The Alabama Lawyer

Vol. 44, No. 1 JANUARY 1983

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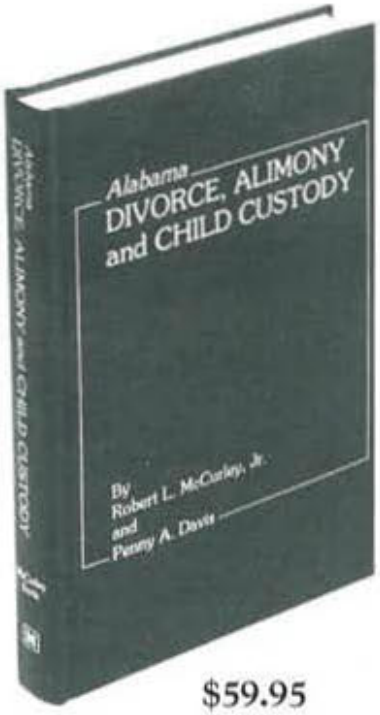

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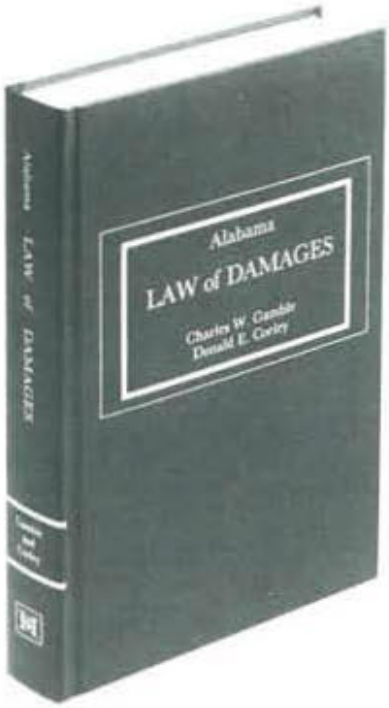

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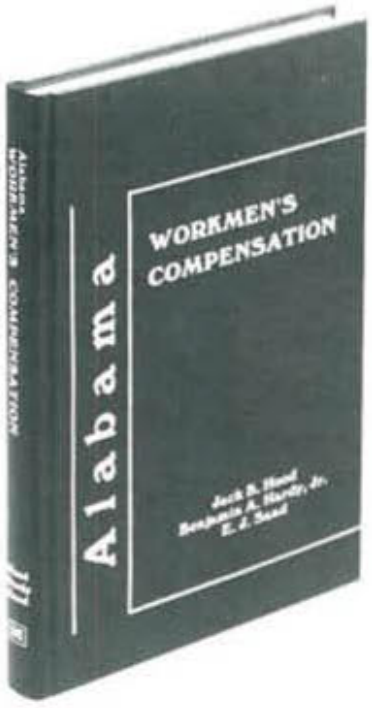

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GENERAL INFORMATION

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THE JANUARY

Appellate practice pointers

—pg. 6

Appellate practice can often be a trap for the unwary. Learn how to avoid the pitfalls in this area of your practice.

Here comes the judge

—pg. 15

The 1982 vote resulted in the election of several new circuit and district court judges. Meet those decision-makers who will fill the bench in our Alabama courts.

On the cover

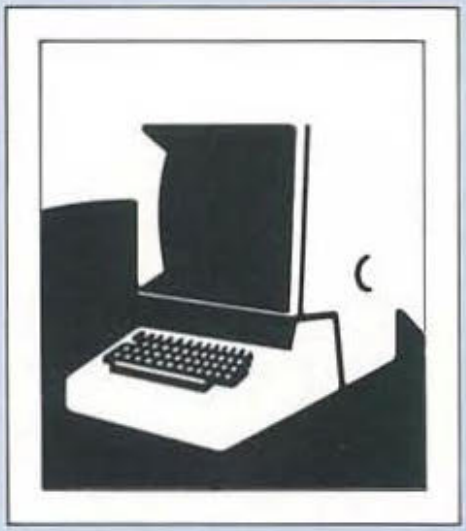
Mr. Norborne C. Stone, Jr., 1982-83 president of the State Bar, is a partner in the Bay Minette law firm of Stone, Partin, Granade & Crosby. He is pictured in front of the Baldwin County Courthouse.

ISSUE IN BRIEF

Bar admits new members

—pg. 24

Three hundred thirty-five new attorneys were certified upon passing the July 1982 bar exam. Admittees names, pictures, and statistics concerning exam inside.



Are you ready for the computer age?

—pg. 40

Increased efficiency is but one of many benefits offered by a law office computer. See how your law office can operate at its maximum potential.

Probate code revised

—pg. 46

The new Probate Code became effective January 1, 1983. Certain of the provisions in the Code are a marked departure from existing Alabama practice.

Regular Features

President's Page

It seems just a short while ago that I penned my first "message." Although it is, at least for me, a difficult task, I sincerely welcome the opportunity to use this medium to report to you and to bring you up to date on the activities, goals and problems of your profession.

We initiate with this issue a new format and style for *The Alabama Lawyer*. Except for the cover, we trust you will like it and that you will offer criticisms and give us the benefit of your observations. The editors particularly welcome news from local bar associations and want our publication to serve as a means of communication between local bars.

I would be less than candid if I said that all is well with the Alabama Bar.

The Bar Commission is struggling with financial problems and is doing all it can to acquit itself of its responsibilities to you with available funds. For example, we are confident that *The Alabama Lawyer* will, through the quality of its content and the more attractive layout for advertising, become self-sustaining.

But that penny hopefully saved is subject to a really pressing demand. I speak of the need to install a computer system at Headquarters with proper programming to handle (1) membership records, (2) section and committee members and functions, (3) Young Lawyer rosters and activities, (4) Mandatory CLE's massive demands for proper posting and record keeping, (5) admissions, (6) bar examination scores and results, and (7) disciplinary functions.

Our problems are not all financial. As your president, it has been revealed to me that there may be lawyers who are abusing the Indigent Defense Fund system. This, if true, is deplorable! Your association with the cooperation of the Administrative Office of Courts asked the Legislature to enact our present statute governing the payment (through a trial tax paid by others) of counsel for indigents charged with crimes and for juveniles. If you are appointed counsel, I suggest you read again the statute which authorizes the payment for your services and then read the Disciplinary Rules and the Criminal Code.

It is inconceivable to me, and I am sure to almost all lawyers, that a lawyer would lie to the Court; however, there are those among us who, from the appearance of things, are doing just that.

Accordingly, I have instructed our staff attorneys at the Center for Professional Responsibility to conduct a thorough investigation of the matter, to consult with and cooperate with the comptroller, and to subject the claims of attorneys to computerized scrutiny. This is no easy task, and it certainly is distasteful to me, but not nearly so hard or distasteful as to stand up and say to the public as your spokesman that we have lawyers who will misrepresent facts and abuse their right to claim funds generated by the public (lie and cheat are really better words), and that we are doing nothing about it. We *are* doing something; we *will* do something.

I know full well that most lawyers who read these remarks will shrug and say, "So what, that doesn't apply to me." You could not be more mistaken. If you want the respect of the public for our profession, if you want your calling to be considered one of dignity, then you better be concerned. I owe it to you to do something about this, and you owe it to yourself and the profession to ferret out those among us who would disgrace us and bring us into disrepute and disfavor.

By the time this reaches you each lawyer will have reported his or her credits under our Mandatory Continuing Legal Education program. I can report that you who are covered have been most receptive, your cooperation has been excellent, and the program is off and running. It is a success, but, just as any other prototype, we are experiencing a few "bugs." There have been, and are now, some problems with respect to delivery of services, certification of seminars and conferences, and maintenance of records. We are, however, in good hands. Our director, Mary Lyn Pike (who received her license on October 25th), and the MCLE Committee under the guidance and tutelage of our "pale little star from Fort Payne," William Scruggs, could not be doing a better job with a difficult task.

This "message" will be appearing with every issue. I shall try to be concise and yet thorough. I regret that I had to spend so much time and space on the Indigent Defense Fund matter, but I felt compelled to do so.

I close by offering you my sincere best wishes for a Happy and Prosperous New Year.

Norborne C. Stone, Jr.

Secretary's Report

The "new" *Alabama Lawyer* represents a step in the achievement of a personal goal I have desired for our bar association for over ten years—a better means of communicating with the membership in a timely fashion.

In a changing profession, speed and effectiveness of transmitting information is vital to an informed membership.

The best publications in the world still must be received—and read. I am convinced that the Board of Commissioners and the Board of Editors will insure a quality publication. The U. S. Post Office, while not perfect, will afford a proven vehicle for delivery. *You* must provide the address.

First class postage to a membership of more than seventy-two hundred is prohibitive and we must, therefore, use a bulk permit which does not allow for forwarding—though first class mail will usually be forwarded for six months.

You have only one address in our records—that provided by *you*.

Because of recent use of first class mailings to communicate with the membership, we have had over five hundred pieces of mail returned as "undeliverable as addressed" or "forwarding order expired." Our tracing efforts indicate that some of the addresses in our system were as much as two years out of date! This means one thing—those "old" addresses resulted in the non-delivery of most of the mail sent to those addresses.

The all too frequent comments I have noted concerning a member having not received an *Alabama Lawyer,* a Commissioner's election ballot, a CLE reporting form, or convention registration materials is readily understandable.

We are spending your money to communicate matters of importance to you.

Please send a change of address to the bar when you change office locations or post office boxes. Don't rely on others to do this. Requests for changes of address are handled *individually.* Some of our members use home addresses; therefore, a multi-named letterhead will not effectuate a change except for the writer or others noted therein specifically requesting a change.

It is my intention to use this space to address totally practical matters of concern. We need your correct and current address! If the address on your bar mailing label is not correct or preferred, please write us immediately.

JUST ANOTHER REMINDER—Your 1982-83 state license to practice law should have been purchased no later than October 31, 1982. Your probate judge or license commissioner is required to notify the presiding circuit judge of all current license holders. Penalties are assessed to the initial $100 cost after October 31. Are you practicing without a license?

Reginald T. Hamner

Submit changes of address to:

Alabama State Bar
P.O. Box 671
Montgomery, AL 36101

Appellate Practice Pointers for Alabama Lawyers in Civil Cases

Champ Lyons, Jr.

Champ Lyons, Jr., a partner in the Mobile law firm of Coale, Helmsing, Lyons & Sims, is a graduate of Harvard University and received his LL.B. from the University of Alabama. Mr. Lyons presently serves on the Board of Editors of ***The Alabama Lawyer.***

Scope Note

The rules governing appellate practice in the Alabama Appellate Courts (hereafter "state court") and the United States Court of Appeals for the Eleventh Circuit (hereafter "federal court") have sufficient similarities which can lull the practitioner into a degree of laxity that could lead to overlooking some very significant differences. This article will accentuate some of these variations in what can best be described as a "nuts and bolts" section and will thereafter give some thoughts on the "art and science" of appellate advocacy in Alabama. Extraordinary writ practice and criminal appeals are not treated.

The future of appellate advocacy is under revaluation. Some view oral argument as a ritual more mandated by tradition than value. See the updated analysis of Davis, *The Argument of an Appeal,* 26 *A.B.A.J.* 895 (1940) in Gould, *Oral Argument Losing Its Appeal,* 8 *Litigation* 3 (Spring 1982). On the other hand, the advantages of expanded oral argument followed by a ruling from the bench, utilizing a drastically slashed written submission, are reviewed in Meador, *Through the Appellate Court in 127 Days, Judges' Journal* 59 (Spring 1981). For the current thinking of a federal appellate judge on the new Fifth Circuit, see Rubin, *Thoughts on Appellate Advocacy,* 6 *ALI-ABA Course Materials Journal* 113 (1982). The appellate decision-making process is indeed time-consuming and expensive. However, the importance of output of high quality in the form of precedent by which to judge future disputes should be weighed carefully before major changes are made in an effort to cut down on the time, effort and expense. Until we are convinced that a substitute mechanism is capable of producing at least the same quality of precedent as is now being generated, we should not relegate today's process to the status of a luxury we can no longer afford. However, a study of alternatives is beyond the scope of this article so we turn to some comments about the process as we now know it.

Nuts and Bolts

Which Court

The appeal from a state trial court goes to the Supreme Court of Alabama when the claim, exclusive of interest and costs, yields a recovery of more than $10,000 or, when the plaintiff recovers nothing and the amount claimed in the trial court, exclusive of interest and costs, exceeded $10,000. Further, the Supreme Court hears all appeals in claims solely for equitable relief, regardless of the amount in controversy. Where legal and equitable claims are mixed in the same action, the equitable claims are disregarded for purposes of determining jurisdiction. However, the foregoing notwithstanding, the Court of Civil Appeals has jurisdiction over all workmen's compensation cases and domestic relations cases. Further, all administrative appeals other than from the Alabama Public Service Commission are filed in the Court of Civil Appeals. See § 12-3-10, Ala. Code (1975). Except in limited circumstances where direct review is available in the United States Supreme Court, an appeal from a federal district court in Alabama goes to the United States Court of Appeals for the Eleventh Circuit. 28 U.S.C. 1921.

The Deadlines

The notice of appeal in state court must be filed, not served, within forty-two days of the entry of judgment except that a time limit of fourteen days applies to certain interlocutory orders in claims for injunctions or receivers, proceedings determining the right to public office, and final orders in actions for validation of public obligations. ARAP 4 (a) (1). The notice of appeal in federal court must be *filed* within thirty days of final judgment. FRAP 4. This deadline also applied to certain interlocutory orders in claims for injunctions, receivers and maritime and patent cases which are appealable by statute, 12 U.S.C. 1292(a).

State court practice permits the certification of rulings on controlling questions of law which are interlocutory and would not otherwise support an appeal. However, a petition for permission to appeal must be filed within fourteen days of the ruling with the Clerk of the Supreme Court, accompanied by the trial court's approval of an immediate appeal. See ARAP 5 (a). The federal analogue is 28 U.S.C. 1292 (b) but a ten day time limit applies to such appeals.

Cross appeals are due within fourteen days of the filing of the notice in state

court (ARAP 5 (a) (2)) and federal court (FRAP 4 (a)).

The time for an appeal stops in state court when a *timely* post-trial motion is filed (ARAP 4 (a) (3)) and a similar result obtains in federal court (FRAP 4 (a)). But, in state court, the post-trial motion must be actually *filed* within thirty days. *City of Talladega v. McRae*, 375 So. 2d 429 (Ala. 1979); ARCP 59, as amended. In federal court, the motion need only be served within the proper time and filed before service or a reasonable time thereafter. *Sadowski v. Bombardier Ltd.*, 527 F. 2d 1132 (7th Cir. 1975), cited with approval in *Allen v. Ault*, 564 F. 2d 1198 (5th Cir., 1977). Note that the federal time frame for post-trial motions is ten, not thirty, days. See FRCP 50(b), 52(b), 59(b), (e).

The Record

The state court procedure for the preparation of the record calls for the preparation of a photocopy of those portions of the pleadings, motions, charges, exhibits, docket sheets, and reporter's transcript that have been designated by the parties. Provision is made for the exclusion of formal matters such as subpoenas, motions for continuances, and pre-trial discovery materials not made a part of the proceedings below. ARAP 10 (a), (b). An agreed statement in lieu of the foregoing is permitted. ARAP 10 (e). The original papers, comprising essentially the same materials, make up the record in federal court. FRAP 10. Legal size paper is required in state court (ARAP 10 (b)) while the federal system shifts to letter size on January 1, 1983.

An extra copy of the record suffices in lieu of an appendix in state court. ARAP 30 (g). Otherwise, copies of an appendix which contains excerpts from the record shall be filed. ARAP 30 (b). The federal court does not afford the option of an additional copy of the record in lieu of an appendix. Instead, the appellant must file *with his brief*, four copies of a separately bound "Record Excerpts" containing the specific items referred to in Rule 22 (a), *Interim Rules of U. S. Court of Appeals for the Eleventh Circuit* (hereinafter "IR11- ").

The Brief

The format of the state court brief is governed by ARAP 28 while the same ground is covered in federal court by FRAP 28 *and* IR11-22 (f). The state court outline is much less specific than the federal and the sequence is not the same. State court requires the following in the order enumerated below:

Request for Oral Argument—This must appear on the front cover. Reasons in support of the request must be included. There is no specification as to where these should appear but their inclusion prior to the Table of Contents would appear to be appropriate. See ARAP 34 (a).

Table of Contents—A table of authorities is also required at this point in the brief. ARAP 28 (a) (1).

Statement of the Case—A history of the case, rather than the facts, is appropriate. ARAP 28 (a) (2).

Statement of the Issues—Principal legal authorities must also be furnished. ARAP 28 (a) (3).

Statement of the Facts—(ARAP 28 (a) (4).

Argument—A summary of argument preceding the argument is optional. ARAP 28 (a) (5).

Conclusion—ARAP 28 (a) (6).

In federal court, the following is required in the order presented:

Title Page—IR11-22(f) (1)

Certificate of Interested Persons—IR11-22 (f) (2)

Statement Regarding Preference—IR11-22 (f) (3)

Statement Regarding Oral Argument—IR11-22 (f) (4)

Table of Contents and Citations—IR11-22 (f) (5)

Statement of the Issues—IR11-22 (f) (6). See FRAP 28 (a) (2) and note that, unlike ARAP 28 (a) (3), there is no requirement of setting forth principal authorities of law at this point in the brief.

Statement of the Case—IR11-22 (f) (7). The history of the case and the facts are subsumed under this heading.

Summary of the Argument—IR11-22 (f) (8). This is mandatory. Compare ARAP 28 (a) (5) where a summary is optional.

Statement of Jurisdiction—IR11-22 (f) (9).

Argument—IR11-22 (f) (10). The authorities cited should conform, whenever possible, to *A Uniform System of Citation*. A proposal is pending which would make this a mandatory requirement.

Conclusion—IR11-22 (f) (11).

Certificate of Service—IR11-22 (f) (12).

The state court imposes on the appellee all of the requirements of form, except the conclusion, but permits adoption of portions of the appellant's brief where the appellee is satisfied. ARAP 28 (b). The federal court requires the appellee's brief to be in the same format as appellant's brief. See IR11-22 (f) which applies to "each principal and amicus brief." The state court rules are silent on the content of a reply brief (ARAP 28 (c)) while federal court rules require a reply brief to contain a table of contents, statements of the issues, argument, citations of authority and certificate of service (IR11-22 (g)).

The length of an appellant's brief and an appellee's brief in state court is restricted to fifty typewritten pages of *argument* while a reply brief is limited to twenty-five typewritten pages. ARAP 28 (g). Portions of the brief which are not part of the argument, such as statement of the case, etc., are not included in calculation of the page limitation in state court. The appellant's opening brief cannot exceed fifty-five pages in federal court while appellee's brief is limited to fifty pages. The reply brief must not exceed twenty-five pages. IR11-22 (c). But, in federal court, the computation of the page limitation begins with the statement of the issues. The additional pages available to an appellant are compensation for having had the laboring oar on the statement of the case, including an outline of the facts.

Typewritten briefs in state court should be on letter size paper with 1-1/2 inches of margin, using only one side of the page. Double spacing is required except for citations and quoted material. Binding is at the left side with pagination on the lower right hand side. ARAP 32 (a) (2). The federal court is more specific and limits each page to thirty-four lines of text and such line limitation is "proportionately adjusted" for footnotes or quoted matter. IR11-22 (d). My experience with the language has resulted in the interpretation that thirty-four lines are all you get, regardless of footnotes, quotes, etc. While state court specifies "at least 11 point type" (ARAP 32 (a) (1)),

federal court specifically condemns elite or similar type as not being 11-point type. IR11-22 (d).

Covers of briefs are the same colors for respective parties in state and federal court. Compare ARAP 32 (a) (3) and FRAP 32 (a). These rules each specify use of colors only where "available" if commercial duplication is not used and requires colors otherwise. However, the federal court describes use of colors in mandatory terms. See IV (F). 2 (a), *Internal Operating Procedures of United States Court of Appeals for the Eleventh Circuit.*

The time in which to file a brief in state court is twenty-eight days from completion of the record for appellant, twenty-one days from service of the appellant's brief for appellees, and fourteen days from service of the appellee's brief for a reply brief. ARAP 31 (a). However, the brief must be filed with the Court on the date it is due. But, use of certified mail on the last day is treated as the equivalent of timely filing. ARAP 25 (a). Service is complete on mailing. ARAP 25 (c). There is no provision for three extra days when service is by mail. Compare ARCP 6 (e). Thus, the appellee cannot add three days for mail service, and, likewise, the appellant cannot do so in computing the time to serve the appellee's brief or a reply brief. In federal court, the comparable time frames are forty days, thirty days and ten days, respectively, (FRAP 31 (a)) but the three extra days for service by mail are available (FRAP 26 (c)). Further, the requirement of filing is satisfied by mailing on the last day if "the most expeditious form of delivery by mail," other than special delivery, is used. FRAP 25 (a).

The service of an original and four copies of the brief is adequate in the Supreme Court of Alabama unless the clerk directs otherwise pursuant to a standing order of the clerk authorized by ARAP 31 (b). Service of an original and two copies is required in the Court of Civil Appeals. ARAP 31 (b). Seven copies of briefs are necessary in federal court. IR11-22 (e).

Motions in state court should be on legal size paper (8-1/2'' × 14''). ARAP 32 (b). Federal court motions should be on letter size paper (8-1/2'' × 11'') and must contain a certificate of interested persons unless "purely procedural." IR11-17 (a).

Art and Science

Preparation for Appeal

There is no one "correct" way to prepare an appellate brief just as there is not unanimity on how to write a book or paint a picture. However, certain techniques can be identified which should have advantages regardless of the nature of the case or status as appellant or appellee.

The preparation for the appeal begins at least during trial, if not sooner in some instances. During the course of trial, I like to save the last few pages of a yellow pad for notes to remind me of instances where it appears that error might have entered the record. If the error is adverse, I try to jot down a shorthand rendition of the theory supporting the contention if it is not otherwise obvious. Likewise, where the error is claimed by the other side, a note concerning the weakness of the adverse party's legal position or methods to show harmless error should be preserved.

After the trial, and certainly within a few days, discipline yourself to review those notes along with your recollection of closing arguments of all parties and then dictate a memorandum which summarizes the pros and cons of contested legal matters *and* factual issues. Nothing is more frustrating than an attempt at rebuttal of a thorough post-trial motion or memorandum which marshals all of the most favorable evidence at a time when you know that an adequate counterpoint existed for every conclusion now being advanced by your opponent but you have allowed the record to become so cold that it is beyond recall or is not presently capable of an equally powerful statement in refutation.

For many years the conventional wisdom supported the belief that trial counsel could handle the appeal in most instances with greater success than a lawyer who was a stranger to the record. Having handled appeals from both perspectives, I do not subscribe to this theory. Many able trial lawyers are as unsuited for appellate practice as their appellate counterparts would be in the trial court. Furthermore, the fresh insight of the stranger to the record can be beneficial. However, if an appeal is considered likely and the injection of a new attorney to handle the appeal is also foreseen, that individual should be exposed to the case during preparation of the trial memorandum. Further, he should be kept apprised during the trial of those issues likely to have appellate significance so as to protect against the prospect of imaginative approaches of appellate counsel which only come to light at a time when it is too late to be of benefit on appeal. Since obvious advantages flow from an on-the-scene familiarity with the record, the need for the *post mortem* file memorandum prepared shortly after trial by trial counsel is even more critical when new counsel will be involved for the appeal.

If trial counsel does not assume primary responsibility for the appeal, he should remain readily accessible to the appellate lawyer. When the case is argued, the trial counsel should plan to be present, particularly where there is any likelihood that questions could arise concerning the status of the record with which the appellate lawyer might be unfamiliar. See *Brookhaven Landscape & Grading Co., Inc. v. J. F. Barton Contracting Company,* 676 F. 2d 516 (11th Cir. 1982), motion to dismiss denied, 681 F. 2d 734 (11th Cir. 1982) where attorneys for both sides were given brisk criticism for their unfamiliarity with proceedings in the trial court during oral argument.

Appellate counsel who has been assigned to the case, particularly where he did not try the case, should make an initial review of the pleadings and the docket sheet to insure that no loose ends in the form of unresolved claims are dangling. Failure to do this can lead to a dismissal of the appeal, sometimes on the court's own motion, for want of a final, appealable order. I must confess that this happened to me when I was counsel for the appellee in *Seybold v. Magnolia Land Company,* appeal dismissed, 372 So. 2d 865 (Ala. 1979), affirmed on the merits on appeal after remand, 376 So. 2d 1083 (Ala. 1979).

Brief Writing

The Alabama practitioner has often been exposed to the philosophy of the late Dean Albert J. Farrah of the University of Alabama Law School who, so I am told, repeatedly admonished his students that "out of the facts, the law arises." This doctrine has its most dramatic field of application in the prep-

aration of the statement of the facts in an appellate brief. This portion of the brief is made even more critical in light of the fact that complete copies of the transcript are so limited in quantity as to be not readily available to each of the members of the appellate panel.

The Supreme Court of Alabama formerly required a summary of the testimony, by witness, where the sufficiency of the evidence was at issue. See *Revised Rules of Practice in the Supreme Court,* 9 (b), Tit. 7, App., *Code of Alabama* 1940 (Recomp. 1958). Fortunately, this ineffective method of marshalling the facts has been abandoned.

After I have reviewed the record to the point that I have a basic familiarity with the fact pattern, I prepare a chronological outline with subheadings which serve as a shorthand rendition of the significant events in the evidence. I then assign each subheading to a separate legal pad. As I go through the transcript, I make notes of the testimony relevant to that subheading, accompanied by a page reference, on the appropriate legal pad. Afterwards, I rearrange the materials on each legal pad in chronological sequence and dictate a first draft, with record references, from these notes. As the statement of facts emerges into final form, the text of the topical headings is polished and preserved in the statement. In addition, the text of the headings appears in full in the Table of Contents, thus furnishing the Court an overview of the evidence in a compact form.

After this portion of the brief is complete, the argument is ready to be addressed. A recent proposal to amend the Interim Rules of the Eleventh Circuit requires the appellant to state from the outset his view as to the standard of review, i.e., abuse of discretion, error of law, no basis in fact, etc. Such an analysis is beneficial and should be set forth in any brief, regardless of whether a rule requires it.

Given the space limitations, all possible legal theories of varying merit cannot, in many instances, be addressed. Prune out the dead branches and thereby facilitate a crisp attack and, at the same time, keep your credibility with the Court. Dispositive questions of lesser complexity should precede a more intricate argument unless the more complex issue is clearly your strong point. Lead with your best shot as a general rule unless logic demands another course, such as where the abstention doctrine clearly dictates the presentation of a state law argument which is dispositive of an appeal that might otherwise turn on application of a federal constitutional principle. The appellee's brief should respond to each issue in appellant's brief, even if a point is so groundless as to be capable of refutation in short order.

I prefer to utilize the same format of descriptive subheadings in the breakdown of the argument rather than the statement of a proposition of law as a lead for a patricular portion of an argument. Again, these subheadings are reproduced in full text in the Table of Contents for a similar, concise overview as is available for the statement of the facts.

The tone of a brief is often a tightrope between, on the one hand, sterility in an effort to avoid undignified hyperbole and, on the other hand, sarcasm and tasteless repartee in an effort to inject forceful persuasion. Probably the better means of balancing is to err on the side of passion in the initial draft with the firm resolve to tone down in later drafts. In the last analysis, candor and logic persuade while exaggeration, blatant appeals to emotionalism, and cheap shots imply a lack of confidence in the real issues on which the appeal should turn.

When the argument is done, state precisely what you want the appellate court to do. Make it easy for the Court to rule with you. A good brief is one that should be tantalizing to the Court as a ready frame around which to mold an appellate opinion. The instinct to agree with you can't help but be enhanced if the reader does not feel the need to go back to square one and make an independent foray through the precedents in order to reach the result you have requested in your conclusion.

Oral Argument

An oral argument should be viewed with relish as a final opportunity to drive home the points upon which you rely. Demeanor and appearance are psychological persuaders. Dress unobtrusively as for a formal occasion. Try to appear relaxed and confident but guard against an image of cockiness and condescension. Be forceful and, where necessary and not beyond limitations of your personality, mildly indignant. However, do not behave in such a manner that is so foreign to your disposition that you appear artificial and insincere. Above all, be courteous to the Court and refrain from undignified references to the trial judge or opposing counsel.

Have a prepared outline from which you can speak extemporaneously. Do not memorize a speech because, once the inevitable questions begin, your train of thought will be broken and you will lack the flexibility to move gracefully back on the course of your outline after the questions have been answered. When the questions come, respond directly. Often, less damage is done by a candid and somewhat harmful answer than one which is exasperatingly evasive. The candor of your brief, carried forward into argument, will serve your credibility well in other aspects of the appeal when the difficult questions are directed to your opponent.

Rehearse before a colleague. Encourage him to interrupt you with hard questions. Gauge the departure point of your argument upon an educated guess as to the degree of the Court's familiarity with the briefs and record. The best feel for this comes from watching the panel's performance in other cases. If you miscalculate the degree of preparation, be prepared to jump forward or backward, as appropriate. Again, flexibility is the key to an effective presentation. Cull as you go because often you will find points in your outline which have been adequately covered in earlier questions. Do not needlessly restate them. Do not feel obliged to use all of your time. If you find you have said about everything you intended to cover and the questions have trailed off, use your prepared "clincher" and sit down. Droning on could open a whole new area of inquiry and, perhaps, vulnerability.

Several other thoughts could be included but, alas, as is so often the case in the appellate process, space does not permit. For instance, nothing has been said about applications for rehearing. Here's hoping you never have to file one, although I must respectfully request leave to withdraw this pleasantry when I meet you as my adversary. □

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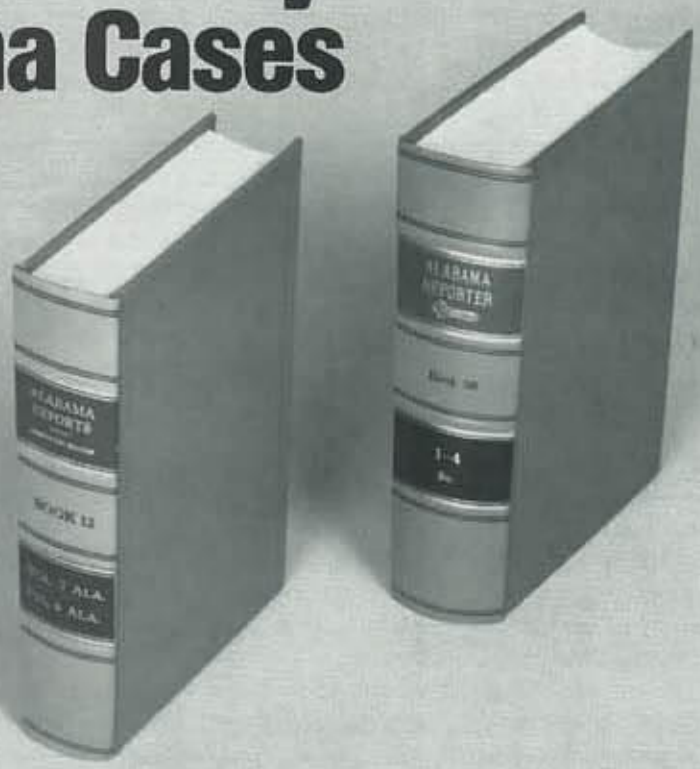

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Letters to the Editor

The Alabama Lawyer—A Facelift for an Old Friend

Robert A. Huffaker

The cosmetic changes to this issue of *The Alabama Lawyer* are readily apparent. A magazine format and widespread use of graphic art are two measures that have been employed to make the publication more eye-appealing. Additionally, you will be receiving *The Alabama Lawyer* more frequently—bimonthly rather than quarterly. By this increase in frequency of distribution, the articles and news items should be more timely and hence more useful to the practitioner in this state.

A glance through the table of contents will reveal the inclusion of new features not found in previous issues. These new features, such as the cartoons and anecdotes, the Secretary's Report, and the section acknowledging accomplishments of bar members, are offered to provide the reader with a broader perspective of our legal profession and the activities of lawyers in this state.

While the new format of *The Alabama Lawyer* may appear at first glance to be a marked departure from tradition, a review of the initial issue of *The Alabama Lawyer* published in 1940 should allay any fear that the publication is embarking upon uncharted waters. Judge Walter B. Jones, the founding editor, noted in that first issue that *The Alabama Lawyer* would contain "stories and anecdotes which best illustrate the humor of bench and bar," articles on "the history of the state's great judges and outstanding lawyers," and legal articles of "practical and permanent value to the profession." Thus, the new features in this issue are not really radical changes. Instead, they are the resurrection of long-dormant publication objectives.

The most popular features of past issues of *The Alabama Lawyer* have not been neglected. Included within the pages of this issue are lead articles of general interest, announcements of law firm happenings, and summaries of significant appellate decisions. Hopefully, this mixture of old and new features will provide you with a more interesting, informative and entertaining publication.

In the jargon of the publishing profession, the revamp of *The Alabama Lawyer* is an attempt to make it a more effective "communicative tool." In plain English, that means that *The Alabama Lawyer* is intended to be like the proverbial book that you just can't put down. Your comments on whether this goal is achieved are anxiously awaited.

—The Editor—

LETTERS TO THE EDITOR

The purpose of the Letters to the Editor column is to provide a forum for the expression of the readers' views. Readers of *The Alabama Lawyer* are invited to submit short letters, not exceeding 250 words, expressing their opinions, or giving information, as to any matter appearing in the publication or otherwise. The editor reserves the right to select the excerpts therefrom to publish. Unless otherwise expressed by the author, all Letters to the Editor will be candidates for print in *The Alabama Lawyer;* however, it will not be our policy to print letters of the anonymous nature. The publication of a letter does not constitute an endorsement of the views expressed. Letters to the Editor should be sent to *The Alabama Lawyer,* Letters to the Editor, P.O. Box 4156, Montgomery, AL 36101.

Regular Schedule of Events

- **Oral Arguments—Supreme Court:** Oral arguments are usually held beginning the second Monday in each month during the Regular Term (October through June). No arguments are scheduled during the Special Term (July through September).
- **Oral Arguments—Court of Criminal Appeals:** Oral arguments are generally scheduled for the first week in each month during the Regular Term (October through June). Arguments are usually held at least once during the Special Term (July through September).
- **Oral Arguments—Court of Civil Appeals:** Oral arguments are scheduled the first three days in the third week of each month year round, except for the month of September.

- **Mobile Bar Association:** Monthly meetings of the Mobile Bar Association are held the third Friday in each month at the Mobilian, 1500 Government Blvd., Mobile. All attorneys, local and visiting, are invited to attend the meeting and luncheon. No reservation is required. The price of the meal is $7.00.
- **Montgomery Bar Association:** Meetings are generally held the third Wednesday in each month at 12:00 noon at the Whitley Hotel.
- **Montgomery Young Lawyer's Section:** Meets second Tuesday in each month at 5:30 P.M. at First Alabama Bank, Main Office. All young lawyers are invited to attend.

Riding the Circuits

Barbour—Bullock Counties

On October 5, 1982 the Barbour County Bar Association held its annual meeting at Lakepoint Resort, Eufaula, Alabama. The officers elected for the 1982-83 term are as follows:

Boyd Whigham—President
Jimmy S. Calton—Vice-president
Donald J. McKinnon—Secretary/Treasurer

Also, at the annual meeting, the association made the resolution to incorporate the Bullock County Bar with the Barbour County Bar Association. The association has been named the 13th Judicial Circuit Bar Association.

—submitted by Boyd Whigham

Calhoun-Cleburne Counties

The Calhoun-Cleburne County Bar Association met on August 27, 1982, at the Anniston Country Club for the regularly scheduled meeting with the president of the Montgomery County Bar Association, Richard Jordan, as our guest speaker. Over sixty members attended and were presented with a thought-provoking address on the lawyer's role in public affairs. Mr. Jordan challenged bar members to become more active in our State Bar Association. Other reports at this meeting included a Sports Committee Report from chairman Bruce Rice concerning our 29-15 softball victory over the local Medical Society team, a legislative update by Representative Jim Campbell, and judicial reports from the presiding circuit and district judges. It was, also, announced that association member Doug Ghee has been selected to serve as state chairman for Law and Court Observance Week for 1983 and that Brenda Smith will be in charge of our local activities for Law Week.

On October 1, 1982, our bar association hosted an Appellate Advocacy Seminar at the Anniston Museum of Natural History. Supreme Court Justices Janie Shores and Richard Jones were the featured lecturers. The seminar was well attended by our members as well as attorneys from several surrounding counties.

The final regularly scheduled luncheon meeting was held on November 5, 1982, at the Anniston Country Club. This was primarily a business meeting with committee reports and judicial reports presented to our membership. Committee chairman Richard Cater reported on our bar participation in the Forward Calhoun County Campaign which raised over one million dollars for industrial development, and Wayne Love discussed his role as our bar commissioner. Our members are certainly appreciative of the work of our Program Committee chaired by Henry Agee for the fine series of luncheon meetings this year.

The following week, the Calhoun Medical Society hosted our annual Doctor-Lawyer Banquet. Approximately 125 local doctors and attorneys gathered for cocktails and dinner highlighted by speaker Stan Starnes, Jr., who addressed problems and areas of concern to both our professions.

—submitted by Gordon F. Bailey, Jr.

Escambia County

The Alabama Supreme Court convened in special session at Jefferson Davis Junior College in Brewton, on October 29, 1982, to hear oral arguments in two criminal cases. Approximately 800 citizens of the Escambia County area had the privilege to see this stage of our judicial process in action. Chief Justice Torbert presided over the six member panel consisting of Justices Jones, Faulkner, Shores, Beatty, and Adams.

The previous night, the Escambia County Bar had the pleasure of entertaining these members of the Court at a dinner banquet held in their honor in Brewton. Our special guests on this occasion included the members of the Conecuh and Monroe County Bar and their spouses, Circuit Judge Douglas S. Webb of Canoe, Circuit Judge

Robert E. L. Key of Evergreen, District Judge Earnest R. White of Flomaton, District Judge Sue Bell of Evergreen, and Broox G. Garrett, Sr., of Brewton, the immediate past president of the Alabama State Bar.

The dinner and brief talks given by each justice were most enjoyable, and the occasion provided the lawyers of Conecuh, Monroe, and Escambia Counties the opportunity to meet and informally "talk law" with members of our Supreme Court.

—submitted by Edward T. Hines

Geneva County

In the past months the Geneva County Bar joined with the Dale County Bar and successfully campaigned for the creation of an additional judgeship for the 33rd judicial circuit. Our new judge will be Charles Woods of Ozark. We congratulate Judge Woods and look forward to working with him and to having easier access to the circuit bench. We also wish to congratulate Circuit Judge P. B. McLauchlin for the outstanding job he has done in handling the largest population of any one circuit judge in Alabama.

The Geneva County Bar also supported by resolution the continuation of the Alabama Legal Services System and participated in a charity basketball game raising money for the American Heart Association.

The Geneva County Bar presently has eleven active members. Our president is Henry F. Lee III. We invite fellow members of the State Bar to join us at our regular meetings which are held on each first Monday, 12:00 noon, at the Chicken Box Restaurant in Geneva.

—submitted by Charles W. Fleming, Jr.

Lee County

The officers of the Lee County Bar Association for 1982-83 are:

Banks Herndon—President
James B. Sprayberry—Vice-president
Jack F. Saint—Secretary/Treasurer

Bar association members are understandably proud and happy to see the Lee County Justice Center moving toward a reality. Site preparation work has been completed and a building contractor should be selected by January 1, 1982.

The monthly bar association luncheons are held on the third Friday of each month at the Auburn-Opelika area Elk's Club.

—submitted by Jack F. Saint

Mobile County

The Mobile Bar Association elected officers for the 1983 term at the regular monthly luncheon on October 15, 1982. They are:

James J. Duffy, Jr.—President
G. Sage Lyons—President-elect
H. P. Feibelman, Jr.—Vice-president
Peter F. Burns—Secretary
Caine O'Rear III—Treasurer

Donald Radcliff, who recently became president of the Mobile Young Lawyer's Section, by virtue of his office has become a member of the MBA Executive Committee which meets the second Thursday of the month. Other Young Lawyer officers are listed in the Young Lawyer's Section of the publication.

—submitted by Barbara Rhodes

Recently retired circuit clerk Pauline C. Eubanks reads the bronze plaque which will be installed in the Montgomery County Courthouse in her honor. As chairman of the "Polly Eubanks' Day" committee, John D. Cates presented the plaque to her at the special luncheon given on November 24.

Montgomery County

The Montgomery County Bar Association (MCBA) and Montgomery County Law Library have purchased a complete video system which is housed in the Montgomery County Bar Association Headquarters at 138 Adams Avenue. With the use of portable carriages, the equipment may be rolled across the street to the Courthouse for video depositions or for use in the courtroom, etc. Jerry Hamilton, an employee of the MCBA and Montgomery County Law Library, is available to operate this equipment for attorneys who are members of MCBA.

The MCBA has hired Randye Rosser, a full-time attorney, to coordinate our Pro Bono program. She and her secretary are housed in the Bell Building and the telephone number is 263-5471. Though her salary and her secretary's salary are funded from the Legal Services Corporation, they are under the control and direction of the president, Richard M. Jordan, and the Board of Directors of the MCBA. As of this writing, 752 inquiries have been received which have resulted in 376 referrals. Of the 376 referrals, 353 were family matters. Out of our membership of approximately 400 private practicing attorneys, 210 have accepted cases.

The MCBA and Montgomery County Law Library purchased a Computer Assisted Legal Research Terminal

which was installed in the MCBA headquarters and Law Library at 138 Adams Avenue the latter part of November. Funds raised by the Montgomery County Bar Association were solicited by President Richard Jordan from private contributions. There will be several training sessions by representatives from Westlaw to familiarize members of MCBA with this computer research system. Gloria Waites, Jean Bowar and Jerry Hamilton will be available at the MCBA Headquarters to assist anyone in the use of the computer.

The Montgomery County Bar Association's Annual Bar-b-cue was held at the American Legion Post on Narrow Lane Road, Saturday, November 20, 1982.

The following week the MCBA honored recently retired circuit clerk Pauline Eubanks at the regular monthly luncheon meeting which was held on November 24. Guest speakers for this important occasion were Judge Eugene Carter, Richard M. Jordan, and Harry Cole. A special committee was appointed by MCBA president, Richard M. Jordan, to handle the planning and arrangements for "Polly Eubanks' Day." The members of the committee were John Cates (Chairman), Elno Smith, John B. Scott, Jr., John R. Mathews, Jr., Ellen Brooks, Jack Crenshaw, William I. Hill, II and Jimmy Garrett, Jr. A bronze plaque was presented to Polly which will be installed in the Montgomery County Courthouse outside the Circuit Clerk's office. She was presented a nice personal gift at the ceremonies. The funds for the plaque and gift were raised by private donations by President Richard M. Jordan from members of MCBA. Carolyn Lusk of the Montgomery Association of Legal Secretaries assisted the committee with its typing, minutes and planning. Wanda Devereaux, MCBA Program Chairman, assisted the committee with the luncheon arrangements as well as media coverage.

Two seminars for CLE credit were sponsored at year's end by the MCBA—one in the latter part of November on "Domestic Abuse" and the other in December on "Litigation."

The Montgomery Association of Legal Secretaries, in conjunction with Huntingdon College, will hold its second annual legal secretaries official course. It will run from January 24 through March 24, 1983 and will meet from 7:00 p.m. to 9:00 p.m. on Monday and Thursday nights.

—submitted by Gloria Waites

Russell County

William J. Benton, Sr. is the newly elected president of the Russell County Bar Association. Carolyn H. Curtis is serving as secretary, and Mark Carter as treasurer. The bar commissioner for the 26th Judicial Circuit is Bob Faulk.

A number of committees have recently been formed to aid the members of the bar in various ways. Included are the Library Committee, the Committee on Continuing Legal Education and the Committee on Proposed Recent Legislation.

Members of the Russell County Bar Association in conjunction with members of the Bar Associations of Barbour, Chambers and Lee Counties have formed the East Alabama Trial Lawyers Association. C. Neal Pope was elected president; Sam Loftin, vice-president and Ken Davis, secretary/treasurer.

Plans are under way for the Russell County Bar Association to have a composite picture made. When the composite is completed, it will hang in the Russell County Courthouse.

The July meeting of the Russell County Bar Association was a special occasion. Members and their spouses gathered at a banquet to honor Mr. Roy L. Smith, Sr. on the anniversary of his 52nd year in the practice of law. The Honorable J. Paul Miller served as master of ceremonies. Guest speakers honoring Mr. Smith were Thomas W. Starlin, an attorney in Columbus, Georgia; William R. Belcher and Arch B. Ferrell, both Phenix City attorneys; Joseph W. Smith, the brother and former partner of the guest of honor; and former Governor John Patterson. The Russell County Bar Association presented to Mr. Smith and his wife, Thelma, a plaque to commemorate his fifty-two years of participation in the Bar.

—submitted by Carolyn H. Curtis

Russell County attorney Roy L. Smith enjoys the banquet given in his honor celebrating the anniversary of his fifty-second year in the practice of law.

Tuscaloosa County

On the occasion of the early retirement of Circuit Judge Fred W. Nicol, the Tuscaloosa County Bar Association unanimously passed a resolution expressing its sincere appreciation for his many years of service. The association extends to Judge Nicol its wishes for a long and happy retirement.

The Lake Tuscaloosa home of local bailiff Sandy Sanders was the site for the annual Tuscaloosa County Bar Association fish fry held August 18, 1982. Following tradition, members and their guests enjoyed late afternoon sailing and motor boat rides before a dinner of fried catfish and hush puppies, coleslaw, potato salad and draft beer. The social committee, after receiving compliments for the planning and execution of this farewell to summer, immediately began making plans for the Christmas cocktail party and dinner which was held in December, and the spring fling dinner dance.

On October 21, 1982, the Tuscaloosa County Bar Association sponsored a cocktail reception for the members of the Court of Criminal Appeals. Held at the University Club, the reception offered a setting which allowed attendees the opportunity to meet the members of the Court and individually to "talk shop" with them.

—submitted by Claire Black

DECISION 1982

Elections to the Bench Across Alabama

The Administrative Office of Courts is responsible for compiling the following list of newly elected circuit and district court judges. ***The Alabama Lawyer*** *would like to thank them for their help. Listed is the judicial circuit or district and the counties it represents, the judge's name and position prior to the election, and a brief educational background of each newly elected judge.*

NEW CIRCUIT JUDGES

5th Judicial Circuit, Place 2 (Chambers, Macon, Randolph, and Tallapoosa Counties)
P. DALE SEGREST (Attorney at Law—Segrest and Pilgrim)
Huntingdon College; University of Alabama Law School, 1967.

6th Judicial Circuit, Place 2 (Tuscaloosa County)
JOHN M. KARRH (District Judge, Tuscaloosa County)
Samford University; Cumberland School of Law, Samford University, 1974.

6th Judicial Circuit, Place 3 (Tuscaloosa County)
PAUL S. CONGER, JR. (Executive Director, Clinical Program, University of Alabama Law School)
Presbyterian College; University of Alabama Law School, 1971.

7th Judicial Circuit, Place 3 (Calhoun and Cleburne Counties)
HAROLD G. QUATTLEBAUM (Attorney at Law)
Jacksonville State University; Cumberland School of Law, Samford University, 1970.

8th Judicial Circuit, Place 1 (Morgan County)
C. BENNETT McRAE (District Judge, Morgan County)
University of Alabama; University of Alabama Law School, 1962.

10th Judicial Circuit, Place 10 (Jefferson County)
STUART LEACH (Attorney at Law—Leach, Hampe, Dillard, and Ferguson)
Auburn University; University of Alabama Law School, 1958.

13th Judicial Circuit, Place 3 (Mobile County)
EDWARD B. McDERMOTT (Attorney at Law—McDermott, Deas, and Boone)
University of Alabama; University of Alabama Law School, 1967.

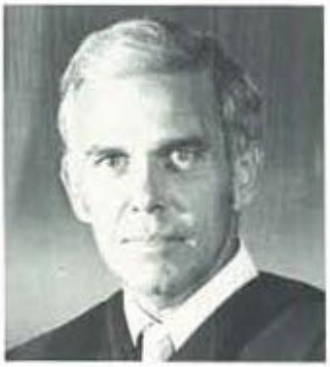

Segrest


Conger


Quattlebaum


McRae


Leach


McDermott

13th Judicial Circuit, Place 8 (Mobile County)
JOHN BUTLER (Court Referee, Mobile County Youth Center)
Troy State University; University of Alabama Law School, 1973.

16th Judicial Circuit, Place 3 (Etowah County)
DONALD W. STEWART (Attorney at Law)
University of Alabama; University of Alabama Law School, 1971.

20th Judicial Circuit, Place 3 (Henry and Houston Counties)
BILLY JOE SHEFFIELD (District Judge, Houston County)
Troy State University; Cumberland School of Law, Samford University, 1973.

28th Judicial Circuit, Place 1 (Baldwin County)
FLOYD C. ENFINGER, JR. (Attorney at Law—Lacey and Enfinger)
Huntingdon College; University of Alabama Law School, 1977.

29th Judicial Circuit, Place 2 (Talladega County)
JERRY L. FIELDING (District Judge, Talladega County)
Auburn University; Jones Law Institute, 1973.

33rd Judicial Circuit, Place 2 (Dale and Geneva Counties)
CHARLES L. WOODS (Attorney at Law—Woods and Corbitt)
University of Alabama; University of Alabama Law School, 1958.

34th Judicial Circuit, Place 1 (Franklin County)
JOHN D. JOLLY (District Attorney, 34th Judicial Circuit)
University of Alabama; University of Alabama Law School, 1963.

38th Judicial Circuit, Place 2 (Jackson County)
ROBERT L. HODGES (Attorney at Law—Campbell and Hodges)
University of Alabama; University of Alabama Law School, 1963.


Stewart


Sheffield


Fielding


Woods


Jolly


Hodges

NEW DISTRICT JUDGES

Blount County, Place 1
ROBERT E. AUSTIN (Attorney at Law—Austin and Dobson)
University of South Alabama; University of Alabama Law School, 1976.

Etowah County, Place 2
CHARLES WAYNE OWEN (Owen Realty)
University of Alabama; University of Alabama Law School, 1972.

Hale County, Place 1
CHARLES A. THIGPEN (Attorney at Law)
University of Alabama; University of Alabama Law School, 1972.

Houston County, Place 1
WILLIAM D. McFATTER (Attorney at Law—McFatter and Ward)
University of Alabama; Cumberland School of Law, Samford University, 1975.


Owen


McFatter

Jefferson County, Place 6
MICHAEL W. McCORMICK (Attorney at Law)
University of Alabama; University of Alabama Law School, 1969.

Jefferson County, Place 9
QUENTIN Q. BROWN (Attorney at Law—Johnson and Johnson)
University of Alabama; Cumberland School of Law, Samford University, 1973.

Lawrence County, Place 1
RANDEL H. MULLICAN (Assistant District Attorney, Lawrence County)
University of Alabama; University of Alabama Law School, 1979.

Monroe County, Place 1
SAMUEL H. WELCH, JR. (Attorney at Law; Municipal Judge, Monroeville)
Birmingham-Southern College; University of Alabama Law School, 1976.

Montgomery County, Place 2
SARAH M. GREENHAW (Attorney at Law)
University of Alabama; Cumberland School of Law, Samford University, 1968.

St. Clair County, Place 1
JIM B. EMBRY, JR. (Attorney at Law)
University of Alabama; Birmingham School of Law, 1977.

Washington County, Place 1
JAMES THOMAS BAXTER (Attorney at Law)
University of Southern Mississippi; Cumberland School of Law, Samford University, 1979.


McCormick


Mullican


Greenhaw

CLE News and Seminars

Mary Lyn Pike

CLE NEWS

MCLE Administration

The first year of mandatory continuing legal education in Alabama has ended. The administration of the twelve hour annual requirement has flowed smoothly under the direction of the MCLE Commission, a subgroup of the Board of Bar Commissioners. Members of the Alabama State Bar have facilitated the administration of the requirement by asking thoughtful and, occasionally, pointed questions and by presenting proposed solutions to problems raised.

Jere Segrest of Dothan concluded his service as a Bar Commissioner and as a member of the MCLE Commission in July, 1982. The Board of Commissioners appointed Commissioner Don Foster of Foley to replace him as a member of the MCLE Commission. The other members of the present Commission are William Scruggs (Chairman), Albert Cope-

Continued page 19

As the first year for Mandatory Continuing Legal Education in Alabama came to an end, Diane Weldon and Mary Lyn Pike of the State Bar are shown reviewing the many individual compliance forms.

CONTINUING LEGAL EDUCATION OPPORTUNITIES

January 1-March 31, 1983

The following list of approved CLE activities was compiled in November, 1982. It is not inclusive of all approved CLE activities for January, February, and March, 1983 but rather was based on information that had been submitted by sponsors at the time the list was compiled. An attorney planning to attend an activity that is not listed should contact the sponsoring organization to determine whether it is approved for CLE credit in Alabama. Credits were listed if available at press time.

To register for any of these seminars, contact the sponsoring organization rather than the MCLE Commission office.

Sponsor Code	Sponsor Name	Telephone Number
ABANI	American Bar Association National Institutes	(312) 567-4675
ABICLE	Alabama Bar Institute for Continuing Legal Education	(205) 348-6230
ADAA	Alabama District Attorneys Association	(205) 832-6946
ALI-ABA	American Law Institute—American Bar Association	(215) 243-1630
ASC	Aspen Systems Corporation	(301) 251-5293
ATLA	Alabama Trial Lawyers Association	(205) 262-4974
CICLE	Cumberland Institute for Continuing Legal Education	(205) 870-2865
IAIC	International Association of Insurance Counsel	(312) 368-1494
NCDA	National College of District Attorneys	(713) 749-1571
NCJJ	National College of Juvenile Justice	(702) 784-6012
NCPE	Northwest Center for Professional Education	(206) 746-4173
PES	Professional Education Systems, Inc.	(715) 836-0060
PI	Professional Institutes	(512) 474-5132
PLI	Practising Law Institute	(212) 765-5700
TLS	Tulane University Law School	(504) 865-5939
UMLC	University of Miami Law Center	(305) 284-4762

SCHEDULE OF SEMINARS

Date	Name and Place of Seminar
January 6-7, 1983	Key Biscayne—*Real Estate Syndications*. ALI-ABA.
January 6-7, 1983	Los Angeles—*Commercial Finance*. PLI. Credits: 3.2.
January 7-8, 1983	*Washington, D.C.—Executive Fringe Benefit Planning*. NCPE. Credits: 14.4.
January 9-14, 1983	Houston—*Applied Trial Techniques*. NCDA.
January 10-11, 1983	Atlanta—*Executive Fringe Benefit Planning*. NCPE. Credits: 14.4.
January 10-11, 1983	New York City—*Defaulted Bonds: Remedies and Related Litigation*. PLI. Credits: 13.8.
January 10-14, 1983	Miami—*Institute on Estate Planning*. UMLC. Credits: 26.9.
January 13-14, 1983	Orlando—*Executive Fringe Benefit Planning*. NCPE. Credits: 14.4.
January 13-14, 1983	San Francisco—*Advanced Antitrust Seminar*. PLI. Credits: 13.8.

January 13-14, 1983	San Francisco—*Planning and Administration of the Large Estate*. PLI. Credits: 13.2.
January 14, 1983	Birmingham—*Legal Writing*. ABICLE. Credits: 7.8.
January 20, 1983	Birmingham—*Alabama Drunk Driving Law*. PES.
January 20-21, 1983	Sheffield—*Mid-Winter Conference*. ADAA.
January 20-22, 1983	New Orleans—*Labor Relations and Employment Law*. ALI-ABA.
January 21, 1983	Montgomery—*Alabama Drunk Driving Law*. PES.
	Montgomery—*Legal Writing*. ABICLE. Credits: 7.8.
	Birmingham—*Workmen's Compensation*. CICLE.
January 27-29, 1983	Birmingham—*Mid-Winter Seminar*. ATLA.
January 27-29, 1983	Montego Bay—*Negotiation and Counseling Skills for Lawyers*. PI. Credits: 15.3.
January 28, 1983	Birmingham—*General Practice*. ABICLE. Credits: 6.3.
January 29-February 5, 1983	Park City, Utah—*Estate Planning and Trial Practice*. CICLE.
January 31-February 2, 1983	Scottsdale, Arizona—*Medical Staff Law and By-Laws*. ASC. Credits: 18.0.
February 3-5, 1983	New Orleans—*Fundamentals of Bankruptcy Law*. ALI-ABA.
February 4, 1983	Birmingham—*Products Liability*. ABICLE. Credits: 6.7.
February 5-12, 1983	Snowmass, Colorado—*Recent Developments in the Law*. ABICLE.
February 10, 1983	Huntsville—*Insurance*. ABICLE. Credits: 6.3.
February 11, 1983	Birmingham—*Insurance*. ABICLE. Credits: 6.3.
February 13-19, 1983	Acapulco—*Mid-Year Meeting*. IAIC. Credits: 3.6.
February 17, 1983	Mobile—*Insurance*. ABICLE. Credits: 6.3.
February 18, 1983	Albuquerque—*Taking Depositions*. ABANI. Credits: 7.5.
February 18, 1983	Montgomery—*Insurance*. ABICLE. Credits: 6.3.
	Birmingham—*Trial Advocacy: Persuasive Techniques*. CICLE.
February 20-24, 1983	Hilton Head—*National Conference on Juvenile Justice*. NCJJ.
February 22-26, 1983	Myrtle Beach—*Experienced Prosecutor Course*. NCDA.
February 25, 1983	Miami—*Trade Secret and Non-Competition Clauses in Employee Agreements*. ABANI.
March 4, 1983	Birmingham—*Federal Practice*. ABICLE.
	Birmingham—*Labor Arbitration*. CICLE.
March 6-10, 1983	Washington, D.C.—*The Prosecutor's Dual Role*. NCDA.
March 9, 1983	Birmingham—*Banking Law*. ABICLE.
March 10-12, 1983	New Orleans—*Civil Practice and Litigation in Federal and State Courts*. ALI-ABA.
March 12, 1983	San Francisco—*Taking Depositions*. ABANI. Credits: 7.5.
March 16-18, 1983	New Orleans—*Admiralty Law Institute*. TLS.
March 16-18, 1983	New Orleans—*Advanced Antitrust Workshop*. PLI.
March 19, 1983	Birmingham—*Federal Rules of Evidence*. CICLE. (tentative)
March 20-24, 1983	Bermuda—*Comparative Law*. ABICLE.
March 25-26, 1983	Birmingham—*Trial Advocacy*. CICLE.

CLE NEWS *Continued*

land, Ben Harris, Richard Hartley, Gary Huckaby, John David Knight, Warren Lightfoot, and Wayne Love.

The MCLE Commission does not sponsor or conduct continuing legal education activities. Its responsibility is to exercise general supervisory authority over the administration of the Rules for Mandatory Continuing Legal Education. To this end, the Commission approves activities for continuing legal education credit and designates sponsors whose activities are considered to be presumptively approved.

Approval of CLE activities

All activities must meet certain criteria in order to be considered for approval or to be presumptively approved. These criteria are set out in the Regulations accompanying Rule 4. Essentially an activity's primary objective must be to increase the participant's professional competence as an attorney. Activities offered primarily to members of other professions do not meet this criterion nor do activities not centered on law. Quality written materials must be distributed to participants in order for an activity to be approved. Additionally, participants must be given the opportunity to evaluate the effectiveness and usefulness of the activity and a summary of the results must be forwarded to the Commission. This requirement facilitates the accountability of sponsors to their lawyer-consumers and that of the MCLE Commission to members of the Alabama State Bar.

To obtain approval of an activity offered by a sponsor whose activities are not presumptively approved, request that the sponsor complete an application for approval and submit it and the required supporting documentation to the Commission. These applications are available from the Commission office at Bar headquarters. The only activities eligible to be approved for 1983 are those occurring in 1983.

Attendance of CLE Activities

If you are interested in attending a seminar that has been announced, contact the sponsoring organization for current information on it. Seminar

schedules are often tentative when published and may change frequently. Seminar brochures are typically mailed six to eight weeks in advance of the scheduled dates and may generally be relied upon for accurate information. It is a good idea to preregister for a seminar by sending a check to the sponsoring organization at least two weeks in advance. This assists the organization in providing adequate seating, written materials, and refreshments.

Additional Information to be Published

A list of sponsors whose activities are presumptively approved for 1983 will be published in February in the newsletter that is to serve as a supplement to *The Alabama Lawyer*. A partial listing of approved CLE activities for January, February, and March, 1983 appears elsewhere in this issue and will be updated in the newsletter. The 1983 Rules and Regulations for Mandatory Continuing Legal Education will be published in booklet form as early as possible in 1983, and a copy will be mailed to each member of the Alabama State Bar Association. □

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Young Lawyer's Section

J. Thomas King, Jr.
President

J. Thomas King, Jr., a partner in the Birmingham law firm of King, King and King, is president of the Young Lawyers Section of the Alabama State Bar. Mr. King received his B.S. degree from the University of Alabama and J.D. from the Cumberland School of Law.

The organizational meeting of the Young Lawyers' Section of the Alabama State Bar was held at the Sheraton Riverfront in Montgomery on September 11, 1982. Virtually all members of the Executive Committee were in attendance, which resulted in the committees becoming fully organized as of that date. As a direct result of the planning prior to the meeting and the participation during our session, an excellent foundation was laid for another outstanding year.

The Young Lawyers' Section sponsored a most successful Bar Admissions Ceremony in Montgomery on October 25, 1982. We were privileged to have as our luncheon speaker the Honorable J. O. Sentell, who extended challenging remarks to the three hundred forty-nine admittees. The chair of the Bar Admissions Committee, Tom Barber, and his committee, did a superb job in planning and implementing this important event, which was held at the Montgomery Civic Center.

The second Executive Committee meeting was held at Lake Guntersville State Park Lodge and Convention Center on November 20, 1982. The committee reports were thorough and revealed that much had been accomplished after the September meeting. The informal atmosphere of the Lake Guntersville setting was conducive to a free and open exchange of ideas.

A priority of mine during this year is to establish closer liaison with the local Young Lawyers' Sections already in existence and to encourage eligible lawyers otherwise to form Young Lawyers' Sections in their own locale.

Presently there are four established local Young Lawyers' Sections in the state. We will endeavor in future articles to keep young lawyers across Alabama abreast of recent and planned activities of the presently active Young Lawyers' Sections in addition to the activities of our state YLS. Please report any news pertinent to young lawyers to the chair of the Young Lawyers' Alabama State Bar Information Committee, Stephen E. Brown, 1400 Park Place Tower, Birmingham, Alabama, 35203.

Birmingham, as might be expected, has the largest local Young Lawyers' Section in the State, with approximately six hundred fifty members. In addition to occasional luncheons and at least one YLS sponsored CLE seminar, the Birmingham YLS has five to six evening social functions each year. Steve Brown, president of the Birmingham YLS, invites lawyers from around the state to attend its YLS functions if in the area when any evening "meeting" is scheduled.

The officers and Executive Committee members of the Birmingham Young Lawyers' Section for 1982-83 are as follows:

President:	Steve Brown
First Vice-President:	Jim Lloyd
Second Vice-President:	Carol Smith
Treasurer:	Lee Benton
Assistant Treasurer:	Popsie Miller
Secretary:	Shay Samples
Executive Committee:	
Graves Stiff	John Haley
Charles King	Bert Taylor
Drew Whitmire	Marty Van Tassel
Gary Pate	Rowena Crocker
Cathy Wright	Boozer Downs
Lee Pittman	

The Mobile Young Lawyers' Section has a membership of approximately three hundred fifty. Mobile YLS regularly meets at 6:30 P.M. on the third Tuesday of each month at an appointed place for cocktails and dinner. Also, the Mobile YLS has an annual Christmas party and sponsors both a spring golf-tennis outing and a fall barbecue for the entire Mobile Bar Association. Immediate Past President Eddie McDonough invites any out of town attorneys to attend these Mobile YLS functions when you are in or around Mobile.

The recently elected officers of the Mobile YLS for 1983 are as follows:

President:	Donnie Radcliff
Vice-President:	Jim Newman
Secretary/Treasurer:	Mary Beth Mantiply

The Huntsville Young Lawyers' Section has been reactivated recently and immediate Past President Phil Price encourages all young lawyers in the Huntsville area to become actively involved in that section's activities. Past activities of the Huntsville YLS include luncheon meetings with speakers (and CLE credit) and evening YLS social functions. Both local and out of town attorneys are invited to attend these functions. The new president of the Huntsville Young Lawyers' Section is Keith Jones.

The Montgomery Young Lawyers' Section presently has approximately two hundred members. Over the past few years, that section has been quite active in sponsoring and assisting in both bar and community projects and, in light of its growing YLS membership, intends to significantly expand those activities in the future. The Montgomery YLS meets on the second Tuesday of each month for an evening business meeting and social function. Wanda Devereaux, President of the Montgomery YLS, invites young lawyers from around the state to attend its meetings when in Montgomery. The present officers and directors of the Montgomery YLS are as follows:

President:	Wanda Devereaux
Vice-President:	Thomas R. DeBray
Secretary/Treasurer:	Pamela J. Gooden
Directors:	J. Wade Hope
	Jimmy B. Pool
	William R. Blanchard
	Ham Wilson, Jr.

Election of new officers will take place at the January business meeting.

Based on the feedback which I have received from members of these local Young Lawyers' Sections, as well as my own experiences, I know that such groups can and do provide an enjoyable and significant means of both professional and social interaction among its respective memberships. The several sections, in turn, make positive contributions to their local bar associations. Anyone interested in forming a local Young Lawyers' Section should contact an officer of our established local sections, or Steve Heninger, 7th Floor, City Federal Building, Birmingham, Alabama, 35203, Chairman of our State YLS Local Bar Coordinating Committee.

It is an honor for me to serve as president of the Young Lawyers' Section during the year 1982-83. We are in the midst of an extremely active year, and I eagerly anticipate working with as many of you as possible. I welcome, indeed request, any suggestions any lawyer might wish to convey regarding any activity in which the State Young Lawyers' Section might be of effective assistance to young lawyers.

Executive Committee of Young Lawyers' Section.

Row one: Edmon H. McKinley, president-elect; J. Thomas King, president; Jane Lecroy Brannan, treasurer; Robert T. Meadows III, secretary.
Row two: Wanda D. Devereaux, John W. Donald, Claire Black, Ronald L. Davis, Carol Ann Smith.
Row three: Bernard J. Brannan, Jr., Randolph P. Reaves, Julia Smeds.
Row four: Stephen E. Brown, James B. Newman, Rowena M. Crocker, Stephen D. Heninger, Caine O'Rear III.
Row five: John W. Harrison.
Others not pictured: Thomas G. Barber, Michael F. Bolin, Floyd C. Enfinger, Jr., J. Hobson Presley, Schuyler H. "Dick" Richardson, III.

Attorneys Admitted to Bar

Fall 1982

Samuel Adams ..... Troy, Alabama
Steven Kirk Aldridge ..... Tuscumbia, Alabama
Philip Baker Landrum Alfeld ..... Alton, Illinois
Vance Lynn Alexander ..... Haltom City, Texas
Helen Johnson Alford ..... Mobile, Alabama
Douglas Locke Anderson ..... Mobile, Alabama
Sheila Denise Anderson ..... Birmingham, Alabama
Thomas Michael Anderton ..... Birmingham, Alabama
Jeffrey A. Apperson ..... Birmingham, Alabama
Mary Lynn Baxley Ault ..... Birmingham, Alabama
James Howard Babkes ..... Birmingham, Alabama
Walker Percy Badham, III ..... Birmingham, Alabama
Frank Wayne Bailey ..... Gadsden, Alabama
Mark Allan Baker ..... Birmingham, Alabama
Robert Preston Barclift ..... Florence, Alabama
Hollinger F. Barnard ..... Tuscaloosa, Alabama
Robert Lawrence Barnett ..... Florence, Alabama
Rodney Edward Barstein ..... Birmingham, Alabama
James F. Barter, Jr. ..... Mobile, Alabama
Pamela June Baschab ..... Foley, Alabama
Roger L. Bates ..... Birmingham, Alabama
Robert Richardson Baugh ..... Decatur, Alabama
Virginia L. Bedford ..... Birmingham, Alabama
Barry Reed Bennett ..... Suttle, Alabama
Henry DeBose Binford ..... Montgomery, Alabama
Joseph S. Bird, III ..... Birmingham, Alabama
Robert Randal Black ..... Guin, Alabama
Daniel Grant Blackburn ..... Mobile, Alabama
David L. Blunt ..... East Alton, Illinois
Mary Seymour Boardman ..... Huntsville, Alabama
Donald Blair Boggan ..... Birmingham, Alabama
Paula Eva Bohannon ..... Russellville, Alabama
George Weldon Bolds, IV ..... Florence, Alabama
Leanne Estes Bonner ..... Phenix City, Alabama
Robert Lamar Bowers, Jr. ..... Birmingham, Alabama
Joseph Tipton Bradford ..... Birmingham, Alabama
Linda Kathryn Browning ..... Birmingham, Alabama
Robert Loye Buck ..... Birmingham, Alabama
Patrick Self Burnham ..... Anniston, Alabama
William Daniel Calhoun ..... Fairhope, Alabama
Pamela Calloway ..... Birmingham, Alabama
Peter Crane Canfield ..... Montgomery, Alabama
James B. Carlson ..... Birmingham, Alabama
Kevin John Carroll ..... Birmingham, Alabama
Joe Calvin Cassady, Jr. ..... Enterprise, Alabama
Douglas Joseph Centeno ..... Birmingham, Alabama
Glenn Chaffin ..... Montgomery, Alabama
Benjamin Lee Channell ..... Birmingham, Alabama

Vincent Taylor Cheatham ..... Birmingham, Alabama
William Ralph Christopher ..... Butler, Alabama
Chaney L. Clark ..... Tuscaloosa, Alabama
George Keith Clark ..... Tuscaloosa, Alabama
Jerry Lewis Clary ..... Fayette, Alabama
Sandra Kay Clements ..... Gadsden, Alabama
Stephen Erwin Clements ..... Mobile, Alabama
Ralph Eugene Clenney, Jr. ..... Abbeville, Alabama
Larry Douglas Clifton ..... Birmingham, Alabama
Rankin Anderson Clinton, III ..... Huntsville, Alabama
Glenda Gale Cochran ..... Birmingham, Alabama
Ralph Earl Coleman, Jr. ..... Birmingham, Alabama
Louis Carl Colley ..... Prattville, Alabama
Lee Hall Copeland ..... Montgomery, Alabama
Steven B. Corenblum ..... Birmingham, Alabama
John Alan Cory ..... Abbeville, Alabama
Laura Bess Cox ..... Florence, Alabama
Laura Lynn Crum ..... Montgomery, Alabama
Richard Muncie Crump ..... Mobile, Alabama
Malcolm Clifton Davenport, V ..... Lanett, Alabama
Freddie Hugh Davis, Jr. ..... Guin, Alabama
Michael Christopher De Laney ..... Mobile, Alabama
Carole Williams Delchamps ..... Mobile, Alabama
Susan Shirock Depaola ..... Montgomery, Alabama
Onnie Davis Dickerson, III ..... Birmingham, Alabama
Lynn Michelle Diehl ..... Huntsville, Alabama
Stephen Norwood Dodd ..... Arab, Alabama
Mary Frances Dominick ..... Birmingham, Alabama
Augusta Salem Dowd ..... Birmingham, Alabama
David Dudley Dowd, III ..... Birmingham, Alabama
G. Edgar Downing, Jr. ..... Mobile, Alabama
Stuart C. DuBose ..... Jackson, Alabama
Robert Edward Dudley, Jr. ..... Huntsville, Alabama
Martha Elizabeth Durant ..... Montgomery, Alabama
Thack Harris Dyson ..... Foley, Alabama
Cathy Jones Eades ..... Birmingham, Alabama
Louise Lloyd Edwards ..... Birmingham, Alabama
Edgar Meador Elliott, IV ..... Birmingham, Alabama
Hoyt Massey Elliott, Jr. ..... Jasper, Alabama
Susan Bethea Ellis ..... Birmingham, Alabama
William A. Ellis, III ..... Homewood, Alabama
Jay E. Emerson, Jr. ..... Huntsville, Alabama
Terrell Keith Farr ..... Birmingham, Alabama
Margaret Lindsey Fleming ..... Talladega, Alabama
Douglass Taylor Flowers ..... Dothan, Alabama
Peter Michael Foley ..... Montgomery, Alabama
John Michael Fraley ..... Tuscaloosa, Alabama
Marvin Eugene Franklin ..... Adamsville, Alabama
Barry Vaughn Frederick ..... Birmingham, Alabama
Gerald Mack Freeman ..... Odenville, Alabama
John Patrick Furman ..... Camden, Alabama
Paul John Gallo ..... Birmingham, Alabama
James Marshall Gardner ..... Mobile, Alabama
George Charles Garikes ..... Birmingham, Alabama
Beall Dozier Gary, Jr. ..... Birmingham, Alabama
George Rod Giddens ..... Talladega, Alabama
Joseph C. Gill, Jr ..... Birmingham, Alabama
Danna Lea Gilmer ..... Birmingham, Alabama
Robert Esker Lee Gilpin ..... Montgomery, Alabama
Jack M. Glover, Jr. ..... Birmingham, Alabama
Steven Albert Goodman ..... Birmingham, Alabama
William Vincent Goodwyn ..... Birmingham, Alabama
Virginia Ruth Gordon ..... Birmingham, Alabama
Gerrilyn Vanessa Grant ..... Tuskegee Institute, Alabama
Jeffrey Max Gray ..... Falkville, Alabama
John Beaulieu Grenier ..... Birmingham, Alabama
Patricia Ellis Guthrie ..... Huntsville, Alabama
Norman Gunter Guy, Jr. ..... Montgomery, Alabama
David W. Haines, Jr. ..... Birmingham, Alabama
William McCollum Halcomb ..... Montgomery, Alabama
Sandra Kay Haley ..... Birmingham, Alabama
John Cox Hall, III ..... Birmingham, Alabama
Claire Lenoir Hamner ..... Selma, Alabama
Kenneth D. Hampton ..... Cullman, Alabama
James Eugene Hasser, Jr. ..... Mobile, Alabama
Debra Winifred Hawes ..... Birmingham, Alabama
John Carroll Hay, III ..... Huntsville, Alabama
Thomas Franklin Hayes ..... Huntsville, Alabama
James Benjamin Head ..... Carrollton, Georgia
Elizabeth Rembert Herbert ..... Dothan, Alabama
Newby Hale Herrod ..... Tuscaloosa, Alabama
Judith L. Hightower ..... Birmingham, Alabama
James Robert Hinson, Jr. ..... Huntsville, Alabama
Michael Lee Hoelter ..... Granite City, Illinois
Thomas C. Hollingsworth ..... Montgomery, Alabama
David Grover Holmes ..... Troy, Alabama
Johnathan David Hood ..... Jasper, Alabama
Robert H. Hood ..... Birmingham, Alabama
Heyward C. Hosch, III ..... Birmingham, Alabama
Thomas Jeffrey House ..... Decatur, Alabama
Kaye Kamman Houser ..... Birmingham, Alabama
Mary Campbell Hubbard ..... New Orleans, Louisiana
Dale Grayson Hubbell ..... Birmingham, Alabama
David Erickson Hudgens ..... Mobile, Alabama
John Mark Hughes ..... Bessemer, Alabama
Melvin Humes ..... Birmingham, Alabama
Vincent Paul Intoccia, III ..... Homewood, Alabama
Sidney Warren Jackson, III ..... Mobile, Alabama
John Mann Johnson ..... Birmingham, Alabama
Lawrence Dean Johnson ..... Guntersville, Alabama
Mollie Penick Johnston ..... Mobile, Alabama
Robert Dencan Johnston, Jr. ..... Daphne, Alabama
James Michael Joiner ..... Alabaster, Alabama
Joe Carl Jordan ..... Mobile, Alabama
Erik Lee Jorde ..... Birmingham, Alabama
David L. Kane ..... Mobile, Alabama
Ray Thomas Kennington ..... Tuscaloosa, Alabama
Steven David Kerr ..... Hartselle, Alabama
Alan Lamar King ..... Birmingham, Alabama
Elizabeth Kim King ..... Montgomery, Alabama
Mark Christian King ..... Birmingham, Alabama
Lynne Brauer Kitchens ..... Montgomery, Alabama
Martha Kathryn Knight ..... Clio, Alabama
Albert Louis Labovitz ..... Montgomery, Alabama
James Scott Langner ..... Birmingham, Alabama
Kim Ingram Lary ..... Tuscaloosa, Alabama
Byron Anthony Lassiter ..... Silas, Alabama
Debra Ann Lee ..... Phenix City, Alabama
James Hatfield Lewis ..... Birmingham, Alabama
Denise Irene Littleton ..... Mobile, Alabama
William Levi Longshore, III ..... Birmingham, Alabama
Charles Jerry Lorant ..... Birmingham, Alabama
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Michael Lee Lucas ..... Birmingham, Alabama
Patrick H. Lucas ..... Birmingham, Alabama
Michael Kernicham Majure ..... Birmingham, Alabama
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Kathy Lucile Marine ..... Panola, Alabama
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Roy Oliver McCord ..... Gadsden, Alabama
Douglas L. McCoy ..... Mobile, Alabama
Mark Charles McDonald ..... Montgomery, Alabama
Charles Howard McDougle, Jr. ..... Dothan, Alabama
Charles Edward McGuire, III ..... Birmingham, Alabama
Marion Ashley McKathan ..... Andalusia, Alabama
Gregory J. McKay ..... Birmingham, Alabama
Mark Dwyer McKnight ..... Birmingham, Alabama
James Hill McLemore ..... Montgomery, Alabama
Lloyd Thompson McMurtrie ..... Huntsville, Alabama
Sandra Kay Meadows ..... Mobile, Alabama
Richard Allen Meelheim ..... Birmingham, Alabama
Jack Wade Meigs ..... Brent, Alabama
Franklin W. Meredith ..... Birmingham, Alabama
William Zachary Messer ..... Dothan, Alabama
Edwina Elaine Miller ..... Tuscaloosa, Alabama
Michael G. Miskowiec ..... Andalusia, Alabama
Thomas E. Mitchell ..... Huntsville, Alabama
Dwight Leslie Mixon, Jr. ..... Birmingham, Alabama

James Donald Moffatt ..... Athens, Alabama
Cecil Barlow Monroe ..... Mobile, Alabama
Charles Robert Montgomery ..... Chatom, Alabama
Harry Montgomery ..... Moulton, Alabama
James W. Moore, Jr. ..... Reform, Alabama
Thomas Glenn Moore ..... Birmingham, Alabama
George Wray Morse, II ..... Birmingham, Alabama
Howard Ward Neiswender ..... Greenville, Alabama
Malcolm Rance Newman ..... Ozark, Alabama
William David Nichols ..... Chelsea, Alabama
William Lawrence Nix ..... Lanett, Alabama
Ralph Reynard Norman, III ..... Fort Deposit, Alabama
Larry Clinton Odom ..... Red Bay, Alabama
Richard Eldon O'Neal ..... Birmingham, Alabama
Richard Lee Owens ..... Montgomery, Alabama
William Donovan Owings ..... Centreville, Alabama
Thomas E. Parker, Jr. ..... Huntsville, Alabama
Gladys Ann Partin ..... Auburn, Alabama
Donald Crawford Partridge ..... Mobile, Alabama
Beverly J. Paschal ..... Birmingham, Alabama
Lee Ann Fields Pasker ..... Huntsville, Alabama
Donna Sanders Pate ..... Huntsville, Alabama
Charles E. Pearson ..... Tuscaloosa, Alabama
Carmine Kenneth Perri ..... Dothan, Alabama
Linda Susann Perry ..... Mobile, Alabama
Richard Paul Petermann, Jr. ..... Mobile, Alabama
David Lynn Peterson ..... Louisville, Kentucky
Jo Celeste Pettway ..... Alberta, Alabama
J. Hunter Phillips, III ..... Birmingham, Alabama
Mary Carolyn Pike ..... Montgomery, Alabama
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John A. Posey, III ..... Haleyville, Alabama
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Michael Wayne Ray ..... Birmingham, Alabama
James P. Rea ..... Birmingham, Alabama
James Rebarchak ..... Mobile, Alabama
Hilliard Risher Reddick, Jr. ..... Birmingham, Alabama
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Finis Ewing St. John, IV ..... Cullman, Alabama
Betty Ann Saxon ..... Troy, Alabama
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James Gregory Shaw ..... Birmingham, Alabama
James W. Sherwood, Jr. ..... Mobile, Alabama
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David Michael Smith ..... Birmingham, Alabama
James Dwight Smith ..... Tuscaloosa, Alabama
John Freeman Smith, Jr. ..... Montgomery, Alabama
Andrew Jackson Smithart, III ..... Tuscaloosa, Alabama
Linda McKnight Smithart ..... Tuscaloosa, Alabama
Richard C. Smyly ..... Birmingham, Alabama
Gary Randall Spear ..... Auburn, Alabama
Janice Dolores Spears ..... Mobile, Alabama
Mitchell A. Spears ..... Birmingham, Alabama
Marion Paul Spina ..... Tuscaloosa, Alabama
E. Ray Stanford, Jr. ..... Atlanta, Georgia
D. Edward Starnes, III ..... Huntsville, Alabama
David Fitzgerald Steele ..... Beatrice, Alabama
Patta Ann Steele ..... Eutaw, Alabama
Dennis Steverson ..... Tuscaloosa, Alabama
Douglass W. Stockham, III ..... Birmingham, Alabama
Michael Harold Sullivan ..... Mobile, Alabama
James Allen Sydnor, Jr. ..... Montgomery, Alabama
Dorothy Annette Robinson Tabron ..... Florence, Alabama
James S. Taylor, Jr. ..... Birmingham, Alabama
Jarred Otis Taylor, II ..... Tuscaloosa, Alabama
Michael F. Terry ..... Florence, Alabama
Cherry Lynn Thomas ..... Tuscaloosa, Alabama
Cleophus Thomas, Jr. ..... Birmingham, Alabama
Barry Lynn Thompson ..... Mobile, Alabama
John Ray Thornton ..... Eclectic, Alabama
John Snow Thrower ..... Opelika, Alabama
Lynne Thompson Riddle Thrower ..... Arab, Alabama
David Knox Tinkler ..... Birmingham, Alabama
Paul Evans Toppins ..... Birmingham, Alabama
Linda J. Trainor ..... Birmingham, Alabama
William Terry Travis ..... Montgomery, Alabama
William P. Traylor, III ..... Birmingham, Alabama
Donald Garry Tucker ..... Montgomery, Alabama
Jerry Flynn Tucker ..... Springville, Alabama
Fred White Tyson ..... Montgomery, Alabama
Mona Ann Vivar ..... Robertsdale, Alabama
Richard W. Vollemer, III ..... Mobile, Alabama
Walter James Waid ..... Gadsden, Alabama
Edwin Glenn Waldrop, Jr. ..... Birmingham, Alabama
Ann Martina Walker ..... Birmingham, Alabama
Richard H. Walston ..... Birmingham, Alabama
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Richard Leigh Watters ..... Birmingham, Alabama
Dennis Burton Webster ..... Auburn, Alabama
Allan Rexford Wheeler ..... Mobile, Alabama
Freddie Lenton White, II ..... Mobile, Alabama
Beverly Dawn Wiggins ..... Brewton, Alabama
Daniel Bruce Williams ..... Cullman, Alabama
Jeffrey Alan Willis ..... Talladega, Alabama
Duane Albert Wilson ..... Mobile, Alabama
Janet Louise Wilson ..... Birmingham, Alabama
Patricia Ann Winston ..... Mobile, Alabama
Steven Lanier Wise ..... Montgomery, Alabama
George Wallace Witcher, Jr. ..... Birmingham, Alabama
Carol H. Wolfe ..... Birmingham, Alabama
Oliver Frederick Wood ..... Hamilton, Alabama
Robert Victor Wood, Jr. ..... Huntsville, Alabama
John David Woodruff, Jr. ..... Birmingham, Alabama
Laura Ard Woodruff ..... Birmingham, Alabama
James Thomson Wooley, II ..... Selma, Alabama
Richard Ashely Wright ..... Decatur, Alabama
Milton Edward Yarbrough, Jr. ..... Mooresville, Alabama
Lawden H. Yates, Jr. ..... Birmingham, Alabama
Sharon Gilbert Yates ..... Montgomery, Alabama
Allyne Nelms Yost ..... Birmingham, Alabama
Michael Allan Yost ..... Birmingham, Alabama
Gary Cheslie Young ..... Birmingham, Alabama
Thomas Fredrick Young, Jr. ..... Birmingham, Alabama

July 1982
Bar Exam Statistics of Interest

Number Sitting for Exam 429
Number Certified to Supreme Court 335
Certification Rate 78%

Certification Rate From:
ABA Alabama Accredited Law Schools 94%
Alabama Non-accredited Law Schools 42%

Lawyers in the Family

Ralph E. Coleman, Sr. (1958) and Ralph E. Coleman, Jr. (1982) (Father/Admittee)

Ralph W. Adams (1940) and Samuel Adams (1982) (Father/Admittee)

Charles J. Lorant (1982) and Jerry O. Lorant (1950) (Admittee/Father)

Edgar M. Elliott IV (1982) and Edgar M. Elliott III (1953)6)Admittee/Father)

William L. Longshore, Jr. (1950) and William L. Longshore III (1982) (Father/Admittee)

Warren S. Reese, Jr. (1930) and Eugene W. Reese (1982) (Father/Admittee)

Roy D. McCord (1920) and Roy O. McCord (1982) (Father/Admittee)

George E. Barnett, Jr. (1951) and Robert L. Barnett (1982) (Father/Admittee)

Joseph Stafford Pittman, Sr. (1952) and Joseph Stafford Pittman, Jr. (1982) (Father/Admittee)

Judge Robert L. Bowers (1954) and Robert L. Bowers, Jr. (1982) (Father/Admittee)

J. B. Blackburn (1928) and Daniel G. Blackburn (1982) (Father/Admittee)

H. R. Burnham (1950) and Patrick S. Burnham (1982) (Father/Admittee)

Tom F. Young, Jr. (1982) and Tom F. Young, Sr. (1949) (Admittee/Father)

Hoyt M. Elliott Sr. (1940) and Hoyt M. Elliott, Jr. (1982) (Father/Admittee)

Albert W. Copeland (1952) and Lee H. Copeland (1982) (Father/Admittee)

Morgan Reynolds (1948) and Sibley G. Reynolds (1982) (Father/Admittee)

Richard W. Vollemer, Jr. (1953) and Richard W. Vollemer III (1982) (Father/Admittee)

Douglass W. Stockham III (1982) and Murray P. McCluskey (1971) (Admittee/Stepfather)

Michael C. DeLaney (1982) and Chris C. Delaney (1948) (Admittee/Father)

Bill Bedford (1966) and Virginia L. Bedford (1982) (Father/Admittee)

Robert O. Cox (1951) and Bess Cox (1982) (Father/Admittee)

Jule R. Herbert (1956) and Elizabeth R. Herbert (1982) (Father/Admittee)

James H. LeMaster (1981) and Lucy Fay Malone (1982) (Son/Admittee)

Alice Meadows (1951) and Sandra Kay Meadows (1982) (Mother/Admittee)

Judge William O. Winston III (1976) and Patricia A. Winston (1982) (Brother/Admittee)

Richard G. Smyly (1982) and Allen Smyly (1980) (Admittee/Brother)

John David Woodruff, Jr. (1982) and Laura Ard Woodruff (1982) (Husband and wife admittees)

James Allen Sydnor, Jr. (1982) and Marda Walters Sydnor (1980) (Admittee/Wife)

Lynn Riddle Thrower (1982) and John Snow Thrower, Jr. (1982) (Wife and husband admittees)

Paul A. Pate (1981) and Donna Sanders Pate (1982) (Husband/Admittee)

Joseph C. Gill, Jr. (1982) and Olivia W. Martin (1982) (Husband and wife admittees)

John V. Duck (1957) and William Daniel Calhoun (1982) (Father-in-law/Admittee)

J. Mason David (1960) and Marcus W. Reid (1982) (Uncle/Admittee)

George W. Witcher, Jr. (1982), George W. Witcher, Sr. (1947) and Andrea Lee Witcher (1981) (Admittee/Father/Sister)

Betty Love (1965), Huel M. Love, Jr. (1982) and Huel M. Love, Sr. (1949) (Mother/Admittee/Father)

David Culver (1950), Fred White Tyson (1982) and Judge John C. Tyson III (1950) (Father-in-law/Admittee/Uncle)

Rebecca L. Shows (1982), Joe C. Cassady, Sr. (1950) and Joe C. Cassady, Jr. (1982) (Admittee/Uncle and Father/Admittee)

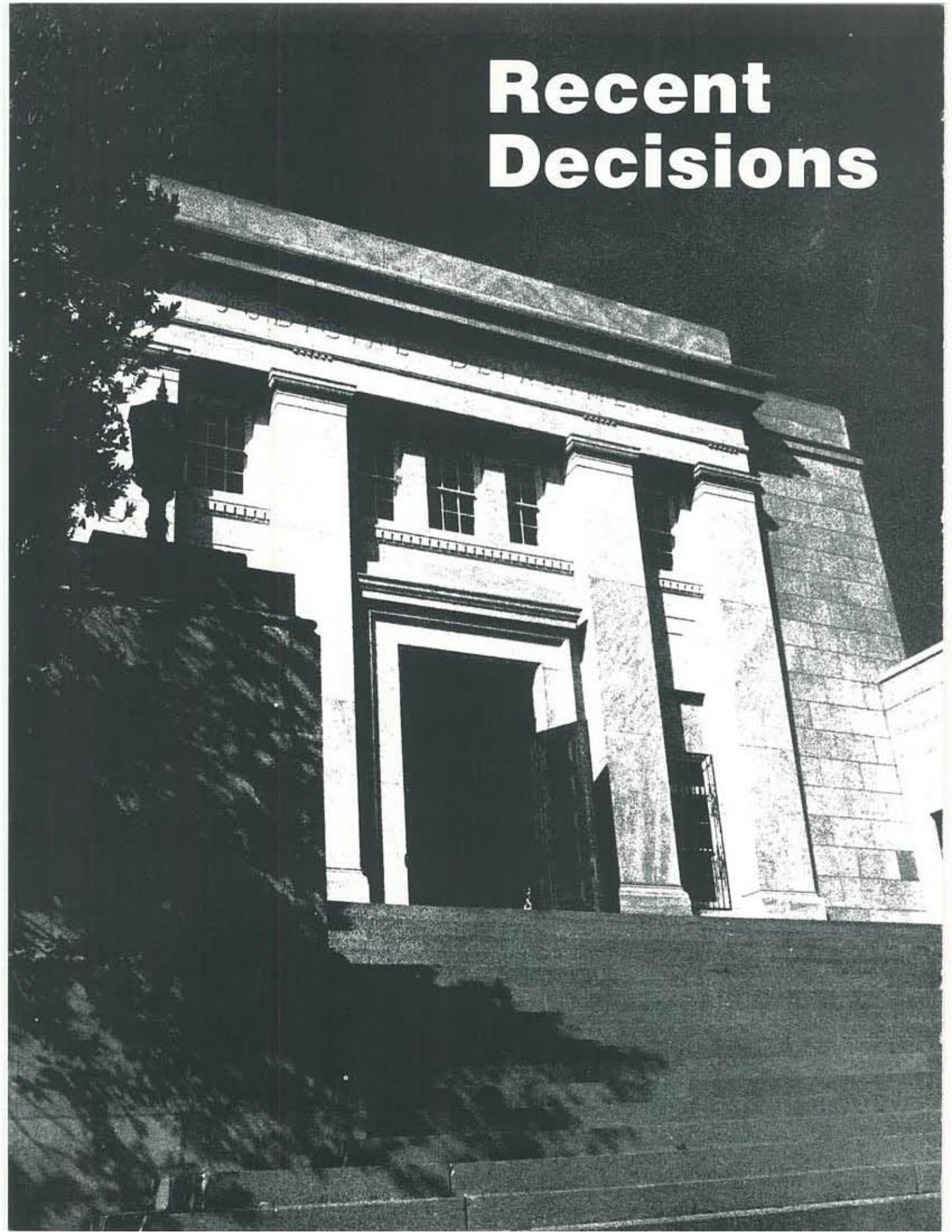
George Peach Taylor (1951), Ann English Taylor (1979) and Jarred Otis Taylor III (1982) (Father/Sister/Admittee)

William Lawrence Nix (1982), Charles A. Nix (1951) and William H. Morrow, Jr. (1952) (Admittee/Father/Uncle)

James A. Bradford (1980), James P. Bradford (1938) and J. Tipton Bradford (1982) (Brother/Father/Admittee)

J. Thomas King, Jr. (1976), J. Thomas King, Sr. (1951) and Alan L. King (1982) (Brother/Father/Admittee)

Finis Ewing St. John, Jr. (1931), Finis Ewing St. John III (1956), Juliet Given St. John (1975) and Finis Ewing St. John IV (1982) (Grandfather/Father/Mother/Admittee)


Recent
Decisions

John M. Milling, Jr., a member of the Montgomery law firm of Hill, Hill, Carter, Franco, Cole & Black, received his B.S. degree from Spring Hill College and J.D. from the University of Alabama.

David B. Byrne, Jr., a member of the Montgomery law firm of Robison & Belser, P.A., received both his undergraduate degree and J.D. from the University of Alabama.

Mr. Byrne and Mr. Milling will co-author this section of ***The Alabama Lawyer*** *concerning significant decisions in the courts. Mr. Byrne will cover the criminal area and Mr. Milling the civil.*

Recent Decisions of the Supreme Court of Alabama—Civil

Civil procedure . . . authority of trial court to amend judgment on its own initiative

Ex parte: Albert Moore Owen (re: GECC Financial Services v. St. Paul Title Insurance Corporation v. Owen (16 ABR 2975, October 1, 1982). Petitioners sought a writ of mandamus directing the trial court to set aside an order by which the court, on its own initiative, amended an order dismissing a third party complaint by adding "without prejudice."

The Supreme Court held that the trial court had authority to act on its own initiative and cited *Moore's Federal Practice,* paragraph 59.12(4), as authority. Paragraph 59.12(4), *supra,* provides that even though Rule 59 is silent on the power of the court to alter or amend a judgment on its own initiative, Rules 59 and 60 are only declaratory examples of the general power of the court. The Supreme Court stated it would be better practice for the trial court to give notice of its intention to amend. Furthermore, petitioners showed no prejudice by the court's failure to give notice since the amendment was not a "final" order and was, therefore, subject to revision at any time.

Civil procedure . . . reinstatement of default judgment

Howell v. *D.H. Holmes, Ltd.,* 16 ABR 2877, (September 24, 1982). On November 27, 1978, Howell filed suit against D. H. Holmes, Ltd. (Holmes) based upon an incident wherein a Holmes employee detained Mrs. Howell on the mistaken belief that she had taken some store clothing without paying. Holmes received summons and complaint on November 30, 1978, and forwarded the papers to its insurer on December 4. The insurance company's agent commenced negotiations with Howell's attorney, but did not send the papers to the insurance company's attorney and a default was entered on January 4, 1979. On February 2, 1979, the insurance carrier's attorney filed Rule 55(c) and Rule 60(b) motions to set aside the default. The trial court denied the motion based upon Rules 60(b) (1)-(5), finding no evidence to support the grounds. Nevertheless, the court set aside the default based on Rule 60(b) (6), based on the size of the judgment ($300,000) and the absence of prejudice to the plaintiff. The matter was presented to the Supreme Court on the trial court's grant of Holmes' motion for summary judgment.

The Supreme Court recognized the broad discretion accorded the trial courts on 60(b) motions, but stated that "in order for one to obtain 60(b) relief, he must allege and prove one of the grounds set out under the rules, *together with a meritorious defense to the action.*" (Emphasis supplied). The Court hastened to add that while two recent decisions may seem inconsistent, they are distinguishable on the facts and the "meritorious defense" aspect was not an issue in those appeals. In contrast to the earlier decisions, the Supreme Court noted that the insurance carrier's agent offered no good reason why he failed to forward the suit papers to an attorney. Furthermore, since the trial court relied upon the size of the judgment as sole grounds for setting aside the default and the trial court found no specific error in the value entered in default, no 60(b) (6) ground for relief was shown. The Court ordered the default judgment to be reinstated.

Commercial law . . . applicability of statute of frauds to partially complete contract

Roy Buckner Chevrolet, Inc. v. *Robert Cagle,* 418 So. 2d 878 (Ala. 1982). In this case, the Supreme Court held that a "buyer's order" form which left the price of the automobile to be fixed at a later date based upon the "list price," was sufficiently definite to comply with the Statute of Frauds.

Cagle went to Buckner Chevrolet to purchase a 1978 "Limited Edition Corvette CP." Cagle partially filled out a buyer's order form and agreed to buy the car at list price. The actual purchase price was left blank. Buckner Chevrolet contended that the agreement was nothing more than an agreement to enter into an

agreement and thus void. The jury and the Supreme Court disagreed. The Supreme Court noted that open terms in a contract are not conclusive on the indefiniteness of the contract. Section 7-2-204, *Ala. Code* 1975, specifically provides that a contract does not fail for indefiniteness if there is a reasonably certain basis for giving an appropriate remedy. Section 7-2-305, *Ala. Code* 1975, also provides that the parties may conclude a contract even though the price is not settled. In agreeing to let the price be fixed at the amount stated on the list price, both parties were bound by the obligation of good faith contained in §7-1-203, *Ala. Code* 1975.

Municipal corporations . . . judicial immunity

James Otis v. *Kenneth Everett,* 16 ABR 3042, (October 1, 1982). In a case of first impression, the Supreme Court held that neither the City of Dothan, its mayor, nor the members of the Board of Commissioners were liable for damages on account of the exercise of their quasi-judicial powers regarding approval or disapproval of an application for a retail liquor license. The Court also held that defendants were "exempt from liability for error or mistake of judgment in the exercise of the duty . . . absent fraudulent, malicious or corrupt intent."

In the action, plaintiff sought damages on the ground that defendants' refusal to approve an application for the license was "arbitrary, capricious and wrongful." The Court noted that §28-3A-1, *Ala. Code* 1975, is an exercise of police power of the state for the public welfare. The Court quoted from an Illinois decision as follows: "The general rule of liability applying to judges applies alike to all officers exercising quasi-judicial powers, and they are exempted from liability for error or mistaken judgment in exercising their duty in absence of corrupt or malicious motives."

Municipal corporations . . . legislative immunity

Tutwiler Drug Company, Inc., et al. v. *The City of Birmingham, et al.,* 418 So.2d 107 (Ala. 1982). In this case, the Supreme Court held that the mayor of the city and the members of the city council in their respective *individual* capacities, were entitled to absolute immunity from personal liability in the performance of their duties in the consideration and adoption of a resolution pursuant to statutory authority.

Plaintiffs filed a declaratory judgment action and sought damages claiming that defendants had acted "arbitrarily and capriciously" in adopting a resolution declaring a certain area to be blighted within §24-2-1, *Ala. Code* 1975. The trial court dismissed the complaint and the Supreme Court affirmed. The Supreme Court noted that this case is another example of Alabama's case law development in the area of "substantive immunity" for public officers. The Court quoted from *Restatement (2nd) of Torts,* §895D, Public Officers (1974). The Court found that since the mayor and city council members were clearly executing their legislative functions, they were entitled to an absolute legislative immunity from tort liability. The Court also adopted a public policy consideration set forth in *Gorman Towers* v. *Bogoslavsky,* 626 F.2d 607 (8th Cir. 1980).

Oil and gas . . . new law in Alabama

Clara M. Sheffield v. *Exxon Corporation,* 16 ABR 3014, (September 1, 1982). In a case of first impression, the Court undertook to establish basic guidelines for the lessor and lessee operating under an oil and gas lease with a voluntary pooling agreement. In May 1969, lessors executed a lease for a primary term of ten years. By order of the oil and gas board, Exxon was appointed to be in charge of drilling operations. The lease provided that it expired at the end of the primary term if oil or gas is not being produced or the lessee is not then "engaged in drilling or reworking operations thereon." Throughout the lease, Exxon experienced trouble maintaining production. In April 1979, Exxon commenced on-site preparations for drilling. The rig was assembled and rigged up by May 1979, but did not produce until after expiration of the primary ten-year term. The lessee contended that Exxon's activities constituted "drilling or reworking operations" within the meaning of the lease and that the term of the lease was extended. The trial court agreed and granted lessee's motion for summary judgment. The Supreme Court affirmed and undertook to announce basic guidelines for what operations constitute "reworking" and "drilling" in Alabama. The Supreme Court looked favorably to an Oklahoma case stating that the key element is whether "the operation is associated or connected with the *physical* site of the well or unit." Additionally, "the operation must be intimately connected with the resolution of whatever physical difficulty caused the well to cease production." In the case at bar, on-site activities took place prior to the expiration of the primary term. The Supreme Court announced similar guidelines to establish what operations constitute "reworking." Operations must be designed to revitalize a well or to restore lost production. The Court discussed other issues peculiar to oil and gas leases and a careful study of the case is recommended.

Truth-in-lending . . . statute of limitations, relation back

Ex parte: Willie D. Fletcher (Willie D. Fletcher v. Public Finance Company of Alabama), ____ ABR ____, Supreme Court No. 81-435, (October 29, 1982). On certiorari, the Supreme Court reversed the Court of Civil Appeals and a line of cases decided by that court and held that in a creditor's collection suit, a counterclaim filed by the debtor for violation of the Truth-In-Lending Act (TILA) disclosure provisions is compulsory and is in the nature of recoupment. Under Rule 13(c), Alabama Rules of Civil Procedure, it relates back to the time the original plaintiff's claim arose.

In this case, the creditor loaned money to the borrower without making proper TILA disclosures. The borrower defaulted. More than one year after execution of the note, the creditor declared the entire note due and filed suit to collect. The borrower joined issue and filed a counterclaim for violation of the TILA disclosure provision. The counterclaim was barred unless it was in the nature of recoupment and related back. Prior to

this decision, the Alabama cases had held that counterclaims were in the nature of a set-off which did not relate back. The Supreme Court reasoned that the previous law was fundamentally unfair in that it permitted a lender to take advantage of a law that allowed him to wait out the limitations period of a penalty statute and escape its sanctions while at the same time filing suit to collect the entire debt.

Uniform reciprocal enforcement of support act . . . statutory interpretation

Ex parte: Nancy L. O'Neill (re: O'Neill v. O'Neill), 16 ABR 2841, (September 24, 1982). In a case of first impression, the Supreme Court affirmed the Court of Civil Appeals which upheld the order of the District Court modifying the divorce decree of another jurisdiction under the terms of the Uniform Reciprocal Enforcement of Support Act (URESA) and terminating periodic alimony payments.

The wife asserted that the Alabama District Court lacked authority to terminate her ex-husband's obligation to pay periodic alimony to her under a Georgia divorce decree. She relied on §30-4-93(b), *Ala. Code* 1975. The Alabama Appellate Courts adopted the interpretation of other jurisdictions adopting the Uniform Act and authorized Alabama as a "responding state" to grant a new order in a URESA proceeding. Of course, the original order granted by the Georgia court remains valid.

Recent Decisions of the Alabama Court of Civil Appeals

Commercial law . . . good faith

Frank Davis Buick AMC-Jeep, Inc., v. *First Alabama Bank of Huntsville*, Civil Appeals No. 3360, (November 3, 1982). The Court held that in determining whether a merchant qualified as a "buyer in the ordinary course of business," the Court should utilize the subjective standard of good faith found in §7-1-201 (19), *Ala. Code* 1975, rather than the objective standard in §7-2-103 (1) (b). The bank had a security agreement and a floor plan arrangement with a Huntsville AMC-Jeep dealer which required the dealer to pay the bank in full when a car was sold. Subsequently, Frank Davis Buick, a Nashville dealer, purchased a jeep from the Huntsville dealer and took delivery. Soon thereafter, the Huntsville dealer ceased doing business. During an inventory check of the Huntsville dealer, the bank discovered that it had not received payment for the jeep. The bank notified Frank Davis Buick of its perfected security interest and subsequently filed suit. The dealer joined issue and claimed he was a buyer in the ordinary source of business and took the jeep free from the security interest under the exception to §7-9-306 (2).

The Court of Civil Appeals noted that resolution of the dispute depends on whether the buyer acted in "good faith." The Court also noted that the Commercial Code has two definitions of good faith. In §7-1-201 (19), good faith is defined as "honesty in fact in the conduct or transaction." This is the so-called "subjective standard" used by the dealer. Section 7-2-103 (1) (b), however, states that good faith "in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade." This is the so-called "objective standard." The bank contended that the dealer-merchant did not observe reasonable commercial standards when it failed to check for outstanding security interests on the vehicle. The Appellate Court noted that there is a split of authority in other jurisdictions as to which definition of good faith should be utilized. The Court reasoned that the subjective standard found in §7-1-201 (19), should be used because it is a general definition found in Article I which applies to all Articles subject to additional definitions in each Article. The definition of good faith found in §7-2-103 (1) (b), however, is found in Article II and applies only to "sales." The Court also stated that the dealer met the objective standard because a security interest does not defeat a sale between merchants unless the buyer has knowledge of facts that would put him on notice that the sale is in violation of the terms of the security agreement.

Contracts . . . damages

Ocie Cook, Jr. v. *Charles G. Brown, Jr.*, Civil Appeals No. 3308, (November 17, 1982). In March 1979, Brown and Cook entered into a contract for the sale of real estate owned by Cook. Subsequently, Brown rescinded the contract, alleging misrepresentation by Cook. On the first trial of this case, the court found that Cook had failed to prove any damages (i.e. the difference between the contract price and the market value at the date of breach).

On appeal Cook claimed that he was entitled to interest on the value of the money he would have received from the contract price at the rate of 8.5% on the unpaid purchase price. The Court of Civil Appeals adopted the reasoning of and quoted from a California Court of Appeals decision where that court refused to allow prejudgment interest. The Court of Appeals reasoned that Brown's repudiation and Cook's election to pursue a damage remedy relieved Brown of his obligation to pay interest under the contract. Similarly, the Court did not find merit in Cook's claim that he should be awarded interest to compensate for lost earnings that he would have received if he had received the purchase price and if he had loaned that sum to his wholly owned corporation at 16% interest. The Court stated that such damages were not within the contemplation of the parties at the time of contracting and, therefore, were not recoverable.

Finally, Cook contended that he should have received damages based on the difference between the contract price and the market value at the date of breach, based upon the United States Government Consumer Price Index. While agreeing with the measure of damages, the Court stated that the Consumer Price Index does not establish fair market value where there is an actual real estate market.

Garnishment . . . child support

Ronald L. Moates v. *Susan Gail Moates Morgan*, Civil Appeals No. 3109, (November 3, 1982). In a case of first impression, the Court of Civil Appeals held that delinquent child support in-

stallments must be reduced by the trial court to a judgment for the exact amount due *prior* to issuance of a writ of garnishment. The Court recognized that the authorities from other jurisdictions are sharply divided on the point and that many Alabama cases contain language to the effect that "installment payments . . . for support . . . become final judgments as of the dates due and may be collected as other judgments." The Court, however, also recognized a recent pronouncement by the Alabama Supreme Court which indicated a contrary result. Specifically, in *Austin* v. *Austin,* 364 So.2d 301 (Ala. 1978), the Court held that past child support payments may not be a charge against the estate of a deceased father where the amount due is disputed and has not been reduced to a monied judgment. Based on the language in Austin, the Court of Appeals determined that the Alabama Supreme Court would require the spouse to reduce the accrued installment payments to a monied judgment prior to issuance of a writ of garnishment.

Juvenile procedure . . . amended rules

Alvin Wright and Patricia Wright v. *Montgomery County Department of Pensions and Security,* Civil Appeals No. 3438, (November 17, 1982). In this case the Appellate Court construed and applied Rules 20 and 28, Alabama Rules of Juvenile Procedure, as amended March 1, 1982. Pensions and Security filed a petition to terminate parental rights in the juvenile section of the Montgomery County Circuit Court on July 21, 1982. The Circuit Court entered an order on August 2, 1982, and Wright filed notice of appeal to the Court of Civil Appeals on August 17, 1982, fifteen days after the judgment. The Court of Appeals dismissed the appeal as being untimely. The Court stated that since amended Rule 20 requires each juvenile proceeding to be recorded so that a record of the proceedings can be made for appeal, it is unnecessary to first appeal to the Circuit Court for a trial *de novo,* as was done before the amendment.

The Court, however, held that §12-15-30(a) (1) and Rule 28 (C) (2), as amended, require that the notice of appeal be filed with the Court of Appeals within fourteen days after entry of the order, *when the appeal arises out of the jurisdiction of the juvenile court over a child alleged to be delinquent, dependent, or in need of supervision and in proceedings to terminate parental rights.* (Emphasis supplied). The Court noted that Rule 28 (A) and (B) pertain to appeals in cases "arising out of the jurisdiction of juvenile courts over minors and adults" and that the appeals still go to the Circuit Court. Rule 28(C) deals with appeals in cases "arising out of the jurisdiction of the juvenile court over a child" and the appeals go to the Court of Appeals. Rule 28(C) (2) lists the types of proceedings that are appealed to the Court of Appeals, and while the Court of Appeals recognized that proceedings to terminate parental rights (the basis of the instant appeal), are not listed in subsection (C) (2), the Court reasoned that §12-15-30(a) (1) and Rules 28(C) (2) (a) and (b) now give the Court of Appeals direct appellate jurisdiction in cases involving termination of parental rights arising out of juvenile court's jurisdiction over children.

Recent Decisions of the Alabama Court of Criminal Appeals

Plain view . . . no panacea

Gaines v. *State*, 8 Div. 633 (November 23, 1982). Russellville Police stopped a car in which the defendant was a passenger. The officers asked Gaines to get in their vehicle for the purpose of accompanying them to the defendant's house where they intended to execute a search warrant. Gaines got into the back seat of the police vehicle. On the way to the defendant's house, one of the officers seated in the front seat observed out of the corner of his eye the defendant remove a small round bottle from his pocket. The police seized the bottle which was later found to contain 33 valium tablets.

The issue on appeal was the legality of the seizure of the bottle containing valium under the "plain view" exception. The Court of Appeals surveyed the cases dealing with the "plain view" exception. Judge DeCarlo held that evidence which is in plain view may be seized without a warrant if the seizing officer (1) had prior justification for the intrusion, (2) comes upon the evidence inadvertently, and (3) immediately recognizes the objects discovered as evidence of wrongdoing. See *Coolidge v. New Hampshire,* 403 U.S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971).

During the suppression hearing, the defendant's counsel established that at the time the officers seized the small, round bottle, he did not know what was contained in it. In reversing the conviction Judge DeCarlo concluded that, "in view of the Alabama Supreme Court's opinion in *Shipman v. State,* 291 Ala. 484, 282 So.2d 700 (1973), we have no alternative but to hold that this seizure cannot be justified under the plain view exception."

Insanity . . . the defendant's right to expert witnesses

Whisenhant v. *State,* 1 Div. 333 (November 23, 1982). On November 23, 1982, the Alabama Court of Criminal Appeals affirmed Thomas Warren Whisenhant's conviction for the rape-murder of Cheryl Lynn Patton. On appeal, the defendant contended that the trial judge committed reversible error in denying that defense's motion for funds to employ two independent psychiatrists at the State's expense.

The thrust of Whisenhant's motion was to request funds in the amount of $3,500 for the exclusive purpose of hiring these psychiatrists. The record further established that the defendant intended to use the funds primarily to pay for the psychiatrists' trial testimony and not to conduct initial psychiatric evaluation of the defendant. Earlier, both psychiatrists had extensively evaluated the defendant. Upon application, the trial court, pursuant to §15-12-21 (d) *Ala. Code* 1975, granted the defendant the statutory maximum of $500 for the use of obtaining expert assistance in the conduct of his defense.

Judge Tyson, writing for a unanimous Court, held that a defendant *may* have

the right to the appointment by the State of an expert where it is shown to be necessary for an adequate defense. Judge Tyson noted however, that "there exists no constitutional right to the appointment of a private psychiatrist of a defendant's own choosing at public expense, as requested by appellant."

Recent Decisions of United States Supreme Court—Criminal

Prosecutor's vindictiveness . . . a retreat from *Blackledge*

United States v. Goodwin, 457 U.S. ——, 73 L. Ed. 2d 74, 102 S. Ct. 2485, (June 18, 1982.) In this case the Supreme Court held that a prosecutor's decision to file felony charges after a defendant accused of a misdemeanor insisted on a jury trial did not require a presumption of unconstitutional vindictiveness on the part of the prosecutor.

The defendant was charged with several misdemeanor offenses following a traffic incident involving a United States park policeman. A federal prosecutor initiated prosecution before a United States Magistrate for misdemeanor offenses. Subsequent to the initiation of prosecution, the defendant insisted on his right to jury trial. The case was transferred to the United States District Court for disposition and assigned to an Assistant United States Attorney, who, after reviewing the case, obtained a four-count indictment which included one felony count. At trial the defendant was convicted of the felony offense and one misdemeanor count.

The Fourth Circuit reversed stating that although the prosecutor had not in fact acted vindictively, the doctrine of *Blackledge v. Perry*, 417 U.S. 21 (1974), mandated reversal. In *Blackledge*, the Supreme Court held that the due process clause prohibits the government from bringing more serious charges against a defendant after he has invoked his right to a jury trial unless the prosecutor comes forward with objective evidence that the enhanced charges could not have been brought before the defendant's exercise of his constitutional right to jury trial.

In the present case Justice Stevens writing for the majority reversed and remanded, distinguishing the *Blackledge* decision. In *Blackledge*, the Court said that the likelihood of vindictiveness justified a presumption that the prosecutor had acted in bad faith. In refusing to apply *Blackledge*, Justice Stevens reasoned that the timing of the prosecutor's action in *Goodwin* established that a "presumption of vindictiveness" was not warranted and that a prosecutor should remain free prior to trial to exercise the broad discretion entrusted to him to determine the extent and scope of the charges to be prosecuted.

Justices Brennan and Marshall dissented arguing that *Blackledge* applied. The dissent cautions that the enhancement of charges posed "a realistic likelihood of vindictiveness" and therefore should have triggered the rule established in *Blackledge*. □

PREVENTING PITFALLS IN LITIGATION PRACTICE

Duke Nordlinger Stern*

Mr. Stern serves as risk manager to the Alabama State Bar in the areas of claims analysis, loss prevention, claims repair and insurance counsel.

Professional liability acts, errors and omissions in the area of litigation practice account for the greatest frequency of claims in most states. In addition, it is not unusual for such claims to also represent losses with high severity. Unfortunately, since these claims are not concentrated in any particular stage of litigation practice, prelitigation, trial or appellate, this broad exposure requires continuous awareness of the potential hazards and perils. In fact, a review of causes of claims reveals that there have been losses as a result of errors or omissions in the handling of almost all of the multiple steps that arise in the course of litigation matters. Nonetheless, there are definite avoidance techniques that can be incorporated into the law practice to reduce the probability of claims.

*I. **Be continuously aware of the litigation practice malpractice risk.*** Ignoring the malpractice risk in your litigation practice will not mitigate the probability of a claim. Rather, accept this potential peril and condition yourself to review each step of each litigation matter one additional time from the perspective of malpractice prevention. Force yourself to ask: "What have I failed to do? What have I done incorrectly?"

*II. **Avoid the fees pitfall.*** A significant number of professional liability claims result because an attorney refused to continue to work for a non-paying client or sued to collect a fee. While there is no system or procedure than can guarantee all clients will be financially responsible, there are techniques which reduce the likelihood of this hazard. Be certain from the beginning of the relationship that your client understands completely the fee and payment arrangement. Discuss how expenses will be handled. Bill on a periodic basis and be sure your statements contain sufficient detail to justify the amounts requested. Closely monitor your accounts receivable. Be understanding in attempting to collect client fees and avoid an adversary atmosphere. Never withdraw from a representation without being certain your client's interests are protected, even if you will not be compensated for additional necessary efforts.

*III. **Maintain and fully utilize an effective docket control system.*** Litigation practice can be a maze of time deadlines: statutes of limitation, procedural deadlines, appearances and other required activities. The law firm must maintain a docket control system which has unlimited capacity and a minimum potential for error. Such a system should be either a manual or computerized perpetual calendar (tickler system) since a diary book or wall calendar will not meet these critical requirements. Memory should be avoided as the reminder system for complying with the multitude of litigation steps. The perpetual calendar should be used to docket both ultimate and supporting events, as well as final and anticipatory notices for each category.

*IV. **Screen all potential clients and matters before acceptance.*** Often a legal malpractice claimant is a person whose representation should never have been accepted. No law firm and its attorneys can be compatible with all potential clients and matters. Personality conflicts can exist, you may not have the ability to educate a particular potential client as to the realities of the matter in controversy, or the firm may not have the specialized skills to handle the representation without denying the needs of other clients. Discovery of such problems after the attorney-client relationship has been created increases the malpractice risk or the probability of a claim even if frivolous. While there are no guarantees that screening will result in compatible clients and matters, objective appraisal of each possible new representation should raise flags as to potential problems.

Force yourself to make such an evaluation before acceptance of each client and matter, and do not let your professional instincts be overcome by the individual's enthusiasm or need. You may still end up accepting a potential problem representation, but do so knowingly and let this knowledge correctly govern how you handle the matter. Detailed engagement and non-engagement letters should always be sent.

V. Checklists improve the effectiveness of your litigation practice and reduce the probability of claims. Detailed checklists which can be used by your firm in handling litigation matters will complement an effective docket control system. Because there are similar steps and procedures in many representations, every firm should develop checklists for prelitigation, trial and appellate stages. Each time a litigation matter is accepted, the checklists should be inserted into the new file. In creating the checklists care should be taken to have them as complete as possible and still have blank lines for the addition of the unique or unexpected. No stage of litigation should be considered complete unless all of the items on that portion of the checklist have been marked off as finished or not applicable.

It is unfortunate that most attorneys are unaware of or ignore the significant malpractice risk in litigation practice. It can never be removed, but it can be reduced. Every attorney must maintain constant awareness of this peril and adopt avoidance techniques.

The risk management program is funded by the Bar's endorsed professional liability insurance company, Insurance Corporation of America (ICA). Loss prevention and claims information is available without cost to any member of the Bar by calling Mr. Stern at (800) 237-8903. Information on the Bar's endorsed professional liability insurance program can be obtained by calling Insurance Corporation of America at (800) 231-2615. These materials may not be reproduced in any form without the express written permission of the author.

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PERSONAL COMPUTERS AND SOFTWARE FOR YOUR LAW OFFICE

Joan McIntyre and
Robert Sellers Smith

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Personal computers, designed for both home and business use, together with specialized law office software, may revolutionize your law office. Traditional law office work and activities readily lend themselves to computer automation. Specialized law office software is the key to the inexpensive automation of any law office today, whether you are a sole practitioner or your office employs a hundred or more lawyers. Your billing, timekeeping, bookkeeping, typing, law research and other traditional law office work and activities can be easily and inexpensively automated with existing and readily available law office software. Approximately four years ago, Stan McIntyre, an aerospace engineer employed at Marshall Space Flight Center, and his wife, Joan McIntyre, one of the authors of this article, developed specialized law office software with the assistance of the three-lawyer office of Smith, Huckaby and Graves, P.A., in Huntsville, Alabama. A system of computer-automated billing and timekeeping, called Verdict™, was the first and most important software program developed for this law office. Bookkeeping software was then developed to integrate with the legal billing system, so the office would have the advantage of an interworking legal billing, timekeeping, and bookkeeping system. With the aid of this software, each month bills for approximately six hundred clients are prepared, along with monthly income and balance statements and internal management reports of individual lawyer and timekeeper production.

It was soon discovered the above activities, when automated, required only a few days each month with the aid of one personal computer. Therefore, the computer and operator were available for word processing approximately three weeks out of each month. Together, the automated legal billing, bookkeeping and word processing enabled the firm to increase its delivery of legal services by approximately twenty-five to thirty-five percent. Office income also increased by twenty-five to thirty-five percent.

Other benefits occurred. Client relations improved dramatically. One of the most interesting side benefits is that each lawyer automatically keeps every client fully informed of services rendered each month in connection with each matter. Even clients whose matters are handled on a contingency fee basis receive itemized bills each month with a detailed listing of every transaction. Although no money is owed except expenses, each contingency fee client knows that his lawyer performed such services as preparing interrogatories, law research, taking depositions, talking to the opposing attorney, or attending a pretrial conference.

With Verdict™, when contingency fee matters are concluded, clients are informed of and appreciate the magnitude of services which have been rendered in connection with each case. For example, in a recent case a client of Smith, Huck-

aby and Graves, P.A., strenuously opposed division of the contingency fee earned by the firm with an out-of-state law firm associated for the purpose of trying the case out-of-state. The client said, "You shouldn't have to share your fee at all because you've worked so hard to settle the case." Such communication is not easy without computerized billing.

Another recent example of the side benefits of computerized billing involved a complicated class action before a Senior United States District Judge in the Northern District of Alabama. Over eighty pages of itemized time and services were presented to the court in support of substantial attorney's fees and expenses agreed to in settlement of a case, involving approximately thirty-three hundred hours of legal services. The distinguished Senior Judge stated in open court that the firm's fee and expenses were fully documented and justified on the basis of the itemized computer bills. In addition, in the case, with the aid of the word processing capacity of the computer, the firm was able to keep up with a large volume of legal briefs, memoranda, pleadings, and other documents that became necessary to rebut the advocacy of ten opposing law firms.

The above law office applications were handled on an inexpensive personal computer. You should consider such applications for your law office if you have not already done so. Most personal computers today cost less than an automobile. Each computer system consists of several components known in the trade as "hardware."

Computer Hardware

The foundation for today's low-priced personal computers is a tiny silicon "chip," smaller than a fingernail and etched with intricate circuitry. This technology was born in the late 1940s when the transistor was first used to control electric current and enabled computers to do calculations. Transistors replaced vacuum tubes and paved the way for today's inexpensive personal computer equipment. During the 1970s a method was developed whereby a computer's entire central processing unit, consisting of thousands of integrated circuits, could be packed onto a small silicon chip. This development introduced the era of the microprocessor. Peripheral chips supplying memory, controls, and timers made possible today's programmable personal computers.

Computer hardware for your law office usually consists of a processor, a terminal, two disk drives, and a printer. It may include a hard disk with multiple terminals.

The Processor. The heart of a computer system, the processor itself, is relatively small and inexpensive. The processor is a single integrated circuit known also as the Central Processing Unit, or CPU. The processor is connected to input-output devices, known as I/O devices. Information on disks is fed into the processor through the use of disk drives or a hard disk. The processor interprets the information provided by the computer program and performs the tasks required, either data processing or word processing, to accomplish the objective of the program. The processor then distributes the results to other components of the system, including the terminal, disks and printer. A processor for a personal computer, which usually includes the disk drives, may cost $1,500 to $5,000. Today some systems are sold with the terminal, disk drives and processor housed in one unit for as little as $2,000.

The Terminal. The terminal, or CRT, consists of a keyboard, similar to a typewriter, and a screen, similar to a TV screen. The terminal is the place where the computer and its operator come together. For this reason, no part of the computer system should be more carefully considered with regard to the comfort and convenience of the operator. For example, the quality and legibility of the print displayed on the screen are extremely important. You should look for an eighty column (character) screen with descenders on lower case letters. The screen should display at least twenty-four lines of text. Today a terminal for a personal computer will cost from $600 to $1,000.

The Disk Drive. You need two disk drives or one disk drive and a hard disk for your computer system. Disk drives read information on a floppy disk. A floppy disk (also known as a diskette) is generally 5 1/4 inches or eight inches in size, although there is now a new three-inch disk on the market. The floppy disk is the main form of information storage for a personal computer. Information is stored in "files" on each disk. Unless you are lucky enough to have a hard disk, your personal computer system will retain all your software programs, word processing text, and data on floppy disks. If you have a hard disk, such software programs, word processing text, and data may be stored on the hard disk with considerably more storage capacity.

The floppy disk is inserted into a disk drive for use. The disk drive operates similar to the record player, with the disk drives being comparable to a record player and the disks being comparable to records. Hard disks exceed floppy disks in storage capacity. For example, a double-sided, double density eight-inch floppy disk will store about one thousand kilobytes of data (one thousand k bytes), or 1 megabyte. In contrast, a hard disk for a personal computer may store five, ten, or twenty megabytes. Even larger hard disks are available. The disk drive capacity of your system is very important. For example, a double density disk holds more than a single density disk. With a greater disk capacity, you will be able to run programs with less shuffling of disks in and out of the drives. The price for two disk drives ranges from approximately $1,300 to $1,800. A five to ten-megabyte hard disk costs approximately $1,500 to $4,000.

The Printer. Good letter-quality printers are now available at reasonable prices, varying from $1,500 to $3,500. In addition, you may wish to acquire a matrix dot printer, which operates faster than a letter-quality printer. The price for a matrix dot printer varies from approximately $500 to $2,000. Your letter quality printer will be used for word processing, including correspondence, pleadings and practice documents. Your matrix dot printer is excellent for monthly billing, the general ledger and draft copies of text. There is a psychological advantage to printing bills on a matrix dot printer. Clients often feel lawyers pull prices out of a hat without reference to an equitable system. When the bills are printed on a matrix dot

printer, clients know you have a regular systemized billing method and that everyone is treated equally and equitably.

What should I know about buying computer hardware?

Now is the right time to buy computer hardware. Prices have dropped dramatically, and, at the same time, a truly outstanding variety of superior hardware is readily available. You can get a good personal computer system including processor, terminal, disk drives and a printer for less than $10,000 and perhaps as little as $5,000.

No one can tell you which computer system is best for your law office. You must get out and look, shop, gather advice and information. Just as one Will form can not meet the needs of every client, one particular personal computer system will not meet the needs or budget of every law office. Many companies market personal computers today. They include Monroe, Exxon, NEC, Xerox, Apple, Altos, Radio Shack, NorthStar, Televideo, Intertec, Vector Graphics, Heath/Zenith, IBM, and many others. Any computer hardware should be carefully reviewed by you prior to purchase from the point of view of application in your law office.

When you are buying hardware for law office use, there are some important things to remember. Word processing is generally available for all personal computers, regardless of their operating systems. On the other hand, a large variety of legal billing, accounting and other specialized law office software is generally available for use only on hardware compatible with CP/M, the most widely accepted software operating system, developed by Digital Research. You need more than word processing to get the maximum benefit for your law office from your computer. Therefore, avoid a computer dedicated to a single job or limited use. Your computer should assist in all aspects of your business and operate a large variety of software.

Is all Computer Hardware and Software Compatible?

You may encounter computers for which very little software is available. There are two aspects to hardware-software compatibility:

(1) The software must run under the computer's operating system or an operating system available for the computer.

(2) The software must be available on a disk format the computer can read.

Much of the application software available today is written in CBASIC for eight-bit personal computers with CP/M operating systems. There are literally thousands of software programs available for CP/M machines. However, a number of computer manufacturers, such as IBM, Apple, and Radio Shack, have developed their own disk operating systems (DOS). Programs written to run under one operating system will not run under another operating system. Thus, there may be little choice in software for computers with proprietary operating systems. Fortunately, Digital Research's CP/M, the standard for most personal computers, is an "add-on," available at an extra charge, for many computers with proprietary operating systems.

In the past all personal computers were eight-bit machines, but there is now a trend toward sixteen-bit machines, such as the IBM Display-Writer and the IBM Personal Computer. Sixteen-bit machines have different operating systems than eight-bit machines. However, CP/M-86 and CBASIC-86 were also developed by Digital Research so the sixteen-bit machines can operate CP/M software. The price for the CP/M-86 and CBASIC-86 combination package is $600, but they allow you to run the thousands upon thousands of programs available for eight-bit CP/M machines.

The second consideration is compatibility of disk format. A software program on a 5 1/4-inch disk for one computer system cannot be read by another computer system even with 5 1/4-inch disk drives except in a few isolated cases. On the other hand, an eight-inch single density disk, the old standard, can be read by almost every computer system with eight-inch disk drives. However, if the software program is written for a computer with a CP/M operating system, you can often find a major software house, selling computer software by telephone and mail order, which offers the software program on the disk format you need. Another alternative is the computer store where you purchase your computer hardware system. They may be able to "download" (transfer the program) for you to the disk format you need.

What other things should I look for in meeting my firm's computer needs?

You should select, in advance, as far as possible, all of the software you plan to use in your law office, both immediately and in the future. Make sure the computer you purchase is, or can be made, compatible with the software you need. Here are some questions you should ask when selecting your computer hardware:

(1) Is it, or can it be made, compatible with CP/M software?

(2) Does it have a minimum of two disk drives?

(3) Is the disk drive capacity of each disk drive two-hundred or more kilobytes per drive? (In any event, not less than 125 kilobytes per drive)

(4) Will you be able to add a hard disk to the system later? (If you purchase a hard disk, it should contain ten or more megabytes for anticipated growth.)

(5) Will the terminal screen accommodate eighty typewriter characters (also known as columns) in width, and will it display twenty-four lines of text?

(6) Does the processor have a minimum of sixty-four kilobytes of processor memory?

Software

Satisfactory word processing software is available for most personal computers you would consider for your law office. Only the smaller and less expensive computers with small display screens are generally unsatisfactory in this regard. The true backbone of the automated law office is a good legal billing and timekeeping system. Oddly enough, the system developed by Stan McIntyre for Smith, Huckaby and Graves, P.A., is now one of the most widely used in law offices today. McIntyre's system, Verdict™, marketed by Micro Craft, Inc., a Huntsville-based company specializing in software development, was featured in the June 1981 issue of *Interface Age*, a well-known computer magazine.

Approximately fifteen hundred law offices throughout the world now operate Verdict™. The program is marketed by Micro Craft through a network of over two hundred dealers, distributors and software houses. Verdict™ is programmed on CBASIC2 and designed for CP/M operating systems.

How does the Software handle the Legal Billing, Timekeeping and Accounting?

With Verdict™, there are seven charge codes. Each client's account is coded into one of these categories:

Code 1—Bills at straight time

Code 2—Discounted bills, discounted by any percent

Code 3—Flat fee bills (time is kept track of, but the bill is for whatever fee has been agreed upon)

Code 4—Monthly retainer bills for clients on regular monthly retainers

Code 5—Contingency fee bills

Code 6—No-charge "bills"

Code 7—Administrative time "bills" for office information

Out-of-pocket expenses are billed to each client, regardless of the charge code.

Verdict™ uses the daily time sheet method of posting time. Separate slips are not necessary as the computer automatically posts each item to the proper client account. A code system based on services rendered allows each lawyer to enter his time on the sheet much faster. Code 1A1, for example, is the code for "Telephone conference with client." The attorney writes the client's account number on the daily time sheet, along with "1A1" and the amount of time spent. The computer automatically translates the code's message on the bill.

The code was designed to cover every billable law office transaction and service. It contains an abbreviated method of accurately describing and billing over fifteen hundred different legal transactions and services. In actual use, it is a simplified shorthand system. This is done with a two-part code, the first part representing approximately seventeen types of services and the second representing parties with whom or for whom the service is rendered, or further describing the nature of the service or transaction. The second part of the code contains ninety-four entries. Therefore, the total number of services that can be described is in excess of 1,500.

The firm can add additional codes or change the codes to fit its practice. The code, printed on a separate sheet, may be fully mastered in a few minutes and is used for reference in making entries on the daily time sheet. With Verdict™ provision is also made for writing in services in paragraph descriptions of any length.

Computerized billing and timekeeping also facilitates a highly accurate office management summary. Each lawyer's professional time is automatically kept track of. Time for each legal assistant and secretary can also be entered for billing purposes or simply to analyze how administrative time is spent.

At the end of the month, the billing disks are run through a summary program, and law office data never before available is easily collected. The summary shows the following data for each attorney:

(1) Amount billed out.

(2) Paid by the firm in any out-of-pocket expenses.

(3) Amount collected in fees and expenses.

(4) Total and aging of accounts receivable.

(5) Total hours in each category.

(6) Total hours for each timekeeper.

This unique management tool is extremely beneficial. Every month it allows each lawyer to examine his production in depth. Each lawyer wants to look good on the summary sheet in comparison, so there is an incentive to maintain satisfactory production levels. The summary also lets a firm handle any deficiency situation before it gets totally out of hand. If accounts receivable are too high, the lawyer knows it immediately and tries to correct the situation. He also immediately knows how much he billed out for the month. It is much better for

"So go ahead and sue! It's just your computer's word against our computer's word."

him to see right away that he only billed out a certain amount for the month when he should have billed out more. The computer also indicates how much attorney time is spent on contingency fee, unbilled, and administrative matters.

Such a system can work for every law office, large or small. A computer operator can easily handle all billing for over six-hundred active accounts each month in thirty to forty hours. The amount of time spent on each account is an average of three to four minutes. This includes printing out the bills ready for mailing and the summary sheets for administrative purposes.

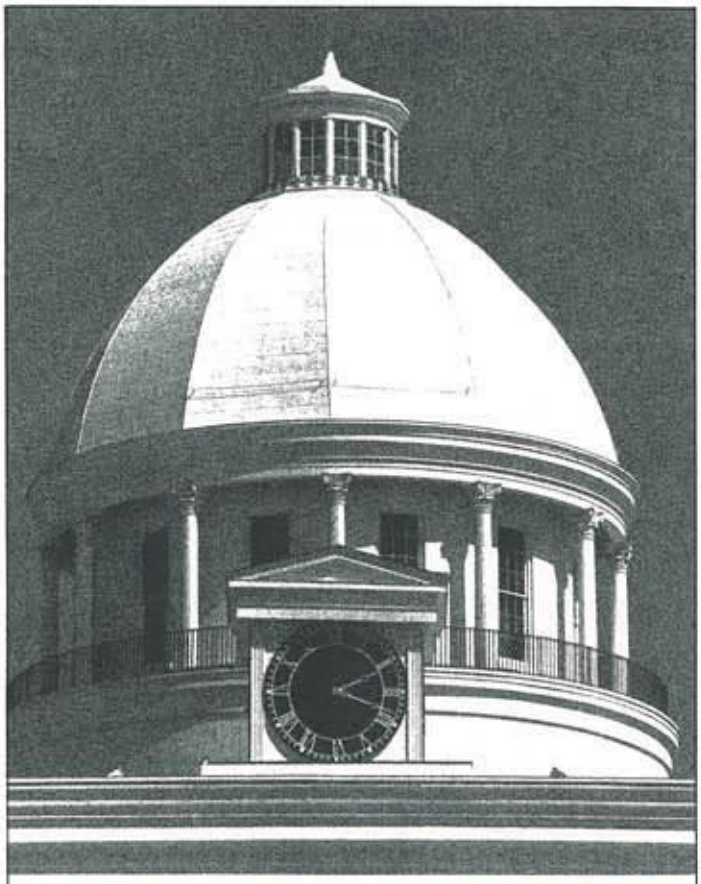
Up to 250 accounts can be handled on each double-density floppy disk, making the system very efficient for a large number of accounts. The system can handle up to fifty floppy disks per firm. On the average each attorney in the firm will need only one floppy disk for his accounts. A hard disk with five to ten megabytes of storage capacity will work even better, especially for larger firms. With a single hard disk, a computer operator might handle two to four thousand active accounts each month.

Your firm's complete accounting work may be maintained by the computer operator in two hours per month if the accounting software is integrated with the billing program. This will provide automatic billing and payment data for your general ledger without the necessity of duplicate computer entries of fees and expenses each month. The legal accounting software prints out the monthly income statement and balance sheet, with detailed supporting data showing all entries on the general ledger.

What are Other Uses for Law Office Software?

Basic software for your law firm includes a legal billing and timekeeping program, an accounting program, and a word processing program. Depending on the volume of word processing work, you may need more than one computer or a network of terminals accessing one central computer with a hard disk. Your computer system should be carefully thought out and planned to meet the requirements of your law office. In addition, you may consider Westlaw and Lexis law research programs, which are available for a monthly rental charge. With a telephone modem, your law office computer can access large computers with major storage banks containing a vast array of legal and other information. Other programs include litigation support, trust accounting, and docket control.

There is no longer any doubt that the age of computers will revolutionize your law office and the way you practice law. The personal computer and specialized law office software challenge you now to increase your law office income and deliver a greater volume of legal services to your clients. □



LEGISLATIVE WRAP-UP

Robert L. McCurley, Jr., director of the Alabama Law Institute, received both his undergraduate and law degrees from the University of Alabama. In this regular column, Mr. McCurley will keep us updated on legislation of interest and importance to Alabama attorneys.

The Alabama Court of Criminal Appeals on October 20, 1982, unanimously held that Senate Bill 60, subsequently designated Act No. 82-860, which provided for the State's right to appeal pretrial questions of law, was pocket vetoed by the Governor.

Section 125 of the Alabama Constitution provides: "bills presented to the Governor within five days before the final adjournment of the Legislature may be approved by the Governor at any time within ten days after such adjournment, and if approved and deposited with the Secretary of State within that time shall become law." In this case the Governor signed the bill on the ninth day but did not deposit the bill with the Secretary of State until the twelfth day after he received it. The court held that bills must be deposited with the Secretary of State after their approval and within the ten day period. This bill and ninety others were not deposited with the Secretary of State until the twelfth day. *See* State v. Eley, ____ So. 2d____ (Ala. Crim. App. 1982) (on appeal).

Some of the bills that received publicity that fall into this category are:

- Bill incorporating the drug law from Title 20 into the Criminal Code (82-3839 and 82-892);
- Bill making prostitution a crime (82-859);
- Bill prohibiting minors who commit certain crimes from being eligible for youthful offender status (82-883);
- Bill imposing mandatory jail sentences for driving under the influence of alcohol (82-884);
- Bill abolishing insanity as a defense (82-888);
- Bill allowing for joinder of defendants (82-903).

The majority of the legislation passed during this session, other than the crime bills, dealt with local legislation.

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The new Legislature elected in November, 1982 met at the Law Center at the University of Alabama for a two day Orientation conducted by the Alabama Law Institute and Legislative Council. One hundred and thirty six of the one hundred and forty Legislators were in attendance for this most successful meeting. Lt. Governor Bill Baxley in his keynote address called for a new Constitution for the State of Alabama.

The Legislature will convene January 11th in Montgomery for an organizational session at which time the House of Representatives will select a Speaker. The leading contenders at this time are two veteran lawyer legislators: Rick Manley of Demopolis and Tom Drake of Cullman. Both Houses will select committee chairmen and make committee appointments. The Regular Session of the Legislature will convene April 19, 1983, and it is expected that they will meet until August , 1983. □

REVISED PROBATE CODE

Annette C. Dodd

Annette Clark Dodd, a professor of law at the Cumberland School of Law, received her B.S. and J.D. degrees from the University of Alabama and did graduate study at the University of Mississippi. Mrs. Dodd is a member of the Alabama Law Institute Uniform Probate Code Committee.

> "This Act shall be liberally construed and applied to promote its underlying purposes and policies. . . . to simplify and clarify the law concerning the affairs of decedents . . . [and] to discover and make effective the intent of a decedent in the distribution of his property."

Thus begins the Revised Alabama Probate Code, which is the culmination of Alabama State Bar studies and reviews since 1959, a major project of the Alabama Law Institute since 1975, and careful study and deliberation prior to enactment by the Legislature. [Act No. 82-399 and codified as Chapter 8 of Title 43, Ala. Code 1975.] Much of the new Code is taken from Articles I and II of the Uniform Probate Code (UPC) and deals with intestate succession and wills. The Alabama Law Institute Probate Code Committee continues its efforts, directed now to considerations of reform in probate procedure and the remaining Articles III through VII of the UPC.

With the mobility of today's society and the increasing likelihood that decedents' estates will be located in more than one state, probate revision in all jurisdictions has been focused on studying the UPC since adoption in 1969. The purpose of the UPC is to make uniform the laws of the various states with respect to wills, intestacy and administration of decedent's estates, to simplify the procedure for administration of estates, and to unify the administration of multi-state estates. Alabama has joined the increasing ranks of those states adopting, at least in part, UPC provisions.

Alabama's prior probate laws, as well as those in most jurisdictions, were patterned after the English Statute of Distribution of 1670, the Statute of Frauds of 1677, and the common law. While the English laws have been greatly reformed in the last two centuries, American laws have been slower to change. The Alabama law prior to the recent revision was not unusual in retaining substantive and procedural distinctions between real and personal property and different provisions for widows and widowers.

Basic to the new Code is the elimination of any distinction in provisions dealing with realty and personalty, provisions relative to the source of property (ancestral property, etc.), and provisions based on sex. "Property" is defined to include both real and personal property. A devise is a testamentary disposition of real or personal property; an heir is a person entitled to the property, real or personal, of a decedent under intestate succession. "Spouse" is used throughout the Code with no distinction being made in regard to sex.

Intestate Succession

Because it is deemed no longer meaningful to have different patterns for real and personal property, all property undisposed of by will passes to the heirs under one statutory scheme, designed to reflect the normal desire of the owner of wealth as to disposition of his property at death. According to the *ALI-ABA Uniform Probate Code Practice Manual*, there are five principal features of intestate succession under the UPC, and these are encompassed within the new Code:

- A larger share is taken by the surviving spouse who is elevated to a first taker. In keeping with the elimination of sex distinctions and real-personal property distinctions in the estate, dower and courtesy are abolished with the surviving spouse taking a minimum of one-half to the maximum of the entire estate depending upon other survivors. [§43-8-57.] ABA studies show most married persons who leave wills give much more to spouses than traditional statutes of descent and distribution; most such wills leave the entire estate to the surviving spouse even when the couple has children.

- Inheritance by collaterals is limited to grandparents and their descendents, thus solving problems occasioned by unlimited inheritance, such as the expense and difficulty in locating more remote relatives, the threat of frivolous litigation in will contests by so-called "laughing heirs," and administrative problems which may be caused by the division of an estate into small portions. In today's society it is unlikely that family ties will be strong with remote relatives, although this may result in more estates which will escheat. This conclusion seems logical since the state is more likely to provide needed care than remote relatives.

- Heirs must survive the decedent by five days. [§43-8-43.] This extension of the reasoning behind the Uniform Simultaneous Death Act may forestall problems by avoiding complex litigation in cases in which it is difficult or impossible to determine order of death. It should also avoid administering the property twice of the first to die, once in his estate and again in his heirs. Finally the provision should avoid unintended results, e.g., where husband and wife are killed in an accident with the wife surviving by minutes, resulting in both her property and his property ultimately being distributed to her heirs. This provision will not apply if its application results in escheat of the estate.

- Adopted children are treated as children born of the adoptive parents

and not of the natural parents, except that adoption by the spouse of a natural parent does not cut off the right of the child to inherit from or through either natural parent. [§43-8-48(i).]

• Advancements must be proved by a writing declaring such by the decedent or acknowledging such by the recipient. It is unrealistic to preserve concepts developed when inter vivos family gifts were rare in an age when such gifts are often made. [§43-8-49.] Similarly, a writing is required to indicate ademption by satisfaction. [§43-8-231.]

From intestate property the share of the surviving spouse is first determined. That share is: the entire estate, if there is no surviving issue or parent; the first $100,000 in value plus one-half of the balance of the estate if no issue but a parent survives; the first $50,000 in value plus one-half of the balance if issue survive, all of whom are also issue of the surviving spouse; one-half of the estate, if at least one surviving issue is not also issue of the surviving spouse. [§43-8-41.] The spousal share is limited to these amounts even if the estate is located in two or more states. This provision is not found in the UPC. However, without such a provision, it would appear that, in situations in which an intestate decedent left land in two or more states and in which there are no issue by a prior marriage, the spouse would be entitled to the first $100,000 or $50,000, as the case may be, in land value in each of the states.

A surviving spouse, for all purposes under the Code, does not include a person who is divorced from the decedent or whose marriage has been annulled, a person who obtains or consents to a divorce or annulment not recognized as valid in this state or who participates in a marriage ceremony with a third person after the decedent obtained such decree or annulment, nor a person who is a party to a valid proceeding concluded by an order purporting to terminate all marital property rights. [§43-8-252.] One who does qualify as a surviving spouse may renounce succession. [§43-8-251.] A waiver in language equating "all rights" before or after marriage or a complete property settlement after or in anticipation of a separation or divorce is deemed a renunciation of benefits as an heir or devisee as well as a waiver of rights of election, exemptions or allowances. [§43-8-72.]

That part of the estate not passing to the spouse passes to the issue of the decedent, who take equally if all are of the same degree, or by representation if not of equal degree. If there are no issue, decedent's parent or parents take equally. If no parent, issue of parents take. If none, paternal grandparent or grandparents take one-half and maternal grandparents the remaining one-half; in the event there is no such grandparent, issue of those grandparents take that respective one-half; if there are no issue of grandparents on one side, that one-half passes to the grandparents or issue on the other side. [§43-8-42.] If there are no grandparents or issue, the estate passes to the State. [§43-8-44.] As noted above, anyone who does not survive the decedent is deemed to have predeceased, except if escheat results; if survivorship cannot be established, it is deemed that the person failed to survive for the required five days. [§43-8-43]; comparable section applied to wills [§43-8-220.]

When representation is called for, the estate is divided at the highest level of a living taker. The estate is divided into as many shares as there are surviving heirs at that level, plus deceased persons of the same degree who left issue, each surviving heir at that level taking one share and the share of each deceased person in the same degree being divided among his issue in like manner. [§43-8-45.] This scheme seems complicated when read; however, the application is uncomplicated and sensible. Simply put, if one or more of decedent's children survive him, the distribution to his issue will be the same as the per stirpal scheme applied under prior intestacy provisions. If, however, no children survive decedent, the modified per stirpal scheme described above may effect a different distribution. If grandchildren are the highest level of living takers, they take equally (with issue of any predeceased grandchild sharing his portion). For example: Assume X, decedent, has three children, A, B, and C. A has one child. B has two children. C has three children.

If one or more of X's children survive him, the distribution is the same as under prior law. If A predeceases, A's child takes one-third and B and C each take one-third. If B and C predecease, A takes one-third, B's two children share the one-third B would have taken for one-sixth each, and C's three children share the one-third C would have taken for one-ninth each.

If, however, A, B, and C all predecease X, the distribution will not be according to a per stirpal scheme, because the first division is at the highest level of a living taker. If all grandchildren survive, each would take one-sixth; if one grandchild also predeceases, his issue would take the one-sixth he would have taken per stirpes. The effect of treating all those on the same level alike, provided they are the highest level of living takers, is based on the presumed intention of the testator to treat all grandchildren equally in the case where all children have died. This same scheme of representation also applies when property is inherited by collateral relatives.

In inheritance the Code makes no distinctions as to relatives of the half blood [§43-8-46], aliens [§43-8-56], or illegitimate children except that paternity must be established by clear and convincing proof [§43-8-48(2)]. Afterborn heirs take if conceived before the intestate's death [§43-8-47].

In the distribution of a totally intestate estate, advancements proved in writing are a charge against the share of any recipient heir. Value is determined as of the time of taking possession or death of the decedent, whichever first occurs. Such charge is not made against issue of a predeceased recipient. [§43-8-49.] Similarly, a debt owed to the decedent is not charged against the share of anyone other than the debtor. [§43-8-55.]

One who is related to the decedent through two lines of relationship is limited to the larger share. [§43-8-58.] This question may arise in the situation of adoption by the spouse of a natural parent whereby the child may inherit from and through both the adoptive and natural parent. For example, if a mother marries her former husband's brother and the child is adopted by him, the child is an issue of the grandparent through both the natural and adoptive fathers.

Elective Share of Surviving Spouse

The elective share provisions of the Code depart radically from the more

complicated augmented estate concept of the UPC. A surviving spouse of a decedent domiciled in this state may take an elective share of the lesser of one-third of the estate or all of the estate less the surviving spouse's separate estate. Such separate estate consists of all property owned by the spouse immediately following decedent's death, including any property received by survivorship as well as death benefits of insurance or employment related benefits from decedent's employer. [§43-8-70.] This right of election is personal to the spouse but may be exercised by order of the court for necessary support of a spouse for whom a guardian has been appointed. [§43-8-71.] Upon the filing for election within six months of date of death or probate of a will, the cour, after notice and hearing, shall determine the amount of the elective share and order satisfaction thereof. [§43-8-73.] In such instance property passing, or which would have passed, to the spouse but for the election is applied first in satisfaction. [§43-8-75.] Abatement for purposes of satisfaction of the balance of the elective share, and for all purposes generally, follows prior law of the following order: intestate property, residual devises, general devises, then specific devises. [§43-8-76.]

In the augmented estate concept of the UPC, the elective share is one-third of the sum of the probate estate, lifetime gifts and death benefits such as insurance and survivorship property to the surviving spouse, and lifetime gifts during marriage to third parties if made within two years of death and if over $3,000 in value or if the decedent retained possession or enjoyment, the right to revoke or right of survivorship. Thus the UPC addresses the case of the decedent who provided adequately for the spouse outside the will by preventing the spouse from also taking a share of the probate estate. Also thwarted is the case of the decedent who attempts to avoid a fair elective share by will substitutes designed to deplete the probate estate. The Code provisions avoid UPC tracing problems, which may tend to leave unsettled the finality of ownership of inter vivos gifts to third persons by omitting any such transfers from consideration in determining a spousal elective share. However, provisions outside the will for a spouse will be included in the separate estate calculation designed to reduce the elective share when the spouse does not need the share for support.

Spouse and Children Unprovided for in Wills

Forced shares for an omitted spouse or pretermitted children are based on the assumption that the testator inadvertently failed to provide for those natural objects of his bounty. If such omission were intentional, the provisions are designed to give effect to such intention. If a testator fails to provide for a child, born or adopted after the execution of his will, or a spouse, who married testator after the execution of the will, such omitted child or spouse receives an intestate share unless it appears from the will that the omission was intentional, that the testator provided for the omitted spouse or child by a transfer outside the will intended to be in lieu of a testamentary provision or, in the case of an omitted child, that the testator had a child at time of execution of the will but devised his estate to the other parent. If the testator fails to provide for a child because of a mistaken belief the child is dead, such child receives an intestate share [§43-8-90, 91.]

Exempt Property and Allowances

A homestead allowance of $6,000 is exempt from all claims in favor of the surviving spouse, or, if none, minor and dependent children. This set dollar amount for homestead allowance is unrelated to any real estate or abode of the decedent. [§43-8-110.] However, any constitutional right of homestead shall be charged against this allowance. In addition, personal effects, automobiles, furniture, or other assets of the estate for a total value of $3,500 are exempt in favor of the surviving spouse or the children, minors and adults of the decedent. [§43-8-111.]

Also, the surviving spouse, minor children, and children who were being supported by the decedent are entitled to a reasonable allowance during the administration of the estate, limited to one year if the estate is insolvent. [§43-8-112.] This family allowance may be paid in a lump sum or installments. The personal representative may determine and disburse a family allowance not exceeding $6,000, or $500 per month, for one year. The court may provide a larger or smaller family allowance taking into consideration the previous standard of living and other resources available to meet living expenses during administration. [§43-8-113.] Homestead and family allowances and exempt property are in addition to any shares provided in a will, by intestate succession or by way of elective share.

With the departure from traditional concepts of homestead, referring to owned realty, toward a set dollar amount, the Code accommodates a modern society in which many families live in apartments by providing them the same protection from creditors' claims and disposition by will. Application of this allowance is quite simple compared to the involved, lengthy prior provisions defined in terms of area, value, abode, substitute realty, determination of quantity of estate taken, solvency, will provisions, etc.

The homestead ($6,000), family allowance ($6,000), and exempt property values ($3,500) operate to set a "small estate" level of up to $15,500 below which administration may be dispensed with or handled summarily.

Wills

Formalities of execution of a will have been reduced to a minimum; the intent, as stated in the Code Commentary, is to validate wills which meet the minimal formalities of the statute. Anyone who is eighteen or more and of sound mind may execute a written will signed by the testator or another in his presence and by his direction and witnessed by two persons generally competent to be a witness. Such competency is not affected by an interest in the will. [§43-8-130, 131.] With the abolition of real-personal property distinctions so go distinctions of capacity based on age under prior law which allowed a person of eighteen years to bequeath personalty and a person of nineteen to devise realty. In keeping with most statutes and the UPC, the Code does not define "of sound mind," leaving intact judicially determined tests of mental capacity.

There is no requirement that witnesses sign in the presence of the testator or in the presence of each other; nor are requirements of publication, request to witness, or place of signature imposed.

The Code does not adopt the UPC provisions which would allow unwitnes-

sed holographic wills. However, a broad choice of law provision may apply to validate such. A written will (precluding nuncapative or soldiers' and sailors' wills) is valid if executed in accordance with the law of the place of the testator's domicile, abode or nationality at the time of execution or date of death. [§43-8-135.]

A will may be made self-proved by acknowledgment by testator and witnesses before an officer authorized to administer oaths. [§43-8-133.] Such will is admitted to probate without testimony of witnesses; it creates a conclusive presumption of compliance with signature requirements and a rebuttable presumption of compliance with other requirements of execution. This does not limit contest on any ground other than signature requirements. For example, it would not preclude proof of undue influence, lack of testamentary capacity, fraud, mistake as to contents, etc.

A will may be revoked totally or partially by a subsequent will indicating an express or implied revocation. A will may be revoked totally by a physical act of burning, tearing, cancelling, obliterating or destroying with the intent to revoke. [§43-8-136.] The only revocation by operation of law is the revocation of provisions in favor of a former spouse upon divorce or annulment. [§43-8-137.] If a will revoking a prior will is subsequently revoked, the prior will is revoked unless an intent to revive the prior will is evident from the circumstances of the revocation of the subsequent will or the former will is republished by codicil. [§43-8-138.] This is more restrictive than the UPC which would allow contemporaneous or subsequent declarations of intent.

Adding to the flexibility available to testators is a Code provision allowing the testator to indicate the law of any particular state for purposes of interpretation of meaning and legal effect of a disposition in a will. [§43-8-221.] Where the intention is unclear or not indicated, the Code sets up rules of construction.

The Code specifically provides for incorporation by reference, testamentary additions to revocable or irrevocable trusts and events of independent significance. [§43-8-139 through 141.]

A devisee who does not survive the testator by five days is deemed to have predeceased the testator unless the will contains language dealing with simultaneous death, common disaster or survivorship requirements. [§43-8-220.] A testator may include language in his will which will clearly state how simultaneous deaths are to be treated. If the will provides for the presumption of survival of a devisee, or requires survival for a stated period, that is an enforceable provision. [*ALI-ABA UPC Practice Manual*, §314, 1st ed. 1972.]

A devise to a grandparent or issue of a grandparent who dies before execution of the will, who fails to survive the testator, or who is treated as if he failed to survive the testator (as in the case of failure to survive by five days) is taken by the issue of the deceased devisee who survive the testator by five days. This provision specifically applies to class gifts. [§43-8-224.] Any devise which lapses or fails for any reason becomes a part of the residue; a share of one residuary devisee which fails passes to any other residuary devisee or devisees. [§43-8-225.] This anti-lapse provision would apply to all who would take by intestate succession, except the surviving spouse. Applying also to gifts which would be void rather than lapsed under the common law, the issue are substituted legatees. If the deceased devisee left no surviving issue, the devise would not be saved for his other heirs.

A specific devise passes subject to any mortgage interest therein without right of exoneration regardless of a general directive to pay debts. [§43-8-228.]

A general residuary clause does not exercise a power of appointment unless specific reference is made to the power or other intent to include the appointive property is indicated. [§43-8-229.]

If a testator intends a specific devise of securities, the specific devisee is entitled to: as much of the devised securities as is part of the estate at the time of the testator's death; any additional or other securities of the same entity owned by the testator as a result of action initiated by the entity and which were not acquired by exercise of purchase options, securities of another entity derived from merger, consolidation, reorganization, etc. initiated by the entity; and any additional securities owned as a result of a plan of reinvesment of a regulated investment company. [§43-8-226.]

A specific devisee has the right to remaining specifically devised property and the balance of any purchase price owing to testator at his death, unpaid insurance proceeds, condemnation awards and property owned by testator as a result of foreclosure of the security for a specifically devised obligation. If a guardian sells specifically devised property or receives proceeds from insurance or a condemnation award thereon, the specific devisee has a right to a general pecuniary devise equal to the price or proceeds. [§43-8-227.] Ademption by satisfaction must be proved in writing by the decedent or acknowledged in writing by the devisee. [§43-8-231.]

One who feloniously and intentionally kills the decedent forfeits any rights to participate in the estate of the decedent as an heir, devisee, appointee, surviving spouse, child, etc. In such instance, the estate passes as if the killer predeceased the decedent; the killing operates as a severance of any rights of survivorship and precludes taking any benefits of insurance or other contractual arrangement. A final judgment of conviction is conclusive. In the absence of a conviction, the probate court may determine by a preponderance of the evidence whether a killing was felonious and intentional. [§43-8-253.] This provision codifies the previously applied public policy of preventing a person from benefitting from his own wrong, thus barring the killer from participating in the estate or from collecting proceeds of a life insurance policy. It goes further, however, and specifically applies to survivorship interests and other interests as yet not dealt with in the state courts. It settles procedural questions of the effect of an acquittal or no acquittal, whether through failure to prosecute or by a verdict of acquittal. And, the treatment is logical.

These aspects of the previous provision typify the effect of the new Code on prior law. Substantive law is changed but not drastically in most areas. Problem areas not previously dealt with in the statutes or decided by the courts are met and specifically set out in a logical manner aimed at producing a logical result. The provisions, both new and those embodying concepts already effective, are made with the purpose of making them clear and unambiguous. □

CONTEMPORARY LITIGATION SERIES

The Michie Company announces a new series of handbooks and treatises especially for the trial bench and bar. Titles in the Contemporary Litigation Series will include:

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Focuses on judicial resolution of land use disputes: legal theories, strategies and techniques involved in litigating zoning and land use cases.
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About Members Among Firms

About Members

Tuscaloosa defense attorney **Ralph I. Knowles** was presented the first Roderick Beddow, Sr. Award at the fall seminar of the Alabama Criminal Defense Lawyers Association. The newly established award presented Knowles is to become an annual honor to the person who has shown great effort and achievement in the areas of criminal defense and preservation of individual liberties. It was named in honor of Roderick Beddow, Sr., a Birmingham attorney who was considered one of the finest defense lawyers in the country. Knowles is a partner in the law firm of Drake, Knowles and Pierce.

Thomas B. Hill, partner in the Montgomery law firm of Hill, Hill, Carter, Franco, Cole and Black, and **Hugh A. Lloyd,** a partner in the Demopolis law firm of Lloyd, Dinning & Boggs, were elected to the board of directors of the Alabama Chamber of Commerce at its annual meeting in October.

Anniston lawyer **William S. Halsey** has been awarded a National Certificate as a Civil Trial Specialist from the National Board of Trial Advocacy (NBTA), the only national certification program for the legal profession. Halsey is one of seventy trial lawyers across the country who met NBTA's rigorous national standards and passed the six-hour, comprehensive written examination on civil trial law last June. He joins eight other Alabama trial lawyers who are NBTA certified.

Four Alabama lawyers were inducted into the prestigious American College of Trial Lawyers at the American Bar Association Convention in San Francisco in August. Inducted were **Jack Livingston,** Scottsboro; **Bill Donald,** Tuscaloosa; **Walter Byars** and **Charles Stakely, Jr.,** both of Montgomery.

Also at the ABA Convention, **James M. Sizemore, Jr.** of Sylacauga was appointed vice chairman of the Committee on Automobile Law, Tort and Insurance Practice Section of the American Bar Association.

Donald L. Collins, a partner in the Birmingham firm of **Collins & Alexander,** has been appointed by President Reagan to serve on the Advisory Board of the National Institute of Justice. Collins was also named to the Executive Committee and was elected Legal Counsel to the Board.

William B. Hairston, president-elect of the Alabama State Bar, was named Lawyer of the Year by the Birmingham Legal Secretaries Association at their November banquet held during Legal Secretaries Week. Hairston is a member of the firm Engel, Hairston, Moses and Johanson.

U.S. Attorney General William French Smith has appointed **Charles J. Cooper** as Deputy Assistant Attorney General in the Civil Rights Division, U.S. Department of Justice. Cooper is a graduate of the University of Alabama School of Law where, among other honors, he served as editor in chief of the *Alabama Law Review.*

Birmingham lawyer **Lanny S. Vines** has been appointed to a one-year term as a vice chair of the Administration Department of the Association of Trial Lawyers of America. The Association of Trial Lawyers of America is the world's largest trial bar organization with more than 50,000 members throughout the United States, Canada, Puerto Rico, and other countries.

Among Firms

Dennis Riley, formerly of **Camp & Riley,** and **John O. Cates,** formerly of **Ford, Caldwell, Ford & Payne,** announce the formation of a partnership for the general practice of law under the firm name of **Riley & Cates.** Offices are located at Suite D, 223 East Side Square, Huntsville, Alabama 35801.

The firm of **Stanard and Mills** takes pleasure in announcing that **Herman D. Padgett,** having withdrawn as a member of the firm of **Bodiford and Padgett,** has become a member of the firm. Offices are located on the Eighteenth Floor, First National Bank Building, Mobile, Alabama 36652.

William H. Allen, Jr. announces the opening of his law office, specializing in civil and probate matters, at 118 North Ross, Auburn, Alabama 36830.

Martin Ray, Walter Oliver and **Ray Ward** welcome **Cameron Parsons** in the formation of the partnership of **Ray, Oliver, Ward and Parsons** for the general practice of law and are pleased to announce the association of **Chaney L. Clark** and **Dennis Herndon.** Offices are at 2020 University Boulevard, P.O. Box 65, Tuscaloosa, Alabama 35402.

Carl E. Chamblee, Jr. and **Donald R. Harris, Jr.,** and their associates, **G. Edward Coey, Patricia N. Moore** and **Mark L. Carter,** are pleased to announce the relocation of their offices to Suite 211, Beacon Parkway West, Birmingham, Alabama 35209.

The firm of **Brewer, Lentz, Nelson & Whitmire** takes pleasure in announcing that **Thomas J. House** is now associated with the firm. Offices are located on the 2nd Floor, First Federal Savings & Loan Association Building, Decatur, Alabama.

Major Bashinsky and **Benjamin C. Maumenee** are pleased to announce the formation of a legal partnership to be known as **Bashinsky & Maumenee,** Attorneys at Law. Offices are located at Fairhope Professional Center, 23 North Section Street, Fairhope, Alabama 36532.

Joseph E. Walden is pleased to announce the opening of his office for the general practice of law at 3170 Montgomery Highway, Suite G-4, P.O. Box 37, Pelham, Alabama 35124.

Gene W. Gray, Jr. announces the opening of his office for the general practice of law with offices at 110 Office Park Drive, Suite 230, Birmingham, Alabama 35223.

J. Thomas King and **J. Thomas King, Jr.** announce the change of the firm name from **King and King** to **King, King and King,** Attorneys at Law, and take pleasure in announcing that **Alan L. King** has become a member of the firm. The firm is located at 9131 Parkway East, Birmingham, Alabama 35206-1591.

Andrew J. Gentry, Jr. and **G. Randall Spear** are pleased to announce the formation of a partnership for the general practice of law under the firm name **Gentry and Spear** with offices at Suite 201, Gentry Building, 165 East Magnolia Avenue, P.O. Box 2071, Auburn, Alabama 36830, (205) 821-4941.

The law firm of **Hewlett & Black,** 604 Geneva Avenue, Muscle Shoals and 103 W. Fourth Street, Tuscumbia, takes pleasure in announcing that **Steven K. Aldridge** has become an associate of the firm.

Caddell, Shanks, Harris, Moores & Murphree takes pleasure in announcing that **Kenneth M. Schuppert, Jr.** is now associated with the firm. Mr. Schuppert was formerly law clerk to Judge Daniel H. Thomas of the United States District Court for the Southern District of Alabama. Offices are located at 230 East Moulton Street, Decatur, Alabama 35601.

Roy W. Williams, Jr., Martha E. Williams and **Daniel B. Williams** are pleased to announce the formation of a partnership for the general practice of law under the firm name of **Williams & Williams.** Offices are located at 417 1st Avenue, SW, Suite 110 Downtown Plaza, Cullman, Alabama 35055. Telephone (205) 739-5400.

Donald L. Collins and **Melton L. Alexander,** formerly with the United States Department of Justice, announce the opening of their offices at Suite 1240, Park Place Tower, 2001 Park Place, Birmingham, Alabama 35203 for the practice of law.

Effective January 1, 1983, **Cabaniss, Johnston, Gardner, Dumas & O'Neal,** Birmingham, Alabama, and **McRight, Rowe & Stewart,** Mobile, Alabama, are pleased to announce the merger of their firms for the continued practice of law in Birmingham and Mobile, Alabama under the name of **Cabaniss, Johnston, Gardner, Dumas & O'Neal,** with offices located at 1900 First National—Southern Natural Building, Birmingham, Alabama 35203 and 2210 First National Bank Building, Mobile, Alabama 36652.

R. Wayne Wolfe and **Robert H. McCaleb** are pleased to announce the formation of their partnership for the practice of law. **Wolfe and McCaleb,** Suite 512, Terry Hutchens Bldg., 102 Clinton Ave. West, Huntsville, Alabama 35801. Telephone 534-3794 or 534-2205.

Pruitt and Pruitt, P.A., attorneys at law, announce the change of the firm name to **Pruitt, Pruitt, Watkins and Robinson, P.A.** and take pleasure in announcing that **Nathan G. Watkins, Jr.** and **C. Frederick Robinson** have become members of the firm. The new address is P.O. Box 1037, Livingston, Alabama 35470.

Merrill W. Doss and **Michael E. Sparkman,** of the firm **Doss & Sparkman,** 214 North Sparkman Street, Hartselle, Alabama 35640, take pleasure in announcing that **Steven David Kerr** has become an associate of the firm.

The firm of **Porter & Porter** announces that **David Shields Hassinger** has been made a member of the firm and that the firm shall be known as **Porter, Porter, and Hassinger,** with offices at 1201-08 City Federal Building, Birmingham, Alabama 35203. (205) 322-1744.

The firm of **Ramsey & Baxley** takes pleasure in announcing that **Charles H. McDougle, Jr.** has become associated with the firm. Offices are located at 207 West Troy Street, Dothan, Alabama 36303.

The law firm of **Nash & Walker, Attorneys, P.A.** is pleased to announce that **Walter W. Kennedy III,** formerly an associate, has become a member of the firm and that the firm name has been changed to **Nash, Walker & Kennedy, Attorneys, P.A.** Offices are located at 304 Third Street North, Oneonta, Alabama 35121.

J. M. Sides, Jerry B. Oglesby, Ronald S. Held and **Thomas E. Dick** are pleased to announce their partnership for the general practice of law under the firm name of **Sides, Oglesby, Held and Dick.** Offices are located at P.O. Box 1849, 1111 Quintard Avenue, Anniston, Alabama 36202.

The law firm of **George E. Trawick,** Attorney, P.C., announces the association of **Ray T. Kennington** and **Henry D. Binford.** Offices are located at P.O. Box 47, Clio Road, Ariton, Alabama 36311-0047.

The firm of **Gallalee, Denniston & Cherniak, P.A.** takes pleasure in announcing that **Caroline E. Wells** and **Dale B. Stone** have become members of the firm. Offices are located at 2 South Water Street, Mobile, Alabama 36652.

Poole & Poole is pleased to announce that **Cleveland Poole** has become a member of the firm and that the firm name has been changed to **Poole & McFerrin.** Offices are located at 600 East Commerce Street, Greenville, Alabama 36037.

Mark A. Stephens, formerly of **McDuffie, Holcombe, Stephens & Coleman,** and **Sanford E. Gunter** announce the formation of the law firm of **Stephens & Gunter.** Offices are located at 507 Alabama Federal Building, 550 Greensboro Avenue, Tuscaloosa, Alabama 35401.

Hand, Arendall, Bedsole, Greaves & Johnston takes pleasure in announcing that **Daniel G. Blackburn, Douglas L. McCoy, Helen Johnson Alford** and **James W. Sherwood, Jr.** have become associated with the firm. Offices are located at 3000 First National Bank Building, Mobile, Alabama 36601.

Chris C. De Laney takes pleasure in announcing that his son, **Michael C. De Laney,** has joined him in the private practice of law with emphasis on Estate and Investment Planning under the firm name of **De Laney and De Laney,** with offices located at 16 Midtown Park East, Mobile, Alabama 36606.

Hornsby, Blankenship & Robinson, P.A., located at 229 East Side Square, Huntsville, Alabama 35801, is pleased to announce that **David H. Meginniss** has become a member of the association and the new name of the law firm is **Hornsby, Blankenship, Robinson & Meginniss, P.A.** □

It Happened at the Bar

The Bar in the old days was probably more colorful though less sophisticated. Some of the lawyers had been admitted to practice so long ago, if they were admitted at all, that their credentials were just taken for granted. It is a safe bet that some of them never saw the inside of a college, but they could make noises like lawyers, and they were neither hindered nor handicapped by any strict rules.

One member of the old school was George Carter. He and I were co-counsel in a case brought against Pizitz Department Store for having repossessed a lady's radio when she was not in default on the payments. Of course, Pizitz denied this, but in the course of our client's testimony she said that, when the men were taking the radio, one of them had pushed her around roughly. So, I added a count for assault and battery, and, in arguing the case to the jury, I told them they could forget the first count for the premature taking of the radio and instead just try the case on the more serious complaint, if the jury believed that the rude representative of the defendant had pushed our lady around.

At this point, my forwarding attorney, Mr. Carter, stood and vigorously objected to my statement. The judge said, "But Mr. Carter, Mr. Hare is on your side. Proceed, Mr. Hare."

I did not finish the next sentence before Mr. Carter was on his feet again objecting vociferously. Again the puzzled judge reminded George that he was my partner in the case. George persisted. I withdrew my appearance and stated to the jury that I could not proceed under those circumstances and that Mr. Carter, apparently, did not know what he was doing. The plaintiff did not have a lawyer and lost the case.

I met George in the hall the next day and asked him if he had too much to drink when the fiasco occurred. His answer is a classic: "Francis, I thought you had more damn sense than that. If the judge had overruled my objection, I could have appealed; if he had sustained it, you could have appealed; and, if you had not been so stupid, we would have had him going and coming." □

An Election Where Push Came to Shove?

A bet with Probate Judge Charles Hall, on who would win the governor's race of 1914, earned Frank S. Stone a ride around the Baldwin County Courthouse in this wheelbarrow. When Henderson won the election, Stone, then county solicitor for Baldwin County, was declared winner of the bet and is shown ready for his trek around the Courthouse Square. Joseph B. Blackburn beat the drum for the occasion.

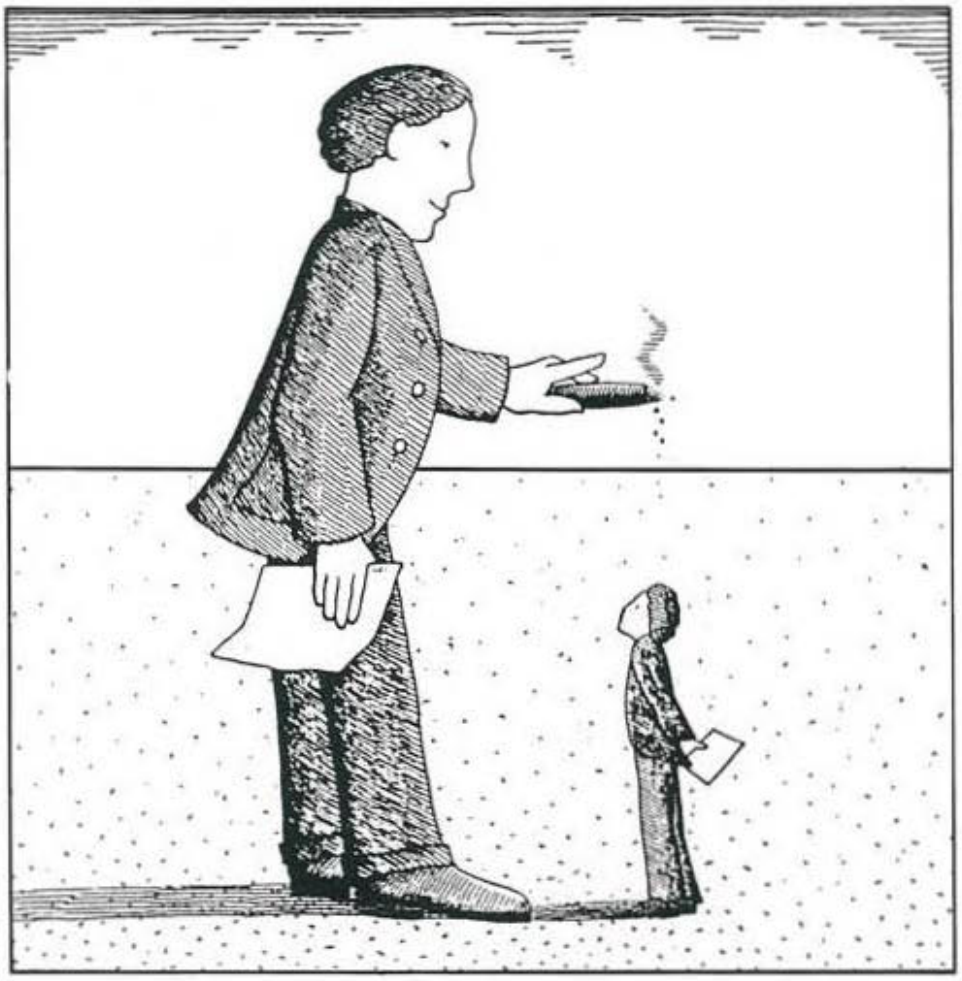
Frank Stone is State Bar President Norborne C. Stone, Jr.'s grandfather, and the boy with the black hat directly above Joseph Blackburn is his grandson, J. B. Blackburn, who has been a practicing attorney in Baldwin County for the past fifty-four years.

The preceding "Bar Story" is taken from Birmingham lawyer Francis H. Hare's book *My Learned Friends—Memories of a Trial Lawyer*. Members of the bar are encouraged to submit interesting tales of unique days in court, or other actual stories that are related to the practice of law, to *The Alabama Lawyer* for publication.

Thanks to Samuel N. Crosby, of the firm Stone, Partin, Granade & Crosby in Bay Minette, for submitting this photo and story. Any member of the Alabama State Bar possessing a historic bar-related photograph, and who would be willing for it to appear in *The Alabama Lawyer*, should contact the managing editor.

Fairweather, Winters & Sommers

The Alabama Lawyer, relying on the little known bar journal exemptions to the laws of libel and receiving stolen property, has decided this year to publish memoranda purloined from the files of the prestigious law firm of Fairweather, Winters & Sommers by Arnold B. Kanter. The columns have appeared in ***Chicago Lawyer*** *and, some of them, in Kanter's book,* ***The Secret Memoranda of Stanley J. Fairweather,*** *published recently by Swallow Press and Ohio University Press. Kanter is on leave as a partner of the Chicago law firm of Sonnenschein Carlin Nath & Rosenthal to do some writing and speaking.*



This will hurt you more than it hurts us

After spending countless hours each fall catering to every whim of scores of snotty-nosed law students from coast to coast, it is always dismaying for the Fairweather, Winters & Sommers Hiring Committee, as the December 15 decision day approaches, to receive the inevitable flood of letters from law students around the country rejecting FWS offers. Recently Stanley Fairweather received a note from one of the upstarts with whom he'd passed an excruciating twenty minutes this fall.

□□□

December 18, 1982

Dear Mr. Fairweather:

It is with regret extraordinaire that I inform you that I will be unable to accept your gracious offer of a summer clerkship with your firm. It was an extremely difficult and heart wrenching decision for me to make, particularly when I considered the highly impressive attorneys and genuinely pleasant atmosphere that prevailed at your firm. Frankly, though, I got a much better deal elsewhere.

I thank you again for your kind offer. Also, please thank Ms. Rusho-Cruter who was extremely helpful to me. I would hope that if for some reason I decide not to return for permanent employment to the firm I clerk for this summer that you would again consider my application.

Best of luck in your recruiting endeavors and warm wishes for a joyous holiday season.

With high respect,

R. E. Jection

□□□

Mr. Fairweather forwarded the letter to the Hiring Committee which, in a fit of pique, decided to retaliate by drafting the following letter for Mr. Fairweather's signature.

□□□

December 21, 1982

Dear Mr. Jection:

Yours of the 18th, which I circulated among members of the Hiring Committee, evoked reactions ranging from extreme relief to almost uncontrollable giggling. To be perfectly candid(e) your letter gave all of us renewed faith that this is, indeed, the best of all possible worlds.

You may not have realized just how correct you were when you said that you were "unable to accept" our offer at the time you wrote your letter. As you know, our offer expired at the stroke of midnight on December 15, the time when the National Association for Law Placement has decreed that all highly recruited potential lawyers turn back into ordinary law student bumpkins. Since your letter was dated three days after that magic date, even if you'd been giving us "good news," we would have had some bad news for you. A tad more attention to your contracts course might have stood you in good stead.

For future reference, we want you to know that we truly don't give a poop how tough your decision was. We do, however, take at face value your representation that this was, in fact, an extremely difficult decision for you. This seems to have been verified empiri-

cally beyond any reasonable doubt by your incessant phone calls (collect) to every member of the Hiring Committee and by your six visits to the firm subsequent to your original call-back interview (Miss Rusho-Cruter, by the way, says that if she ever sees your puss around our firm again, she will feed you to the firm's paper shredder.)

The difficulty that you have had in making your decision and your gutless method of writing, rather than calling, us with your news suggest that your prospects of becoming a takecharge lawyer are not brilliant. Further evidence of this was your confiding to one of our associates on your fifth visit to the firm that thinking about your decision was causing you migraine headaches and periodic vomiting.

You may, perhaps gain some modicum of solace in knowing that our own decision on whether to extend an offer to you was deadlocked until, on the 23rd ballot, a member of the committee suggested that the matter be resolved by horse-and-goggling. You won, as a rock breaks a scissors.

Nor, frankly, Mr. Jection, do we care that you found our attorneys impressive and our atmosphere pleasant. We've been wowing law students for decades and, in all candor, have found that it's not that tough to impress a second year law student, even a pseudo-sophisticate like yourself. And, though our atmosphere may well have seemed pleasant to you in short snatches, we feel sure as God made little green apples that you would have found it oppressive in the long haul; certainly most of us do, but we put up with it because the money's good.

We do congratulate you on your establishment of a new firm interviewee record by having milked the firm for seven lunches, four dinners and three all-expenses paid trips to Chicago for you and your "significant other." (In this regard, you may be interested to know that your wife of five years has expressed some chagrin at your constant reference to her as a "significant other.")

Our experience with you has caused us to rethink our wining and dining policy and to revamp it in a manner that makes it virtually impossible that your record will be exceeded. Accordingly, we have bronzed your expense reimbursement slips and placed them in your interviewee hall of fame along with the 17-page resume of I.M. Spectackler, the fold out color picture resume of Getta Lodamee, the rejection letter we wrote to Louis Dembitz Brandeis and much other hiring memorabilia.

We have bronzed your expense reimbursement slips and placed them in our interviewee hall of fame.

As to your hope that we would consider your application again should you submit one next year, we would encourage you to do so. In fairness, however, I should disclose that it is the present consensus among committee members that it will be an extremely nippy day in hell before we would invite you in for more interviews with us. I am encouraging your reapplication, however, as several committee-members would experience more than moderate satisfaction in turning you down cold.

Mr. Jection, we appreciate your having agonized over this decision and recognize that you must have fantasized over the anguish we would feel at your rejection letter. You should know, however, that we put out offers to so many second year law sutdents that, by the time they accept or reject our offers, we don't even remember who they are or why we made offers to them in the first place.

We hope you have a gala summer at your chosen firm and that you don't screw up so badly that you are forced to come groveling back to us next fall.

Good tidings of comfort and joy, comfort and joy.

Very truly yours,

Stanley J. Fairweather

□□□

From the Center for Professional Responsibility

Opinions of the General Counsel

William H. Morrow, Jr.

QUESTION:

May an attorney or a law firm deposit trust funds of one's clients in an interest bearing trust fund account?"

ANSWER:

There is no ethical impropriety in an attorney depositing trust funds of a client in an interest bearing trust account.

DISCUSSION:

Disciplinary rule 9-102(A)(1) & (2) provides:

> "DR 9-102—Preserving Identity of Funds and Property of a Client.
> (A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited *in one or more identifiable bank accounts maintained in the state in which the law office is situated* and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
> (1) Funds reasonably sufficient to pay bank charges may be deposited therein.
> (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved." (emphasis added)

The disciplinary rule simply provides for deposit of a client's funds in "one or more identifiable bank accounts maintained in the state in which the law office is situated." Since the rule does not specify the precise nature of the bank account there would be no impropriety in depositing a client's funds in an interest bearing account.

QUESTION:

If the answer to the preceding question is in the affirmative, what may ethically be done, under the Code of Professional Responsibility, with the interest so generated by the trust funds deposited in such an account?

ANSWER:

Since the money in the bank account is the property of the client, it follows that the interest is also the property of the client and the attorney must "promptly pay over money collected by him for his client" including both principal and interest when the same is due.

Disciplinary Rule DR 9-102(B)(4) provides:

> "A lawyer shall:
> (4) Not misappropriate the funds of his client, either by failing *promptly* to pay over money collected by him for his client or by appropriating to his own use funds entrusted to his keeping." (emphasis added)

DISCUSSION:

Disciplinary Rule 9-102(A) does not specify that the interest earned on the funds in the client's trust account belong to the client. Commentators have criticized this omission, noting that it might allow attorneys to misappropriate such interest. See *Attorney Misappropriation of Client's Funds: A Study in Professional Responsibility,* 10 U. Mich. J. L. Ref. 415 (1977). At least one court has implied that when the conduct of attorneys who have been entrusted with funds is being examined, misappropriation or deprivation of interest should be considered. *Greenbaum v. State Bar,* 15 Cal. 3d 893, 126 Cal. Rptr. 785.

QUESTION:

When an attorney is named as a party plaintiff or defendant in a lawsuit may he testify in his own behalf and also act as his own trial counsel?

ANSWER:

An attorney who is a party to a lawsuit may testify in his own behalf and also act as his own trial counsel since it is implicit that a lay person may not only try his own case but also testify in his own behalf. Merely because a party is a lawyer does not deprive him of that same right.

DISCUSSION:

Disciplinary Rule 5-101(B) provides in part as follows:

> "A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness . . ."

On at least two occasions the Office of General Counsel and the Disciplinary Commission have been called upon to determine the ethical propriety of an attorney who is named as a party in a lswsuit testifying in his own behalf and also acting as trial counsel.

The case of *International Electronics Corp.* v. *Flanzer* 527 F. 2d 1288, (2nd Cir. 1975) involved a suit brought against an attorney and certain other defendants. The attorney was an essential witness on his own behalf and on behalf of the other defendants. The attorney and the other defendants were represented by a law firm in which the defendant attorney had been a partner at the time of the transactions which gave rise to the suit. In denying the plaintiffs motion to have the defense firm disqualified the court stated:

> "It is implicit that a lay party may not only try his own case but also testify on his own behalf. We do not think that because he is a lawyer he should be deprived of that right.
>
> From what we have said, it must be clear that we do not think the question of 'appearances' under Canon 9 is particularly acute in this case. We caution . . . that Canon 9, though there are occasions when it should be applied, should not be used promiscuously as a convenient tool for disqualification when the facts simply do not fit within the rubric of other specific ethical and disciplinary rules."

If a member of an attorney's law firm may act as trial counsel when the attorney is a party to the lawsuit and also a necessary witness in his own behalf, we perceive no ethical impropriety in the attorney himself acting as trial counsel. As stated by the court in *Harrison* v. *Keystone Coca Cola Bottling Co.* 428 F. Supp. 149 (M.D. Pa. 1977):

> "Implicit in the right to represent oneself is the right to be represented by counsel of one's own choosing. We know of no authority which says that a party forfeits this right merely because he is an attorney."

See also *Norman Norell, Inc.* v. *Federated Department Stores, Inc.* 450 F. Supp. 127. (M.D.N.Y. 1978).

Questions have arisen as to the propriety of an attorney who is named as a party plaintiff or party defendant representing not only himself but his co-plaintiffs or defendants. There is nothing unethical per se in such representation. However, the lawyer should be mindful of Ethical Considerations 5-14 through 5-17 and DR 5-105 and the conflict of interest problems that may arise in a specific case.

We express no opinion as to the wisdom of an attorney testifying in his own behalf and also acting as trial counsel. This involves a question of trial tactics rather than one of legal ethics. □

Disciplinary Report

Effective September 14, 1982, WARREN L. FINCH, of Mobile, was disbarred from the practice of law for violations of DR 1-102(A) (3), 1-102(A)(4), 1-102(A)(6), 6-101(A), 7-101(A), and 9-102(B)(4).

On October 1, 1982, previously suspended Lee County lawyer MICHAEL I. KENT was publicly censured for having knowingly sworn falsely in answering certain interrogatories propounded to him by the State Bar during Mr. Kent's previous disciplinary proceeding, in violation of DR 1-102(A)(4) and DR 1-102(A)(6).

There were also four private reprimands administered to attorneys on October 1, 1982.

Opening of Court Ceremony
Appellate Courts of Alabama

October 4, 1982
Memorial Address

As Delivered by the Honorable J. O. Sentell
Clerk of the Supreme Court of Alabama, 1967-1982
Editor of *The Alabama Lawyer*, 1967-1982

Mr. Chief Justice, Justices of the Supreme Court, Judges of the Courts of Appeal, Members of the Clergy, Members of the Alabama State Bar, Friends:

During the past term, the cold hand of death touched forty-four of those whose names are written upon the roll of attorneys in the Supreme Court. At the beginning of a new term we meet together in the solemnity and beauty of this sanctuary to honor their memory. This is the largest number of deaths of the bench and bar within recent history.

The forty-four represent all ages—the young lawyer, the octogenarian, the nonagenarian. There is a span of sixty-two years between the youngest and the oldest. They lived in all sections of the state—from the Tennessee to the Gulf of Mexico, from the Chattahoochee to the Tombigbee, and some died outside the borders of the state.

They represented all aspects of law—the corporate attorney, the large firm, the single practitioner, the generalist, the specialist, the trial lawyer, the examiner of titles, the counselor, the advocate. They found and traveled different avenues for their expression of their commitment to the law. They were judges, a president of the Alabama State Bar, attorney for the government, assistant attorney general, district attorney, court administrator, legislator, business executive. Although there was a diversity in the ways they found expression for their commitment to the law, there was unanimity in their commitment to the law.

They were outstanding in many ways. They were true patriots. They fought for their nation from the Argonne Forest of World War I to the sandy and bloody beaches of the South and West Pacific in World War II.

They achieved success and renown through hard' earnest work, effort and labor. It is a wonderful way in which the many talents of the law—the many talents of the lawyer—can be expressed in service to humanity, and to the nation, and to the community. The efficacy of a memorial service is to keep bright and fresh the attributes that adorned those whom we now honor.

Before their names were placed on the roll of the Supreme Court, each of them, while invoking divine aid, took the solemn oath:

> 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 courts as to the client; I will use no falsehood or delay any person's cause for lucre or malice; and 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.

They were faithful to the oath that they took. They were faithful to their clients; they were faithful to the Court; they were faithful to all that was good, right, and just. They supported the constitution of their state and of their nation. They had faith in the courts. They had faith in the fundamental laws of this state and nation. They had faith in our system of jurisprudence.

There are many aspects of a lawyer's character which the public fails to recognize in the busy life and work of the lawyer. Hope is a mighty factor in the life and work of the lawyer as he strives to maintain the interests and the rights of his client. There is hope in the heart of the lawyer as the lawyer seeks to maintain justice and seeks, as an officer of the court, to see that justice is properly administered. Concomitant with the faith and hope of a lawyer is valor. The public fails to see that the lawyer and the jurist are brave and courageous as they stand against pressures when at stake there are rights and justice.

The law demands utmost devotion of those who embrace it as a profession. Their devotion transcends the requirements of the law. These lawyers not only were devoted to the law. They loved God, their home, their family, their loved ones and humanity, and they served them well.

It is with sadness that we note their departure, but they have left with us a beautiful, precious and imperishable legacy that will forever be enshrined in our memory. As a great man of the spirit wrote over 1900 years ago to his friends at Corinth, "So faith, hope and love abide, these three, but the greatest of these is love."

The Final Judgement

Sam Wesley Pipes III
1916-1982

On Thursday, October 28, Sam Pipes, one of Alabama's finest lawyers, went to his reward. His career at the Bar commenced upon his graduation from the Law School at the University of Alabama in 1938. He continued to practice until shortly before his death in his home town, Mobile. That career included not only most competent representation of his clients, but also a great love of and service to the University of Alabama Law School, Alabama State Bar, and Alabama's system of justice. He was president of the University of Alabama Law School Foundation from 1966 until 1968 and chairman of the Law School Foundation in 1966. For the State Bar he headed the fund-raising drive for the foundation which was responsible for payment for the Bar headquarters in Montgomery. The State Bar recognized his many years of service when it elected him president in 1968.

Over the years he served on countless committees by appointment of the Supreme Court of Alabama and was also a Special Justice of our Supreme Court.

Sam's legal knowledge and total integrity were well known to all who came in contact with him. With it all, his sense of timing and his marvelous sense of humor made friendship with him a rare privilege to be cherished.

This summer Walter Mims and I flew to Mobile to spend the morning with Sam at his office. The three of us had served together for several years on the Grievance Committee when we initiated the investigation of the quickie divorce schemes here in Alabama and the ensuing prosecutions. Despite ill health, Sam was his usual entertaining, knowledgeable and charming self. That visit will always live in Walter's mind and in mine.

With deep sadness we mourn Sam's death and extend to his wife Maude and his family our heartfelt sympathy, but it is with genuine affection and admiration that we recall Sam Pipes—a great lawyer and a true friend.

—Robert E. Steiner, III

Richard Taylor Rives
1895-1982

Chief Justice Earl Warren, early in his Supreme Court career, after being profoundly impressed by an opinion of Judge Richard T. (Dick) Rives of the old Fifth Circuit, reportedly asked Justice Hugo Black:

"What kind of a man is this Dick Rives?"

Justice Black replied with a question of his own.

"Chief, what do you get when you cross a lion with a lamb?"

"I don't know, Hugo."

"You get a Dick Rives, that's what."

Never was a federal circuit judge more respected by the members of the one court that could reverse him, the Supreme Court of the United States. This, however, does not explain why Dick Rives was the most influential and powerful federal judge below the Supreme Court level during the period between *Brown v. Board of Education* and, at least, his taking senior status, in 1966. That came from another kind of power—the

natural power that radiates from a gentle, just, principled man of courage. Dick Rives never hurt anyone else by word or deed. Nor could any other person hurt Dick Rives. You could not blackmail him. He never did anything wrong. You could not scare him. He knew no fear. You could not as a personal friend or as a community hurt him by withdrawing treasured relationships. He could do without you if necessary to accomplish the right as he saw it.

No one in America has contributed more to racial justice than Dick Rives. His commitment to that principle, said Judge Rives, resulted in part from the most severe tragedy of his life. Judge Rives worshipped the memory of his son, Dick Rives, Jr., who was killed in a tragic automobile accident before graduation from college. According to Judge Rives, Dick Rives, Jr. had developed a strong sense of racial justice and is the person who contributed most to Judge Rives' own profound commitment to racial justice.

One shudders to think of what would have happened to the states in the old Fifth Circuit in the early post *Brown* years if Dick Rives had not been in the right place at the right time. The old Fifth of those days had its share of great men; but great men have a way of getting into competition with one another, sometimes to the detriment of the public weal. All his life, Dick Rives tried to avoid limelight positions that would cause others to envy him and, perhaps, get into competition with him. Believing that Elbert Tuttle was a better administrator, he stepped down as Chief Judge for Elbert Tuttle, freeing up time to craft opinions too persuasive for difference of opinion, and time to bring immovable strength to three judge courts on the firing line, and time to use his unique but quiet political skills to make justice happen on his collegial court. Those political skills had become so renowned before he went on the court that he was the most sought after campaign manager in the Alabama of his day. He was, before going on the circuit court, political advisor number one to Senator Hugo Black and, then, to Senator Lister Hill, among others. Indeed, Justice Black repeatedly said that perhaps his most important gift to his country was his input on the appointment of Dick Rives to the Fifth Circuit.

Dick Rives' skills as a lawyer are, of course, items of legend. He was an advocate of quiet passion, effective for plaintiffs and defendants in civil cases and a veritable Clarence Darrow for criminal defendants whose character he did not find intolerable.

All this does not mean that Judge Rives was a boring goody-goody. He had a rich and subtle sense of humor specializing in delayed reaction jokes that came out solemnly but within seconds exploded into fun when the point hit you. He liked to play practical jokes on his friends. Once when I had a case not up to standard and wanted five minutes of argument, if that, he insisted that I take thirty minutes, all the while pretending that the Court would be deprived if one so "distinguished", with such an "important" cause, argued only five minutes. Looking back, no more fun times can be remembered than evenings of bourbon sipping and storytelling and chuckling with Dick Rives.

Until I got to know Judge Rives, I could never bear the thought that I might have had some father other than the one assigned to me by nature. But after I came to know Judge Rives, I realized that I would have had exactly the same feeling had nature inflicted me on him.

On Hugo Black's grave marker it is written, "Here lies a good man." On Dick Rives' grave marker, the same thing can be written in script as bold or maybe even bolder. After all, Hugo Black did not exactly eschew the limelight.

—Hugo L. Black, Jr.

J. W. Smith

Joseph Wilson Smith of Phenix City died September 6, 1982, at M.D. Anderson Hospital in Houston, Texas. He was sixty-five years old.

Mr. Smith was born on February 12, 1917, in Girard, Alabama, which is now a part of Phenix City. He attended the University of Alabama where he received his LL.B in 1941. While in school he was a leader in every facet of college life. Among his many accomplishments he served as president of the law school student body and was elected to Who's Who in American Colleges and Universities.

Three weeks after graduation, Mr. Smith was drafted into the Army where he served until 1947. He retired as a major, having lost his right eye to cancer.

Those who knew Mr. Smith were well aware of his involvement in both his community and his state.

He served as a state senator, later was elected to the Alabama House where he served as floor leader for Governor John Patterson, and he served on numerous committees concerning his work in politics. In 1959 he was named the Outstanding Legislator of the Year in Alabama.

Mr. Smith served as president of the Lions Club, director of the Boys Club of Phenix City, president of the Phenix City—Russell County Chamber of Commerce, and as an officer or a member of numerous other organizations.

He was a member of the First United Methodist Church in Phenix City where he was a former board member and Sunday School superintendent. He was a member of the Russell County, Alabama and American Bar Associations.

Survivors include his wife, the former Lenora West Coghlan; two daughters, Mrs. Jerry Murl (Sydney S.) Smith and Mrs. Norman W. (Lenora W.) Gregory; two sons, Joseph W. Smith, Jr., and Walter C. Smith, II; four sisters; two brothers, including Roy L. Smith, Sr.; and two grandchildren.

T. A. Hamilton

Thomas Alexander Hamilton of Mobile died August 29, 1982 at the age of seventy-six.

Mr. Hamilton was born in Mobile, Alabama in February of 1906, the son of Judge John Gaillard Hamilton and Augusta Clarkson Hamilton. He was a graduate of University Military School and received his LL.B. degree from the University of Alabama in 1928.

After law school, he joined his father in the practice of law in the Hamilton law firm which is the oldest law firm in the state of Alabama. He practiced in that law firm, now known as Hamilton, Butler, Riddick, Tarlton & Allen, for over fifty years.

Mr. Hamilton's commitment was not only to the legal profession, but also to many civic and religious groups. He served as chairman of the Board of Trustees of the Mobile Public Library as well as the County Law Library. He was also chairman of the Young Women's Christian Association of Mobile and the Child Day Care Center. Memberships included the Boards of the Fine Arts Museum of the South, the Mobile Community Chest, Child and Family Welfare Bureau and the Advisory Board of the Junior League of Mobile. He was a member of the Christ Episcopal Church and a former vestryman for that church.

Thomas Alexander Hamilton, a distinguished member of the Mobile, Alabama, and American Bar Associations, will be recognized and remembered for his outstanding record as a promiment lawyer and an honored civic and church leader.

Deepest sympathy is extended to his wife, Catharine Chapman Hamilton of Mobile; his daughter, Mrs. Amiel Word Brinkley, Jr.; three grandchildren; and one great-grandson.

J. O. Bryan IV

Greenville District Attorney Jesse Oliver Bryan IV died August 16, 1982, at the age of sixty-two.

Mr. Bryan, known as Jobie, was born on June 13, 1920 in Greenville, the youngest son of the late Mr. and Mrs. J.O. Bryan. He was educated in the local public schools and completed his undergraduate college work at Vanderbilt University and Auburn University. He was graduated from the University of Alabama School of Law and admitted to the Alabama Bar in 1950.

Mr. Bryan retired from the Air Force with the rank of colonel and served with the Strategic Air Command until his retirement in 1968. In November 1969 he was appointed to the office of District Attorney for the 2nd Judicial Circuit composed of Butler, Crenshaw and Lowndes Counties. He served in that capacity until his death.

In Greenville, where Mr. Bryan lived most of his life, he was involved in civic affairs. He was a past president of the Greenville Lions Club and held membership in the American Legion, Woodmen of the World, VFW and DAV. Mr. Bryan was also in the Alumni Associations of the three universities he attended and a member of the American Bar Association.

Bryan had been admitted to practice before the Supreme Court of the U.S., the U.S. Court of Military Appeals, the U.S. District Court of Northern Alabama, and the Kingdom of Morocco and North Africa.

Family members include his wife, Joan Doehring Bryan, and their four children, Karen Bryan Reynolds of Greenville, Jessica Bryan and William Jennings Bryan (both students at the University of Alabama), and Jesse Oliver Bryan V who attends school in Greenville.

— *In Memoriam* —

These notices are published immediately after reports of death are received. Memorials not appearing in this issue will be published at a later date if information is accessible.

NAME	CITY	DATE OF DEATH
BRYAN, Jesse Oliver, IV	Greenville	August 16, 1982
CHENAULT, William Lowe	Decatur	September 2, 1982
deLATHOUDER, Frank Durham	Birmingham	July 30, 1982
GRANT, George McInvale	Washington, DC	November 7, 1982
HAMILTON, Thomas Alexander	Mobile	August 29, 1982
MILLER, George Oliver, Jr.	Montgomery	November 12, 1982
PIPES, Sam Wesley, III	Mobile	October 28, 1982
PITTS, William McLean	Selma	November 21, 1982
REDDEN, Arthur Drew	Tallassee	December 7, 1982
RICHERSON, Mary Thompson White	Mobile	September 25, 1982
RIVES, Richard Taylor	Montgomery	October 27, 1982
RUTLEDGE, Richard Elwood	Haleyville	August 18, 1982
SIMPSON, Robley Justin	Fairhope	May 5, 1982
SMITH, Joseph Wilson	Phenix City	September 6, 1982

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DEADLINES

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January 15 (March Issue)
March 15 (May Issue)
May 15 (July Issue)
July 15 (September Issue)
September 15 (November Issue)

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Please be reminded that effective January 1, 1983, documents filed on 8 1/2 × 14 inch size paper will not be accepted in the federal courts. All pleadings or documents will be required to be on 8 1/2 × 11 inch size paper. The 8 1/2 × 11 inch size applies to stationery and related correspondence-type material as well.

The opening ceremonies of the Eleventh Circuit Historical Society will be held on Monday, January 24, 1983, at 4:00 p.m. in the U.S. Court of Appeals Building, 56 Forsyth Street, N.W., Atlanta, Georgia. A portrait of the Honorable Elbert P. Tuttle, Judge, Eleventh Circuit Court of Appeals, will be presented to the society at that time. A reception will follow the ceremonies. An invitation is extended to all members of the Alabama State Bar.

The cumulative index for *The Alabama Lawyer* for volumes 34-43 (1973-1982) has not been published. The advertisement in the October 1982 issue of the bar journal was intended to see if sufficient interest existed to warrant the publication of such an index. All responses to the ad will be kept on file and you will be notified when the index will be published and how much it will cost. Please continue to respond if you are interested in the index. The cumulative index for volumes 1-33 (1940-1972) is available for $5.00.

The names of Joseph D. Phelps, Montgomery, and Norborne C. Stone, Bay Minette, were inadvertently omitted from the list, in the October 1982 issue of *The Alabama Lawyer*, of those lawyers whom have received the Alabama State Bar Award of Merit for their outstanding and constructive service to the legal profession in Alabama. Both received the award in 1980.

The first deadline for reporting compliance with the twelve hour continuing legal education requirement was December 31, 1982. The requirement applies to all members of the Alabama Bar, resident and non-resident alike, unless a specific exemption has been granted. Every member of the Alabama State Bar must file the report entitled "Annual Report of Compliance With Continuing Legal Education Requirements" (MCLE Form 1). If you have not done so, do so today. If you did not receive a reporting form, request one by calling 205/269-1515 or writing to the MCLE Commission, Alabama State Bar, P. O. Box 671, Montgomery, Alabama 36101.

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UPCOMING

1983

Jan. 20-21
ADAA Mid-Winter Conference, Sheffield

Jan. 27-29
ATLA Mid-Winter Seminar, Birmingham

Feb. 2-9
ABA Midyear Meeting, New Orleans, LA

May 13-14
YLS Annual Seminar, San Destin, FL

July 21-23
Alabama State Bar Annual Meeting, Birmingham

July 28-Aug. 4
ABA Annual Meeting, Atlanta, GA

The Alabama Lawyer

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JANUARY

SAT 1 New Year's Day	FRI 14 Legal Writing, Birmingham (ABICLE)	MON 17 Deadline for March *Alabama Lawyer*
THURS 20 Alabama Drunk Driving Law, Birmingham (PES)	THURS 20 Alabama District Attorney's Assoc. Mid-Winter Conference, Sheffield	FRI 21 Alabama District Attorney's Assoc. Mid-Winter Conference, Sheffield
FRI 21 Alabama Drunk Driving Law, Montgomery (PES) Workmen's Compensation, Birmingham (CICLE)	THURS 27 Alabama Trial Lawyer's Association Mid-Winter Seminar, Birmingham	FRI 28 Alabama Trial Lawyer's Association Mid-Winter Seminar, Birmingham
FRI 28 General Practice, Birmingham (ABICLE)	SAT 29 Alabama Trial Lawyer's Association Mid-Winter Seminar, Birmingham	

FEBRUARY

WED 2-9 ABA Midyear Meeting New Orleans, LA	THURS 4 Products Liability, Birmingham (ABICLE)	THURS 10 Insurance, Huntsville (ABICLE)
FRI 11 Insurance, Birmingham (ABICLE)	THURS 17 Insurance, Mobile (ABICLE)	FRI 18 Insurance, Montgomery (ABICLE) Trial Advocacy: Persuasive Techniques, Birmingham (CICLE)

MARCH

FRI 4 Federal Practice, Birmingham (ABICLE) Labor Arbitration, Birmingham (CICLE)	WED 9 Banking Law, Birmingham (ABICLE)	SAT 19 Federal Rules of Evidence, Birmingham (CICLE)
FRI 25 Trial Advocacy, Birmingham (CICLE)	SAT 26 Trial Advocacy, Birmingham (CICLE)	