

May 2006

Vol. 67, No. 3

The Alabama Lawyer



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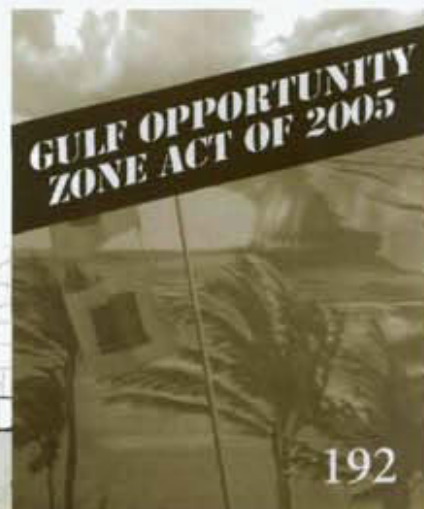
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The Alabama Lawyer (ISSN 743-080) is published six times a year by the Alabama State Bar, 615 Dexter Avenue, Montgomery, Alabama 36104. Periodicals postage paid at Montgomery, Alabama, and additional mailing offices. POSTMASTER: Send address changes to The Alabama Lawyer, P.O. Box 4156, Montgomery, AL 36103-4156.

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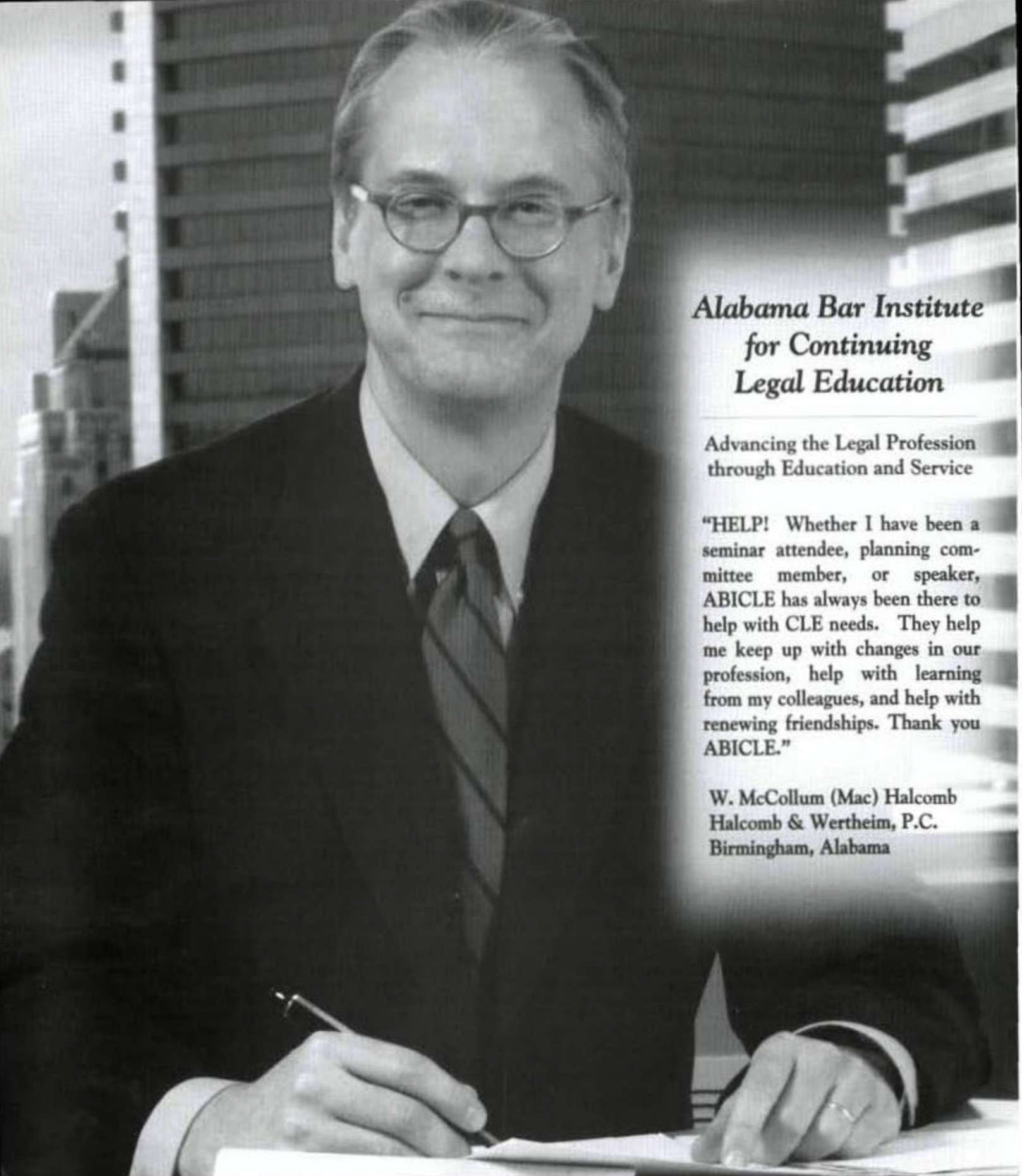
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Bobby Segall

Judge Charles Nice— Unsung Alabama Hero



NEWS FLASH!

Judges should be independent—not Roy Moore or Tom Parker independent, i.e., not divorced from their sacred obligation to adhere to, and apply the law of the land, but rather independent of partisan (or any other) politics, of peer pressure and of public opinion. You can best determine a judge's character when his or her independence is tested. Only judges with character pass the test. And when they do, you know that character really does count.¹ And isn't it nice when, on occasion, you encounter a legislator with that same strength of character? I've known only a few such people.

One of them died December 5, 2001, on his 82nd birthday. He was an Alabama

hero, and most of us never heard of him. He put principle over power and paid for it with his position. And, he did it at least twice in his lifetime. That person was Judge Charles Nice, and we can all learn a lot from his courage and his independence.

Judge Nice was an Alabama native. He attended Birmingham public schools and the University of North Carolina in Chapel Hill before graduating from the University of Alabama School of Law in 1948. Six years out of law school, Judge Nice won a seat in the Alabama House of Representatives, a month short of his 33rd birthday. That same year, 1954, the United States Supreme Court handed down its landmark decision in *Brown v. Board of Education*. That decision marked the end of legal segregation across the country as well as the very young legislative career of Charles Nice.

The reaction to *Brown* in Alabama was dramatic and embarrassing. Politicians quickly lined up to announce their opposition to the Court's decision. The best political strategy at the time was to be the first to condemn the decision, the last to condemn the decision and the loudest to do so. Many prominent leaders declared the law invalid and promised not to follow it. Thus was born Alabama's tradition of demagogic (un)civil disobedience most singularly practiced in future years by George Wallace and more recently by Roy Moore.

Fortunately, then Chief Justice Moore reaped what he sowed, and his defiance of a federal court order was (hopefully) a serious setback to his political career, one can only pray. That wasn't necessarily the case, though, in 1954 Alabama. When it came to *Brown*, defiance was the only option for a politician who wanted to keep his job. In 1956, the Alabama legislature pushed through a bill to actually shut the doors on any white school system that followed *Brown*'s mandate and began admitting black students. The law was unconstitutional on its face, but that didn't stop its passage.²

At that time, we had 100 representatives in Montgomery. Ninety-nine of them voted for the bill. One voted against it, and he lost his seat because of that vote. That lone dissenter was Charles Nice.³

From all accounts, Judge Nice was a generally soft-spoken man. It's particularly amazing, therefore, to think how loudly that lone "nay" must have reverberated off the walls of the Alabama legislature. But it bespoke a courage and independence that would define Alabama's civil rights movement and characterize Charles Nice for the rest of his career.⁴

Two decades after *Brown* and his election to the Alabama legislature, Charles Nice had been vindicated. The Civil Rights and Voting Rights Acts had been signed and put into effect. Strongholds of hate and oppression like Birmingham and Montgomery were turning the corner on tolerance. The country's attention

shifted away from Civil Rights on to Vietnam. And Charles Nice was appointed to serve as a Jefferson County Circuit Judge in 1974. A lot of people would be

satisfied in their life with one courageous, career-ending stand. Not Judge Nice.

Over the course of eight years of service on the circuit bench, Judge Nice did



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something few Alabama judges have ever been willing to do. After a jury recommended that a convicted killer receive the death penalty, he used his own judgment—as Alabama law allowed—and substituted a sentence of life in prison. Oh, and he did it four times.

To help put this courageous stand in context, consider this. Alabama rewrote its capital punishment law in 1981 to give judges the power to substitute their own sentence for the recommendation of a jury after a capital murder conviction. It's a two-way street. If the jury recommends death, the judge can reduce the sentence to life in prison. If the jury recommends life, the judge can still impose a death sentence. Traditionally, judges have followed the recommendation of the jury. But, nearly 80 times between 1981 and 2002, an Alabama judge ignored the recommendation of the jury and imposed his or her own sentence. Only seven of those 80 involved reducing a death recommendation to life in prison. Of those seven, four were done by Charles Nice.

He faced intense criticism over the decisions, so much that he eventually had

to transfer from his circuit court seat to the family court bench. The legislature he stood up to in the 1950s was back at it again. It passed a resolution in 1978 criticizing Nice for overruling jury recommendations of death. Of course, Judge Nice was merely following his conscience—and the law. Perhaps I missed it, but I can't recall any similar resolutions condemning either Roy Moore for his out-and-out refusal to follow the law, or Justice Tom Parker for his advocating that our Alabama Supreme Court justices disregard the law.

Many of you may disagree with Judge Nice's decisions on the death penalty, but I think we can all admire his courage and independence. Unfortunately, independence and courage often stand at odds with political reality. In my opinion, there should be no place for such politics in our judiciary. Political pressure can force good people to sometimes make bad decisions; for those who stand on principle—Judge Nice and the many independent judges we have on the bench today—must always consider the risk that a political system will replace

them with those who do not. Ours is a profession that requires independence. The bench is the highest calling of our profession, and therefore demands the most independence of all.

An Alabama hero died a short time ago, and most of us never heard of him. Perhaps his quiet legacy can serve as a reminder of what is wrong with our system and as an example of how it can be made right.⁵

Endnotes

1. Thus sayeth Chief Justice Nabers in his new book, *The Case for Character*.
2. The Act passed by the legislature, once ratified by the people of Alabama, became the infamous Amendment 111 to the Alabama constitution. The purpose of the amendment was to continue a dual system of education in Alabama, a private system for most white children and a public one for black children and poor whites. The idea was to divert funds and other assets from public schools to private schools. To accomplish this goal without legal repercussions under state law, Amendment 111 necessarily had to end any right to education under Alabama's constitution. It did so with the language "...Nothing in this Constitution shall be construed as creating or recognizing any right to education at public expense."



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Thusly protected, our forefathers, at the same time, further amended the constitution to authorize grants of public money and public property to private schools, thus denying those resources to public schools. Even more blatantly, the amendment provided expressly that no parent would be required to send a child to school with a child of the opposite race.

This diabolic scheme, although glaringly unconstitutional, and declared such in 1991 by Montgomery Circuit Judge Gene Reese, somehow remains in Alabama's constitution today. And, it has served the purpose for which it was intended. Private schools have developed throughout the state, robbing the public school system of students, loyalty and public support. As intended, public schools have suffered.

Because Amendment 111 was conceived in racism and showed on its face that it was racially discriminatory, the legislature gave us an opportunity in 2004 to purge it from the Alabama constitution. Sinfully, the Christian Coalition and Roy Moore objected to purging the most racially motivated portion of the Amendment, the provision that provided that no part of the constitution could be construed as

granting a right to education at public expense. Their irrational rationale was that if we restore the right to education that was removed for unabashedly and explicitly racial reasons, the Alabama Supreme Court might increase taxes. Huh?! Although I don't know for sure, I strongly suspect that Roy will not be among the five people Judge Nico meets in heaven.

3. Judge Nice was also the only person in the house to vote against a resolution condemning the United States Supreme Court for the *Brown* decision.
4. At least three other Alabama legislators who exhibited courage and independence during difficult times bear particular note. In August 1967, when Lurleen was governor and George was her commander in chief, the Wallace oligarchy pushed a teacher choice bill that would, in George's words, "allow parents to vote on who they wanted to teach their children—Negro or white." (Alvin Benn, *Reporter Covering Civil Rights . . . And Wrongs In Dixie*, at 161) Only three senators voted against this racist bill, and, blessedly, all three were lawyers. They were, and still are, Bob

Harris of Decatur, Stewart O'Bannon of Florence and Bo Torbert of Opelika. Could you possibly be any more proud?

5. This footnote is only tangentially related to my comments about Judge Nice, but I want you to know about the Atticus Finch Society. It was very recently created by the Alabama Law Foundation. For those (possibly many) of you who don't know, the Alabama Law Foundation is a charitable organization affiliated with the ASB that strives to make access to justice and education in Alabama a reality.

A primary source of funding for the Alabama Law Foundation is interest on lawyers' trust accounts. Because of low interest rates, though, IOLTA has, in recent years, generated very little for the foundation to contribute to the causes of justice; hence, the Atticus Finch Society. The funds generated through membership in the society will increase the foundation's existing endowment and solidify the foundation's ability to provide grants to worthy programs even during (hopefully plentiful) periods of low interest rates.

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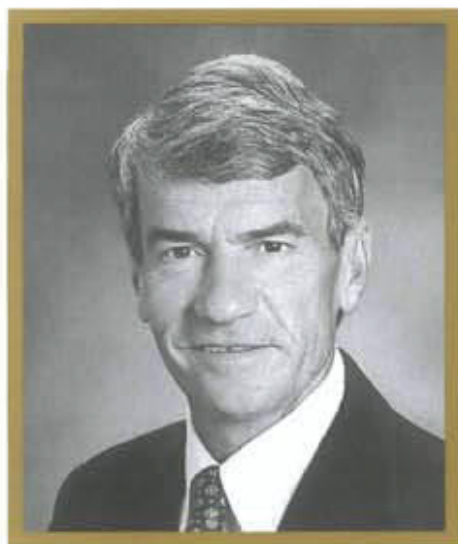
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President-Elect Profiles

Pursuant to the Alabama State Bar's Rules Governing the Election of the President-Elect, the following biographical sketches are provided of Samuel N. Crosby and James E. Williams. Crosby and Williams were the qualifying candidates for the position of president-elect of the Alabama State Bar for the 2006-07 term, and the winner will assume the presidency in July 2007.



Samuel N. Crosby

Sam Crosby is in his 28th year of practice with the firm of Stone, Granade & Crosby, PC. The firm of ten lawyers represents both plaintiffs and defendants and has offices in Daphne, Foley and Bay Minette. His practice includes a broad range of civil litigation, transactional work and mediations.

Sam's father's family is originally from Stockton, Alabama in north Baldwin County and his mother's family is originally from Monroe County, Alabama. He graduated in 1973 with academic distinction from the University of Virginia. At Virginia, he was an All-Atlantic Coast Conference Soccer player, co-captain of the men's varsity soccer team, a member of the Atlantic Coast Conference Academic Honor Roll and a Big Brother. He graduated in 1978 from the University

of Alabama School of Law where he was on the Moot Court Board and the Honor Court. Sam spent 11 years in the JAG Corps of the United States Naval Reserve.

Sam's wife, Ann Simpson Crosby, is from Tuscaloosa. They met during their first week as students at the University of Alabama School of Law where they both graduated, and they have been married for 28 years. Their daughter, Cason, is in her third year of law school. Their son, Sam, is in his first year of medical school. Their first grandchild, Marianne, was born recently to Cason and her husband, Dan Cheely.

Sam Crosby is one of five Alabama lawyers in private practice who were appointed at large to the Chief Justice's Commission on Professionalism. Alabama is the 11th state to create such a commission.

Sam's book of humorous court stories, *The Sleeping Juror*, was published in 2002 by the Alabama Law Foundation and has raised over \$29,000 for Kids' Chance scholarships and indigent legal services. He has published nine professional articles statewide in *Addendum* and authors a monthly column appearing in three Gulf Coast newspapers. He also has served on the editorial boards of *The Alabama Lawyer* and *Addendum*.

Sam serves as a bar commissioner from Baldwin County and has served on the Executive Council and the Long-Range Planning Task Force of the Alabama State Bar. He is a trustee of the Alabama State Bar Foundation and is both a Life Fellow of the Alabama Law Foundation and a

charter member of the Atticus Finch Society. He has served on a disciplinary panel and currently serves on the Alabama Lawyers' Hall of Fame Selection Committee. He is a past president of the Baldwin County Bar Association and he serves each year as vice-chairman of the annual Bench & Bar Conference for the Mobile and Baldwin County bar associations. He is a member of the Alabama Law Institute.

Sam is a director of the University of Alabama Law School Foundation and serves on the Law School Executive Committee. He is also on the Building Excellence Committee and is a member of the Farrah Law Society. In 2001, he and Ann endowed a Library Support Fund.

Sam is a director of the Mobile chapter of the Christian Legal Society and a member of the Alabama Academy of Attorney Mediators. He also has served as a municipal judge and has served on the Federal Magistrate Judge Selection Committee for the Southern District.

Sam Crosby is a past director of Ecumenical Ministries, Inc., an organization which aids the poor in Baldwin County, and he has been active in numerous charitable and civic organizations, including the Boy Scouts of America, the American Red Cross and the Waterfront Rescue Mission.

Sam has led Crown Financial Ministries small group Bible studies for 13 years. He plays music at Spanish Fort United Methodist Church and Church of the Apostles Episcopal Church in Daphne, where he is a member.



James E. Williams

Jim Williams was born July 20, 1954, in Prattville, Alabama, and attended public schools in Autauga County through high school. He obtained his BS degree from Auburn University in 1976 and graduated from Cumberland Law School in 1979. Jim served as a law clerk to the Honorable Robert Bradley for the Alabama Court of Civil Appeals, and then served as an Assistant District Attorney for Montgomery County from 1981 to 1983.

Jim began private practice in Montgomery with the firm of Melton & Espy in 1983 and has been in private practice since that time. Jim was admitted to practice in the Supreme Court of the United States and the Eleventh Circuit and has tried cases in federal court and numerous circuit courts in the state of Alabama.

Jim has been active in bar activities at the local and state level, as well as many other professional organizations. Jim served as a member of the Montgomery County Bar Association Grievance Committee. He was elected to serve on the Board of Directors for the Montgomery County Bar Association in 1988 and was elected president in 1993. Jim has also been a member of the Hugh Maddox Inns of Court.

Jim was first elected to the ASB Board of Bar Commissioners in 1992 and served until 2001 and was re-elected to serve another three-year term in 2003.

Jim served on the Disciplinary Board from 1993 to 2001, first as a member and then, in 1994, as chairman of a disciplinary panel. Since 2001, he has served as a disciplinary hearing officer. He has served two different terms as a member of the Mandatory Continuing Legal Education Committee for the Alabama State Bar.

Jim was elected to the Board of Trustees for the Alabama Law Foundation in 2002 and was recently elected to serve another three-year term. He is a Life Fellow of the Alabama Law Foundation and a charter member of the Atticus Finch Society. He is also a member of the Alabama Law Institute.

Jim's law practice consists primarily of litigation. He was first a prosecutor and then a criminal defense lawyer. Jim has represented both plaintiffs and defendants in a variety of litigation. His practice is

now primarily the defense of hospitals, doctors and other healthcare providers.

Jim is active in community affairs. He is a board member of the Boys and Girls Clubs of South Central Alabama and has served as a member of the Advisory and Steering Committee for the Capital Campaign. Jim is chairman for the Montgomery Indigent Defense Commission and has been a board member since its formation in 1993. He also serves as a board member of the Montgomery County Community Corrections and Punishment Authority. Jim is a member of St. James United Methodist Church where he serves on the administrative council.

Jim is married to the former Sharon Olive (Montgomery) and they have three children, Blake, Layne Marie and Clayton.

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Keith B. Norman

Steps Taken to Address Student Loan Debt Problem

Ten years ago, I first wrote about the heavy student loan debt being borne by law school graduates. In 1996, 51 percent of those sitting for the February bar exam had student loan debt that averaged \$35,000. This past February, although only 35 percent of those taking the bar exam had student loan debt, the average debt had increased to more than \$71,000! That is a 102 percent increase in ten years. Even though the percentage of examinees with student loan debt exam was lower this February than ten years ago, the percentage of those taking the bar exam with education debt has consistently been above 50 percent.

I am pleased to report that steps have been taken to help address this problem. The Committee on Quality of Life for Lawyers recently adopted a resolution underscoring the committee's concern about the high level of student debt being shouldered by new lawyers entering the profession. The committee's resolution tracks the problem as highlighted in the 2005 Quality of Life Survey. Seventy-one percent of those surveyed who had been practicing law ten years or less agreed that "student loan debt was becoming a significant problem for beginning attorneys."

The committee adopted the following recommendations in its resolution to address student loan debt and its detrimental effect upon the quality of life of Alabama lawyers:

- Annual presentations by lawyers, financial experts and student loan professionals to incoming law students at all law schools in Alabama that address the realities, responsibilities and burdens associated with student loan debt;
- Provide law students at each law school current data concerning the starting salary of recent graduates from their respective law schools and the average student loan debt of that school's graduates;
- Provide law students with financial data to project the monthly student loan payment upon graduation (based on the average student loan debt from their law schools and the current interest rate) as compared to the average weekly take-home pay (based on average student salaries of recent graduates from their law school);
- Encourage law students to take out as little education debt as possible and when possible to utilize other sources of funds, e.g., family, job, savings, etc.,

as a way to reduce the level of student loan debt; and, finally,

• Advise students who have acquired student loan debt and who desire to pursue careers in public service, (e.g., state and local prosecutors, public defenders, state and local judicial clerks, legal services) that they may be unable to accept these traditionally lower-paying positions.

The Board of Bar Commissioners enthusiastically supported the committee's recommendations at its February meeting and encouraged the inclusion of pre-law students in the counseling sessions as well.

Unquestionably, the expansion of federal student loan programs has made loans much easier to obtain. The last several

years, we have witnessed some of the lowest interest rates ever for student loans, but, as interest rates have been creeping back up, so, too, have student loan interest rates. Students who had locked in variable rates as low as 4.7 percent this year will face much higher monthly payments when those federally backed loans shift to a fixed rate of 6.8 percent in July. This interest rate change means that someone with \$71,000 in student loans would repay more than \$9,000 in additional interest over the course of a ten-year repayment period. (I am told that student loans can be financed for as long as 20 or even 30 years!)

The Alabama Law Foundation (ALF) has recognized the concerns of high student debt and is developing a loan forgiveness program. Although the specifics

of ALF's loan forgiveness program are not yet available, such programs typically encourage young lawyers with student loan debt to practice in the public service arena, where salaries are traditionally lower, in return for having a portion of their student debt repaid. I am sure that when the ALF program becomes operational, it, too, will encourage more young lawyers to accept public service positions.

The high level of student loan debt is a serious concern for the legal profession and, if ignored, one that could pose severe problems in the future for the judicial system. High student loan debt is a problem that will not be quickly ameliorated. Nevertheless, you should be pleased that serious steps are underway to address this problem in meaningful ways. ■

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- **Joseph W. Cade**, a partner with the Indianapolis firm of Sommer Barnard PC, was recently appointed by the Hon. Cale Bradford, presiding judge for the combined City of Indianapolis and Marion County judiciary, as judge pro tempore for the Superior Court of Marion County, Civil Division. Cade received a B.S. from the University of Alabama in 1985 and a J.D. from the University of Alabama School of Law in 1992.



Cade

- **George T. French, Jr.** has been named the 13th president of Miles College in Fairfield. French had served as interim president since the death of Albert J. H. Sloan last November.
- Hand, Fellows & Associates announces the recent appointment of **Ben Hand** by Secretary of Defense Donald Rumsfeld to the Board of Visitors for the Western Hemisphere Institute of Security Cooperation (WHINSEC). WHINSEC is located in Fort Benning, Georgia and functions as the nation's primary training center for Latin American military

personnel. The Board of Visitor's primary job is to "review and evaluate curriculum, instruction, physical equipment, fiscal affairs, and academic methods." Board members are selected from a variety of sources (the majority of them being appointed directly by the Secretary of Defense for two-year terms) and are meant to represent a wide cross-section of the population.

- **Thomas E. Tiffin, Jr.** was elected president of the National Community Development Association (NCDA) Region IV-Southeastern/Caribbean Region. The NCDA is comprised of approximately 400 local governments across the country that administer federally supported community/economic development housing and human service programs.
- **Mark Waggoner** has been elected to serve as a member of the board of trustees for the National Multiple Sclerosis Society, Alabama Chapter. Waggoner is a partner in the firm of Hand Arendall.

United States District Court Northern District of Alabama In Re: The Matter of the Reappointment Of Robert R. Armstrong, Jr. as a United States Magistrate Judge

NOTICE

The current term of the office of United States Magistrate Judge Robert R. Armstrong, Jr. at Birmingham, Alabama, is due to expire August 8, 2006. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new eight-year term.

The duties of a magistrate judge position include the following: (1) conducting most preliminary proceedings in criminal cases, such as initial appearances, bond and detention hearings and arraignments; (2) the trial and disposition of misdemeanor cases; (3) conducting various pretrial matters and evidentiary proceedings on reference from the judges of the district court, including civil discovery and other non-dispositive motions; (4) conducting preliminary reviews and making recommendations regarding the disposition of prisoner civil rights complaints and habeas corpus petitions; and (5) trial and disposition of civil cases upon consent of the litigants.

Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court and should be directed to:

Sharon N. Harris, acting clerk
U. S. District Court
Northern District of Alabama
Room 140, 1729 5th Avenue North
Birmingham, Alabama 35203

Comments must be received by June 30, 2006.

Pro Bono Award Nominations

The Alabama State Bar Committee on Volunteer Lawyer Programs/Access to Legal Services is seeking nominations for the Alabama State Bar Pro Bono Award. Nomination forms can be obtained by contacting:

Linda L. Lund, director
Volunteer Lawyers Program
Alabama State Bar
P.O. Box 671
Montgomery, Alabama 36101
(334) 269-1515

The Alabama State Bar Pro Bono Award recognizes the outstanding pro bono efforts of attorneys, law firms and law students in the state. The award criteria includes but is not limited to the following: the total number of pro bono hours or complexity of cases handled, impact of the pro bono work and benefit for the poor, particular expertise provided or the particular need satisfied, successful recruitment of other attorneys for pro bono representation, and proven commitment to delivery of quality legal services to the poor and to providing equal access to legal services.

Nominations must be postmarked by May 15, 2006 and include a completed Alabama State Bar Pro Bono Awards Program Nomination Form in order to be considered by the Committee.

EVAN AUSTILL

Evan Austill, a member of the Mobile Bar Association, died in Mobile October 16, 2005 at the age of 70. Austill was a native and lifetime resident of Mobile, and an avid hunter and fisherman with a great reputation as an outdoorsman. He was a Phi Beta Kappa at the University of Alabama, from which he received a bachelor's of science degree, and from which he later was awarded his law degree.

He was an active member of various civic and business organizations and was also a member of the Country Club and the Athelstan Club of Mobile.

Austill served with the U. S. Military Reserve and was retired from the reserves with the rank of major.

During the lifetime of his father, his firm was known as Austill, Austill & Austill, which developed an outstanding reputation in the field of real property and mineral rights litigation.

He left surviving him his wife of 41 years, Ruth Sullivan Austill; his daughter, Elizabeth Harris of Mobile, and his son, Nashville attorney Evan Austill, Jr.; his brother, Mobile attorney Jere Austill, Jr.; and his sister, Mary Sanford of Opelika, Alabama, together with two grandchildren, Austill Harris and Caroline Harris, and numerous other family members.

—Ben Rowe, *president,*
Mobile Bar Association

JAMES CHARLES BALDONE, SR.

James Charles Baldone, Sr., age 90, died Friday, July 22, 2005. He was a devoted and loving husband, father and grandfather. Preceding him in death was Lillian Romeo Baldone, his wife of 56 years. He is survived by his children, James C. Baldone, Jr. (Sherry), Francesca Baldone Allen (Chris) and Donna Baldone Ingram (Charlie); grandchildren Carl Baldone, Ann Baldone, Francesca Lillian Allen and Christina Virginia Allen; and brothers Dr. Pasqual A. Baldone and Dr. Joseph C. Baldone.

Mr. Baldone attended Birmingham-Southern College and graduated from the University of Alabama in 1937. He was a lifelong avid Alabama fan. After graduating from the University of Alabama School of Law in 1940, he enlisted in the United States Army, attended Officer Candidate School and served as a second lieutenant in Army intelligence during World War II. In 1972, he was honored by the President of Italy with the title "cavaliere" for his work as legal advisor to the Consul General of Italy.

Upon graduation from the University of Alabama School of Law, Mr. Baldone

joined the firm of Balch & Bingham, formerly Martin, Blakely, Balch & Bingham, in Birmingham. He later practiced for a short time at his own office. He then joined Bruno's Inc. and was promoted to general counsel and retired as vice-president/corporate secretary. Upon retirement, he joined the firm of Cicio & Cicio, PC in Birmingham and was designated *of counsel* for several years before his last retirement.

Mr. Baldone was always one with a good story and was an excellent storyteller. He remained active in local and state bar activities and took great pride in being a member of the legal profession and enjoyed his association with lawyers. He was a member of the Farrah Law Society, Italian-American Bar Association, Order of Sons of Italy, The Club, and City Salesmen. A member of St. Paul's Cathedral, he was a Knight, Equestrian Order of the Holy Sepulcher. His children express their deepest gratitude and love to his dear caregivers, Carol Gregory, Evelyn Boldin, Brenda Harris and also LaGloria Blevins and Evelyn Coleman.

—Anthony L. Cicio, *Birmingham*

JOHN A. CADDELL

John A. Caddell of Decatur died February 7, 2006. Mr. Caddell was born in Tuscumbia on April 23, 1910. He was preceded in death by his wife of 67 years, Lucy Bowen Harris Caddell. He is survived by his daughter, Lucinda Lee (Mrs. Maurice D. Bell, Jr.) of Mobile; sons Thomas Arthur Caddell (Becki) of Decatur, Henry Harris Caddell (Barbara) of Mobile and John Andrew Caddell, Jr. (Amy) of Decatur; eight grandchildren; and 13 great-grandchildren.

Mr. Caddell was a lawyer in Decatur from June 1933 until the time of his

death. He was the senior partner in the local firm of Harris, Caddell & Shanks, PC. He was an active member of the Morgan County Bar Association, the Alabama State Bar (serving as president in 1951-52) and the American Bar Association. He was a Fellow in the American College of Trial Lawyers, the American College of Trust and Estate Counsel, the American Bar Foundation and the Alabama Law Foundation.

Mr. Caddell received his baccalaureate and law degrees and an honorary doctor of laws degree from the University of

Alabama. He served on the board of trustees of that institution for a number of years and was chief executive officer of the Tuscaloosa campus for a few months during a vacancy in the office of president. He was an active member of First Presbyterian Church where he served as a deacon and an elder. He received numerous honors during his lifetime including election to the Alabama Academy of Honor.

The family suggests that any memorials be made to a charity of the donor's choice.

PAUL LEE COULTER

Paul Lee Coulter, a longtime member of the Alabama State Bar, passed away Sunday, November 27, 2005 at his residence. Mr. Coulter was born in Langdale on July 31, 1937 and was the only child of Marvin and Sara Lee Coulter. He was a graduate of Texas Christian University and Duke University School of Law. He

was a retired corporate attorney for Bell South in Birmingham. Mr. Coulter retired to Hilton Head, SC, where he was a member of the fishing club and later lived in Sequim, WA, where he continued to be an avid fisherman. He then moved to Lexington where he was a member of St. Michael's Episcopal Church. Survivors

include his wife of 42 years, Anne DeHart Coulter; two daughters, Carole (Jim) Ramsey of Lexington and Jane Coulter of Atlanta; and four grandsons, Galen Coulter-Ledbetter, Jacob Mack Ramsey, Jordan Hunt Ramsey and Neil Coulter Solis.

—Ben A. Hardy, Mentone



CHARLES MCDOWELL CROOK

Charles McDowell Crook, a member of the Montgomery County Bar Association, died August 10, 2005 at the age of 67.

He was born in Union Springs, July 27, 1938. He received his bachelor's degree from the University of Alabama where he served as vice-president of the Student Government Association. He received his law degree from the University of Alabama School of Law in 1961, following which he served in the United States Army and attained the rank of captain. He received a master's degree in taxation from New York University in 1966 and began the practice

of law in Montgomery, with the firm of Goodwyn, Smith & Bowman. That firm became Smith, Bowman, Thagard, Crook & Culpepper prior to its merger with the firm of Balch & Bingham, LLP.

Following his retirement from the practice of law in 2004, Charlie served as general counsel for the Department of Corrections at Governor Riley's request. Following his death, Billy Addison, assistant general counsel for Corrections, wrote of Charlie's tenure with that department, "What a gem he was and what a delightful experience that was for me. He was the epitome of everything that is good about our profession, which often gets overlooked..."

Bobby Segall, president of the Alabama State Bar, wrote in the *Docket*, the

newsletter of the Montgomery County Bar Association, "He became one of Montgomery's and Alabama's best lawyers. And one of its best people...In fact, if I had thought in years past to give an award for 'Most Integrity,' Crook would have been a perennial contender...Charlie's sense of honor shown brightly. He elevated his profession."

All lawyers who dealt with Charlie recognized that in addition to his strength of character and integrity, he possessed a keen intellect and had an innate ability to sort out and analyze the relevant legal issues in any situation. His brief writing showed a rare combination of clarity, conciseness and reasoned legal analysis.

—Sterling G. Culpepper, Jr.,
Montgomery

WILLIAM ALBERT OWENS, JR.

The Limestone County Bar mourns the passing of William Albert Owens, Jr., who died August 26, 2005.

Bill was born November 7, 1942 in Limestone County. He graduated from Athens High School and received his bachelor's degree from Athens College. He worked as a computer analyst for Burroughs before attending law school. He graduated from Cumberland School of Law in 1974 and returned to Athens to practice his profession.

Bill was known for the tenacity with

which he handled every case and the doggedly determined way in which he represented his clients. In a profession which unfortunately can tend to narrow a person's fields of interest, Bill became excited about new developments in agriculture, technology and politics. He always owned the latest "gadget" and would enthusiastically show it to everyone in the courthouse. Most importantly, Bill had a tender heart of compassion and often represented clients who were unable to pay.

Bill is survived by his loving wife, Stella Ann Owens, as well as three daughters, Suzane Warren, Leisel Stanford and Sonya Persell, and two sons, William Albert Owens, III and Thomas W. Owens. Bill always glowed when speaking of his grandchildren: Trey Warren, Taylor Warren, Lars Stanford, Olivia Persell, and Reagan Persell.

This community is the poorer for Bill's death but so much the richer for his life.

—E. Steven Croomes,
Limestone County Bar

JUDGE GEORGE H. TRAWICK

Judge George H. Trawick was born October 8, 1946 in Homewood. He attended Birmingham Southern College and graduated with a bachelor of arts degree from Troy State University, and then entered and graduated from Cumberland School of Law in Birmingham.

During his career as a practicing attorney, George Trawick was widely known as an attorney who was committed to

representing his client's interest with enthusiasm and dedication; however that representation was accomplished with a calm and reassuring demeanor and with dignity and respect for the legal system and its foundation. Judge Trawick practiced law for over 20 years during which he served as a member and past president of the Dale County Bar Association, municipal judge for the City of Ozark

and prosecutor for the municipal courts both Ozark and Daleville.

Judge Trawick was elected as Dale County District Judge in November 2004 and took office in January 2005. He loved his work as an attorney and judge as shown by his dedication to his profession even after he was diagnosed with a terminal illness. He passed away December 7, 2005.

—William T. Kominos, Ozark

Bark, David Olof
Mobile

Admitted: 1950
Died: November 15, 2005

Bonham, John Dwight
Montgomery

Admitted: 1952
Died: February 9, 2006

Lusk, Donald Dewitt
Birmingham

Admitted: 1968
Died: February 24, 2006

Madison, John L. Jr., Hon.
Jasper

Admitted: 1976
Died: February 21, 2006

Ogletree, Tom Roscoe
Sylacauga

Admitted: 1961
Died: December 13, 2005

Ormond, Marvin Thomas
Tuscaloosa

Admitted: 1949
Died: January 18, 2006

Pruett, William Henry
Richardson, TX

Admitted: 1953
Died: September 27, 2005

Reid, Robert Raymond, Jr.
Birmingham

Admitted: 1955
Died: January 13, 2006

Richardson, Reginald
Greensboro

Admitted: 1951
Died: October 18, 2005

Smith, Virgil McDaniel
Gadsden

Admitted: 1951
Died: April 7, 2003

Wooten, George Frederick
Charlottesville, VA

Admitted: 1937
Died: January 11, 2006

Tom Drake—*"The Cullman Comet"*

Lawyer, Football Coach, Wrestler, Speaker of the House, and Living Legend

BY CHARLES F. CARR

Cullman County, Alabama. Most Alabama lawyers have either heard of the county or been through it on their way to Huntsville or Florence. For those who have regularly been to its courthouse, it is known for the "All Steak Restaurant" which moved into new quarters a few years back. Lawyers, storekeepers and many of the residents of the county come to the All Steak for lunch or dinner several days a week.

Among the customers almost every day is the Cullman two-person and husband-wife lawyer team of Tom and Chris Drake. Their offices are across the street from the All Steak but also a stone's throw away from the Cullman County Courthouse.

If you have ever had any litigation with Tom Drake, you have also had litigation with Chris. You have also frequently been invited to lunch with them at the All Steak. There is no way that litigating against the Drakes can be anything other than civil. You become something like a member of their family after the second case if not during the first.

Conversations are seldom with Tom or Chris. They are with Tom and Chris. Sentences are often started by Tom and finished by Chris or started by Chris and finished by Tom. They are the quintessential "union" of husband and wife. Lawyers in small and big firms who have squabbled among themselves marvel at how the two always seem in such perfect harmony.

Chris also is comfortable in allowing the spotlight to shine more on her better known husband. In fact, she may be willing to turn on the light if you give her the chance. She has every reason to be proud of Tom Drake.

Tom is now 75 years young. He is enjoying the best years of a storied career that has seen him as a college football player, a wrestling coach under "Bear Bryant," a law student, a professional wrestler, and a state legislator and speaker of the house under George Wallace. For an encore, he has spent the last 43 years as a lawyer helping the residents of Cullman and north Alabama.

Tom was born in 1930 in Cullman County. Tom's father died when Tom was



The Cullman Comet—Tom Drake in his wrestling days



Attorneys in the Drake family include, left to right, Kimberly Drake (2004), Tommy Drake (1989), Tom Drake (1963), Christine Drake (1985), and Whit Drake (1989).

only 6 years old and grandparents became parent figures at a very early age. "Lawyering" was in Drake's family. His grandfather, Butler Powell, practiced in Cullman after being licensed in 1917. Uncles and cousins such as Sherman Powell, Newt Powell, Myles Powell, J.N. Powell, Sherman Powell, Jr., and Joe Powell have practiced in the Decatur and Cullman area.

After a fine football career at Cullman High School, Tom received a football scholarship to the University of Chattanooga. In 1953, Tom played in his dream game when his Chattanooga Moccasins squared off against the Alabama Crimson Tide. Alabama would win 21-14 but Tom Drake was selected as the player of the game by the *Birmingham News*. One of the Alabama players walked off the field with the game ball, but then Alabama Coach "Red" Drew took it from the Alabama player and handed it to Tom. Drake still has that ball.

Later, Tom would play in the Blue-Gray all-star football game and there his path would cross that of Gray Coach Paul "Bear" Bryant. He would always remember Bryant telling him to call him if he ever needed anything.

Shortly after the Blue-Gray game, Tom enlisted in the United States Army. He spent much of his time at Ft. Benning, Georgia

and there he would see his first live professional wrestling match. With a background in college wrestling while at Chattanooga, Tom liked what he saw in professional wrestling. He approached a promoter while in Columbus who helped Tom launch his professional wrestling career.

That career would take Tom from Atlanta to Mobile and any number of wrestling arenas throughout the South in the 1950s. He would continue to climb back in the wrestling ring, off and on, until 1978. He would be known to his wrestling fans as "The Cullman Comet."

His most well-known match occurred when he squared off against famed wrestler Lou Thesz for the NWA title in 1962. Recently, Tom was nominated for induction in the Professional Wrestlers Hall of Fame in Amsterdam, New York.

In 1957, Tom married Chris. Chris recalls a honeymoon unlike any other couple might ever experience. Immediately after getting married, Tom and Chris set out for Broom, Mississippi. Chris would experience a combined honeymoon trip and wrestling match in downtown Broom.

In 1958, Tom encountered famed Alabama politician George Wallace. A relative told Tom he needed to see this young politician. Tom set out from Mobile to Grand Bay, Alabama and saw Wallace at his early best as a political speaker. Tom was hooked and a relationship began to be forged.

In that same year of 1958, Tom went back to school at Alabama to get a master's degree in physical education. Coincidentally, it would be the year that Bear Bryant "heard Mama calling" and returned to the Capstone to coach the Crimson Tide. Tom remembered Bryant telling him to call him if he ever needed anything. He did just that and was hired by Bryant to be his first wrestling coach after returning to the University. Drake also served as an assistant coach on the Alabama football team.

Over the span of two years, Tom had fateful encounters with two of the most



Three generations of the Drake family

important legends in Alabama. He could have very easily chosen to follow the path of either legend. Drake chose George Wallace and a career in law and politics.

In 1960, Tom entered law school at the University of Alabama. In 1962, he dropped out of law school for a semester to run his first political race. He ran for state representative in Cullman County. Tom would win that race which featured ten candidates. He would win without even having a run-off and he would do it spending less than \$600 on the campaign.

Tom would later finish law school at Alabama, often having to drive down to Montgomery when the legislature was in session. He would ultimately serve as chairman of the Rules Committee, as a member of the powerful Ways and Means Committee and as speaker of the house. In all, he served 32 years in the state legislature.

Nothing could have been more fun for Tom, however, than practicing law in Cullman for almost half of his legal career with his best friend and wife, Chris. While raising their four children, Chris would drive to "night school" in Birmingham, being educated by the likes of famed Birmingham defense lawyer Bibb Allen. For 20 years, Tom Drake has practiced in Cullman under the banner of "Drake & Drake."

The following is just a small listing of the other accomplishments of Tom Drake:

1. He played in the Mobile, Alabama Senior Bowl and was later drafted by the Pittsburgh Steelers, only to be drafted into the United States Army two weeks after signing a professional football contract.
2. He currently serves on the Board of Directors of Attorneys Insurance Mutual of Alabama, Inc. which provides errors and omissions coverage to Alabama lawyers.
3. Drake and Senator Bert Bank of Tuscaloosa assisted in passing a resolution renaming Denny Stadium "Bryant-Denny Stadium."
4. Tom appeared on NBC's "What's My Line." The panel was told that he was a lawyer, a state legislator and a farmer, but they had to guess his "sideline." He was unable to stump the panel who finally guessed that he was also a wrestler.
5. In 2000, he was inducted into the International Wrestlers Hall of Fame & Museum in Newton, Iowa which honors professional, Olympic and collegiate wrestlers.

6. While speaker of the house, he sponsored legislation, at the request of then Supreme Court Chief Justice C.C. "Bo" Torbert, to build the new supreme court building.
7. Drake was one of the sponsors of the Judicial Article which upgraded the judicial system in Alabama.

Two of the Drake children are also lawyers in Alabama. Whit practices in Birmingham but is also *of counsel* with Drake & Drake. Tom II practices with his wife Kimberly, "just admitted in 2005," in Cullman. Daughter Mary Frances Pate is the chief doctor in pediatric nursing at the University of Oregon in Portland. Daughter Christy Lee Drake received her master's degree from Durham University in England and is completing her doctorate at Lampeter University, Wales. Christy has taught Latin, Greek and Hebrew at Western Oregon University.

So many lives have been touched by Tom Drake. It is not just the lives of the many clients he has represented who have been touched. No better example can be found than the high school of Holly Pond, Alabama. After returning to Cullman to practice law and needing to spend his hours earning a little money while not in

session in the legislature, Tom agreed to serve as the volunteer football coach for a new football program at Holly Pond High School. Whether it was afternoons or nights, Tom could be found giving these kids their first introduction into the game that had meant so much to Tom.

Just as importantly to this writer, Tom Drake never seemed like a foe in the courtroom or across the deposition table. For a young lawyer practicing in the "big city" of Birmingham, Tom Drake and Chris became something of adoptive parents. When lawyers in our firm in Birmingham were looking for someone to travel north to Cullman on a legal matter, I was always quick to volunteer. A good meal at the All Steak and kind words and fellowship with Tom and Chris would soon be in the waiting. ■



Charles F. Carr

Charles F. Carr is a native of Enterprise. He is a senior shareholder of the Carr Allison firm. He practiced law for 20 years in Birmingham and currently practices in the Mobile area from his office in Daphne.

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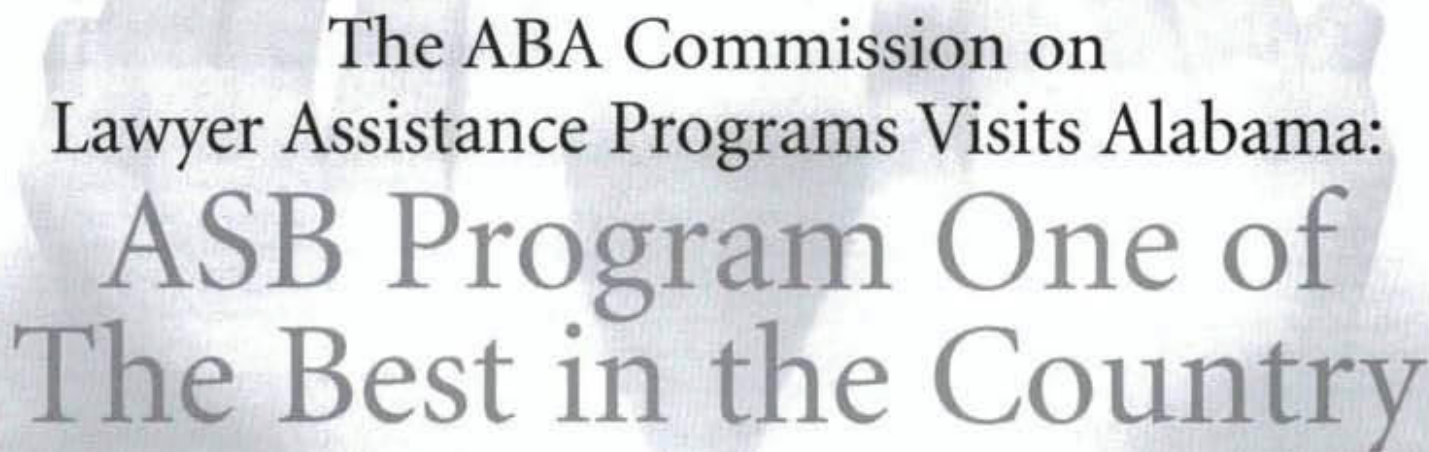
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The ABA Commission on Lawyer Assistance Programs Visits Alabama: ASB Program One of The Best in the Country

BY JEANNE MARIE LESLIE

The American Bar Association's Commission on Lawyer Assistance Programs (CoLAP) was invited to Montgomery to review the Alabama's Lawyer Assistance Program (ALAP) on January 11, 2006. The CoLAP evaluation process involved sending a team of individuals experienced in the field of peer assistance to examine the structure, operations and procedures of the state bar's lawyer assistance program, and to make suggestions regarding the growth and development of the programs future. A team consisting of two lawyer assistance program directors and one lawyer assistance volunteer was assembled by the ABA's CoLAP chair, Richard A. Soden.

The team examined the Alabama Lawyer Assistance Program in reference to criteria adapted from the *Guiding Principles for Lawyer Assistance Programs* (Guiding Principles), adopted by the ABA in February 1991, and the *Model Lawyer Assistance Program* (Model LAP), adopted by the ABA in March 2003. The Principles and Model LAP reflect experience gained by the commission in almost 20 years of conducting program evaluations. They incorporate policies and procedures drawn from and tested by the collective experience of lawyer assistance programs throughout the United States and Canada.

The CoLAP reviewers appointed were Myer J. Cohen, executive director of Florida Lawyers Assistance Inc. and past member of the CoLAP and the CoLAP Advisory Committee; William R. Leary, executive director of the Louisiana Lawyers Assistance Program, past member of the CoLAP and current member of the CoLAP Advisory Committee; and Stephenson Todd, past chair of the Tennessee Lawyers Assistance Program and current member of the CoLAP.

Leary was part of the initial evaluating team whose 1997 report was instrumental in helping the Alabama State Bar implement a lawyer assistance program. The purpose of the CoLAP evaluation was to review the job responsibilities of the ALAP, including services provided, volunteer involvement and the cooperative measures between the ALAP, the judiciary and the state bar.

On Thursday January 12, 2006 the three-member panel met with Alabama State Bar President-Elect Fournier Joseph Gale along with members of the judiciary, the Hon. Justice Harold See, Alabama Supreme Court, the Hon. Sue Bell Cobb, Alabama Court of Criminal Appeals, and the Hon. Craig Pittman, Alabama Court of Civil Appeals, along with Rosa Davis, Attorney General's Office and Judicial Inquiry Commission. Reviewers spent time accessing the educational efforts by ALAP to the Alabama judiciary. The judiciary often represents the first line in identifying attorneys who may be suffering from chemical or psychological impairments. In addition, members of the judiciary themselves suffer from the same impairments as the rest of the profession, although the impediments to seeking help is often greater. Discussions centered on ways to improve services to the judiciary so that referrals can be made to ALAP.

The reviewers also met with law school representatives Charles I. Nelson, dean and professor of law, Jones School of Law; Jenelle Marsh, senior assistant dean for students/academic affairs, the University of Alabama School of Law; and Pamela J. Nelson, Coordinator, student services, Cumberland School of Law. The discussions centered on the continued working relationship between ALAP and the law schools and improving the ongoing programs to educate law students and faculty about stress-related issues such as depression and substance abuse. Reaching out to students during the law school experience, acknowledging the additional stress and offering a means to help with these issues is something ALAP and the Alabama Lawyers Helping Lawyers Committee members have been committed to doing for several years.

Lawyers Helping Lawyers (LHL) committee members David Wooldridge, Eason Mitchell and Clinton Pitman participated in all of the meetings of the reviewing process. In addition, several members of the LHL Committee met with the CoLAP reviewers to discuss the program's operations and growth since inception. The CoLAP reviewers made a special effort to recognize the tireless

efforts the Alabama LHL committee members have put forth on behalf of their colleagues.

The commissioners then met with the Alabama State Bar Admissions Director Dorothy Johnson and Character and Fitness panel members Gwen Garner, Tom Thagard and Laura Crum to discuss how the ALAP services are being utilized.

Later in the day, the members of the Alabama State Bar's Executive Committee, President Bobby Segall, Vice-President Tom Methvin, Past President Douglas McElvy and Executive Director Keith Norman, also met with the CoLAP reviewers. The CoLAP reviewers commended the ASB for clearly taking the 1997 CoLAP evaluation to heart. Most of the recommendations made in that report, including implementing a statewide program, hiring a full-time director, creating a hotline and establishing a relationship between the ALAP and the disciplinary department, have been acted on and put into effect. As a result of the continued growth, progress and expansion of ALAP, as well as its recognized success, panel members discussed ways to help ALAP move to the next level of service for the members of the ASB.

On Friday, January 13, 2006, CoLAP reviewers met with the ASB's General Counsel, Tony McLain. Panel members commented that the ALAP and the Office of General Counsel have done an excellent job of establishing an identification and referral system. Lawyers reported to discipline who are suffering from mental health problems such as depression and substance abuse often are referred to ALAP for monitoring.

In conclusion, the commission will provide a written report with recommendations for expanding and/or improving the reviewed program. Although the final recommendations are still

pending, the reviewers were impressed with the reception and cooperation they received from all the individuals involved in the evaluation process. They expressed the fact that the above individuals were willing to spend so much time with the reviewers given their obvious stature and busy schedules is a clear indication of the strong support and recognition of the work being done by ALAP. The CoLAP reviewers also expressed their gratitude for the generosity shown by all the participants in the evaluation process, and they did acknowledge that in a very short period of time, the Alabama Lawyer Assistance Program has developed into one of the most comprehensive and best administered in the country. I thank the CoLAP and the reviewers for their commitment to improving the quality of life for all members of the legal profession and for all the individuals who graciously gave their time to participate in this evaluation process. I continue to be indebted to the members of the Alabama Lawyers Helping Lawyers Committee for their resolve and service to the members of the Alabama State Bar and for their commitment to the ALAP. ■

Jeanne Marie Leslie, RN, M.Ed, is director of the Alabama Lawyer Assistance Program.

The consulting team also used the report and recommendations of the ABA *Commission on the Evaluation of Disciplinary Enforcement* (McKay Commission), as adopted by the ABA House of Delegates in February 1992 and the *National Judicial Action Plan on Professionalism* created by the National Conference of Chief Justices (Chief Justices' Plan) as adopted in 1999. These recommendations reaffirm, expand and add to many of the suggestions set forth in the Principles and Model LAP.

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Be part of the solution.

For every one person with alcoholism, at least five other lives are negatively affected by the problem drinking. The Alabama Lawyer Assistance Program is available to help members of the legal profession who suffer from alcohol or drug dependencies. Information and assistance is also available for the spouses, family members and office staff of such members. ALAP is committed to developing a greater awareness and understanding of this illness within the legal profession. If you or someone you know needs help call Jeanne Marie Leslie (ALAP director) at (334) 834-7576 (a confidential direct line) or 24-hour page at (334) 224-6920. All calls are confidential.



Notice

Kimberly Jane Dearman-Davidson, whose whereabouts are unknown: On March 15, 2006 a petition for summary suspension was filed with the Disciplinary Commission alleging that grounds exist for the summary suspension of Kimberly Jane Dearman-Davidson's license to practice law, to wit: Kimberly Jane Dearman-Davidson has failed to respond to requests for information from a disciplinary authority despite demands to do so by the Office of General Counsel of the Alabama State Bar. By order of the Disciplinary Commission entered March 15, 2006, Kimberly Jane Dearman-Davidson must respond to the petition for summary suspension and show cause, if any she has, in writing, within ten days of May 5, 2006, why the petition should not be granted or, thereafter, the allegations contained therein shall be deemed admitted and an order summarily suspending Kimberly Jane Dearman-Davidson's license to practice law shall be entered by the Disciplinary Commission of the Alabama State Bar. See, rules 8(e), and 20(a), *Alabama Rules of Disciplinary Procedure*. [Rule 20(a); Pet. No. 06-30]

Disciplinary Commission, Alabama State Bar

Disbarments

- Jacksonville attorney David Joel Forrester was disbarred from the practice of law in the State of Alabama effective January 20, 2006, 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.

In ASB No. 04-261(A), formal charges were filed against Forrester on July 14, 2005, alleging that in May 2004, Forrester, knowing that his suspension from the practice of law in the State of Alabama was imminent, agreed to represent the complainant in a criminal matter and received a \$3,650 retainer fee for the representation. Forrester did not advise the complainant of the pending suspension,

but told him that he was "going on vacation" and that another lawyer would handle the case. Forrester abandoned the complainant and his case. Further, Forrester failed to respond to numerous requests for information regarding the matter during the course of the bar's investigation. Forrester did not file an answer to the formal charges. A default judgment was entered against him finding him guilty of violating rules 1.3, 1.4(b), 1.16(d), 8.1(b), 8.4(a), 8.4(c), 8.4(d), and 8.4(g), *Alabama Rules of Professional Conduct*.

In ASB No. 04-318(A), formal charges were filed against Forrester on July 14, 2005, alleging that Forrester was retained to represent the complainant in a bankruptcy matter and paid a \$600 retainer. Thereafter, Forrester did little or no work in the matter and abandoned the

complainant and his case. Further, Forrester failed to respond to numerous requests for information regarding the matter during the course of the bar's investigation. Forrester did not file an answer to the formal charges. A default judgment was entered against him finding him guilty of violating rules 1.3, 1.16(d), 8.1(b), 8.4(a), and 8.4(g), *Alabama Rules of Professional Conduct*.

In ASB No. 05-19(A), formal charges were filed against Forrester on July 14, 2005, alleging that Forrester was retained to represent the complainant in a bankruptcy matter and paid a \$500 retainer. Thereafter, Forrester did little or no work in the matter and did not communicate with the complainant about the status of her case. Forrester told the complainant that her case had been given to another attorney because he was "going on a summer vacation." Forrester abandoned the complainant and her case. Further, Forrester failed to respond to numerous requests for information regarding the matter during the course of the bar's investigation. Forrester did not file an answer to the formal charges. A default judgment was entered against him finding him guilty of violating rules 1.3, 1.4(b), 1.16(d), 8.1(b), 8.4(a), 8.4(c), and 8.4(g), *Alabama Rules of Professional Conduct*.

In ASB No. 05-72(A), formal charges were filed against Forrester on July 14, 2005, alleging that Forrester was retained to represent the complainant in a bankruptcy matter and paid a \$500 retainer. Thereafter, Forrester did little or no work in the matter and did not communicate with the complainant about the status of his case. Forrester told the complainant that his case had been given to another attorney. Forrester abandoned the complainant and his case. Further, Forrester failed to respond to numerous requests for information regarding the matter during the course of the bar's investigation. Forrester did not file an answer to the formal charges. A default judgment was entered against him finding him guilty

of violating rules 1.3, 1.4(b), 1.16(d), 8.1(b), 8.4(a), and 8.4(g), *Alabama Rules of Professional Conduct*.

In ASB No. 05-73(A), formal charges were filed against Forrester on July 14, 2005, alleging that on March 23, 2004, Forrester, knowing that his suspension from the practice of law in the State of Alabama was imminent, agreed to represent the complainant in a divorce matter and received a \$400 retainer fee for the representation. Forrester did not advise the complainant of the pending suspension. Forrester abandoned the complainant and his case. Further, Forrester failed to respond to

numerous requests for information regarding the matter during the course of the bar's investigation. Forrester did not file an answer to the formal charges. A default judgment was entered against him finding him guilty of violating rules 1.3, 1.4(b), 1.16(d), 8.1(b), 8.4(a), and 8.4(g), *Alabama Rules of Professional Conduct*.

In ASB No. 05-90(A), formal charges were filed against Forrester on July 14, 2005, alleging that Forrester was retained to represent the complainant in a bankruptcy matter and paid a \$300 retainer. Thereafter, Forrester did little or no work in the matter, lost the

C O U R S E S E A R C H

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www.alabar.org/cle

complainant's file on two occasions, missed appointments and did not communicate with the complainant about the status of her case. Forrester told the complainant that her case had been given to another attorney because he was "not going to practice law for a while." Forrester abandoned the complainant and her case. Further, Forrester failed to respond to numerous requests for information regarding the matter during the course of the bar's investigation. Forrester did not file an answer to the formal charges. A default judgment was entered against him finding him guilty of violating rules 1.3, 1.4(b), 1.16(d), 8.1(b), and 8.4(a), *Alabama Rules of Professional Conduct*.

A hearing to determine discipline was conducted by Panel III of the Disciplinary Board on January 17, 2006. Forrester failed to appear at the hearing. During the hearing, the Alabama State Bar established that on April 27, 1999, Forrester received a private reprimand for failing to promptly remit funds to a client that were held in trust. The Alabama State Bar also established that on September 11, 2001, Forrester received a 91-day suspension due to his failure to properly train employees and for engaging in inappropriate sexual conduct toward clients and employees. The imposition of the suspension was suspended and held in abeyance pending a two-year period of probation. On July 21, 2003, Forrester received a private reprimand for willfully neglecting a legal matter on behalf of a client who retained him to file a bankruptcy and paid him the requested retainer. Forrester did no work in the matter. Because he violated the *Alabama Rules of Professional Conduct* during his two-year probationary period, Forrester's probation was revoked and the 91-day suspension previously ordered on September 11, 2001 was imposed. The bar also offered evidence establishing that Forrester's probation was revoked by order

entered November 24, 2003, with the effective date of the suspension to be set by the Alabama Supreme Court. Eventually, the effective date was set as June 1, 2004. The evidence proved that from November 24, 2003 until the effective date of suspension, Forrester continued to accept retainers and payment for work in exchange for promises that he would perform legal work on behalf of clients knowing that his suspension from the practice of law had been ordered and that the effective date was imminent. [ASB nos. 04-261(A), 04-318(A), 05-19(A), 05-72(A), 05-73(A), and 05-90(A)]

- The Supreme Court of Alabama adopted an order of the Disciplinary Commission disbaring Mobile attorney **LeMarcus Alan Malone** from the practice of law in the State of Alabama effective December 20, 2005. Malone was convicted of a "serious crime" as defined by Rule 8(c) (2) (a), *Alabama Rules of Disciplinary Procedure*. On April 21, 2005, in the Superior Court of California, County of Sacramento, Case No. 04F04865 SUP, Malone entered a plea of *nolo contendere*, was convicted of attempted carjacking and attempted kidnapping, and received a sentence of three years and four months in the custody of the California Department of Corrections. Malone also failed to show cause in writing within ten days of receipt of the commission's order why he should not be suspended or disbarred pursuant to Rule 22(a), (2), *Alabama Rules of Disciplinary Procedure*. [Rule 22(a), Pet. No. 05-01]

Suspensions

- Birmingham attorney **John Croom Falkenberry** was suspended from the practice of law in the State of Alabama for a period of 91 days effective January 20, 2006, by order of the Alabama Supreme Court. The supreme

court entered its order based upon the decision of Disciplinary Board of the Alabama State Bar. The board further ordered that Falkenberry make restitution to his client in the amount of \$1,500.

Formal charges were filed against Falkenberry on August 24, 2005, alleging that he had been hired to represent a client in a dispute with his disability insurance carriers. Falkenberry was paid a \$1,500 retainer, after which Falkenberry wrote two letters requesting a waiver of the policy provisions in dispute. Apparently, after inquiries from the defendants to Falkenberry went unanswered, the defendants communicated directly with Falkenberry's client. The client attempted to communicate with Falkenberry without success. After receiving payment of the retainer, Falkenberry wrote two letters and did no other work in the matter. Falkenberry did not respond to the defendants or to his client. Further, after the grievance was filed with the state bar, Falkenberry failed to respond to requests for information regarding the matter during the course of the bar's investigation. Formal charges were filed in this matter and were personally served on Falkenberry on September 6, 2005. Falkenberry did not file an answer to the formal charges. Therefore, on October 12, 2005, a default judgment was entered against him finding him guilty of violating rules 1.3, 1.4(a), 1.16(d), 8.1(b), and 8.4(a), *Alabama Rules of Professional Conduct*. Falkenberry did not appear for his hearing to determine discipline on January 17, 2006. [ASB No. 04-191(A)]

- On January 26, 2006, the Supreme Court of Alabama issued an order adopting the Disciplinary Commission of the Alabama State Bar's order dated November 22, 2005, suspending Tuscaloosa attorney **Byron Todd Ford** from the practice of law in Alabama.

The Disciplinary Commission entered the order based upon Ford's conditional guilty plea. Ford's law license was suspended for a period of 12 months effective November 4, 2005. Should Ford be reinstated, he will be placed on 24 months probation effective the date of his reinstatement. There will be certain terms Ford will be required to meet during his probation. The plea and suspension arose out of Ford's misappropriation of funds he had been advanced regarding court-appointed cases. Ford had entered into factoring agreements whereby he was advanced funds in court-appointed cases. After Ford received the advancements, he was to indicate that fact by placing a routing code on the attorney fee declaration forms that he submitted to the

state comptroller. On numerous occasions, Ford submitted the attorney fee declaration forms and failed to indicate that the fees were not to be paid to him but to the lending agency. Ford then converted the funds for his personal use. [ASB No. 05-212(A)]

- On January 26, 2006, the Supreme Court of Alabama entered an order adopting the December 15, 2005, order issued by Panel V of the Disciplinary Board of the Alabama State Bar suspending Theodore attorney George Lucas Simons for a period of 90 days. Simons failed to comply with the requirements of a September 10, 2004 order of the Disciplinary Board. Therefore, another hearing was held on

December 15, 2005 before the Disciplinary Board. The board found that Simons failed to comply with a condition which required him to obtain counseling from the Alabama State Bar's Law Office Practice Assistance Program. The board found that on two previous occasions, Simons had been reprimanded for similar acts of misconduct. The board considered standards 8.2, 9.22(a) and 9.22(e), *Alabama Standards for Imposing Lawyer Discipline*, and determined that Simons be suspended from the practice of law for a period of 90 days. Upon reinstatement, Simons will be placed on a two-year probation, subject to conditions. Simons will immediately enroll in the Lawyer Assistance Program and Practice Management

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Assistance Program. He will also open a trust account and comply with any and all rules and regulations concerning trust accounts for lawyers. Simons will pay restitution to the involved client in the amount of \$250, and will be taxed for all costs and fees incurred. This case was initiated by a complainant who paid Simons to represent her in an uncontested divorce. Simons did draft the divorce and the complainant completed her payments of attorney's fees and filing fees to Simons. In or about April 2003, Simons told the complainant that the divorce had been filed but that the clerk's office was behind. On May 12, 2003, the complainant checked with the clerk's office and learned that nothing had been filed. After the bar complaint was filed, Simons refunded the filing fee of \$161 to the complainant. During the investigation of the bar complaint, Simons told the investigator that he did not file the divorce pleadings because he had spent \$50 of the filing fee. [ASB No. 03-144(A)]

Public Reprimands

• Albertville attorney James Radford Berry received a public reprimand without general publication on February 3, 2006 for violations of rules 8.4(a), 8.4(c) and 8.4(d), *Alabama Rules of Professional Conduct*. Berry filed a personal Chapter 7 bankruptcy petition because of, in part, severe financial losses suffered due to a used car operation that he incorporated and financed for his son. The finance corporation that made a \$10,000 floor-plan loan filed a non-dischargeability action against Berry alleging that he had an ownership interest in and operated the used car lot and was attempting to discharge debts arising out of the operation of the used car lot and further alleged that Berry provided false financial statements, absconded with funds for which he had a fiduciary obligation and committed fraud. Berry maintained that he had no knowledge of the floor-plan transaction and was not involved in the day-to-day operations of the business.

However, the bankruptcy court found in favor of the finance corporation and concluded that Berry actively participated in the fraudulent transaction. [ASB No. 04-143]

• On February 3, 2006, Bessemer attorney Calvin David Biggers received a public reprimand without general publication for violations of rules 1.5(a), 1.5(b), 1.7(b), 1.15(c), and 1.16 (d), *Alabama Rules of Professional Conduct*. On or about May 11, 2004, a client met with Biggers to discuss a situation involving a suspension from his employment with the Fairfield City School System. The following day, Biggers called the client and advised him to return to his office. Biggers told the client that he needed to pay a \$5,000 retainer fee. The client wrote a check payable to Biggers' law firm on the same date. Biggers then asked the client to void the check and write another check that was made payable to him individually. Biggers advised the client that he could not save his job with the Fairfield City School System, but would assist him in finding other employment. Two days later, on May 13, 2004, the client sent Biggers a letter terminating his legal representation and requesting a refund. He asked Biggers to send him an itemized bill for his services and a refund of the unearned fees. The client began attempting to contact Biggers. Biggers failed or refused to return his telephone calls. The client also checked with the bank and determined that Biggers had cashed the \$5,000 check on May 12, 2004. On May 28, 2004, the client came to Biggers' office demanding a refund. Biggers told the client that he had spoken with the superintendent of the Fairfield City Schools and that he was still employed by the School Board until the investigation was completed. The client already knew his contract had not been renewed and realized that Biggers was stating facts that were simply not true. Biggers continued to work on the matter after he had been terminated and

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later stated to the client that he had earned the \$5,000 for doing ten hours of legal work. The client later learned that Biggers represented the Fairfield City School Board. [ASB No. 04-249(A)]

- On February 3, 2006, Birmingham attorney William Norris Dunn received a public reprimand without general publication for violating rules 1.5(a), 1.4(a), 1.15(a) and 1.16(d), *Alabama Rules of Professional Conduct*. The complainant hired Dunn to represent him in a post-divorce matter. The complainant paid Dunn a \$3,000 fee for this service. Thereafter, the complainant and his ex-wife resolved their differences and Dunn was advised to stop the action. No petition for modification or contempt had been prepared by Dunn. The complainant requested a return of the fees paid and Dunn agreed to do so. Thereafter, Dunn relocated his office and failed or refused to communicate with the complainant. The complainant attempted to call Dunn on at least 50 occasions, however Dunn failed or refused to communicate with him. When the complainant finally

made contact with Dunn, Dunn explained to him that he was having a hard time financially and admitted owing him a refund. Dunn offered to repay him in installments, but failed to do so. Prior to earning his fee in this matter, Dunn negotiated the complainant's check and did not keep the funds in a separate account. Furthermore, Dunn never entered into a fee agreement with the complainant and could not remember the hourly rate to be charged against the complainant's retainer. Dunn did little or no work in this matter and charged a clearly excessive fee in violation of Rule 1.5(a). Dunn failed to keep his client reasonably informed about the status of the matter and did not promptly comply with reasonable requests for information related to the matter in violation of Rule 1.4(a). Upon termination of his representation, he failed to keep his client's funds in a separate account in violation of Rule 1.15(a), and Dunn did not refund the advance payment of the fee in this matter that had not been earned in violation of Rule 1.16(d), *Alabama Rules of Professional Conduct*. [ASB No. 04-199(A)]

- Luverne attorney Charles J. Kettler, Jr. received a public reprimand without general publication on February 3, 2006, for violating rules 1.3 and 1.4(b) *A.R.P.C.* Kettler was hired to represent a client in a slip-and-fall case. While representing the client in the slip-and-fall case, she was injured in an automobile accident. At some point during the representation, the client appeared in Kettler's office in a "somewhat crippled condition" claiming she was the victim of medical malpractice. Kettler advised her that, assuming what she had told him was true, her malpractice claim had more merit than her slip-and-fall case and advised her to consider abandoning her slip-and-fall case in favor of proceeding with the medical malpractice case. The client was to advise Kettler how she wanted to proceed.

The client never expressed a decision on whether or not to proceed with the slip-and-fall case. Rather than confirming her decision to proceed or not proceed on that case, Kettler assumed that she had accepted his advice and allowed the statute to run without filing suit on the slip-and-fall case. [ASB No. 04-196(A)] ■

Robert E. Perry

Mechanical Engineer

Expert Witness

- BSME Norwich University
- MSME Lehigh University
- Adjunct Professor at UAB
- Owner of 2 patents

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Anita Hamlett
MCLE director, Alabama State Bar

Wow! What a busy few months. Thank you for your patience through my first reporting session as MCLE director at the Alabama State Bar. Of the approximately 15,000 members of the bar, I feel like I heard from 14,876 in December alone. Just when I was beginning to feel popular in my new position, we got past March 15th and you would think I have an unlisted number. I hope that you are finding the "Don't Panic" portion of our Web site helpful, but in the words of country music icon Reba, "Why haven't I heard from you?" Now is the time that we are more available to work with you; and it is the best time for you to think about CLE compliance for 2006.

When I joined the MCLE staff in September, we immediately began working on an easier way to track CLE compliance. We implemented what has humorously for some (not so for others) been referred to as the "pink-slip" process. All individuals who were identified as not having completed their CLE requirements in early December were mailed pink notification forms that had to be edited and returned by January 31, 2006. Most individuals who received transcripts and preliminary notices of non-compliance have since become compliant. However, hundreds more (yes, I said hundreds) sought deficiency plans to obtain CLE credit late.

It is important to note that if you fall into that category and procrastinated in 2005, an MCLE task force is working with the MCLE commission to determine a way to reduce this abuse of deficiency plan requests for the future. In a nutshell, absent an emergency or serious health problem, please be prepared to get

your CLE credits timely in 2006.

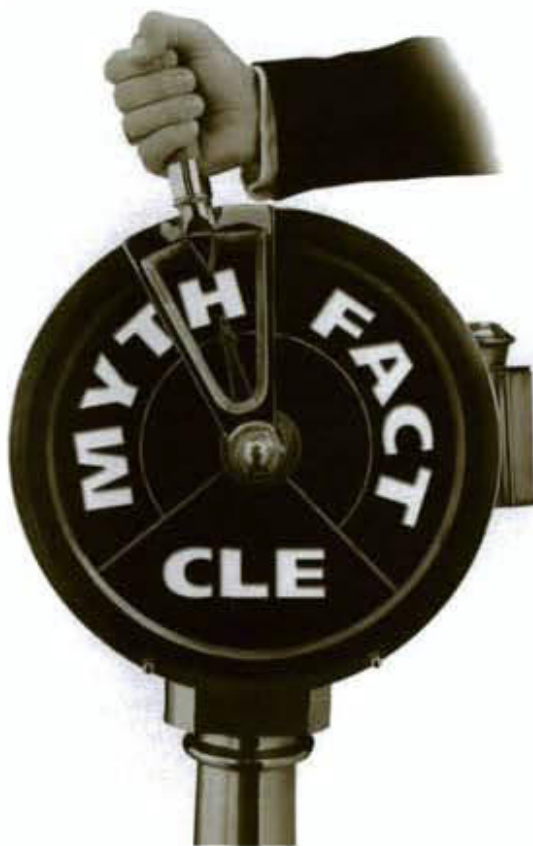
If you have had the opportunity to talk with my staff members, **Christina Brewer** and **Carol Thornton**, you know how genuine, helpful and friendly they are to our attorneys. They have brought it to my attention that many Alabama attorneys are simply unfamiliar with the MCLE rules and regulations. Please note that all the MCLE rules and regulations are posted at www.alabar.org/cle. Ignorance of these rules has not proven to be a viable excuse for the MCLE commission. Below is a list of common myths that our staff addressed this compliance period followed by explanations from the actual rule or regulation. We hope this will serve as a handy reference this year.

Myth: I have until January 31 to complete my courses.

Fact: You have until December 31 to earn CLE credit. After that time, if you have not earned your credit, you will be deemed in non-compliance (MCLE Rule 6). You have until January 31 to report any courses that the sponsors did not report to the bar for you. Under Rule 3, Alabama attorneys shall attend annually a minimum of 12 actual hours of approved continuing legal education, one hour of which shall be ethics or professionalism.

Myth: I am not a new attorney, so I don't have to take ethics.

Fact: All Alabama attorneys must complete one hour of ethics or professionalism regardless of how many general CLE hours are completed annually.



New attorneys are subject to MCLE Rule 9 and must take a separate six-hour professionalism course.

Myth: I took 36 hours in 2004, so I have met the requirements for 2006.

Fact: You can apply excess general and ethics hours to satisfy the succeeding calendar year's MCLE requirements only (MCLE Regulation 3.6). Therefore, you could only carry over 12 general hours (including a maximum of one hour of ethics) for the following year (2005). Thereafter, you would lose the remaining hours.

Myth: I can wait until December 29 and purchase all my credits online.

Fact: No self-study courses may be approved for CLE credit in Alabama. Always check the course listings at www.alabar.org/cle to determine if the course you wish to take is interactive and has been approved. Additionally, online courses must be completed by midnight on December 31, not just purchased by that date. It is your responsibility to make sure your computer is in working order before attempting to take online courses. Finally, you may not obtain more than six MCLE hours online, so you cannot expect to obtain *all* your CLE credits via the Internet.

Myth: My firm is doing a CLE this summer, so I will get all my CLE hours there.

Fact: Under MCLE Regulation 4.1.14, law firms may not obtain CLE credit for programs unless half the instruction is from persons outside the firm. To confirm that you will obtain credit for CLE programs in your firm, make sure the course is submitted timely and has been approved prior to the seminar date.

Myth: I don't need CLE because I only practiced a few weeks out of the year.

Fact: Under MCLE Regulation 2.5, if you held a regular license during "any

part of a calendar year," you are required to obtain CLE hours for that year.

Myth: I attended a local bar luncheon where the speaker fielded questions for an hour. That should count as one hour of CLE credit.

Fact: CLE presentations must be accompanied by thorough, high-quality, carefully prepared written materials (MCLE Regulation 4.1.6). The MCLE commission has found that short periods of questions and answers are acceptable (a rule of thumb would be about 15 minutes per six-hour program). However, programs including lengthy question-and-answer sections with no planned presentation or written materials would "raise a red flag" for additional review or denial of credit.

Myth: I changed my address on my transcript; I don't need to check it on the ASB Web site (www.alabar.org).

Fact: Please double-check any address changes on the ASB Web site to confirm that the changes you submitted with your CLE changes are reflected on your membership information page. If incorrect, you should e-mail Membership Services at ms@alabar.org and inform them of any changes.

Myth: I attended a seminar in Birmingham and gave them my Social Security number. It is up to the sponsor to make sure that I get credit for attending.

Fact: After a seminar, always check your transcript online within 30 days. Some sponsors do not request CLE credit in Alabama. It is your responsibility to submit the course if the sponsor does not. Sponsors should submit courses at least 30 days prior to the seminar, so you should know at the date of the seminar if the course has been approved and for how many hours it has been approved. DO NOT EXPECT A SPONSOR TO SUBMIT YOUR HOURS IF YOU DID NOT PROVIDE A CORRECT ALABAMA STATE BAR NUMBER (YOUR ASB #).

If the sponsor did not submit the course in advance, you have 30 days after a seminar to submit the course to the MCLE commission for review. Applications for accreditation can be found at www.alabar.org/cle/ApplicationforAccreditation2005.pdf.

The application should be accompanied by an agenda of the course including the faculty members and their credentials and a processing fee (\$50 if submitted by the sponsor/\$25 if by the attending attorney). Allow 30 business days for a reply to this application. NOTE THE IMPORTANT DEADLINES. If you have already attended a course for CLE that was not pre-approved for 2006, please submit an application as soon as possible. Untimely applications may be denied.

Myth: It is the state bar's responsibility to keep up with my CLE hours and send me a report annually.

Fact: At one time, the bar would send written transcripts annually. However, now you may access your transcript at anytime through our Web site at www.alabar.org. Since September, most of our sponsors are now posting CLE attendance after seminars. Therefore, your transcripts are constantly being updated to reflect the actual hours you attend programs. It is your obligation to correct any inaccuracies in your transcript and to report any hours that are not reflected on your transcript to the bar. You may send changes to MCLE Commission, P.O. Box 671, Montgomery, Alabama 36101. Information on how to file formal reports for 2006 will follow.

Since most of the non-compliance issues have now been resolved for 2005, I welcome your suggestions, comments and gentle, constructive criticisms. I am hopeful that by remaining in constant communication with our members, I can serve you well and be available to help ensure that the CLE presented in our state is of the quality that you expect as members of the bench and bar. ■

ALABAMA LAW FOUNDATION Announces 2005 Fellows

At the beginning of each year, the Alabama Law Foundation announces the lawyers selected to join the Fellows Program. No more than one percent of bar members may become Fellows; therefore, the selection committee invites into fellowship an exceptional group of lawyers who have demonstrated their dedication to improving the world around them.

This year's new Fellows were recognized at the annual Fellows Dinner on

Friday, February 3, 2006, at the Capital City Club in Montgomery. A gathering of 164 people enjoyed the evening's speaker, Tony Barnhart, *The Atlanta Journal-Constitution* sportswriter for national college athletics. Tony Barnhart is also known for his Thursday night appearances during football season on "College Kickoff Countdown" on Fox Sports Net South, and his Saturday appearances on "College Football Today" on CBS.

The Fellows program was established in 1995 to honor Alabama bar members who have made significant contributions to their profession and their community. Those chosen to become Fellows are given the opportunity to increase their leadership roles through the Alabama Law Foundation. As leaders in the legal community, Fellows provide financial and personal support for the Alabama Law Foundation, the charitable arm of the Alabama State Bar.



New Fellows honored at annual dinner are (L-R) John Gullahorn, Julian Butler, Judge Sue Bell Cobb, Richard Calhoun, and Steve Heninger.



Life Fellows (L-R) David Byrne, Robert Huffaker, James Gevin, Ernestine Sapp, Fred Ingram, Steve Heninger, John Owens, and David Bagwell.

Fellows accepted into membership for 2005:

Joseph M. Brown, Jr., Mobile
Partner in Cunningham, Bounds, Crowder,
Brown & Breedlove

Julian D. Butler, Huntsville
Partner in Sirote & Permutt

Richard F. Calhoun, Troy
Partner in Calhoun, Faulk, Watkins & Faircloth

Sue Bell Cobb, Montgomery
Judge, Alabama Court of Criminal Appeals

Cecilia J. Collins, Mobile
Partner in Johnstone, Adams, Bailey, Gordon & Harris

John H. England, Jr., Tuscaloosa
Judge, 6th Judicial Circuit

Broox G. Garrett, Jr., Brewton
Partner in Thompson, Garrett & Hines

John C. Gullahorn, Albertville
Partner in Gullahorn & Hare

Stephen D. Heninger, Birmingham
Partner in Heninger, Burge, Vargo & Davis

James J. Jenkins, Tuscaloosa
Partner in Phelps, Jenkins, Gibson & Fowler

Thomas H. Keene, Montgomery
Partner in Rushton, Stakely, Johnston & Garrett

Michael D. Knight, Mobile
Partner in McDowell, Knight, Roedder & Sledge

J. Anthony McLain, Montgomery
General Counsel of the Alabama State Bar

Frank B. McRight, Huntsville
Partner in Lanier, Ford, Shaver & Payne

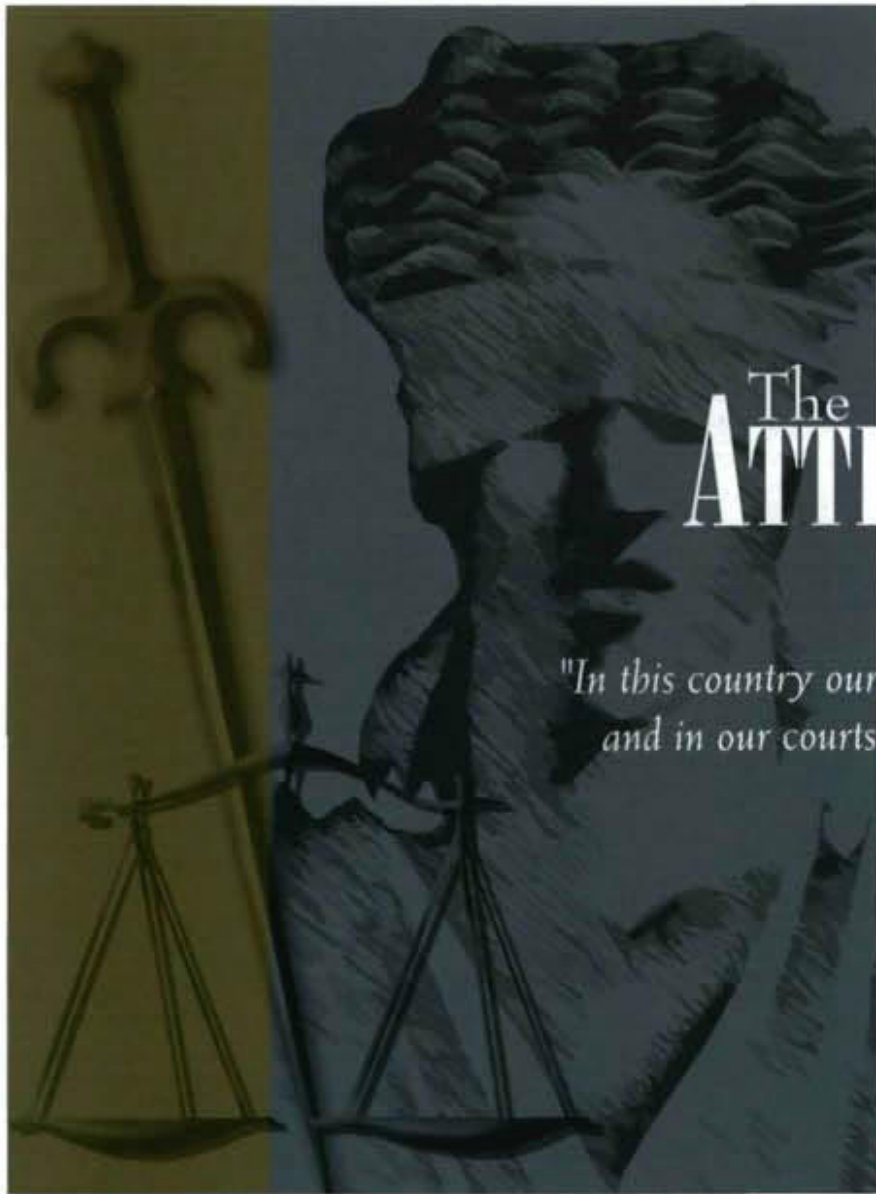
Caryl P. Privett, Birmingham
Judge, 10th Judicial Circuit Court

W. Stancil Starnes, Birmingham
Partner in Starnes & Atchinson

Cooper C. Thurber, Mobile
Partner in Lyons, Pipes & Cook

W. Lee Thuston, Birmingham
Partner in Burr & Forman

James E. Williams, Montgomery
Partner in Melton, Espy & Williams



ALABAMA LAW FOUNDATION

The ATTICUS FINCH SOCIETY

*"In this country our courts are the great levelers,
and in our courts all men are created equal . . ."*

Atticus Finch

To Kill A Mockingbird (Harper Lee)

In serving the legal needs of the poor and those no one else would represent, Atticus Finch epitomizes the type of professional, and person, lawyers strive to be.

The Atticus Finch Society's mission is to build an endowment in order to secure the future of the Alabama Law Foundation's work to make access to justice a reality for all Alabama citizens.

The Atticus Finch Society recognizes the need and acknowledges those whose *courage, honor* and sense of *duty* compels them to *act*.



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For Charter Membership Information Contact:

Tracy Daniel, Executive Director | ALABAMA LAW FOUNDATION

1.800.354.6154 or 269.1515 | tdaniel@alfinc.org

www.ALFINC.org



BEYOND MERE ETHICS

Improving Professionalism In the Practice of Law

BY CHARLES I. NELSON AND JUSTIN L. GARRETT, II

As the Watergate scandal unfolded in the early 1970s, it was clear that many lawyers were involved. As a result, a public hue and cry arose for stricter regulation of lawyers. At that time, many thought that the relatively new ABA Model Code of Professional Responsibility addressed nearly all questions worth considering.¹ The Kutak Commission concluded that additional ethical standards were needed and the ABA adopted the Model Rules of Professional Conduct in 1983.

Even as ethical rules were being redrafted, the bench and bar noted other disturbing trends in the behavior of lawyers. The term "unprofessional" came to describe behaviors that were neither illegal nor unethical, but were almost universally agreed to be undesirable. Numerous causes were assigned for the decline in professionalism, including the unique stresses of modern society, pressures to increase billable hours, increased competition for clients as lawyer advertising became legal, scorched-earth litigation tactics, and a prevailing attitude that winning is everything.

Realizing that it is not enough for lawyers to be merely ethical, the profession wrote rules governing behaviors not regulated by criminal codes or ethics rules. The resulting codes of civility and professional conduct were widely adopted. In 1992, the Alabama State Bar Board of Bar Commissioners adopted a Code of Professional Courtesy.² In 1999, the Alabama Trial Lawyers Association and the Alabama Defense Lawyers Association adopted Standards of Professional Conduct.³ The new codes, however, were generally cast in precatory language.

It is clear that professional values cannot be imposed by rule or decree. In spite of that reality, the bar is not powerless to effect change. This article suggests a few things that ordinary lawyers can do to improve professionalism.

Master the mundane aspects of practicing law

No ethical rule is violated if you are five or ten minutes late for a client appointment. Still, if tardiness becomes customary, it reflects poorly on your professionalism. Develop a reputation for being on time for appointments, depositions, and court appearances. Pay your court reporter invoices with the same celerity with which you insist on payment of your fees.

Judges always appreciate lawyers who consistently follow the rules of procedure. Carefully following the rules enhances your

reputation for professionalism and leaves a favorable impression with judges and lawyers alike. Clients and opposing counsel will notice whether you return phone messages promptly. Your professional image will improve if you carefully proofread documents and heed grammar and usage conventions.

Show respect for everyone

A true professional demonstrates the utmost respect for other people at all times. To congratulate and shake hands with opposing counsel when your client wins is easy. To do the same when your client loses is much harder. It is tempting to attribute an opposing client's motives or misdeeds to his or her lawyer. And it takes tremendous self-discipline to resist the urge to combat rudeness with rudeness in kind. Resist anyway, and recognize that the higher calling of the profession demands that you be respectful even when you are shown no respect. Being respectful does not signal weakness. The professional can be both firm and respectful at the same time.

Being respectful to everyone will never compromise your client's case. No criminal defense attorney ever lost a motion to suppress because he or she greeted the arresting officer before court. No prosecutor ever lost a trial by shaking hands with the defendant's private investigator. No litigator ever lost a motion because he or she held the door for a junior associate who works for the opposing law firm. No deposition objections are waived by thanking the staff for coffee offered.

Extend common social courtesies not only to the judge and opposing counsel, but to everyone. Never ignore support staff or take them for granted, and never vent your frustrations on court staff. Word of such behaviors will invariably get back to the judge. The legal profession could hardly function without the help of court reporters, couriers, the staff of print shops, and the technicians who service your computers and photocopiers. Treat them with the same courtesies that you appreciate.

Remember that professionalism demands much more than technical proficiency

A professional must, of course, be technically competent. But technical proficiency, by itself, does not make an attorney

professional. In *Clark v. Florida*, 475 U.S. 1134 (1986), a law student got a speeding ticket, went to trial pro se, and was fined \$100. He then attempted to appeal the conviction, but failed to observe the procedural rules for doing so. In his repeated filings, he relied for support on a Florida Court of Appeals case that had been reversed by the Florida Supreme Court. He eventually sought review by the U.S. Supreme Court, arguing that the 55 mph speed limit was unconstitutional. The court denied the petition without opinion.

Then Chief Justice Burger urged that Clark (who had by then been admitted to the Florida bar) be sanctioned for filing a frivolous appeal. Burger noted that Clark had demonstrated a contempt for the Florida courts and the system of justice by repeatedly ignoring filing deadlines and by raising patently frivolous claims. Although Clark showed that he was not technically proficient, Burger noted the dangers of training lawyers in technical proficiency "without instilling a sense of professional responsibility and ethics—a bit like giving a small boy a loaded pistol without instruction as to when and how it is to be used."

The case of *Prudential Ballard Realty Co. v. Weatherly*, 792 So. 2d 1045 (2000), shows that being right is not the same thing as being professional. In *Prudential*, the plaintiffs won a jury verdict and punitive damages. The defendants appealed, arguing that the trial court erred in failing to instruct the jury on the mitigation of damages. Following an original opinion granting the defendants a new trial, the plaintiffs applied for rehearing, arguing that the defendants had not preserved the jury instruction issue. The

Court then concluded that the plaintiffs were correct, and filed a new opinion affirming the judgment.

The Court noted that counsel for the plaintiffs had advanced "a principled argument that the Court's initial holding was in error."⁴ Counsel, however, combined the winning argument on the jury instruction issue with an accusation in a brief that members of the Court were "selling favorable decisions to the highest bidder."⁵ In a *per curiam* opinion, the Court responded that:

[Counsel's] remarks in this regard, as unfounded and completely unprofessional as they are, sadly are indicative of a growing trend among some attorneys who feel that an application for rehearing provides them with a bully pulpit for venting their frustrations after receiving an adverse decision. Whether some attorneys believe it to be necessary to spew this venom for the benefit of their unhappy clients or to take the spotlight off of their own inadequacies as legal practitioners, such childish behavior is uncivil and beneath the members of a professional bar association and it is a dangerous method of appellate advocacy. By couching a rehearing argument in the form of a written temper tantrum, an attorney can detract from the merits of the argument and do his or her client irreparable harm by failing to maintain the required level of professionalism.

796 So. 2d at 1060.

The lessons from *Prudential* are clear. Even well-reasoned and superior arguments may be made in an unprofessional way. No matter how frustrating the situation or how unhappy the

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clients, unprofessional behavior in any guise is beneath the dignity of the bar.

Recognize that professionalism leads to job satisfaction

Professor Lawrence S. Krieger of Florida State University School of Law has conducted extensive empirical research showing that high levels of professional behavior are connected to personal satisfaction.⁶ Noting that surveys show that many lawyers are not satisfied with their careers and have extremely high rates of depression,⁷ Krieger argues that professionalism and career satisfaction are essentially inseparable given the nature of human beings. He concludes that quality of life and professional reputation both emanate from the most desirable goals, values, and motives in our personal lives.⁸ When viewed this way, professionalism becomes both personally relevant and an excellent way to avoid the frustration, confusion, depression, and addictions that plague so many lawyers today.⁹

Conclusion

In this era when the practice of law is viewed as a business, it is far too easy for the practices of the marketplace to be the standard by which we judge our actions. In a profession where the business of others is entrusted to us, it is important that we adhere to high standards in order to create an atmosphere that the public can trust. Professionalism demands that we see ourselves as serving others and that we take steps to make sure that service inspires confidence and trust. ■

Endnotes

1. Thomas D. Morgan and Ronald D. Rotunda, *Professional Responsibility* 1 (8th ed. 2003).
2. Keith B. Norman, "In the Spirit of Public Service," 53 *Ala. Law.* 436, 437 (1992).
3. See "General Order *In re* Standards for Professional Conduct" (M.D. Ala. Jan. 8, 1999), available at www.almd.uscourts.gov/ (follow "Rules & Procedures" hyperlink; then follow "3. Standards for Professional Conduct" hyperlink). Many federal district courts adopted similar codes. See, e.g., *Dandi Properties Corp. v. Commerce Savings and Loan Ass'n*, 121 F.R.D. 284, 292 (N.D. Tex. 1988).
4. 792 So. 2d at 1060.
5. 792 So. 2d at 1060.
6. Lawrence S. Krieger, "The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness," 11 *Clinical L. Rev.* 425 (2005).
7. *Id.* at 426-427.
8. *Id.* at 438.
9. *Id.* at 437-438.

Charles I. Nelson

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Justin L. Garrett, II

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2006 ALABAMA STATE BAR ANNUAL MEETING

HILTON SANDESTIN BEACH
GOLF RESORT & SPA

SANDESTIN, FLORIDA

JULY 12-15, 2006

Register Online: www.alabar.org

FIRST 75 REGISTRANTS RECEIVE A FREE COPY
of Sean Carter's book "If It Does Not Fit, Must You Acquit?"

July 12-15, 2006

Hilton Sandestin Beach Golf Resort & Spa
Sandestin, Florida

Meeting Highlights

Renew. Relax. Reconnect.

Preview

- **EARLY BIRD VENDOR PREVIEW AND RECEPTION**
Wednesday, July 12 from 4 - 6 pm

Refresh

- **COFFEE/TEA AND MUFFINS** will be provided by the BIRMINGHAM SCHOOL OF LAW between 8 - 9 am
Thursday, July 13 outside of the Plenary Session meeting room.

Play

- **TEE TIME WITH ISI ALABAMA**
The ISI Children's Party will be Friday, July 14, on the PUTT PUTT course from noon to 2 pm. Children ages 5-15 are welcome. There will be FREE pizza for parents and children. There is no charge for the party, but registration is required. See registration form on page 5. Contact Rita Gray at (334) 269-1515, ext. 305 for more information. Hosted by ISI Alabama, a division of Insurance Specialists, Inc.

Laugh

- **THE BOB NOONE SHOW**



Thursday, July 13, at 8:15 pm following the Membership Buffet at 6 pm.

Bob Noone maintains a successful legal practice, yet he manages to step into the third person and parody the law life around him in a funny, thought-provoking manner which everyone enjoys. For several years he hosted

"Legally Speaking," a live radio legal talk show, which provided humorous topics for his music.

Noone has been writing and performing music for over 20 years, satirizing the realm of the legal world. Over the years he has performed his distinctive brand of musical humor before thousands, meriting standing ovations from convention participants. Recent comments: "The best part of Bob's music is that you don't have to be a legal eagle to enjoy it... but he does provide a needed service to the profession — getting people to laugh at their legal experiences. You certainly don't have to be a lawyer to enjoy Bob Noone's witty, solid-sounding tunes ranging from a parody on the McDonald's hot coffee lawsuit to his irreverent topic of 'When You Find Yourself Disbarred.' No sacred cows here."

Reflect

- **SEAN CARTER, HUMORIST AT LAW**



"Cleaning Up the Stress Mess"

In nearly a decade of law practice after graduating from Harvard Law School, Sean Carter has been dubbed "America's Funniest Lawyer" by the *Radio-TV Interview Report*, and has been described as "Informative,

insightful, and always amusing."

A much sought-after public speaker and syndicated columnist, his weekly legal humor column has appeared in newspapers in 30 states as well as countless Web sites. He is also the author of two books, the acclaimed *If It Does Not Fit, Must You Acquit?* and *2002: A Lawpsided Year in Review*.

Shop

- **SILENT AUCTION FUNDRAISER**

Attendees of the Membership Buffet will have the opportunity to bid silently on artistic treasures, unique products and tempting services... and all proceeds will go to a great cause. Beneficiaries of this special fundraising event, which is included in the admission cost for the reception, are the Lawyer Assistance Foundation, established by the Lawyers Helping Lawyers Committee of the Alabama State Bar, and the Justice Janie L. Shores Scholarship Fund, established by the Women's Section of the Alabama State Bar. Donations are tax deductible.

Win

- **GRANDE PRIZE GETAWAY 2006: PAMPERED AT PALMETTO**

This year's Grande Prize Getaway winner will enjoy a weekend of Low Country leisure and sheer relaxation in the beautiful surroundings of The Inn at Palmetto Bluff. Located in Bluffton, South Carolina, a coastal setting between Hilton Head and Savannah, Palmetto Bluff has achieved wide acclaim for luxurious accommodations, distinctive cuisine and stimulating adventure.

The Getaway Prize includes a three-night stay, complete with a resort amenity package which will fill the days with the beauty and hospitality of the Low Country. www.palmettobluffresort.com/

Compliments of ISI Alabama, a division of Insurance Specialists, Inc.

July 12-15, 2006

Hilton Sandestin Beach Golf Resort & Spa
Sandestin, Florida

Schedule at a Glance

Programs have been designed to interest both practitioners who occasionally handle particular areas of the law, and those who concentrate most of their practice in that area. Presenters reflect the unique age, gender, racial and geographical diversity of our changing association. You will enjoy learning as well as taking advantage of the many opportunities for socializing and making new friends during your stay in Sandestin. Special programs include updates from the Alabama State Bar Leadership Forum, a panel discussion of the progress of minorities in the profession and a report from the ASB Quality of Life survey.

Wednesday, July 12

• ANNUAL MEETING OFFICIALLY OPENS

- 4:00 pm - 6:00 pm
ANNUAL MEETING REGISTRATION
- 4:00 pm - 6:00 pm
LEGAL EXPO 2006 and EARLY BIRD
VENDOR PREVIEW RECEPTION
Hors d'oeuvres and refreshments
served as you relax and reconnect
with friends while meeting the
exhibitors at LEGAL EXPO 2006
- 2:00 pm - 4:00 pm
BOARD OF BAR COMMISSIONERS'
MEETING
- 4:00 pm - 5:00 pm
MCLE COMMISSION MEETING
- DISCIPLINARY COMMISSION MEETING

Thursday, July 13

- 7:30 am - 8:45 am
ALABAMA LAW FOUNDATION
TRUSTEES' BREAKFAST
- 8:00 am - 5:00 pm
ANNUAL MEETING REGISTRATION
LEGAL EXPO 2006
- 8:00 am - 9:00 am
COFFEE/TEA/MUFFINS
Sponsored by Birmingham
School of Law

9:00 am - 10:00 am WELCOME AND OPENING PLENARY SESSION

"Cleaning Up the Stress Mess"
Sean Carter, Mesa, Arizona
Mr. Carter draws on his decade of experience in both law firms and in-house legal departments to share the three steps to a more stress-free legal career.

10:00 am - 10:30 am COFFEE BREAK VISIT LEGAL EXPO 2006

10:30 am - 11:30 am
"Issues in Ethics and Professionalism: Guarding Against Crossing the Line"
Alabama State Bar

"Recent Developments in Family Law, 2006"
Family Law Section

"Broken Records: Preservation of Error and How to Fix a Record on Appeal"
Appellate Law Section

"A View from the Bench: Access to Justice"
Volunteer Lawyers Program
Of the Alabama State Bar

10:30 am - 12:30 pm
"Recent Developments in the Alabama Legislature"
Alabama Law Institute

11:30 am - 12:30 pm
"A Criminal Defense Law Update, 2006"
Alabama Criminal Defense
Lawyers Association

"Why Alabama Needs a False Claims Act"
Alabama Trial Lawyers
Association

"Legal Ethics Update, 2006"
Office of General Counsel,
Alabama State Bar

"What's in Your Wallet? The Dollars and Sense of Utilizing Your Paralegals"
Alabama State Bar and
Alabama Association of
Paralegals, Inc.

10:30 am - 11:30 am ATTORNEYS' INSURANCE MUTUAL OF ALABAMA ANNUAL MEETING

12:30 pm - 2:00 pm BENCH AND BAR LUNCHEON Sean Carter, Humorist at Law Mesa, Arizona

"Practice Makes Perfect ... Except in the Law"
Sean Carter now takes a light-hearted look at the practice of law. In this hilarious presentation, Mr. Carter examines his 15 years of experience in the law — beginning with his introduction to law school and continuing through his "tours of duty" as a lawyer in private practice and as in-house counsel. In this talk, he tackles Law School — Torts, Contracts and Celibacy ... Oh My!; Law Firm Recruiting — And You Thought Fishermen Told Tall Tales!; Law Firm Associates — Subordinate Convertible Indentured Servants; Making a Living In-house (Provided You Don't Want to Do a Whole Lot of "Living"); and Balancing Work and Family and Other Legal Fairy Tales. Drawing on his background as a stand-up comedian and a corporate lawyer, he speaks for everyone who has ever scribbled on a legal pad.

SPECIAL PRESENTATIONS

- Alabama Law Institute
Legislative awards
- ABICLE Award
- Judicial Award of Merit
- Alabama State Bar
Award of Merit
- Alabama State Bar
Pro Bono awards

2:30 pm - 3:30 pm
"Labor and Employment Law Update, 2006"
Labor and Employment Law Section

"Professionalism Then and Now: Plaintiff View"
"The Duty of Professional Conduct and Civility in Litigation: Defense View"
Litigation Section

Schedule at a Glance

(Continued from page 3)

Thursday, July 13

2:30 pm - 4:00 pm

"Adventures in Administrative Law: It's Not For Sissies"
Administrative Law Section
(Reception to follow)

4:00 pm - 4:30 pm

YOUNG LAWYERS' SECTION
BUSINESS MEETING

5:00 pm - 6:00 pm

VLP RECEPTION
Honoring Pro Bono Award winners

6:00 pm - 8:00 pm

MEMBERSHIP BUFFET

SILENT AUCTION FUNDRAISER

(Proceeds to benefit the Lawyer Assistance Foundation and the Justice Janie L. Shores Scholarship Fund)

8:15 pm

THE BOB NOONE SHOW

"Today's Best Practices in Law Firm Marketing"
The Remsen Group, Atlanta
Alabama State Bar

10:30 am - 12:30 pm

"MultiMedia Depositions and Trial: Using Technology in the Courtroom to Win!"
LegalLink, a Merrill Company - Alabama

10:30 am - Noon

"The Uniform Probate Code"
Elder Law Section and Real Property, Probate and Trust Law Section

"Justice Delayed, Not Justice Denied: The Prosecutions of the 16th Street Baptist Church Bombing Case"

G. Douglas Jones, Birmingham
William J. Baxley, Birmingham
Alabama State Bar

"The Five Things You Cannot Change About Law, and Must Accept to Be Happy: Open Forum On Quality-Of-Life Issues"

Alabama State Bar
Committee On Quality of Life for Lawyers

11:30 am - 12:30 pm

"A Younger Generation Speaks Out On Lawyers Rendering Service"
Moderator: Champ Lyons, III
Birmingham

Young Lawyers' Section and Alabama State Bar Leadership Forum

"Firm-Wide Marketing Plans: Keys to Successful Implementation"
The Remsen Group, Atlanta
Alabama State Bar

Noon

**CHILDREN'S PUTT PUTT PARTY
TEE TIME WITH ISI ALABAMA**

(Ages 5-15, free pizza for parents and children)
Sponsored by ISI Alabama, a division of Insurance Specialists, Inc., Norcross, Georgia

12:30 pm

**ANNUAL KIDS' CHANCE
GOLF SCRAMBLE**
Kelly Plantation

12:30 pm - 2:00 pm

WOMEN'S SECTION RECEPTION & THE MAUD MCLURE KELLY AWARD LUNCHEON
Women's Section and Alabama State Bar

2:30 pm - 4:00 pm

"Seal the Deal: Powerful Skills to Get Agreement in Negotiation and Mediation"
Alternative Dispute Resolution Program and Alabama State Bar

5:00 pm - 6:00 pm

PRESIDENT'S RECEPTION
Honoring President Bobby Segall and Sandy Segall

6:00 pm - 7:30 pm

• UNIVERSITY OF ALABAMA SCHOOL OF LAW ALUMNI RECEPTION

• CUMBERLAND SCHOOL OF LAW ALUMNI RECEPTION

7:30 pm - 9:00 am

DESSERT RECEPTION FOR ALUMNI AND FRIENDS OF THOMAS GOODE JONES SCHOOL OF LAW

Saturday, July 15

8:30 am - 9:15 am

COFFEE AND SWEET ROLLS

9:15 am - 11:00 am

GRANDE CONVOCATION

STATE OF THE JUDICIARY

Hon. Drayton Nabers, Jr.,
Chief Justice, Supreme Court Of Alabama

**INTRODUCTION OF ALABAMA
STATE BAR LEADERSHIP FORUM
GRADUATES, 2005 - 2006 CLASSES**

SPECIAL PRESENTATIONS

- Recognition of 50-year members
- Local Bar Achievement Awards
- Kids' Chance Scholarship
- Grande Prize Drawing

INSTALLATION OF NEW PRESIDENT

11:15 am

BOARD OF BAR COMMISSIONERS' MEETING

REGISTER TODAY!

Register online at www.alabar.org

KIDS' CHANCE Golf Scramble

Join us for an afternoon of golf at the Kelly Plantation — made even more rewarding by knowing that you are making a difference in a young person's life. Sign up to play in the **13th Annual Kids' Chance Golf Scramble** on Friday, July 14, 2006.

The Kids' Chance Scholarship Fund provides scholarships for children who have had a parent killed or permanently and totally disabled in an on-the-job injury. Kids' Chance was established in 1992 by the ASB Workers' Compensation Section. Since then we have awarded \$311,000 in scholarships to over 100 students, many of whom would not be able to attend college without our help.

If you are unable to play in the tournament, please sponsor a hole. The Workers' Compensation Section appreciates your support. — *Wendy Thornton, chair*

GOLF SCRAMBLE ENTRY FORM

Name _____ Handicap _____

Firm _____

Address _____

City _____ State _____ ZIP Code _____

Office Telephone _____ Home Telephone _____

E-mail Address _____

Individual Player \$150 \$ _____ Please make checks payable to: **Kids' Chance Scholarship Fund**

Hole Sponsorship \$350 \$ _____ **OR** please bill my credit card: ☐ VISA ☐ MasterCard ☐ AMEX

Hole Sponsorship & 1 Player Slot \$375 \$ _____ Card No. _____

Hole Sponsorship & 4 Player Slots \$600 \$ _____ Expiration Date _____

TOTAL ENCLOSED \$ _____ Signature _____

If you do not have a team, you will be paired with another player.

For more information, contact Tracy Daniel at 800-354-6154 or tdaniel@alfinc.org.

Tee Time With ISI: Children's Putt Putt Party

Hosted by ISI Alabama, a division of Insurance Specialists, Inc., Norcross, Georgia

Bring the kids for their own "golf scramble" and pizza party. The ISI Children's Party will be Friday, July 14, on the PUTT PUTT course from noon to 2 pm. Children ages 5-15 are welcome. There will be FREE pizza for parents and children.

TEE TIME ENTRY FORM

NO CHARGE, BUT REGISTRATION IS REQUIRED

Parent's Name _____

Child's Name _____ Child's Name _____

Child's Name _____ Child's Name _____

Mailing Address _____

City _____ State _____ ZIP Code _____

Office Telephone _____ Home Telephone _____

E-mail Address _____

Contact Rita Gray at (334) 269-1515, ext. 305 for more information.

ALABAMA STATE BAR 2006 ANNUAL MEETING

July 12-15, 2006

Hilton Sandestin Beach Golf Resort & Spa
Sandestin, Florida

Online Registration
Available at
www.alabar.org

Meeting Registration Form

Advance registration forms **MUST BE RECEIVED NO LATER THAN JUNE 30, 2006**.
Cancellations with full refund, minus a \$25 administrative fee, may be requested
through noon, Friday, July 6, 2006. **NOTE: In order to claim CLE credit
for the annual meeting, you must be registered for the meeting.**

PLEASE PRINT.

Name (as you wish it to appear on name badge) _____

Check categories that apply: ☐ Bar Commissioner ☐ Past President ☐ Local Bar President ☐ Justice/Judge

Firm _____ Office Telephone _____

Business Address _____

City _____ State _____ ZIP Code _____

E-mail Address _____

Spouse/Guests Name _____

Child/Children Name(s) _____

Please indicate any dietary restrictions: ☐ Vegetarian ☐ Other _____

Please send information pertaining to services for the disabled: ☐ Auditory ☐ Visual ☐ Mobility _____

REGISTRATION FEES (Advance Registration)

(A limited number of reduced registration fee scholarships are available. Contact the Alabama State Bar for details.)

ADVANCE REGISTRATION

	By June 30	After June 30	Fees
___ Alabama State Bar Members	\$240.00	\$290.00	\$ _____
___ Full-Time Judges	\$120.00	\$155.00	\$ _____
___ Attorneys admitted to bar 5 years or less	\$120.00	\$155.00	\$ _____
___ Non-Member	\$395.00	\$420.00	\$ _____

(Does not apply to spouse/guest of registrant or LEGAL EXPO 2006 vendors)

TOTAL REGISTRATION FEES \$ _____

OPTIONAL EVENT TICKETS

Thursday, July 13, 2006

	No. of Tickets		Cost	
___ Bench & Bar Luncheon	___	@	\$25.00 ea.	\$ _____
___ Membership Buffet (includes 2 drink tickets)	___	@	\$58.00 ea.	\$ _____
___ Special Children's Menu - 10 and under	___	@	\$ 5.00 ea.	\$ _____

Friday, July 14, 2006

___ Alabama State Bar 2005 and 2006 Leadership Forum Breakfast	___	@	\$17.00 ea.	\$ _____
___ Christian Legal Society Breakfast	___	@	No Charge	
___ Farrah Order of Jurisprudence/Order of the Coif Breakfast	___	@	\$17.50 ea.	\$ _____
___ Howard University School of Law Alumni Breakfast	___	@	\$17.00 ea.	\$ _____
___ University of Virginia School of Law Alumni Breakfast	___	@	\$17.00 ea.	\$ _____
___ Vanderbilt University School of Law Alumni Breakfast	___	@	\$17.00 ea.	\$ _____
___ Tulane University School of Law Alumni Breakfast	___	@	\$17.00 ea.	\$ _____
___ The Maud McLure Kelly Award Luncheon	___	@	\$30.00 ea.	\$ _____
___ Children's Party: Putt Putt & Pizza (PRE-REGISTRATION REQUIRED) (Hosted by ISI Alabama, Insurance Specialists, Inc.)	___	@	No Charge	
___ President's Reception (Limit two tickets per registrant)	___	@	No Charge	
___ Cumberland School of Law Alumni Reception	___	@	\$25.00 ea.	\$ _____
___ University of Alabama School of Law Alumni Reception	___	@	\$25.00 ea.	\$ _____
___ Jones School of Law Dessert Reception	___	@	No Charge	

TOTAL EVENT TICKETS FEES \$ _____

TOTAL FEES TO ACCOMPANY FORM \$ _____

PAYMENT MUST ACCOMPANY REGISTRATION FORM.

Checks for Registration/Tickets should be made payable to the ALABAMA STATE BAR.

OR Please bill my credit card: ☐ VISA ☐ MasterCard ☐ AMEX Card No. _____

Expiration Date _____ Cardholder's Signature _____

MAIL REGISTRATION FORM & PAYMENT TO: 2006 Annual Meeting, Alabama State Bar, P. O. Box 671, Montgomery, AL 36101

July 12-15, 2006

Hilton Sandestin Beach Golf Resort & Spa
Sandestin, Florida

Hotel Reservation Form

Hilton Sandestin Beach Golf Resort & Spa

Room Reservations **MUST BE MADE DIRECTLY WITH THE ALABAMA STATE BAR**To ensure your accommodations, reservations should be received **NO LATER THAN FRIDAY, JUNE 9, 2006.**.....
RESERVE ACCOMMODATIONS FOR (please print or type):

Name _____

Firm/Company _____

Address _____

City _____ State _____ ZIP Code _____

Office Telephone _____ E-mail _____

Arrival Day/Date _____ Departure Day/Date _____

CHECK-IN TIME is 4:00 pm. **CHECK-OUT TIME** is 11:00 am.

\$50 Early Departure Fee for checkout prior to confirmed departure date.

Group Rate: ☐ \$239 Resort View (per night) Single or Double Occupancy
 ☐ \$289 Beach View (per night) Single or Double Occupancy
 ☐ \$339 Beach Front (per night) Single or Double Occupancy
Above rates do not include 11% Florida sales tax. (Subject to change)

Please Check: ☐ King Bed ☐ Two Double Beds (Queen)
 ☐ Smoking ☐ Nonsmoking

Number of Rooms Required _____ Number of Adults _____ Number of Children _____

ADVANCE DEPOSIT OF ONE NIGHT'S ROOM AND TAX IS REQUIRED TO CONFIRM RESERVATIONS.**Method of Payment:** ☐ Check Enclosed (made payable to Hilton Sandestin) ☐ Type of Credit Card _____

Credit Card No. _____ Expiration Date _____

Name of Credit Card Holder _____

Card Holder's Signature _____

Deposits will be recorded at the time reservation is made. No charge for children under 17 sharing room with parents. A deposit will be refunded if cancellation of reservation is received 7 days prior to arrival date.

NOTE: There is an \$8.00 daily parking fee at the Hilton Sandestin.

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 brochures on a variety of legal topics of interest to the general public.

Below is a current listing of public information brochures available for distribution by bar members and local bar associations.

BROCHURES

<i>To Serve the Public</i> ... Highlights and details of bar public service programs from the TO SERVE THE PUBLIC video presentation.	\$10.00 per 100	Qty ____ \$ ____
<i>Law As A Career</i> ... Information on the opportunities and challenges of a law career today.	\$10.00 per 100	Qty ____ \$ ____
<i>Lawyers and Legal Fees</i> ... A summary of basic legal procedures and common legal questions of the general public.	\$10.00 per 100	Qty ____ \$ ____
<i>Last Will & Testament</i> ... Aspects of estate planning and the importance of having a will.	\$10.00 per 100	Qty ____ \$ ____
<i>Legal Aspects of Divorce</i> ... Offers options and choices involved in divorce.	\$10.00 per 100	Qty ____ \$ ____
<i>Consumer Finance/"Buying On Time"</i> ... Outlines important considerations and provides advice on financial matters.	\$10.00 per 100	Qty ____ \$ ____
<i>Mediation/Resolving Disputes</i> ... An overview of the mediation process in question-and-answer form.	\$10.00 per 100	Qty ____ \$ ____
<i>Arbitration Agreements</i> ... Answers questions about arbitration from the consumer's perspective.	\$10.00 per 100	Qty ____ \$ ____
<i>Advance Health Care Directives</i> ... Complete, easy to understand information about health directives in Alabama.	\$10.00 per 100	Qty ____ \$ ____

ACRYLIC BROCHURE STAND	\$ 5.00 EACH	Qty ____ \$ ____
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... Individual stand imprinted with attorney, firm or bar association name for use at brochure distribution points. One stand per brochure is recommended.

Name to imprint on stand: _____

Mailing Address: _____

Shipping & Handling \$ 5.00

TOTAL \$ ____

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:
Susan Andres, Director of Communications, Alabama State Bar, P.O. Box 671, Montgomery, AL 36101

Deficit Reduction Act of 2005

BY WILLIAM O. BUTLER

The Deficit Reduction Act of 2005 (S1932), which was signed into law February 8, 2006, makes extensive changes to several areas involving Medicaid long-term care eligibility. Most of these changes apply to transfers of assets and transactions, such as the establishment of a trust or the purchase of an annuity, occurring on or after the date of enactment. The Medicaid Agency will be adopting emergency rules to comply with this statute, but the federal law is already in effect.

Summary of Long-Term Care Eligibility Provisions of the Deficit Reduction Act of 2005 (S1932)

Look-Back Period: The Deficit Reduction Act of 2005 (DRA) extends the look-back period for all transfers of assets to 60 months. Prior law provided for a 60-month look-back period for trusts and 36 months for all other assets.

Change in Beginning Date for Period of Ineligibility: The penalty period will begin the later of the month after assets are transferred or the date that the person would be eligible for Medicaid and otherwise receiving institutional level care but for the application of the penalty period. Under the prior law, Alabama Medicaid started the penalty period the month after the month of transfer, which meant that often the penalty expired before nursing home eligibility was needed. Under the DRA, the penalty period will not start to run until the person would qualify for Medicaid and long-term care, but for the penalty.

Availability of Hardship Exceptions: The DRA provides specific criteria for applying the existing undue hardship exception. It requires notice to recipients of the existence of the exception and an appeal process. It provides that a nursing home may request the hardship exception when authorized by the resident or personal representative.

Partial Months of Ineligibility: The DRA prohibits states from rounding down or disregarding any fractional period of ineligibility due to a transfer of assets.

Multiple Transfers: States are authorized to treat multiple transfers in separate months as one transfer by calculating one penalty period using the total uncompensated value.

Notes, Loans and Mortgages: Funds used to purchase promissory notes, loans or mortgages are considered to be transferred for less than fair market value unless the instrument (1) has an actuarially sound repayment term, (2) provides for equal payments with no deferral or balloon payments and (3) prohibits cancellation upon the death of the lender.

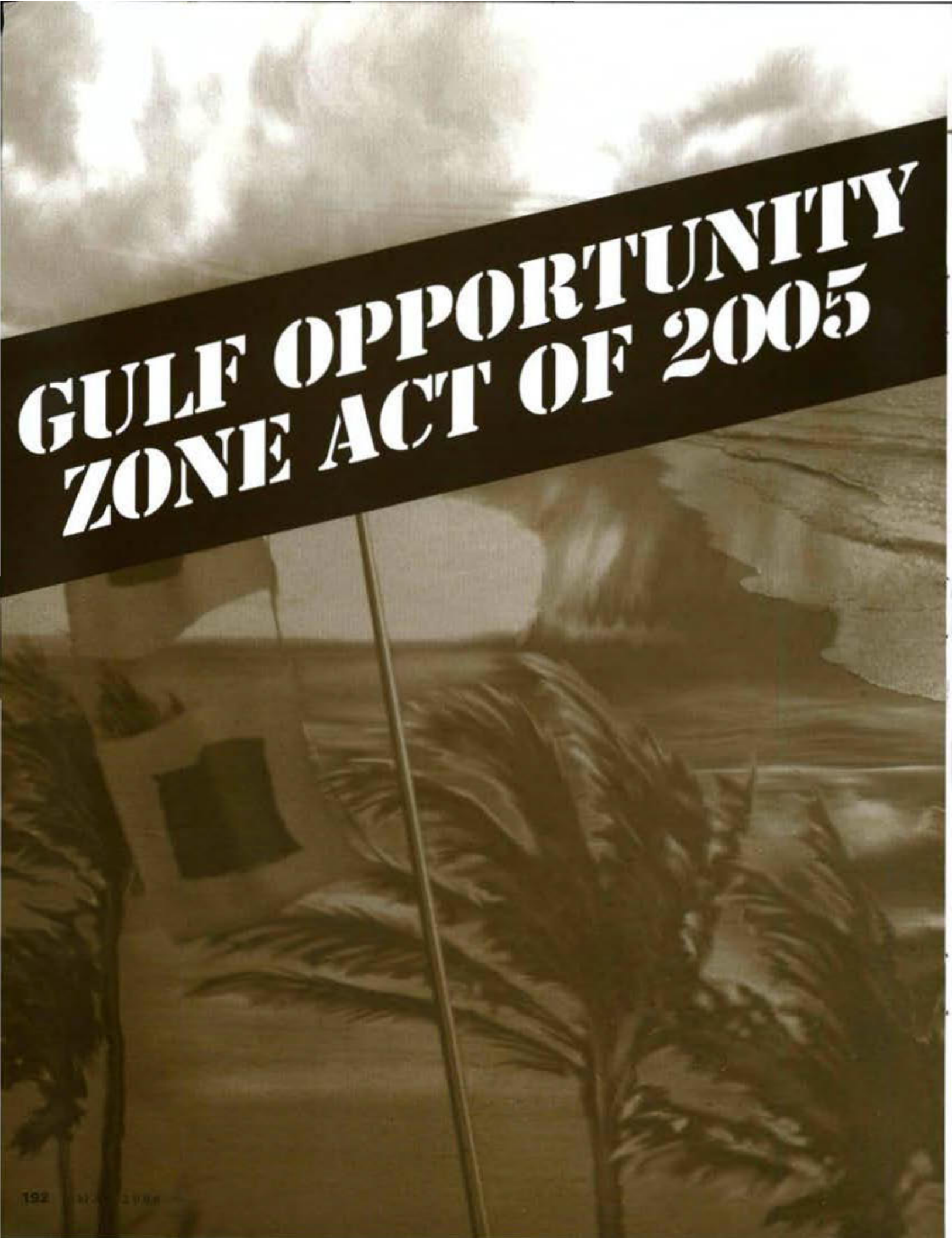
Life Estates: The purchase of a life estate is considered a transfer of assets unless the purchaser resides in the home for at least one year after the purchase.

Annuities: The purchase of an annuity is considered a transfer of assets unless the annuity meets certain requirements, such as being a type described by the Internal Revenue Code, or being irrevocable and non-assignable, actuarially sound and providing for equal payments, with no deferral or balloon payments.

The purchase of an annuity is also considered a transfer of assets unless the state is named as a remainder beneficiary.

An individual is required to disclose on the nursing home application and on any recertification a description of any interest in an annuity of similar financial instrument held by the individual or community spouse.

Home Equity: Individuals with home equity exceeding \$500,000 (or \$750,000 at the state's option) are not eligible for Medicaid long-term care services, unless a spouse, child under 21 or blind or disabled child is lawfully residing in the home. ■



GULF OPPORTUNITY ZONE ACT OF 2005



BY FRANK D. MCPHILLIPS

On December 21, 2005, President Bush signed the Gulf Opportunity Zone Act of 2005 ("GOZA" or the "Act"), just in time to provide sorely needed Christmas cheer to areas devastated by hurricanes Katrina, Rita and Wilma. GOZA is a major piece of legislation patterned after the Liberty Zone Act, which galvanized the reconstruction of New York City following the 9/11 terrorist disaster. GOZA offers substantial benefits to both public and private entities in the areas of Louisiana, Mississippi and Alabama which comprise the Gulf Opportunity Zone (the "GO Zone"). It also provides some significant relief to governmental entities and 501(c)(3) corporations located throughout the State of Alabama, including areas outside the GO Zone. This article will address many of the highlights of this important legislation. The purpose of this article is not to summarize or analyze every aspect of GOZA. For a thorough explanation of GOZA, readers should read the Act itself and the report prepared by the Staff of the Joint Committee on Taxation, which can be obtained online at www.house.gov/jct/x-88-05.pdf.

Gulf Opportunity Zone

Within Alabama, the GO Zone consists of 11 counties, including Mobile, Baldwin, Washington, Clarke, Choctaw, Marengo, Sumter,

Greene, Hale, Pickens, and Tuscaloosa. These are the only Alabama counties in which President Bush declared a major disaster immediately following Hurricane Katrina and determined that individual and public federal assistance was warranted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Although most of the benefits offered by GOZA are available only to public and private entities located or operating in these counties, the Act does furnish an additional advance refunding opportunity to governmental entities and 501(c)(3) corporations located throughout the state, as discussed in greater detail below.

Bonding Authority for Private Projects Within GO Zone

Section 103 of the Internal Revenue Code permits state and local governments to finance governmental projects with tax-exempt bonds. The effect of this tax exemption is to enable public entities to incur substantially lower borrowing costs than private corporations. The spread between taxable and tax-exempt rates on a 20-year bond historically has ranged between 150 to 200 basis points. That spread will likely increase if long-term interest rates increase or federal income tax rates increase, both of which may likely occur.

Income on bonds issued to finance facilities used by a private entity in its trade or business is generally subject to federal income taxation unless the bonds are issued for certain specifically permitted purposes. For example, it is permissible under certain circumstances to issue tax-exempt industrial development bonds to finance small manufacturing projects so long as the user of the financed facilities is able to comply with fairly restrictive capital expenditure rules. These bonds are known as "qualified small issue bonds." It is also permissible to issue tax-exempt bonds to finance capital investments in certain specifically enumerated projects which have substantial private use, such as docks and wharves, solid waste disposal facilities and qualified residential rental projects. These bonds are known as "exempt facility bonds." Even when a private facility is eligible for tax-exempt financing, the tax treatment of such bonds is less favorable than governmental bonds because qualified small issue bonds and exempt facility bonds are subject to the alternative minimum tax. The alternative minimum tax may cause such bonds to trade at a yield which is 20-30 basis points higher than governmental bonds. This spread between AMT bonds and non-AMT bonds will most certainly increase as the alternative minimum tax begins to affect more and more middle class taxpayers. Conversely, if the alternative minimum tax is ever repealed, the attractiveness of non-AMT bonds will decrease and the spread will be eliminated.

The GOZA legislation is significant because it permits the issuance of tax-exempt bonds to finance a broad range of private facilities that previously could only be financed with taxable bonds or conventional bank financing. In an effort to spur the reconstruction of Katrina-affected areas, Congress determined that the availability of low-cost, tax-exempt financing must be expanded to include, for example, retail facilities, warehouses, hotels, restaurants, office buildings, and larger manufacturing facilities (without regard to the capital expenditure limitations described above).¹ Tax-exempt GOZA bonds may be issued to finance the cost of acquiring, constructing, reconstructing and renovating nonresidential real property (including buildings and structural components), public utility property and qualified residential rental property and to make qualified mortgage loans. The impact of GOZA on the housing sector, including the additional bonding authority to finance residential rental projects and make mortgage loans, will be addressed later in this article. See, "New Incentives to Rebuild Housing," below. However, it is the ability to finance virtually any private, nonresidential project on a tax-exempt basis which represents a radical departure from prior law.

GOZA bonds should prove to be especially attractive to investors because interest on such bonds will not be subject to the alternative minimum tax. In that respect, GOZA bonds will be treated just like governmental bonds and, thus, will trade at a lower yield than comparable qualified small issue bonds or other exempt facility bonds.

GOZA bond proceeds may not be used to finance movable fixtures and equipment. The purpose of this limitation is to

**...PERMITS THE
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BONDS OR
CONVENTIONAL
BANK FINANCING.**

ensure that property financed with the bonds will remain in the Gulf Opportunity Zone. The term "movable fixtures and equipment," however, does not include components that are assembled to construct an industrial plant. GOZA bond proceeds also may not be used to finance the acquisition of existing property unless a minimum of 50 percent of the cost of such acquisition financed with bond proceeds is devoted to rehabilitating the acquired property. Therefore, if the acquisition cost of a building is \$10 million and the purchaser expects to spend \$3 million to rehab the building, then GOZA bonds may be issued to finance \$9 million of the total cost (\$6 million of acquisition costs plus \$3 million of rehab costs). The remaining \$4 million would have to be financed on a taxable basis.

There are three important new limitations on GOZA's bonding authority for new

private projects. First, bonds may be issued only for projects which are approved by the governor. Second, the maximum aggregate face amount of all GOZA bonds that may be issued is limited to \$2,500 multiplied by the population of the 11 counties in the GO Zone, which amounts to \$2.174 billion. This volume cap is applied to the entire GO Zone; there is no pro rata volume cap for individual counties. Finally, no GOZA bonds may be issued to finance a new project after January 1, 2011.

In addition to the special requirements imposed by GOZA, it is important to bear in mind that GOZA bonds remain subject to all the other tax-exempt bond rules generally applicable to exempt facility bonds. These rules include the following:

- The substantial user of the financed facilities or a person who is "related" to such user may not hold the bonds;
- The average maturity of the bonds may not exceed 120 percent of the average reasonably expected economic life of the financed facilities;
- No more than 25 percent of the net proceeds of the bonds may be used for the acquisition of land;
- No portion of the net proceeds may be used to acquire land for farming purposes (with certain special exceptions for first-time farmers);
- No more than two percent of the net proceeds of the bonds may be spent on costs of issuance;
- TEFRA public hearing is required;
- Federal guarantee of the bonds is prohibited;
- The bonds may not be advance refunded; and
- The applicable spend-down requirements to avoid "hedge bond" treatment are met.

New Incentives to Rebuild Housing

The devastation caused by Hurricane Katrina was particularly acute in the housing sector and the Act contains substantial tax incentives designed to rebuild housing in the GO Zone.

In the multi-family housing arena, GOZA bonds issued to finance qualified residential rental projects will be subject to more relaxed eligibility rules. Under prior law, a qualified residential rental project would require that (i) 20 percent or more of the residential units be occupied by individuals whose income is 50 percent or less of area median gross income, or (ii) 40 percent or more of the residential units be occupied by individuals whose income is 60 percent or less of area median gross income. In lieu of the 20-50 test and the 40-60 test, GOZA has employed a 20-60 test and 40-70 test for purposes of determining whether or not the project is eligible, the effect of which is to increase the number of people who can qualify to rent an apartment.

In the single-family arena, GOZA bonds issued to make mortgage loans for the purchase, improvement or rehabilitation of owner-occupied housing are also subject to revised eligibility rules. To qualify, 100 percent of the financed residences must be located in the GO Zone and 100 percent of the mortgage loans must be made to mortgagors whose family income is 140 percent or less of the median family income in the GO Zone. GOZA eliminates the present law rule allowing one-third of the mortgage loans to be made without regard to income limits but it increases the median family income threshold from 110 percent to 140 percent. The effect of these changes is to permit more middle income families to qualify by stretching the income limits while eliminating the possibility that upper-income families may take advantage of the new housing stock. The first-time homebuyer rule is also waived and the permissible amount of a qualified home-improvement loan that may be financed with bond proceeds is increased from \$15,000 to \$150,000.

Finally, GOZA greatly expands the allocation and size of low-income housing tax credits available in the GO Zone during 2006, 2007 and 2008. In addition to the current-law allocation of \$1.90 of tax credits per capita, an emergency allocation of \$18 per capita (measured on the basis of the population in the GO Zone) is made available to build low-income housing in the GO Zone. This nine-fold increase in tax credits available for low-income projects in the GO Zone may prove to be more than the demand in the affected areas. Moreover, the size of the credit in effect for a particular project generally increases from 100 percent to 130 percent of qualifying project costs. For information concerning the procedure for applying for tax credits, contact the Alabama Housing Finance Authority at www.ahfa.com.

Additional Advance Refunding Permitted

In addition to expanding the availability of tax-exempt financing for private nonresidential projects, including housing projects, GOZA also provides governmental entities and nonprofit corporations with the opportunity to refund existing indebtedness which otherwise could not be refunded. Most long-term, fixed-rate bond issues grant an option to the issuer to redeem the bonds on or after a date which is typically eight to ten years after the date of issuance. If the issuer determines that it would generate savings to refund such bonds prior to the redemption date, then the issuer will typically deposit the proceeds of the refunding bonds in an

escrow fund to pay principal and interest until the redemption date, as well as the amount required to redeem the bonds on the earliest possible redemption date. A refunding of this type is referred to as an "advance refunding" because the refunding bonds are being issued at least 90 days in advance of the redemption date. Under present law, governmental entities and 501(c)(3) corporations are entitled to advance refund their bonds only once on a tax-exempt basis.

To illustrate the restrictive effect of this rule, assume that an issuer (City A) issues bonds (the "1995 Bonds") at a yield of 6.5 percent on June 1, 1995. In order to realize substantial savings, City A decides to advance refund the 1995 Bonds with the proceeds of refunding bonds issued on June 1, 2001 (the "2001 Bonds") at a yield of 5.75 percent. The earliest redemption date on the 2001 Bonds is June 1, 2011. Prior to GOZA, the 2001 Bonds could not be refunded again until March 1, 2011 (90 days before the first redemption date of the 2001 Bonds), even if prevailing rates would make it extremely attractive to do so.

GOZA permits one additional advance refunding of bonds issued to finance governmental facilities and qualified 501(c)(3) bonds. This additional advance refunding authority extends to governmental entities and nonprofit corporations throughout the State of Alabama. The maximum amount of advance refunding bonds which may be issued under GOZA is limited to \$1.125

...ALLOWS BUSINESSES TO CLAIM A SPECIAL FIRST-YEAR DEPRECIATION DEDUCTION EQUAL TO 50 PERCENT OF THE COST OF NEW QUALIFIED CAPITAL INVESTMENTS MADE IN THE GO ZONE.

billion in the State of Alabama and such advance refunding bonds must be approved by the governor. In addition, the advance refunding bonds must be issued prior to January 1, 2011.

There is one important limitation on the Act's advance refunding authority. To be eligible under GOZA, a refunding bond issue must be the only other outstanding bond issue with respect to the refunded bonds. Thus, for example, if City A issues bonds initially in 2001 (the "2001 bonds"), which are not callable until 2011, and the 2001 bonds are advance refunded in 2004 (the "2004 bonds"), then City A cannot take advantage of the GOZA advance refunding option. Since GOZA bonds must be issued prior to January 1, 2011, any effort to refund the 2004 bonds would cause there to be three sets of bonds outstanding at the same time.

Bonus Depreciation

GOZA allows businesses to claim a special first-year depreciation deduction equal to 50 percent of the cost of new qualified capital investments made in the GO Zone. This rule is available only if the investment property was *not* financed with the proceeds of tax-exempt bonds. Thus, this provision will be particularly useful to businesses which invest in heavy equipment and movable fixtures since GOZA bonds may not be issued to finance such property. The availability of this bonus depreciation is not dependent upon the approval of the governor.

IT IS ESSENTIAL THAT ATTORNEYS... MUST DEVELOP A WORKING KNOWLEDGE OF THE GULF OPPORTUNITY ZONE ACT OF 2005.

In order to be eligible for the bonus depreciation, the property in question must be either (i) tangible property which, under the Modified Accrual Cost Recovery System, has an applicable recovery period of 20 years or less, or (ii) computer software that is available for purchase by the general public, subject to a nonexclusive license, and has not been substantially modified, or (iii) water utility property, or (iv) certain leasehold improvement property, or (v) certain nonresidential real property and residential rental property. Substantially all of the use of such property must be in the trade or business of the taxpayer within the GO Zone. In addition, the original use of the property in the GO Zone must commence with the taxpayer (accordingly, used property may qualify so long as the property has not previously been used in the GO Zone). Finally, the property must be purchased and placed in service before January 1, 2008.²

Expensing for Gulf Opportunity Zone Property

Current law permits eligible small businesses to expense up to \$100,000 of qualifying investments. Eligible small businesses are defined as those with less than \$400,000 of annual investments. GOZA doubles the amount that may be expensed under section 179 (from \$100,000 to \$200,000) for investments made in the GO Zone. It also increases the phase-out floor from \$400,000 of annual investments to \$1 million. The higher phase-out ensures that section 179 expensing remains available to small businesses even if they have extraordinary investments in one year due to the cost of rebuilding after Hurricane Katrina. This provision expires after December 31, 2007.

Economic Development and Public Policy Implications

The new GOZA bonding authority and advance refunding authority present a host of public policy and economic development challenges and opportunities for the Riley administration. The Act leaves it entirely within the discretion of the governor to determine how to allocate the volume cap for GOZA "new money" bonds and advance refunding bonds. If the governor determines to allocate the new money volume cap on a strictly first-come, first-served basis, without any restriction as to the size of the project, then large capital-intensive utility companies, such as Alabama Power, may quickly reserve a substantial portion of the volume cap. On the other hand, the governor may determine that this bonding authority would be useful as an economic development tool when competing with a state other than Mississippi or Louisiana for a high-profile manufacturing facility. Perhaps the governor will determine that this bonding authority could be important as an inducement to small companies willing to locate or expand in under-developed Black Belt counties within the GO Zone. However, if the governor reserves a substantial

amount of the volume cap for a speculative project and the volume cap is not allocated in full by the end of 2010, then the state will lose the opportunity to take advantage of this bonding authority.

Similarly, the Riley administration has decisions to make regarding how to allocate the advance refunding authority. Although the purpose of GOZA was to provide relief to areas affected by Hurricane Katrina, the additional advance refunding authority is available, with the governor's approval, throughout the state. Governor Riley may wish to use a portion of this authority to relieve the state's General Fund by refunding outstanding indebtedness that is payable out of the state's general revenues. Alternatively, the governor may wish to grant advance refunding authority to local school boards or colleges and universities as part of a comprehensive education initiative. Perhaps the governor may decide to grant advance refunding authority only to entities within the GO Zone. Or, the governor may believe it is prudent to withhold a portion of this authority with the expectation that interest rates will drop before the end of 2010. If an improved interest rate environment does not materialize by that time, the advance refunding authority granted by GOZA will disappear.

In short, GOZA has presented the Riley administration with an important public policy tool but one that is fraught with political ramifications. Any allocation formula that the Riley administration may implement can be changed at any time in the governor's discretion, but it is essential that the demand for volume cap be carefully monitored by the governor's office. Any unused volume cap will expire December 31, 2010.

Conclusion

It is essential that attorneys who represent public entities, businesses and nonprofit corporations in the 11-county area comprising the GO Zone must develop a working knowledge of the Gulf Opportunity Zone Act of 2005. The Act also presents significant potential opportunities for public entities and nonprofit corporations throughout the rest of the State of Alabama. For areas devastated by Hurricane Katrina, the Gulf Opportunity Zone Act offers a glimmer of hope. For many other areas along the coast and in the Black Belt of Alabama, GOZA presents a major opportunity for economic development. ■

Endnotes

1. The only prohibited nonresidential uses include any private or commercial golf course, country club, massage parlor, hot tub facility, sunbath facility, racetrack, or other facility used for gambling, and any store the principal purpose of which is the sale of alcoholic beverages for consumption off premises.
2. For qualifying nonresidential real property and residential rental property, the property must be placed in service before January 1, 2009.



Frank D. McPhillips

Frank D. McPhillips is a cum laude graduate of Harvard University (1976), where he was a John Harvard Scholar, and the University of Virginia School of Law (1980), where he was a Hardy C. Dillard Fellow and a Moot Court Board member. McPhillips served as a law clerk to Judge Sam C. Pointer, Jr., retired, U.S. District Court, Northern District of Alabama. He is a shareholder in the Birmingham firm of Maynard, Cooper & Gale PC.



ppsstt

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State Court, 123 Street, Anytown, USA...

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John A. Doe, 555-5555...

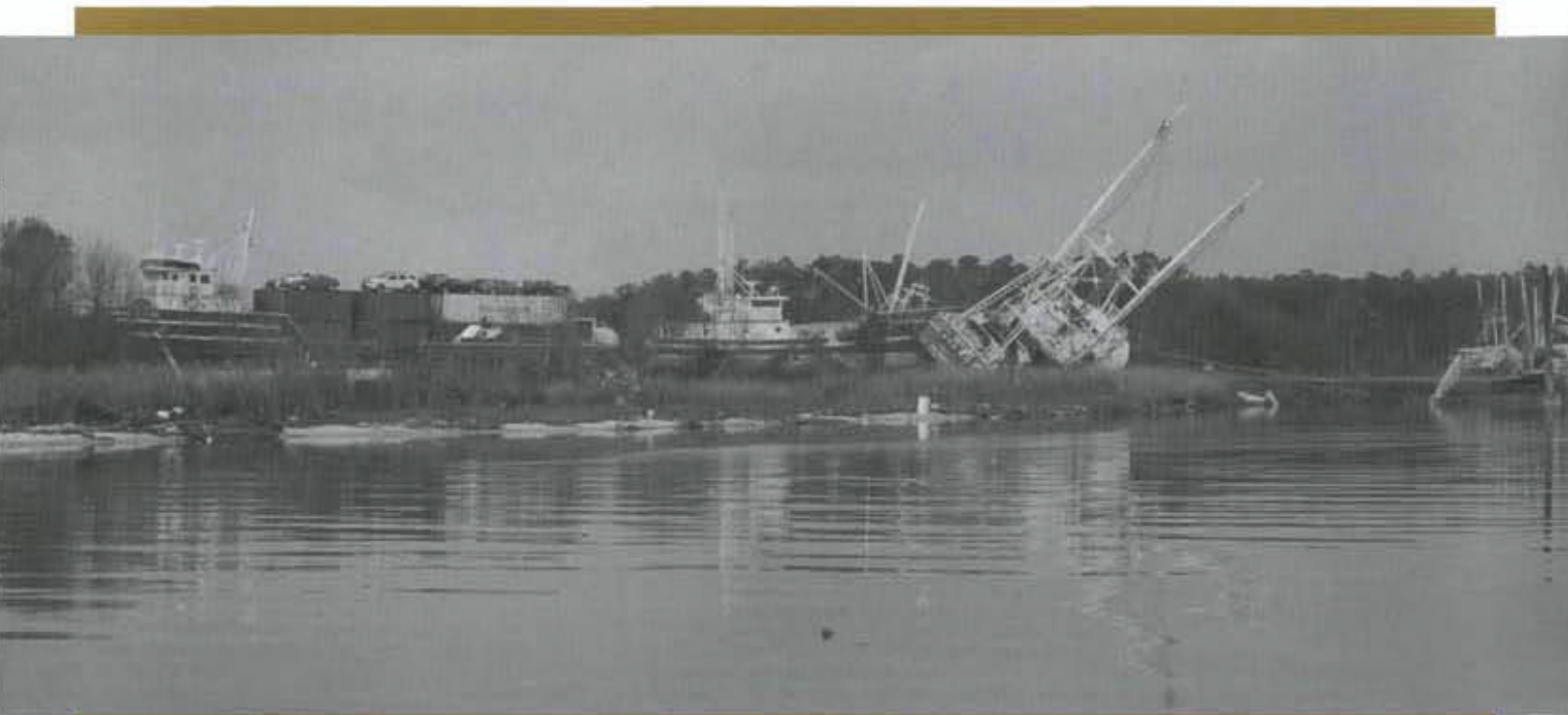
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hire a detective.**

**Find them all at
www.alabar.org, "Bar Directory"**

(Please note: There was no 2006 bar directory printed – go to the ASB Web site for the most up-to-date names, addresses and other information available!)



Shrimp boats remain aground in the aftermath of Hurricane Katrina, shown in January 2006 in Bayou La Batre on Mobile Bay, Alabama. (Photo by Jacqueline McGlamery, Minnesota State Bar)

MINNESOTA LAWYERS RAISE \$400,000 FOR LEGAL SYSTEMS IN THE GULF COAST; **Legal Services Alabama Receives \$34,000 Donation**

BY MELISSA A. PERSHING

Minnesota State Bar Association (MSBA) President Susan M. Holden recently announced that MSBA members have contributed \$400,000 to rebuild Gulf Coast legal systems damaged by Hurricane Katrina. Of those funds, \$40,000 has been allocated to Legal Services Alabama and two checks totaling \$34,343 have been presented to LSA.

MSBA President Holden, past MSBA President Jim Baillie, MSBA staffer Jacqueline McGlamery and Minnesota attorney Abigail Turner (chair of the

MSBA Katrina Task Force on Delivery of Legal Services subcommittee) recently visited the Katrina-affected states. During their four days in the Gulf Coast, the MSBA delegation visited storm- and flood-damaged areas around Mobile, Pascagoula, Biloxi and New Orleans.

More than three million people were affected by hurricanes Katrina and Rita. Almost a million were evacuated, most to Texas, but many to Alabama, Arkansas and Georgia. In one week in September, 15,000 people applied for emergency food stamps at the Mobile Civic Center.



Members of the Minnesota State Bar Association visit Alabama in January in the aftermath of Hurricane Katrina. Shown at the Bayou La Batre City Hall are: Sue Holdert, MSBA president; Jim Baillie, co-chair, MSBA Katrina Task Force Subcommittee on Delivery of Legal Services; Jackie McGlamery, MSBA staff; Abigail Turner, co-chair, MSBA Katrina Task Force Subcommittee on Delivery of Legal Services; and Debbie Jones, executive assistant to the mayor, City of Bayou La Batre.

As of the end of January 2006, there were 135,000 households (*not individuals—households*) registered for FEMA assistance in Alabama as a result of hurricanes Katrina and Rita. Ninety thousand of those are in Mobile, with the sixth highest concentration of FEMA applicants out of the 369 metro areas in the country currently reporting applicants within their boundaries. The second largest concentration is in Birmingham with the remainder scattered throughout the state from north to south and east to west.

A dozen Disaster Resource centers were opened in Alabama in the months following Katrina. Alabama State Bar and Mobile Volunteer Lawyer programs (VLPs), Legal Services Alabama staff and lawyer and law student volunteers staffed tables at every disaster resource center in Alabama most days they were open. Several thousand calls for disaster legal assistance have been answered to date by the Alabama State Bar VLP/Young Lawyers' Section ABA-funded disaster line, by LSA's Disaster Hotline Network and by the Mobile Volunteer Lawyer

Program. More than 600 Katrina-related cases have been opened by volunteer lawyers and by LSA staff attorneys since Katrina struck. Two-thirds of these cases are being handled by LSA—with 150 added to the regular case loads of the LSA's Mobile office staff alone.

The New York State Bar has raised and sent LSA \$10,000. The ABA Litigation and Antitrust Section members have contributed hundreds of thousands of dollars to legal services in Louisiana and Mississippi and made a \$30,000 contribution to Legal Services Alabama's litigation fund to be used for Katrina victims. LSA has received a contribution from the American Association of Corporate Counsel and a grant from the AARP to help provide legal assistance to senior victims of Katrina. The Florida Bar Foundation covered all the expenses for experienced disaster legal services trainers and facilitators from Florida to come to Alabama on several occasions and the Georgia State Bar waived the registration fee and opened its own disaster legal services CLE to a dozen LSA attorneys

from around the state—so that they could come back and keep LSA's local offices open while LSA had its own three-day CLE to train the rest of its staff and volunteer attorneys.

We know from experience and are deeply grateful that the Alabama State Bar and Alabama Law Foundation, law students and volunteer attorneys will always help out our colleagues and our citizens in a time of need, but we indeed stand in awe of those lawyers and organizations outside Alabama who are giving of their time and money to us to make sure the legal needs of Katrina victims are met—no matter where they are. ■



Melissa Pershing

Melissa Pershing is executive director of Legal Services Alabama, a statewide nonprofit organization providing free civil legal aid to low-income Alabamians and victims of Hurricane Katrina.

Alabama Court Administration Certification Program



Court Administration Enhances and Improves the American Justice System

BY ALLEN L. TAPLEY

I recall as if it were yesterday the occasions during 1976-78 when I witnessed "up close and personal" the need for a university-based court education program. In the fall of 1976, C.C. (Bo) Torbert Jr. of Opelika had been elected the chief justice of Alabama to succeed Howell Heflin. It was to be the responsibility of Torbert to implement the judicial reforms which had been recently adopted by the Alabama legislature and public during the tenure of Chief Justice Heflin. As Torbert put it to me in a conversation, this new job of mine was to have "something to do with administration." My work at the time was in hospital administration in Opelika and the new chief justice-elect and I had previously worked together on several projects.

In a later conversation, Chief Justice-Elect Torbert was to ask me to come with him to Montgomery in January 1977 and assist him in implementing and administering the new state court system. I recall clearly my reply to Torbert: "I am deeply grateful for your faith in me, but I am just not qualified to manage the state courts. I have never met a real life judge, know nothing about the courts, and know very little about state government."

I then asked the chief justice-elect, "By the way, exactly what does the chief justice do?" He looked at me for a moment, and then replied, "You know, I'm just not sure what all the chief justice does. Why don't we go to see Howell Heflin in Montgomery and get him to orient us about all this?" Thus, I was to soon meet my first real life judicial official in the person of Chief Justice Howell Heflin. The point of this story thus far is this: In 1977 there was a short list, if not an empty supply, of qualified court managers not



Chief Justice Bo Torbert (ret.) and Allen Tapley, who worked together for 12 years

only in Alabama, but in the nation. And even today, court administration remains a relatively new, yet emerging, profession.

I was subsequently to report to the court profession in Alabama with Torbert in January 1977 with limited knowledge to perform the leadership role which had been assigned to me. But I was inspired by the challenge before us and I began to learn rapidly from some wonderfully wise and patient Alabama judges, clerks of court, district attorneys, lawyers, and employees of the courts throughout the state. And, thankfully, there was Chief Justice Torbert, my mentor each day for 12 years. Torbert was smart, diligent to all tasks at hand, experienced in state government from his legislative days, and a rapid-fire learner. He was to be a wise and devoted teacher to his new state court administrator.

But I was further challenged in my new court administration assignment in that I had to employ a staff to manage the newly established Administrative Office of the Courts. This new state central office was to provide administrative and support services to the new unified state court system. There was a finance department to staff, in order that we might have budgets, payroll and financial accountability. There was the need to establish personnel and case and jury management divisions, court records, legal support, space and property, court security, etc., and soon there would be technological innovations which would permanently change how we conduct the business of the courts.

I was also confronted with a huge problem: I had great difficulty employing qualified staff to the various positions because potential employees, like me, had little or no court knowledge or experience. It was to be a major challenge to overcome. So, it was during this period of time (1976-1978) and over the years, on many occasions, that I longed for a university-level court education program. I desired a program which would systematically provide a quality education and training location for those interested in seeking a career in the courts, and would additionally provide in-service training opportunities for current court employees.

In 1977, the Torbert administration moved quickly to establish the Alabama Judicial College. This court organization, a division of the Alabama Administrative Office of Courts, has for many years now provided court officials with greatly needed continuing education. But we, back then, and court officials throughout the years have never had the judicial college funded at a level for the program to reach and to serve the courts at the employee level.

It has long—too long—been a goal of mine to establish a university-based court administration program for Alabama and this month, Auburn University Montgomery (AUM), through its Continuing Education Department, will partner with me to provide the state of Alabama with that opportunity.

The first phase of this program will be a "court administration certification program." It will be available to the various court officials and employees and to the general public at large. No prerequisite level education degree is required and no experience in court administration is required or expected.

The classes will be offered both on weeknights (Tuesday and Thursday) and on Saturdays. This court administration certification program is an 80-hour program. In order for the student to receive a certificate in court administration, the individual must complete the full 80 hours consisting of five 16-hour/month classes to be offered in May, June, September, October, and November 2006 and January 2007. The introduction to court administration class is to be made available twice, in May and June. If needed, the introduction class may be offered again in the fall of 2006. However, the court classes may be taken individually and in no special sequential order.

The curriculum is designed to provide training in the theory of court management and in the practical skills needed in the field. This includes instruction in the structure and function of the courts and the criminal justice system, finance and budgeting, technology, case and jury management, court leadership and management skills, human resources, juvenile, probate, and municipal court services and responsibilities, legal services, space and records management, ethics, court security, and inter-governmental relations.

Each class will cost \$195, or \$975 for the five-class certification program. A ten percent discount is available to those who pay the \$975 program fee in advance.

Court administration is an interesting and dynamic profession that offers

rewarding career opportunities for a new generation. The theme of this new AUM program in court administration is "Court Administration Enhances and Improves the American Justice System."

Since the early 1970s, the Alabama courts have made wonderful progress and we can be proud that the Alabama system remains a model for American courts. In this new AUM university-level program which I am developing, teaching and coordinating, I will prepare those who seek to enter the court administration career field and also provide a quality in-service education program for the currently employed employees within the Alabama Court System. ■

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Allen L. Tapley

Allen L. Tapley served as the executive director of The Sentencing Institute from 1991 to 2005. From 1977 to 1991, Tapley served as administrative director of courts for the State of Alabama, during which time Alabama implemented a state-funded, unified judicial department of government, which became recognized as the model state system within the United States. As a result of his expertise in the areas of civil and criminal justice administration, Tapley has performed consulting work on a national basis. He is the author of numerous articles and publications regarding the operations and improvement of Alabama's justice system. Tapley received his bachelor's degree from Auburn University in 1965 and his master's degree from the University of Alabama in 1970.



THE HEFLIN-TORBERT JUDICIAL BUILDING

BY HUGH MADDOX

When the Supreme Court of Alabama, in 1820, held its first session of court in Cahaba, Dallas County, it met in a log house that it had rented from William Pye for \$20.

When Chief Justice Drayton Nabers announced the opening of the 2005-2006 Term of the Courts of Alabama on October 3, 2005, he did so in a building that had been featured on the cover of a national architectural lighting magazine, and that had been described in an article in that magazine as "[a] Southern Judicial Building [that] conveys a sense of authority and stability, as well as organized simplicity in its rich detail," and that "...it's fair to say that the facility looks more like a Capitol and less like a government institution—which is just what the State of Alabama ordered."

During the 185 years of the supreme court's existence as an appellate court, the court had occupied offices located at the seat of the state capitol. Likewise, the intermediate appellate courts had also occupied offices at the seat of the state government, and sometimes within the same building.

In October 1993, when the new Alabama Judicial Building was opened, it was the first time that the Supreme Court of Alabama, the court of criminal appeals, the court of civil appeals, the Supreme Court and State Law Library, and the Administrative Office of Courts were housed under one roof.

There was no official dedication ceremony held at the time the new building was first occupied, or subsequently, but when the Alabama legislature, in 2004, adopted a resolution to name the new judicial building the Heflin-Torbert Judicial Building instead of the Alabama Judicial Building, in honor of the late former Chief Justice Howell T. Heflin and former Chief Justice Clement Clay Torbert, the supreme court thought it appropriate to arrange an official dedication of the building. That dedication ceremony was held in the afternoon of October 3, 2005, after the opening-of-court ceremony.

The dedication ceremony was held in the beautiful rotunda of the building, and was attended by members of the

Heflin and Torbert families, and many past and present government officials, members of the Alabama State Bar, and other persons associated directly or indirectly with the passage of the legislation that authorized the construction and location of the building. Chief Justice Nabers presided at the dedication ceremony and after some brief remarks about the history of the almost 30-year period it took to get the new building constructed, former Chief Justice Torbert expressed his appreciation to the legislature for honoring him in such a special way, and to all of those who had helped him in getting legislative authorization to construct the building. Tom Heflin, son of late Chief Justice Heflin, and a Tusculum attorney, made a similar response on behalf of his deceased father.

The history of the appellate courts of Alabama shows that the supreme court, the old court of appeals and the current court of criminal appeals and court of civil appeals have always had offices located at the seat of the government, but until the construction and occupancy of the new judicial building, those courts and the justices and judges did not always occupy the same building. From 1885 until July 1940, for example, the Alabama Supreme Court occupied offices in what is now the east wing of the state capitol, and in space in the capitol that is now used to display some of the furniture and other items used by the court when it was located in the capitol.

The history of the location of the appellate courts after 1940 is contained in several

documents that are on file in the Alabama Supreme Court and State Law Library. Based on facts contained in some of those documents, it appears that during the 1920s, the capitol building became inadequate to house all the departments of state government then located in it, and Governor Bibb Graves, in the late 1920s, commissioned a Birmingham architectural firm to prepare a design for the entire capitol complex. That firm subsequently designed the original building that is now used by the Department of Archives and History, and also designed a new building for the Highway Department that was located on the south side of Dexter Avenue in front of the capitol. The Birmingham architectural firm also designed the State Office Building that is located in front of the capitol and across the street from the old Highway Department Building, subsequently occupied by the Department of Public Safety.

The Birmingham firm also was responsible for the design and renovation of the old Judicial Building located on Dexter Avenue, which was a Scottish Rite Temple, and was purchased by the State of Alabama in 1938 and remodeled, and, in July 1940, was used by the supreme court, the old court of appeals and the attorney general. The attorney general at that time was the late Justice Thomas S. Lawson, and he played a leading role in the remodeling of the Scottish Rite Temple for use by the two appellate courts and by his office as attorney general. Newspaper accounts of the move by the supreme court, the old court of appeals and the attorney general show that the move to new quarters was very acceptable. One newspaper account described the move as follows:

"Among the innovations expected to be made in the new judiciary home is the use of judicial robes by the justices. This is done in keeping with the dignity of the

court, with the solemn somberness with which its judgments are pronounced and in line with the practice long in effect in most of the higher courts of the land."

In 1965, however, the old Judicial Building that had been so welcomed by the courts in 1940 had become woefully inadequate, and according to William C. Younger, marshal and librarian of the supreme court, the dream of a new judicial building occurred on an auspicious occasion early one morning when Associate Justice Pelham J. Merrill met him on the ground floor of the old Judicial Building and advanced to him the idea of building a new building. The supreme court apparently took immediate action on Justice Merrill's suggestion, because shortly thereafter, on Monday, November 1, 1965, the minutes of the supreme court kept by the clerk of the court show that the supreme court, after considering several items on its Miscellaneous Docket, adopted a resolution that stated, in part, "that the Judicial Building [had] become inadequate for the present and future needs of the Supreme Court and the Court of Appeals," and that a committee should be appointed to address that problem. The resolution further stated that then Chief Justice J. Ed Livingston and then Presiding Judge Annie Lola Price of the court of appeals should appoint a member of their respective courts to serve with the librarian of the supreme court, William C. Younger, as a joint committee to investigate the requirement, cost and feasibility of constructing a building for the use of both the supreme court, the court of appeals and the supreme court library. That committee was subsequently established, and the late Justice Merrill served as its chairman until he retired from the supreme court in January 1977, and, according to Younger, the committee continued to exist thereafter.

At about the same time that this activity regarding the need for a new judicial building was occurring at the supreme court in 1965, the late Howell T. Heflin, who was president of the Alabama State Bar in 1965, and who later served as chief justice and as a United States Senator respectively, was taking action, not only looking forward to getting a new judicial building constructed, but he started laying plans for a complete modification of



Chief Justice Nabers addresses invited guests and honorees before unveiling the busts of Heflin and Torbert.



Chief Justice and Mrs. Torbert, Tom Heflin, Mrs. Howell Heflin, and Justice Maddox listen to remarks during the dedication of the Heflin-Torbert Judicial Building.

Alabama's judicial system. His major project was to get legislation adopted that would completely reform the judicial system of the State of Alabama and the rules and procedures by which it would operate. To accomplish this, Heflin appointed numerous committees, including a "Committee on Feasibility of Citizen's Conference," and that committee subsequently arranged for the convening of what became known as the First Citizens' Conference on State Courts. That Citizen's Conference met in Montgomery on December 8, 9 and 10, 1966, and the conferees at that conference represented a variety of professions and trades from every area of the state. At that Citizens' Conference, the conferees heard a keynote address by Justice Merrill and other renowned experts in the field of judicial administration, and at the close of the conference, the conferees issued a consensus statement that many believe was used as the blueprint for the reforms subsequently made in the Alabama Judicial System.

Regarding the construction of a new judicial building, Heflin appointed a "Committee on New Judicial Building" that was chaired by Albert P. Brewer, who was then speaker of the Alabama House of Representatives. As reported in the *The Alabama Lawyer*, "[that] Committee unanimously recommend[ed] the support of legislation which [would] enable the construction of a new judicial building," and according to the report of the New Judicial Building Committee, legislation had already been drafted, and a conference with the governor and other officials had been held and the full support of the governor and other appropriate state officials had been assured. The expectancy expressed by the committee did not happen.

A bill was introduced in the Alabama House in the 1966 Extraordinary Session of the Legislature by Messrs. Brewer *et al*, as H. B. 166 to authorize the construction of a new judicial building. Two of the co-sponsors of H. B. 166 were Rep. Henry Steagall and Rep. Kenneth Ingram, and both of them would later serve as associate justices on the supreme court, after having served in other offices of state government. Although H.B. 166 passed the house, and was sent to the senate and received its first reading and



Former Supreme Court of Alabama, 445 Dexter Avenue, Montgomery (Photo courtesy of Marcia Daniel)

was referred to committee, the journal of the senate for that session does not reflect that the senate took any further action on the bill.

In the late 1960s and early 1970s, further attempts were made to get legislative approval for a new judicial building. Journals of the legislature show that bills to authorize the construction of a new building were introduced in the 1967 Regular Session, the 1967 Extraordinary Session and the 1973 Regular Session, but none of those bills passed. H. B. 422, that was introduced in the Regular Session of 1973, almost made it through the legislature. It passed the house and was the next bill on the calendar for consideration in the senate on the last day of the legislative session, but the senate adjourned without considering it. Consequently, it suffered the same fate as had the 1966 legislation.

After that 1973 failure to get legislation passed, efforts to get legislative authorization to build a new judicial building were basically suspended, and were not restarted until November 20, 1981, when the Judicial Study Commission's subcommittee, that was charged with the responsibility for studying the need for a new judicial building, recommended the creation of a joint legislative committee to make appropriate studies and recommendations on the matter. Three years later, in 1984, the Alabama legislature accepted the challenge and became actively involved in the process.

Legislative journals show that representatives Tom Drake and James Clark

introduced a House Joint Resolution, H.J.R. 91, in 1984, which created a Joint Legislative-Judicial Committee to study, develop plans and make recommendations for a new judicial building. Members of that Joint Legislative-Judicial Committee visited new or recently constructed court buildings around the country to get ideas for design and function requirements, and when the legislature, in 1985, appropriated \$250,000 to the Unified Judicial System to hire consultants and architects who were knowledgeable in the design and construction of court buildings, the prospects for a new judicial building seemed more promising. Those prospects improved significantly when the City of Montgomery, the Alabama State Bar, the Landmarks Foundation and Montgomery's two daily newspapers carried editorials supporting the construction of a new judicial building. Those groups were interested in having a new judicial building built and located on Dexter Avenue, rather than "at the extreme end of the capitol complex facing the east side of the capitol," as reported by the initial state bar's Committee on New Judicial Building appointed in 1965 by Howell Heflin. The Dexter location was commended in an analysis in a local newspaper, and by Maury Smith, a Montgomery attorney who had been appointed chairman of an Alabama State Bar Task Force on Proposed Judicial Building, who pointed out in a letter that many members of the bar supported putting the new building on Dexter.

The Dexter location was finally settled when the Building Commission of the State of Alabama, on June 17, 1985, acceded to the desires of those who favored the Dexter location, and voted unanimously "to 'look favorably' at building a judicial center in the Dexter Avenue section of the capitol complex." The Dexter Avenue location had been strongly supported by editorials appearing in both of Montgomery's daily newspapers.

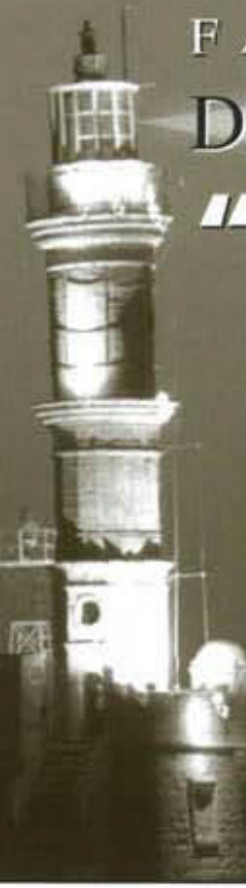
The prospects for a new judicial building became even much more realistic when legislation authorizing the construction of the new building was sponsored by Senator Ryan deGraffenried and 23 other senators as S.373 in the Regular Session in 1986. Sen. deGraffenried's bill authorized the creation of the Alabama Judicial Building Authority, and authorized the authority to issue \$40,000,000 in bonds to construct a new building. Although significant progress had been made in getting authorization to build a new judicial building, and although the bill passed the senate without significant

difficulty, it was subjected to extended debate and parliamentary moves in the house that could have caused its defeat. In fact, it appeared to many that S.373 would die in the house on the last day of the session, and therefore, would suffer the same fate as similar bills had suffered in 1966 and 1973. In fact, in a story on the front page of the *Montgomery Advertiser*, dated Wednesday, April 23, 1986, it was reported that "[m]embers of the local [Montgomery] legislative delegation said the [new judicial building] bill has little chance of passing Monday, the last day of the regular session, because of the opposition and the fact that a state budget has not been adopted."

A more disturbing story appeared in the *Montgomery Advertiser* the next day, on Thursday, April 24, 1986. Under a headline stating "Speaker Not Expected To Force Vote on Judicial Building Bill," State Rep. Roy Johnson, speaker pro tem of the house, who presided as speaker on the last day of the Regular Session in 1986, stated that he did not expect the

house leadership to force a vote on S. 373 on the last day of the session. In that same article, Chief Justice Torbert expressed his disappointment that the house did not pass the bill the week before. Opponents of the bill in the house claimed that support for the bill was "soft," and even though "pressure [was] mounting on opponents of the bill," one member of the legislature stated that "debate will end only if the House leadership forces a vote."

Based on the entries in the Journal of the House for the regular session, 1986, and newspaper accounts of legislative action at the time, it appeared that the foregoing dire predictions that the bill would not pass might be true. The legislative history of S. 373 shows that this pessimism was indeed realistic, because S. 373 was subjected to several parliamentary procedures that almost defeated it. The Journal of the House shows that Rep. James Clark of Eufaula was persistent in getting the bill on the special order calendar in the house, getting a budget



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isolation resolution adopted and getting the bill amended to guarantee some legislative representation and oversight over the construction of a new judicial building. One of the most critical votes occurred when Rep. Alvin Holmes of Montgomery offered a motion in writing that read: "Mr. Speaker, shall the main question now be put?" That written motion by Rep. Holmes was adopted by an extremely close vote, 34-33, and S. 373, as amended, was read a third time at length and passed, 69-23. Rep. Roy Johnson, having voted with the prevailing side, then made a motion to reconsider the vote by which S. 373 was passed and to table the motion to reconsider, and the motion to table was adopted, thereby foreclosing any further consideration of S. 373. The senate concurred in and adopted the house amendment to the bill. The president and presiding officer of the senate signed the bill and sent it back to the house, where the bill was duly signed by the speaker of the house, in the presence of the house, and sent to Gov. George C. Wallace, who signed the bill into law on April 29, 1986, in the presence of several members of the legislature and the Alabama judicial system.

Based on the legislative history of S. 373, it is obvious that much credit for the passage of the bill on the final day must go to a number of individuals who worked so hard for its passage. Chief Justice Torbert, according to Speaker Tom Drake, spent a significant amount of time talking to him and other legislators to urge passage of the legislation. Others also lent their support. There were editorials in the Montgomery daily newspapers supporting its passage, with titles such as "Vote for Building" and "Pull It Together." The Judicial Building Committee of the Alabama State Bar, chaired by Montgomery attorney Maury Smith, also strongly supported the passage of the bill, as did the Montgomery Landmarks Foundation. There were also some other personal contacts made with Governor Wallace on behalf of its passage, and Mayor Emory Folmar and the City of Montgomery not only provided support for the legislation but also financial assistance to purchase lots on which the building was built.

Once the bill became law, the Alabama Judicial Building Authority was created,

and on July 10, 1990, the sum of \$40 million in bonds was issued, property was acquired and contracts were entered into between the authority and Barganier, Davis & Sims and Gresham, Smith & Partners, architects, and Brasfield & Gorrie Construction respectively to design and construct the building. The authority selected a site that was bounded on the north by Dexter Avenue, on the east by Hull Street, on the south by Washington Street and on the west by McDonough Street. The selection of that block was not acceptable to some of the owners of the lots in that block, but the issue of the location of the building was finally resolved—it would be on Dexter Avenue.

It took two years from the time the building construction was begun in September 1991 until it was completed and occupied in October 1993. During that time, the authority selectively restored and refinished several items of furniture in the old judicial building, such as judges' desks, tables and bookcases, and preserved as much of the property in the old building that could possibly be used in the new building.

Chief Justice Torbert, who had worked so hard to get legislative authorization for a new judicial building, elected not to seek re-election in 1988; therefore, he did not get to oversee the construction of the building. Ernest C. "Sonny" Hornsby succeeded Torbert as chief justice, and he retained Jack Dixon as the project manager for the building. Dixon was an Alabama lawyer who was a retired staff judge advocate at the Air University, and who had previously been hired by Torbert as his staff counsel. Because of the complexities of the construction project, Chief Justice Hornsby also hired an independent architect to work with the authority's staff to handle architectural and construction matters.

Dixon maintained a detailed record of every expenditure, and, according to Dixon, because Chief Justice Hornsby insisted on "vigorous competition" among the suppliers of some expensive elements of the building, the authority was able to get Indiana limestone instead of pre-cast concrete for the exterior of the building, Honduran mahogany instead of standard walnut for interior built-in furniture, and Italian marble from the Carrara quarry, where

Michaelangelo got his marble for his masterpieces, instead of marble of less quality, for use in the rotunda of the building.

The new judicial building, since it was opened, has become a favorite spot for visitors, both young and old. Docents guide tours of the building and point out interesting information about its design and the function of the courts located in it. It is estimated that since 1997, when records of visitors were kept, as many as 138,000 persons have visited the building. Before records were kept, it is estimated that the number of visitors totaled approximately 12,000 each year.

Even though the construction of the building ultimately received the support of Gov. Wallace and the legislature, and even though Gov. Guy Hunt and Gov. Jim Folsom, Jr. subsequently supported the construction of the new building after the authority was created, there were still those who felt that the new building should not be built. While the legislation was pending to authorize the construction of the new building, and before the building was actually constructed, for example, some legislators and citizens expressed an opinion that the building was too expensive, and others complained that there was no need for a large library because of computerization of legal data. There were some other problems associated with the building of the new structure. Some of the landowners objected to the location of the building on their lots, and some objected to the price offered by the authority to purchase their interests, but these problems with the acquisition of the land were ultimately resolved, with 13 of the 14 owners agreeing to sell at the price negotiated by the authority. There were also some questions raised about the legality of the bidding process in connection with the construction of the building, but these questions were ultimately resolved also.

Because of all the complaints about the need for a new building, especially those related to the cost of the new building that were made even before it was constructed, the question could be asked: What was the final cost of the building? According to Dixon, when the construction of the building was completed, on time, it was a million dollars under budget,

and the cost of construction was approximately \$117 per square foot. When will the building be paid for? According to Dixon, the lease between the Alabama Judicial Building Authority and the Unified Judicial System provides that after the bonds are paid off in December 2013, the authority will have the option to purchase the building in the name of the Unified Judicial System for \$1,000.

Another question might be asked: Why was the name of the judicial building changed from the Alabama Judicial Building to the Heflin-Torbert Judicial Building? The Alabama legislature authorized it. In a house joint resolution signed into law as Act 2004-59, the legislature designated the Alabama Judicial Building the Heflin-Torbert Judicial Building, "in recognition of and appreciation for the distinguished judicial service and leadership of these outstanding individuals." The legislature, in recognizing the judicial service of Howell Heflin and C. C. "Bo"

Torbert, set forth some of those areas of judicial service in its house joint resolution that was signed into law as Act 2004-59. That resolution designated the Alabama Judicial Building as the Heflin-Torbert Judicial Building, and the resolution was read in its entirety during the dedication ceremonies of the building.

At the conclusion of the dedication ceremonies, those attending were invited to enjoy a reception in the courtyard of the Heflin-Torbert Judicial Building, a building that had been described by Elizabeth Via Brown in an article in the *Montgomery Advertiser* on October 30, 1993, shortly after the building was first opened, as follows:

"In fashion, it's the basic black dress. Literature has Homer's 'Odyssey' and 'Iliad,' and in music, there are compositions by Bach and Wagner. In the world of art, Michelangelo is a master.

"In architecture, it's the Parthenon and the Temple of Poseidon in Greece and

the Montgomery Museum and Fine Arts, the state Capitol and the newly constructed Alabama Judicial building in Montgomery.

"All classics in their own fields, they set the standard by which all others are judged. Ask for a definition of classical and the response will likely contain words such as timeless, authoritative, excellence and traditional."



Hugh Maddox

Justice Hugh Maddox retired in January 2001, as the senior associate justice on the Alabama Supreme Court. He received his juris doctor degree from the University of Alabama School of Law and is a retired colonel in the United States Air Force Reserve.

Justice Maddox is the author of *Alabama Rules of Criminal Procedure*, a treatise on the Alabama Rules of Criminal Procedure. He is currently co-chair, with former Governor Albert Brewer, of the Alabama State Bar Task Force on Diversity in the Profession.

2006 Arbitration Training

SPONSORED BY THE ALABAMA CENTER FOR DISPUTE RESOLUTION

Date:	May 15 and 16, 2006
Place:	Alabama State Bar, Board Room
Time:	9:00 a.m. – 4:00 p.m. both days
CLE:	12 hours, including one hour of ethics
Cost:	\$360, includes materials and lunch

Faculty are experienced arbitrators: Jack Clarke, Montgomery, and Cary Singletary, Tampa

Training will cover:

The Law of Arbitration: Arbitrator's Role and Authority; Arbitrator's Pre-Hearing Functions and Duties; Conducting the Hearing; The Award and Post-Award Considerations

For registration information call (334) 269-0409 or (334) 269-1515 ext. 111



Christy Crow
Jinks, Daniel & Crow PC
Union Springs

Be careful what you ask for...



How many times have I heard that?

And, yet, I still dive headlong into new projects without knowing how much work I am adding to my plate or how I am going to find time to get those tasks completed. As anyone who has read my articles over the last few months knows, we have started several new committees and I have been asking for volunteers. The good news . . . we have lots of new volunteers and some great things going on. The bad news . . . well, there is really no bad news.

We have some great things going on and a lot of people working hard to make things happen. We have scheduled a Young Lawyers' Day of Service for June 10 where young lawyers from across the state will help in their local communities. Under the leadership of Bob Battle and Brannon Buck, the Community Outreach Committee is helping us live up to our state bar's motto, "Lawyers Render Service." There will be volunteer teams in Huntsville, Birmingham, Montgomery and Mobile. Volunteers will serve at homeless and children's shelters, soup kitchens, schools, animal shelters, and others. We will start in the morning and work through the afternoon. No special skills are required. Contact one of the following leaders in your metro-area to sign up as a volunteer:

HUNTSVILLE

Page Banks
(256) 536-9008
page@sconlon.com

BIRMINGHAM

Jon Macklem
(205) 795-6588
jwmacklem@csattorneys.com

Jodie Smith
(205) 254-1109
jodie.smith@maynardcooper.com

We also are organizing a program, "A Lawyer in Every Classroom," that will give lawyers the opportunity to go into a high school civics class in their community and speak to the students about different issues from a lawyer's perspective. Mitesh Shah and Bob Bailey are heading up that effort and doing a great job. One idea is providing information about the history of voting rights and providing an opportunity to register to vote. We are open to other ideas so if you are interested in helping out with this program, let me know. We are hoping to kick off the program by going into the classrooms in the fall.

Finally, we have our annual Young Lawyers' CLE in Destin. This year, it is scheduled for May 19-20. Lawyers from across the state join together for some great speakers. This is a good opportunity to offer a rewarding continuing education opportunity with great speakers and to also allow young lawyers an opportunity to network. Many thanks go to Tucker Yancey, Craig Martin, Norman Stockman and Clay Lanham for organizing this fun and educational event.

So, what does this all mean for me? I've been attending a lot more meetings than normal (fortunately, some are by telephone). I am still not "careful" about what I ask for because I am trying to make a difference and I think service to those in our community and to other lawyers is a cornerstone of our profession. And, I am writing this article while eating lunch at my desk. Wish me luck. ■

MONTGOMERY

Roman Shaul
(334) 269-2343
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MOBILE

Norman Stockman
(251) 694-6352
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LOST LAWYER ARTICLE



To the editor:

The article "Where Have All the Lawyers Gone?" (*Alabama Lawyer*, March 2006) begs a fascinating question: Are lawyers "uniquely qualified for service in law-making bodies?" Lawyers would no doubt like to corner the market in as many services as possible, including public service. The perception of their being uniquely qualified would certainly help when campaigning for office. But alas, the more compelling if less romantic view is that lawyers are at best equally qualified with other candidates.

The adversary approach to their training and experience may even make lawyers uniquely unqualified for public service. In most cases, the law, the facts and the lawyers' positions are given to them. As part of clinical or continuing education, many lawyers now train to resolve disputes through negotiation, mediation or more formal process—valuable skills, but always practiced under the shadow of "the case," a set of existing facts and existing law.

Judges must objectively assess the merits of each adversary's claim. But their decision-making remains even more confined to the facts in the record and the arguments of law presented to them by the lawyers. The best judges seize upon the narrowest possible reading of the law and facts to dispose of a case, lest they be accused of "making law."

Making law, the job of the legislator, presumes that no law yet exists or that existing law is not good enough—two arguments a really good lawyer should never need to make. And making law usually involves starting from scratch in developing a legislative record of reports, statistics, testimonials and economic analysis—what they don't teach you at law school.

The question begged by "Where Have All the Lawyers Gone?" has been asked before. In 1995, the dean of Yale Law School, Anthony Kronman, visited the Cumberland School of Law at Samford University, Birmingham, Alabama to present his book, *The Lost Lawyer*. The book, like this article, laments the decline of lawyer statesmen. Cumberland Professor Michael E. DeBow offered a response applicable here (26 *Cumb. L. Rev.* 859 (1995):

"[I]n the case of the alleged lawyer/policy work shortage, should the supply of sage advice from lawyers decline, there are a number of alternative suppliers ready to fill the gap. Certainly, sage advice is not fungible, and the advice one gets from a large firm partner is different than that one gets from an investment banker—to use one alternative source that Kronman recognizes—but the basic point remains that lawyers do not have a corner on the market for sage advice."

Sincerely,
James D. Johnston, JD



Robert L. McCurley, Jr.

Productive Legislature

When this article was submitted, the legislature was two-thirds of the way over and only ten days remained. It appears to be one of the more productive legislatures in many years. There have been 1,325 bills introduced in the 2006 Regular Session of the legislature. Three hundred thirty-three of these have passed the house of origin. Sixty-eight of them have already been signed into law.

All eight of the sentencing bills described in the March 2006 *Alabama Lawyer* article have passed the house of origin and need only one legislative day to be considered by the second house.

Some of the statewide bills that have passed are:

HB. 31 (Act 2006 - 114) amends various sections of Title 40 of the *Code of Alabama* to conform Alabama law to the federal income tax rules for the taxation of trusts, estates and their beneficiaries. This applies also to entities taxed as a financial institution and business trust. It further allows the State Department of Revenue to promulgate rules interpreting the act. This act will become effective for all taxable years after January 1, 2005.

HB. 49 (Act 2006 - 216) is the Alabama Uniform Trust Code drafted by the Alabama Law Institute. This act will become effective January 1, 2007. See *Alabama Lawyer*, January 2006.

HB. 120 (Act 2006 - 198) amends *Criminal Code* §§ 13A-7-5 and 6 relating to burglary in the first and second degree to add a provision to the law relating to a burglar being armed with a deadly weapon while in the dwelling or in fleeing from the dwelling and using or threatening the use of a deadly weapon against another person.

HB. 122 (Act 2006 - 218) amends *Criminal Code* § 13A-5-5 to provide that a pre-sentence investigation report is to be completed and filed on every defendant convicted of a felony and that it be in an electronic format.

HB. 152 (Act 2006 - 213) provides that the designation of "flood vehicle" be on the motor vehicle's title for disclosure to a perspective purchaser when the motor vehicle has been submerged in water.

SB. 118 (Act 2006 - 112) amends various sections of the *Criminal Code* relating to obscene material involving children to further define "matter" to include DVDs, VCRs and items stored on a computer.

SB. 133 (Act 2006 - 204) makes it a crime to expose a child to a meth lab.

Major items currently needing only one legislative day for approval include:

HB. 100 revises Title 17, which is the *Election Code* prepared by the Alabama Law Institute.

HB. 147 permits warrants executed in one county may be issued in another county. It is not necessary to secure a written endorsement on the arrest warrant from a judicial officer in the second county.

HB. 214 provides that prior to the issuing of a pistol license the sheriff shall contact available local state and federal criminal history data banks to determine whether the possession of a firearm by the applicant would be a violation of state or federal law.

HB. 287 Uniform Residential Landlord Tenant Act. The Uniform Residential Landlord Tenant Act, prepared by the Alabama Law Institute, and now after modifications made to satisfy realtors, passed the House of Representatives 100-0. This bill needs only one legislative day. When passed, it will become effective January 1, 2007. It gives both habitability rights to tenants and provides a streamlined and clear method for evictions for landlords.

HB. 479 amends various sections of the municipal code relating to municipal elections to provide for provisional voting in municipal elections to make municipal elections consistent with the provisional voting for state and federal elections.

SB. 18 increases the compensation paid to poll workers to assure that they receive at least \$75 a day and that each election inspector will be entitled to a supplemental appropriation of \$25 pending poll workers' school.

SB. 281 amends 10-2B-1.4 to allow for shareholders to appoint proxies electronically and to use electronic transmission over the Internet.

SB. 293 permits the recording in the probate office of living wills. The living wills are not open for general public inspection but will be available to emergency medical personnel,

hospitals, physicians and members of the person's immediate family.

Already there have been 22 local acts signed into law with several hundred others expected to pass.

The Annual Meeting of the Alabama Law Institute will be held at 10:30 a.m. Thursday, July 13, 2006 during the Alabama State Bar Annual Meeting in Destin. Major legislation passed during the 2006 Regular Session of the legislature will be reviewed.

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

Robert L. McCurley, Jr.

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

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J. Anthony McLain

Billing Client for Attorney's Fees, Costs And Other Expenses

The Disciplinary Commission, in RO-94-02, addressed the issues surrounding a lawyer's billing a client for attorney's fees, costs and other expenses incurred during the representation of the client. Basically, the Disciplinary Commission's opinion adopted ABA Formal Opinion 93-379.

The instant opinion reaffirms the Disciplinary Commission's adoption of and adherence to that referenced formal opinion of the ABA.

Discussion:

One of the primary factors considered by a client when retaining a lawyer is the fee to be paid by the client for the lawyer's providing legal representation to the client. Incidental to the lawyer's fee, for which the client will be responsible, are those expenses and costs incurred by the lawyer during the representation of the client.

Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation. Inherent in this initial consultation with a client would be some discussion of the fee to be charged by the lawyer, and possible reimbursement to the lawyer for expenses he or she incurs during the representation of the client.

In those situations where there is no pre-existing lawyer-client relationship, Rule 1.5(b), *Alabama Rules of Professional Conduct*, encourages the lawyer to communicate to the client, preferably in writing, the basis or rate of the fee to be charged by the lawyer for representing

the client. The rule suggests that this communication occur "before or within a reasonable time after commencing the representation." *A.R.P.C.*, 1.5(b).

The comment to Rule 1.5 encourages that "... an understanding as to the fee should be promptly established." The lawyer is also given an opportunity at the outset of representation to fully discuss and address any concerns which the client may have concerning the total fee, which would obviously include costs and expenses to be reimbursed to the lawyer by the client.

Additionally, Rule 1.5(c) states:

"Rule 1.5 Fees

(c) ... A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated."

Rule 1.5(a), *A.R.P.C.*, also prohibits a lawyer from entering into an agreement for, or charging, or collecting a clearly excessive fee. In the past, the Disciplinary Commission has reviewed allegations of clearly excessive fees in the disciplinary process. Due consideration is given, in addressing those type of complaints and fee disputes, to the total fee to be charged to the client by the lawyer, which would necessarily include reimbursed costs and expenses.

For that reason, the lawyer should, when assessing the reasonableness of the fee, take into consideration not only the

basic attorney fee, but the total amount to be paid by the client, including costs and expenses reimbursed to the lawyer.

The primary focus of the assessment should be to determine whether the total charges to the client are reasonable.

The basic costs or expenses incurred by the lawyer in representing the client can be broken down into two basic categories: (1) Those costs which are incurred by the lawyer within the firm itself, e.g., photocopying, postage, audio and videotape creations, producing of exhibits, and the like; and, (2) Costs incurred external of the law firm or outsourced by the law firm in further representation of the client, e.g., depositions, production of records from a third party, travel and lodging, and the like.

In ABA Formal Opinion 93-379, charges other than professional fees are broken down into three groups, for discussion: (A-1) General overhead; (B-2) Disbursements; and (C-3) In-house provision of services. With regard to overhead, said opinion states:

"In the absence of disclosure to the client in advance of the engagement to the contrary, the client should reasonably expect that the lawyer's cost in maintaining a library, securing malpractice insurance, renting of office space, purchasing utilities and the like would be subsumed within the charges the lawyer is making for professional services."

Therefore, that opinion does not consider overhead as an expense which is to be passed along to the client independent of the basic fee for professional legal services.

With regard to disbursements (B-2) above, the opinion points out that it would be improper "... if the lawyer assessed a surcharge on these disbursements over and above the amount actually incurred unless the lawyer herself incurred additional expenses beyond the actual cost of the disbursement item." This would include, but not be limited to, litigation expenses such as jury consultants, mock trials, focus groups and the like. The opinion also points out that if a lawyer receives any type of discounted rate or benefit points, then those discounted rates or benefit points should be passed along to the client.

With regard to (C-3) above, the opinion states that "... the lawyer is obliged to charge the client no more than the direct cost associated with the service ... plus a reasonable allocation of overhead expenses directly associated with the provision of the service ...". The obvious reasoning behind this approach is that the lawyer should not utilize the lawyer-client relationship, beyond the fees for professional services, to "manufacture" a secondary source of income by inflating costs and expenses billed to a client. This approach philosophically agrees with Rule 1.5's prohibition against clearly excessive fees. Since the basic lawyer's fee is governed by a "reasonableness" approach, likewise, all fees and expenses which are charged back to a client during the course of the representation should be reasonable, and not considered as a secondary opportunity for a lawyer to generate additional income from the lawyer-client relationship.

In reviewing this aspect of the lawyer-client relationship, it is also necessary to consider possible abuses by lawyers of a lawyer-client relationship with regard to fees charges for the lawyer's professional services. ABA Formal Opinion 93-379 recognizes two possible scenarios where a lawyer's billing practices would contravene the *Rules of Professional Conduct*. In one situation, the lawyer bills more than one client for the same hours spent. If a lawyer appears on behalf of multiple clients for one docket call, with each client being a separate case file and separate lawyer-client relationship, may the lawyer bill each file for the total number of hours spent at the docket call? The obvious answer to this would be no. Otherwise, the lawyer would be guilty of using a multiplier for his time spent on behalf of a client which would be not only misleading, but, in some instances, rise to the level of fraud. The classic example would be a lawyer appointed to represent indigent defendants in criminal cases. The lawyer receives notices that he has three separate clients on the same morning docket. The lawyer sits and participates throughout the docket which spans some two hours. Upon returning

to his office, the lawyer then bills each of the client files the two hours expended in court, totaling hours in multiple of the number of client files presented during that docket.

The situation would develop whereby a lawyer would actually be billing more hours than actually expended by the lawyer, which would contravene not only public policy, but also the *Rules of Professional Conduct*.

A second situation involves a lawyer who performs work for one client while engaged in an activity for which he bills another client. The classic example is the lawyer who flies from one city to another for a deposition on behalf of Client A. The time spent by the lawyer in traveling to and conducting the deposition would be billed to Client A.

However, during the flight, the lawyer works on files for Client B. May the lawyer also charge Client B for the same time for which he is billing Client A?

Again, the obvious answer would be no. To allow otherwise would constitute double billing by the lawyer for his or her time.

Lastly, there is a possibility that lawyers "recycle" documents and research on behalf of clients. The classic example arises where a lawyer has done a significant amount of research and drafted memoranda, pleadings or other documents on behalf of a client. The client is billed for this research and these documents.

Later, the lawyer is hired by a new client, but in discussing the case with the new client, the lawyer realizes that he or she may be able to utilize the research and documents created for the predecessor client. May the lawyer now charge the same number of hours billed to the initial client, to this subsequent client, even though the actual time will not be necessary to recreate the research and documents in question? Again, the obvious answer would be no.

The commission suggests that lawyers review their office practices with regard to fee contracts and letters of engagement to ensure compliance with the above-discussed fee and expense issues. [RO-2005-02]

The Alabama Lawyer no longer publishes addresses and telephone numbers unless the announcement relates to the opening of a new firm or solo practice.

About Members

Linda Marion Baker Allen announces the opening of Linda B. Allen, Attorney at Law LLC.

Grover Asmus announces the opening of Grover E. Asmus LLC, with offices at 107 Saint Francis Street, Suite 1500, Mobile 36602. Phone (251) 439-7600.

Jonathan A. Blackwell announces the opening of his firm with offices at 100-C Jefferson Street S., Huntsville 35801. Phone (256) 539-3331.

Clotele Hardy Brantley announces the opening of C. H. Brantley Attorney At Law with offices at 2322 Second Avenue N., Birmingham 35203. Phone (205) 907-9707.

Jonathan Lyn Brogdon announces the opening of his firm with offices at 2015 First Avenue N., Birmingham. Phone (205) 458-1100.

Penny Hays Cauley has opened the firm Hays Cauley PC, and the mailing address is P.O. Box 2629, Tuscaloosa 35403. Phone (205) 464-0021.

Retired District Judge R. Allen Crow announces the opening of his office in Eastaboga.

Russell M. Cunningham, IV announces the opening of the Cunningham Firm LLC with offices at the Steiner Building, Suite 305, 15 Richard Arrington, Jr. Boulevard N., Birmingham 35203. Phone (205) 279-2746.

Stephanie Olivia Daniels announces the opening of Law Offices of Stephanie Olivia Daniels LLC.

Shannon Dawn Hutchings announces the opening of Law Office of Shannon D. Hutchings in Homewood.

Hattie E. Kaufman announces the opening of her practice, and the mailing address is P.O. Box 3143, Tuscaloosa, 35403. Phone (205) 339-1609.

Zeb Little announces the opening of Zeb Little Law Firm LLC at 700 Second Avenue SW, Cullman 35055. Phone (256) 775-7707 or (256) 775-7708.

Matthew John Meloun announces the opening of The Law Offices of Matthew J. Meloun LLC with offices at 517 Beacon Parkway W., Birmingham 35209. Phone (205) 942-3157.

Robert Allen Ratliff announces the opening of Robert A. Ratliff PC.

William T. Watson announces the opening of William T. Watson LLC at 1651 McFarland Boulevard N., Tuscaloosa 35406. Phone (205) 345-1577.

Matthew David Wright announces the opening of The Wright Law Firm with offices at 113 Glenn Avenue, Trussville 35173.

Among Firms

Agnew & Agnew announces that John Michael Agnew has joined the firm.

Andrea Jane Mixson is now associated with the Alabama Disabilities Advocacy Program.

The District Attorney of the First Judicial Circuit announces that Joe Haguewood Thompson has joined the staff.

W. Keith Watkins has been appointed as a district judge for the Middle District of Alabama.

Alfred Wilson Webb is now associated with Alabama Consumer Law Group PC.

Laura Sidwell Maki announces her association with Wade S. Anderson & Associates.

Jeffrey Norman Mykkeltvedt is now associated with Apolinsky & Associates LLC.

Zack Azar is now associated with Azar & Azar LLC.

Balch & Bingham LLP announces that Steven Ray Parker has joined the Birmingham office, and Daniel Wilson of the Huntsville office and Lisa Sharp of the Birmingham office have been named executive committee members.

Karen Ashworth Couch announces that she is again associated with Bank of America.

Richard Lee Barnes, Laura Lou Barnes and Jerome Tucker III have formed Barnes, Tucker & Barnes PC with offices at 8028 Parkway Drive, Leeds 35094. Phone (205) 699-5000.

Battle, Fleenor, Green, Winn & Clemmer LLP announces that James E. Fleenor, Jr. and Wilson F. Green have opened the firm's Tuscaloosa office. Also, Rita H. Dixon has joined the firm's Birmingham office as *of counsel*.

Onwotta Tameka Wren is now associated with BlueCross and BlueShield of Alabama.

Bradley Arant Rose & White LLP announces that Stacey T. Bradford, Jonathan B. Head, Joel M. Kuehnert and James V. Stewart have become partners in the Birmingham office; George R. Parker has become a partner in the Montgomery office; and Gregory H. Revera has become a partner with the Huntsville office.

Burgess & Hale LLC announces that Victoria Franklin-Sisson, Laura Susan Hardin, David L. Veasey and G. Meador Akins have been named members of the firm.

Burr & Forman announces that new partners for the Birmingham office are Joe A. Joseph, James A. Hoover, Derek F. Meek, Cathy Moore, India E. Vincent, and Howard P. Walthall, Jr. New associates joining the firm are Rashad L. Blossom, Julie A. Cottingham, Devin C. Dolive, Melinda M. Eubanks, M. Ellen Gober, Jennifer A. Harris, Jennifer B.

Kimble, John G. Newman, and James L. Webb.

Cabaniss, Johnston, Gardner, Dumas & O'Neal LLP announces that Carolyn L. Duncan has become a member of the firm.

Capell & Howard PC announces that Lee M. Russell, Jr. and Scott Pierce have become members of the firm.

Carr Allison Pugh Howard Oliver & Sisson announces that Daryl Patrick Harris and Janet Leigh Weaver are associated with the firm.

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G15	\$135	\$135	\$168	\$290	\$443	\$650	\$1,035
G20	\$168	\$170	\$225	\$373	\$575	\$863	\$1,418

West Coast Life Insurance Company \$500,000 Level Term Coverage Male, Super Preferred Annual Premium

AGE:	30	35	40	45	50	55	60
G10	\$185	\$185	\$230	\$375	\$535	\$930	\$1,495
G15	\$220	\$220	\$285	\$530	\$835	\$1,250	\$2,020
G20	\$285	\$290	\$400	\$695	\$1,100	\$1,675	\$2,785

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About Members, Among Firms

Continued from page 215

Chambless Math PC announces that Bernard B. Carr has become a shareholder in the firm and that James G. Martin, Jr. has joined the firm as a partner. The firm name has been changed to Chambless Math Carr PC.

Cory, Watson, Crowder & DeGaris PC announces that Douglas A. Dellaccio, Jr. is now associated with the firm.

Drew, Eckl & Farnham announces that Erica Leigh Parsons has joined the firm.

Jeffrey C. Ezell and Richard L. Chancey announce that R. Michael Raiford and Laurel Wheeling Farrar have become partners. The firm name is now Ezell, Chancey, Raiford & Farrar LLP. Jennifer Dudley Jackson is associated with the firm.

Ronald Edgar Scarbrough, Jr. announces his association with Emrick, Scarbrough & Associates PC.

Michael A. Short is now associated with Endeavor Energy Resources LP.

Erica Lynne Tucker Lang announces her association with the Etowah County District Attorney's Office.

Adam T. Williamson announces his association with Ford Lumber Company.

Alan Scott Hughes is now associated with French & Hughes.

David Gordon announces his association with Friedman, Leak, Dazzio, Zulas & Bowling PC.

Murray H. Gibson, Jr. and Steven W. Money announce the changing of their firm's name from Gibson, Rodgers & Money LLC to Gibson & Money LLC.

Gidiere, Hinton & Herndon announces that Andrew W. Christman has joined as a partner and Matthew Y. Beam has joined as an associate. The new firm name is Gidiere, Hinton, Herndon & Christman.

Gordon & Associates LLC announces that Sam David Knight has joined the firm.

William Clyde Nabors is now associated with Graham & Poss LLC.

Haskell Slaughter Young & Rediker LLC announces that Romaine S. Scott, III has joined the firm and Gilbert Calvin Steindorff, IV is now associated with the firm.

Hatcher, Stubbs, Land, Hollis & Rothschild LLP announces that Bobby L. Scott has joined the firm.

Charles A. Hicks, Hon. Dominick J. Matranga (ret.) and Brandy Osborne

announce the formation of Hicks, Matranga & Osborne.

Tracy Lynn McAnelly Green is now associated with the Hollaway Law Office.

Hyundai Motor Manufacturing Alabama LLC announces that Christopher N. Smith has joined the staff.

Leah Fuller Dube is now associated with Ifediba Law Group LLC.

Isom & Stanko LLC announces that Ryan G. Blount has become associated with the firm.

Jill Ganus has been appointed as a Jefferson County District Court judge.

Thomas Ryan Luna is now associated Helmsing, Leach, Herlong, Newman & Rouse.

Clatus Junkin, H. Gregory Pearson, Charles E. Harrison and Samuel W. Junkin announce the opening of Junkin, Pearson, Harrison & Junkin LLC with offices in Tuscaloosa and Fayette.

Kaufman & Rothfeder PC announces that David Bowen Hughes has joined the firm as a shareholder and that S. Reagan Rumsey and Jenny Rutledge Wilson have joined the firm as associates.

Kee & Selby LLP announces that Jon M. Hughes and Angela C. Shields have been named partners in the firm.

Knowles Law Firm LLC announces that Christie Dasinger Knowles has joined the firm as a member.

The Law Office of Earl H. Lawson, Jr. announces that James A. Potts, II has joined the firm as field legal counsel.

Melissa Charlton Bowen is now associated with Legal Services Alabama in Montgomery.

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Lightfoot, Franklin & White LLC announces that Lana K. Alcorn, Kevin E. Clark, Terry W. McCarthy and J. Chandler Bailey, II have become members of the firm and William E. Bonner, Mitchell D. Greggs, Brandy R. Owens and C. Meade Hartfield have joined the firm as associates.

Clyde Randall Caldwell, Jr. and Michael Stephen McGlothren are now associated with McGlothren & Caldwell PC.

Michael L. Wade, Jr. is now associated with Moore & Van Allen PLC.

Mark C. Nelson, Joel F. Dorroh and Burt W. Newsome announce that Suzanne Hughes Mills is associated with their firm which is now named Nelson, Dorroh & Newsome LLC.

Virginia Rose Lucci is now associated with Nelson Law LLC.

Shannon Gail Marty Gosewehr is now at the University of North Texas System with the Office of General Counsel.

Jason Michael Osborn is now associated with Olson & Associates of NW Florida, Inc.

R. Gordon Pate and Julia T. Cochrun announce the formation of Pate & Cochrun LLP Attorneys At Law and that W. Whitney Seals has become associated with the firm. Offices are located at 400 Title Building, 300 N. Richard Arrington Jr. Boulevard, Birmingham 35203. Phone (205) 323-3900.

Phelps, Jenkins, Gibson & Fowler LLP announces that Robert G. Upchurch has joined the firm as an associate.

Brandy Adkins Boone announces her association with Proassurance.

John Merrill Lee is now associated with Rock-Tenn Company of Norcross.

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Richard G. Brock, Esq. richard@americanlegalsearch.com

For all other inquiries, contact:

Brannon Ford, Esq. brannon@americanlegalsearch.com

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Jason Peevy, Esq.

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About Members, Among Firms

Continued from page 217

Rumberger, Kirk & Caldwell PC announces that James F. Walsh and Craig A. Alexander have joined the firm as partners.

Sasser, Bolton, Stidham & Sefton PC announces that Charlanna W. Spencer, Chad E. Stewart and R. Brian Tipton have become shareholders in the firm.

Starnes & Atchison LLP announces that Bryan G. Hale, G. Matthew Keenan, Tabor R. Novak, III, Stephen W. Still, Jr., H. Thomas Wells, III, C. Ramsey Duck, and William David Smith, Jr. have joined the firm as associates.

Michael Douglas Babb is now associated with Stewart Howard PC.

Christopher Lee Shaeffer is now associated with Stockham, Carroll & Smith PC.

Stone, Granade & Crosby PC announces that Benjamin R. Graves has become associated with the firm.

Sherri Tucker Freeman is now associated with Stonegate Realty LLC.

Amos John Sheffield is now associated with Stewart & Sheffield LLC.

Paul Vaughan Russell, Jr. announces his association with Taylor Ritter PC.

Cynthianther Lashon May is now associated with Thomas Means Gillis & Seay PC.

Marianne Cosse Boston is now associated with Thompson, Slagle & Hannan LLC.

Mitchell Mark Mataya is now associated with The Law Office of John Foster Tyra PC.

Danielle Kara Greco announces her association with the United States Bankruptcy Court.

John Edwin Searcy, Jr. is now associated with the United States District Court, Middle District of Alabama.

Sharon Yvonne Broach announces her association with the U.S. District Court, Northern District of Alabama.

Charles Brinsfield Campbell is now associated with the U.S. Senate Subcommittee on Administrative Oversight and the Courts.

Lanny Vines & Associates announces that Robert Page Bruner has joined the firm.

Tammy Cecile Murphy Woolley is now associated with Waldrep, Stewart & Kendrick LLC, formerly known as Vines & Waldrep LLC.

Wallace, Jordan, Ratliff & Brandt LLC announces that Julie Bonner DeArman has become a member of the firm.

Walston, Wells & Birchall LLP announces that Joseph H. Johnson, Jr. has joined the firm as of counsel.

Webb & Eley PC announces that Winthrop Edward Johnson has joined the firm.

Winston, Winston, Jenkins & Chastain announces that David J. Chastain has joined the firm.

Whatley Drake LLC announces that Othni J. Lathram has become a member and Symantha Christeen Frankowski is associated with the firm.

Gregory H. Hawley has joined White, Arnold, Andrews & Dowd PC as a partner and shareholder.

Richard Francis Browne announces that he is now associated with YKK Corporation of America.

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from little
acorns grow*

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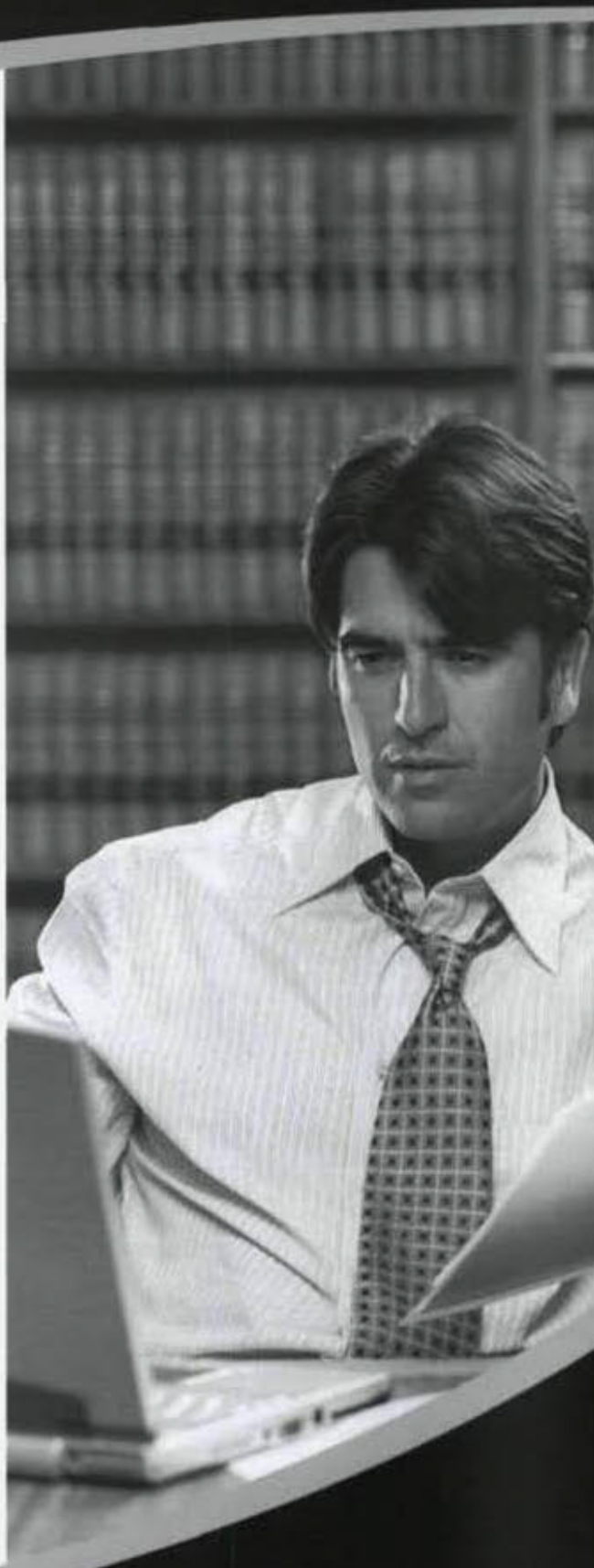


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