



The Alabama Law Institute's annual meeting program was highlighted by two separate panels providing analysis and review of the state's new business entity and real estate laws. Above: (l-r), Rep. James Buskey, Sen. Ben Brooks, Rep. Cam Ward and Prof. Howard Walthall, Cumberland School of Law

Below: (l-r), Sen. Rodger Smitherman, Rep. Jeff McLaughlin, Sen. Roger Bedford, and Rep. Demetrius Newton, speaker pro tem, Alabama House of Representatives



ROBERT L. MCCURLEY, JR.

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

Annual Meeting of the Law Institute

The annual meeting of the Law Institute was held during the state bar meeting in July. Re-elected for the 2009-2010 year were the following officers:

President: Representative Demetrius Newton
 Vice President: Senator Roger Bedford
 Secretary and Director: Robert L. McCurley, Jr.
 Executive Committee:

Representative Marcel Black
 David Boyd
 James M. Campbell
 William N. Clark
 Peck Fox
 Fred Gray
 Representative Ken Guin
 Richard S. Manley*
 Oakley W. Melton, Jr.*
 Yetta Samford*
 Senator Rodger Smitherman
 Representative Cam Ward
 (*emeritus member)

Elected to fill unexpired terms on the council were Allan Chason of Bay Minette for the 1st District and Leatha Gilbert of Birmingham in the 6th District.

LEGISLATIVE WRAP-UP

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New Laws for 2009

Ad Valorem Tax Redemption—effective September 1, 2009

Uniform Limited Partnership Act—effective January 1, 2010

Electronic Recording of Real Estate Records—effective January 1, 2010

Business and Non-Profit Entities Codes—effective January 1, 2011

(See the July 2009 *Alabama Lawyer* for a summary of acts.)

Proposed Bills for 2010

The Institute expects to propose to the Alabama legislature the following revisions that are being completed

in time for the January 5, 2010 beginning session of the legislature:

1. Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The current Guardianship and Protective Proceedings Act was passed by Alabama in 1987 and was based on the Uniform Act at the time.

Due to increased population mobility, cases involving simultaneous and conflicting jurisdiction over guardianship increased to the point that Alabama passed the Uniform Child Jurisdiction Enforcement Act in 2000 to clarify the law concerning child custody where the parents are in different states. This same problem now exists for adults who have similar problems of guardianship of aging parents with children living in

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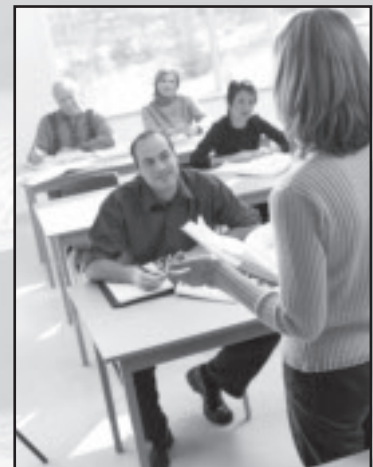
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different states. Guardians are regularly appointed by courts to care for an aging adult in one state where the individual is domiciled or physically present. There needs to be an effective mechanism for resolving multi-jurisdictional disputes.

The Full Faith and Credit clause of the U.S. Constitution requires that court orders in one state be honored in another state but there are exceptions to Full Faith and Credit doctrine of which guardianship and protective proceedings law is one. Sometimes guardianship must be initiated in a second state because of the refusal of financial institutions, care facilities and the courts to recognize a guardianship or protective order issued in a second state.

This law is organized into five articles.

Article 1—General Provisions—contains definitions and provisions designed to facilitate cooperation between courts in different states.

Article 2—Jurisdiction—specifies which court has jurisdiction to appoint a guardian or conservator. Its overall objective is to locate jurisdiction in one and only one state except in cases of an emergency or in situations where the individual owns property located in multiple states.

Article 3—Transfer of Guardianship or Conservatorship—specifies a procedure for transferring guardianship or conservatorship proceedings from one state to another.

Article 4—Registration and Recognition of Orders from Other States—deals with enforcement of guardianship and protective orders in other states.

Article 5—Miscellaneous Provisions—contains boiler-plate provisions.

The Uniform Adult Guardianship and Protective Proceedings Act will clarify many guardianship issues such as the original guardianship, registration and transfer and out-of-state enforcement. It provides procedures that will help to considerably reduce the cost of guardianship and protective proceedings from state to state.

This is the result of a study committee chaired by Tuscaloosa attorney Sandy Gunter with University of Alabama Law Professor Hugh Lee serving as reporter.

2. Uniform Child Abduction Prevention Act

Child abduction is a serious problem faced by parents and families today. The Office of Juvenile Justice and Delinquency Prevention estimates over 250,000 children are abducted annually with approximately 78 percent abducted by a family member. While current state laws address the initial child custody determination and the criminal repercussions of child abductions they generally provide inadequate prevention mechanisms.

In 2006, the Uniform Law Commission promulgated a uniform act for deterring both domestic and international child abductions by parents and persons acting on behalf

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of parents. In 1999, Alabama passed the Uniform Child Custody Jurisdiction and Enforcement Act. This proposed act builds on the interstate jurisdiction and enforcement mechanisms including the temporary emergency jurisdiction available now for minors.

The parties seeking the abduction prevention measures must file a petition with the court specifying the risk factors for abduction as well as other biographical information, a statement regarding any prior actions or arrests relating to abduction or domestic violence and finally any additional information required by state child custody law.

The Act sets out factors to be considered and determines whether it is a credible risk the child will be abducted. These factors include overt signs such as previous abductions, attempts to abduct the child or threats of abduction, as well as signs of general abuse including domestic violence, negligence or refusal to obey child custody determination. Other factors for consideration would be a wide range of activities that may indicate a planned abduction, including abandoning employment, liquidating assets, obtaining travel documents or travel tickets or requesting the child's school or medical records.

The act also addresses special problems involved in international child abduction including risk factors related to whether the party is likely to take the child

to a county that is not a party to the Hague Convention on the Civil Aspects of the International Child Abduction or is on a current risk of state sponsors of terrorism or engaged in active military war.

The court may enter an order that will impose travel restrictions, prohibit the individual from removing the child from the state or other said geographic area, place the child's name on the U.S. Department of State's child passport issuance alert program or require the individual to obtain an order from a foreign country containing identical terms to the child custody determination. The order would then be effective until revoked or the child's 18th birthday.

If abduction appears imminent, the court may issue a warrant to take physical custody of the child, direct law enforcement officers to take steps to locate and return the child or exercise other appropriate powers existing under state law.

Retired Supreme Court Justice Gorman Houston chaired this committee with Kim Bart, director, Domestic Violence Law Clinic, University of Alabama, serving as the reporter.

In the next *Alabama Lawyer* article the discussion of the Uniform Durable Power of Attorney Act and the Model Trademark Act will be discussed.

The Uniform Mortgage Satisfaction Act was discussed in the January 2009 *Alabama Lawyer*. ▲▼▲



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