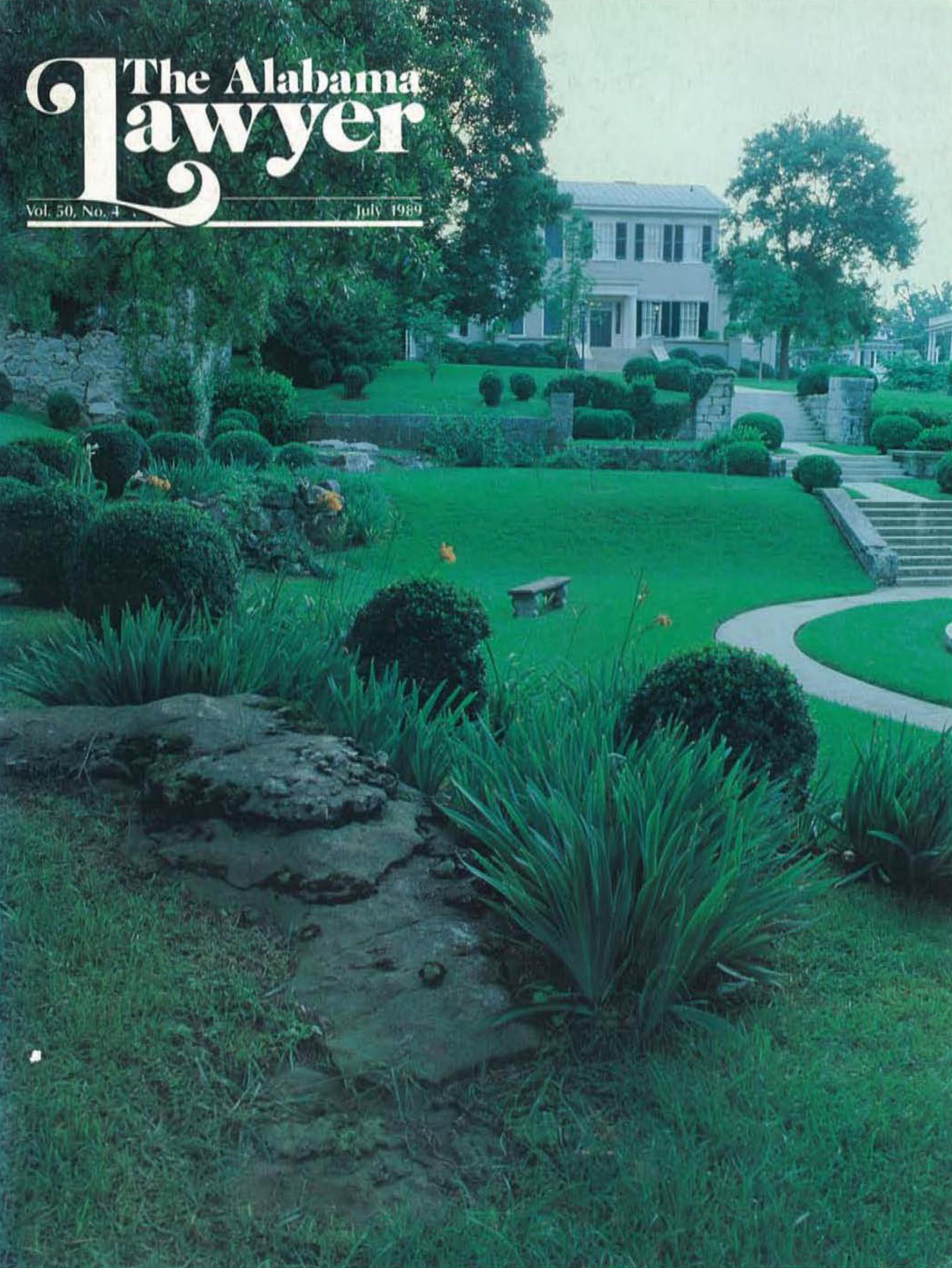


The Alabama Lawyer

Vol. 50, No. 4

July 1989



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MONEY MAGAZINE, FALL 1988

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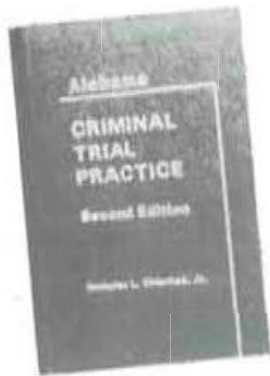
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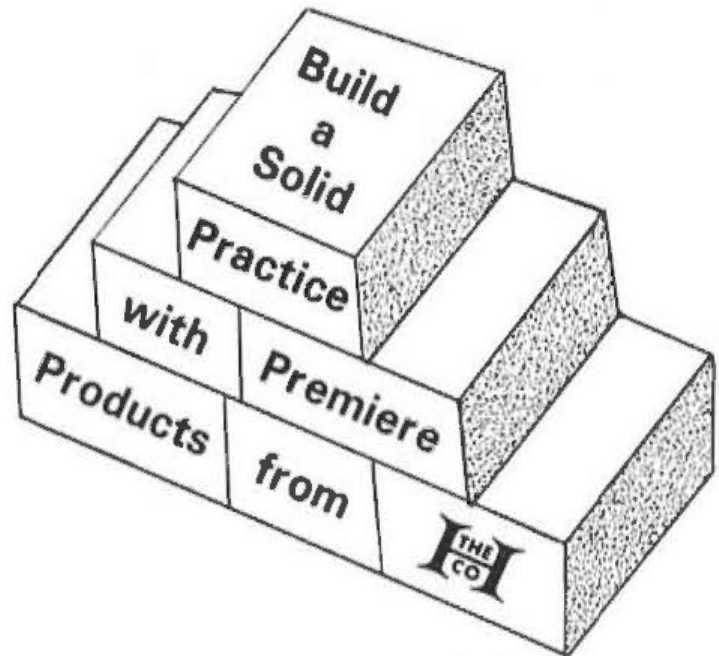
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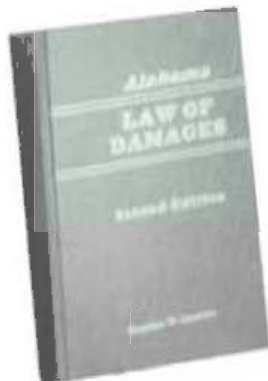
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The Alabama Lawyer

In Brief

VOL. 50, NO. 4

JULY 1989

Published seven times a year by The Alabama State Bar
P.O. Box 4156 Montgomery, AL 36101
Phone (205) 269-1515

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GENERAL INFORMATION The Alabama Lawyer, (ISSN 0002-4287), the official publication of the Alabama State Bar, is published seven times a year in the months of January, March, May, July, August (bar directory edition), September, and November. Views and conclusions expressed in articles herein are those of the authors, not necessarily those of the board of editors, officers or board of commissioners of the Alabama State Bar. Subscriptions: Alabama State Bar members receive The Alabama Lawyer as part of their annual dues payment. \$15 of this goes toward subscribers for The Alabama Lawyer. Advertising rates will be furnished upon request. Advertising copy is carefully reviewed, but publication herein does not necessarily imply endorsement of any product or service offered.

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The Alabama Lawyer is published seven times a year for \$15 per year in the United States and \$20 outside the United States by the Alabama State Bar, 415 Dexter Avenue, Montgomery, AL 36104. Single issues are \$3, plus postage for the journal, and \$15 for the directory. Second-class postage paid at Montgomery, AL.

Postmaster: Send address changes to The Alabama Lawyer, P.O. Box 4156, Montgomery, AL 36101.

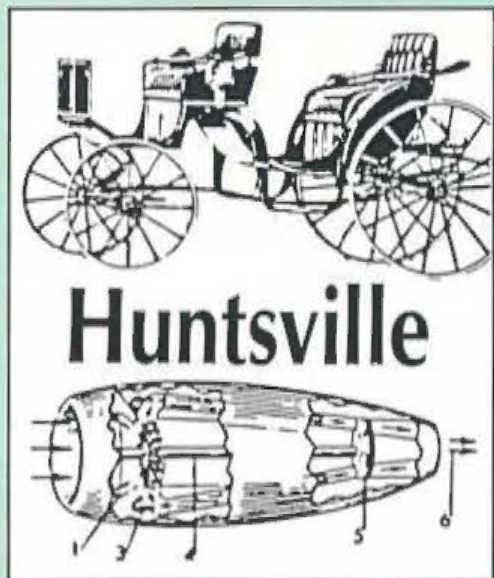
On the cover—

Westlawn, the site of the English High Tea to be held in conjunction with the state bar's 1989 annual meeting, is located in the Twickenham Historic District. It was originally constructed in 1834 and later served as the home of LeRoy Pope Walker, the first secretary of war for the Confederacy.



No Starving Lawyers in the Rocket City or One Lawyer's Favorite Places to Eat in Huntsville—by H. Harold Stephens 172

With its diverse population and ethnic mixture, Huntsville reflects an international flair in its restaurants.



Huntsville—Alabama's Time Machine—by Rebecca Turnipseed Bergquist 170

Huntsville is a bustling metropolis and the site of many high-tech industries. For the visitor the city offers numerous attractions of interest to both young and old.

$$PV = PMT \times \frac{1 - 1/(1 + i)^n}{i}$$

Method for Calculating Present Value of Future Payments in Worker's Compensation Cases—by Timothy C. Hutchinson 182

Since the Alabama Supreme Court decision in *St. Regis v. Parnell*, trial courts have struggled with computation of the present value of worker compensation benefits. The correct method of calculating a worker's compensation award involves use of a formula or access to tables.

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President's Page

Remarks of the president at the admissions ceremony for new lawyers

On behalf of the some 8,000 members of the Alabama State Bar, I welcome you as new members. I congratulate you on your achievement, but I would be remiss if I did not acknowledge the sacrifices that have been made by the spouses and parents of so many of you. Without them, this day likely would not have been possible.

In reflecting over the 27 years since I was admitted to the practice of law in this state, I considered what I might say to you that would be of some value as you find your way in this profession. To give advice is presumptuous because it infers that the giver has some special knowledge or wisdom, and that the giver always follows the advice. I disclaim both of these presumptions in this instance.

There are ten rules that I would recommend to you.

One: Do not permit others to set your limits or your goals. If your law school record is less than what you wanted it to be, remember that Charles Darrow flunked out of law school. If your law school record was exemplary, do not rest upon it—it will not serve you in the long run. It still is true in this profession that you can be what you want to be.

Two: Play fairly. Treat clients, fellow lawyers and judges with civility, goodwill and, above all, fairness. You are entering an adversarial occupation, but always remember, you are not a hired gun. Do not let a client or another lawyer dictate your ethical conduct. Before acting or writing in wrath, wait 24 hours.

Three: Keep humility. Do not lose your sense of humor and do not take yourself too seriously. Remember what your grandmother told you, "Pride goeth before a fall." Or, as said by a less urbane relative of mine from rural north Georgia, "Fly high, old buzzard, you'll sure light low."

Four: Be prepared. There is no substitute in this profes-



HUCKABY

sion for preparation, whether drafting a contract, creating a corporation or appearing in court on a motion. Nine times out of ten, the prepared lawyer wins. As an anonymous sage once said, "Don't learn the tricks of the trade, learn the trade."

Five: Seek good advice. This profession is filled with lawyers possessed of real wisdom and common sense. You will be the better for tapping this resource.

Six: Practice self-discipline. Find a way to control your schedule. You will learn quickly that time is your most precious commodity and the most difficult resource to conserve. Avoid dependence on chemicals, alcohol or other crutches. At times of crises in your career—and they will surely come—they will be your undoing.

Seven: Deal with the rules of conduct the same way the Roman emperor expected his chariot driver to: Stay as far away from the edge as possible. You may recall the legend of the emperor whose chariot driver had been killed in battle. As he searched the empire for another driver, he called before him three of the best-known. To the first, he posed this question, "When you drive the chariot, how close to the precipice can you come without having the wheel go over?" The driver said with pride, "Your Excellency, I can drive the chariot within one foot of the precipice, and the wheel will not go over." The emperor turned to the second driver and posed the same question. The driver replied, "Your Excellency, I can drive the chariot within six inches of the precipice, and it will not go over." The emperor turned to the third driver and said, "How close to the precipice can you come?" The third driver replied, "I do not know, your Excellency. When I drive the chariot, I stay as far away from the precipice as possible."

Eight: Do not let this profession consume you. "The law is a jealous mistress." This quote has been attributed to everyone from Dean Farrah to Voltaire, but it represents

(continued on page 166)

Executive Director's Report

Untapped potential

Recent requests for information on and addresses of the local bar associations in the state has focused on a really untapped source for professional enhancement and well-being—the local bar association.

Twenty years ago, only Birmingham had a local bar with a full-time executive secretary. Now Mobile and Montgomery have full-time directors, too. Birmingham and Mobile have their own headquarters building. Huntsville has a part-time staff person who functions as its bar secretary. These four associations have regular meetings and offer continuing legal education programs.

While there are other bar associations throughout the state that do meet for other than purely social functions, these are relatively few in number when viewed in the total local association picture. Several areas with smaller lawyer populations have formed circuit bar associations to address their professional needs. Within these circuit bars we have discovered county bar organizations still exist with their own slate of officers.

The state bar seeks to maintain an accurate and up-to-date list of local bars and their officers. There are times when the bar commission desires a profession-wide consensus or needs to mount a statewide initiative and the local bar is the natural basic unit. Contacting the "local bar" is, too frequently, a problem. There are a number of reasons for this:

(1) Some, while they purport to exist, do not hold regularly scheduled meetings, and, less regularly, elect officers.

(2) Some "convene" as needed.

(3) Some local presidents express unawareness of their date of election or expiration of their terms of office.

(4) Some local bars function in direct proportion to the level of presidential leadership and activity level.

(5) There is a lack of uniformity in the "bar year." Those that are active operate on a variety of fiscal year dates. Some operate January-December; some follow the state bar year of June-July.

(6) Some associations exist for social purposes, while docket calls serve as the real "bar association meetings."

The benefits of an active or organized local bar are many. Through social functions it affords a measure of collegiality that many lawyers decry our lack of today. The local bar allows for a means for dissemination of information where a substantial number of lawyers can discuss issues and matters of import. Regular meetings afford deliberative action instead of oftentimes "reacting" to matters of professional concern.

The state bar, for years, has sent a weekly legislative newsletter to the local bar presidents listed in our directory. Not infrequently, a past president will write that his/her term of office is long over; however, neither the retiring nor the incumbent president notified bar headquarters. More likely than not, we were not aware of an election date.

The Alabama Lawyer runs a bi-monthly "Riding the Circuits" section. The editor covets news from the local bars; however, we frequently have dif-



HAMNER

ficulty contacting a source.

We embark on a new state bar year when Alva Caine assumes the presidency July 22, 1989. I encourage those of you in active local bars to "begin new years" too, if practical. I realize some of our more well-established local bars have fixed dates and have had such for years. I do not presume to suggest you change your operations, but I hope those without a regular meeting or election schedule would consider this.

If your bar is not as active as you wish it to be, you may be the catalyst needed to activate it. It has not been so long ago that I cannot recall our annual Montgomery County Bar meeting "to pass the gavel" and memorialize the deceased

President's Page

(continued from page 164)

a great truth. You will have to learn to deal with the unfortunate fact that most of the work in law seems to be a seamless, never-ending fabric, surrendering very little time for contemplative analysis. Take some time to plant, sing, dance, paint or play. Get involved with people. Listen to them and nourish friendships. Friends will be of incalculable value. Over everything else, elevate your family.

Nine: Give something back to the public and to the profession. We are the custodians of this justice system, and we have some responsibility to leave it better than when we found it. Your new profession has been granted an exclusive privilege. It is self-regulated, and each of us owes a duty to volunteer time to improve our profession.

Ten: Learn to use the language. Language to the lawyer is as the scalpel to the surgeon, the brush to the painter, or the clay to the sculptor. An ability to use good English, in both spoken and written form, is not an attractive adornment; it is a necessity. There is not a place in this state in which basic English is not conveniently taught. Do not let pride or procrastination prevent you from mastering these skills if you do not already have them.

You are entering this profession at the height of its power and influence. For better or for worse, the law has never been such a prevalent force in the lives of our citizens. Your studies to this point have brought you into contact with musty volumes and ancient decisions. You have

acquired a healthy respect for the principle of *stare decisis*, but if you believe that this profession is only about precedents, you have been misled.

Your generation of lawyers will be called upon to resolve more weighty societal problems than all other generations of lawyers combined. You will have to find ways through law to protect this fragile planet on which we live and to resolve the proper distribution and use of its physical assets. Lawyers of your time will have to decide such godlike issues as when life begins and when it ends, and how transplantable organs are allocated. You will have to deal with the legal implications of genetic engineering with both plants and animals, even human be-

ings. The property lawyers will have to decide what law governs our oceans, the Arctic and the Antarctic and even outer space. You must grope for answers in the area of surrogate parenting, which shakes the very foundations of Anglo-American jurisprudence. You must find ways to protect our privacy in a day of computers and phenomenal electronics. In your era lawyers will be forced to cope with the population explosion, which threatens our very ability to survive. At times the challenges of the future seem to virtually overwhelm us.

It is indeed an exciting time to be a lawyer, and I will follow with anticipation your progress in our honored profession. ■

Report

members of the bar who died during the preceding 12 months or our September (meeting) barbeque at the late T.B. Hill and Jim Carter's pond where we invited county and city officials and had fun. We still enjoy our local Montgomery bar, but I think we all agree that being organized and meeting monthly has afforded all a richer professional experience.

To those who would demur that we have enough lawyers in the more populated areas to have a meaningful association, I would respond it is not the number present, but the quality of and commitment to professionalism that counts in bar work. Bar association meetings offer opportunities for reflective thought and assessment.

The state bar needs a strong viable network of local bar associations with which to cooperate in strengthening all aspects of the profession. Please look on pages 14-15 of the new (1988-89) *Bar Directory Edition of The Alabama Lawyer* and see if your local bar is listed. Are your officers correctly noted? If not, please write and let me know.

If your local bar would like to have a program, we would be happy to arrange for a speaker on a subject you desire. Our state bar presidents and members of the staff are usually available to speak to your group on reasonably short notice.

We need to strengthen our local association network.

Please help us maintain our list of local bars and officers by notifying the Alabama State Bar immediately when there is a change in officers or election date. Also, if there is a local bar that has not been identified, please let us know. ■

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About Members, Among Firms

ABOUT MEMBERS

Frank S. Dodge announces the opening of his law practice. Offices are located at 540 North Cascade Avenue, Suite 102, Colorado Springs, Colorado 80903. Phone (719) 473-7338.

Mary Beth Meyer has been admitted to the Louisiana State Bar Association and become associated with the firm of **Chaffe, McCall, Phillips, Toler & Sarpy**, 2300 Energy Centre, 1100 Poydras Street, New Orleans, Louisiana 70163-2300. Phone (504) 585-7000.

John T. Bender announces the opening of his new office for the practice of law at 150 Government Street, Suite 1004, Mobile, Alabama. Phone (205) 433-1835.

William H. Roe announces the relocation of his office to 1101 City Federal Building, Birmingham, Alabama 35203, effective May 1, 1989. Phone (205) 251-9930.

Thomas H. Figures announces the relocation of his practice to 212 South Lawrence Street, Mobile, Alabama 36602 (across from the Mobile Civic Center). His mailing address is P.O. Box 2645, Mobile, Alabama 36652-2645. Phone (205) 433-0416.

David P. Shepherd announces the relocation of his office to 913 Plantation Boulevard, Fairhope, Alabama. Phone (205) 928-4400.

John P. Furman announces the relocation of his office to Suite 2404, First National Bank Building in Mobile. The new mailing address is P.O. Box 49, Mobile, Alabama 36601-0049. Phone (205) 432-5700.

Edward P. Meyerson, a partner in the firm of **Najjar, Denaburg, Meyerson, Zarzaur, Max, Wright & Schwartz, P.C.**, was elected national chairperson of the Legal Advisory Committee of the American Subcontractors Association. The members of the committee are attorneys nationwide who represent state and city chapters of the American Subcontractors Association.

Bryan G. Duhe' announces the opening of his new office at 712 Oak Circle Drive, West, Mobile, Alabama 36609. Phone (205) 660-0261.

Michael D. Blalock announces the relocation of his office to Suite 214, 651 Beacon Parkway, West, Birmingham, Alabama 35209, effective April 24, 1989.

David F. Ovson announces the removal of his offices to Suite 120, 728 Shades Creek Parkway, Birmingham, Alabama 35209, effective July 1, 1989. Phone (205) 870-1511.

AMONG FIRMS

Clark, Scott & Sullivan announces that **Jeffrey L. Luther**, a 1988 graduate of the University of Alabama School of Law, joined the firm September 26, 1988, as an associate in their Mobile office. The firm also has an office in Birmingham under the name of **Clark & Scott, P.C.** Mobile offices are located at 56 St. Joseph Street, P.O. Box 1034, Mobile, Alabama 36633. Phone (205) 433-1346.

Donald L. Colee, Jr., and **Jerome Tucker, III**, announce the opening of their law offices, **Colee & Tucker**, at 701 37th Street, South, Suite 4, Birmingham, Alabama 35222. Phone (205) 252-1166.

Tom Estes and **Mark S. Carter** announce the formation of a partnership for the practice of law to be known as **Estes & Carter**, located at 931 Broad Street, P.O. Box 730, Phenix City, Alabama 36867. Phone (205) 291-3070.

John E. Amari and **Coleman D. Hamm, Jr.**, announce that **J. Dennis Bailey** has become a member of the firm and the change of the firm name from **Amari & Hamm** to **Amari, Hamm & Bailey**. Offices are located at 9636 Parkway East, Birmingham, Alabama 35215. Phone (205) 836-6266.

The firm of **Pritchard, McCall & Jones** announces the relocation of its offices to 800 Financial Center, 505 North 20th Street, Birmingham, Alabama. Phone (205) 328-9190.

Harris, Shinn, Phillips & Perry, P.A. and **Caddell & Shanks** announce the merger of the firms for the practice of law under the name of **Harris, Caddell & Shanks, P.C.** Offices are located at 214 Johnston Street, Southeast, P.O. Box 2688, Decatur, Alabama 35602-2688. Phone (205) 340-8000.

William H. Steele, former chief assistant district attorney and assistant United States attorney, and **Joseph D. Thetford**, former assistant district attorney, announce the formation of a partnership, **Thetford & Steele**. Offices are located at Suite 1702, First National Bank Building, 107 St. Francis Street, Mobile, Alabama 36602. Phone (205) 433-7000.

About Members, Among Firms

■
Maynard, Cooper, Frierson & Gale, P.C. announces that **David M. Smith, Jarred O. Taylor, II, and J. Michael Savage**, formerly associates, have become members of the firm, and **Mark L. Drew, Randall H. Morrow, Jayna J. Partain, Kathryn Pugh and Mark Strength** have joined the firm as associates. Offices are located at Twelfth Floor, Watts Building, Birmingham, Alabama 35203. Phone (205) 252-2889.

■
Bradley, Arant, Rose & White announces that **Norman Jetmundsen, Jr., Mac M. Moorer, Joseph S. Bird, III, John M. Johnson, M. Christian King and E. Glenn Waldrop, Jr.**, have become members of the firm. Birmingham offices are located at 1400 Park Place Tower, 35203. Phone (205) 252-4500. Huntsville offices are located at 223 East Side Square, 35801. Phone (205) 533-5040.

Armbrrecht, Jackson, DeMouy, Crowe, Holmes & Reeves announces that **James D. Smith, William H. Philpot, Jr., and Michael E. Upchurch** have become members of the firm, and **Scott G. Brown and Lisa C. Tinsley** have become associated with the firm. Offices are located at 1300 AmSouth Center, P.O. Box 290, Mobile, Alabama 36601.

■
McFadden, Lyon, Willoughby & Rouse announces that **Jeffry Alan Head** has become a member of the firm, and **William S. McFadden** has become associated with the firm. Offices are located at 718 Downtowner Boulevard, Mobile, Alabama 36609.

■
Jackson P. Burwell, of Jackson P. Burwell, P.C., James P. Hess and L. Thompson McMurtrie of Hess & McMurtrie, and L. Dean Johnson announce the formation of **Burwell, Hess, McMurtrie & Johnson, P.C.**, with offices at 200 Russell Street,

Huntsville, Alabama 35801. Phone (205) 533-5300.

■
Robert E. Morrow and Thomas ap Roger Jones announce the relocation of their offices to 800 Alabama Avenue, Selma, Alabama 36701. Phone (205) 872-7454.

■
The firm of **Calhoun, Watkins & Clower** announces that **Kenneth W. Cox, Jr.**, has become a partner in the firm, and the firm name has been changed to **Calhoun, Watkins, Clower & Cox**. Offices are located at 104 South Brundidge Street, P.O. Box 489, Troy, Alabama 36081-0489. Phone (205) 566-0424 and 566-3783.

■
McKnight & Wirtes, P.C., announces that **Sandra K. Vinik, William R. Hill, Jr., and Peter M. Neil** have become associated with the firm. Offices are located at 22 Iverness Center Parkway, Suite 610, Birmingham, Alabama 35242, phone (205) 995-9665; Main Street, P.O. Box 297, Goodwater, Alabama 35072, phone (205) 839-5809; and Main Street, P.O. Box 568, Lineville, Alabama 36266, phone (205) 396-5222.

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Bar Briefs

"A Matter of Law" daily radio program debuted Law Day, May 1

Robert D. Raven, president of the American Bar Association, announced recently that the ABA is participating in the preparation of a new radio program called "A Matter of Law."

It is produced by Synergy, a New York based media company, in cooperation with the ABA. The 13-week pilot daily radio program, consisting of 90-second features on the law, is broadcast and syndicated to radio stations across the nation.

The program debuted on Law Day U.S.A., May 1, with a feature on "Access to Justice," the theme of this year's annual Law Day celebration.

Following the Law Day airing, programs will deal with such topics as copyright law, *pro bono* public efforts by lawyers, juror concerns, television in the courtroom, death row appeals, custody questions, firings without cause, controlling drunken driving, attorney-client privilege, affirmative action programs, parking lot crime, legal aid, rights of unwed fathers, and the reliability of eyewitness testimony.

George R. Lovelock, president of Synergy and the creator of the program, is co-producing "A Matter of Law" with former CBS News "60 Minutes" producer Paul Loewenwarter. Veteran reporter Lou Adler is the correspondent, and his company, Eagle Media Productions, syndicates the program nationally.

Since the programs are aired by different stations and at different times across the country, it is suggested that listeners check their local listings for announcements concerning "A Matter of Law" broadcasts.



American Bar Association President Robert D. Raven at the U.S. Supreme Court announcing ABA's participation in "A Matter of Law" daily radio program with creator George R. Lovelock, president, Synergy; Paul Loewenwarter, co-producer; and Ernest Y. Sevier, chairperson, ABA's Standing Committee on Association Communications

Chief Justice Hornsby addresses the monitoring of capital cases

In Chief Justice Hornsby's recent address to the joint session of the Legislature, he made the following observation regarding the processing of capital cases through the justice system:

"The crisis which has developed in this country concerning the death penalty is one which requires attention here in Alabama. Whatever deterrent value the death penalty may have is much depreciated when appeals last a decade after the crime. This delay is a terrible burden on the victims, police, prosecutors, public defenders, prison officials, and defendants. It imposes a dreadful cost on public confidence and the ability of the

system of justice to function. While these cases present the most awesome decisions we make, the time required to get them through the system now is unacceptable."

For the above reasons, the appellate courts and Administrative Office staffs are gathering data to identify problems and areas where delay can be reduced in both the trial and appellate court processes, and also are in the process of implementing a capital case monitoring system to track cases from arrest to execution of the judgment. It is hoped that this system will identify potential problems and assist in the reduction of any unnecessary delay. Any suggestions should be sent c/o Allen Tapley, Administrative Director of Courts, 817 South Court Street, Montgomery, Alabama 36130. ■

by
Rebecca Turnipseed Bergquist

Make plans now to attend the 1989 Alabama State Bar Annual Meeting in Huntsville July 20-22. There is no better time to be in Huntsville! The Space Celebration '89, a special part of the Alabama Reunion, is July 15-21, and it is (where else?) in Huntsville. Come and enjoy the annual meeting and sample all Huntsville has to offer. Bring your entire family for fun-filled festivities, splendid sights and exciting events for all. Plan to come early and stay late.

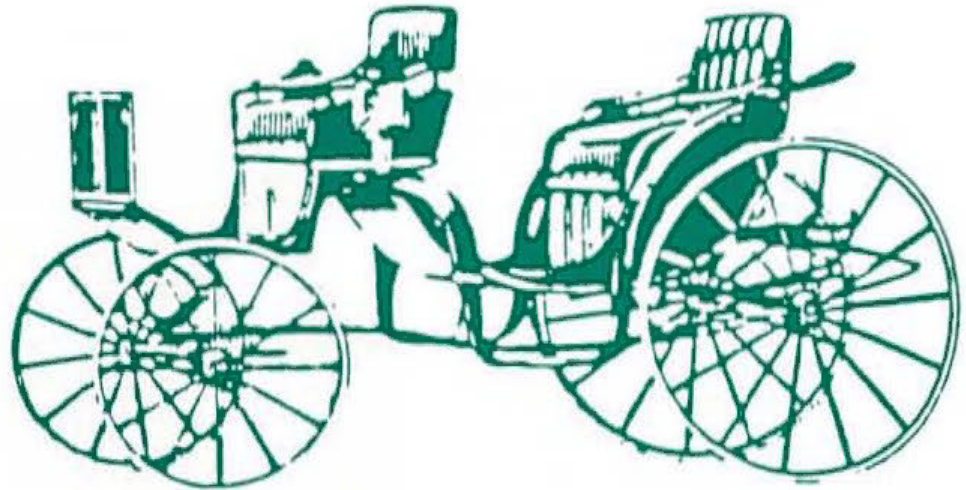
Yes, HUNTSVILLE IS ALABAMA'S TIME MACHINE. The excitement of the future and the heritage of the past are all in Huntsville. Chart your own course through many special moments in time.

For a glimpse of the future, set your time machine on tomorrow. Be an astronaut at the **SPACE AND ROCKET CENTER** with more than 60 hands-on ex-

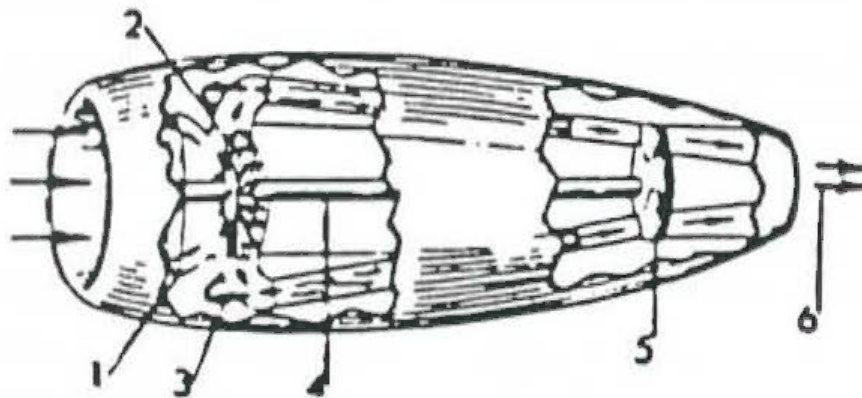
fired and the earth shakes. Tours originate from the Space and Rocket Center. Phone 837-3400.

For a window on the 21st century, drive through the nation's second largest high technology center, **CUMMINGS RESEARCH PARK**.

Next stop in the 19th century is a visit to the **HOWARD WEEDEN HOUSE** built in 1819 and birthplace of poet and artist Maria Howard Weeden. It is a superb example of federal architecture, now beautifully restored. 300 Gates Avenue. Phone 536-7718.



Huntsville—Alabama's



hibits, take a simulated space flight and see the Space Shuttle Park with an authentic Saturn V moon rocket. Become immersed in the sights and sounds of space travel in a spectacular Spacedome Theater with a 67-foot domed movie screen. You will feel what the astronauts feel! Highway 20 West. Phone 837-3400.

For more of the future and an in-depth view of our nation's space program, visit the NASA-Marshall Space Flight Center. See test stands where moon rockets are

Now, for a visit to the past, set your time machine on yesterday and take a horse-drawn carriage coach or sulk in the lovely historic downtown Huntsville area. Phone 837-8807. Or take a walk in Big Spring International Park, the site where John Hunt founded the City of Huntsville in 1805. Just east of the park is the First Alabama Bank, one of the first chartered in the state. Legend has it that Jesse James jumped off the cliff, down to the Big Spring.

For more beautiful homes constructed in the 19th and early 20th century, it is the **TWICKENHAM HISTORIC DISTRICT** and the **OLD TOWN HISTORIC DISTRICT**. To take a lovely stroll on your own, pick up *A Walking Tour of Huntsville, Alabama* brochure available at registration. For private and group tours, call Huntsville Heritage Tours. Phone 534-7783.

Be an Alabama settler at the **CONSTITUTION HALL PARK**, site of Alabama's 1819 Constitutional Convention. The charming museum village and its costumed guides bring to life this period with informative craft demonstrations for you and your children. 301 Madison Street. Phone 532-7551.

For 19th century gospel music, an outdoor concert at the Carriage Barn at Constitution Hall Park begins at 2:30 p.m., July 23. Bring your picnic basket and a blanket. Admission is free. Phone 532-7551.

For shopping in the 1900s, set your time machine for 1897 and visit Harrison Brothers Hardware store, Alabama's oldest operating hardware store. It is full of nostalgic items and wonderful gifts to take back home. 124 South Side Square. Phone 536-3631.

Train travel in 1860 finds you at the Huntsville Depot Museum, the oldest surviving train depot. Enjoy intriguing exhibits and antique engines. For more fun, the depot street car travels 'round trip from the depot through historic downtown and to the Space and Rocket Center. Phone 539-1860.

A visit to Huntsville's fascinating past must include the **BURRITT MUSEUM** and **PARK** atop Monte Sano, with its magnificent view of Huntsville. See log cabins, a blacksmith shop, a smoke house and an old country church, or enjoy the garden, the nature trails and the picnic facilities. For information on

Special events include an open house at NASA-Marshall Space Flight Center (July 15), a full-scale shuttle rocket engine test firing (July 15), Missile and Space Old-timer Reunion (July 17), the Von Braun Forum (July 17) and a street fair for all of Huntsville's visitors (July 21).

For baseball fans, plan to attend the **HUNTSVILLE STARS-ORLANDO TWINS** games July 20-23, at Joe Davis Stadium. Phone 882-2562 for tickets.

For joggers of all ages, try the Madison County Par Course, a two-mile jogging trail with 20 exercise stations on Johnson Road in southeast Huntsville.

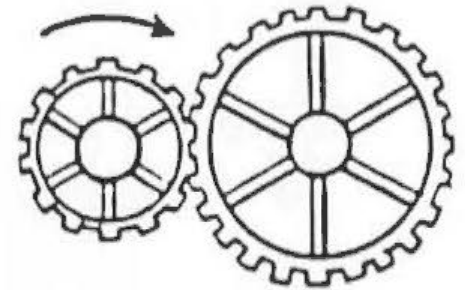
For cross-country runners, take the challenge of the Country Running Park at the old airport off Airport Road and South Memorial Parkway.

MONTE SANO STATE PARK awaits you with spectacular scenery, hiking trails, picnic and playground facilities, RV hookups and camp sites. In the evenings,



For writers, the Huntsville Literary Association presents a **POETRY WRITING WORKSHOP** with nationally published local poets on July 25. Phone 828-6083.

For beautiful music, hear **GAZEBO CONCERTS** each Monday evening at Big Spring Park. Phone 539-6653. On July 22 and 23, travel to Sewanee, Tennessee, for faculty and student concerts at the University of the South. Phone (615) 598-1225.



From Alabama's first capital to the space capital of the universe, Huntsville's fascinating high technology environment and its traditional southern heritage provide rich and varied experiences for all. Plan to come early. Enjoy the Space Celebration '89, participate in the many activities scheduled for the annual meeting, and let the time machine entice you to stay a little longer.

Most of all, have an enjoyable time in Huntsville where yesterday and tomorrow create an exciting today! ■



Time Machine

special Earth Camp sessions for children, both day camp and overnight, phone 536-2882.

In between the exciting future and the lovely past, set your time machine on today. There are many other wonderful sights and events scheduled for July in Huntsville. Most outstanding will be the **SPACE CELEBRATION, '89**. The celebration blasts off July 14 with a week of activities. See visiting astronauts, planetarium events and a space film festival.

the amphitheater features classic films as entertainment. Phone 539-FILM.

The **HUNTSVILLE MUSEUM OF ART**, adjacent to the Von Braun Civic Center, displays both historic and modern art. Phone 535-4350 for current exhibitions, lectures and workshops.

For theatregoers, see **"MY THREE ANGELS,"** July 20-22, to be performed by the Twickenham Repertory Company at the Von Braun Civic Center. Phone 536-6301.

Rebecca Turnipseed Bergquist received her undergraduate degree from the University of Alabama and law degree from the University of Toledo. She served as law clerk to Judge John Snodgrass of the 23rd Judicial Circuit and now is an associate of the Huntsville firm of Bell, Richardson & Sparkman. She is a member of the Huntsville-Madison County Bar Association, the Alabama State Bar and the American Bar Association.



No Starving Lawyers in the or One Lawyer's Favorite Places to Eat in



Notwithstanding the increasing numbers of lawyers and law firms choosing to locate in north Alabama, there are no starving lawyers in Huntsville—at least, none that go hungry because of the lack of a good restaurant. Visitors to this year's state bar annual meeting will find that Huntsville offers many choices for fine dining. The list that follows certainly is not exhaustive and intended only as the views of the author.

My Personal Top Ten (in alphabetical order)

by H. Harold Stephens

1. Fogcutter Restaurant—3805 University Drive—539-2121. Offers a wide variety of choices with excellent steaks and seafood.

2. Fratelli's Italian Restaurant—501 Jordan Lane—830-1660. Excellent Italian food in a relaxed atmosphere.

3. Greenbriar Bar-B-Que—Highway 20—353-9769. If you like barbecue, you will love Greenbriar. It is worth the drive!

4. Heritage Club—111 Washington Street—533-0350. A private dining club so you will need to get a lawyer friend from Huntsville to treat you. (It is affiliated with private clubs in Birmingham and Mobile.) No better food or nicer atmosphere in Huntsville.

5. House of Mandarin—3312 South Memorial Parkway—882-9262. I would put their hot and sour soup and Moo Shu Beef up against any Chinese restaurant.

You will find the management and service friendly, as well.

6. Michael's—3502 South Memorial Parkway—881-6120. All 'round well-prepared food offering two dining rooms, one more casual by the pool and the other more intimate (in other words, it is darker). Steaks and fish are especially good; their lunch menu offers a wide choice of meats and vegetables.

7. Mr. Steak—3508 South Memorial Parkway—883-2003. A Huntsville tradition and certainly one of our best. My favorites are the Sampler (choice of chicken salad, taco salad or seafood salad served with fresh fruit) and 21 Shrimp (count them)—and, as the name implies, their steaks are outstanding.

Rocket City

8. Olive Garden—3730 University Drive—539-1954. A wonderful Italian restaurant with a very nice atmosphere. The shrimp primavera (shrimp over fettucine) makes you feel like you are in Florence (Italy, that is). And, the breadsticks are well worth your dough—just be sure your spouse and/or date has some, too. The garlic will protect you both from vampires for the rest of the weekend.

9. Ol' Heidelberg—3807 University Drive—536-5246. One of my personal favorites, this is Huntsville's Bavaria. You will not find a better German restaurant this side of Wiesbaden. From schnitzel to German sausage, the menu is consistently good and the service is excellent.

10. TGI Friday's—4935 University Drive—830-2793. I know—it is a member of a restaurant chain, but the food is wonderful. The kids will love their burgers (I do, too), and the menu's only problem is there are too many good choices. Do as I do—order one of each.

Other sure choices

Many of the following are likely to be included in other Huntsville lawyers' top ten choices. Groupings are by category for your convenience.

JAPANESE

1. Mikato Japanese Steak House—4061 Independence Drive—830-1700.
2. Shogun—3780 University Drive—534-3000.

Both are excellent choices and great fun for groups of four or more. Best to call for reservations.

CHINESE

1. Empress of China—2012 South Memorial Parkway—539-5797.
 2. Peking Chinese Restaurant—3790 University Drive—533-6833.
- Some people (including my wife) would pick one of these as Huntsville's best Chinese restaurant.

MEXICAN

1. Chi-Chi's Mexican Restaurant—5901 University Drive—830-4404.
2. Chili's—4925 University Drive—722-9620.
3. El Palacio—2008 South Memorial Parkway—539-6075.

If your taste buds are feeling like something south of the border, choose one of the above.

AMERICAN

1. Boots—1522 South Memorial Parkway—534-9369.
2. Lofton's: Huntsville Hilton & Towers—401 Williams Avenue—533-1400.
3. Ruby Tuesday—5901 University Drive—830-5440.
4. Steak & Ale—3807 University Drive—533-7480.
5. Twickenham Station—509 Williams Avenue—539-3797.

All of the above are truly outstanding restaurants. You will find a wide variety

of menu selections and very good food. Shoppers can enjoy Ruby Tuesday at Madison Square Mall, and Lofton's and Twickenham are both near the Civic Center.

BARBECUE/CATFISH

1. Catfish Haven Restaurant—Highway 231 South, Union Grove—881-7279.
2. Gibson's—3319 South Memorial Parkway—881-4851.
3. Nolen's Barbeque—9007 South Memorial Parkway—883-8575.

Who has Huntsville's best barbecue? Ask three Huntsville attorneys, and you will get three answers: Gibson's, Greenbriar, Nolen's. Try all three. And the best catfish? Most say a toss-up between Catfish Haven, Gibson's and Greenbriar.

SANDWICHES

1. Bubba's—105 Washington Street—534-3133.
2. Duffey's Deli—2324 Whitesburg Drive—533-4179.
3. Gorin's—101 Washington Street—534-3848.
4. The Mill Bakery & Eatery—2003-B Whitesburg Drive—534-4455, or 311 Jordan Lane—837-8555.

If you are in a hurry or just want something light, pick one of the above.

SOUTHERN/DOWN-HOME

1. Eunice's Country Kitchen—1004 Andrew Jackson Way—534-9550.
2. Five Points Restaurant—816 Wellman Avenue—536-7356.
3. Mullin's—607 Andrew Jackson Way—539-2826.
4. Ivey's—310 Governors Drive—534-2828.

If you just want some good old Southern-style cooking (and lots of it) and a romantic setting is not a necessity, you won't go wrong with any of the above selections. Breakfast at Eunice's was a Huntsville tradition before some fellow named Brennan ever moved to New Orleans!

I hope this list offers something for everyone, and trust that you will find dining out in Huntsville to be an enjoyable experience. If you do have a problem at these or any other restaurants in Huntsville, tell them Gary Huckaby sent you. Bon appetit! ■

H. Harold Stephens received his undergraduate degree in history from the University of Alabama and law degree from the University of Alabama School of Law. Upon graduation, he served as an assistant United States Attorney for the Northern District of Alabama in Birmingham. He currently is a member of the Huntsville firm of Lanier, Ford, Shaver & Payne, P.C.



Building Alabama's Courthouses

by Samuel A. Rumore, Jr.

The following continues a history of Alabama's county courthouses—their origins and some of the people who contributed to their growth. *The Alabama Lawyer* plans to run one county's story in each issue of the magazine. If you have any photographs of early or present courthouses, please forward them to:

Samuel A. Rumore, Jr.
Miglionico & Rumore
1230 Brown Marx Tower
Birmingham, Alabama 35203

Colbert County

Colbert County enjoys a special place in Alabama history. Along with Etowah and Lamar counties, it was established, disestablished and then reestablished. Reconstruction-era politics caused this phenomenon.

Originally Colbert County was the northern-most part of a larger Franklin County. More than half of the population lived in this northern area, including a majority of the business and professional men. There was no logical reason for these people to travel a long distance over poor roads to their county seat; they wanted a new county with a closer courthouse.

Their efforts to establish a new county were given impetus by Reconstruction politics in Alabama. Following the Civil War, the competing interests of north Alabama and the Black Belt of south Alabama intensified with the emancipation and enfranchisement of the former slaves. The creation of a new predominantly white county in the northern half of the state would result in an additional representative for the state Legislature and, therefore, more political clout. So, after some legislative maneuvering, Colbert County was established February 6, 1867.

A Constitutional Convention convened that same year. In its deliberations, this body, known as the Radical Constitu-

tional Convention, abolished Colbert County on November 29, 1867. The next convening legislature ordered all records and public property in Colbert County returned to the probate judge of Franklin County.

Two years later, a new legislature proposed to re-establish Colbert County, provided that a majority of voters in Franklin County approved. The election in January 1870 confirmed the creation of the new county. Another election was held so the citizens could choose either Tuscumbia or Cherokee as the seat of government. Tuscumbia won this election by a vote of 1,367 to 794, and it has served ever since as the only county seat of Colbert County.

The county was named for two prominent brothers who were local Chickasaw Indian chiefs. They were George and Levi Colbert, sons of James Logan Colbert, a Scotsman who came to the area in 1740 from the Carolinas and married a Chickasaw Indian. George Colbert operated a ferry across the Tennessee River on the old Natchez Trace. It was reported that he earned as much as \$20,000 annually from his ferry service for people and livestock.

The first white settlers of present-day Tuscumbia were Michael Dickson and his wife, Sene Williams Dickson, of Reynoldsburg, Tennessee. They and their family sought a new home in the Tennessee Valley after marauding Indians had destroyed Reynoldsburg. In the spring of 1815 they settled in an area known for its big springs. Here they met Chief Tash-kambia, whose name meant "warrior who kills" but who became the Dickson's friend.

The place where the Dickson family settled has had many names. It was first

called Ococoposa, the Indian word for "cold water." The area was officially incorporated by the Alabama State Legislature on December 20, 1820, as Cold Water, Alabama. Soon thereafter, on June 14, 1821, the name was changed to Big Spring.

An election was held in 1822 to decide the town's permanent name. Local lore recounts that two names were proposed for the town. One was Tuscumbia, for the Indian chief who still lived in the area. The other proposal was to honor Annie, the infant daughter of Michael and Sene Dickson, who was the first white child born there. After the town was named to honor the chief, the legend states that he graciously gave a pair of miniature moccasins to his defeated rival. The town officially became Tuscumbia December 31, 1822.

Colbert County had no courthouse during the first years of its existence. When the county was re-established in 1870, the Horn House, located at the northeast corner of Fifth Street and Main in Tuscumbia, served as a temporary courthouse. This three-story hotel, with its



Samuel A. Rumore, Jr., is a graduate of the University of Notre Dame and the University of Alabama School of Law. He served as founding chairperson of the Alabama State Bar's Family Law Section and is in practice in Birmingham with the firm of Miglionico & Rumore.



Colbert County Courthouse

first-floor saloon, had been built around 1835 as a stagecoach stop. Later, courts were held on the third floor of the Masonic Hall.

Finally, in 1880, the site for a permanent courthouse was chosen. Captain A. H. Keller, father of Helen Keller, with other local citizens suggested the selection of four lots between Third and Fourth streets at Main Street. On December 13, 1880, the county purchased this property for \$2,000. This location was the site of the Mansion House, an early hotel in Colbert County.

On May 10, 1881, a contract was awarded to William Dowling of Chattanooga for the construction of a courthouse. Edward Laurent of Nashville was architect for the project. The building was completed and occupied August 29, 1882. The cost of construction was \$14,750.

The Colbert County Courthouse was a two-story brick structure of Italianate design. On one end of the building was a turret containing a four-sided clock. This building suffered extensive fire damage on the night of May 14, 1908. Parts of the roof and second floor were destroyed, but the exterior walls remained intact.

The citizens of Colbert County rebuilt their courthouse in 1909. However, its architectural style was significantly changed. The architect for the restoration was Mr. Peckinpaw of Nashville. He changed the building from its original Italianate design to its current Greek Re-

vival style by adding four Ionic columns and a portico to each of the four sides of the courthouse. He also designed an octagonal open-arched clock tower over the center of the building, somewhat reminiscent of the state capitol dome in Montgomery. During the reconstruction

of the building, courts were held at the Tuscumbia Opera House.

In 1948 a north annex was added to the courthouse. The columns and portico were removed from the north side of the building. The architect for this project was H.A. Griffith, Jr., and the builder was N.S. Hatcher.

In 1962 another expansion was needed, and a courthouse annex and the county jail were completed on Fifth Street at a site detached from the main courthouse building.

On June 22, 1975, a new two-story west wing was dedicated for the Colbert County Courthouse. B.H. Craig Construction Company of Florence was the contractor, and Northington, Sith, Kranert, Tomblin and Associates, also of Florence, were architects for the project. Alabama Supreme Court Chief Justice Howell T. Heflin, a resident of Tuscumbia, served as the dedication speaker. The addition of this west wing and the renovations to the main courthouse building cost over two million dollars. Remodeling in the main building was completed in 1976. ■

The Alabama Wills Library by Attorneys' Computer Network

The programs ask multiple-choice and fill-in-the-blank questions, and then compose tailored documents in minutes. **The Wills Library** (Cat. 4930) prepares simple and complex wills providing for separate dispositions of personal effects and realty, cash bequests, annuities, the granting and exercise of powers of appointment, credit equivalency trusts with QTIP provisions, marital deduction trusts, charitable remainder trusts, and other dispositions. The residuary estate may be divided into equal or unequal shares with each share being given to one or more beneficiaries outright, or in a variety of trusts. Trusts may be terminated or partially distributed at specific ages, or may last for the life of the beneficiary. Alternate and successor beneficiaries may be specified. The program also prepares living will declarations, powers of attorney, family tree affidavits, asset summaries, execution checklists, and

other ancillary documents.

Libraries for **Inter Vivos Trusts** (4931), **House Sales** (4934), **Condo Sales** (4935), **Com'l Real Estate Contracts** (4937), **Office Lease Riders** (4938), **Store Lease Riders** (4939),

Net Leases (4940), **Limited Partnerships** (4946), **Separation Agreements** (4933),

Business Sales (4947), and **Shareholders Agreements** (4948), are available for Alabama at \$200 each.

Updates are free the first year, \$10 per disk thereafter. IBM or compatible computers. Specify 5 1/4" or 3 1/2" disk. Call Bernice Williams, (800) 221-2972 for information on these and other programs for Alabama.

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Uniform Guidelines for Attorney Fee Declarations

Recommended by the Indigent Defense Committee
of the Alabama State Bar

PREFACE

The following guidelines were promulgated by the Indigent Defense Committee of the Alabama State Bar, and adopted by the Board of Bar Commissioners of the Alabama State Bar, to assist and guide lawyers throughout the state with respect to billing procedures in cases in which they are appointed by the court to represent persons accused of crimes who have also been determined

to be indigent. It is the hope of the Alabama State Bar that these guidelines will provide guidance to lawyers and serve as a standard by which questionable conduct can be judged.

Those lawyers who follow the letter and spirit of these guidelines will be protected from charges of impropriety; those who do not will have no added protection from charges to the contrary. In short, these guidelines, though designed chiefly to aid and assist members of the bar, also stand as this bar's self-policing mechanism for questionable fee practices.

The Alabama State Bar expresses its sincere appreciation to those who dedicate themselves to the representation of those who do not have the means to hire a lawyer. At the same time, it cautions anyone who attempts to take advantage, either of their clients or the State of Alabama, by practices such as double-billing, that abuses of this honorable system will not be tolerated.

1. ACTIVITIES ARE TO BE LISTED SEPARATELY

All activities for which compensation is claimed shall be listed separately on contemporaneous time records. In order to receive payment, activities must be listed in the appropriate spaces on the fee declaration form or, if contemporaneous time records are kept in a manner that conforms to the fee declaration form, the contemporaneous records may be themselves submitted without the necessity for transferring them to the fee declaration form.

2. STANDARD TIME REPORTING

All time shall be declared in increments of .1 hour (six minutes). Counsel may bill for time spent under six minutes at a minimum rate of .1.

3. PHONE CALLS

The purpose, not substance, of phone calls should be briefly specified. For example: "phone call to defendant's

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brother re: raising bail" or "phone call to defendant re: trial date." Each call should be listed separately (on the contemporaneous time records, not on the fee declaration form).

4.
MILEAGE

The rate for mileage shall conform to *Alabama Code* (1975) §36-7-22 (as of September 1, 1984, this rate is twenty-two cents [\$0.22] per mile).

5.
EXPENSES

Certain expenses must be approved prior to the time they are incurred. *Alabama Code* (1975) §15-12-21(d). A general definition of expenses is impractical. Therefore, a definition is given by way of what is and what is not an expense which requires approval prior to being incurred. Counsel should file the appropriate motion in cases of uncertainty. In cases where court approval is required, counsel shall file a copy of the court's pretrial order along with the fee declaration form in order to obtain reimbursement.

The following are examples of expenses which do require approval prior to being incurred:

- A. Private investigators
- B. Expert witnesses
- C. Transcripts of trials or hearings not otherwise available
- D. Interpreters
- E. Scientific tests

The following are examples of expenses which do not require approval prior to being incurred:

- A. Copying (limited to twenty-five cents [\$0.25] per copy, except in extraordinary circumstances)
- B. Long distance phone calls
- C. Travel

6.
OPENING AND CLOSING CASE FILES

Counsel may bill for this activity, but the maximum time which may be billed (for opening and closing combined) is .5 hour.

7.
TRAVEL TIME TO AND FROM COURT

Travel time to and from a court appearance should be billed as out-of-court time, except under the following circumstances, where it may not be claimed:

A. Travel time to arraignment when counsel is not assigned a defendant prior to arraignment; and,

B. Travel time to arraignment when counsel is assigned a client prior to arraignment, but counsel fails to file a waiver of arraignment (where "waiver" is provided by local law or otherwise) without just reason. Some examples of just reasons for failing to file a waiver include that the client refused to waive arraignment,

or that counsel could not locate client prior to arraignment, etc.

If travel time involves more than one case, it should be divided equally among the cases; e.g., if two cases are involved, one-half of travel time should be billed to each case.

8.
ARRAIGNMENT

Only the actual time spent arraigning a defendant is compensable unless counsel is assigned a client prior to arraignment and counsel is required to wait due to circumstances beyond his control. Such waiting time may be billed as in-court time and should be noted as such on the fee declaration form.



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9.
HEARINGS AND TRIALS OF CO-
DEFENDANTS OR DIRECTLY-RELATED
CASES

Attendance at the hearings and trials of co-defendants or cases directly related to your clients should be billed as out-of-court time and your attendance should be justified by an attachment to the declaration. However, in cases where a co-defendant's case has been consolidated with your case, in-court activities may be billed as in-court hours.

10.
PRELIMINARY HEARINGS

An appearance at your client's preliminary hearing should be billed as in-court

time even in the event you are proffered the state's witnesses for interview and the preliminary is thereafter waived. However, interviewing witnesses after your client's preliminary hearing is concluded should be billed as out-of-court time. Waiting time required by circumstances beyond counsel's control may be billed as in-court time and should be noted as such on the fee declaration form.

11.
LAW CLERKS, PARALEGALS AND
ASSOCIATES

Time spent by qualified law clerks and paralegals working at your direction should be billed at one-half the hourly out-of-court rate, and the name of the law

clerk or paralegal should be noted on the declaration. Time spent by qualified associates working at your direction should be billed at the statutory rate, provided that (a) the associate's assistance was required by circumstances beyond your control and (b) the name of the associate is noted on the declaration. An associate will not be permitted to serve as lead counsel without prior approval from the court.

12.
ACTUAL TIME RECORDS

Actual time records, notations or memoranda shall be maintained contemporaneously.

13.
TOTAL BILLING IS REQUIRED

A declaration should not be filed until the case has reached conclusion, e.g., it is not permissible to file a declaration after a preliminary hearing where the defendant has been bound over and been indicted.

When, however, a client fails to appear or absconds, a declaration may be filed sixty (60) days thereafter. Similarly, if new counsel is appointed or retained, a declaration may be filed immediately. However, the continuity of counsel provided by statute is to be strictly adhered to and should be departed from only in those cases in which it is absolutely necessary to have new counsel.

14.
SEPARATE DECLARATIONS ARE RE-
QUIRED IN MULTIPLE CHARGE CASES

In the past, it has been the normal practice to file a separate fee declaration form for each separate case number, in cases involving multiple counts, defendants, and/or indictments. That was prior to joinder and consolidation under the new temporary rules of criminal procedure. These cases no longer should be treated separately, but rather should be billed in the following manner.

All cases arising out of the same transaction shall be billed as one case. For example, if a client is charged with breaking and entering and burglary of the same dwelling, and the cases are joined, they shall be treated as one case. If, at the initiation of the proceedings, the



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cases were listed separately, simply list the additional case number on the fee declaration form with an explanation that the cases were consolidated.

In contrast, if cases arise out of separate transactions, they may be billed individually, even if they have been consolidated. For example, if a client commits three separate and distinct burglaries at three separate locations, and the cases are consolidated, they may be billed separately.

Double-billing will not be tolerated under any circumstances. Therefore, if you are billing for more than one case, be careful not to charge for the same work more than once.

Finally, though payment will be permitted for new trial motions and like proceedings, including sentencing, all such billing shall be treated as trial, rather than post-conviction, billing.

15.

"IN-COURT" VERSUS "OUT-OF-COURT" TIME

Consistent with sections 8 and 10, supra, all waiting time at the courthouse for a scheduled court appearance, caused by circumstances beyond counsel's control, may be billed as in-court time and should be noted as such on the fee declaration form, i.e., that portion of the total in-court hours which reflects necessary waiting time should be specifically noted as "waiting time" on the declaration form.

16.

FEES COLLECTED FROM THE CLIENT

Any fees or expense money collected from the client (or from anyone on the client's behalf), before, during or after working the case for which counsel has been appointed, shall be reported. All amounts received shall be deducted from the amount finally paid to the lawyer.

In the event of changed circumstances (i.e., the client becomes able to retain counsel or secures outside assistance to retain counsel), counsel shall immediately notify the court that he/she has been retained, and the appointment shall be withdrawn. Retained counsel will not be required to file a fee declaration form, because no state funds will be paid. ■

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Committees

More midyear reports from Committees and Task Forces

Task Force on Citizenship Education has applied with the American Bar Association to become a participant in the bar/school partnership program. This program is a cooperative program between the state bar and the state department of education, local bar associations and local school boards. The purpose of the program is to promote law-related education. The three target areas for this year's pilot program are Birmingham, Mobile and Opelika.

Committee on Correctional Institutions and Procedures selected the juvenile justice system as its priority for review and consideration. At the committee's first meeting, problems in the juvenile justice system were defined and three subcommittees created, each to evaluate the three following areas: the general way institutions are used to house juveniles in the state; the availability and training of judges and lawyers in the juvenile justice area; and alternatives to institutional incarceration for juveniles. Due to the fact that the Chief Justice of the Alabama Supreme Court appointed a blue ribbon task force in February to address the problems associated with juvenile justice system, the committee has focused its attention on ways to better prepare judges and lawyers to work in the juvenile justice system.

Insurance Programs Committee members have spent much time educating bar members about the critical importance of forming and capitalizing the bar's captive, Attorney's Insurance Mutual of Alabama, Inc., and has been the committee's most important project.

Law Day Committee members prepared a booklet describing recommended Law Day activities and distributed them to all county bar presidents, or county Law Day chairpersons with a request that each county bar plan an activity in observance of Law Day.

Committee on Lawyer Advertising and Solicitation produced public service announcements to inform the public on lawyer solicitation. A subcommittee was named which prepared and submitted an application for a grant from the Alabama Law Foundation for funding this project.

Alabama Lawyer Referral Service has run articles in *The Alabama Lawyer* encouraging participation in the service and is designing printed notices to be mailed to various legal and judicial offices (i.e., probate judge, circuit clerk, etc.). The posted notices would state that the office cannot give legal advice, but would give the name and address of referral services around the state.

Legislative Liaison Committee members met with the bar's legislative counsel

prior to discussing proposed legislation of interest to members of the profession. The chairperson and several committee members assisted in monitoring and alerting bar members to contact their legislators to defeat specific bills not in the best interest of the administration of justice or the profession.

Prepaid Legal Services Committee reported that during the year, two legal service corporations had qualified with the Alabama Department of Insurance. There are now five legal insurance companies operating in Alabama. The committee further reported that, due to the likely future proliferation of prepaid legal service plans in Alabama, it has been in communication with a subcommittee of the Permanent Code Commission concerning regulations and procedures for the bar's approval of such plans and corresponding disciplinary rules.

Committee on Public Relations, Information and Media Relations is studying long-range programs for recommendation to the board of bar commissioners.

Committee on the Unauthorized Practice of Law reported the following activity:

	1988	1989
Number of complaints received	29	6
Number of files closed	23	4

Of the 23 files closed, they were closed by the following action:

No further action was necessary	8	3
Signed cease and desist affidavit	15	1

Total pending files for 1988, 1989 is 13. ■

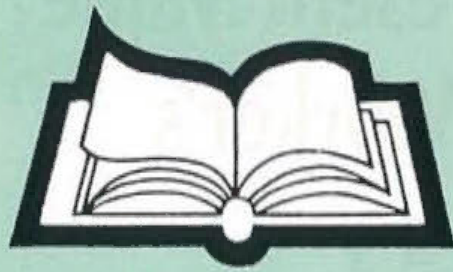
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july

17-21

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18 tuesday

HAZARDOUS WASTE ISSUES IN ALABAMA
Birmingham
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20-22

ANNUAL MEETING
Von Braun Civic Center, Huntsville
Alabama State Bar
(205) 269-1515

24-25

INSTITUTE ON EMPLOYMENT LAW
IICLE Jenner & Block Conference
Center, Chicago
Practising Law Institute
Credits: 11.0 Cost: \$450
(212) 765-5700

25 tuesday

HAZARDOUS WASTE ISSUES IN ALABAMA
Ramada Resort/Beltline Highway,
Mobile
National Business Institute, Inc.
Credits: 6.0 Cost: \$98
(715) 835-8525

25-28

SUMMER CONFERENCE
Perdido Beach Hilton, Orange Beach
Alabama District Attorneys
Association
(205) 261-4191

july-august

july 28-aug. 1

NORTHWEST BANKRUPTCY LAW INSTITUTE
La Chateau Frontenac, Quebec
Institutes on Bankruptcy Law
Credits: 17.4 Cost: \$475
(404) 535-7722

august

3-10

ANNUAL MEETING
Honolulu
American Bar Association
(312) 988-5000

10-12

DEPOSITION PROGRAM
Los Angeles
National Institute for Trial Advocacy
Credits: 20.0 Cost: \$750
(219) 239-7770

15 tuesday

COMMERCIAL REAL ESTATE LEASING IN ALABAMA
Mobile
National Business Institute, Inc.
Credits: 6.0 Cost: \$98
(715) 835-8525

24 thursday

SPORTS LAW
Cudworth Hall, Birmingham
Cumberland Institute for CLE
Credits: 6.0 Cost: \$115
(205) 870-2865

24-25

WORKSHOP ON LEGAL WRITING
Hilton, New York
Practising Law Institute
Credits: 10.0 Cost: \$450
(212) 765-5700

25 friday

RECENT DEVELOPMENTS
Florence
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31 thursday

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Method for Calculating Present Value of Future Payments in Worker's Compensation Cases

by Timothy C. Hutchinson

This article shows how to calculate the "present value" of a stream of payments in light of the recent decision by the Supreme Court of Alabama in *Ex parte St. Regis v. Parnell*, 535 So.2d 160 (Ala. 1988), requiring that "upfront" attorney fee awards in worker's compensation cases must be based on the present value of the compensation awarded.

If you need to have a present value calculated or verified, I recommend that you purchase a financial calculator. In such a purchase, the overriding consideration must be the number of decimal places to which the calculator computes a value. While it may not seem that a small difference in the eighth decimal place is significant, this difference can cause the final result to vary on different calculators. Because all calculators use the same formula to calculate a present value, the disparity in the results obtained by different calculators is caused by the round-off error in the limited internal memory of each respective calculator. Also, the number displayed by a calculator is generally less accurate than the number actually stored in internal memory. These factors may cause dissimilar results.

My examples assume that the employee is to pay the attorney fee, and for purposes of consistency and clarity the attorney fee awarded in each example will equal 15 percent of the benefits awarded to the employee (though a court may award a lesser amount). Also, all calculations use a 6 percent annual discount

rate as provided in *Ala. Code* (1975) § 25-5-B.3.

The following formula can be used to calculate the present value of any payment stream, if: (1) the payments are made at the end of the pay period; (2) all pay periods are of equal duration; (3) all payments are of an equal amount; and (4) the interest rate is the same for each pay period. In the formula, "PV" is the present value of the payment stream, "PMT" is the amount of the payment for each period; "n" is the number of pay periods; and "i" is the interest rate per period. The formula can be written as follows:

$$PV = PMT \times \frac{1 - 1/(1 + i)^n}{i}$$

Because the discount rate is set by statute, "i" will be the same in all cases. Using the data from *St. Regis*, there are 208.7143 weeks in a four-year period. In one year there are 52.178575 weeks (208.7143 ÷ 4). Therefore, the interest rate per week equals 6 percent ÷ 52.17857 or .11498972 percent or .0011498972. In the formula, "i" must equal .0011498972, not .11498972. The following is a step-by-step computation of the present value ascertained in *St. Regis*:

1. $1 + .0011498972 = 1.0011498972$
2. $(1.0011498972)^{2111.145} = 11.31585259$
3. $1/11.31585259 = .08837160$
4. $1 - .08837160 = .91162840$

5. $.91162840/0.0011498972 = 792.7912165$
6. $(792.7912165)(194) = 153801.496 = \$153,801.50$

The quotient calculated in equation 5, i.e., 792.7912165, is the same number you would find in an annuity table for 2111.145 pay periods and an annual discount of 6 percent or .11498972 percent per period. Letting this quotient equal "F", the formula can be simplified to $PV = (PMT)(F)$. Conversely, the payment can be calculated as $PMT = PV/F$. Therefore, in *St. Regis* the weekly benefits to be paid the employee during the period of his life expectancy can be calculated as follows:

1. $\$153,801.50 \times 15 \text{ percent} = \$23,070.22$
2. $\$153,801.50 - \$23,070.22 = \$130,731.28$
3. $\$130,731.28/792.7912165 = \164.90

It should be noted that \$164.90 is 85 percent of \$194. That is, the employee will receive the same weekly benefit whether the 15 percent attorney fee is paid in a lump sum or in weekly payments equal to 15 percent of the weekly benefits awarded to the employee.

Actually, it is not necessary to calculate the present value of the weekly benefits in order to compute the employee's remaining weekly benefits, if the attorney fee is to be paid entirely from future benefits. In this situation, the employee is to receive 100 percent of the award, less the percentage awarded as the attorney fee. If the attorney fee is 15 percent, then the employee is to receive 85 percent; and if the attorney fee is 10 percent,

then the employee will receive 90 percent, and so on. In *St. Regis*, the attorney fee was 15 percent, or \$29.10, of the weekly award, leaving the employee 85 percent, or \$164.90 per week.

The present value of \$29.10 per week for 2111.145 weeks discounted at the 6 percent discount rate is $\$23,070.22 = (\$29.10)(792.7912165)$. In other words, the amount of the attorney fee is the same whether the present value of the weekly benefits is calculated and then the 15 percent attorney fee is determined, or 15 percent of the weekly benefit is calculated first and then this amount used to calculate the present value of the attorney fee. The result is the same.

Another way to view the *St. Regis* rule is that the total cost to the employer is the same regardless of the amount of the attorney fee or the method of payment. In *St. Regis* the total cost to the employer was limited to a present payment of \$153,801.50 or \$194 per week for the lifetime of the employee, assuming he otherwise remains entitled to benefits. Life expectancy is used to give a definite time period for calculating the present value of the benefits awarded when the employee is entitled to benefits for the remainder of his life.

Knowing the mechanics of calculating the present value of a payment stream, and the various constraints to calculating the present value of a worker's compensation award notably that the total cost of the attorney fee is to be borne by the employee, it may be useful to apply the foregoing analysis to a few practical examples. When a lump sum attorney fee is awarded, there are at least three possible scenarios in which it may be necessary to calculate the present value of the weekly benefits awarded to the employee.

1. The attorney fee is for securing future benefits only.

2. The attorney fee is for securing past and future benefits, and the employer has withheld past benefits sufficient to pay the attorney fee earned for securing past benefits.

3. The attorney fee is for securing past and future benefits, and all past benefits have been paid to the employee.

Scenario 1

This is the situation involved in *St. Regis*. If the attorney earned a lump sum attorney fee for securing only future benefits for the employee, then that fee is to be paid from future benefits only, and the analysis above should be used to calculate the present value of the benefits awarded to the employee. To compute the lump sum attorney fee, calculate 15 percent of the present value of the benefits. In this situation, for the remaining period of the employee's life expectancy, the employee will receive 85 percent of the benefits. If the employee survives beyond the period of his life expectancy, then his benefits will increase to the amount to which he was originally entitled (the "upfront" attorney fee having been fully repaid by the employee at this point).

Scenario 2

In this situation the problem can be broken into two distinct parts. First, the attorney fee for securing past benefits should be paid from the funds held by the employer, and the balance of the past benefits should be paid to the employee. Second, apply the analysis above to the future benefits awarded in order to calculate the attorney fee for securing future benefits.

For example, suppose that in *St. Regis* the employer had retained the \$19,788 of past benefits and that the attorney had earned a 15 percent attorney fee with respect to these benefits. The employer simply would have paid \$2,968.20 ($\$19,788 \times 15$ percent) to the attorney and the balance of \$16,819.80 to the employ-

ee. Thus, the attorney would have been entitled to a total lump sum attorney fee of \$26,038.42; ($\$2,968.20 + \$23,070.22$ for securing future benefits). The future weekly benefits to which the employee would be entitled is equal to benefits paid under Scenario 1.

Scenario 3

In this situation the employee's remaining weekly benefits will be less than 85 percent of the benefits originally awarded. Again, using the data from *St. Regis*, if the attorney had earned a fee for securing the past benefits of \$19,788, but the employer had already paid these benefits to the employee, then the present value of the future weekly benefits awarded must be reduced by the attorney fee applicable to both past and future benefits.

For example, suppose that in *St. Regis* the attorney had earned a 15 percent fee on those benefits already accrued and paid to the employee. This attorney fee of \$2,968.20 ($\$19,788 \times 15$ percent) must be deducted from the total present value of \$153,801.50 along with the \$23,070.22 attorney fee for securing future benefits; this would give the employee's future weekly benefits a present value of \$127,763.08. To calculate the employee's remaining weekly benefits, divide \$127,763.08 by F, or 792.7912165, for a weekly benefit of \$161.16.

As stated in *St. Regis*, if the employee lives beyond his life expectancy then the weekly benefits, under any scenario, will increase to the original amount awarded because the employer at that point will have recouped the amount of the lump

Timothy C. Hutchinson, an associate in the Dallas, Texas, firm of Geary, Stahl & Spencer, P.C., is a graduate of the University of Alabama School of Law. He is a former law clerk to Justice Janie L. Shores.



sum attorney fee. Simply put, the employer is required to lend the amount of the attorney fee to the employee and the employee is required to repay the employer, at a 6 percent annual percentage rate over the term of his life expectancy, by having the employer withhold a portion of the weekly benefits. Once the loan is repaid, the employer is no longer entitled to withhold any of the benefits.

There is no justification for distinguishing between a fixed duration award and a lifetime award when calculating a lump sum attorney fee and the duration or amount of the employee's future weekly benefits. Remember, the total cost to the employer must be the same whether the award is paid in weekly payments or a lump sum payment. This fact, more than the fact that it is impossible to determine when the back-end of a lifetime award

will occur, is the rationale for requiring that a lump sum attorney fee be based on the present value of the award, and requiring the employee to repay the attorney fee by having a portion of the weekly benefits withheld by the employer each week.

The following examples demonstrate that the foregoing analysis should apply to fixed duration awards. In all of the examples, assume that the employee is entitled to \$200 per week for 300 weeks and that no attorney fee has been awarded for securing past benefits. The present value of \$200 per week for 300 weeks, using the analysis above, is \$50,720.61. Therefore, the total cost to the employer cannot exceed \$50,720.61 in "present value" dollars, regardless of the amount of the attorney fee awarded or the method of repayment imposed upon the employee.

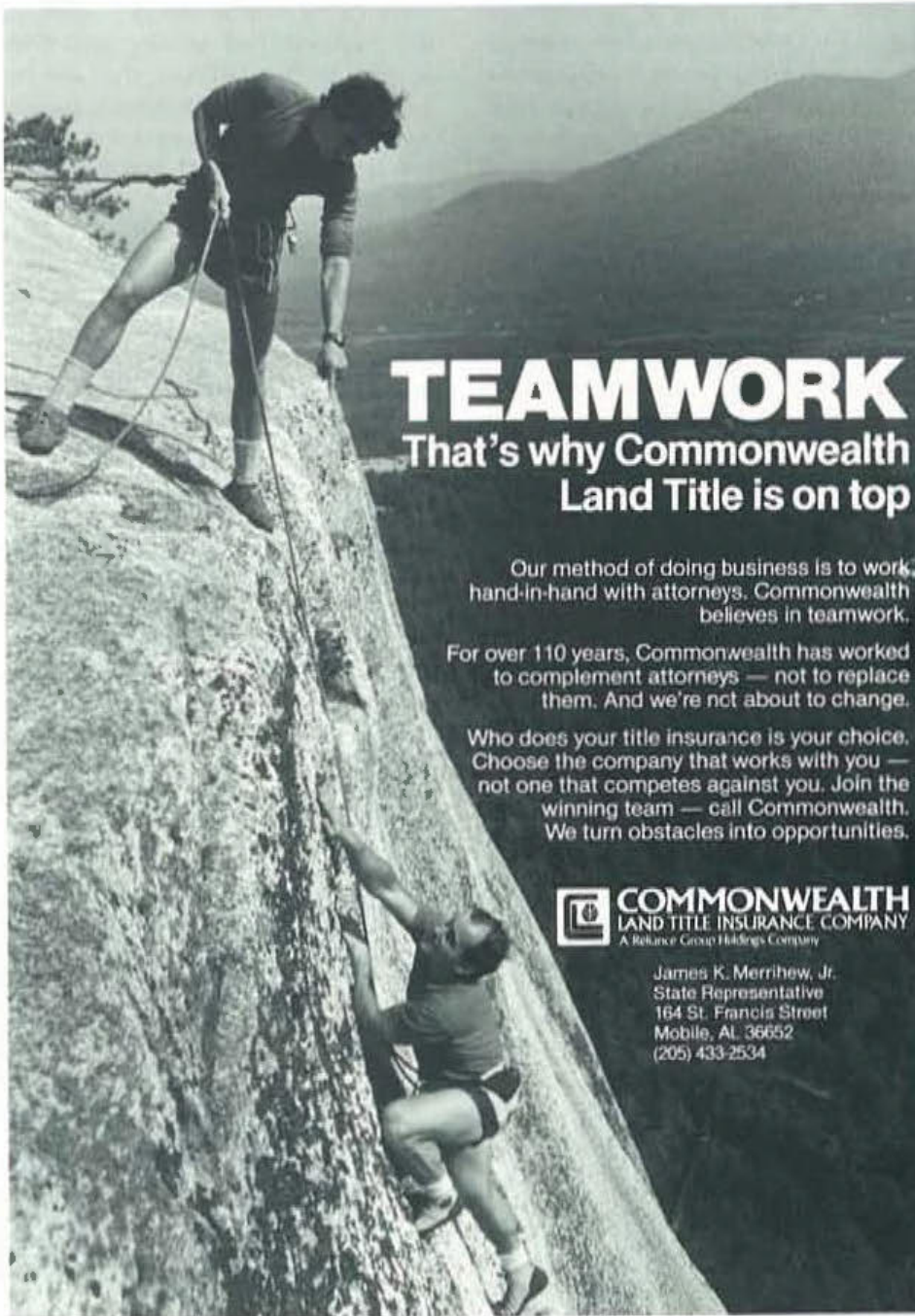
Example 1

Assume that the trial court awards 15 percent of \$50,720.61, or \$7,608.09, as the attorney fee, and requires that the attorney fee be paid from the back end of the award. Dividing \$7,608.09 by \$200 results in 38.04 weeks being taken off the back end to repay the attorney fee. Therefore, the employee would receive \$200 per week for 261.96 weeks. The present value of \$200 per week for 261.96 weeks discounted at the 6 percent annual discount rate is \$45,214.86. Adding the attorney fee of \$7,608.09 to the present value of \$45,214.86 results in a total present value cost to the employer of \$52,822.95, which is greater than \$50,720.61, and contrary to requirement that the employee pay all of the attorney fee.

Example 2

Assume that the trial court awards 15 percent of \$60,000 (300 x \$200), or \$9,000 as the attorney fee, despite the fact that \$9,000 is greater than 15 percent of \$50,720.61 and order that the fee be repaid off the back end of the award. Dividing \$9,000 by \$200 results in 45 weeks being taken off the back end to repay the attorney fee. Therefore, the em-

(continued on page 186)




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Young Lawyers' Section

A sometimes-overlooked authority of the Alabama State Bar, particularly by young lawyers who are not familiar with the functions of our organization, is the board of bar commissioners. There are 54 members of the board from around the state comprising the 39 judicial circuits and the Bessemer Cut-off. These bar commissioners are elected by bar members within their respective judicial circuits and are their representatives and voices on matters of business coming before the Alabama State Bar. Among the many duties and powers of the board are the following:

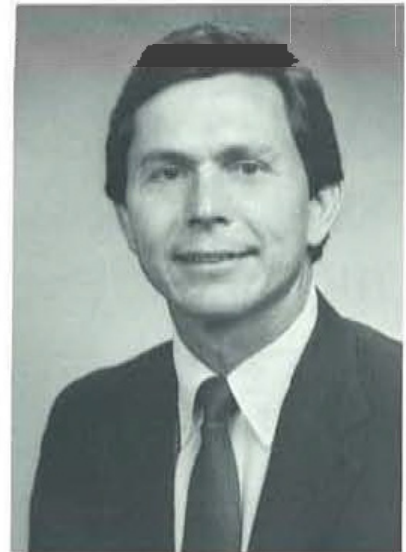
1. determining the qualification and requirements for admission to the practice of law;
2. formulating rules of conduct for attorneys;
3. investigating and acting on complaints concerning conduct of members and applicants for admission;
4. administering discipline by public or private reprimand, suspension or disbarment;
5. making rules and bylaws on selection and tenure of officers and committees, and for the control and regulation of the business of the board and the bar;
6. establishing local bar associations; and
7. conducting educational and social meetings and publishing journals to improve the ethical and educational standing of the bench and bar.

As one can see, the board of commissioners has an awesome responsibility, and it is necessary and essen-

tial that each lawyer keep his/her commissioner informed about his/her position on matters coming before the bar or on any other matters affecting the practice of law. Young lawyers, especially, should know who their bar commissioner is and keep in touch with him or her concerning the ongoing business of the Alabama State Bar. The more one is informed about the ongoing functions of our organization, the greater the likelihood that he or she can contribute to making it a better organization. It certainly has been an enlightening and enriching experience for me, as president of the Young Lawyers' Section, to have the opportunity to sit in on the business of the board of commissioners. The commissioners are very conscientious regarding matters coming before them that might affect the YLS, and I applaud them for the way they conduct their business.

Spring admittees

On May 15, 1989, the bar admitted 137 new attorneys to the practice of law in Alabama. An admissions ceremony was conducted by the Alabama Supreme Court and appellate courts at the Montgomery Civic Center. New Associate Justice Mark Kennedy spoke to the admittees at the luncheon following the ceremony. I again offer my congratulations to the admittees and wish them the best of luck with their career in the legal profession. My thanks also to Rebecca Bryan of our executive committee for the fine job she did in putting together



N. Gunter Guy, Jr.
YLS President

the admission program.

I am happy to learn that the Attorney's Insurance Mutual of Alabama, Inc., will become a success despite the fact it did not meet its original goal to capitalize at \$2,500,000. AIM did receive in excess of \$2,000,000 which will be enough to begin operation and start underwriting attorneys for insurance on or about July 1, 1989. Once again, I encourage members of the YLS to take an active role in AIM, as I believe that it will be of great benefit to you in the long run with reduced insurance costs.

On July 20-22 of this year, the state bar will hold its annual meeting in Huntsville, Alabama. At that time the YLS will conduct its annual business meeting with the election of officers. As per usual custom, the YLS will sponsor a social function Thursday night, July 20, for all members of the state bar. Entertainment will be provided by "Chevy 6." Amy Slayden and Frank Potts, who are members of our executive committee, have worked hard to make this social function an enjoyable event for everyone. You do not want to miss the great sounds of "Chevy 6," and I encour-

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Method for Calculating Present Value

(continued from page 184)

ployee would receive \$200 per week for 255 weeks. The present value of \$200 per week for 255 weeks discounted at the 6 percent annual discount rate is \$44,181.19. Adding the attorney fee of \$9,000 to the present value of \$44,181.19 results in a total present value cost to the employer of \$53,181.19, which is greater than \$50,720.61, and contrary to the requirement that the employee pay all of the attorney fee.

It should be clear that awarding the attorney fee in a lump sum, and then paying the employee full weekly benefits that terminate when the remaining weekly benefits equal the attorney fee paid would require the employer to bear a portion of the total cost of the attorney fee in contravention of the law. Therefore, either the employee's weekly benefits must be reduced for the entire period used to calculate the present value of the lump sum attorney fee, or the number of pay periods must be reduced to the appropriate number of weeks so that the employer is not required to pay a portion of the award.

Using the data from Example 1 above, the present value of \$200 per week for 300 weeks discounted at the 6 percent annual discount rate is \$50,720.61. Reducing that present value by a 15 percent attorney fee of \$7,608.09 leaves a remaining present value of \$43,112.52.

Knowing that the present value is \$43,112.52 and that the weekly payments are \$200, we can calculate F, and eventually n, the number of weeks the employee should receive \$200. The following is a step-by-step computation of n, using the formula $F = PV/PMT$:

1. $43,112.52/200 = 215.5626$
2. $(215.5626)(.0011498972) = .24787483$
3. $.24787483 - 1 = -.75212517$
4. $(-.75212515)(-1) = 1.329566$
The quotient is multiplied by -1 to eliminate negative numbers.
5. $(.0011498972)^n = 1.329566$
6. $\ln(.0011498972)^n = \ln(1.329566)$
7. $(n) \ln(.0011498972) = .284852573$
8. $(n)(.0011492363) = .284852573$

9. $n = .284852573/.0011492363$
10. $n = 247.862386$

Thus, if the attorney is awarded a lump sum fee of \$7,608.09 and the employee receives the full weekly benefits of \$200 for 247.862386 weeks, then the total cost to the employer will be \$50,720.61, in compliance with the worker's compensation statutes.

Again, for the lawyer who handles worker's compensation cases, I recommend a financial calculator. These formulas are already programmed into the calculator and the answers are available at the touch of a button. However, be warned that some calculators may not accept fractional pay periods, but would require you to "round" the figures, so that 2111.145 would be entered as 2111. Also, the capacity of the calculator may affect the accuracy of the answer due to round-off error. Even if you use a financial calculator this article should help you understand how it calculates a present value. Additionally, an annuity table for weekly payments of \$1 discounted at an annual discount rate of 6 percent can be obtained on request from *The Alabama Lawyer*, P.O. Box 4156, Montgomery, Alabama 36101. This table is useful as a guide to calculating the present value of a stream of weekly payments for up to 3,600 weeks.

Because there is no exact answer (in fact, some of the values may have an infinite number of decimal places), the best you can hope for is a very close approximation. Therefore, the values in this article and those in *St. Regis* are provided as guides to computing a present value, and due to factors such as round-off error, you should not be concerned if your results deviate slightly from the values in this article.

Finally, I thank Justice Janie L. Shores for giving me the privilege of being a member of her staff. Her guidance and leadership have proven to be invaluable, and I hope that the remainder of my legal career is as rewarding as my clerkship with her. ■

YLS

age everyone to make plans to attend the annual bar meeting and the YLS party.

In the past, our section has received some excellent ideas from the various meetings provided by the Young Lawyers' Division of the American Bar Association to better serve our profession and the public. We expect, and hope, to have delegates attend as many of these meetings as possible during the next year. The meetings will be in Vancouver, Canada; Los Angeles, California; Miami, Florida; and Chicago, Illinois.

Although the various committees of the YLS presently are working enthusiastically, there is always a need for greater involvement in the hands-on activities of the section. The only requirement for the membership into the section is that one must be under 36 years of age or in his or her first three years of practice. If you are in either category and wish to become involved in our section, please contact me or one of my executive committee members. ■



Recent Decisions

by John M. Milling, Jr.,
and David B. Byrne, Jr.

Recent Decisions of the Alabama Court of Criminal Appeals

Assertion of Fifth Amendment privilege by witness cannot be employed as hammer by prosecution

Limbaugh v. State, 7 Div. 945 (April 28, 1989)—Limbaugh was convicted of murder and sentenced to life imprisonment. Earlier, Limbaugh's co-defendants, Barnes and Helton, had pled guilty to the gruesome murder and were currently serving time in prison. At the conclusion of the case for the defense, the state called Helton as a rebuttal witness. When the prosecutor's questions focused on Helton's guilt and the guilt of Limbaugh, Helton refused to answer any further questions invoking his Fifth Amendment privilege against self-incrimination. The trial court, however, ruled that the witness had no Fifth Amendment right since "you can't incriminate yourself if you have already been convicted or sentenced" and because the time for appeal had expired. The court then instructed the witness to answer, but he continued to refuse, whereupon the prosecutor attempted to read Helton's statement line by line under the guise of questioning him.

On appeal, Limbaugh alleges that the trial court committed reversible error in not granting his motions for mistrial as a result of the serious inferences and innuendoes of guilt read into the record under the guise of questioning directed to Helton who steadfastly refused to answer. A unanimous Alabama Court of Criminal Appeals reversed and remanded.

The appellate court's decision authored by presiding Judge Taylor provides an excellent overview of the Sixth Amendment confrontation rights made applicable to the state under *Pointer v. Texas*. In *Shockley v. State*, 335 So.2d 659 (Ala.Crim.App. 1975), the court of appeals stated, "Regardless of whether the witness had

waived his immunity from testifying, so that he could not lawfully refuse to testify during extensive questioning, the fact that this Fifth Amendment claim may not have been valid did not remove the prejudice from such questioning. In essence, we held that it is not the witness's right which is in question, but rather, the right of a defendant to a fair trial which is at the crux of such a matter."

The court, in reversing the *Limbaugh* decision, relied on the *Shockley* rationale as follows:

"The prosecutor's persistent confrontation of the witness . . . with multiple questions . . . even though the prosecutor [knew] that [the witness] would



John M. Milling, Jr., is a member of the firm of Hill, Hill, Carter, Franco, Cole & Black in Montgomery. He is a graduate of Spring Hill College and the University of Alabama School of Law. Milling covers the civil portion of the decisions.



David B. Byrne, Jr., is a graduate of the University of Alabama, where he received both his undergraduate and law degrees. He is a member of the Montgomery firm of Robison & Belser and covers the criminal portion of the decisions.

not testify, supports a reasonable inference that the prosecutor preferred to parade these questions before the jury, thereby impressing them with innuendoes and inferences of guilt prejudicial to defendant.

"The trial court committed error in permitting such interrogation, although no answers were made, if for no other reason than that the defendant under such tactics was denied confrontation, a right of cross-examination, assured under the Sixth Amendment to the U.S. Constitution."

Recent Decisions of the Supreme Court of Alabama—Civil

Civil procedure . . .
attorney/client privilege, work

product and Rule 26(b)(1) discussed

Ex parte Great American Surplus Lines Ins. Co. (In re: Uniroyal, Inc. v. St. Paul Fire & Marine Ins. Co.), 23 ABR 1091 (February 17, 1989). By petition for writ of mandamus, Great American asked the supreme court to vacate the circuit court's order compelling Great American to produce a "coverage opinion letter" of Great American's legal counsel. The court issued the writ.

Lawsuits were filed against Great American's insureds, and they demanded coverage. Great American denied coverage. Being challenged by the insureds, Great American responded that it would submit the matter to legal counsel for review. Subsequently, Great American informed the insureds that legal counsel had agreed with its denial, and the insureds filed this declaratory judgment action and sought discovery of the opinion letter. Great American argued that the

opinion letter is protected by the attorney/client privilege and/or the "work product doctrine." The court agreed.

The court stated that the attorney/client privilege is to encourage candid "communication between attorneys and their clients and, thereby, promote broader public interest in the observance of law and administration of justice." The court determined that the opinion letter was a privileged communication.

The court also discussed the "work product doctrine" and found it to be much broader than the attorney/client privilege in that it affords protection to all documents and tangible items prepared by or for the attorney of the party for whom discovery is sought "as long as they were prepared in anticipation of litigation or preparation for trial." The opinion letter was prepared in anticipation of litigation and its discovery could only have been ordered upon a showing of "substantial need." A.R.Civ.P. 26(c).

Riding the Circuits

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The Autauga County Bar Association recently elected its officers for 1989. They are:

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Counties . . .

Section 11-12-5 construed and Section 6-8-101 applied

Elmore County Commission v. Ragona, 23 ABR 973 (January 27, 1989). Plaintiffs were injured on an Elmore County road and alleged that Elmore County negligently maintained the road. Plaintiffs also sued their uninsured motorist carrier. The entire action was filed in Montgomery County. The trial court denied the county's motion to transfer venue to Elmore County, and the jury returned a verdict for the plaintiff. The county appealed, and the court affirmed.

First, the county contended that the notice filed pursuant to Section 11-12-5, *Ala. Code* (1975), was deficient because the claim was filed by plaintiffs' attorney who did not have "personal knowledge" of the facts as required by statute and because the damages sought were not "itemized" to comply with the statute. The court disagreed, stating that "per-

sonal knowledge" should not be construed to limit the class of persons eligible to file claims to those involved in, or eyewitnesses to, the event giving rise to the claims. Plaintiffs' attorney qualifies as a person with personal knowledge. The court also stated that the requirement of an "itemization" should not be narrowly construed to require a breakdown of damages in precise amounts. The notice should include a factual background, a description of the claim, the basis for the county's liability, the nature of the damages and the compensation demanded.

The county also contended that the trial court's failure to transfer the action to Elmore County is reviewable by appeal. The county argued that *Davis v. Marshall*, 404 So.2d 642 (*Ala.* 1981) and the cases following it were improperly decided and should be overruled. They held that an adverse ruling on a motion to transfer an action to a proper venue must be reviewed by a petition for writ of mandamus and cannot be raised in an

appeal from a final judgment. The court agreed with the county. Section 6-8-101, *Ala. Code* (1975), clearly allows a party to raise the question of transfer of venue on appeal from an adverse judgment on the merits. *Davis v. Marshall* and the other cases to the contrary are overruled. The court went on to note that mandamus also may be proper in some instances to correct an erroneous ruling on transfer of venue.

Administration of estates . . .

Clark v. Jefferson Federal Savings and Loan Assoc. of Birmingham overruled

Jefferson Federal Savings and Loan Assoc. of Birmingham v. Clark, 23 ABR 1032 (February 3, 1989). Jefferson Federal filed this second appeal from the summary judgment in favor of Clark as administrator of the estate of McKee on its suit to recover money erroneously paid to the estate. In the first appeal, the supreme court reversed a summary judg-

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ment in favor of Jefferson Federal because it failed to file a claim within six months from the grant of letters testamentary as required by Section 43-2-350, *Ala. Code* (1975). Jefferson Federal was given constructive notice by publication in a newspaper, but Jefferson Federal did not receive actual notice until approximately one year after the administrator was appointed.

The court reversed itself because the United States Supreme Court recently held that constructive notice by publication in a newspaper is insufficient and that actual notice by mail is required where creditors are "known or reasonably ascertainable." The court remanded the case for a determination of whether Jefferson Federal was a "known or reasonably ascertainable" creditor and thereby entitled to actual notice rather than constructive notice.

Releases . . .

Section 12-21-109 given effect

Pierce, etc. v. Orr, 23 ABR 1201 (February 24, 1989). Plaintiff settled a worker's compensation suit and signed a general release which purported to release any and all parties. The trial court enforced the release to include the release of unnamed third parties. The plaintiff appealed, and the court chose this case to reevaluate and change its position on this court's treatment of general releases.

The court noted that a general release discharging any and all persons connected with the subject injury and damages traditionally has been held to dis-

charge from liability any and all persons without regard to whether such persons were named, whether they paid any part of the consideration or whether they had any knowledge of the instrument. It did not even matter whether the executing parties knew that the third parties were involved.

The court stated that the courts seemingly have ignored Section 12-21-109, *Ala. Code* (1975) which states "all releases . . . must have effect according to their terms and the intentions of the parties." Therefore, the court stated that, henceforth, unnamed third parties, referred to in the release as "any and all parties" or words of like import, who have paid no part of the consideration and who are not agents, principals, heirs, assigns of, or who do not otherwise occupy a privity relationship with the named payors, must bear the burden of proving by substantial evidence that they are parties intended to be released, i.e., that their release was within the contemplation of the named parties to the release.

Torts . . .

parental immunity doctrine no longer applicable to sexual abuse claim

Hurst v. Capitell, 23 ABR 963 (January 16, 1989). Plaintiff, a minor, sued her stepfather and her natural mother for damages based on sexual abuse. The trial court dismissed the action as to the mother and granted summary judgment for the stepfather based upon the parental immunity doctrine. Plaintiff appealed and asked the supreme court to abolish

the parental immunity doctrine. Instead, the court created an exception to the doctrine, limited only to sexual abuse cases.

The court stated that the doctrine is not based on common law or statute. Rather, it was judicially created by the Mississippi Supreme Court. The court reasoned that since it is judicially created, it may be judicially qualified. In creating this exception for sexual abuse cases, the court stated that traditional rules of tort law relating to intentional infliction of personal injury generally are sufficient for the governance of such claims and the defenses asserted thereto. However, the court also stated that the plaintiff had to prove its case under a "clear and convincing" standard as opposed to a mere "substantial evidence" standard. In creating this exception to the parental immunity doctrine, the court made no distinction between biological or adoptive parents or stepparents.

Venue . . .

amendment no. 473 not applicable to pending litigation

Ex parte Tichenor (In re: Patterson v. Tichenor), 23 ABR 1077 (February 10, 1989). The plaintiffs filed suit in Jefferson County in 1985. One of the defendants was a foreign corporation. Venue was proper in Jefferson County when suit was filed. However, in March 1988, the Alabama Constitution was amended to provide "any foreign corporation . . . may be sued only in those counties where such suit would be allowed if the said foreign corporation were a domestic corporation." Defendants filed a motion to transfer the case, contending that amendment no. 473 applied to pending litigation. The trial court denied the motion, and defendants filed this petition for writ of mandamus.

The court agreed with the trial court and held that the amendment does not require a transfer of a case then pending from a county wherein venue was proper prior to the approval and proclamation of ratification. The amendment makes no reference to pending litigation. The court stated that it would be less disruptive of the orderly disposition of pending litigation to hold that only cases filed on or

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after April 1, 1988, are controlled by amendment no. 473.

Recent Decisions of the Supreme Court of the United States

No interlocutory appeal for a FRCP 6(E) violation

Midland Asphalt Corp. v. United States, No. 87-1905, 57 USLW 4386 (March 28, 1989)—May federal criminal defendants who fail to persuade a judge to dismiss their indictments because of alleged grand jury abuses by prosecutors under Federal Rules of Criminal Procedure 6(e)(2) immediately appeal the district court's refusal? The Supreme Court, in a unanimous decision, said no.

The *Midland* defendants moved to dismiss a federal indictment on the ground that the prosecution had violated Federal Rules of Criminal Procedure 6(e)(2), which generally prohibit public disclosure by government counsel of "matters occurring before the Grand Jury." The government had filed, in a separate criminal case, a memorandum disclosing matters before the grand jury in the *Midland* case. The district court denied the motion, whereupon the defendants appealed the trial court's ruling to the court of appeals. The court of appeals granted the government's motion to dismiss the defendants' appeal for lack of jurisdiction on the ground that the district court's order was not an immediately appealable "final decision" within the meaning of 28 U.S.C. §1291.

Justice Scalia delivered the opinion for a unanimous Court holding that denials of request for dismissal based on alleged violations of Federal Rules of Criminal Procedure 6(e)(2) are not immediately appealable. The high court reasoned, "Since the petitioners have not yet been sentenced, the district court's order is not a final judgment ending the litigation on the merits."

Justice Scalia's opinion also cryptically notes that "neither the test of Rule 6(e) nor the Grand Jury clause of the Fifth Amendment affords a right not to be tried in the event of a violation of Grand Jury

secrecy." Last term, the Supreme Court in *Bank of Nova Scotia v. United States*, 487 U.S. _____ (1988) held "that a district court had authority in certain circumstances to dismiss an indictment for violations of Rule 6(e).

Adding insult to injury

United States v. Halper, No. 87-1383, _____ USLW _____ (May 15, 1989)

May civil fines placed on top of criminal penalties amount to multiple punishment banned by the Constitution's double jeopardy clause? The Supreme Court, in a unanimous decision, said yes.

In an opinion by Justice Blackmun, the Court said that the double jeopardy pro-

vision of the Constitution had been violated in *Halper* when \$131,170 in civil fines were assessed under the False Claim Act after criminal penalties had been imposed on a Medicare fraud conviction involving \$585.

Justice Blackmun reasoned that, "A civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can be explained only as serving either retributive or deterrent purposes is punishment . . . a defendant who already has been punished in a criminal prosecution may not be subjected to an additional civil sanction to the extent that the second sanction may not fairly be characterized as remedial." ■



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Legislative Wrap-up

by Robert L. McCurley, Jr.

The regular session of the Alabama Legislature ended May 11, 1989. With the budgets passed early in the session, little major legislation was considered. The Legislature did pass the following five bills prepared by the Alabama Law Institute:

Fraudulent Transfers (Act 89-793)

This act will be effective January 1, 1990. Some of the features of the bill are outlined below:

§ 1 Definitions.

§ 2 Enumerates when a debtor is "insolvent"

- a. debtor's debts are greater than his assets
- b. debtor generally is not paying his debts when due
- c. when the partnership debts are greater than its assets
- d. listing of type assets excluded
- e. listing of type debts excluded

§ 3 Enumerates "value"

- a. transfer for existing debt
- b. giving reasonably equivalent value at a foreclosure
- c. transfer for present value

§ 4 Transfers Fraudulent as to Present and Future Creditors

- a. transfer made with actual intent to defraud
- b. factors (badges) in determining actual intent
 1. transfer to insider
 2. transfer made but debtor retains possession
 3. transfer was concealed
 4. transfer was made after debtor was sued
 5. transfer was substantially all debtor's assets
 6. debtor absconded
 7. debtor removed or concealed assets
 8. whether value received was equivalent to the value of assets
 9. debtor became insolvent after transfer
 10. transfer shortly before or after transfer
 11. transfer to a lienor who conveyed to an insider

- c. transfer without receiving reasonably equivalent value and debtor was left with small assets or inability to repay

§ 5 Transfers Fraudulent to Present Creditors

- a. as to existing creditors, transfer was without receiving reasonably equivalent value, and the debtor became insolvent as the result of the transfer
- b. existing creditors and transfer to an insider where the insider had cause to believe the debtor was insolvent

§ 6 When Transfer is Made

1. i. real property is transferred and the good faith purchasers cannot acquire title or interest
- ii. personal property transferred and creditor cannot acquire a judgment lien
- 2,3. when the transfer is perfected
4. transfer is not made until the debtor has acquired rights to the asset

§ 7 Remedies of Creditors

- a. i. set aside the transfer as to creditors
- ii. attachment
- iii. injunction, appointment of a receiver, allow a judgment creditor to levy on the asset transferred
- b. judgment creditor may petition the court to levy on property conveyed

§ 8 Defenses, Liability and Protection of Transferee

- a. good faith transfer for reasonably equivalent value
- b. liability is for value of goods transferred



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

- c. goods valued at transfer
- d. lien on goods transferred are to the value of lien
- e. not voidable if the transfer was from the termination of a lease or enforcement of a security interest
- f. not voidable to the extent of value given or made in a good faith effort to rehabilitate the debtor

**§ 9 Extinguishment of Claims for Relief
Statute of limitations**

- a. actual fraud—10 years after transfer of real property
- b. actual fraud—6 years after transfer of personal property
- c. constructive fraud—4 years after transfer as to existing creditors
- d. constructive fraud—1 year after transfer as to future creditors

Statute of Non-Claims (Act 89-811)

Alabama's statute of non-claims *Ala. Code* § 43-2-60 and 43-2-61 (1975) was declared unconstitutional. This revision continues the publication of constructive notice of probating an estate in a newspaper for three weeks and the requirement that claims must be filed within six months. The act adds the provision for mailing 30 days actual notice to parties who have claims against the decedent and who are known or are reasonably ascertainable by the personal representative.

Memorandum of Lease (Act 89-942)

This act allows a memorandum of a lease to be recorded or the lease itself. The memorandum must state:

1. names of the parties
2. terms of the lease
3. any options
4. legal description
5. any other provision

Registration of Federal Liens (Act 89-948)

This bill provides for the registration of federal liens and designates a place of filing for notices of liens of the United States and applies only to the federal liens. The bill provides that federal liens upon real property and certificates and notices affecting the liens to be filed in the office of judge of probate in the county in which the real property is located. Federal liens upon personal property that apply to a corporation or partnership or a trust will be filed in the secretary of state's office. If the interest is against the estate of the decedent or in other cases, then the filing will be in the judge of probate's office in the county where the estate is filed or the person resides.

Institute bills also introduced but not acted on by the legislature were the Condominium Act, the Adoption revision, the Securities revision and the Eminent Domain amendments. These bills will be introduced again in the next session. ■

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Opinions of the General Counsel

by Alex W. Jackson, assistant general counsel

QUESTION #1:

A law firm wishes to participate in an advertising program called "Injury Helpline." These ads are placed for broadcast in certain specific areas, are 30 seconds in length, and designed to encourage telephone calls to a toll-free number. Callers are referred to a participating law firm within a zip code area, and law firms are granted an exclusive franchise within a given zip code area. The ads contain a disclaimer stating "Advertising Paid for by Sponsoring Attorneys. Not a Lawyer Referral Service." The ads are prepared, marketed, owned and placed by the producer, which contracts to use not less than 70 percent of monies collected in a given market for advertising in that market. A copy of the proposed contract between the producer and the attorney was attached to the request, with the contract specifying, in part, that callers requesting a "referral" will be "referred" to an attorney in "... his/her residence, employment or other zip code area"

ANSWER:

The advertising and marketing scheme presented herewith does not comply with the *Code of Professional Responsibility of the Alabama State Bar* and, in our opinion, it would be impermissible for you to participate in the same. The Commission is of the opinion that despite disclaimers regarding what the advertisement is, or is not, it is by its nature a for-profit referral service, the same being impermissible pursuant to Temporary DR 2-102(C). Additionally, the terms used in the broadcast presentation are misleading in that a clear inference is made that the services obtained from attorneys who participate in the program are somehow different and preference is made that the services obtained from attorneys who the telephone book. Temporary Disciplinary Rule 2-101 proscribes such representations.

We are of the opinion that the "Injury Helpline" advertising program is not in conformity with the provisions of Temporary Disciplinary Rules 2-101 through 2-106 of the *Code of Professional Responsibility*.

DISCUSSION:

In classifying this advertising program as a for-profit referral service the Commission has looked at the structure of the program rather than to the definition placed thereon by the producer. The Commission is mindful of the fact that these advertising spots are owned, produced and marketed by non-lawyers. This is not a cooperative advertising venture put

together by Alabama attorneys. We also note with interest that the contract utilized by the producer makes reference to the true nature of the service, which is referral of business to participating, i.e., paying attorneys. This was not dispositive in our consideration, but is illustrative of the many facets of the program that lead to the inescapable conclusion that this is a for-profit referral service.

The provider of this service has indicated a willingness and desire to come into conformity with the *Alabama Code of Professional Responsibility*. We are of the opinion that a very fundamental change in the structure in the system and the advertisements presented would be required to come into conformity with Alabama rules on attorney advertising.

by Robert W. Norris, general counsel

QUESTION #2:

An Alabama law firm requested an opinion concerning the propriety of joining a nationwide network of law firms, for the purpose of advertising nationally, exchanging information and referring cases. The firm also asked whether the disclaimer and name of a responsible lawyer need be included in national advertising.

ANSWER:

The network is an organization of law firms, in corporate form, whose primary purpose is to advertise, provide information about member law firms to potential clients and refer clients to member firms. The network is characterized as non-profit and will be supported by the dues of the member firms. You may participate in this network as long as the cost of maintaining it is shared by the members and is not related to the number of cases referred.

Any advertising done by the network must conform to the requirements of the *Code of Professional Responsibility of the Alabama State Bar*, including using the disclaimer as well as the name of at least one lawyer in the firm responsible for the content of the advertisement.

DISCUSSION:

In 1985 the Alabama Supreme Court adopted temporary advertising rules substantially similar to the advertising rules contained in the American Bar Association Model Rules. These rules, contained in Temporary DR 2-102 to DR 2-106, are carried forward without change in the proposed new Alabama Rules of Professional Conduct that have been approved by the board of bar commissioners and are currently pending adoption by the Alabama Supreme Court.

Temporary DR 2-102 Advertising provides that any lawyer who advertises concerning legal services shall comply with the following:

* * *

"(C) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of any advertisement or written communication permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service.

(D) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

(E) No communication concerning a lawyer's services shall be published or broadcast unless it contains in legible and/or audible language the following: 'No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.' (Amended effective January 6, 1986)"

Prior to 1985 Disciplinary Rule 2-104(C) restricted referral services to those operated, sponsored or approved by the bar. This rule was repealed in October 1985 and replaced by Temporary DR 2-102(C) which contains no such limitations. Under the proposed new Alabama Rules of Professional Conduct this section becomes Rule 7.2(c). The approved comments concerning Rule 7.2(c) states as follows:

* * *

"A lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs."

* * *

Regarding the not-for-profit aspect some legal scholars feel that this provision is simply to limit the open-ended permission to these services and that services run for profit, such as individual lawyers and law firms, are presumably subject only to the general rules of advertising. See Wolfram, *Modern Legal Ethics*, West Publishing Company (1986), pg. 774, n. 14.

Presumably then it would be acceptable for two or more lawyers or law firms to form an advertising/referral arrangement that contained a profit factor. Whether or not such an arrangement would be acceptable, of course, would depend on the individual aspects of each arrangement. In the instant case there is no need to address the "for-profit" aspect since the members of the "Network" pay through dues only the expense of maintaining the organization. Consequently, it is the opinion of the General Counsel and the Disciplinary Commission that the requesting firm may participate in the State Capital Law Firm Network.

The purpose of including the name of at least one lawyer responsible for the content of the advertisement (Temporary DR 2-102(D)) is to facilitate the enforcement of the advertising rules and provide factual consumer information. To be effective this rule must apply whether the advertising is in- or out-of-state and whether it is done directly by the attorney or law firm or by an organization such as the one here being considered.

The New York rule which requires that advertisements contain the firm's name, office address and telephone number was upheld by the New York Supreme Court as not unconstitutionally infringing on the lawyer's freedom of speech. The court citing *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) and *Zauderer v. Office of the Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626 (1985) ruled that such a regulation was not a regulation of "content" but rather a reasonable regulation designed to give prospective clients information in choosing counsel. See *In Re Anonymous*, N.Y. Sup. Ct., App. Div., 2d Department (4/12/88).

Regarding the disclaimer it is only required in attorney advertisements that describe specific legal services. The

background and constitutionality of the disclaimer required by the Alabama rules were discussed in detail in *The Alabama Lawyer*, volume 47, No. 5, September 1986, and volume 48, No. 6, November 1987.

In request for opinion 86-100, the Disciplinary Commission stated, "If the material disseminated by an attorney described a specific legal service or services whether through public media such as telephone directory, legal directory, newspaper or other periodicals, outdoor displays, radio, television or written communication . . . regardless of size or duration . . . it must contain the disclaimer in legible and/or audible language."

In view of the above it is the opinion of the General Counsel and the Disciplinary Commission that any advertisements placed by the network in the public media that describe a specific legal service or services are required to contain the disclaimer contained in Temporary DR 2-102(E). ■

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Supreme Court of Alabama

ORDER

WHEREAS, the Board of Commissioners of the Alabama State Bar recommended to this Court that the *Code of Professional Responsibility of the Alabama State Bar* be superseded by the adoption of new "Alabama Rules of Professional Conduct"; and

WHEREAS, the Court considered those proposed Rules and deemed it appropriate to have them published for comment by interested persons; and on January 5, 1989, ordered them published; and

WHEREAS, those proposed rules were published in 536 So.2d Advance Sheet No. 2, February 23, 1989 (special "Alabama Edition," mailed only to all So.2d Advance Sheet subscribers with an Alabama mailing address); and

WHEREAS, it now appears to the Court that there may have been insufficient notice to the bar of the January 5, 1989, order concerning the proposed Rules of Professional Conduct;

IT IS HEREBY ORDERED that further notice be given in the July 1989 issue of *The Alabama Lawyer* of the Proposed Rules of Professional Conduct, and that all interested persons shall have until September 11, 1989, to submit to the Clerk of the Supreme Court, P.O. Box 157, Montgomery, Alabama 36101, any written objections or comments concerning those proposed rules.

DONE this the 16th day of June, 1989.

Hornsby, C.J., and Maddox, Jones, Almon, Shores, Adams, Houston, Steagall, and Kennedy, JJ., concur.

■

Disciplinary Report



Removal from Disability Status

● **Michael S. Sheier**, a Birmingham attorney, was removed from disability inactive status on February 14, 1989. Sheier also was suspended from the practice of law for three years, effective January 31, 1986, and ending February 1, 1989, on each of four complaints involving misappropriation of a client's funds in violation of Disciplinary Rule 1-102(A)(4) which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation, nor be guilty of willful misconduct. [Pet. No. 88-06]

Reinstatement

● **Michael S. Sheier**, a Birmingham attorney, was reinstated to the practice of law by order of the Supreme Court effective April 3, 1989. [Pet. No. 88-06]

Suspension

● Birmingham lawyer **Samuel H. (Shmuel) Sanders, III**, has been ordered suspended from the practice of law for a period of one year, effective February 20, 1992, at the conclusion of an earlier imposed term of suspension. The latest suspension results from a default judgment having been entered against Sanders before the Disciplinary Board, due to his failure to deny disciplinary charges alleging that he had accepted a total fee of \$875 to assist a client in connection with two legal matters, but failed to provide the legal services for which he had been paid, failed to refund the fee and failed to return the client's papers to him. [ASB No. 87-752]

● On April 17, 1989, the Supreme Court of Alabama ordered that Mobile attorney **C. Christopher Clanton** be suspended from the practice of law for a period of three years, said suspension to become effective December 31, 1986, with no automatic reinstatement. The suspension is based upon Clanton's conviction before the Disciplinary Board of the Alabama State Bar of various ethics violations. [ASB Nos. 86-354, 86-421, 86-431, 86-432, 86-532, 86-708, 86-729, 87-57, 87-269, 87-272, 87-605]

Private Reprimands

● On March 24, 1989, a lawyer was privately reprimanded for conduct adversely reflecting on his fitness to practice

law [DR 1-102(A)(6)]. The lawyer was retained to file suit in two collection matters and paid the filing fees in both cases by the client. Thereafter, the lawyer failed to file suit, and ignored repeated requests from the client for status reports as to the two cases. The statute of limitations expired as to both claims, after which the client filed a complaint with the bar. Only after being notified of the complaint did the lawyer refund the pre-paid filing fees. [ASB No. 88-716]

● On March 24, 1989, a lawyer was privately reprimanded for conduct adversely reflecting on his fitness to practice law and willfully neglecting a legal matter entrusted to him. The lawyer was retained to appeal a misdemeanor conviction from municipal court to circuit court, and to obtain a jury trial for the client. The lawyer filed the appeal, but did not demand a jury trial, causing the client to lose the right to trial by jury in circuit court. [ASB No. 88-634]

● On March 24, 1989, a lawyer was privately reprimanded for engaging in illegal conduct involving moral turpitude, dishonesty, fraud, deceit, misrepresentation, willful misconduct and conduct prejudicial to the administration of justice, all of which adversely reflected on his fitness to practice law. The lawyer was appointed to represent an indigent criminal defendant. In filing payment claim vouchers for said representation, the lawyer misrepresented the status of the cases and the amount of time expended by the lawyer in representing the client. [ASB No. 83-237]

● On March 24, 1989, a lawyer was privately reprimanded for intentionally failing to seek the lawful objectives of a client through reasonably available means [DR 7-101(A)(1)], and intentionally failing to carry out a contract of employment entered into with a client for professional services [DR 7-101(A)(2)]. The lawyer was retained to defend a client in a unlawful detainer action, but failed to notify the client of the date the case was set for trial and failed to appear for trial on behalf of the client. [ASB No. 88-526]

● On March 24, 1989, a lawyer was privately reprimanded for having violated DR 6-101(A) by failing to promptly return to a client \$228 in pre-paid expenses that were to be used in the course of representing the client. [ASB No. 88-192]

Memorials

Joseph E. Lane, Jr., 67, of Tuscaloosa, died May 7, 1989, at University Hospital in Birmingham. He was a 1956 graduate of the University of Alabama School of Law and admitted to the Alabama State Bar in the same year.

A native of Cookeville, Tennessee, he received his bachelor's degree from Tennessee Technical University and his master's from Wharton School, Pennsylvania University. He was a certified public accountant and professor of accounting at the University of Alabama from 1949-84.

Professor Lane made an outstanding contribution in the state in combining the fields of accounting and law primarily in the area of taxation. He originated the master's of taxation program in the School of Accountancy, drawing on both the law and accounting faculties for its offerings. He was one of the initiators of



JOSEPH ERNEST LANE, JR.

the combination Law-MBA programs under which graduates receive both the juris doctor and master's in business administration degrees. He has been one of the principal leaders of the annual Federal Tax Clinic held on the university campus for attorneys and accountants. He was the author in 1951 and 1960 of *Regulations Under the State Tax Code*. He has served as one of the organizers and a president of the Tuscaloosa Estate Planning Council. He has lectured throughout the country on topics of estate planning, taxation and accounting.

Within the university, he chaired the Faculty Senate and the Insurance and Retirement Committee, and served on the University Budget Committee, the University Council and as senior advisor to the Chancellor's Committee on Compensation. Since his retirement, he has been a consultant for the Alabama Society of CPAs and the Alabama State Board of CPAs, as well as engaging in a successful tax practice.

Dean Nathaniel Hansford of the School of Law paid tribute to Professor Lane as an able contributor to his adopted state, to the two professions which he has so ably brought together

and as one of the outstanding graduates of the law school.

Professor Lane is survived by his wife, Edna Flynn Lane, of Tuscaloosa, Alabama; four daughters, Louise LeGrand of Huntsville, Anne Kohlman of Atlanta, Beth Merchant of Birmingham and Mary Bailey of Seattle; a son, Joseph E. Lane, III; a sister, Mary Virginia Maddux of Cookeville, Tennessee; and nine grandchildren.

He was a veteran of World War II in the submarine service and an active member of the First United Methodist Church of Tuscaloosa, serving as a past chairperson of its administrative board and as a longtime teacher of the Friendship Sunday School Class.

—J. Rufus Bealle
Tuscaloosa, Alabama

Fuller, Charles Eugene, Jr.—Lafayette

Admitted: 1932

Died: July 29, 1988

Garrett, James Willis—Montgomery

Admitted: 1940

Died: May 8, 1989

Lane, Joseph Ernest, Jr.—Birmingham

Admitted: 1954

Died: May 7, 1989

Patton, Alta Chapman—Montgomery

Admitted: 1948

Died: August 25, 1988

Seale, Harry—Mobile

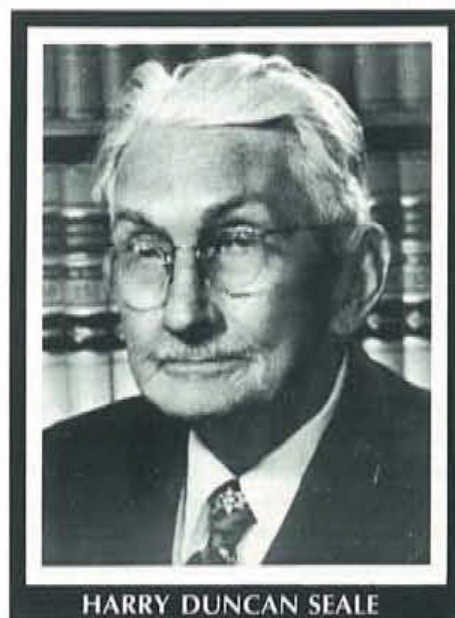
Admitted: 1927

Died: April 12, 1989

Street, Charles Shelton—Mobile

Admitted: 1964

Died: April 16, 1989



HARRY DUNCAN SEALE

WHEREAS, Harry Seale was born January 13, 1895, and after a full and bountiful life died April 12, 1989; and

WHEREAS, the Mobile Bar Association in grateful appreciation for all his contributions to this profession recognizes his dedication to the law and to this bar;

NOW, THEREFORE, BE IT KNOWN, that at the time of his death, Seale had been a longtime resident of Mobile, Alabama, where he distinguished himself as a lawyer and as an advocate for more than 50 active years until his retirement in 1977.

In his early years he served his country well during World War I as a member of the United States Army Medical Corps, receiving an honorable discharge in 1919. He returned to marry Marie Grutka in 1922. While they had no children, his nephew, Al Seale, currently is a member of the Mobile Bar.

Seale received both his bachelor of arts and bachelor of laws from the University of Alabama, graduating with honors in 1927. He was selected for membership in Phi Beta Kappa. When he first returned to Mobile to practice law he was hired as an associate by Francis Inge. On June 1, 1930, he joined the firm of Outlaw & Kilborn. In 1950 Seale, then practicing alone, hired M.A. Marsal and, eight months later, his nephew, Al Seale, and the firm of Seale, Marsal & Seale was born.

His practice was primarily in criminal defense although he handled cases of all types and was city attorney for 20 years. He was an aggressive, competitive advocate, yet at the same time a kind and gentle man with a keen sense of fair play and justice, a gentleman's gentleman. It was truly a learning experience for all lawyers who were fortunate enough to see him at work.

He was an accomplished machinist as a result of labor in the shipyards along the Gulf Coast where he worked and saved for law school. He maintained a working machine shop at his home. He was an avid fisherman until the infirmities of old age interfered.

Seale's wife passed away in 1986.

NOW, THEREFORE, BE IT RESOLVED, by the Mobile Bar Association, at its regular meeting held Friday, April 21, 1989, that the death of Harry Seale was a great loss to this association, the bar of this state and the people of this county, whom he served so well; that this association extends its sympathy to his family and friends and shares with them their

loss; and that the members of this association express the honor felt by them to have known him and to have practiced law in this community with him.

—William H. McDermott
President, Mobile Bar Association ■

CHARLES SHELTON STREET

WHEREAS, Charles Shelton Street was born in Gadsden, Alabama, February 1, 1936, moved to Mobile during his youth, and gave great service to our community and to the legal profession;

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

NOW, THEREFORE, BE IT KNOWN, that Charles Shelton Street departed this life April 16, 1989.

During his high school years, Street attended and graduated from Murphy High School, after which he matriculated to the University of Alabama and received a bachelor of science degree in 1955. From 1955 to 1960 and from 1962 to 1963 he was in active service to his country as a member of the United States Air Force. He received his J.D. degree from the University of Alabama School of Law in 1964 and was admitted to practice law in this state that year. While in law school, Street became a member of the Bench and Bar Society.

During his early years after graduation from law school, Street served as an assistant district attorney and with the Mobile law firm of Tyson, Marr & Friedlander. In 1971, he formed a partnership with fellow Mobile attorneys James Atchison and Calvin Clay under the name of Atchison, Clay & Street. Thereafter, the firm name was changed to Clay, Massey, Street & Gale, with its office first located in the First National Bank Building and then on Church Street. Since 1980, Street was a sole practitioner.

He was a member of Ashland Place United Methodist Church and active in the support of the pre-school program conducted at Ashland Place. Street was a member of many local and professional

organizations, including, but not limited to, the Mobile Bar Association, the Alabama State Bar, the Trial Lawyers Association, American Legion Post #3, the McCormick Masonic Lodge F&AM, Abba Temple, the York Rite Bodies and the American Arbitration Association. He was a retired lieutenant colonel in the United States Air Force Reserve.

Street was a quiet man but possessed of a dry wit. A knowledgeable practitioner, with particular emphasis upon estate matters, bankruptcy and property law, he often was called upon for advice and counsel by his fellow attorneys. He was a Christian gentleman who never had unkind words to say about anyone.

He is survived by his wife, Lois Street; a daughter, Angela Lynn Street; a son, Michael Shelton Street; his mother; two sisters; a brother; and nieces, nephews and other relatives, all of whom with the members of our association mourn his passing.

THEREFORE, we, the members of the Mobile Bar Association, do hereby honor the memory of our friend and fellow member, request that this resolution be spread upon the minutes of this association and of the Alabama State Bar, and that a copy be presented to the family of Charles Shelton Street.

—William H. McDermott
President, Mobile Bar Association ■



These notices are published immediately after reports of death are received. Biographical information not appearing in this issue will be published at a later date if information is accessible. We ask you to promptly report the death of an Alabama attorney to the Alabama State Bar, and we would appreciate your assistance in providing biographical information for *The Alabama Lawyer*.

Consultant's Corner

The following is a review of and commentary on an office automation issue that has current importance to the legal community, prepared by the office automation consultant to the state bar, Paul Bornstein, whose views are not necessarily those of the state bar.

This is the eleventh article in our "Consultant's Corner" series. We would like to hear from you, both in critique of the article written and suggestions of topics for future articles.

Serene & Comfortable (revisited)

Thousands (one) of faithful readers hastened to comment on last month's article concerning Alabama's model law firm. How, they asked, can the firm be so profitable? There must be some secret formula, right? An angle? A gimmick? Sorry, faithful readers, the firm of Serene & Comfortable, although a model, is not a gimmicky concoction of my imagination; there is no secret formula. Every "trick" in their book is something you have read about here or in a systems-type of newsletter. Herewith is a refresher.

Fee agreements

Yes, they use them, on all individual clients and all new corporate clients. They are simple to prepare, once programmed into your word processor and save infinite amounts of time haggling over fees, promised outcomes, etc.

Time

They ruthlessly record all time spent on client matters. True, they write off some at pre-bill time, but they reserve that decision to then, not spur of the moment. Each morning they recite the time-keeper's anthem, "Fifteen minutes a day at \$80 per hour is \$5,000 per year . . . I'll take it."

Copy charges

It is amazing what a few copies will do. They have a copy controller costing about \$150 per month that captures nearly \$2,000 in copy charges, half of which, if done manually, probably would have gone unrecorded.

Telephone charges

Serene & Comfortable tries very hard to minimize non-billable time. One former timewaster is now a snap. Instead of laboriously poring over telephone company itemized charges, they have a standard charge for all toll calls, based on average monthly calls.

Cash advances

They do not advance anyone out-of-pocket expenses. Their fee agreement letter is quite specific on this, and they require pre-payment of any estimated out-



Bornstein

of-pocket expenses. This is held in trust and applied as needed.

Realization

On a monthly basis, they very carefully examine their average hourly billings, as compared to their budgeted billing rates. Hours and billings are separated on

a fee basis spread sheet. They know quickly, for example, when fixed fee billings per hour drop below budget. This triggers an examination of the fixed fee and the prudence on continuing such arrangements. Sometimes they choose to continue at the same rate, sometimes they choose to raise the rate, sometimes they choose to discontinue the service. Whatever their decision, it is a conscious one, triggered by the facts, not a desperate one, triggered by panic.

Technology

They are not a particularly high tech firm. Frankly, their word processing system is rather dated. Their billing package is in the high mediocre to average range. But they keep abreast of the developments in the technology marketplace. One of the younger partners has this responsibility because she has an undergraduate background in computer science. She regularly briefs the other partners on emerging developments. They consider some and table some. They are never first to try something; more importantly, they are never last, either.

The future

The firm has structure, market focus and a dedicated support staff. They have an additional characteristic that few others have, a succession plan. There is a written agreement providing for the continuation of the firm on an orderly basis. There are no draconian payout provisions to retired or deceased partners that would threaten the firm with insolvency. The partners are fully apprised of the plan, the support staff, generally. This contributes greatly to a sense of stability and continuity. Not surprisingly, there is virtually no turnover in the firm.

Serene & Comfortable is looking forward to the last decade of the century with quiet confidence. Their name seems to suit them perfectly. ■

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9451-1A/1-89

142023

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