to our profession and to this community;

Now, therefore, be it resolved that Charlie, as he was affectionately known, was born in Portsmouth, Virginia and was a resident of Mobile since 1924. He was the son of the late C.B. Arendall, who had served as pastor of Dauphin Way Baptist Church for many years. After attending Murphy High School, he received his Bachelor of Arts degree from the University of Richmond and his law degree from Harvard Law School where he was a *cum laude* graduate. He was admitted to the Mobile Bar Association in 1938 and was an associate with the law firm of Smith & Johnston from 1938 to 1941. He then became a partner in the Hand, Arendall law firm.

Charles Baker Arendall, Jr.

Charlie was truly a "lawyer's lawyer" in every sense of the word, and possessed the rare talent of being both an accomplished trial lawyer and an able office or transactional lawyer. He served as president of the Mobile Bar Association in 1976, and was a member of the Alabama State Bar and American Bar Association. He also served as a national vice-president of the Harvard Law School Association and president of the Alabama unit. Charlie was a Fellow of the American College of Trial Lawyers. He was extremely active in church and civic affairs. He was a founding member of the board of trustees of the University of Mobile and, in 1991, had a resident hall named in his honor.

"He was a man of tremendous stature," University of Mobile President Michael A. Magnoli said of Charlie Arendall. "He led a life focused on equality and excellence. That commitment carried through to his tenure on the University of Mobile's Board of Trustees."

Massey Bedsole, one of Charlie's law partners, said, "The thing I remember most, he had two primary loves—his family and his profession. He was a Christian, Sunday school teacher and deacon. He was a wise and compassionate counselor and was a giant in his profession. He enjoyed life to the fullest. Whatever he did, whether it was fun or profession, he did 100 percent."

Charlie Arendall was a devoted husband and father whose loss is felt keenly by all who knew him. He is survived by four daughters, Boone A. McGinley of Mobile, Barclay A. Manley and Elizabeth A. Tilney of Houston, and Katherine Weller of Atlanta; two brothers, J.T. Arendall of Mobile and Dr. Edwin M. Arendall of Birmingham; and nine grandchildren.

Thomas E. Bryant, Jr.
President, Mobile Bar Association
Mobile, Alabama

ALABAMA STATE BAR SECTION MEMBERSHIP APPLICATION

To join one or more sections, complete this form and attach separate checks payable to each section you wish to join.

NAME _____

FIRM OR AGENCY _____

OFFICE ADDRESS _____

_____

OFFICE LOCATION _____

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OFFICE TELEPHONE NUMBER _____

	SECTION	ANNUAL DUES
_____	ADMINISTRATIVE LAW	$20
_____	BANKRUPTCY AND COMMERCIAL LAW	$20
_____	BUSINESS TORTS AND ANTITRUST LAW	$15
_____	COMMUNICATIONS LAW	$15
_____	CORPORATE COUNSEL	$30
_____	CORPORATION, BANKING AND BUSINESS LAW	$10
_____	CRIMINAL LAW	$10
_____	ENVIRONMENTAL LAW	$20
_____	FAMILY LAW	$30
_____	HEALTH LAW	$15
_____	LABOR AND EMPLOYMENT LAW	$10 IF PRACTICING LESS THAN 5 YEARS, $30 IF PRACTICING 5 OR MORE YEARS
_____	LITIGATION	$15
_____	OIL, GAS AND MINERAL LAW	$15
_____	REAL PROPERTY, PROBATE AND TRUST LAW	$10
_____	TAXATION	$15
_____	WORKER'S COMPENSATION LAW	$20
_____	YOUNG LAWYERS'	0

_____

TOTAL

REMEMBER: ATTACH A SEPARATE CHECK FOR EACH SECTION.

MAIL TO: SECTIONS, ALABAMA STATE BAR, P.O. BOX 671, MONTGOMERY, AL 36101

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Please note:

The publication date of the bar directories has been changed from December 1993 to June 1994

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