THE ALABAMA LAWYER

FROM POWER TO SERVICE

THE STORY OF LAWYERS IN ALABAMA
Finding Malpractice Insurance Does Not Have To Be A Trip Through Troubled Waters!

Call AIM.  
We Take the Bite Out of the Process.
Relax.

We can help you choose the health insurance coverage that’s right for you

Learn more about the Aetna Advantage plans for Alabama State Bar Members, Employees, and Eligible Family Members

Choice: Aetna has a wide range of affordable health insurance plans, including coverage for children only. Immunizations are covered 100 percent.

Access: Benefit from our national network of physicians, hospitals and dentists.

Locked-in rates: Your rates can be modified from the time in which you got your quote, however rates from the effective date are guaranteed not to increase for 12 months in most states.

Rx Home Delivery: This exclusive benefit, available to members, allows you to order prescriptions by phone or online in seconds.

Just a call away: Our Member Assistance Program (MAP) provides telephone access to licensed clinicians for consultation and referrals to community services 24 hours a day, 7 days a week.

Health Savings Account (HSA): Compatible plans available. You can pay for qualified medical expenses with tax-advantaged funds. Please consult your independent financial advisor before opening an HSA or making an investment selection.

No waiting period: No waiting period to access preventive health (routine physicals) or annual routine GYN exam coverage.

Aetna Advantage plans for individuals, families, and the self-employed are underwritten by Aetna Life Insurance Company directly and/or through an out-of-state blanket trust and Aetna Health Inc. (Aetna). In some states, individuals may qualify as a business group of one and may be eligible for guaranteed issue, small group health plans. Information subject to change. Plans may be subject to medical underwriting. Health insurance plans contain exclusions and limitations. Investment services are independently offered through JPMorgan Institutional Investors, Inc., a subsidiary of JPMorgan Chase Bank.

©2008 Aetna Inc.
Register now for spring seminars at www.CLEalabama.com

Spring 2010 Calendar

Live Seminars

JANUARY
15 Video Replay of Alabama Update Tuscaloosa
29 Professionalism Birmingham

FEBRUARY
5 Banking Birmingham
12 President's Day Birmingham
19 Elder Law Birmingham
26 Workers' Compensation Birmingham

MARCH
26 Domestic Practice Birmingham

APRIL
23 E-Discovery Birmingham

MAY
7/8 City & County Government Orange Beach
21 Professionalism Birmingham

Online Seminars

2009 Alabama Update: Ethics Update from the Alabama State Bar
2009 Alabama Update: Tort Law Update
60 Practice Tips in 60 Minutes!
Assault and Domestic Violence
Cross-Examination of Witnesses
Estate Tax Returns
Ethics of E-Discovery
Family Law Issues in Immigration Law
How to Swallow an Elephant: Managing Email Overload
Reading an Insurance Policy: The Basics
Real Estate: Basic Loan Closings
Show Me the Money: Bills Out, Money In & Accounting for the Bottom Line
Special Issues in Administering Estates
Technology in the Courtroom: Benefits, Bling & Bloopers
The Representation of US Military Members by the Civilian Bar
What Appellate Court Judges Want to See in a Brief & Hear in Oral Arguments
Workers' Compensation: The Case From Start to Finish

Teleseminars

JANUARY
13 Trust Administration
19 Defending Against IRS Collections, Part 1
20 Defending Against IRS Collections, Part 2
21 Ethics in Trust and Estate Planning
28 Ethics of Working with and Preparing Witnesses

Go to CLEalabama.com for 24/7 access to over 150 online seminars and a full listing of available live seminars and teleseminars.
IN THIS ISSUE

24 ASB Fall 2009 Admittees
36 ASB Volunteer Lawyers Program 2009 Honor Roll
45 The VLP and the Thief
By Pamela H. Bucy
Reviewed by Judge R. Bernard Harwood
48 What Kind of Bang Am I Getting for My Buck with the LRS?
By Renee Avery
50 Task Force to Examine Interest in Creating New Federal Court Practice Section
52 ASB Leadership Forum
By Edward M. Patterson
56 Creation of Commercial Litigation Docket in the Birmingham Division, Tenth Judicial Circuit
By Presiding Judge J. Scott Vowell
58 Piercing the Corporate Veil: When is Too Much Fiction a Bad Thing?
By Will Hill Tankersley and Kelly Brennan
64Oops, It Happened Again: Inadvertent Disclosure under New Federal Rule of Evidence 502
By Wayne Morse, Jr.
68 Reliance, the Bachelor: Will Experience Answer the Open Questions of Reasonable Reliance?
By Wilson F. Green
75 *Twombly* and *Iqbal*: The Effect of the “Plausibility” Pleading Standard on Alabama Litigators
By J. Thomas Richie and Anne Manasco Dionne

From Power to Service: The Story of Lawyers in Alabama
This commemorative book is a detailed chronicle of the profession’s first 200 years in Alabama. Author Pat Boyd Rumore draws on a rich array of sources that bring to life both the internal history of the profession and its role in the legal and political life of the state. Here are stories of the legions of lawyers and judges who successfully faced the challenges of their profession and created a powerful community of shared interests and commitments. The book will be available for purchase in February for $40. Proceeds go to the Alabama Law Foundation and the Bench and Bar Historical Society.

DEPARTMENTS

9 President’s Page
“Thank You, Legal Services!”
13 Executive Director’s Report
The Image of the Legal Profession and the Weather
15 Important Notices
Notice of Election and Electronic Balloting
Alabama Lawyers’ Hall of Fame Nomination Form
Judicial Award of Merit
Amendment of Rules 16, 26, 33(c), 34, 45, and Form 51A, Alabama Rules of Civil Procedure, and Adoption of Rule 37(g), Alabama Rules of Civil Procedure
17 Memorials
21 Bar Briefs
23 Young Lawyers’ Section
New Admittees, CLE and Pro Bono – Have We Left Out Anything?
79 Opinions of the General Counsel
Third-Party Auditing of Lawyers’ Billings – Confidentiality Problems and Interference with Representation
85 Legislative Wrap-Up
The 2010 Legislature Begins
89 Disciplinary Notices
93 About Members, Among Firms
ALABAMA STATE BAR STAFF

Executive Director ................................................. Keith B. Norman
Executive Assistant ................................................. Diane Locke
Network Administrator ............................................. Wayne Hughes
Computer Programmers ............................................. Dallon L. Trout
Scanning Operator .................................................... Larry Pratt
Web Administrator .................................................... Willie Murphy
Assistant Executive Director ..................................... Edward M. Patterson
Administrative Assistant ........................................... Rita Gray
Director of Regulatory Programs ................................. Angela Parks
CLE Administrative Assistant ................................. Carol Thornton
Regulatory Programs/PHV Assistant ......................... Cathy Sue McCurry
Director of Communications ................................. Brad Carr
Publications Director ................................................. Margaret L. Murphy
Communications and Publications Assistant ............................................ Ann Rittenour
Director of Admissions ................................. Dorothy D. Johnson
Membership Services Director ..................................... Mary Corbit
Membership Administrative Assistant ................. Emily Farrior
Director of Admissions ........................................... Dorothy D. Johnson
Admissions Administrative Assistant ..................... Sonia Douglas
Bookkeeper .......................................................... Gale Skinner
ASB Foundation Assistant ......................................... Ann Rittenour
Graphic Arts Director .............................................. Maggie Stuller
Graphic Arts Assistant .............................................. Roderick Palmer
Receptionist .......................................................... Stephanie Oglesby
Director of Service Programs ......................... Laura A. Calloway
SP Administrative Assistant ...................................... Kristi Skipper
Volunteer Lawyers Program Director .................. Linda Lund
VLP Assistant ........................................................... Katherine L. Church
Intake Specialist ....................................................... Deborah Dickey
Lawyer Referral Secretary ....................................... Renee Avery
Alabama Lawyer Assistance Program Director .............. Jeanne Marie Leslie (834-7576)
ALAP Administrative Assistant .............................. Sandra Clements
ALAP Case Manager .............................................. Shannon Knight
Alabama Law Foundation, Inc. Director ...................... Tracey Daniel
ALF Administrative Assistant ..................................... Sharon McGuire
Alabama Center for Dispute Resolution Director .................. Judith M. Keegan (269-0409)
ADR Assistant .............................................................. Patsy Shropshire

ALABAMA STATE BAR CENTER FOR PROFESSIONAL RESPONSIBILITY STAFF

General Counsel ....................................................... J. Anthony McLain
Secretary to General Counsel .................................... Julie Lee
Assistant General Counsel ......................................... Robert E. Luk, Jr.
Assistant General Counsel ......................................... Samuel S. Partridge
Assistant General Counsel ......................................... Jeremy W. McIntire
Complaints Intake Coordinator ................................. Kim Ellis
Disciplinary Clerk ....................................................... Bonnie Manor
Paralegals/Investigators ............................................. Cheryl L. Rankin
Client Security Fund Coordinator ......................... Laura Blazer
Receptionist ............................................................. Sherry Langley

ALABAMA STATE BAR
415 Dexter Avenue
Montgomery, AL 36104
(334) 269-1515 • (800) 354-6154
FAX (334) 261-6310
Web site: www.alabar.org
The Perfect Gift For A Lawyer

From Power to Service: The Story of Lawyers in Alabama

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

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

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

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

The cost is $40 per copy.

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

Shipping and handling charges will be waived for the first 250 orders and those orders will also be eligible to receive a signed first edition of the book.

Why travel when you can save time and money, for yourself and your clients, while staying close to home? The Alabama State Bar offers a state-of-the-art videoconferencing facility for client meetings, depositions and settlement conferences. For more information or to schedule the facility, contact Kristi Skipper at (334) 517-2242 or kristi.skipper@alabar.org. First hour free for first time users.
Estimates show that about 25 percent of Alabama’s population, or about 1 million people, live in poverty. In the current economic climate, it is likely that these numbers will grow. Research indicates low-income Alabama households experience more than 700,000 legal problems per year. Common civil problems include consumer and family law issues, as well as issues involving housing, health, public benefits and elder law.

**Legal Services Alabama** (LSA) is the most important resource available to address these needs. LSA is a statewide nonprofit organization dedicated to providing access to justice and quality civil legal aid. It operates 10 offices throughout the state, in Anniston, Birmingham, Dothan, Florence, Huntsville, Mobile, Montgomery, Opelika, Selma, and Tuscaloosa. It serves legal needs in all 67 counties in Alabama. LSA helps people by providing representation on critical legal matters in judicial and administrative forums, and by providing free legal counsel, community education and mediation services.

The Alabama State Bar has partnered with LSA in our **“Mortgage Foreclosure Program.”** This program was started in 2008 with grants from the **Access to Justice Commission** and the **Alabama Civil Justice Foundation.** The program provides a toll-free hotline for people facing home foreclosure and provides them a free lawyer who works at LSA. The **Mortgage Foreclosure Hotline** (877-393-2333) is promoted throughout the state with public service announcements on television that are sponsored by the Alabama State Bar.

**“Thank You, Legal Services!”**

Montgomery area attorneys, paralegals and law students recently donated their time and talents during the Montgomery County Bar Association’s Legal Advice Clinic, as part of this year’s Pro Bono Week.
So far, the hotline has helped more than 3,600 callers. We opened over 3,000 mortgage cases and have completed over 2,300 of those cases. In addition to helping clients, the success of this program creates positive publicity for our bar, which provides these much-needed services.

The partnership with LSA worked so well that we decided to adopt this same model to help with domestic violence cases. We received another grant from the Access to Justice Commission to hire a lawyer to be housed at Legal Services. When we receive domestic violence calls to the Alabama State Bar Volunteer Lawyers Program (VLP), we attempt to place these clients with one of our volunteer lawyers. If we cannot find a volunteer lawyer to help, we send them to the Legal Services lawyer who was hired with this grant.

This has worked well and allows us to help a lot of hurting people.

Despite the essential role it plays in our communities, LSA receives no state funding. Instead, it relies heavily on the generous contributions of its investors. We must help to increase existing funding sources for Legal Services Alabama so it can hire more lawyers. We have already received substantial pledges from Birmingham-area law firms for this. We plan to do a lot more.

Royal Dumas, Kimberly Ray-Cobb, Pat Sefton, Theresza Harris, and Tom Gardner, Jr. are all smiles at the conclusion of a successful joint endeavor, the monthly legal advice clinic. Dumas and Sefton are members of the Montgomery County Bar Association (MCBA) and Ray-Cobb, Harris and Gardner are on staff at the Montgomery Community Action Agency (MCAA).

Despite the essential role it plays in our communities, LSA receives no state funding. Instead, it relies heavily on the generous contributions of its investors. We must help to increase existing funding sources for Legal Services Alabama so it can hire more lawyers. We have already received substantial pledges from Birmingham-area law firms for this. We plan to do a lot more. We
are also increasing awareness of the need for access to justice funding among the public, the members of the bar and the court system. We plan to do a lot more here also.

Many people say that a society should be judged by how it treats the least among it. Lawyers are leaders of society and have a duty to try to help the less fortunate. Legal Services does this by providing a gateway to justice for people in our community. We have the opportunity to raise money for Legal Services Alabama and to be a part of making Alabama a leader in ensuring true access to justice for all. Will you help? You can make a donation at www.legalservicesalabama.org. It’s going to take all of us, working together, to accomplish this.

Alabama State Bar President Tom Methvin recently addressed 178 first-year law students at Cumberland School of Law and was honored by the law school for his contributions to improving access to justice in Alabama and, specifically, the need for increased pro bono work. Methvin has been a strong advocate for increasing state funding for legal services and has pledged to work with the state legislature. He discussed the professional responsibility that all lawyers have to provide pro bono service that is concomitant with the privilege of practicing law. Cumberland Dean John Carroll presented Methvin with a framed certificate as part of its 2009 Pro Bono Salute.
When will it hit you?

Face it: There's a very good chance that you or someone you love will need long-term care. Fortunately, Blue Cross and Blue Shield of Alabama offers long-term care insurance plans to provide for things like home health care, adult day care, assisted living, nursing home care or a long-term stay in a hospital or hospice facility. All from the Company you know and trust.

To learn more about the Alabama State Bar--endorsed long-term care benefit call 1-866-435-6669, or visit us at www.preferredltc.com, select group coverage, then enter group code A1349001.
The Image of the Legal Profession and the Weather

What in the world does the image of the legal profession have to do with the weather? Very little except when it comes to complaints. Like those who complain about the weather and the fact that no one can do a thing about it, I often hear lawyers complain about the image of the profession and that no one is doing anything about it. For many years, the Alabama State Bar has done much to publicize the many positive things that the legal profession does—including pro bono work, “Wills for Heroes,” the Advance Directive for Health Care and many other worthy examples. Through our 12-year partnership with the Alabama Broadcasters’ Association, we have received nearly $10,000,000 in TV and radio time statewide to let Alabamians know of the tremendous public service which the legal profession renders. Yet, with all lawyers do in the public interest, we never seem to get much traction in raising the profession’s image.

One can certainly attribute the legal profession’s low esteem to several factors, including the fact that lawyers work in an adversarial system, the complexity of the judicial system’s rules and the exceedingly slow movement of cases or matters through the system which can be very frustrating to clients and parties alike. But, I believe the fault for our profession’s image problem lies principally with us, especially when lawyers lambaste courts for rendering a decision that is not in their favor or denigrate opposing counsel. These actions are unnecessary and do nothing more than stain the image of the entire profession. Sadly, this conduct appears to be on the rise as the monetary and emotional stakes in cases increase.
In April 1992, the Alabama Board of Bar Commissioners adopted the Alabama State Bar Code of Professional Courtesy, and the Alabama State Bar Lawyer’s Creed to guide all lawyers in their comportment and treatment of fellow lawyers and the judiciary. The Code has since been incorporated into the Alabama Pledge of Professionalism. Although aspirational, the Code and Creed are both bedrock tenets of professionalism. Among the Code’s 19 precepts are the following four which are especially noteworthy with regard to a lawyer’s relationship with opposing counsel and the court:

- A lawyer should maintain a cordial and respectful relationship with opposing counsel.
- A lawyer should never intentionally embarrass another lawyer and should avoid personal criticism of another lawyer.
- When each adversarial proceeding ends, a lawyer should shake hands with the fellow lawyer who is the adversary; and the losing lawyer should refrain from engaging in any conduct with engenders disrespect for the court, the adversary or the parties.
- A lawyer should recognize that adversaries should communicate to avoid litigation and remember their obligation to be courteous to each other.

Similarly, the Creed stresses:

- To the opposing parities and their counsel, I offer fairness, integrity and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.
- To the courts, and other tribunals, and to those who assist them, I offer respect, candor and courtesy. I will strive to do honor to the search for justice.

To date, over 2,000 Alabama lawyers, or a little more than 12 percent of the membership, has signed the pledge of professionalism to abide by the principles enumerated in the Code of Professional Courtesy.

Memphis attorney and former president of the Tennessee Bar Association Bill Haltom writes a regular column for the Tennessee Bar Journal. In the November 2009 issue, Bill talks about Tennessee lawyer, statesman and former U.S. Senator Howard Baker being the personification of civility in both his private life and distinguished public career. In particular, Bill relates a story that Howard Baker tells about the advice he received from a man who was a great lawyer and former U.S. Congressman—Howard Baker, Sr., his father. Baker said of this father, “He taught me that you should always go through life working on the assumption that the other guy may be right” (emphasis added). Bill observes that this statement “captures the essence of civility.” He writes: “It doesn’t mean that you don’t stand up for what you believe. It doesn’t mean you can’t be a fierce advocate for your clients and causes. It just means you go into a conflict with a notion that your opponent may, in fact, be right, and you treat your opponent accordingly.”

This simple notion embodies the civility that both the Code and the Creed hope to instill in our dealings with other lawyers and the judiciary. If we can practice this simple advice in our treatment of our colleagues and the court, we still may not be able to do anything about the weather, but we can certainly change the climate of professionalism and improve the forecast for the legal profession’s image in Alabama.

Endnotes
1. www.alabar.org/member/professional_courtesy.cfm.
Notice of Election and Electronic Balloting

Notice is given here pursuant to the Alabama State Bar Rules Governing Election and Selection of President-elect and Board of Bar Commissioners.

Bar commissioners will be elected by those lawyers with their principal offices in the following circuits:

1st Judicial Circuit
15th Judicial Circuit
3rd Judicial Circuit
5th Judicial Circuit
6th Judicial Circuit, Place 1
7th Judicial Circuit
10th Judicial Circuit, Place 3
10th Judicial Circuit, Place 6
13th Judicial Circuit, Place 3
13th Judicial Circuit, Place 4
14th Judicial Circuit
15th Judicial Circuit, Place 1
15th Judicial Circuit, Place 3
15th Judicial Circuit, Place 4
23rd Judicial Circuit, Place 3
25th Judicial Circuit
26th Judicial Circuit
28th Judicial Circuit, Place 1
32nd Judicial Circuit
37th Judicial Circuit

Additional commissioners will be elected in these circuits for each 300 members of the state bar with principal offices herein. The new commissioner petitions will be determined by a census on March 1, 2010 and vacancies certified by the secretary no later than March 15, 2010.

All subsequent terms will be for three years.

Nominations may be made by petition bearing the signatures of five members in good standing with principal offices in the circuit in which the election will be held or by the candidate’s written declaration of candidacy. PDF or fax versions may be sent electronically to the secretary, keith.norman@alabar.org. Either paper or electronic nomination forms must be received by the secretary no later than 5:00 p.m. on the last Friday in April (April 23, 2010).

As soon as practical after May 1, 2010, members will be notified by e-mail with a link to the Alabama State Bar Web site that includes an electronic ballot. **Members who do not have Internet access should notify the secretary in writing before May 1 requesting a paper ballot.** A single written request will be sufficient for all elections, including run-offs and contested president-elect races. Ballots must be voted and received by the Alabama State Bar by 5:00 p.m. on the last Friday in May (May 28, 2010). Election rules and petitions are available at www.alabar.org.

At-Large Commissioners

At-large commissioners will be elected for the following place numbers: 2, 5 and 8.

Alabama Lawyers’ Hall of Fame Nomination Form

The Alabama State Bar will receive nominations for the 2009 honorees of the Alabama Lawyers’ Hall of Fame through March 1, 2010. The two-page form should be completed and mailed to:

Samuel A. Rumore
Alabama Lawyers’ Hall of Fame
P.O. Box 671
Montgomery, AL 36101

In 2000, Terry Brown of Montgomery wrote Sam Rumore, the Alabama State Bar president at that time, with a suggestion to convert the old supreme court building into a museum honoring the great lawyers of
Alabama. Although the concept of a lawyers’ hall of fame was studied, a later bar president, Fred Gray, appointed a task force to implement a hall of fame. The Alabama Lawyers’ Hall of Fame is the culmination of that idea and many meetings. Previous honorees include:

**2008**
John B. Scott (1906–1978)
Vernon Z. Crawford (1919–1985)
Elisha Wolsey Peck (1799–1888)

**2007:**
John Archibald Campbell (1811–1889)
Howell T. Heflin (1921–2005)
Thomas Goode Jones (1844–1914)
Patrick W. Richardson (1925–2004)

**2006:**
William Rufus King (1776–1853)
Thomas Minott Peters (1810–1888)
John J. Sparkman (1899–1985)
Robert S. Vance (1931–1989)

**2005:**
Oscar W. Adams (1925–1997)
William Douglas Arant (1897–1987)
Hugo L. Black (1886–1971)
Harry Toulmin (1766–1823)

**2004:**
Albert John Farrah (1863–1944)
Frank M. Johnson, Jr. (1918–1999)
Annie Lola Price (1903–1972)
Arthur Davis Shores (1904–1996)

To download a printable nomination form for 2010, go to [http://www.alabar.org/members/hallfame/hallof_fame_ALH_2010.pdf](http://www.alabar.org/members/hallfame/hallof_fame_ALH_2010.pdf)

---

**Judicial Award of Merit**

The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the state bar’s Judicial Award of Merit through March 15, 2010. Nominations should be mailed to:

Keith B. Norman
Secretary
Board of Bar Commissioners
P. O. Box 671
Montgomery, AL 36101-0671

The Judicial Award of Merit was established in 1987. The award is not necessarily an annual award. It must be presented to a judge who is not retired, whether state or federal court, trial or appellate, who is determined to have contributed significantly to the administration of justice in Alabama. The recipient is presented with a crystal gavel bearing the state bar seal and the year of presentation.

Nominations are considered by a three-member committee appointed by the president of the state bar, which then makes a recommendation to the board of bar commissioners with respect to a nominee or whether the award should be presented in any given year.

Nominations should include a detailed biographical profile of the nominee and a narrative outlining the significant contribution(s) the nominee has made to the administration of justice. Nominations may be supported with letters of endorsement.

---

**Amendment of Rules 16, 26, 33(c), 34, 45, and Form 51A, Alabama Rules of Civil Procedure, and Adoption of Rule 37(g), Alabama Rules of Civil Procedure**

The Alabama Supreme Court has amended rules 16, 26, 33(c), 34, 45, and Form 51A, Alabama Rules of Civil Procedure, and adopted Rule 37(g), Alabama Rules of Civil Procedure. The amendment and adoption of these rules are effective February 1, 2010. The order amending rules 16, 26, 33(c), 34, 45, and Form 51A and adopting Rule 37(g) appears in an advance sheet of Southern Reporter dated on or about December 31, 2009. These comprehensive revisions are to accommodate the discovery of electronically stored information. The text of these rules can be found at [http://www.judicial.state.al.us/rules.cfm](http://www.judicial.state.al.us/rules.cfm).

—Bilee Cauley, reporter of decisions, Alabama appellate courts
J. Gilmer Blackburn

J. Gilmer Blackburn, a Decatur lawyer who dedicated his life to his family, his church, his profession, his community, and to Auburn University, died May 31st in Auburn at the age of 81.

Born in Opelika on October 21, 1927, he was the fourth child of Anderson and Vera Blackburn. Mr. Blackburn attended the Lee County School in Auburn, Alabama from the first through the 12th grades. He was drafted out of high school in 1946 and served in Alaska in the Army with the Alaska Communication System in 1947 on the Alcan Highway.

He entered Alabama Polytechnic Institute (API), now known as Auburn University, in 1947. While at API he participated in student activities and was responsible for the campaign to build the first Auburn Student Union Building. He was a member of the Spades Honorary Society, Alpha Tau Omega fraternity and other organizations. He graduated from Auburn in 1950 with a bachelor of science. In 1951, during the Korean Emergency, he was called back into service as a 2nd Lieutenant serving with the 40th Tank Battalion, 4th Infantry Division, in Germany. Prior to leaving for Germany, he and Phyllis Birdsong were married in Albertville in 1951.

Upon returning from the service in Germany, he and Phyllis entered the University of Alabama in Tuscaloosa. Mr. Blackburn returned to his studies at the law school and graduated in 1954. He attended New York University Law School in 1954 under a Kennison National Fellowship and obtained a master of laws (in taxation).

In 1955, he established his law practice in Decatur. He was the first tax attorney in north Alabama. He also lectured extensively on tax matters for the University of Alabama Continuing Education Program and other seminars. He was president of the Morgan County Bar Association, chair of the ASB Tax Section, member of the Committee on Life Insurance Companies (Section of Taxation, American Bar Association) and a member of the Board of Directors of the Alabama Federal Tax Clinic. He was the founding attorney and senior counsel of Blackburn, Maloney & Schuppert LLC.

In 1962, he was elected commissioner of the City of Decatur and served as its mayor for two terms, being unopposed in his second term. As mayor, he was responsible for a major development program called “Operation New Decatur.” The program was developed to bring Decatur into the New South. It included urban renewal programs to rebuild the...
downtown area for small family businesses, a new civic center (including a city hall, courthouse and federal building), major new plans for city schools, and improvement of recreation activities with three new parks with recreation centers, including the nationally recognized Aquadome swimming pool. The major concept of the plan, however, was the regional Point Mallard Park, including the J. Gilmer Blackburn Aquatic Center incorporating the first wave-activated swimming pool in the United States, a golf course and other activities. The park has been recognized by the State of Alabama Tourism Bureau as the number one seasonal park in the state.

Mr. Blackburn was also active with the Auburn Alumni Association and served as the president of the Morgan County Auburn Alumni Club and as member of the Executive Committee and president of the National Auburn Alumni Association. He was a charter member of the Auburn University Foundation, serving on its board of directors and as vice president, president and chairman of the board, and member emeritus of its board.

He was preceded in death by his parents, his wife of 48 years, Phyllis Birdsong Blackburn, and his brother, Joe Blackburn. He is survived by his wife, Dorry Ann Blackburn; three children, Gay Maloney and husband Mark, Allison Akins and husband Bobby and Lisa Ayerst and husband Rob; his grandchildren; and the children of his wife, Trey Johnston and wife Rebecca, Skip Johnston and wife Glenda and Dixie Keller and husband Gray; and Dorry Ann’s grandchildren.

Gilmer Blackburn was the embodiment of the ideal of the lawyer as public servant. He was a visionary for the City of Decatur. Two days after his death, The Decatur Daily editorialized: “That the former mayor was ‘the Father of Point Mallard’ is more than a statement on a plaque at the water park’s entrance. Point Mallard Park would not exist but for his efforts. The legacy, though, goes beyond a park. He had a vision of Decatur that included industry, but refused to stop there.” Gilmer Blackburn will be missed, not only by his family and his colleagues, but also by the citizens of his city.

—Mark Daniel Maloney, Decatur

**Jackson Wilson Guyton**

“The Person I Admire Most”

The one I admire most is my dad. I admire him because he is just what I want to be. He is intelligent, does not mind to do hard work, and he is hard working. My dad cares more about his family than himself and he wants to have a good time. He is also kind and does not [mind] helping people. He wants to help people. He is fair and just and pays attention to what unimportant and important people say. And when I grow up I want to be just like my dad.

—Jeffrey P. Guyton

Age 11

I have only worked and known Mr. Guyton since January of 2007, but from everything his clients, friends and family have said about him, he is the same kind and caring man today as he was 37 years ago when his son Jeff wrote the above essay for school. Mr. Guyton has had a long and wonderful life, personally and professionally, and it has been truly an honor to have worked for him and known him.

Mr. Guyton was born in 1926 to John L. and Lallie Dunbar Guyton who lived in the western section of Jefferson County. He grew up in Dolomite and later moved to West End where he graduated from high school. Mr. Guyton served two years during World War II. After the war, he graduated from the University of Alabama in Tuscaloosa with an engineering degree. In 1950 he went to work at US Steel as an industrial engineer, and then later worked in labor relations.

He attended Birmingham School of Law and passed the bar exam in 1957. In 1966, he began practicing with Frank B. Parsons and Victor C. Harwood in Fairfield. In 1971, Victor Harwood died and J. Clewis Trucks joined Frank Parsons and Jack Guyton to form Trucks, Parsons & Guyton. In 1984, Frank Parsons and Jack Guyton began practicing under the name of Parsons & Guyton, and the office has been located at 4507 Gary Avenue in Fairfield since 1984.

In 1960, Mr. Guyton married Martha Lou Harless and later they had two children, Jeffrey P. Guyton and
Tracey G. Cole. Mr. Guyton also has an adorable eight-year-old granddaughter, Katie. Mr. Guyton and his family have been long-time members of Mountain Brook Baptist Church. Some people thought that when Mr. Guyton’s beloved Martha Lou passed away in 2002 he would retire. Not so—it wasn’t until he was physically unable to drive himself to work that he was forced to retire this July, at the age of 83.

In 2008, the Alabama State Bar recognized Mr. Guyton’s 50 years of service as an attorney. He was a long-standing member of the Fairfield Chamber of Commerce, the Exchange Club, the Birmingham Bar Association and the Alabama State Bar. He had a general practice, but his primary concentration over the last several years had been in planning and probating estates, representing landlords and real estate transactions.

Unfortunately, Mr. Guyton passed away September 24, 2009. He touched so many lives with his wit, warmth and knowledge. He will be truly missed.
—Jeanne Wood, PLS

Robert W. Lee

Robert W. Lee, age 55, passed away on August 16, 2009. The legal world lost a vital, talented member of its bar at too early of an age. Those of us fortunate to have had Bob in our legal lives will miss him for several reasons. He had the uncharacteristic ability to make every lawyer, young or old, feel important and worthy of the practice of law. This is a rare talent that speaks volumes about his character. But, mostly, he made the practice of law fun. Not many can carry this badge of honor.

His depth of knowledge of any topic from law to medicine to Auburn football, his uncanny ability to narrow the issues down in a case, his unique ability to find good in every person and situation, his open personality that made lawyers relish having a case with him, and his natural presence in front of a jury or judge encompass the perfect lawyer that Bob Lee was. Judges respected him, opposing counsel appreciated his candor and the plaintiff’s bar honored him, and all deservedly so. While there were accolades, publications, authorships and honors, Bob’s legal presence was more of an intangible greatness.

While law was important to Bob, his greatest passion was for his family. If he were here today for me to ask him what his greatest accomplishment in life was, I know he would answer his two sons, Harrison and Draper. My days of practice with Bob were always filled with stories of carpool adventures, Auburn football games and going to the lake house, and all included his boys. After my girls were born, Bob became not only my legal mentor but also my parenting mentor—a role I think he preferred! I hope that I can live up to his hopes for me as a lawyer and a mother. I will miss my law partner, my mentor and my friend. I know I am not alone in missing him.
—Wendy N. Thornton, Birmingham

John A. Lockett, Jr., 66, of Selma, died October 31 after a brief illness. Mr. Lockett is survived by his wife of 36 years, Martha Beasley Lockett of Selma; his mother, Louise D. Lockett of Selma; his sons, John A. Lockett III (Erin) of Atlanta and Peyton B. Lockett of Birmingham; a sister, Sue Lockett Lovoy (Steve) of Birmingham; and nieces and a nephew.

Mr. Lockett was born in Selma November 21, 1942. He graduated from A.G. Parrish High School in Selma in 1960 and from Birmingham-Southern College in 1964, where he was a member of Sigma Alpha Epsilon fraternity. He graduated from the University of Alabama School of Law in 1967. After serving a short time as an assistant attorney general for the State of Alabama, Mr. Lockett returned to Selma where he was engaged in the private practice of law for over 40 years, devoting much of his career to assisting the working people of Selma and the surrounding area with their legal affairs. Mr. Lockett served one term, 1974-1978, as a representative in the Alabama state legislature representing Dallas and Bibb counties as a Democrat.

He will be missed by his family and all of those who knew him.
Donald N. Spurrier

We remember our friend, mediator and peacemaker, Donald N. Spurrier. Don, of Spurrier, Rice & Forbes LLP in Huntsville, passed away October 27th.

Don was a very successful and well-loved mediator, and a member of the Alabama State Court Mediator Roster and the Appellate Court Roster. Last year, he mediated 138 cases for circuit court, settling 91. He also mediated six cases for our appellate courts, settling three. Nine disputes were mediated by him before they were even filed in court, and he settled eight of them.

In a recent interview with Jeremiah Hodge for the fall 2009 Alabama Association for Justice Journal, Judge Karen Hall said, “That’s why Don Spurrier’s such a great mediator, because he’s been around the block.” Hodge replied that Don had a lot of credibility. Those who knew him certainly agree. Don will be missed.

—Judith M. Keegan, director, Alabama Center for Dispute Resolution

<table>
<thead>
<tr>
<th>Name</th>
<th>City</th>
<th>Date Admitted</th>
<th>Date Died</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cole, John Lewis</td>
<td>Birmingham</td>
<td>1959</td>
<td>October 18, 2009</td>
</tr>
<tr>
<td>Corretti, Douglas Philip</td>
<td>Birmingham</td>
<td>1948</td>
<td>October 11, 2009</td>
</tr>
<tr>
<td>DeMouy, Marshall Jefferson</td>
<td>Mobile</td>
<td>1950</td>
<td>September 17, 2009</td>
</tr>
<tr>
<td>Hicks, Preston Lee</td>
<td>Foley</td>
<td>1994</td>
<td>September 5, 2009</td>
</tr>
<tr>
<td>Hodgkins, Robert Walker</td>
<td>Birmingham</td>
<td>1953</td>
<td>October 8, 2009</td>
</tr>
<tr>
<td>Kenner, Hamilton Gray</td>
<td>Santa Rosa Beach, FL</td>
<td>1996</td>
<td>April 5, 2009</td>
</tr>
<tr>
<td>Lamar, Robert Standring, Jr.</td>
<td>Montgomery</td>
<td>1966</td>
<td>October 18, 2009</td>
</tr>
<tr>
<td>Markstein, Daniel Harry, Jr.</td>
<td>Birmingham</td>
<td>1934</td>
<td>August 9, 2009</td>
</tr>
<tr>
<td>Pogue, Thomas Leo</td>
<td>Tuscaloosa</td>
<td>1964</td>
<td>May 21, 2009</td>
</tr>
<tr>
<td>Smith, Jason Randolph</td>
<td>Dothan</td>
<td>2001</td>
<td>October 31, 2009</td>
</tr>
<tr>
<td>Snoddy, Thomas Edd</td>
<td>Double Springs</td>
<td>1954</td>
<td>September 13, 2009</td>
</tr>
<tr>
<td>Solomon, William Howard</td>
<td>Mandarin, FL</td>
<td>1976</td>
<td>September 20, 2009</td>
</tr>
<tr>
<td>Spurrier, Donald Nelson</td>
<td>Huntsville</td>
<td>1956</td>
<td>October 27, 2009</td>
</tr>
<tr>
<td>Torbert, Jack Whitfield</td>
<td>Gadsden</td>
<td>1950</td>
<td>May 5, 2009</td>
</tr>
<tr>
<td>Simpson, James Evans</td>
<td>Birmingham</td>
<td>1957</td>
<td>March 10, 2009</td>
</tr>
<tr>
<td>Sikes, Stanley Britt</td>
<td>Fort Lauderdale, FL</td>
<td>1965</td>
<td>June 17, 2009</td>
</tr>
</tbody>
</table>
• The Alabama Workers’ Comp Blawg was recently selected as a LexisNexis Top 25 Blogs for Workers’ Compensation and Workplace Issues. Selections were made by the LexisNexis Workers’ Compensation Law Center staff using feedback from community members and Larson’s National Workers’ Compensation Advisory Board members. The blog is owned and maintained by the Birmingham firm of FISH NELSON, LLC which handles insurance defense litigation with a focus on workers’ compensation matters.

• Robin L. Beardsley and Marcus M. Maples of Sirote & Permutt will chair sub-committees for the 2009-10 Defense Research Institute Young Lawyers’ Committee. As members of the YL Steering Committee, Beardsley will chair the Civility & Professionalism Subcommittee and Maples will serve as vice chair of the Diversity Subcommittee.

• The State Fellows of the American College of Trial Lawyers announce that Charles Gaines, Wilbor Hust, Anthony Joseph, John Saxon and Joe Whatley have been inducted into the fellowship. The college strives to improve the standards of trial practice, the administration of justice and the ethics, civility and collegiality of the trial profession.

• The Alabama Law Foundation announces that April Houston is the winner of the Justice Janie L. Shores Scholarship. The foundation and the Women’s Section of the Alabama State Bar established the scholarship in 2006 for female residents attending an Alabama law school. The Justice Janie L. Shores scholarship is named in honor of the first female Alabama Supreme Court Justice, who was elected in 1974. Houston graduated from the University of Alabama at Birmingham in 2005. She currently attends the Thomas Goode Jones School of Law School in Montgomery and will graduate in May 2010. Houston has served on the editorial board of the Faulkner Law Review, was a Camille Armstrong Scholarship recipient for spring 2005 and was recognized as a University Scholar.

• Tanner & Guin announces that William B. McGuire, Jr. was recently named a fellow in the American Academy of Matrimonial Lawyers (AAML). He joins a select group of 1,600 attorneys across the U.S. which recognizes the nation’s top family law attorneys representing individuals in the areas of divorce, annulment, prenuptial and post-nuptial agreements; marital settlement agreements, child custody and visitation; business valuations, property valuation and division; alimony; and child support.

• Fredrick H. Olsen, a partner in the Public Finance Department of Ballard Spahr LLP, has been named a fellow to the American College of Bond Counsel. The college recognizes lawyers with reputations among their peers for “skill, experience and high standards of professional and ethical conduct in the practice of bond law.”
ARE YOU SEEING YOUR JUDGE CLEARLY?

Introducing Judicial Reports – with Westlaw Litigator® How well do you really know the judge? How does the judge typically respond to different types of motions? How had the judge fared on appeal? Now you can quickly access precise statistical analysis of a Judge’s track record in Judicial Motion Reports and Judicial Reversal Reports on Westlaw® – which also offer links to underlying documents. Customize your report by motion type, case type and more. Next time, go to court with a full picture of the judge you’re about to face.

Visit westlawlitigator.com or call 1-800-REF-ATTY (733-2889).
I am pleased to recognize the members of the executive committee who will be serving our section this year: Gray Borden (Birmingham), David Cain (Mobile), Brandon Hughley (Mobile), Shay Lawson (Tuscaloosa), Hughston Nichols (Birmingham), Clifton Mosteller (Birmingham), Mark Bledsoe (Huntsville), Nathan Dickson (Union Springs), Hall Eady (Birmingham), Leslie Ellis (Montgomery), J.R. Gaines (Montgomery), Katie Hammel (Mobile), Brett Ialacci (Birmingham), Louis Calligas (Montgomery), Andrew Nix (Birmingham), Rodney Miller (Birmingham), Jon Patterson (Birmingham), Mitesh Shah (Birmingham), Chris Waller (Montgomery), Larkin H. Peters (Mobile), Brad Hicks (Bay Minette), Walton Hickman (Greenville), Sancha Epiphane (Mt. Meigs), Brian Murphy (Mobile), Chip Tait (Mobile), Nathan Ryan (Sheffield), William J. Long (Birmingham), and Elizabeth Kanter (Birmingham).

In October, we hosted the Alabama State Bar Admissions Ceremony for fall admittees at the Montgomery Performing Arts Center. The MPAC at the Renaissance Montgomery Hotel and Spa serves as an excellent venue for this event. Chris Waller, chair of our Admissions Ceremony subcommittee, did an excellent job in making this event successful. Also, Nathan Dickson, Louis Calligas, Walton Hickman, Kitty Brown, and Leslie Ellis are recognized for their hard work on this ceremony.

In November, we hosted our Eighth Annual Iron Bowl CLE, which was fantastic! We thank Balch & Bingham LLP for allowing the use of their offices in Birmingham for this seminar. This year’s great lineup of speakers included Shannon D. Hutchings (general counsel, Barber Companies), Stephen Wallace (Dawson & Wallace LLC), Brian Walding (Walding LLC) and the Honorable Caryl P. Privet (circuit judge, Jefferson County). I also recognize Jon Patterson for chairing this event and Brett Ialacci and Clifton Mosteller for their hard work in making this seminar a success. For those who missed it this year, please join us next year for this always fun and rewarding CLE.

Speaking of great CLE opportunities, it is not too early to book your calendar for our annual Sandestin seminar May 12th through May 16th, 2010 at the Hilton Sandestin Beach Golf Resort & Spa in Destin.

Finally, consistent with ASB President Tom Methvin’s goal of increasing access to justice in Alabama, our YLS Executive Committee has formed a Pro Bono Subcommittee chair by William J. Long and Nathan Ryan. This subcommittee will be an extension of our former FEMA subcommittee that provided volunteer assistance to natural disaster victims. The Pro Bono Subcommittee, in addition to assisting natural disaster victims, will also attempt to boost membership in the Volunteer Lawyers Program in Alabama.

If you have any questions about your Young Lawyers’ Section, or to get more involved with the YLS, please contact me at rnb@LanierFord.com.
Number sitting for exam .............................................................................................................................. 485
Number certified to Supreme Court of Alabama ......................................................................................... 362
Certification rate*......................................................................................................................................... 74.6 percent

certification Percentages
University of Alabama School of Law ......................................................................................................... 94.5 percent
Birmingham School of Law .......................................................................................................................... 44.7 percent
Cumberland School of Law .......................................................................................................................... 91.4 percent
Jones School of Law .................................................................................................................................... 84.5 percent
Miles College of Law ................................................................................................................................... 7.1 percent

*Includes only those successfully passing bar exam and MPRE
For full exam statistics for the July 2009 exam, go to www.alabar.org, click on “Members” and then check out the “Admissions” section.
Alabama State Bar Fall 2009 Admittees

Frelon Abbott III  
Ruth Frances Alexander  
Mary Michelle Alexander-Oliver  
Timothy Mark Allen  
Sheena Allen  
Zachary DeWitt Alsobrook  
Michael Kingston Amster  
Laura Catherine Ashburner  
Jinyoung Bae  
Kimberly Irnita Baker  
John Stewart Baker IV  
Janice Rae Ballard  
Christopher William Basler  
Michael Douglas Beach  
Joshua Brent Beard  
Frank Austin Branscomb Beavers  
James Edwin Beck III  
Sarah Elizabeth Bell  
George Bolin Belohlavek  
Matthew Edward Benak  
Jennifer Kathleen Benedict  
Katherine Ann Berkmeier  
Jessica Lynn Betts  
Angelia Cherice Biggs  
Casey Nicole Biggs  
Joel Ray Blankenship  
James Rodney Bledsoe  
Daniel Heath Boman  
Lindsey C. Boney IV  
Megan Bookout  
Heather Leigh Friday Boone  
Brad Jacob Booth  
Joseph Bryan Boudreaux  
Stephen Douglas Boyd  
Teri Christine Brelowski  
Kathryn Lindsay Wade Bridges  
Sarah Elizabeth Brown  
David Tyler Brown  
Delmar Eugene Buck III  
George Blanchet Bulls II  
Russell Kane Burnette  
Michelle Nicole Butler  
Robert Nash Campbell  
Jeffrey Bartow Cannon Jr.  
Jennifer Gregory Cannon  
Alyson Leigh Cantrell  
Ruth Suzanne Carlisle  
Jonathan Gabriel Carpenter  
Larry Michael Carr  
Jessica Neil Carson  
Anna Ludlum Chambers  
Pooja Chawla  
Michael Allen Chester  
Anne Christine Christensen  
Stephen Chu  
William Scott Clay  
Laura Lee Clemons  
Karen Elizabeth Cleveland  
Jonathan Christopher Cobb  
Tammi Sheree Cockrell  
Marianne Helen Combs  
Matthew David Conn  
Rebecca Ann Cook  
Timothy Paul Cook  
David John Coombs  
Jamie Elizabeth Coston  
Christopher Heath Cox  
Jessica Robinson Craft  
Laurel Marie Crawford  
Katie Marie Crow  
Carla Camille Crowder  
Judson Eric Crump  
Christopher Jason Cunningham  
Adam Christopher Dauro  
Robert Jeffrey Davis  
Joseph Ladd Davis  
Summer Austin Davis  
Margaret Frances Demeranville  
Ashley Lauren Dismukes  
Mark Henry Lucuanan Dithmer  
Marc Lee Domres  
Jeff David Donaldson  
Erin Lynne Donohoe  
Matthew Ted Dorius  
Brent Whitmore Dorner  
Sarah Elizabeth Dorner  
Jeffrey Paul Doss  
Summer Brook Dowdy  
Christopher Allen Driskill  
Charley Michael Drummond  
Sarah Kathleen Dunagan  
Robert Martin Durham  
Nicole Byrd Dyess  
Sasha Lynn Eastburn  
Maria Virginia Echenique  
Bradley Walter Edmonds  
Freddrick Anthony Effinger  
William Andrew Ellis  
Cameron Wayne Ellis  
Margaret Leigh Enfinger  
Tobby Ray Evans  
Joel Marshall Everest  
William George Fendley  
Austin Lee Fenwick  
Dara D. Fernandez Perez  
Daniel Joseph Ferretti  
Daniel Stephen Flickinger  
Ashley Sheron Fowler  
Anna Leigh Fowler  
Alisha Dawn Franklin  
Jonathan Blake Friedlander  
Stephen Matthew Frisby  
Daniel Scott Fuqua  
Jeremy Scott Gaddy  
Gregory Allen Garnette  
James Ralph Garrison III  
George Carroll Gaston  
Charles Ryan Germany  
James Walter Gibson  
Grant William Gibson  
Justin Lee Gifford  
Myung-sun Caitlyn Goldstein  
Jeffrey Leonard Goodgame  
Daniel Joseph Goodman  
Thomas Russell Goree Jr.  
John David Gray  
Marchello Dewan Gray  
Cole Robinson Gresham  
Lucas Wayne Griffin  
John Eugene Griffin  
Ashley Powell Griffin  
Preston Wells Griffith III  
Seth Bryant Grissom  
Eugenia Walker Hamilton  
Amy Marie Hampton  
Elizabeth Ann Hamrick  
George Mathews Handley Jr.  
Wendy Nicole Hardegree  
Matthew Rutland Harrison  
Peter James Harrison  
John Matthew Hart  
Carolyn Jaye Hayes  
Patrick Scott Haynes  
Margaret Jessica Head  
Timothy Alan Heisterhagen  
April McEachern Helms  
Ryan Roebuck Hendley  
William Justin Hendrix  
Jennifer Marie Herring  
Olan Scott Hewitt  
Sara Robinson Higgins  
Megan Elizabeth Hoggard  
Lee Faith Holland  
Leslie Anne Hopkins  
Robert Austin Hornbuckle  
David Lee Horsley  
Brad Alan Howell  
George Allen Howell  
David Lee Hubbard  
Meggan Marie Huggins  
Craig Fowler Hughes  
Wesley Jerome Hunter  
Stacie Elizabeth Irwin  
Brandon Terrell Isleib  
Jon Andrew Isom  
Adam Kent Israel  
David Carlton Jamieson  
Patrick Lee Jarrett  
Marvis Leroy Jenkins  
Malcolm Lee Johnsey Jr.  
Margaret Rose Johnson  
Jadine Caroline Johnson  
Stephanie Nicole Johnson  
Justin Lee Jones  
Emily Ann Jones  
Abbott Marie Jones  
Amanda Cauthen Jones  
Jessica Lora Jones  
Mark Preston Jones  
Stephanie Maria Joppeck

(Continued on page 26)
Jennifer Michelle Justice
Christopher Mark Kaminski
Kristofer Wyatt Kavanaugh
Robert David Keahey Jr.
Christine Elizabeth Keifer
Robert Joseph Kelly
Patrick Brittain Kenerly
Dustin Wesley Kennemer
Byron Woodrow Ketcham III
Michael Paul Killian
Alan Scott Kirk
Kristy Maria Kirkland
Megan Arys Kirkpatrick
Andrew Clair Knowlton
Heather Jess Koch
Justin Alexander Lackey
Rachel Dana LaFleur
Michael Graham Lane
Katie Marie Langer
Blair Randolph Lanier
Hannah Baril Lansdon
John Ernest Lawes
Mark Alan LeQuire
Katherine Elizabeth Lewey
Lisha Xiao Li
Yue Li
Christopher Shawn Linton
Christopher Lea Lockwood
Don Boyden Long III
Huel McKinley Love III
Joseph Trent Lowry
David Ryan Lynch
Lana Danette Makemson
William Preston Martin
Jacob Pippin Mauldin
William Thomas Mayfield IV
Mary Kathryn Maynard
Diane Stamler McAteer
Daniel Evan McBrayer
John William McClurkin
Dustin Lee McCown
Maloree Gayle McDonough
Thomas Slate McDorman
Timothy Michael McFall
Mary Catherine McGowan
Julie Elizabeth McMakin
Summer Len McWhorter
Jeremy Brian Meador
Monique Kathleen Meadows
Taylor Sumner Meadows
Jason Scott Medlin
Jason Michael Meyerpetter
Jennifer Suzanne Michaelis
Chadrick Wayne Milam
Allison Joanne Miller
Bradley William Miller
Ronald Bou Miller Jr.
Megan Eva Miller
Jacob Allen Millican
David Welles Mitchell
Jeremy Wayne Mitchell
Joshua Dayton Moore
Michael Roberto Morenilla
Nicholas Francis Morisani
Adam Gregory Mudge
Jenna Beth Mullendore
Aaron Michael Murphy
Christopher Roesch Neff
Leroy Dekteveon Nix
Dominique Doan-My Thuy Nong
John Paul Norman
Alfred Dudlow Norris III
Anna Belle Wilder Norton
Justin Craddock Owen
Emily Marie Page
Ian Spencer Palmer
Jong Won Park
Angela Denise Parker
Jennifer Leah Parker
Alexandria Parrish
Dustin Christopher Paseur
Daniel James Pasky
Janet Leigh Pate
Robin Elizabeth Pate
Chandra Dawn Paul
Sarah Suzanne Payne
Matthew Irvin Penfield
Gregory Reid Peoples
Cynthia LaShele Perdue
Margaret Culp Phillips
Meredith Lackey Phillips
Matthew Tae Phillips
Joseph Thomas Pilcher IV
Joshua Randall Pipkin
Robert Coles Pitman
Jessica Suzanne Pitts
Lakelia Patrice Powell
Kristi Anne Powers
Richard Allen Powers
Austin Smitherman Prestwood
Jeffrey Donald Price
Mary Leslie Price
Ashaunti Veneek Pritchett-Parker
Ashley Fallon Ragsdale
Stephanie Michelle Ramsay
Robert William Reed
Katherine Ellis Reeves
Mitchell Lawrence Reid
Charles Michael Rent III
John Daniel Rhames
Latisa Denise Rhodes
Kelli Leigh Roberson
Charles Alton Roberts Jr.
Tina Engram Roberts
Ryan Patrick Robichaux
Edward Andra Robinson
Anderson Dewey Robinson
Jeremiah James Rogers
Anthony Nino Romano
Paul Zev Rothstein
Courtney Lee Saad
Thomas Edward Sanders
Sia Manta Sanneh
Hunter Campbell Sartin
Stanley Scott Sasser
Christina Eloise Morrison Saunders
Vincent Francis Saylor
William Jason Scheil
Amy Christine Scott
William Edward Scully III
Laura Kristen Segers
Justin Clayton Sellers
Kristy Diana Shelton
Matthew Thomas Simechak
Walter Lee Sims
Cory Patrick Sims
Adam Bradley Smelser
Rachel Alison Smith
Tiffany Bock Smith
Anna Lynes Smith
Keri Lynn Smelter
Robert Jordan Smith
Jennifer Alene Smith
Shawna Haas Smith
Ashley Nicole Smith
Teri MaLea Smith
Ryan Matthew Smith
Stanley Richard Snyder
Kasee Garnet Sparks
Sidney Bradford Spear
Brian Learmond Spellen
William Tyler Stafford
Jennifer Rene’e Stanley
Jason Patrick Statum
David Fitzgerald Steele Jr.
Megan Perkins Stephens
Richard Scott Stewart
Clark Vann Stewart
Stacey Leigh Strain
William Reid Strickland
Rachel Holland Sullivan
Margaret Emerson Summerford
Charles Edwin Tait
Clifton Douglas Taylor
Alexandra Stevens Terry
Ashton Lauren Thompson
Ryan David Thompson
Scott Ledell Tindle
Brooke Lanier Tinsley
Jacquelyn Diane Tomlinson
Rachelle Elizabeth Toomey
Rachel Leah Turner
Melanie Starr Turner
Elizabeth Eugene Utley
Chad Michael Vacarella
Jared Dale Vaughn
Hallie Bourland Wagner
Shelley Elizabeth Wallace
Jordan David Watson
Teresa Belrose Watson
William Lee Webb
Ashley Morgan Welch
Stephanie Joy Whatley
Tajay Everette White
Allison Eileen White
Barry Alan White
Wesley Kyle Winborn
Sarah Beth Windham
Adam Sidney Winger
Robert Jordan Wood
Tonya Nichelle Woods
Brandon Jamaal Wooten
Christopher William Worshek
Larry Young Jr.
Christy Lanter Young
LAWYERS IN THE FAMILY

Admittee, cousin, cousin, cousin, uncle, and uncle

Admittee, father, aunt and grandmother

Admittee, uncle, cousin and cousin

Sara Robinson Higgins (2009) and George D. Robinson (1990)
Admittee and father

Admittee, brother and uncle


Clark Vann Stewart (2009), Judge Donald Stewart (1971) and Scott F. Stewart (1998) Admittee, father and brother

J. Bryan Boudreaux (2009), J. Scott Boudreaux (1980) and Mike Cleckler (1972) Admittee, father and stepfather
**LAWYERS IN THE FAMILY**

  Admittee and father

  Admittee and husband

- **Walter Lee Sims (2009) and Judge George N. Sims (1976)**
  Admittee and father

  Admittee, uncle, aunt and stepmother

- **David Fitzgerald Steele, Jr. (2009), Emily Page Steele (2009) and David Fitzgerald Steele, Sr. (1982)**
  Husband and wife co-admittees, father/father-in-law

- **Justin Craddock Owen (2009) and Clyde Craddock Owen, Jr. (1976)**
  Admittee and father

- **Heather Leigh Friday Boone (2009) and Eric J. Friday (2005)**
  Admittee and brother

- **Mandy Jones Johnson (2009) and Adrian D. Johnson (2001)**
  Admittee and husband
LAWYERS IN THE FAMILY

Margaret Summerford Gaddy (2009), Jeremy Scott Gaddy (2009), Alice Tatsum Summerford (1980) and E. Clark Summerford (1978)
Wife and husband co-admittees, mother/mother-in-law, father/father-in-law

Jonathan Friedlander (2009) and Donald A. Friedlander (1967)
Admittee and father

Admittee, father and cousin

Admittee, father, brother and brother

Margaret Jessica Head (2009) and James B. Head (1982)
Admittee and father

Christopher Lockwood (2009) and Robert Lockwood (1996)
Admittee and brother

Frank Austin Branscomb Beavers (2009) and Charles A. J. Beavers, Jr. (1977)
Admittee and father
LAWYERS IN THE FAMILY


Don Long, III (2009) and Don Long, Jr. (1966) Admittee and father

Patrick Brittain Kenerly (2009) and James H. Miller, III (1977) Admittee and father-in-law

Jon Andrew Isom (2009), C. E. Isom (1967) and Chervis Isom (1967) Admittee, father and uncle

Casey Biggs (2009), Terrie Scott Biggs (2002) and Greg Biggs (1985) Admittee, mother and father

Lee F. Holland (2009) and Lyman F. Holland (1957) Admittee and grandfather


Alexandria Parrish (2009) and Danny Evans (1975) Admittee and husband
LAWYERS IN THE FAMILY

Joel M. Everest (2009) and Mark J. Everest (1978)
Admittee and father

David Donaldson (2009), Emily Donaldson (2004) and
Jeff Donaldson (1968)
Admittee, sister and father

Sarah Payne (2009) and
Jack Payne (1971)
Admittee and father

Justin Lackey (2009), Gary W. Lackey (1981) and
Patricia Lackey (1998)
Admittee, father and aunt

Peter Harrison (2009) and
Jack Neal (1977)
Admittee and father-in-law

Paul Rothstein (2009) and
Joe Erdberg (1974)
Admittee and father-in-law

Slate McDorman (2009) and
Clarence McDorman, Jr. (1961)
Admittee and father

William George Fendley (2009) and
George Washington Fendley, III (1980)
Admittee and father
**LAWYERS IN THE FAMILY**


- **Megan Eva Miller** (2009), **Dwight Kirk Rice** (1983) and **Bruce Miller Rice** (1979) Admittee, cousin and cousin

- **Sarah Elizabeth Bell** (2009) and **John Clarke Bell** (1974) Admittee and father


- **Anne Christensen** (2009) and **Mark Christensen** (1995) Admittee and spouse

- **Michael Graham Lane** (2009), **William K. Lane, III** (1992) and **Richard Dance** (1948) Admittee, father and grandfather


William P. Gray, Jr. (1968) and John David Gray (2009) Father and new admittee
It is more important than ever to understand your 401(k) fees.

401(k) fees can be assessed as explicit out-of-pocket expenses or charged as a percentage of assets. These expenses can be charged to either the sponsoring law firm or the plan’s participants. Often they are assessed both ways, in some combination to the firm and its participants.

HOW IS THE ABA RETIREMENT FUNDS PROGRAM DIFFERENT FROM OTHER PROVIDERS? TWO REASONS:

1. The ABA Retirement Funds program was created by a not-for-profit organization within the ABA to provide a member benefit, not generate revenue for the ABA.

2. The ABA Retirement Funds program achieves the necessary economies of scale with over $3 billion invested to eliminate all explicit fees for firms, and provide investments for participants with low asset based fees.

Let the ABA Retirement Funds program provide you with a cost comparison so you can better understand your direct 401(k) fees, and see how we can help you to provide an affordable 401(k), without sacrificing service, to your firm.

For more details contact us by phone [877] 947-2272, by email abaretirement@us.ing.com or on the web at www.abaretirement.com

You should consider the investment objectives, risks, charges and expenses of the investment options carefully before investing. Please refer to the most recent Program prospectus for such information. For a copy of the Prospectus with more complete information, including charges and expenses associated with the Program, or to speak to a Program consultant, call 1-877-947-2272, or visit www.abaretirement.com or write ABA Retirement Funds P.O. Box 5142, Boston, MA 02206-5142 - abaretirement@us.ing.com. Please read the information carefully before investing. The Program is available through the Alabama State Bar as a member benefit. However, this does not constitute, and is in no way a recommendation with respect to any security that is available through the Program.
By this honor roll, the Alabama State Bar recognizes the following lawyers for their participation in volunteer lawyers programs across the state. Their generous assistance, cooperation and dedication have enabled these programs to provide legal representation to hundreds of disadvantaged Alabamians.
The Alabama State Bar and the four organized pro bono programs salute all private attorneys across the state who donated some portion of their time to providing free legal assistance to low-income persons.
We also thank the dedicated lawyers of Legal Services Alabama. Their assistance and cooperation have enabled these programs to operate efficiently without a duplication of services.
Justice for all is more than just a cliché. It is a time-honored ideal to which all lawyers and all Americans aspire. By volunteering your time and skill to provide legal services to those who cannot normally obtain them, you are making a significant contribution toward making that ideal a reality.
This honor roll reflects our efforts to gather the names of those who participate in organized pro bono programs. If we have omitted the name of any attorney who participates in an organized pro bono program, please send that name and address to the Alabama State Bar Volunteer Lawyers Program, P. O. Box 671, Montgomery 36101.
“Two big extravaganza pizzas!” She ordered two of the biggest pizzas from Domino’s and paid for them with my checks! On two different nights! She had them delivered to her right around the corner!”

Mr. Monroe railed as he told me about the woman who stole his wallet. According to Mr. Monroe, the woman, a neighbor, stole his wallet the morning after a “roundabout.” This, Mr. Monroe later learned, was this woman’s scam. Ultimately, the woman was arrested and convicted for the theft of Mr. Monroe’s wallet, but not until she ran up $5,000 in bills using his credit card checks.

Mr. Monroe told me about his case as we sat in his small apartment on a tree-shaded street in the blocks of subsidized housing in Huntsville. Confined to a wheelchair with diabetes, rheumatoid arthritis and a weak heart, Mr. Monroe moves easily in his motorized wheelchair through his handicapped-modified apartment.

After the woman ran up the $5,000 in bills, creditors began calling Mr. Monroe, then hounding him and finally threatening to sue. Soon, Mr. Monroe was served with a copy of a lawsuit filed by a credit collection agency. He submitted a handwritten response explaining that his wallet had been stolen and the bills were not his. In his wheelchair, Mr. Monroe took a bus downtown to the Madison County Courthouse. He appeared in court, as he had been instructed to do. District Court Judge Lynn Sherrod listened to him and then recommended that he contact Legal Services Alabama’s Huntsville office for help. He did, which is how he met Richard J. R. Raleigh, Jr., his Volunteer Lawyers Program attorney.

Started in 1991, the Alabama State Bar’s VLP recruits lawyers throughout the state to provide, pro bono, up to 20 hours of legal services per year for those who cannot afford them. Offices of Legal Services Alabama, Inc., located throughout the state, screen cases that come in to determine if those cases are appropriate for referral to VLP attorneys. Cases which meet the following criteria are eligible for referral to the VLP: (1) the case involves certain issues of law and (2) the case is simple, straightforward and appears to be resolvable within 20 hours or less. In Alabama, 23 percent of licensed attorneys are volunteers in the VLP.

Mr. Monroe and Raleigh met at Raleigh’s office. Thereafter, Raleigh filed an amended answer to the complaint and had subpoenas served on the Huntsville Police Department to obtain records confirming the thief’s arrest and conviction for stealing Mr. Monroe’s wallet. Raleigh collected all this information and presented it to counsel for the collection company. The company was not impressed. It offered, once again, to settle for a significant payment by Mr. Monroe. Monroe refused and the case was set for trial.

It was a hot summer day in 2008 when Mr. Monroe, in his mechanized wheelchair, got off the bus at the Madison County Courthouse and met Raleigh for trial. They went to the courtroom to find a crowded docket. When Judge Sherrod called their case, counsel for the collection company announced that the company was not prepared to proceed. Counsel for the company had brought no witnesses or documents to prove that Mr. Monroe owed anything. Mr. Monroe testified. He explained once again that his wallet and been stolen and that the bills were not his. Judge Sherrod ordered judgment for Mr. Monroe. He owed nothing. He had won his case.

What does Mr. Monroe think about Rich Raleigh? “He got a lot of satisfaction for me. He helped me quite a bit. He was real nice. He sat down and listened to my problem.”

What does Mr. Monroe think about the legal system? “It worked. It worked real well.”

What does Mr. Monroe think about the collection agency? “They’re still after me! I got a letter a couple of weeks ago, offering to settle the $5,000 for $800. I just threw the letter away.”

Endnotes
1. A pseudonym
2. Individuals qualify as VLP clients if they live below the poverty level, which is currently $13,538 gross income per year for an individual, or $27,563 gross income per year for a family of four.
3. Adoption—by relatives with consent of natural parents; Bankruptcy—Chapter 7; Child Support Modification—caller has major change in circumstances; Collections—small claims with attorney on other side; Contracts and Warranties; Custody—by agreement; Divorce—uncontested parties are separated or defendant’s whereabouts are unknown; Education; Guardianship of Child—if needed to enter child in school; Guardianship of Adult—person not of sound mind or medical condition prevents person from caring for self; Home Ownership—deed preparation, pre-foreclosure negotiation or land dispute; Landlord/Tenant—private housing; Legitimations—by consent; Name Change—adult and minor; Power of Attorney; Probate—wills, living wills, small estate administration; Tax; Tort Defense; Visitation Change—by agreement
4. The average VLP case actually takes five and a half hours to resolve.
5. If you would like to volunteer for the VLP, go to the Alabama State Bar’s Web site (www.alabar.org) and click on the VLP link.

Pamela H. Bucy is the Bainbridge-Mims Professor of Law at the University of Alabama. She has served as a member of the Alabama State Bar Access to Legal Services Committee, as an at-large bar commissioner and as vice president of the Alabama State Bar.
The Alabama Appellate Practice Guide expertly supplies the long-standing need of practitioners for an in-depth, yet easily accessible handbook on Alabama appellate procedure. Authored by Ed Haden, chair of the appellate focus team of Balch & Bingham LLP, with the assistance of a group of editors fully knowledgeable in the field, this book is a splendid resource for any lawyer undertaking to navigate the often challenging pathways of Alabama appellate procedure. It walks the practitioner through every critical step of an appeal from a final judgment as well as all of the available interlocutory appeals, and likewise guides him or her through the intricacies of petitions for the writ of mandamus, the writ of prohibition and the writ of certiorari. Recognizing the sometimes daunting complexities involved in appellate procedures (often requiring consideration of the interrelationships among a variety of statutes, the Alabama Rules of Appellate Procedure, the Alabama Rules of Civil Procedure and opinions of the Alabama Supreme Court and the Alabama Court of Civil Appeals), Haden and his group of editors have gone to great lengths to make sure this practice guide is “user-friendly.” The 273 pages of substantive text and the several appendices are readily accessible through the introductory “Detailed Table of Contents” and the concluding lengthy “plain English” index. The 17 chapters comprehensively cover the various areas of appellate practice in a logically organized order. In addition to fully treating the various steps and stages of appeals and applications for extraordinary writs, separate consideration is given to a variety of ancillary matters; for example, preserving error, cross-appeals and applications for rehearing. There are entire chapters devoted to such nuts-and-bolts subjects as appellate motions practice, staying judgments and composition of the record on appeal. Less routine areas, such as amicus curiae briefs, questions certified to the Alabama Supreme Court by federal courts and advisory opinions of the justices, are not neglected, receiving their own separate and full treatment.

The chapter on “When, Where and How to Appeal” provides a great road map for avoiding pitfalls in the timing and structure of an appeal, including such particularized procedures as appeals from probate courts, the timing of cross-appeals and the computation of various applicable deadlines. The interaction of post-judgment motions and appeal timetables is also helpfully
explored. As an example of how the thoughtful organization of the various chapters provides comprehensive coverage of a subject, yet enables the reader easily to locate a particular point of interest, consider Chapter 3 dealing with “Appellate Review of Interlocutory Orders.” First, the various statutes and rules of appellate procedure which specially authorize appeals from certain interlocutory orders are cataloged and also summarized in a chart which identifies the time for taking each of those types of appeal. There then follows a discussion of the interlocutory appeals permitted from orders certified as final pursuant to Rule 54(b) of the Alabama Rules of Civil Procedure, interlocutory petitions for writs of mandamus or prohibition (including a lengthy listing of the various types of orders from which mandamus or prohibition review has been allowed) and the special timing rules that apply to those various procedures. Thereafter, the requirements for taking a “permissive” appeal under Rule 5 of the Alabama Rules of Appellate Procedure are covered.

All relevant aspects of pursuing appellate review are addressed in the book, from the substantive (what constitutes a “final” judgment that will support a regular appeal) to the purely procedural (what language must a Rule 54(b) Ala. R. Civ. P. “finality certification” order contain to support an interlocutory appeal). Each chapter contains cross-references to other chapters that should be considered to obtain a complete understanding of the area under discussion, and each concludes with a practical set of “Practice Tips.”

Although the forward to this guidebook disclaims any intent that it constitute “a comprehensive treatise that deals with every appellate rule and every question of Alabama appellate procedure that may arise,” my searching survey of its content has failed to spot any gap or material omission. At the very least, this well-researched, knowledgeably arranged and most helpfully indexed work will lead the practitioner carefully and thoroughly through all necessary steps of any appellate procedure he or she might need to pursue with respect to a civil case in an Alabama state court. In short, it is a “must have” for any lawyer who might ever become involved in any sort of appeal or extraordinary writ proceeding, be that as appellant/petitioner or appellee/respondent.

Copies may be obtained for $25 each by visiting http://www.balch.com/files/upload/AppellateBookInfo.pdf or by contacting Vera Kirk, with Balch & Bingham, at (205) 251-8100.

Mr. Haden thanks those pictured below for their contributions to Alabama Appellate Practice Guide.

Matt Carroll  Tom Casey  Greg Cook  Daniel Harrell  Joe McCorkle  Kelly Pate  Jason Tompkins  Dorman Walker  C. Yielding

Judge R. Bernard Harwood, Jr. obtained a degree in commerce and business administration at the University of Alabama and his law degree from the university’s School of Law in 1963. He practiced for 28 years in Tuscaloosa until 1991, when he was appointed by the governor to the Circuit Court of Tuscaloosa County. He was then elected twice to that judgeship. In November 2000, he was elected an associate justice of the Alabama Supreme Court and served in that position from January 2001 to January 2007, when he voluntarily retired to return to Tuscaloosa. He rejoined his former law firm and the firm resumed its original name of Rosen Harwood. Judge Harwood is a Fellow of the American Bar Foundation, the Alabama Bar Foundation and the American College of Trial Lawyers and is a “Diplomat” of the American Board of Trial Advocates. He is chair of the Advisory Committee on the Alabama Rules of Evidence and teaches an advanced evidence course at the University of Alabama School of Law.

Helping you untangle conflict …

Call me to mediate your case.

Charlie Anderson, Mediator
• 22 years’ litigation experience in 38 Alabama counties
• Registered with the State Court Mediation Roster since 1994
• Mediation training completed at the Harvard Law School
• Ready to help you find resolution and to bring peace to adverse parties.

CH 272-9880
4511 Halycon Point Dr.
Montgomery, AL 36117

www.andersonmediation.com
Why join the Alabama State Bar Lawyer Referral Service? What can I expect for my investment? What can the LRS do for me that I can’t do myself? How many calls will I have to take before I get an actual client? What kind of client needs to call for a referral? Are the clients that call wanting a free attorney? These are some of the questions asked by attorneys. We have the answers.

Every attorney from the solo practitioner to the partner in the big firm could benefit from the LRS program. Last year, the Alabama State Bar Lawyer Referral Service received over 9,000 callers requesting a referral. Of these 9,000 calls, approximately 7,000 received a referral.

All callers are first screened by LRS staff before a referral is made to an attorney.

• The LRS provides fast, efficient referrals via a specially modified database system.

• Referrals are made using criteria based on area of law and geographic preferences to provide a mutually beneficial match to both the attorney and client.

• The proceeds from the percentage-fee program will be used to fund the service, increase LRS promotions and networking and advertise the service.

• The LRS provides the groundwork to build clientele.

• The LRS has a targeted marketing plan to reach the public.

• We are better than a billboard! When people call our line, they talk to someone in person who gives your information to potential clients!

• You receive your referrals via e-mail (unless you choose otherwise) within an hour of the potential client calling the service.

• We advertise in the Yellow Pages of almost every county to help you get potential clients.

• Our rate is only $100 per year! Nowhere else can you spend such a small amount of money and get such a great return.

• You become a part of a great public service program.
How many referrals will I get through the LRS?

Do you speak Spanish? Do you practice family law? How far are you willing to travel? The number of referrals a member receives varies widely depending on a number of factors. The more flexibility you have usually means more referrals.

Many attorneys are skeptical at the type of client they would get from the Lawyer Referral Service. Some think that an individual who really needs an attorney would be able to find one on his own. The reality is that individuals look for a good source to find someone who can help. The resource they usually go to is the bar association in their state. The ASB Lawyer Referral Service is an ideal way to introduce clients to lawyers who can provide the legal services they need.

The LRS is changing with these changing times. We are reaching out for clients who can afford legal help, but do not know where to find it in their area.

The LRS is constantly trying new marketing ideas to reach the public who needs to find a lawyer. In the coming year, we will be distributing bookmarks to all public libraries in the state and handing out marketing information to chambers of commerce statewide, in addition to speaking to numerous senior groups. We will continue our Yellow Book ads for almost every county across the state.

Networking is a huge part of today’s society. The LRS is a great way to do that at an affordable rate. Maybe the referral wasn’t an instant client, but the value of your name being out there is priceless. Getting the pre-qualified referral is great for client development and retention as well as a public service.

With the tough economic times we are facing one must maintain and grow your practice by all available means. The most affordable means is the Lawyer Referral Service. You may join the service by calling (800) 354-6154 or going to the ASB Web site at www.alabar.org, click on “Members” and then visit “Lawyer Referral.” Get more bang for your buck—join the LRS today!

Networking is a huge part of today’s society. The LRS is a great way to do that at an affordable rate. Maybe the referral wasn’t an instant client, but the value of your name being out there is priceless. Getting the pre-qualified referral is great for client development and retention as well as a public service.

With the tough economic times we are facing one must maintain and grow your practice by all available means. The most affordable means is the Lawyer Referral Service. You may join the service by calling (800) 354-6154 or going to the ASB Web site at www.alabar.org, click on “Members” and then visit “Lawyer Referral.” Get more bang for your buck—join the LRS today!

Renee Avery joined the Alabama State Bar staff as the Lawyer Referral Service secretary in February 2009.
A labama State Bar President Tom Methvin recently appointed a blue-ribbon task force comprised of federal judges and practitioners to determine the feasibility of forming a new Federal Court Practice Section.

“A Federal Court Practice Section would serve as the bar’s liaison to the federal courts, the standing committees of the Federal Judicial Conference, Federal Bar Association chapters throughout Alabama and those members of the state bar interested in federal court practice,” Methvin said.

Task Force Chair David B. Byrne, III of Montgomery said the section would strive to foster communications between lawyers and federal judges on matters pertaining to federal court practice; review and offer comment on proposed changes to federal court rules, including local federal court rules, and offer educational programs and publications designed to improve the federal court practice experience of state bar members.

“Our main goal is to assist Alabama lawyers in federal court practice and to aid the federal judiciary in its mission to administer justice. The organized bar has a pivotal role to play,” Methvin said.

Members of the task force are:

- David B. Byrne, III, Montgomery, chair
- Chief Judge Sharon L. Blackburn, U.S. District Court, Northern District of Alabama, Birmingham
- Mag. Judge (retired) Delores Boyd, Montgomery
- Henry H. Brewster, Jr., Mobile
- Judge John L. Carroll, dean, Cumberland School of Law, Birmingham
- Judge L. Scott Coogler, U.S. District Court, Northern District of Alabama, Tuscaloosa
- Judge Kristi K. DuBose, U.S. District Court, Southern District of Alabama, Mobile
- Jeffrey E. Friedman, Birmingham
- Chief Judge Mark E. Fuller, U.S. District Court, Middle District of Alabama, Montgomery
- R. Austin Huffaker, Jr., Montgomery
- Bob Methvin, Jr., Birmingham
- Harold Stephens, Huntsville

If the criteria for creating a new section is met (at least 50 ASB members indicating they would join such an entity and pay annual dues), then the ASB would have 23 substantive law sections, not including the Young Lawyers’ Section.
Lawyers' Malpractice Insurance

Daniels-Head and Zurich in North America are working together to help you protect your firm's finances and reputation.

Daniels-Head is a leading professional liability insurance provider serving several states with many insurance products that should be of interest to your organization. Daniels-Head understands the needs of small law firms. This understanding comes from serving professionals for more than 50 years, and is reflected in the quality products and services provided.

Zurich's Lawyers' Malpractice Insurance provides qualified small law firms malpractice insurance and a portfolio of risk management services designed to help mitigate professional liability risk. The program's value-added services help enhance your firm's legal research capabilities, and put skilled professionals at your disposal when potential malpractice issues arise.

Together, Daniels-Head and Zurich are committed to crafting customized insurance and risk management solutions for businesses of all types and sizes.
On October 30th, the Board of Bar Commissioners approved 30 attorneys for participation in Class 6 of the 2010 Leadership Forum. The Board of Bar Commissioners also selected Matthew Lee Huffaker as an honorary posthumous member of Class 6. At the time of his death August 16th, Lee was a partner at Maynard, Cooper & Gale PC in Birmingham.

The application process opened in July and closed on October 2nd. The Selection Committee received 75 applications from lawyers who have been admitted to practice at least five but not more than 15 years as of January 1, 2010 based on an applicant’s year of first admission to any state bar. Demonstrated leadership ability based on past accomplishments and current engagements, and an understanding of the importance of servant leadership as demonstrated in the applicant’s narrative, are the most weighted factors in the selection process. The selection process is highly competitive so consideration was also given to applicants who have applied in previous years. Christopher A. Mixon (Class 5) chaired the 10-member Selection Committee. Other members included Shawn T. Alves (Class 3), J. Chandler Bailey (Class 5), Sandra E. Gregory (Class 4), Teresa G. Minor (Class 1), Emily K. Niezer (Class 5), Valerie H. Plante (Class 5), Robert E. Poundstone, IV (Class 5), Erica L. Sheffield (Class 5), and Aldos L. Vance (Class 2).

The racial and gender diversity of the class exceeds the percentages of the state bar membership as a whole. The 2010 class includes 13 females (43 percent), 17 males (57 percent), five African Americans (17 percent), one other (3 percent), and 24 Caucasians (80 percent). The average age of the class is 35.9 years. A chart accompanying this article illustrates the applicant demographics for the past six years. Forty-four of the 75 applications were from attorneys living in the Birmingham area. Class 6 includes seven lawyers working in the public sector, two public interest lawyers, one in-house counsel, three transactional lawyers, six plaintiff’s trial lawyers in a large firm or solo practice, two criminal defense lawyers, and nine civil defense litigators.

---

**Session Dates and Topics**

Session 6.1—Orientation—“Fundamentals of Leadership,” January 28-30, 2010, Marriott Grand Hotel, Point Clear (Thurs., Fri. and Sat.)

Session 6.2—“Legislative Process & Economic Development,” February 23, 2010, Alabama State Bar, Montgomery and Hyundai (Tues.)

Session 6.3—“Black Belt: Struggles & Triumphs,” March 18, 2010, Kellogg Conference Center, Tuskegee (Thurs.)

Session 6.4—“Leadership through Education,” April 22, 2010, Alabama State Bar, Montgomery (Thurs.)

Session 6.5—“Access to Justice,” May 20, 2010, Balch & Bingham LLP, Birmingham (Thurs.)

Graduation Banquet, Birmingham

The agendas of the first two sessions of the 2010 forum clearly demonstrate the quality of the programming continues to increase as alumni of the forum take ownership, responsibility and pride in furthering the purposes of the Alabama State Bar Leadership Forum.

---

Edward M. Patterson is assistant executive director of the Alabama State Bar. He is the staff director of the Leadership Forum and is a recipient of the State Bar Award of Merit.
2010 CLASS PARTICIPANTS

John A. Baty  Jefferson County District Attorney’s Office  Birmingham
Robin L. Beardsley  Sirote & Permutt PC  Birmingham
Kevin L. Boucher  Mobile County Commission  Mobile
Steven M. Brom  The Brom Law Firm LLC  Birmingham
Brian V. Cash  The Perkins Group LLC  Birmingham
Joel D. Connally  attorney at law  Montgomery
Christopher W. Deering  Oglethorpe Deakins  Birmingham
Rebecca G. DePalma  White, Arnold & Dowd  Birmingham
Nicole S. Diaz  University of Alabama  Tuscaloosa
Brandon K. Essig  Department of Justice  Montgomery
Glenda D. Gamble  City of Tuscaloosa  Tuscaloosa
Monica G. Graveline  Balch & Bingham LLP  Birmingham
Brandy O. Hambright  Hicks, Matranga, Hambright  Mobile
Tyrell F. Jordan  Balch & Bingham, LLP  Birmingham
Derrick A. Mills  Marsh, Rickard & Bryan  Birmingham
Larry B. Morris  Starnes & Atchison LLP  Birmingham
Anil A. Mujumdar  Haskell Slaughter Young & Rediker  Birmingham
Andrew S. Nix  Maynard, Cooper & Gale PC  Birmingham
Jennifer C. Pendergraft  Oglethorpe Deakins  Birmingham
William I. Powell  Lauderdale County District Attorney’s Office  Florence
Angela S. Rawls  Madison County Volunteer Lawyers Program  Huntsville
Hon. Katrina Ross  State of Alabama—10th Judicial Circuit  Bessemer
Joi C. Scott  Christian & Small LLP  Birmingham
Jay E. Stover  Stover, Stewart & Phillips LLC  Gadsden
Brian A. Wahl  Bradley Arant Boult Cummings LLP  Birmingham
Todd B. Watson  District Attorney’s Office—35th Circuit  Evergreen
Leslie G. Weeks  Helmsing, Leach, Herlong, Newman & Rouse  Mobile
William C. White, II  Parkman, Adams & White  Birmingham
Tamula R. Yelling  Constangy, Brooks & Smith LLC  Birmingham
Cinda R. York  Regions Financial Corp  Birmingham
**Session 6.1—Orientation**  
**“Alabama Needs You to Lead”**  
*January 28-30, 2010*  
*Grand Hotel Marriott Resort, Golf Club & Spa, Point Clear*

**THURSDAY, JANUARY 28, 2009**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>11:00 am–noon</td>
<td>Check-in and registration</td>
</tr>
<tr>
<td>12:00–1:00 pm</td>
<td>Lunch: Welcome and introductions</td>
</tr>
<tr>
<td>1:00–2:00 pm</td>
<td>“Imagining Alabama in 2020”</td>
</tr>
<tr>
<td></td>
<td>David G. Bronner, CEO of Retirement Systems of America, lays out his vision of what Alabama can achieve with strong leadership over the next decade.</td>
</tr>
<tr>
<td>2:00–3:00 pm</td>
<td>“What Is A Leader?”</td>
</tr>
<tr>
<td></td>
<td>Allison Cornelius Black, Principal Consultant, BlackBOARD Governance &amp; Leadership Consulting</td>
</tr>
<tr>
<td>3:00–3:15 pm</td>
<td>Break</td>
</tr>
<tr>
<td>3:15–5:00 pm</td>
<td>Allison Cornelius Black (continued)</td>
</tr>
<tr>
<td>5:00–5:15 pm</td>
<td>Wrap-up and Adjourn</td>
</tr>
<tr>
<td>6:00–7:30 pm</td>
<td>Cocktails (short walk from the hotel)</td>
</tr>
<tr>
<td></td>
<td>Dinner at the nearby Wash House Restaurant in Fairhope</td>
</tr>
</tbody>
</table>

**FRIDAY, JANUARY 29, 2009**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:30–8:15 am</td>
<td>Breakfast</td>
</tr>
<tr>
<td>8:15–9:00 am</td>
<td>“Making Your Vision a Reality”</td>
</tr>
<tr>
<td></td>
<td>University of South Alabama’s head football coach, Joey Jones, discusses the creation of USA’s ambitious football program. (This season is the team’s first.)</td>
</tr>
<tr>
<td>9:00 –10:00 am</td>
<td>“Why You Must Lead”</td>
</tr>
<tr>
<td></td>
<td>Panel discussion concerning the moral and practical reasons why those who have the ability and resources to lead must do so. Possible panelists include:</td>
</tr>
<tr>
<td></td>
<td>Moderator/speaker Michael D. Knight, past president, Mobile Bar Association, and senior partner, McDowell Knight Roedder &amp; Sledge LLC</td>
</tr>
<tr>
<td></td>
<td>Stephen F. Black, director, Center for Ethics &amp; Social Responsibility, the University of Alabama</td>
</tr>
<tr>
<td></td>
<td>Kathy Jorgensen, Methodist minister</td>
</tr>
<tr>
<td></td>
<td>Major General J. Gary Cooper, U. S. Marine Corp. (retired) Former Alabama Governor Albert Brewer</td>
</tr>
<tr>
<td>10:00–10:15 am</td>
<td>Break</td>
</tr>
<tr>
<td>10:15 –11:00 am</td>
<td>“What’s Holding Alabama Back?”</td>
</tr>
<tr>
<td></td>
<td>Why does Alabama continue to lag behind other states in some key areas? Wayne Flynt discusses problems with the Alabama constitution, as well as other historic and ongoing impediments to progress in the state, and suggests ways to overcome those obstacles.</td>
</tr>
<tr>
<td>11:00–12:30 pm</td>
<td>Lunch</td>
</tr>
<tr>
<td>12:30–1:15 pm</td>
<td>“Effective Alabama Leadership in Action: The Renaissance of Mobile”</td>
</tr>
<tr>
<td></td>
<td>Mike Dow, Mobile’s mayor from 1989 until 2005, discusses the city’s dramatic revival during his time in office.</td>
</tr>
<tr>
<td>1:15–2:30 pm</td>
<td>“The Port of Mobile: A Gateway to the World”</td>
</tr>
<tr>
<td></td>
<td>Tour of Austal shipbuilding facility, manufacturer of military and other large watercrafts</td>
</tr>
<tr>
<td></td>
<td>Tour includes assembly bay for the Navy’s Littoral Combat ship and the $170 million Module Manufacturing Facility which prefabricates ship components for assembly in various vessels. Facility tour followed by presentation by Austal’s President/CEO Joseph Nall, who will discuss Mobile’s opportunity to become a major shipbuilding center. (As a federal contractor, Austal is a secured site and only U.S. citizens may visit. There is a clearance process which takes approximately a month, and requires visitors to provide a passport or birth certificate.)</td>
</tr>
<tr>
<td>2:30–4:15 pm</td>
<td>Tour of Hyundai shipbuilding facility</td>
</tr>
<tr>
<td>4:15–5:00 pm</td>
<td>Bus trip back to Grand Hotel</td>
</tr>
<tr>
<td>6:00–7:00 pm</td>
<td>Cocktails</td>
</tr>
</tbody>
</table>

**7:00–9:00 pm:** Dinner  
*Guest Speaker: United States Surgeon General Regina Benjamin  
“Pick Yourself Up, Dust Yourself Off, Start All Over Again: Perseverance Is at the Heart of Leadership”*

**SATURDAY, JANUARY 30, 2009**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:30–9:30 am</td>
<td>Breakfast</td>
</tr>
<tr>
<td>9:30–10:15 am</td>
<td>“Finding Common Ground in a Fractious Time”</td>
</tr>
<tr>
<td></td>
<td>Current Mobile Mayor Sam Jones, the first African-American elected to that position, discusses the challenge of leading at a time when political, social and economic divisions often appear to be widening and public discourse is frequently acrimonious.</td>
</tr>
<tr>
<td>10:15–11:30 am</td>
<td>“Practical Leadership Goals for Alabama Lawyers”</td>
</tr>
<tr>
<td></td>
<td>Panel discussion: Four senior lawyers with strong leadership records discuss lessons learned from taking on leadership roles inside and outside the law, and give concrete advice about how and where younger lawyers should get involved.</td>
</tr>
<tr>
<td></td>
<td>Moderator/speaker John N. Leach, president, Mobile Bar Association</td>
</tr>
<tr>
<td></td>
<td>Samuel N. Crosby, ASB past president</td>
</tr>
<tr>
<td></td>
<td>William Lee Thuston, managing partner, Burr &amp; Forman</td>
</tr>
<tr>
<td>11:30–11:45 am</td>
<td>Final Remarks: “It’s Your Time to Lead”</td>
</tr>
<tr>
<td></td>
<td>Edward M. Patterson, assistant executive director, Alabama State Bar</td>
</tr>
<tr>
<td>Noon</td>
<td>Check-out</td>
</tr>
</tbody>
</table>

**SESSION 6.2—Proposed Agenda**  
**“The Legislative Process and Economic Development”**  
*Tuesday, February 23, 2010*  
*Alabama State Bar, Montgomery*

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:00–8:45 am</td>
<td>Registration and breakfast in Boardroom</td>
</tr>
<tr>
<td>8:45–9:00 am</td>
<td>Walk from ASB to State House, 8th Fl. Conference Room, Old House Chambers Room, State Capitol</td>
</tr>
<tr>
<td>9:00–9:10 am</td>
<td>Othni J. Latham, Lara M. Avis, D. Scott Mitchell, Emily H. Raley</td>
</tr>
<tr>
<td></td>
<td>Introductions and Legislative Process Overview</td>
</tr>
<tr>
<td>9:10–9:40 am</td>
<td>Representative Marcel Black, “The Committee Process”</td>
</tr>
<tr>
<td>9:40–10:10 am</td>
<td>Representative Paul DeMarco, “Becoming a Lawyer-Legislator”</td>
</tr>
<tr>
<td>10:10–10:40 am</td>
<td>Senator Rodger Smitherman, “How the Senate Works”</td>
</tr>
<tr>
<td>10:40–10:50 am</td>
<td>Break</td>
</tr>
<tr>
<td>10:50–11:20 am</td>
<td>Kim Adams and Suzie Edwards, tour of State House</td>
</tr>
<tr>
<td>11:20–11:35 am</td>
<td>Walk from State House back to Alabama State Bar</td>
</tr>
<tr>
<td>11:35–12:05 pm</td>
<td>Mark White, “How to be an Advocate with the Legislature”</td>
</tr>
<tr>
<td>12:05–1:00 pm</td>
<td>Buffet Lunch</td>
</tr>
<tr>
<td>12:15–1:00 pm</td>
<td>Congressman Artur Davis, “The Federal Legislative Process”</td>
</tr>
<tr>
<td>1:05 pm</td>
<td>Board touring bus and travel to Hyundai Motor Manufacturing Alabama, LLC, Hope Hull</td>
</tr>
<tr>
<td>1:25–1:30 pm</td>
<td>Group photo in HMMA reception area</td>
</tr>
<tr>
<td>1:30–1:45 pm</td>
<td>Rick Neal, HMMA general counsel, and Christopher N. Smith, “Welcome &amp; Introductions”</td>
</tr>
<tr>
<td>1:45–3:15 pm</td>
<td>Tour of Hyundai plant</td>
</tr>
<tr>
<td>3:15–3:30 pm</td>
<td>Break</td>
</tr>
<tr>
<td>3:30–4:15 pm</td>
<td>Bradley Byrne, “Economic Development in Alabama”</td>
</tr>
<tr>
<td>4:15–4:30 pm</td>
<td>Edward M. Patterson, “Closing Remarks”</td>
</tr>
<tr>
<td>4:30 pm</td>
<td>Return to Alabama State Bar</td>
</tr>
<tr>
<td>5:00 pm</td>
<td>Official group photograph</td>
</tr>
</tbody>
</table>
Others get too wrapped up in the numbers. We discover and define financial value.

RGL Forensics is an international firm of accounting, valuation and technology professionals who are specially trained to sort through the details and make sense of the data. We specialize in litigation support services: pre-trial preparation, economic damage analysis, investigative accounting and embezzlement, business valuation, fraud, business interruption, loss-of-earnings calculations, e-discovery, and expert witness testimony.

Ryan A. Carruth, CPA/CFF, CFE
Peachtree Center — International Tower
229 Peachtree Street NE, Suite 900
Atlanta, GA 30303
866.953.0400

RGL Forensics
Discovering & Defining Financial Value
For many years, our Birmingham circuit judges have been assigned to specific divisions of the court due to the volume of litigation filed in Birmingham. We now have 11 circuit judges in the Civil Division, nine in the Criminal Division, three in Domestic Relations and one in Family Court. With this degree of specialization, a judicial candidate may select a judgeship that is assigned to the area of the law in which the candidate has expertise. When the judge achieves the judgeship, he/she will have the opportunity to develop the special skills needed to handle the type of case to which he/she is assigned. We have found that this system serves us well.

In Birmingham, we have further specialized our court system in establishing “Problem Solving Courts” or “Remediation Courts.” The concept of these courts is that the traditional adversarial system is not the best method of dealing with some of modern American society’s major problems: drug use, domestic violence and mental health. In these courts, we use specialists to address the root cause of the defendant’s legal problem. These courts provide alternatives to incarceration and reduce recidivism. Special skills are required of the judges in these courts.

Another trend in the American legal system is the establishment of specialized, commercial civil dockets to help expedite cases arising out of business disputes and other complex litigation. These dockets have been especially useful in metropolitan areas, such as ours, where business litigation is most prevalent.

Chief Justice Sue Bell Cobb asked me to consider the feasibility of creating a Business Court in Alabama. I appointed an ad hoc committee, which included Jefferson County Circuit Judge Robert Vance, retired Supreme Court Justice Ralph Cook, retired Circuit Judge Tennant Smallwood, corporate litigation attorney Drew Sinor, and Alabama Gas Corporation President Dudley Reynolds.

The committee obtained and considered a great deal of information dealing with the formation of a Business Court. The committee submitted a report to the chief justice, and she has accepted our recommendations.

The committee concluded that the creation of a specialized Commercial Litigation Docket (CLD) would be beneficial to the people of Alabama. It was determined that this name for the docket would be more descriptive than “Business Court.”

The creation of a specialized CLD serves several goals. The laws contemplated to be at issue in such cases generally affect all businesses in the state, and the efficient planning of those businesses requires greater predictability in assessing the effects of potential litigation. The prompt resolution of such claims requires developing expertise in those laws and the utilization of specialized case management procedures. Concentrating such litigation in a specialized docket, with one judge presiding, furthers the goals of predictability and efficiency. Such benefits have been recognized by a number of states that have already created specialized business or commercial litigation courts.

The committee reached the following conclusions:

1. The CLD should have a specifically-defined jurisdiction so that parties, attorneys and judges could readily determine whether their cases fit within the defined jurisdiction. Cases falling within the CLD are described below.

2. Only those cases properly within the Birmingham Division of the Jefferson County Circuit Court would be eligible for assignment. Since the presiding judge has the authority to assign cases under the Rules of Judicial Administration, no legislation or other formal action would be needed to establish this docket in Birmingham. This would permit an easier implementation of this docket and would allow for the assessment of the docket as a pilot program that, if proven to be beneficial, might become a model for the establishment of additional such courts in other circuits.

The committee further agreed to the following points pertaining to managing the CLD:

- A party desiring to have a newly-filed case included on the docket must file, in addition to the summons and complaint, and the Civil Cover Sheet (form A.R.Civ.P.-93), a verified
document that would make explicit the request for inclusion in the docket and an explanation why inclusion is warranted. Any such request would be forwarded to the presiding judge, who would determine whether the case should go on the docket. An order to that effect would be directed to the clerk of the court, who would then make the necessary arrangements for assignment.

- No additional filing fees would be required of a party requesting that a case be included in the docket.
- Alternatively, if a case is assigned to another judge as part of the circuit’s regular docket, and that judge subsequently and reasonably concludes that the case should be on the CLD, that judge may refer the matter to the presiding judge for possible re-assignment.
- All cases on the CLD would be assigned by the presiding judge to Circuit Judge Robert S. Vance, who would handle the CLD in addition to his regular caseload. There would be a standing designation of another judge to serve as a backup in the event that Judge Vance could not hear a particular case on the docket, or is absent when exigent circumstances arise. Note that it is with gratitude that Judge Vance has volunteered to take the responsibility for this docket.
- Like with all other circuit civil cases, the Birmingham Differential Case Management Plan would apply.
- Assignment to the CLD would not affect any party’s right to a jury trial that might otherwise exist.
- Judge Vance would retain the authority to refer a case back to the court’s regular docket, with re-assignment to a judge at random, if events occurring after a case’s initial filing (e.g., a ruling that a proposed class is not properly certifiable) remove the case from the categories of cases properly included in the CLD.

The following cases would be properly included within the CLD:

1. Claims arising from allegations of breach of commercial contract or of fiduciary duty, fraud, statutory violation arising out of business dealings (e.g., sales of assets or securities, corporate structuring, partnership, shareholder, joint venture and other business agreements, trade secrets, and restrictive covenants), and all other litigation arising under Ala. Code (1975) § 10-1-1, et seq.
2. Actions relating to securities, such as claims arising under Ala. Code (1975) § 8-6-1, et seq.
3. Actions arising from trade secrets or intellectual property disputes.
4. Business torts such as antitrust claims under Ala. Code (1975) § 8-10-1, et seq., claims of unfair competition, interference with contractual or business relations.
5. Claims pertaining to trademarks, names, marks, devises, and labels, under Ala. Code (1975) § 8-12-1, et seq.
6. Transactions involving the development of commercial real property or complex commercial construction disputes.
7. Commercial class actions and consumer class actions not based on personal injury or product liability claims.
8. Malpractice claims involving a business entity and attorneys, accountants, architects or other professionals in connection with services rendered to that business.
9. Environmental claims and environmental insurance coverage litigation arising out of the acquisition or sale of business.
10. Transactions governed by the Uniform Commercial Code, Ala. Code (1975) § 7-1-1, et seq., provided the amount in controversy, exclusive of interest, attorneys’ fees and litigation expenses, exceeds $50,000.
11. Any other case in which the presiding judge determines that any of the following apply:

   (A) that the case may have implications for business and industry beyond the decision in the particular case;
   (B) that the case may result in a significant interpretation of a statute within the scope of the docket, or
   (C) that there exist other reasons for the proper inclusion in the CLD.

The following types of litigation would not be properly included within the CLD:

1. Disputes regarding sales of residential real property or construction of residential dwellings.
2. Professional malpractice cases arising outside the context of a commercial dispute.
3. Cases seeking declaratory judgment as to insurance coverage for personal injury or property damages.
4. Individual consumer claims including product liability, other personal injury or wrongful death cases.
5. Individual employment-related claims.
6. Individual consumer claims, including product liability.

At this time, we do not know the amount of litigation which will be included in the CLD. As we gain experience, we anticipate refining the descriptions of cases which are properly assigned to the CLD.

We look forward to this attempt to improve the quality of justice offered by our courts to the Alabama business community. We appreciate the cooperation of the Alabama State Bar and welcome your suggestions as the program develops. The program was expected to begin January 2, 2010. The cases assigned to the court will be designated “CLD.”

Judge J. Scott Vowell, presiding judge of the Tenth Judicial Circuit, is a graduate of the University of Virginia Law School. Vowell was elected to the Jefferson County Circuit Court (Civil Division) in 1994 after practicing law for 30 years. He has been re-elected twice. Vowell has served as presiding judge of the circuit since 2003. Judge Vowell also serves on the Alabama Court of the Judiciary and the Alabama Pattern Jury Instruction Committee.
General Rule: Uphold the Corporate Identity

The corporate identity is a useful fiction. Indeed, some would argue that it is a vital fiction in the sense that individuals might balk at launching new ventures if it meant their personal assets were readily at risk. In general, the common law has enforced the corporate identity unless it is a sham or alter ego of another. This presumption against piercing the corporate veil can be overcome by showing fraud or other exceptional circumstances. Given the nature of piercing the corporate veil, such “piercing” is generally a fact intensive exercise of a court’s equitable powers. The court’s power to reach a determination on “piercing” or alter ego issues has particular application not only in reaching assets behind a sham corporation but also can be important in patent infringement venue questions. This article sets forth the general principles for piercing the corporate veil and its application under both Alabama law as well as its application to venue questions under patent law.

Presumption of validity

Alabama law upholds the “the corporate identity . . . unless the individual sought to be charged with the corporation’s liability has used the corporate identity as his alter ego.” Chenault v. Jamison, 578 So. 2d 1059, 1061 (Ala. 1991) (citing Forester & Jerue, Inc. v. Daniels, 409 So. 2d 830 (Ala. 1982)). Indeed, in Alabama, “the corporate form is not lightly disregarded, since limited liability is one of the principal purposes for which the law has created the corporation.” Id. (quotation marks omitted); see also M & M Wholesale Florist, Inc. v. Emmons, 600 So. 2d 998, 999 (Ala. 1992). In virtually every situation where a court is asked to pierce the corporate veil, the court typically observes that such an exercise of judicial power is extraordinary, or is not to be done lightly. See Gilbert v. James Russell Motors, Inc., 812 So. 2d 1269, 1273 (Ala. Civ. App. 2001) (“extraordinary”); Transamerican Properties v. Watkins, 673 So. 2d 422, 425 (Ala. Civ. App. 1993) (“not … lightly exercised”); M & M Wholesale Florist, Inc. v. Emmons, 600 So. 2d 998, 999 (Ala. 1992) (“corporate form [ ] not lightly disregarded”); First Health, Inc. v. Blanton, 585 So. 2d 1331, 1334 (Ala. 1991) (“not … lightly exercised”); cf. Ex parte Thorn, 788 So. 2d 140, 143 (Ala. 2000) (“The doctrine of ‘piercing the corporate veil’ is equitable in nature.”). Thus, a presumption is in favor of upholding the corporate veil.

General standards for piercing the veil

The presumption against piercing notwithstanding, courts may disregard the corporate form when (1) the corporation is inadequately capitalized; 2) the corporation is conceived or operated for a fraudulent purpose; (3) the corporation is operated as an instrumentality or alter ego of an individual or entity with corporate control; or (4) the interests of justice and equity so require. See Southern Sash Sales & Supply Co. v. Wiley, 631 So. 2d 968, 970 (Ala. 1994) (“Separate corporate existence will not be recognized where a corporation is so organized and controlled and its business conducted in such a manner as to make it merely an instrumentality...
of another”); Culp v. Economy Mobile Homes, Inc., 895 So. 2d 857, 859-60 (Ala. 2004)(same); Gilbert, 812 So. 2d at 1273 (“The Alabama Supreme Court has set out the following extraordinary circumstances in which it would be appropriate to pierce the corporate veil: where the corporation is inadequately capitalized; where the corporation is conceived or operated for a fraudulent purpose; or where the corporation is operated as an instrumentality or alter ego of an individual or entity with corporate control.”); M & M Wholesale Florist, 600 So. 2d at 999 (same); First Health, 585 So. 2d at 1334 (same); Deupree v. Ruffino, 505 So. 2d 1218 (Ala. 1987) (“A separate corporate existence will not be recognized when a corporation is so organized and controlled and its business so conducted as to make it a mere instrumentality of another or the alter ego of the person owning and controlling it. A corporation and the individual or individuals owning all its stock and assets can be treated as identical, even in the absence of fraud, to prevent injustice or inequitable consequences.”).

For example, Alabama law has recognized that a corporate form should be disregarded in certain cases:

A separate corporate existence will not be recognized when a corporation is so organized and controlled and its business so conducted as to make it a mere instrumentality of another or the alter ego of the person owning and controlling it. A corporation and the individual or individuals owning all its stock and assets can be treated as identical, even in the absence of fraud, to prevent injustice or inequitable consequences.

Deupree v. Anderson, 505 So. 2d 1218, 1222 (Ala. 1987).1 Depletion of corporate funds also can be used as a basis to disregard the corporate form and pierce the corporate veil:

The corporate veil may be pierced where a corporation is set up as a subterfuge, where shareholders do not observe the corporate form, where the legal requirements of corporate law are not complied with, where the corporation maintains no corporate records, where the corporation maintains no bank account, where the corporation has no employees, where corporate and personal funds are intermingled and corporate funds are used for personal purposes, or where an individual drains funds from the corporation.


1. “Fraud” or “Injustice” To pierce the corporate veil under Alabama law, a plaintiff must show either fraud in asserting the corporate existence or must show that recognition of the corporate existence will result in injustice or inequitable consequences. (Additionally, mere domination cannot be enough to pierce the corporate veil; there must be the added elements of misuse of control and harm or loss resulting from it.) Id. Econ Marketing, Inc. v. Leisure American Resorts, Inc., 664 So. 2d 869, 870 (Ala. 1994). To establish a fraudulent purpose or to prove that a business is being operated as an alter ego, plaintiff must show more than just a shareholder’s desire to avoid personal liability for the business’ debts. “To pierce the corporate veil, a plaintiff must show fraud in asserting the corporate existence or must show that recognition of the corporate existence will result in injustice or inequitable consequences.” Simmons v. Clark Equip. Credit Corp., 554 So. 2d 398, 400 (Ala. 1989).

The Alabama Supreme Court has explained:

[A] parent corporation which owns all the stock of a subsidiary corporation is not liable for acts of its subsidiary corporation, unless the parent corporation so controls the operation of the subsidiary corporation as to make it a mere adjunct, instrumentality, or alter ego of the parent corporation. Baker v. Hospital Corporation of America, 432 So.2d 1281 (Ala. 1983). Furthermore, where one corporation controls and dominates another corporation to the extent that the second corporation becomes the mere instrumentality of the first, the dominant corporation becomes liable for those debts or torts of the subservient corporation attributable to an abuse of that control.

Duff v. Southern Ry. Co., 496 So. 2d 760, 762 (Ala. 1986). The court has applied a number of factors to determine whether this control exists:

(a) The parent corporation owns all or most of the capital stock of the subsidiary.

(b) The parent and subsidiary corporations have common directors or officers.

(c) The parent corporation finances the subsidiary.

(d) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation.

The only payment solution recommended by over 50 bar associations nationwide! 866.376.0950 LawFirmMerchantAccount.com

Win Business and Get Paid!
(e) The subsidiary has grossly inadequate capital.

(f) The parent corporation pays the salaries and other expenses or losses of the subsidiary.

(g) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to it by the parent corporation.

(h) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation’s own.

(i) The parent corporation uses the property of the subsidiary as its own.

(j) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation in the latter’s interest.

(k) The formal legal requirements of the subsidiary are not observed.

Id. (The test above was used to determine whether the corporate form should be disregarded as between a parent and its subsidiary. Although not precise to the facts of this case, the factors used are relevant and should be persuasive.)

In Duff, for example, the court held that the following four factors (plus some other “relevant factors” concerning control) were enough for the plaintiff’s claims to survive summary judgment and to be sent to the jury on a veil piercing theory: (1) company A owned all the stock in Company B; (2) an individual named Garner was an officer of one company and a director of the other; (3) Company A paid the salaries of Company B’s workers; (4) that over 99 percent of Company B’s business was with Company A; and (5) Garner, a director of Company B, may not have acted independently from Company A. Id. at 763.

These factors are important for a court to consider, but no single factor will determine the outcome, and a court may consider other factors as well. Furthermore, in part because piercing the corporate veil is “an equitable doctrine,” Ex parte Thorn, 788 So. 2d 140, 145 (Ala. 2000), there is significant flexibility in the way it is applied. Therefore, outcomes are difficult to predict, and a court has significant discretion in applying the factors.

Additionally, as the cases below demonstrate, a critical finding in most decisions to pierce the corporate veil is some finding of misuse, in the form of fraud, corporate form abuse or other malfeasance. A combination of elements—such as control, under-capitalization and equities favoring piercing—may well justify piercing, but in the absence of wrongdoing, a court will be less inclined to pierce the corporate veil, even if a party proves control or the equities favor piercing.

2. Sample Alabama Cases

Shelton v. Clements, 2002 WL 161328 (Ala. Civ. App. Feb. 1, 2002)—In Shelton, the court of civil appeals upheld the trial court’s decision to pierce the corporate veil because the evidence supported an alter-ego/instrumentality theory. In reaching its conclusion, the court focused on evidence that the individual to whom the court attached liability was the president of the corporation, the corporation was undercapitalized, the individual commingled his funds with those of the corporation and the individual intended to file a petition in bankruptcy for the corporation if it did not earn a profit on the project that was the subject of the lawsuit. The court concluded this despite the fact that the record contained no information regarding the identities of the other officers of the corporation, the number of corporate stockholders or their ownership interests, or the corporation’s financial information.

Ex parte AmSouth Bank, 669 So. 2d 154 (Ala. 1995)—In Ex parte AmSouth Bank, the Alabama Supreme Court reversed the court of civil appeals’ decision to affirm entry of summary judgment. The court found that the existence of a material fact precluded entry of judgment on whether the corporate veil should be pierced and held that AmSouth’s interaction with a certain individual as the corporation’s representative did not foreclose piercing, but only militated against it. Moreover, pertinent facts justifying the denial of summary judgment included the fact that the individual was the sole shareholder, sole director and sole officer of the corporation; that the corporation had no financial records, business licenses or bank accounts; that the corporation assumed responsibility for the individual’s debts for no consideration; and that the individual may have misused the corporate form.
Southern Sash Sales & Supply Co. v. Wiley, 631 So. 2d 968, 970 (Ala. 1994)–In Southern Sash, the Alabama Supreme Court upheld a jury’s determination that sufficient evidence existed to pierce the corporate veil. The lawsuit related to certain indebtedness incurred by the “second corporation” that remained unpaid and essentially uncollectible because the second corporation did not have any assets. The court found the corporation that purchased the second corporation was liable for the second corporation’s debt in light of evidence that the first corporation took over responsibility of the second corporation’s bank account, purchased its assets prior to plaintiffs’ effort to collect judgment and then operated the second corporation in a manner virtually identical to how it had been operated before the sale.

Econ Marketing, Inc. v. Leisure Am. Resorts, Inc., 664 So. 2d 869 (Ala 1994)–In Econ, the Alabama Supreme Court reversed the trial court’s decision not to pierce the corporate veil because there was evidence in the record to support the conclusion that the subsidiary sought to be pierced failed to keep complete and correct records of all transactions of the corporation and minutes of meetings (including a record of a transaction between it and the parent by which the subsidiary was to provide goods and services to other subsidiaries of the parent), and failed to produce financial records regarding several relationships and financial transactions between the subsidiary, the parent and the sole shareholder.

Deupree v. Ruffino, 505 So. 2d 1218 (Ala. 1987)–The Alabama Supreme Court affirmed the trial court’s decision to pierce the corporate veil because evidence showed that the corporation in whose name the business had been transacted never issued stock, never adopted by-laws, failed to keep financial records, had no employees, and the dominant shareholder commingled personal and corporate funds.

Kwick Set Components, Inc. v. Davidson Indus., 411 So. 2d 134 (Ala. 1982)–The Alabama Supreme Court affirmed the trial court’s decision to pierce the corporate veil where not only did the dominant and subservient corporations share the same president and same board of directors, the dominant corporation purchased goods through the name of the defunct corporation to perform contracts, and the dominant corporation also apparently sought to avoid payment of the subservient corporation’s debts while benefiting from the use of the goods causing the debts.

Transamerican Properties v. Watkins, 673 So. 2d 422, 425 (Ala. Civ. App. 1993)–The Alabama Court of Civil Appeals upheld the trial court’s finding that sufficient evidence existed to justify piercing the corporate veil. The court found it was proper to attach individual liability because one individual dominated the two corporate defendants named in the action; the corporations were grossly undercapitalized, the plaintiff did not have workers’ compensation insurance to cover employees and neither corporation owned any assets to compensate the plaintiff for his injury. In upholding the verdict, the appeals court stated: “While it is true that mere undercapitalization or dominance by one person alone would not be enough to pierce the corporate veil, those two factors, when combined with the fact that the corporate form in this case was misused and created an injustice or inequitable consequences, are enough to support the trial court’s finding that Pate is personally liable to Watkins for workmen’s compensation benefits.”

Reverse Piercing

In some instances, parties may seek to “reverse pierce.” “Reverse pierce” treats the assets of the LLC as owned by the member in order to avoid fraud on creditors. The authors are not aware of any Alabama cases that have accepted or rejected an attempt to “reverse pierce.” In cases outside of Alabama, courts have permitted judgment creditors to pierce the corporate veil or “reverse pierce” the corporate veil of limited liability companies or partnerships where it was clear the judgment debtor was using the corporate form to evade judgment creditors. Sample cases include:
C.F. Trust, Inc. v. First Flight LTD Partnership, 140 F. Supp. 2d 628 (E.D. Va. 2001)–The Virginia court permitted reverse piercing of the corporate veil where a judgment debtor used his limited partnership interest to evade creditors. The court was persuaded by the fact that the debtor maintained control over the partnership and its distributions despite official transfer of control and ownership to another person, and the debtor siphoned business assets for his own personal use and without a business purpose.

In re Phillips, 139 P.3d 639 (Colo. 2006)–The court stated that Colorado law allows reverse piercing of the corporate veil when justice requires.

Mallard Automotive Group, Ltd. v. LeClair Management Corp., 153 F. Supp. 2d 1211 (D. Nev. 2001)–The Nevada court held that a party seeking to hold a corporation responsible for an individual’s debt under reverse piercing does not have to prove that the corporation was a sham, but instead only that the corporate form would perpetuate fraud or injustice.

BLD Products, LTC v. Technical Plastics of Oregon, LLC, 2006 WL 3628062 (D. Or. 2006)–The Oregon court allowed the corporate veil to be pierced where assets were commingled and the corporate form was disregarded.

Litchfield Asset Management Corp. v. Howell, 799 A. 2d 298 (Conn. App. 2002).–The Connecticut court found the evidence was sufficient to disregard the corporate form and hold limited liability company responsible for the debtor’s personal debt where the debtor used company funds to pay for the debtor’s personal expenses and used corporate funds as her own; the corporation did not pay her a salary but paid her expenses directly; the debtor owned 97 percent of the stock and all of the stock of the second corporation; and both companies operated outside of the same office space over the debtor’s garage.

State Bank of Eden Valley v. Euerle Farms, Inc., 441 N.W.2d 121 (Minn. Ct. App. 1989)–The Minnesota court held the family farm was the alter ego of its occupants and the corporate veil was properly reverse pierced to reach property.

LFC Marketing Group, Inc. v. Loomis, 8 P.3d 841 (Nev. 2000)–The Nevada court listed reverse piercing cases and found use of the doctrine was appropriate where a corporation is being used to hide assets or secretly conduct business to avoid pre-existing liability of controlling debtor.

For example, in Minnesota Mining & Mfg. Co. v. Eco Chem., Inc., 757 F.2d 1256 (CAFC 1985), venue was established under an alter ego theory based on the following facts:

a. One shareholder owned 80 percent of the company stock;
b. Majority shareholder’s spouse possessed all of the company’s know-how;
c. There was no meaningful board of directors’ oversight;
d. Minority shareholders were not apprised of company operations;
e. Corporate formalities were ignored; and
f. The majority shareholder and her spouse manipulated the company assets in an effort to thwart recovery.

In any event, with the high cost of patent litigation, being able to achieve a venue advantage can be useful to a patent plaintiff.

Conclusion

Those who seek to pierce the corporate veil have an uphill, but not impossible, struggle ahead of them. Indeed, not piercing the veil could result in a worthless judgment (or a difficult patent venue). In any event, Alabama practitioners who follow the above guidelines may be able to show a court when too much corporate fiction is a bad thing.

Endnote

1. That is not to suggest that ownership of a controlling amount, or even all, of the shares of a corporation is dispositive on a veil-piercing or alter ego analysis. On the contrary, courts have explained that the “fact that a party owns all or a majority of the stock in a corporation does not alone destroy the corporate entity, nor does the fact that the corporation is not sufficiently capitalized alone work to defeat the corporate existence.” Shelton v. Clements, No. 200851, 2002 WL 161328 at *5 (Ala. Civ. App. Feb. 1, 2002); see also Transamerican Properties, 673 So. 2d at 424 (citations omitted (same); First Health, 585 So. 2d at 1334 (“The mere fact that an individual or another corporation owns all or a majority of the stock of a corporation does not, of itself, destroy the separate corporate entity.”)

Will Hill Tankersley is a partner at Balch & Bingham LLP and is the senior intellectual property litigator. He founded and was the first chair of the Alabama State Bar Section for Intellectual Property. He has over 23 years of experience and holds a Master’s of Law in IP and Antitrust from New York University School of Law. After college and before law school, Tankersley served as a regular Army officer in the Infantry and Special Forces.

Kelly Brennan is a graduate of Tulane University Law School and a partner in the Birmingham office of Balch & Bingham LLP. She is a 2008 graduate of the Leadership Forum and serves on the Judicial Liaison and the Unauthorized Practice of Law committees. Brennan is a member of the ASB Litigation Section. She concentrates her practice in the areas of securities and banking law, anti-money laundering rules and regulations, UCC Articles 3 and 4, and other state and federal statutes including RICO, FCRA, FDCPA and TILA. Brennan is a Certified Anti-Money Laundering Specialist (CAMS).
New Federal Rule of Evidence 502 is worthwhile reading for courtroom lawyers because it changes the law regarding waiver of attorney-client privilege. Rule 502 has several subsections.

(a) defines the limited circumstances under which a party’s intentional waiver of the attorney-client or work-product protections as to one document waives the protections afforded other documents and information concerning the same subject-matter;

(b) creates a “reasonableness” standard for identifying those instances when a party’s inadvertent disclosure of a document waives the protections attached to that document;

(d) and (e) strongly counsel that litigators use court-approved confidentiality agreements to further avoid uncertainty regarding a waiver and its consequences and to ensure that whatever disclosures they make cannot be used by non-parties as evidence of waiver; and in an important federalism development

(f) provides that a federal court’s determination of a party’s non-waiver is binding upon a state proceeding.

Intentional Disclosure

In short, Rule 502 provides that a waiver of privilege exists with respect to a document if the party acted intentionally. Fed. R. Evid. 502(a). Most important, the inquiry into intent under Rule 502(a) concerns a party’s intent to waive the privilege, not its intention to produce a particular document. If a party intentionally waives the privilege attaching to a document, the Rule does not create a broader waiver of all other documents and information on the same subject, unless the non-disclosed, privileged documents “ought in fairness to be considered” with the material that was turned over. This codification is a change in the presumption of waiver. Previously, lawyers and judges considered an intentional waiver as to a document a waiver as to all documents of that subject-matter. The result was often harsh, so judges tended to narrowly construe the subject-matter of the disclosed document.

The language of Rule 502(a) and the advisory committee notes unambiguously provide that Rule 502’s presumption is against subject-matter waivers for even an intentional waiver. The notes offer that subject-matter waivers should occur only in “unusual situations,” when fairness requires that the non-disclosed material be considered with the material already turned over. Rule 502 falls short of providing sufficient certainty and guidance on when “fairness” will require a subject-matter waiver. The advisory committee notes do not add much guidance, as they state only that “… a party that makes a selective, misleading presentation that is unfair to the adversary opens itself to a more complete and accurate presentation.” Until more case law interpretation develops, it will be difficult for a party or its counsel to assess what documents a court might conclude “ought in fairness” to be considered waived with other documents.

Suppose a party intends to waive the attorney-client privilege that would otherwise protect a corporate internal investigation report. It is clear that, pursuant to Rule 502(a), production of the report would waive the protections afforded that report. What about the many other privileged documents that were created as part of preparing the final report? Rule 502 falls short of providing sufficient certainty and guidance on when “fairness” will require a subject-matter waiver. The advisory committee notes do not add much guidance, as they state only that “… a party that makes a selective, misleading presentation that is unfair to the adversary opens itself to a more complete and accurate presentation.” Until more case law interpretation develops, it will be difficult for a party or its counsel to assess what documents a court might conclude “ought in fairness” to be considered waived with other documents.
Of privilege exists as to a document only if inadvertent disclosure waives not only the subject-matter referred to in that document. The court noted that a waiver “extends to all communications related to the same subject-matter.”

Other courts have held that “[i]n a proper case of inadvertent disclosure, the waiver should cover only the specific document in issue.” In a separate decision, a court determined that “the general rule that a disclosure waives not only the specific communication but also the subject-matter of it in other communications is not appropriate in the case of inadvertent disclosure unless it is obvious a party is attempting to gain an advantage or make offensive or unfair use of the disclosure.”

Inadvertent Disclosure

If the disclosure is inadvertent, a waiver of privilege exists as to a document only if a party failed to take “reasonable steps to prevent disclosure” or took “such steps to prevent disclosure” or took such steps, but failed “promptly” to take “reasonable steps to rectify the error” once the party learned an inadvertent error was made. Fed. R. Evid. 502(b). Subsection (b) allows a party who inadvertently disclosed a document to continue to apply the privilege to that document and “claw back” the document provided it acted reasonably in preventing disclosure and in rectifying the problem after it discovered that an inadvertent disclosure took place. Under subsection (b), a broad subject-matter waiver never occurs from an inadvertent disclosure.

The inadvertent disclosure provisions are at the heart of the cost-saving goals of Rule 502. The Rule codifies the majority judicial rule that an inadvertent disclosure only is a potential waiver as to the disclosed document, not as to the entire subject-matter referred to in that document. Accordingly, the potential damage to a disclosing party is minimized.

The claw-back provision adds helpful guidelines for determining waiver. According to the Rule’s notes, courts are to consider many factors: (a) the reasonableness of precautions taken; (b) the time taken to rectify the error; (c) the scope of discovery; (d) the number of documents reviewed and the time constraints for production; (e) the extent of disclosure; and (f) “the overriding issue of fairness.” The notes also suggest that a party can help in demonstrating that its steps were reasonable by employing “advanced analytical software applications and linguistic tools” in screening for privilege.

Rule 502 was drafted to reduce the costs of privilege reviews in discovery in complex cases. Its development is also an acknowledgement. Reviewing documents for privileged communications is expensive, as is motion practice over inadvertently disclosed documents. The Rule seeks to address the challenges for withholding attorney-client communications where voluminous electronic documents are involved. For Rule 502 to reduce costs, courts will have to be consistent and predictable and liberally find that disclosures were inadvertent.

District courts have shown some commonality in their approaches to inadvertently disclosed documents. Analyses have been fact-intensive, and most have weighed heavily the “fairness” factor enumerated in Rule 502’s notes. Courts also tend to focus on how soon the party sought return of the document and the volume of discovery produced.

The first decision to address new Rule 502 and inadvertent disclosures was Rhoads Industries, Inc. v. Building Materials Corp. of America, 254 F.R.D. 216 (E.D. Pa. 2008). Rhoads involved a dispute over whether Rhoads’s inadvertent disclosure of more than 800 privileged documents constituted waiver. Rhoads faced motions to deem certain of privilege claims waived, contending that the Rhoads was careless, delayed in seeking return of the documents and failed to produce complete and accurate privilege logs. Notably, the court pointed to the Advisory Committee Note to Rule 502, which summarizes the multi-factor test utilized by a majority of courts.

Facts the court found favoring Rhoads included: the purchase of a special software program for purposes of the litigation; the trial searches conducted prior to purchase of the software; the hired technical consultant was experienced with the Rhoads computer system; search terms utilized; time spent reviewing documents; the number of inadvertent disclosures in comparison to the number of documents produced; Rhoads’s immediate response to defendants’ e-mail that some potentially privileged documents had been produced; a tight discovery schedule; the invocation of Federal Rule of Civil Procedure 26(b)(5)(B) to have the inadvertently produced documents sequestered; the willingness to produce a cleansed hard drive; and Rhoads’s general compliance with the three conditions of Rule 502(b).

The court in Rhoads pointed to the following facts in favor of the defendants on the issue of inadvertent disclosure: the limited search terms utilized; Rhoads’s associate attorney having no prior experience doing a privilege review; the document search limited to e-mail address lines as opposed to the e-mail body; the documents produced which should have been captured even under Rhoads’s search terms; the reliance solely on a key word search for purposes of conducting privilege review; the Rhoads’s testing of its search; the number of inadvertently produced documents; the time taken by Rhoads to review; Rhoads’s failure to provide adequate resources for the review; the defendants brought the privilege error to Rhoads’s attention; the time taken to produce a privilege log; Rhoads’s failure to offer suggestions to rectify the inadvertent
production until after many depositions were taken; and the lack of rigor in Rhoads’s privilege review.

In its legal analysis of inadvertent disclosure, the court took the position that the first hurdle is to determine whether the producing party has “at least minimally complied with the three factors stated in Rule 502(b), i.e., that the waiver was inadvertent, the party took reasonable steps to prevent disclosure, and attempted to rectify the error.” If the initial three factors are “minimally complied with” and a dispute remains regarding “reasonableness,” the court proceeds with the traditional five-factor test used in earlier decisions.

The court found Rhoads had taken steps to prevent disclosure and to rectify its error; however, Rhoads’s efforts, to some extent, were unreasonable. The court applied the five-factor test, found in favor of defendants as to the first four factors, but in favor of Rhoads as to the fifth factor, interest of justice. Denial of the privileged documents to defendants was not prejudicial because defendants had no reasonable expectation to privileged communications. Rhoads was required to produce certain privileged documents due to its failure to timely log all of its inadvertently produced privileged documents. The court did not analyze this issue under Rule 502, relying instead on Federal Rule of Civil Procedure 26(b)(5).

Not surprising is that courts have consistently made a threshold determination of whether the documents are indeed attorney-client communications. The party claiming the privilege has the burden of proving the document contains a communication between an attorney and a client, constituting legal advice, which was intended to be and was kept as confidential. The courts’ consideration of this threshold issue appears to be informed by a concern that a party is not seeking to be opportunistic and to use Rule 502(b)’s generous “fairness” factor improperly to obtain return of a document that is not privileged. In the most recent reported decision, Clarke v. J. P. Morgan Chase & Co., 2009 WL 970940 (S.D. N.Y. Apr. 10, 2009), the court held that an inadvertently disclosed e-mail was not privileged. The e-mail, authored by an attorney, was sent by the company’s management team, not the attorney, and it did not state that it was prepared by the attorney. The court determined that the remaining documents sought back by J. P. Morgan Chase were not protected by Rule 502(b), among other reasons, because of the delay in reclaiming the documents, and “the volume of Plaintiff’s discovery was not so large that the email would have been difficult for Defendant to identify.”

Uncertainties remain even under Rule 502. Therefore, lawyers should craft agreements regulating the effect of an intentional waiver or inadvertent disclosure and seek an order incorporating those agreements. Such provisions should be included in consent protective orders which are routine in civil litigation. By agreement, parties may avoid any ambiguity in Rule 502 regarding inadvertent disclosure and substitute a well-defined standard. Parties may agree that no production could create a subject-matter waiver, or that an inadvertently produced privileged document may be clawed back under any circumstances. Under Rule 502, litigants must still proceed with caution in discovery, be diligent in reclaiming privileged documents and seek judicially approved agreements at the incipient stages of the proceeding. However, thoughtful, well-informed practice under Rule 502 should help control costly electronic discovery and privilege reviews meant to protect against inadvertent disclosure.

This article originally appeared in the American Bar Association’s Pretrial Procedure, volume 17, number 4, summer 2009. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
Reliance, the Bachelor: Will Experience Answer the Open Questions of Reasonable Reliance?

By Wilson F. Green

Brownlow, ever the punctilious prosecutor, gave sound interpretation to the facts under the controlling law. Although Mr. Bumble had pleaded the “Adam Defense” (it was all Mrs. Bumble’s idea to pawn that jewelry, so he claimed), Brownlow rejoined that the law supposes—one might say conclusively presumes—that a wife acts under her husband’s direction. Mr. Bumble, at once outraged and confounded, then uttered his unforgettable line—“the law is an ass.”

Non-lawyers (some lawyers, too) often quote this mantra about the—er—darker side of the law when speaking of a legal result which defies the perceived equities of a case. What we all usually forget is the rest of Mr. Bumble’s statement, and no doubt his most significant words. For Mr. Bumble, the law is an ignorant bachelor who, having never been married, does not understand the otherworldly idiocy of the controlling legal principle. Regardless of what the “rule” is, a wife does not, in any semblance of reality, act under a husband’s direction. The rule of law belies the teaching of experience.

I thought about poor Mr. Bumble a few months ago. I was buying a new cell phone for my wife, and renewing my contract, at a wireless provider’s retail store. After an hour’s wait, my number was called, and the representative led me to a kiosk containing a computer terminal (for him) and a credit card scanner and signature pad (for me). I hurriedly explained what I wanted (I was already late for a meeting). The representative handed me the new phone and then made the changes to my account on his computer. He explained the terms of the new service agreement generally—the number of lines I would have, the number of package minutes and the like—and then instructed me to sign the signature pad with the

“That is no excuse,” replied Mr. Brownlow. “You were present on the occasion of the destruction of these trinkets, and indeed are the more guilty of the two, in the eye of the law; for the law supposes that your wife acts under your direction.”

“If the law supposes that,” said Mr. Bumble, squeezing his hat emphatically in both hands, “the law is a ass—a idiot. If that’s the eye of the law, the law is a bachelor; and the worst I wish the law is, that his eye may be opened by experience—by experience.”

Charles Dickens, Oliver Twist, Ch. 51
magnetic pen. I looked down, and the blank computer signature pad had a box for my signature, indicating my agreement to the “Terms of Service.” The only problem, of course, was that I had no “Terms of Service.” I was signing my new contract, though I had been provided no contract at all. Eager to leave, I signed, grabbed the goods and rushed to my car.

As I fractured a few traffic laws dashing down Highway 82, I began to think about what I had done. I entered into a contract without knowing all—for that matter, any—of its terms. I began asking myself questions:

• Did I sign an arbitration agreement? (Wait, that’s not a question.)
• Did the representative get the service package that I requested?
• Am I obligated to pay an activation fee on the new phone?
• What about termination fees?
• What terms don’t I know about?

I asked more questions of myself than in the Talking Heads’ song “Once in a Lifetime”—but it included the last question from that song: “WHAT HAVE I DONE?”

This, of course, brings us to reasonable reliance. The fraud law in Alabama would say that I acted irresponsibly, even heedlessly, in signing a contract without reading its terms. Perhaps that’s so (though I would protest that I should not be held to a document that I never even received). Mr. Bumble would defend me, however, arguing that the law has never experienced waiting in a cell phone store for an hour, or being late for a meeting. Indeed, one could argue that no one with reasonable reliance issues. With Mr. Bumble, we hope that experience—experience which largely comes from developed fact patterns in future cases—can teach some valuable lessons in reaching sound resolutions to those still-unanswered questions, which are more plentiful that one might suppose.

Four Unanswered Questions

Foremost and its progeny establish that a fraud plaintiff cannot reasonably rely on an oral statement which is contradicted by a conspicuous, understandable, unambiguous, contractual writing. Thus, in virtually all of the post-Foremost cases, including the most recent decisions in AmerUs Life Ins. Co. v. Smith, 5 So. 3d 1200 (Ala. 2008) and Cook’s Pest Control, Inc. v. Rebar, 2009 WL 418074 ( Ala. Feb. 20, 2009), all four features of the contradictory writing—conspicuous, understandable, unambiguous and contractual—were either present or, at least, not seriously contested. Our supreme court has not definitively answered whether judgment as a matter of law is appropriate as to reasonable reliance when one (or more) of those four conditions is not present:

• What if the portion of the writing which contradicts the alleged oral misrepresentation is not conspicuous or readily apparent?
• What if the plaintiff testifies that she actually read, but could not understand, the controlling contractual provision?
• What if there is ambiguity in the controlling contractual provision?
• What if the writing which allegedly contradicts the oral misrepresentation is outside the controlling contract—even if the writing is conspicuous, understandable and unambiguous?

If any of these conditions are not met, the question of reasonableness may be one for the fact-finder, even under the existing post-Foremost law.

1. What to do with the inconspicuous contradiction?

Looking over the post-Foremost cases, it is striking that virtually every post-Foremost case has involved a conspicuous written disclosure which flatly, and admittedly, contradicted the oral misrepresentation. This is particularly true for the “four horsemen” of universal life insurance cases: Alfa Life Ins. Co. v. Green, 881 So. 2d 987 (Ala. 2003); Liberty National Life Ins. Co. v. Ingram, 887 So. 2d 224 (Ala. 2004); Baker v. Metropolitan Life Ins. Co., 907 So. 2d 419 (Ala. 2005); and AmerUs Life Ins. Co. v. Smith, 5 So. 3d 1200 (Ala. 2008). In AmerUs and the other universal life insurance cases, the writings plainly and clearly disclosed that the scheduled premiums might not be sufficient in future years, and that future premiums might need to be increased to maintain insurance coverages. The court has never, so far as my review has revealed, faced an argument that a written disclosure was not conspicuous, though arguably (or even admittedly) contradictory, and that its lack of obviousness in the contradiction between the writing and the oral misrepresentation should render the question of reasonableness one for the fact-finder.

Consider an example. Suppose that the document in issue is lengthy or complex. The oral misrepresentation pertains to a contract term appearing well into the document, but that the controlling contract term’s operation depends upon other interplay with other sections of the contract...
(such as definitions), thus requiring the reader to cross-reference multiple times to ascertain the meaning of the controlling contract terms. Or, perhaps, the controlling contractual provision requires the reader to perform one or more mathematical calculations to determine the financial impact (in, for example, an annuity contract containing a formula for calculating an early termination charge). Even with a relatively sophisticated reader, deciphering the meaning of such a contract term might prove challenging, and actually calculating the financial impact from a formula might be impossible or, at the very least, might require considerable expertise beyond the average ken. In the end, the contract does not contain a clear and concise refutation of the oral misrepresentation, as has been the case in prior reasonable-reliance decisions.

There is some post-**Foremost** precedent suggesting that the question of reasonableness in such circumstances might be one of disputed fact. First, in **Ex parte Seabol**, (Ala. 2000), the supreme court established an exception to the application of **Foremost** for what might be called “complex transactions.” The plaintiff in **Seabol** was a real estate professional, claiming fraud in connection with the scope of a mortgage on property. Given the plaintiff’s expertise in real estate, one would have assumed a more stringent test for reasonableness, since the plaintiff unmistakably had possession of the mortgage documents, and since those documents spelled out clearly what property was encumbered, and what debts the mortgage secured. But the court, finding the transaction one in which the documents were “not so easily understood,” held that an exception to **Foremost** applied.

The court has never developed the contours of **Seabol**, except to discuss its facts and holding, without altering its scope, in two subsequent cases, **Potter v. First Real Estate Co.**, 844 So. 2d 540 (Ala. 2002), and **Gilmore v. M & B Realty Co., LLC**, 895 So. 2d 200 (Ala. 2004). But if (as in **Seabol**) a real estate professional can claim that a real estate transaction, with which he should be uniquely familiar, is sufficiently complex as to warrant a **Foremost** exception, such would suggest a broader scope of application.

One other case merits mention as possibly creating a “complex transaction” or other exception to the operation of **Foremost. In Ex parte Alabama Farmers Cooperative, Inc., 911 So. 2d 696 (Ala. 2004)**, AFC hired PriceWaterhouse Coopers LLP (“PWC”) to perform an internal audit to assess AFC’s liability under certain long-term leases (which were presumably in AFC’s possession), which were entered into by a high-ranking AFC officer who had committed malfeasance. PWC issued an audit report opining that AFC had no obligations, even though PWC never reviewed the underlying leases. AFC relied on the report, though a review of the underlying leases (again, presumably in AFC’s possession) would have indicated otherwise. The court held that AFC could reasonably rely on the audit report itself, particularly since PWC was being hired to assess the underlying leases themselves.

Admittedly, both **Seabol** and **AFC** addressed statute of limitation questions, rather than substantive reasonable reliance questions. As discussed under question 3, the conflation of reasonable reliance principles and the discovery rule in fraud’s limitations period has created some confusion in reasonable reliance law. It is also noteworthy that in **AmerUS Life Ins. Co. v. Smith**, 5 So. 3d 1200, 1215 (Ala. 2008), the court implicitly rejected the plaintiff’s effort at making a “complex transaction” counterargument to the defendant’s unreasonable reliance position. However, the court in **AmerUS** specifically noted that the plaintiff’s evidence of complexity was insufficiently specific to create an issue of fact regarding reasonableness. Thus, for **Seabol** and **AFC** could support a “complex transaction” exception to **Foremost** in a manner not inconsistent with **AmerUS**, so long as the complexity infected the specific matter made the basis of the oral representation.

2. What if plaintiff actually tried to read the document, but did not understand the contradiction?

Post-**Foremost** decisions, almost without exception, have involved plaintiffs who admittedly did not read their documents. Indeed, the animating principle behind the re-adoption of “reasonable reliance” in **Foremost** was the court’s stated desire to jettison the automatic denial of summary judgment commanded under justifiable-reliance law, in situations where the plaintiffs never read clear
documents, and instead blindly trusted the oral representations to the contrary. Where plaintiffs “were fully capable of reading and understanding their documents but nonetheless made a deliberate decision to ignore written contract terms[,]” reliance on oral representations is inherently unreasonable. Foremost, 693 So. 2d at 421.

Thus, facing a plaintiff who admittedly did not read her documents, the supreme court in post-Foremost cases has looked for one of two additional facts, or factors, to determine the reliance issue. First, in many post-Foremost cases, the plaintiff has admitted both that she did not read and that, if she had read the documents, she would have understood the truth. In those cases, judgment as a matter of law has been uniformly granted (a la the universal life cases). Alternatively, if there is no record evidence from plaintiff that she would have understood if she had read the document (or sometimes, in addition to such evidence), the court has then examined the relative sophistication of the plaintiff, in order to determine whether the circumstantial evidence indicates that she would have understood the documents if she had read them.

However, the cases have not considered, or answered definitively, what happens if the plaintiff testifies that she actually tried to read the documents, but for some reason failed in subjectively understanding the contradiction between the written document and the oral misrepresentation. One case tangentially related to the point is Gilmore v. M&B Realty Co., LLC, 895 So. 2d 200 (Ala. 2004), in which plaintiffs claimed that they intended to buy the house they had been shown, but the closing documents showed they were buying a different house. The court held that the issue of reasonable reliance was one of fact, because the plaintiffs were first-time home buyers and therefore were not as familiar with transactional documents, even though the closing documents showed clearly that they were buying a different house than they were shown. Thus, plaintiffs’ status as first-time home buyers proved critical to their creating a fact issue as to their “subjective understanding” of the transaction. The circumstantial “markers” of sophistication, in other words, created a fact issue.

A fact dispute would probably exist if the plaintiff can demonstrate that she tried to read or understand the documents, but for some reason failed in subjectively apprehending the contradiction between the writing and the oral representation. On the one hand, the plaintiff will have stated that she tried to read but failed to understand, and under such circumstances, the plaintiff has discharged her Foremost duty to read. On the other hand, there may be circumstantial indicia, or markers, that plaintiff could have understood the contradiction. Perhaps the plaintiff is college-educated, or has experience in business affairs—or perhaps the plaintiff understands the contradiction while sitting in a deposition, but for whatever reason did not understand the contradiction at the time she initially read the document. Regardless, the question of reasonableness in such circumstances would quite possibly be for the jury, in that the plaintiff’s subjective failure to understand the contradiction would be purely an issue of the plaintiff’s credibility, a uniquely factual determination.

Obviously, the development of an evidentiary record will prove critical to further development of reasonable reliance law in this area. As a general proposition, however, we can say that to allow for a jury question under these circumstances would not necessarily be inconsistent with Foremost. Indeed, the court in Foremost specifically contemplated that the fact-finder would consider “the issue of reliance based on all of the circumstances surrounding a transaction, including the mental capacity, educational background, relative sophistication, and bargaining power of the parties.” Foremost, 693 So. 2d at 421. Mental capacity would, one assumes, encompass subjective understanding. Finally, recognizing a fact issue under these conditions would not undermine the policy espoused in Foremost, that parties read their contracts, because in this hypothesized situation, the plaintiff would have read her contract. Thus, the plaintiff would have discharged her duty to read.

3. What if the writing is ambiguous?

Foremost and its progeny have dealt with unambiguous writings which unmistakably, or admittedly, contradict the alleged oral misrepresentation. No case of which I am aware has ever found a summary judgment issue based on the “contradictory document” rule of reasonable reliance, where the controlling document was ambiguous, or in any way unclear, on the particular point made the basis of the fraud claim.

Logic would say, of course, that a jury question is present if there is some question as to what the pertinent provisions of the controlling writing mean. However, there is some language in AmerUS Life Ins. Co. v. Smith, 5 So. 3d 1200 (Ala. 2008), which could be used by a fraud defendant to argue that even an ambiguous document triggers “inquiry notice,” and that if the plaintiff makes no further inquiry in the face of an ambiguous writing, the defendant could argue that it is still entitled to judgment as a matter of law. Such was not the issue in AmerUS, because the documents in AmerUS were admittedly unambiguous on the seminal question. Moreover, such a broad reading of “inquiry notice” would likely be a substantial departure from the first principles of Foremost.

The problem of how far “inquiry notice” goes is rooted in the intermingling of discovery-rule statute of limitations and substantive reasonable reliance principles, the genesis of which is in Foremost itself. Though we often forget it, it is significant that Foremost was
actually more a statute of limitations case than a reliance case. The Foremost plaintiffs, who sued more than two years after receiving their contract documents, testified that they did not read their documents, but admitted that if they had done so, they would have known the truth. Though the court returned to the “reasonable reliance” standard for proof of substantive fraud, the primary issue was whether the plaintiffs’ receipt of the documents, coupled with their admission that had they read the documents they would have understood the truth, triggered the running of the statute of limitations under the discovery rule. In other words, the issue was whether a reasonable person in the plaintiffs’ position should have discovered the fraud.

Four years after Foremost, in Auto-Owners Ins. Co. v. Abston, 822 So. 2d 1187, 1195 (Ala. 2001), the court accentuated this aspect of the Foremost holding, stating that “[u]nder Foremost, the limitations period begins to run when the plaintiff was privy to facts which would ‘provoke inquiry in the mind of a [person] of reasonable prudence and which, if followed up, would have led to the discovery of the fraud.’” The court quoted Wilcutt v. Union Oil Co., 432 So. 2d 1217, 1219 (Ala. 1983), a pre-Foremost case, in support of this iteration of the statute-of-limitations standard. Thus, Abston explicitly and pointedly reintroduced to the post-Foremost world the concept of “inquiry notice” as being sufficient to trigger the running of the statute of limitations.

AmerUS Life Ins. Co. v. Smith, 5 So. 3d 1200 (Ala. 2008), contains language, though arguably dicta, which could be read to extend the concept of “inquiry notice” beyond the statute-of-limitations world, and into the substantive proof of reasonable reliance. Like the other universal life cases, the plaintiff in AmerUS admitted that he did not read his documents. The documents, moreover, clearly contradicted the alleged oral statements. Though the court likely could have stopped its analysis right there, the court proceeded, stating that the receipt of documents contradicting the oral representation actually triggered a duty to inquire:

In light of the language of the documents surrounding the insureds’ purchase of the life-insurance policies at issue in this case and the conflict between [the agent’s] alleged misrepresentations and the documents presented to [plaintiff], it cannot be said that [plaintiff] reasonably relied on [the agent’s] representations. As this court stated in Torres v. State Farm Fire & Cas. Co., 438 So. 2d 757 (Ala. 1983): “[T]he right of reliance comes with a concomitant duty on the part of the plaintiffs to exercise some measure of precaution to safeguard their interests.” 438 So. 2d at 759. The insureds here took no precautions to safeguard their interests. If nothing else, the language in the policies and the cost-benefit statement should have provoked inquiry or a simple investigation of the facts by [plaintiff].

Moreover, the testimony . . . does not resolve the issue whether, as a matter of law, a reasonable person, upon reading the entire policy and the cost-benefit statement, would be put on inquiry as to the consistency of those documents with the previous representations by [the agent]. Of course, if so, that person is then charged with knowledge of all of the information that the inquiry would have produced. We conclude that no reasonable person could read the policies and the cost-benefit statement and not be put on inquiry as to the existence of inconsistencies, thereby making reliance on [the agent’s] representations unreasonable as a matter of law.

AmerUS, 5 So. 3d at 1215-16 (citations omitted). Thus, under AmerUS, a plaintiff who receives an unambiguous document which flatly contradicts an oral representation (a) has a duty to read the document, and (b) upon apprehension of the inconsistency between the writing and the oral statement, has a duty to inquire further.

The court’s treatment of the “inquiry notice” concept has not, however, been entirely consistent. Within the past year, the court may have (unintentionally) revived a pre-Foremost iteration of statute of limitations principles in fraud, which, in turn, would eradicate “inquiry notice.” In Jones v. Alfa Mut. Ins. Co., 1 So. 3d 23 (Ala. 2008), Alfa argued that the statute of limitations had expired on a bad-faith claim, and in support of that argument analogized to the fraud statute of limitations. The court’s treatment of that issue could be read to endorse an “actual knowledge,” pre-Foremost standard for triggering the limitations period:

Alfa notes that this court has previously held that “‘fraud is discoverable as a matter of law for purposes of the statute of limitations when one receives documents which would put one on notice that the fraud reasonably should be discovered.’” Kelly v. Connecticut Mut. Life Ins. Co., 628 So. 2d 454, 458 (Ala. 1993) (quoting Hickox v. Stover, 551 So. 2d 259, 262 (Ala. 1989), overruled
on other grounds, Foremost Ins. Co. v. Parham, 693 So. 2d 409 (Ala. 1997)).
The sentence immediately preceding the above-quoted sentence from Kelly, however, states: “The question of when a plaintiff should have discovered fraud should be taken away from the jury and decided as a matter of law only in cases where the plaintiff actually knew of facts that would have put a reasonable person on notice of fraud.” 628 So. 2d at 458 (quoting Hicks v. Globe Life & Acc. Ins. Co., 584 So. 2d 458, 463 (Ala. 1991), overruled on other grounds, Foremost Ins. Co., supra); see also Gilmore v. M & B Realty Co., 895 So. 2d 200, 210 (Ala. 2004) (“[t]he question of when a party discovered or should have discovered fraud is generally one for the jury.”) (quoting Ex parte Seaboll, 782 So. 2d 212, 216 (Ala. 2000).

Jones, 1 So. 3d at 31 (emphasis added). The bold-faced language was the language rejected in Foremost, language which obviated any inquiry requirement. While the court in Jones might have intended only to point out a case of perceived selective quotation on the part of the arguing litigant (Alfa), the court did not explicitly disclaim the accuracy of the substantive legal principle.

So where does all of this leave us? If a plaintiff relies on an oral representation and then is presented with an ambiguous, unclear or complex document, does “inquiry notice” compel the plaintiff to ask more questions? Or, on the other hand, is the duty to inquire triggered only where the plaintiff receives an oral representation, then is delivered a document which flatly, plainly and palpably contradicts the oral representation? Certainly, no Alabama case has held that a duty to inquire was triggered upon receipt of a document which was unclear or ambiguous on the subject matter of the oral representation. As a matter of policy, a rule which would require a plaintiff faced with an ambiguous document to inquire further, after receiving a clear oral representation, would actually encourage the drafting of deliberately ambiguous writings—hardly a desirable outcome.

Moreover, on its facts, AmerUS supports only the proposition that the duty to inquire is triggered upon the receipt of an unambiguous document contradicting the alleged oral misrepresentation. What to do with Jones, finally, is a “puzzlement” (as the King of Siam would say).

4. What if the contradictory writing is outside the contract?
Several post-Foremost cases have inconsistently applied Foremost principles to documents outside the contract. On the one hand, several of the universal life insurance cases, notably both AmerUS and Baker v. Metropolitan Life Ins. Co., 907 So. 2d 419 (Ala. 2005), appear to involve a mixture of contractual documents and non-contractual disclosures or schedules, which separately and severally clearly contradicted the oral representations. However, in neither of these cases did the plaintiff argue that the non-contractual documents should not be considered on the reliance issue, because those documents were not contractual in nature, and therefore not binding on the parties.

Interestingly, however, a plaintiff has been barred from placing any reasonable reliance on non-contractual written representations, on the basis that only the underlying contracts could be reasonably relied upon. In Alabama Elec. Cooper., Inc. v. Bailey’s Construction Co., Inc., 950 So. 2d 280 (Ala. 2006), Bailey’s delivered an insurance certificate to AEC indicating that AEC was listed as an additional insured on Bailey’s insurance policies. The certificate, however, stated that it was issued for information purposes only and conferred no rights upon the certificate holder, and that the certificate did not amend, extend or alter the coverage under the policy. AEC did not obtain copies of the underlying policies. The court held that AEC could not reasonably rely upon the certificate, which was outside the policy contracts, when the underlying policies did not confer additional insured coverage.

This presents somewhat of a conundrum. One possible reading (a broad one) of the universal life cases is that, under the Foremost rule, the plaintiff has a duty to read documents outside the contract, and if those extra-contractual writings contradict the oral representations, there is no reasonable reliance. On the other hand, AEC holds that the plaintiff cannot reasonably rely upon documents outside the contract, even those provided by the defendant, if those documents are in fact outside the contract. Thus, the inconsistency: a party cannot have a duty to read a document that, as a matter of law, the party cannot reasonably rely upon.

The analysis is even more burdened, moreover, if the controlling contract contains a merger or integration clause. If the contract is intended to be full and complete expressions of the parties’ agreement, then any writing outside the contract is parol evidence—in the same way that any oral representations (whether or not they are contradicted by the extra-contractual writing) are parol evidence. In that event, it would seem that the oral representation and the extra-contractual writing would be on even footing—both are parol evidence, and neither is dispositive as to the reasonable reliance question. The parol-evidence status of extra-contractual writings, in the end, may definitively relegate reliance questions to the fact-finder.

Conclusion
As its 13-year age and teenage status would suggest, reasonable reliance law is a bachelor of limited experience. To Mr. Bumble’s delight, the experience of additional cases and fact patterns will undoubtedly lead to a more robust, and more nuanced, maturity.

Endnote
1. This article does not address, for example, the scope and (perhaps shifting) contours of the “special relationship” exception established in Potter v. First Real Estate Co., Inc., 844 So. 2d 540 (Ala. 2002), as discussed at length in AmerUS Life Ins. Co. v. Smith, 5 So. 3d 1200 (Ala. 2008).

Wilson F. Green is a partner at Battle Fleener Green Winn & Clemmer LLP in Tuscaloosa. He is a graduate of the University of Alabama School of Law and served as law clerk to the Hon. Robert B. Propst, United States District Court for the Northern District of Alabama. His practice has been primarily in the areas of complex business litigation and class actions, including antitrust. Green is a member of The Alabama Lawyer Board of Editors and a 2007 graduate of the Leadership Forum. He is an adjunct professor at the University of Alabama School of Law, where he teaches class actions, complex litigation, damages and arbitration.

THE ALABAMA LAWYER 73
ALAJ MID-WINTER CONFERENCE

"BUILDING" on your PRACTICE

January 28-30, 2010 • Ross Bridge, Birmingham • Program Chair: Courtney French

MEET YOUR FACULTY:

- Controlling Client Expectations
  Mark Wolfe
- Safeguarding your Practice from the Pitfalls of Tort Reform
  Former Georgia Governor Roy Barnes
- Maximizing the Value of Your Auto Cases
  Jamie Holland
- Ethics
  Robert McKenize
- "Got Beer?" How Alcohol Providers Better Ask "Have you had too much?"
  Josh Wright
- Appellate Update – Year in Review: The Good, The Bad & The Ugly
  Rhonda Chambers

- Really Getting EVERYTHING from a Deposition...Really!
  Tom Vesper
- The Difference in a Successful and Unsuccessful Mediation/Arbitration
  Ralph Cook
- Voir Dire: Get it Right from the Start
  David Marsh
- You Can't Judge a Book by its cover: How to tell your client's story
  Larry Morris

Workers Comp Case Law Updates
Gina Coggin

Ways to Increase the Value of Your Cases by Using OSIs
Labarron Boone

Threading Through the Red Tape of Medicare
Charly Schell & Peter Wayne (Forge)

*Submitted to State Bar for 10.25 CLE credits including 1 hour of ethics

Name ____________________________________________ Bar # ________________________________

Name For Badge ____________________________________________________________

Firm _________________________________________________________________

Address _________________________________________________________________

City, State, Zip __________________________ Email _______________________________________________

Tel # __________________________ Fax # __________________________

PAYMENT: must accompany registration

☐ CHECK ☐ VISA ☐ MASTERCARD ☐ AMERICAN EXPRESS

Name on Card ____________________________________________________________

Card # __________________________ Expiration Date ____________

Signature ______________________________________________________________

MAIL CHECK TO: ALAJ, P.O. Box 1187, Montgomery, AL 36101

FAX TO ALAJ with credit card number: (334) 262-1452

FOR QUESTIONS call (334) 262-4974

HOTEL RESERVATIONS:

Please call the Ross Bridge at (800) 593-6419
Group rates are $161.00 single/double. Cut off date 01/11/10

If you require special accommodations relating to a disability contact the ALAJ office at (334) 262-4974

Seminar Tuition: Tuition includes seminar, a weblink to the seminar book one week before the seminar, coffee service, 2 drink tickets for Friday night cocktail reception, and "Wrap It Up" Saturday reception.

NOTE! We are now providing the seminar book via weblink one week prior to the seminar. Print off the pages you want and bring them with you. CD of book provided at the seminar. If you prefer a hardcopy of the book upon arrival at the seminar, please pay the addition amount in the middle column below.

Seminar Tuition: $420
Seminar Weblink: $495

Tuition & Hard Copy of Book

ALAJ member: $420
Sustaining member: $420
Retired attorneys: $210
Non-member attorneys: $250
Legal Assistant/Paralegal: $620
Full time judge: $75
Law student: $25

After: 01/11/10

Add $25
Add $25
Add $25
Add $25
Add $25
Add $25
Add $25
Add $25

Grand Total __________________________

THE LEADER IN PROFESSIONAL DEVELOPMENT FOR THE LEGAL COMMUNITY

-Cancellation Policy: Written cancellation received by January 16 will be refunded less a $50 administrative fee.
Introduction

Two Rule 8s currently apply in courts in Alabama. On the face of things, they are indistinguishable. Federal Rule of Civil Procedure 8 and Alabama Rule of Civil Procedure 8 contain identical language defining pleading standards in a complaint: both require “a short and plain statement of the claim showing that the pleader is entitled to relief.” Compare ALA. R. CIV. P. 8(a) with FED. R. CIV. P. 8(a)(2). Don’t let the identical language fool you.

The United States Supreme Court recently decided two cases that fundamentally changed the vocabulary, and the reality, of notice pleading. These cases–Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009)–impose a higher burden on plaintiffs’ pleadings, a burden of “plausibility” instead of mere “possibility.” As a result, defendants in federal court have enjoyed increased success in having claims dismissed before discovery begins.

This change has not yet spread to Alabama’s state courts. Despite the identical language and Alabama’s established preference for construing its rules of procedure in line with the federal rules, the court of civil appeals has twice declined to adopt the Twombly standard, waiting for the authoritative word from the Alabama Supreme Court. For now, the Alabama and federal rules are diverging.

This article first examines Twombly and Iqbal to determine exactly what notice-pleading standard a plaintiff in federal court must satisfy. Second, it highlights how this new federal standard differs from the Alabama pleading standard. Third, it explores two important areas of law where the divergent notice pleading standards are particularly important for practitioners. Finally, it evaluates the prospects of Twombly and Iqbal reaching Alabama state courts.

Twombly and Iqbal

Federal Rule of Civil Procedure 8 requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” For more than 50 years, Conley v. Gibson established the authoritative construction of Rule 8. 355 U.S. 41, 45–46 (1957). In an opinion by Justice Black, the Court described as “accepted” the “rule that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.” Id. Although Conley’s complaint that his union breached its statutory duty to represent all its members “failed to set forth specific facts to support its general allegations,” the Court reversed the dismissal of the complaint because the Federal Rules “do not require a claimant to set out in detail the facts upon which he bases his claim[,]” and require only that the plaintiff “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Id. at 47. Courts interpreted Conley to suggest that a plaintiff’s claim must be dismissed only when his inability to prove any set of facts to support it is apparent from the face of the pleading; in effect, Conley established a “possibility” standard.

The Court revisited this rule in Twombly, holding that a complaint cannot survive a motion to dismiss unless it contains “enough facts to state a claim to relief that is plausible on its face.” 550 U.S. 544, 570 (emphasis added). The Court made clear that a claim that is merely “conceivable” is insufficient. In an opinion joined by seven justices, the Court reitered that Rule 8 does not require that “a claimant set out in detail the facts upon which he bases his claim[,]” but nevertheless requires some specificity: “[i]t still requires a showing, rather than a blanket assertion, of entitlement to relief.” Id. at 556 n.3. The Court stated that “a formulaic recitation of the elements of a cause of action will not do” and that “a legal conclusion couched as a factual obligation” is not entitled to a presumption of truth against a motion to dismiss. Id. at 555. Because the complaint of the consumer class that the telephone service providers illegally conspired to restrain trade did not state enough factual matter to establish an unlawful agreement, the Court ruled that the complaint must be dismissed.
Although *Twombly* made waves when it was decided, its significance was not immediately certain. For one, *Twombly* involved allegations of a conspiracy under the Sherman Act: the Court’s decision could have been cabined to similarly-complex statutory schemes far removed from the daily practice of many lawyers. Moreover, the syntactic complexity of the *Twombly* opinion—it is almost impossible to find a quotation that articulates a precise pleading standard—made the interpretive task more difficult. How can *Twombly* change notice pleading if we cannot be sure exactly what *Twombly* means?

*Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009), put these questions to rest. In *Iqbal*, the Court stated that Rule 8 does not require “detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* at 1949. “The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* The Court clarified that its construction did not preclude “extravagantly fanciful” allegations by foreclosing “conclusory” ones. *Id.* at 1951. The Court articulated the plausibility standard this way: “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 1949 (emphasis added). *Iqbal* then goes one step further, allowing federal courts to consider alternative inferences that can be drawn from the factual allegations and determining the plausibility of the plaintiff’s claims against the backdrop of these other inferences. *See id.* at 1951-52. Because *Iqbal’s* complaint stated a conclusory allegation that the former Attorney General was a “principal architect” of a policy decision to subject him to harsh conditions on the basis of discriminatory factors, and because *Iqbal* had not alleged facts that made his theory that the government harmed him plausible in light of the innocuous inferences that could be drawn from the same facts, the Court ruled that the complaint had to be dismissed. *See id.*

In short, *Iqbal* articulates a plausibility rule that applies in every case. It also made clear that federal courts can engage their “judicial experience and common sense” to weigh whether the non-conclusory facts alleged in the complaint establish a plausible claim for relief, given that more probable explanations may exist. *Id.* at 1950, 1951. (For good measure, the Eleventh Circuit’s opinion in *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252 (11th Cir. 2009), lays out how the plausibility standard applies in the Eleventh Circuit, quoting heavily from *Twombly* and *Iqbal*). Although, as always, there remains room for the Court to clarify its decisions, this much is clear: the possibility rule is out. Only claims that contain factual allegations sufficient to make the claim for relief plausible will survive.

**Alabama Supreme Court has not adopted Plausibility Standard**

As of this writing, the Alabama Court of Civil Appeals has twice been asked to apply the plausibility standard. The court has twice declined. *See Crum v. Johns Manville, Inc.*–So. 2d–2009 WL 637260 at *2 n.2 (Ala. Civ. App. March 13, 2009); *Thomas v. Williams*–So. 2d–2008 WL 4952466 at *1 n.1 (Ala. Civ. App. Nov. 21, 2008). The court has stated that it lacks the authority to adopt the plausibility rule because “we are unable to overrule prior caselaw in order to alter [th[e] well-settled standard of review]” that the Alabama Supreme Court has established. *Crum*, 2009 WL 637260 at *2 n.2.

The “well-settled” standard adopted by the Alabama Supreme Court comes from *Bowling v. Pow*, 301 So. 2d 55 (Ala. 1973), in which the court adopted the *Conley* “no set of facts” rule. So, as matters now stand, Alabama continues to apply the standard that the United States Supreme Court has rejected.

Alabama’s standard is materially broader than the federal standard. Indeed, the Alabama Supreme Court has described the pleading standard it applies as “the overly broad non-requirement[ ] of Rule 8.” *Davis v. Marshall*, 404 So. 2d 642, 645 (Ala. 1981) (dismissing a claim that alleged that the plaintiff was harmed when the defendants committed an “indicative offense”). Not only does Alabama apply the “no-set-of-facts” test, but it also allows plaintiffs to plead legal conclusions. *See, e.g.*, *Mitchell v. Mitchell*, 506 So. 2d 1009, 1010 (Ala. Civ. App. 1987) (allowing the pleading of legal conclusions so long as they put the defendant on notice of the claim). Pleading legal conclusions at a high level of abstraction is also acceptable. In *Knight v. Burns, Kirkley & Williams Constr. Co., Inc.*, 331 So. 2d 651 (Ala. 1976), the court held a complaint that alleged that the defendant negligently caused the plaintiff’s death was sufficient to pass Rule 8 muster, even though the complaint did not allege what duty the defendant breached. *Id.* at 655.

The Alabama Supreme Court has observed that including too much detail in a complaint may make it easier for a court to dismiss the complaint. *See Fugazzotto v. Brookwood One*, 325 So. 2d 161, 162-63 (Ala. 1976). In *Fugazzotto*, the court affirmed the dismissal of a complaint where the plaintiff had not only alleged that the defendant’s activity would cause a “substantial invasion” of the plaintiff’s property rights, but also alleged exactly what form that substantial invasion would take. *See id.* Because the specific form of harm alleged—increased traffic—could not support a claim for relief, the court affirmed the dismissal. *Id.* The court’s opinion leaves the distinct impression that the plaintiff might have prevailed had he limited his complaint to a general “the defendant will cause a substantial invasion of my property rights” allegation.

Therein lies the dilemma. Federal courts will dismiss a complaint that merely alleges “you harmed me,” but Alabama courts implicitly encourage such pleading. Not only do federal and state courts apply different standards, they encourage opposite strategies. State complaints should be short and should lean on legal conclusions to do the work of putting the defendant on notice without saying too much. Because federal complaints must pass plausibility muster, federal plaintiffs must make specific and numerous factual allegations to get to discovery.

**Why the divergent pleading standards matter: two examples**

Two recent developments in federal jurisdiction may make pleading standards an area of interest. These two areas are the federal preemption of state law relating to drugs and medical devices and the narrowing of removal jurisdiction brought about by *Lovery v. Alabama Power Co.*, 483 F.3d 1184 (11th Cir. 2007).

**Preemption:** Three recent decisions of the United States Supreme Court define when state law may apply to claims brought against drug or device manufacturers that are regulated by federal law. *See Wyeth v. Levine*, 129 S. Ct. 1187 (2009); *Altia Group, Inc. v. Good*, 129 S. Ct. 538 (2008); *Riegel v. Medtronic, Inc.*, 128 S. Ct. 999 (2008). These cases allow state-law claims to escape federal preemption in certain circumstances. As a result, defendants in drug
and device cases are less able to remove their cases to federal court based on the existence of a federal question.

The reduced ability to remove drug and device cases is doubly important in light of different pleading standards. Not only can plaintiffs take advantage of broader state liability rules and other advantages of litigating in state court, but state-court plaintiffs, at least for now, appear to enjoy a more lenient pleading standard. Plaintiffs enjoy both procedural and substantive advantages if they can tailor their claims to escape federal preemption.

Lowery: Although the preemption cases are important primarily to practitioners in the drug and device bar, the law of removal affects nearly all litigators. The Eleventh Circuit’s opinion in Lowery has already received considerable attention for its impact on the removal of diversity cases. In Lowery, the court ruled that defendants must establish the jurisdictional amount in controversy at the time of removal based on the pleadings and evidence obtained in the case at issue. 483 F.3d at 1208–11. Naturally, this makes it more difficult for defendants to carry their burden of proving that the amount in controversy exceeds the jurisdictional amount and avail themselves of the plausibility standard that exists in federal court. Together with Twombly, Lowery also portends a heightened scrutiny on the allegations in a plaintiff’s complaint in federal court. In that sense, Lowery and Twombly indicate an emerging trend that federal courts will pay closer attention to the contents of a complaint, and that this scrutiny cuts both ways. Plaintiffs may have a more difficult task in drafting a complaint that passes plausibility muster, but defendants will have a more difficult time removing cases based on the face of the pleadings. Having abandoned code pleading in favor of notice pleading in the Federal Rules of Civil Procedure, it may be that the pendulum is beginning to swing back in the other direction.

What next?

Clearly, different pleading standards apply in Alabama, and the federal rule is meaningfully more stringent than the state rule. But will the divergence last? Our best guess is that, ultimately, Alabama will follow or adopt Twombly and Iqbal. The Alabama rules are modeled on the federal rules, and there is a longstanding tradition that “[f]ederal cases construing the Federal Rules of Civil Procedure are persuasive authority in construing the Alabama Rules of Civil Procedure because the Alabama Rules of Civil Procedure were patterned after the Federal Rules of Civil Procedure.” White Sands Group, L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1056 (Ala. 2008) (citation and quotation omitted); see also Ex parte Scott, 414 So. 2d 939, 941 (Ala. 1982) (“Due to the similarity of the Alabama and Federal Rules of Civil Procedure, a presumption arises that cases construing the Federal Rules are authority for construction of the Alabama Rules.”). The persuasive force of the federal interpretation is even stronger when the language of the Alabama rule mirrors the federal rule. See White Sands, 998 So. 2d at 1056. Here, as we noted at the outset, Federal Rule 8 and Alabama Rule 8 are identical.

Moreover, the Conley v. Gibson rule is, obviously, a rule Alabama adopted from the federal courts. When adopting that rule, the Alabama Supreme Court noted that the federal and state rules imposed identical requirements. See Bowling, 301 So. 2d at 186 (relying on “cases that have passed upon the point where governed by Federal Rules of Civil Procedure, the same in all material respects as to the mentioned requirement as the
Managing your law practice

Casemaker Legal Research ..................334-269-1515 Ext. 2242
Business Planning & Technology Assistance334-269-1515 Ext. 2242
Lawyer Referral Service ..................334-269-1515 Ext. 2140
Join a Substantive Law Section ........334-269-1515 Ext. 2162
CoreVault (data backup)...............1-866-609-4ASB
Pennywise Office Products ..............1-800-942-3311
CLE Information .........................334-269-1515 Ext. 2176
Fee Dispute Resolution Program .........334-269-1515 Ext. 2176
Schedule Meeting Room Space (at the Bar Center) ....334-269-1515 Ext. 2162
Legal Specialization .................334-269-1515 Ext. 2176
Schedule Video Conferencing Room (at the Bar Center) ....334-269-1515 Ext. 2242
FedEX ......................................1-800-636-2377
Legal Directories Publishing Co. (Blue Book) ....214-321-3238

Ethics & professional responsibility

Ethics Opinions .........................334-269-1515 Ext. 2184
Volunteer Lawyers Program ..............334-269-1515 Ext. 2246
Lawyer Assistance Program ..............334-269-1515 Ext. 2238
Point, click & find what you need ......334-269-1515 Ext. 2218
www.alabar.org

Insurance & retirement

ISI (Insurance Specialists, Inc.) – major medical ...1-888-ISI-1959
Blue Cross Blue Shield Long-Term Care ....1-866-435-6669
GEICO – automotive, home, etc ..........1-800-368-2734
ABA Retirement Funds .....................1-877-947-2272

Online

Membership Directory .................334-269-1515 Ext. 2124
The Alabama Lawyer .................334-269-1515 Ext. 2124
Addendum ................................334-269-1515 Ext. 2124
Public Information Pamphlets .........334-269-1515 Ext. 2126
Third-Party Auditing of Lawyers’ Billings—Confidentiality Problems and Interference with Representation

QUESTION:
The Office of General Counsel has received numerous opinion requests from attorneys who represent insureds pursuant to an employment agreement whereby the attorney is paid by the insured’s insurance carrier. Some insurance companies have begun to submit to the attorney billing guidelines and litigation management guidebooks which place certain restrictions on discovery, the use of experts and other third-party vendors. The billing guidelines also restrict the lawyers who will be allowed to work on the files and require pre-approval of time spent on research, travel and the taking and summarization of depositions. Some insurance companies also require the attorneys they employ to submit their bills to a third-party billing review company for their review and approval. The bills obviously contain descriptions of work done on behalf of the insureds. In most instances, the insureds have not been consulted and have not approved the use of the billing guidelines and litigation management guidebook or the billing review process. The inquiry presented is whether there is any ethical impropriety in following these procedures which some insurance companies are attempting to impose.

ANSWER:
It is the opinion of the Disciplinary Commission of the Alabama State Bar that a lawyer should not permit an insurance company, which pays the lawyer to render legal services to its insured, to interfere with the
lawyer’s independence of professional judgment in rendering such legal services, through the acceptance of litigation management guidelines which have that effect. It is further the opinion of the commission that a lawyer should not permit the disclosure of information relating to the representation to a third party, such as a billing auditor, if there is a possibility that waiver of confidentiality, the attorney-client privilege or the work-product privilege would occur. The Disciplinary Commission expresses no opinion as to whether an attorney may ethically seek the consent of the insured to disclosure since this turns on the legal question of whether such disclosure results in waiver of client confidentiality. However, the commission cautions attorneys to err on the side of non-disclosure if, in the exercise of the attorney’s best professional judgment, there is a reasonable possibility that waiver would result. In other words, if an attorney has any reasonable basis to believe that disclosure could result in waiver of client confidentiality, then the attorney should decline to make such disclosure.

DISCUSSION:
The Disciplinary Commission of the Alabama State Bar has addressed the conflict of interest issues raised by dual representation of the insurer and the insured in several earlier opinions. In one of those, RO-87-146, the commission concluded as follows:

“Although you were retained to represent the insured by the insurance company and are paid by the company, your fiduciary duty of loyalty to the insured is the same as if he had directly engaged your services himself. See, RO-84-122; Nationwide Mutual Insurance Company v. Smith, 280 Ala. 343, 194 So.2d 505 (1966) and Outboard Marine Corporation v. Liberty Mutual Insurance Company, 536 F. 2d 730, 7th Cir. (1976). Since the interests of the two clients, the insurance company and the insured, do not fully coincide, the attorney’s duty is first and primarily to the insured.”

Similar conclusions were reached in RO-90-99 and RO-81-533. Additionally, the Alabama Supreme Court discussed the insurer-insured relationship in Mitchum v. Hudgens, 533 So.2d 194 (Ala. 1988) and confirmed the Disciplinary Commission’s analysis of that relationship, viz:

“It must be emphasized that the relationship between the insured and attorney is that of attorney and client. That relationship is the same as if the attorney were hired and paid directly by the insured and therefore it imposes upon the attorney the same professional responsibilities that would exist had the attorney been personally retained by the insured. These responsibilities include ethical and fiduciary obligations as well as maintaining the appropriate standard of care in defending the action against the insured.” 533 So.2d at 199.

See also, Hazard and Hodes, The Law of Lawyering, 2nd Ed. §§ 1.7: 303-304. These authorities conclusively establish the proposition that the insured is the attorney’s primary client and it is to the insured that the attorney owes his first duty of loyalty and confidentiality.

Effective January 1, 1991, the Alabama Supreme Court promulgated the Rules of Professional Conduct of the Alabama State Bar. Rule 1.8(f) of the Rules of Professional Conduct provides as follows:

“Rule 1.8 Conflict of Interest: Prohibited Transactions

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents after consultation or the lawyer is appointed pursuant to an insurance contract;

(2) there is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.”

A similar and related prohibition is found in Rule 5.4(c) of the Rules of Professional Conduct which provides as follows:

“Rule 5.4 Professional Independence of a Lawyer

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.”

The Disciplinary Commission has examined a Litigation Management Guidebook which the commission understands to be one example among many of the procedures which some insurance companies have requested attorneys to follow in representing insureds. This guidebook contains various provisions and requirements which are of concern to the commission.
The guidebook requires a “claims professional,” who, in most instances, is a non-lawyer insurance adjuster, to “manage” all litigation. An excerpt from the guidebook provides as follows:

“Accountability for the lawsuit rests with the defense team. This team is composed of the claims professional and the defense attorney. The claims professional is charged with fulfilling all the responsibilities enumerated below and is the manager of the litigation.”

Other responsibilities of the claims professional include “evaluation of liability, evaluation of damages, recommendation of discovery and settlement/disposition.” The guidebook requires the claims professional and the defense attorney to jointly develop an “Initial Case Analysis” and “Integrated Defense Plan” which are “designed for the claims professional and defense attorney to reach agreement on the case strategy, investigation and disposition plan.” Furthermore, the attorney “must secure the consent of the claims professional before more than one attorney may be used at depositions, trials, conferences, or motions.” The claims professional must approve “[e]ngaging experts (medical and otherwise), preparation of charts and diagrams, use of detectives, motion pictures and other extraordinary preparation.” The Litigation Management Guidebook also requires that all research, including computer time, over three hours be pre-approved by the insurance company and restricts deposition preparation by providing that the “person attending the deposition should not spend more time preparing for the deposition than the deposition lasts.”

It is the opinion of the Disciplinary Commission of the Alabama State Bar that many of the requirements of the Litigation Management Guidebook such as described above could cause an “interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship” in violation of Rule 1.8(1)(2) and also possibly constitute an attempt “to direct or regulate the lawyer’s professional judgment” in violation of Rule 5.4(c). The commission is of the opinion that foremost among the lawyer’s ethical obligations is the duty to exercise his or her independent professional judgment on behalf of a client and nothing should be permitted to interfere with or restrict the attorney in fulfilling this obligation.

An attorney should not allow litigation guidelines, or any other requirement or restriction imposed by the insurer, to impair or influence the independent and unfettered exercise of the attorney’s best professional judgment in his or her representation of the insured.

The commission has also examined the insurance company’s “Billing Program” pursuant to which attorneys are required by the insurance company to submit their bills for representation of the insureds to a third-party auditor for review and approval. Not only are the bills themselves to be submitted to the auditor, but all invoices must be accompanied by the most recent Initial Case Analysis and Integrated Defense Plan which contains the defense attorney’s strategy, investigation and disposition plans. Each activity for which the attorney bills “must be described adequately so that a person unfamiliar with the case may determine what activity is being performed.”

It is the opinion of the Disciplinary Commission that disclosure of billing information to a third-party billing review company as required by the billing program of the insurance company may constitute a breach of client confidentiality in violation of rules 1.6 and 1.8(1)(3) and, if such circumstances exist, such information should not be disclosed without the express consent of the insured.

However, the commission also has concerns that submission of an attorney’s bill for representation of the insured to a third party for review and approval not only may constitute a breach of client confidentiality, but may also result in a waiver of the insured’s right to confidentiality, as well as a waiver of the attorney-client or work-product privileges. While it is not within the purview of an ethics opinion to address the legal issues of whether and under what circumstances waiver may result, the fact that waiver is a possibility is a matter of significant ethical concern. A recent opinion of the United States First Circuit Court of Appeals, U.S. v. Massachusetts Institute of Technology, 129 F.3d 681 (1st Cir. 1997), held that the IRS could obtain billing information from MIT’s attorneys, which otherwise would be protected under the attorney-client privilege and as work product, because MIT had previously provided this same information to Defense Department auditors monitoring MIT’s defense contracts. The Court held that the disclosure of these documents to the audit agency forfeited any work-product protection and waived the attorney-client privilege. MIT argued that disclosure to the

![Image of Physician Experts!](https://www.medmalEXPERTS.com)
audit agency should be regarded as akin to disclosure to those with a common interest or those who, though separate parties, are similarly aligned in a case or consultation, e.g., investigators, experts, codefendants, insurer and insured, patentee and licensee. The Court rejected this argument holding that an outside auditor was not within the “magic circle” of “others” with whom information may be shared without loss of the privilege.

“Decisions do tend to mark out, although not with perfect consistency, a small circle of ‘others’ with whom information may be shared without loss of the privilege (e.g., secretaries, interpreters, counsel for a cooperating codefendant, a parent present when a child consults a lawyer).

“Although the decisions often describe such situations as one in which the client ‘intended’ the disclosure to remain confidential, the underlying concern is functional: that the lawyer be able to consult with others needed in the representation and that the client be allowed to bring closely related persons who are appropriate, even if not vital, to a consultation. An intent to maintain confidentiality is ordinarily necessary to continue protection, but it is not sufficient.

“On the contrary, where the client chooses to share communications outside this magic circle, the courts have usually refused to extend the privilege.” 119 F.3d at 684.

As indicated above, the question of whether disclosure of billing information to a third-party auditor constitutes a waiver of confidentiality or work product is essentially a legal, as opposed to ethical, issue which the commission has no jurisdiction to decide. The commission is also aware that this may be a developing area of the law which could be affected, or even materially altered, by future decisions. However, while the commission recognizes that the MIT opinion may not be the definitive judicial determination on this issue, the possibility that other courts could follow the 1st Circuit makes it incumbent on every conscientious attorney to err on the side of caution with regard to such disclosures. If disclosure to a third-party auditor waives confidentiality, the attorney-client privilege or work-product protection, then such disclosure is clearly to the detriment of the insured to whom the defense attorney owes his first and foremost duty of loyalty. Attorneys who represent the insured pursuant to an employment contract with the insurer should err on the side of non-disclosure when there is any question as to whether disclosure of confidential information to a third party could result in waiver of the client’s right to confidentiality or privilege. Furthermore, while a client may ordinarily consent to the disclosure of confidential information, the commission questions whether an attorney may ethically seek the client’s consent if disclosure may result in a waiver of the client’s right to confidentiality or privilege.

The North Carolina opinion discusses the comment to Rule 1.7(b) which states that the test of whether an attorney should ask the client to consent is “whether a disinterested lawyer would conclude that the client should not agree.” The opinion concludes as follows:

“The release of such information to a third party may constitute a waiver of the insured’s attorney-client or work product privileges. Therefore, in general, by consenting, the insured agrees to release confidential information that could possibly (even if remotely) be prejudicial to her or invade her privacy without any returned benefit.”

The North Carolina opinion discusses the comment to Rule 1.7(b) which states that the test of whether an attorney should ask the client to consent is “whether a disinterested lawyer would conclude that the client should not agree.” The opinion concludes as follows:

“When the insured could be prejudiced by agreeing and gains nothing, a disinterested lawyer would not conclude that the insured should agree in the absence of some special circumstance. Therefore, the lawyer must reasonably conclude that there is some benefit to the insured to outweigh any reasonable expectation of prejudice, or that the insured cannot be preju-
diced by a release of the confidential information, before the lawyer may seek the informed consent of the insured after adequate consultation.”

In reaching the above-stated conclusions, the Disciplinary Commission has examined and considered, in addition to opinion of the North Carolina Bar referenced above, opinions issued by, or on behalf of, the bar associations of Florida, Indiana, Kentucky, Louisiana, Missouri, Montana, North Carolina, Pennsylvania, South Carolina, Utah, Washington, and the District of Columbia. All of these opinions appear to be consistent with the conclusions and concerns expressed herein. Only Massachusetts and Nebraska have released opinions which, in part, may be inconsistent with this opinion, and it appears that the opinions from these two states are not official or formal opinions of those states’ bar associations.

In summary, and based upon the foregoing, it is the opinion of the Disciplinary Commission of the Alabama State Bar that a lawyer should not permit an insurance company, which pays the lawyer to render legal services to its insured, to interfere with the lawyer’s independence of professional judgment in rendering such legal services, through the acceptance of litigation management guidelines which have that effect. It is further the opinion of the commission that a lawyer should not permit the disclosure of information relating to the representation to a third party, such as a billing auditor, if there is a possibility that waiver of confidentiality, the attorney-client privilege or the work-product privilege would occur.

The Disciplinary Commission expresses no opinion as to whether an attorney may ethically seek the consent of the insured to disclosure since this turns on the legal question of whether such disclosure results in waiver of client confidentiality. However, the commission cautions attorneys to err on the side of non-disclosure if, in the exercise of the attorney’s best professional judgment, there is a reasonable possibility that waiver would result. In other words, if an attorney has any reasonable basis to believe that disclosure could result in waiver of client confidentiality, then the attorney should decline to make such disclosure.

[RO-98-02]
REGISTER EARLY AND SAVE

ABA TECHSHOW 2010
CONFERENCE AND EXPO • MARCH 25-27, 2010

Practical Technologies for Transforming Your Practice

Got questions? Get answers!

Early Bird Ends February 19!
Conference: March 25–27, 2010
Expo: March 25–26, 2010
Hilton Chicago, Chicago, IL

www.techshow.com

PRESERVED BY THE

ABA LAW PRACTICE MANAGEMENT SECTION
MARKETING • MANAGEMENT • TECHNOLOGY • FINANCE

Use the Event Promoter Discount Code, EP1002, to save $150 on registration!
The 2010 Legislature Begins

On Tuesday, January 12, 2010, the Alabama legislative term began and continues for 105 calendar days with its last day no later than Monday, April 26, 2010.

This is a big election year for Alabama. The governor, lt. governor, supreme court justices, all members of the house and senate, sheriffs, district attorneys, and all other constitutional offices will be elected. The last day for qualifying will be April 2, 2009, with the primary election day being Tuesday, June 1, 2009. The primary run-off will be July 13.

The public often thinks that legislators are predominately lawyers, while, in fact, fulltime legislators have now become the largest occupational group (at 16.4 percent of the group) in the state legislature. Previously, attorneys were the largest occupational group but the number of lawyers in state legislatures has decreased substantially nationwide over the last three decades, from about 25 percent in the 1970s to only 15 percent today. This is up from 2.7 percent in the ’70s; however, fulltime legislators are still relatively low in Alabama at 5 percent. The third largest group of legislators is retired persons, making up about 12 percent, both nationally and in Alabama.

In Alabama, the biggest block of people is those who are business owners or business employees, making up 26.5 percent of the legislature. Educators, either in college or K-12, comprise 14.3 percent. Other facts about legislators are as follows, showing the first number being Alabama and the parentheses being the national statistic. Ethnically, 77 percent (88 percent) of legislators are Caucasian, with 23 percent (10 percent) African-American. Gender ratio is men 88 percent (78 percent) and female 12 percent (88 percent). With respect to age, the distribution of those 65-plus years old is 36 percent (23 percent), 50 to 64 years 40 percent (49 percent), 35 to 49 years 22 percent (25 percent), and under 34 years 2 percent (3 percent), with the overall average age of a state legislator in the United States being 56 years old.
For the past two decades, the number of Alabama African-American legislators has remained constant with 23 percent of the senate seats and 26 percent of the house seats being filled with African-Americans. No other state has a greater percentage of minority representation in the senate as Alabama (only Mississippi exceeds Alabama with minority legislators in their house of representatives). This is especially significant nationwide where only 8 percent of state senators and 9 percent of state house members are African-Americans.

There is a higher percentage of lawyers in the southeast who are members of the legislature than nationally: Alabama, 17.1 percent; Florida, 24.1 percent; Georgia, 17.8 percent; Louisiana, 26.4 percent; Kentucky, 21.3 percent; North Carolina, 19.4 percent; South Carolina 23.8 percent; and Virginia, 30 percent.

In the Alabama senate, there are 21 Democrats and 14 Republicans, while in the house of representatives there are 60 Democrats, 44 Republicans and one vacancy. In the surrounding states, both Tennessee and Mississippi legislatures are Democratic while Georgia and Florida are controlled by the Republicans. The Republicans control both houses of the South Carolina legislature, while both houses of the North Carolina legislature are controlled by Democrats. All of these are up for election in 2010.

The previous information was compiled by the National Conference of State Legislatures and may be found on their Web site, www.NCSL.org.

With the elections now eminent, candidates cannot solicit or receive contributions beginning the first day of the legislature—January 12, 2010 (Section 17-5-7(b)(2)). Republican and Democratic parties will end state qualifying on April 2, 2010.

Alabama has no limitation on the number of terms a person may serve in the legislature. Sixteen states do have such a limit and six more, at one time, had term limits that have since been repealed. The dean of the senate, Senator Bobby Denton, first elected in 1978, will be retiring, while the dean of the house, Alvin Holmes, was first elected in 1974 and is again seeking reelection. Approximately half of the members of the house have been legislators for less than ten years, while approximately one-third of the senate has served for less than ten years.

Nationally, the pay of state legislators varies greatly from a low of $100 a year in New Hampshire to a high of $116,000 in California. Alabama is in the middle with compensation of approximately $47,000. This includes expenses since their legislative salary of $10 a day was set in the 1901 Constitution.
Law Institute legislative presence

The Law Institute has proposed for the 2010 legislature the following acts:

- Alabama Trademark Act Amendments
- Adult Guardianship Jurisdiction Act
- Child Abduction Protective Proceedings Act
- Residential Mortgage Satisfaction Act

Summaries of these acts can be found in the September and November 2009 editions of *The Alabama Lawyer*. Copies of these acts and the commentary can be found on the Alabama Law Institute’s Web site at www.ali.state.al.us

Assisting in the legislature this year are the following lawyers who serve as counsel to the house of representative’s committees:

Bill Messer, Montgomery
Samuel A. Rumore, Jr., Birmingham
Al Vance, Birmingham
Karen Mastin-Laneaux, Montgomery
Charlanna W. Spencer, Montgomery
Trina S. Williams, Montgomery
Sandra Lewis, Montgomery
Scott T. McArdle, Montgomery
Charles Prince, II, Birmingham
Bill Espy, Montgomery
Fred Gray, Sr., Tuskegee
William B. Sellers, Montgomery
Bob McCurley, Tuscaloosa
LaVeeda M. Battle, Birmingham
Brandi C. Williams, Birmingham

Also serving as counsel to the senate are the following lawyers:

Bill Messer, Montgomery
Teresa Norman, Montgomery
Misha Mullins Whitman, Montgomery
LaVeeda Battle, Birmingham
Pat Rumore, Birmingham
Scott T. McArdle, Montgomery

The institute is also providing 16 interns to the house and senate during the session. These students must be at least juniors in college and will provide constituent services and legislative assistance to members of the legislature.
The 2010 Alabama State Bar Annual Meeting
JULY 14-17, 2010
Baytowne Wharf, Sandestin Beach and Golf Resort

Early highlights include:
- Family night pizza party and movie on the Grand Lawn
- Island theme party (Thursday)
- Children’s activities:
  Build-a-Bear Workshop
  Learn to sail class
  Pottery painting
  Arcade games
  Kidzone day camp
  Children’s evening out
  Caricatures by Deano
- Spouse’s program /optional activities:
  Fashion Show
  Wine Tasting (hosted by the Carneros Della Notte, Napa Valley)
  Lunch and sightseeing cruise aboard the Solaris
- Grand Prize Giveaway – 4 days/3 nights in Las Vegas, baby!
- Registrants will have a variety of affordable luxury accommodations from which to choose
  (studio, 1-2-3 bedroom suites, villas, high rise condos)
Reinstatement

- On September 2, 2009, the Supreme Court of Alabama accepted the order entered on August 19, 2009, by Panel I of the Disciplinary Board of the Alabama State Bar reinstating Virginia Dewella Emfinger (Hicks) to the practice of law, with conditions. Emfinger was suspended for a period of one year, effective April 7, 2008. [Rule 28, Pet. No. 09-1605]

Disbarments

- Huntsville attorney James Bant Atwood, Jr. was disbarred from the practice of law in Alabama, effective October 9, 2009, by order of the Supreme Court of Alabama. The supreme court entered its order based upon the decision of the Disciplinary Board of the Alabama State Bar accepting Atwood’s consent to disbarment. Atwood admitted that he assisted a disbarred attorney in the unauthorized practice of law. Atwood also admitted that he knowingly made false statements of material fact to the bar during its investigation. [Rule 23(a), Pet. No. 09-2216; ASB No. 09-1157]

- Albertville attorney Lawton Dale Fuller was disbarred from the practice of law in Alabama, effective July 9, 2009, by order of the Supreme Court of Alabama. The supreme court entered its order based upon the decision of the Disciplinary Board of the Alabama State Bar accepting Fuller’s consent to disbarment. Fuller admitted to improperly converting client funds held in his trust account. [Rule 23(a), Pet. No. 09-1814; Rule 20(a), Pet. No. 09-1777(A); ASB No. 09-1778(A)]

- Mobile attorney Joseph Gullatte Hunter, III was disbarred from the practice of law in Alabama, effective September 3, 2009, by order of the Alabama Supreme Court. The supreme court entered its order based upon the decision of the Disciplinary Board of the Alabama State Bar accepting Hunter’s surrender of his license and consent to disbarment, which was based upon his acknowledgement that there were currently pending investigations into his ethical conduct as a lawyer that con-
cerned alleged violations of rules 1.3, 1.4(a), 1.4(b), 1.15, and 8.4(a), (b), (c), (d), and (g), Ala. R. Prof. C., and, if proven, would likely result in serious discipline by the bar, to include disbarment. [Rule 23, Pet. No. 09-2098 et al]

- Montgomery attorney Gary L. Stephens was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, effective September 1, 2008, the date of Stephens’s previously-ordered suspension. The supreme court’s order was based upon the decision of the Disciplinary Board of the Alabama State Bar accepting Stephens’s consent to disbarment. Stephens was suspended September 1, 2008 in another matter and admitted that he engaged in the practice of law after he was suspended. [Rule 23(a), Pet. No. 09-2180; ASB nos. 08-1254(A) and 09-2175(A)]

Suspensions

- Evergreen attorney John Gordon Brock was suspended from the practice of law in Alabama by order of the Alabama Supreme Court for a period of six months, effective October 15, 2009. The supreme court entered its order based upon the decision of the Disciplinary Commission of the Alabama State Bar accepting Brock's conditional guilty plea wherein he pled guilty to a violation of Rule 8.4(b), Ala. R. Prof. C. Brock was found guilty of perjury in the third degree in the Circuit Court of Conecuh County on August 13, 2009. [Rule 22(a), Pet. No. 09-2137; ASB No. 08-192(A)]

- On July 23, 2009, Panel I of the Disciplinary Board of the Alabama State Bar entered an order accepting the conditional guilty plea of Florence attorney Basil Timothy Case to violations of Rule 1.4(a), Alabama Rules of Professional Conduct, in the below-referenced complaints. All of these matters involved a general lack of communication by Case with his clients. Case was suspended for a period of 180 days, which suspension will be held in abeyance. He was placed on probation for a period of two years, effective July 23, 2009. [ASB nos. 04-134(A), 04-189(A), 04-227(A), 04-228(A), 04-229(A), 04-258(A), 04-266(A), 04-267(A), 04-268(A), 04-270(A), 04-284(A), 04-286(A), 04-316(A), 05-05(A), and 06-134(A)]

- Phenix City attorney Cecil Kerry Curtis was suspended from the practice of law in Alabama by order of the Disciplinary Commission of the Alabama State Bar for 91 days. The Disciplinary Commission ordered that said suspension be held in abeyance and Curtis be placed on probation for a period of two years pursuant to Rule 8(h), Ala. R. Disc. P. The Disciplinary Commission accepted Curtis’s conditional guilty plea wherein he pled guilty to violations of rules 1.3, 1.4(a), 1.4(b), 3.2, 8.4(a), 8.4(d), and 8.4(g), Ala. R. Prof. C. Curtis failed to properly represent his clients before the United States Bankruptcy Court. [ASB No. 09-1051(A)]

- Mobile attorney Joseph Gullatte Hunter, III was interimly suspended from the practice of law Alabama pursuant to rules 8(c) and 20(a), Ala. R. Disc. P. by order of the Disciplinary Commission of the Alabama State Bar, effective June 25, 2009. The Disciplinary Commission’s order was based on a petition filed by the Office of General Counsel evidencing that probable cause exists that Hunter has misappropriated and mismanaged client trust funds. [Rule 20(a), Pet. No. 09-1845]

- Birmingham attorney Temo Lopez was suspended from the practice of law in Alabama for 91 days, effective September 11, 2009. The 91-day suspension was deferred pending a two-year period of probation. Lopez admitted that he failed to respond to requests for information from a disciplinary authority during the course of an investigation. Upon successful completion of probation, Lopez is to receive a private reprimand for a violation of Rule 8.1(b), Ala. R. Prof. C. As part of the plea agreement, ASB No. 07-82(A) and the Rule 20(a) [summary suspension] files are to be dismissed. [Rule 20(a), Pet. No. 09-1150; ASB nos. 07-82(A) and 09-1053(A)]
Prattville attorney Keith Anderson Nelms was suspended from the practice of law in Alabama for three years by order of the Supreme Court of Alabama, effective July 9, 2009. The Supreme Court of Alabama based its order on Nelms’s guilty plea for violations of rules 1.5(a), 1.15(a) and (g), 5.4(a), 7.1(a), 7.2(c), and 8.4(c), Alabama Rules of Professional Conduct. Nelms owns and operates Allegro Law, LLC and held himself and Allegro Law, LLC as providing legal services in the field of debt management and debt settlement. Nelms undertook to represent more than 15,000 clients from across the United States despite the fact that he was only licensed to practice law in Alabama.

Nelms collected fees for debt settlement services from clients prior to the performance of any services on their behalf and prior to those fees actually being earned. Nelms also routinely paid third-party companies and non-lawyers for referrals. In addition, Nelms referred his own clients to a non-lawyer-owned company and would share legal fees paid by his clients with the company. Nelms also failed to disclose to clients that Americorp, a non-lawyer-owned corporation, was handling the majority of all negotiations and settlements with the creditors of Allegro Law’s clients. Additionally, Nelms failed to hold client funds in an IOLTA trust account in compliance with Rule 1.15, Ala. R. Prof. C. [ASB nos. 08-247(A) and 09-1481(A); CSP No. 09-1684(A)]

Auburn attorney Walter Mark Northcutt was suspended from the practice of law in Alabama for 91 days by order of the Supreme Court of Alabama, effective September 11, 2009. The supreme court entered its order based upon the April 30, 2009 order of the Disciplinary Board of the Alabama State Bar wherein Northcutt was found guilty of violations of rules 1.4(a), 1.15(b), 1.15(c), 8.4(a), 8.4(c), and 8.4(g), Ala. R. Prof. C. The factual basis of these violations involved Northcutt’s representation of three clients. In each of these cases, Northcutt admitted to signing the affidavit of a client and fraudulently notarizing the affidavit, violations of rules 8.4(a), 8.4(c), 8.4(d) and 8.4(g), Ala. R. Prof. C.; and in ASB No. 1682(A), Northcutt admitted that he grabbed another attorney by the tie, pushed the attorney up against a wall and cursed and threatened the attorney, a violation of Rule 8.4(g), Ala. R. Prof. C. Northcutt agreed to a 91-day suspension. The suspension was held in abeyance and Northcutt was placed on three years’ probation by the Disciplinary Commission. The conditional guilty plea and order also stated that any subsequent violation of the Alabama Rules of Professional Conduct would be considered a violation of the probation and the 91-day suspension would immediately take effect. On or about August 13, 2009, the Office of General Counsel filed a petition to revoke probation based on information provided by multiple individuals that Northcutt had gotten into a verbal altercation with a part-time assistant district attorney. Northcutt admitted to the verbal altercation. On or about September 9, 2009, Northcutt consented to the revocation of his probation and the imposition of the 91-day suspension. [Rule 20(a), Pet. No. 09-1692; ASB nos. 08-194(A), 08-195(A) and 09-1682(A)]

Montgomery attorney Joe Morgan Reed was suspended from the practice of law in Alabama by order of the Supreme Court of Alabama for 90 days, effective October 1, 2009. The supreme court entered its order based upon the April 30, 2009 order of the Disciplinary Board of the Alabama State Bar wherein Reed was found guilty of violations of rules 1.4(a), 1.15(b), 1.15(c), 8.4(a), 8.4(c), and 8.4(g), Ala. R. Prof. C. The factual basis of these violations involved Reed’s representation of three clients. In each of these cases, Reed received settlement funds which he initially deposited into his trust account. Reed later withdrew these funds belonging to the clients and deposited them into his operating account and used these funds to pay a firm advertising bill. Reed knowingly converted client funds for his own use. [ASB No. 08-85(A)]
Alabama State Bar Publications Order Form

The Alabama State Bar is pleased to make available to individual attorneys, firms and bar associations, at cost only, a series of pamphlets on a variety of legal topics of interest to the general public. Below is a current listing of public information pamphlets available for distribution by bar members and local bar associations, under established guidelines.

**BROCHURES**

**Late As A Career**  
Information on the opportunities and challenges of a law career today.  
$10.00 per 100

**Lawyers and Legal Fees**  
A summary of basic legal procedures and common legal questions of the general public.  
$10.00 per 100

**Abogados Y Honorarios Legales**  
Un resumen de procedimientos legales básicos y preguntas legales comunes del gran público.  
$10.00 per 100

**Last Will & Testament**  
Aspects of estate planning and the importance of having a will.  
$10.00 per 100

**Legal Aspects of Divorce**  
Offers options and choices involved in divorce.  
$10.00 per 100

**Consumer Finance/“Buying On Time”**  
Outlines important considerations and provides advice on financial matters.  
$10.00 per 100

**Worried About Foreclosure? – What You Should Know**  
Provides answers to some of the more commonly-asked questions.  
$10.00 per 100

**Mediation/Resolving Disputes**  
An overview of the mediation process in question-and-answer form.  
$10.00 per 100

**Arbitration Agreements**  
Answers questions about arbitration from the consumer’s perspective.  
$10.00 per 100

**Advance Health Care Directives**  
Complete, easy to understand information about health directives in Alabama.  
$10.00 per 100

**Alabama’s Court System**  
An overview of Alabama’s Unified Judicial System.  
$10.00 per 100

**Notary Public & Lawyers/Notarios Y Abogados**  
Clarifies the difference between notary publics and lawyers in the USA.  
Clarifica la diferencia entre Notario público y abogados en los Estados Unidos.  
$10.00 per 100

**Acrylic Stand**  
Individual stand imprinted with attorney, firm or bar association name for use at distribution points.  
$7.00 each

Shipping & Handling  
$5.00

**TOTAL**  

Name to imprint on stand: ____________________________________________

Physical Mailing Address (not P.O. Box): _____________________________________

Please remit CHECK OR MONEY ORDER MADE PAYABLE TO THE ALABAMA STATE BAR  
for the amount listed on the TOTAL line and forward it with this order form to:  
Marcia Daniel, Communications, Alabama State Bar, P.O. Box 671, Montgomery, AL 36101
About Members

Michael A. Griggs announces the opening of his firm at 1608-A Gilmer Ave., Tallassee 36078. Phone (334) 252-1013.

Shirley A. Millwood announces the opening of Millwood Law Firm LLC at 80 Spring Branch Dr., Ste. E, Alexandria 36250. Phone (256) 847-3777.

Richard H. Ramsey, III announces he has returned to Dothan to enter private practice.

Marvin E. Simpson announces the opening of The Simpson Law Office LLC at 2632 19th St. N., Hueytown 35023. Phone (205) 744-1255.

Mark E. Smith announces the opening of The Law Office of Mark Edward Smith at 631 S. Perry St., Montgomery 36104. Phone (334) 538-0536.
Among Firms

Adams & Reese LLP announces that Neeli Gandhi has joined as an associate.

Alford, Clausen & McDonald LLC announces that Mark A. Dowdy and Latisha D. Rhodes have joined as associates.

The United States Army announces that John W. Miller II has been promoted to the rank of Brigadier General and has assumed command of the Judge Advocate General’s Legal Center and School.

Baker, Donelson, Bearman, Caldwell & Berkowitz PC announces that William R. Sylvester and C. Bradley Cherry have joined the firm’s Birmingham office.

Bradley Arant Boult Cummings announces that Laura Catherine Ashburner, Kane Burnette, Jonathan C. Cobb, Anna Manasco Dionne, Jessica Jones, Charles A. Roberts, Jr., William Carlos Spaht, and W. Justin Hendrix have joined as associates.

The Brom Law Firm LLC announces that James E. Roberts has joined as of counsel.

Burr & Furman LLP announces that Brent W. Dorner, Lisha X. Li, Anthony N. Romano and Megan P. Stephens have joined as associates.

The Edmundson Law Firm LLC announces that Robert E. Hawthorne, III has joined as an associate.

Friedman, Leak, Dazzio, Zulanas & Bowling PC announces that Matthew David Conn has joined as an associate.

Harbinger Capital Partners LLC of New York announces that John H. Roth has joined as assistant fund and compliance counsel.

Huie, Fernambucq & Stewart announces that Bart Cannon and Jeremy Gaddy have joined as associates.

Jones & Davis PC announces that Steven M. Wyatt has joined as a member and T. Matthew Jones has joined as an associate. The new firm name is Jones, Wyatt, & Davis PC.

Lightfoot, Franklin & White LLC announces that John S. Baker, C. Ryan Germany, James W. Gibson, Marchello D. Gray, and Ryan P. Robichaux have joined as associates.

Marsh, Rickard & Bryan PC announces that David T. Brown has joined as an associate.

Maynard, Cooper & Gale PC announces that Stephen D. Davis II has joined as an associate and Jay Watkins has joined as a shareholder in the Mobile office.

The National Highway Traffic Safety Administration announces the appointment of Oakley Kevin Vincent as chief counsel.

Ritchey & Simpson PLLC announces that Howard K. Glick and Steve R. Burford have joined as partners and the firm’s new name is Ritchey, Simpson, Glick & Burford PLLC.

Smith, Spires & Peddy PC announces that C. Michael Renta, III has joined as an associate.

Jill Lolley Vincent has accepted an appointment with the Social Security Administration’s Office of Disability Adjudication and Review.

Stephens, Millirons, Harrison & Gammons PC announces that Joshua B. White has become a partner and Matthew R. Harrison has become an associate.

Tanner & Guin LLC announces that Hannah B. Lansdon has joined as an associate.

Turner, Webb & Roberts PC announces that Laura K. Segers has joined as an associate.

Britt B. Griggs has become an attorney with the United States Bankruptcy Administrator for the Middle District of Alabama.

Vickers, Riis, Murray & Curran LLC announces that Mark L. Redditt has joined as a member and Charles E. Tait has joined as an associate.

Wallace, Jordan, Ratliff & Brandt LLC announces that Wesley K. Winborn has joined as an associate.

Waller Lansden Dortch & Davis LLP announces that William Athanas has joined as of counsel.

Wettermark Holland & Keith announces that Ashley Thomas has joined as an associate.

Wilmer & Lee PA announces that Suzanne C. Dorsett has become a partner and Christopher L. Lockwood has joined as an associate.
Get with the PROgram.
150,000 other attorneys already have.

When you become a member of the GilsbarPRO program, you will not only receive excellent service and coverage backed by CNA, but you’ll also have access to an abundance of resources to support your legal practice.

Statutes of Limitation Quick Reference Cards
Risk Management & Continuing Education Seminars • GilsbarPRO eNEWS
Document Retention Guides • Risk Management Hotline

CNA is the largest underwriter of legal malpractice coverage in the US.

GilsbarPRO is the exclusive administrator for the CNA Lawyers Professional Liability Program in the State of Alabama.

Call the Pros. (800) 906-9654
www.gilsbarpro.com/prontoquote

GILSBARPRO

CNA
Training Alabama Mediators for 15 Years!

www.AlabamaMediation.com

For 15 years, our basic and advanced mediation seminars have provided an informative, entertaining and interactive CLE experience for Alabama attorneys. If you want to be a mediator (or just think like one!) our seminars will provide you with a marketable skill and a CLE experience unlike any other. Come find out why attorneys, judges, and mediators tell us that our programs are the best CLE seminars they’ve ever attended. Visit www.alabamamediation.com or call 800-237-3476 for more information.

BIRMINGHAM • HUNTSVILLE • MOBILE • MONTGOMERY