



A Big ADVANTAGE in Alabama Law...

Alabama case law, statutes, Secretary of State filings, law reviews and more for as little as \$110 per month.*

Low, flat monthly rates.
 Predictable pricing.
 Unlimited use.
 Give yourself the ADVANTAGE you need to compete—and win!

1-800-356-6548

When you need results.







*All pricing includes applicable subscription fee. Program is available to law firms with 10 attorneys or less. Price quoted is for one attorney. Additional charge applies to each attorney in the firm. Note: state and local taxes not included. Some restrictions apply. Prices subject to change. LEXIS and NEXIS are registered trademarks of Reed Elsevier Inc., used under license. ©1996 LEXIS-NEXIS, a division of Reed Elsevier Inc. All rights reserved.

The Official Pulle of The Alabama Code Official Code, Alabama Cases, And The Only Alabama Administrative Code On CD-ROM.

A Comprehensive, Integrated System. Everything You Need For Your Alabama Research.

When it comes to building your practice, Alabama LawDesk* is the foundation for success. With Alabama Cases. Official Statutory Code, and Administrative Code on CD-ROM, LawDesk brings state-of-the-art technology to Alabama primary law, creating the most comprehensive, authoritative legal resource available in Alabama. And with a simple keystroke or mouse click, this powerful system links to Alabama Auto-Cite,* ALR*, USCS,** Am Jur 2d and more. See it for yourself. For more information, or to arrange a no-obligation demonstration, call 1-800-762-5272.





A Big ADVANTAGE in Alabama Law...

Alabama case law, statutes, Secretary of State filings, law reviews and more for as little as \$110 per month.*

Low, flat monthly rates.
 Predictable pricing.
 Unlimited use.
 Give yourself the ADVANTAGE you need to compete—and win!

1-800-356-6548

When you need results.

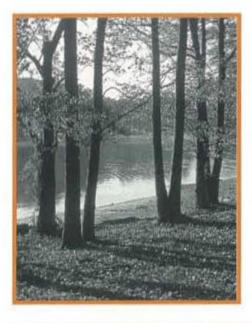






*All pricing includes applicable adocriptions fee. Program is available to law firms with 10 attorneys or less. Price quoted is for one attorney. Addamnal charge applies to each attorney in the firm. Note: stare and local stares non-included. Some centrictions apply. Prices subject to change. UXIS and NEXIS are registered trademarks of Rent Elsevier Inc., used under locase. O1998 LEXIS-NEXIS, a division of Rent Elsevier Inc. All rights reserved.

A1.0121



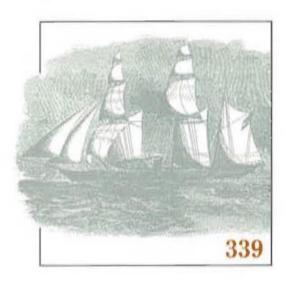


On the Cover

Fall colors at Wind Creek State Park, Tallapoosa County, Alabama —Photo by Paul Crawford, JD, CLU

IN THIS ISSUE

THE ALABAMA CLAIMS
By Eric C. Bruggink
THE ABCS OF ERISA:
AN ALABAMA PERSPECTIVE
By Wayne Morse
1996-97 Committees
AND TASK FORCES
RECEPTION FOR JUDGE GODBOLD
WRESTLING WITH THE
INTENTIONAL INJURY EXCLUSION
By Bibb Allen
ALABAMA CODE OF ETHICS FOR MEDIATORS
U.S. DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA
STANDING ORDER
BAR LEADERSHIP CONFERENCE
AND PARTNERSHIP PROGRAM HIGHLIGHTS





(Continued on page 324)

01210000200020002000	(ram page 323) TMENTS
DEFAK	IMENIS
	nt's Page 26
	rector's Report 28
	s, Among Firms 30
	Briefs 34
	ary Notice 36
	ortunities 46
	e Wrap-Up 48
	na's Courthouses 49
	General Counse 61
	Decisions 64
	orials 68
Classifie 31	d Notices 83
3 Mem 3 Classifie	64 orials 68 d Notices

Published seven times a year (the June issue is a bar directory edition) by the Alabama State Bar, P.O. Box 4156, Montgomery, Alabama 36101-4156, Phone (334) 269-1515.

Robert A. Huffaker	
Susan Shirock DePaola	Vice-Chair & Associate Editor
David B. Champiin	Vice-Chair, Finance
Susan H. Andres	Staff Lisison & Communications Director
Margaret L. Murphy	

Board of Editors

John Q. Somerville, Birmingham • Mike Druhan, Mobile • Robert S. Smith, Huntsville • Charles D. Cleveland, Birmingham • Glenda G. Cochran, Birmingham • Lisa Huggins, Birmingham • Hon. Debra H. Goldatein, Birmingham • Pamela L. Mable, Atlanta • Sheri T, Freeman, Birmingham • William G. Gantt, Birmingham • Michael A. Kirtland, Montgomery • Jonathan S. Cross, Tuscaloosa • P. Leigh O'Dell, Montgomery • Linda G. Filippo, Birmingham • LaJuana S. Davis, Montgomery • Victoria J, Franklin-Sisson, Birmingham • M. Donald Davis, Jr., Mobile • Lynn Robertson Jackson, Clayton • Hon. William R, Gordon, Montgomery • Richard F. Allen, Montgomery • William T, Carlson, Jr., Montgomery • Eugenia H. Mullins, Birmingham • Samuel A, Rumore, Jr., Birmingham

Officers

Chicas	
Warren B. Lightfoot, Birmingham	President
Stanley Dagnal Rowe, Huntsville	President-elect
Donna S. Pale, Huntsville	Vice-president
Keilh B. Norman, Montgomery	Secretary

Board of Commissioners

1st Circuit, E. Mark Ezell, Butler. 2nd Circuit, John A. Nichols, Luverne. 3rd Circuit, Lynn Robertson Jackson, Clayton, 4th Circuit, Ralph N. Hobbs, Selma, 5th Circuit, John Percy Oliver, II, Dadeville, 6th Circuit, Place No. 1, Walter P. Crownover, Tuscaloosa. 6th Circuit, Place No. 2, J. Douglas McElvy, Tuscaloosa. 7th Circuit, Arthur F. File, III, Anniston, 8th Circuit, William E, Shinn, Decatur, 9th Circuit, W.N. Watson, Ft. Payne, 10th Circuit, Place No. 1, Samuel H. Franklin, Birmingham. 10th Circuit, Place No. 2, James W. Gewin. 10th Circuit, Place No. 3, J. Mark White, Birmingham, 10th Circuit, Place No. 4, Samuel A. Rumore, Jr. 10th Circuit, Place No. 5, Frederick T. Kuykendall, III, Birmingham. 10th Circuit, Place No. 5, Mac B. Greaves, Birmingham. 10th Circuit, Place No. 7 Stephen A. Rowe, Birmingham, 10th Circuit, Place No. 8, Max C. Pope, Jr., Birmingham, 10th Circuit, Place No. 9, Cathy S. Wright, Birmingham, Bessemer Cut-off, Ralph L. Armstrong, Bessemer, 11th Circuit, Robert L. Gonce, Florence, 12th Circuit, M. Dale Marsh, Enterprise, 13th Circuit, Place No. 1, Wesley Pipes, Mobile, 13th Circuit, Place No. 2, Billy C. Bedsole, Mobile, 13th Circuit, Place No. 3, Caine O'Rear, III, Mobile, 13th Circuit, Place No. 4, Benjamen T. Rowe, Mobile, 14th Circuit, to be filled, Jasper. 15th Circuit, Place No. 1, Robert D. Segall, Montgomery. 15th Circuit, Place No. 2, Wanda D. Devereaux, Montgomery. 15th Circuit, Place No. 3, James E, Williams, Montgomery, 15th Circuit, Place No. 4, Richard B, Garrett, 15th Circuit, Place No. 5, David R. Boyd, Montgomery, 16th Circuit, Roy O. McCord, Gadsden, 17th Circuit, Taylor T. Perry, Jr., Demopolis, 18th Circuit, Conrad M. Fowler Jr., Columbiana. 19th Circuit, John Hollis Jackson, Jr., Clanton. 20th Circuit, Wade H. Baxley, Dothan. 21st Circuit, Charles R. Godwin, Atmore. 22nd Circuit, Earl V. Johnson, Andalusia. 23rd Circuit, Place No. 1, Donna S. Pate, Huntsville. 23rd Circuit, Place No. 2, Patrick H. Graves, Jr., Huntsville. 24th Circuit, John A. Russell, III, Aliceville, 25th Circuit, Oliver Frederick Wood, Hamilton. 26th Circuit, Bowen H. Brassell, Phenix City, 27th Circuit, John C. Gullahorn, Albertville, 28th Circuit, E.E. Balt, Bay Minette, 29th Circuit, Tom R Ogletree, Sylacauga, 30th Circuit, J. Robert Bentley, Oneonta, 31st Circuit, William K. Hewlett, Tuscumbia, 32nd Circuit, Billy W. Jackson, Cullman, 33rd Circuit, Robert H. Brodgen, Ozark, 34th Circuit, Robert I. Rogers, Jr., Russellville, 35th Circuit, John B. Barnett, III, Monroeville, 36th Circuit, Chris Malcom, Moulton, 37th Circuit, J Tutt Barrett, Opelika, 38th Circuit, Stephen M. Kennamer, Scottaboro, 39th Circuit, James M. Corder, Athens, 40th Circuit, John K. Johnson, Rockford

The Alabama Lawyer is published seven times a year for \$20 per year in the United States and \$25 per year outside the United States by the Alabama State Bar, 415 Dexter Avenue, Montgomery, Alabama 36104. Single issues are \$5.00, for the journal and \$25/\$60 for the directory. Periodicals postage paid at Montgomery, Alabama, and additional mailing offices.

ALABAMA STATE BAR HEADQUARTERS STAFF

415 Dexter Avenue, Montgomery, AL 36104 (334) 269-1515 • FAX (334) 261-6310

and henter themest theme Potter With a potter (most)
Executive Director Keith B. Norman Executive Assistant Margaret Boone Director of Programs Edward M. Patterson Administrative Assistant for Programs Heidl Alves Programs Secretary Pam Hagan Director of Communications & Susan H. Andres
Publications Director
Publications/Communications Secretary
Membership AssistantMyrna McHenry
Director of AdmissionsDorothy D. Johnson
Admissions AssistantsElizabeth Shwarts Mary Corbitt

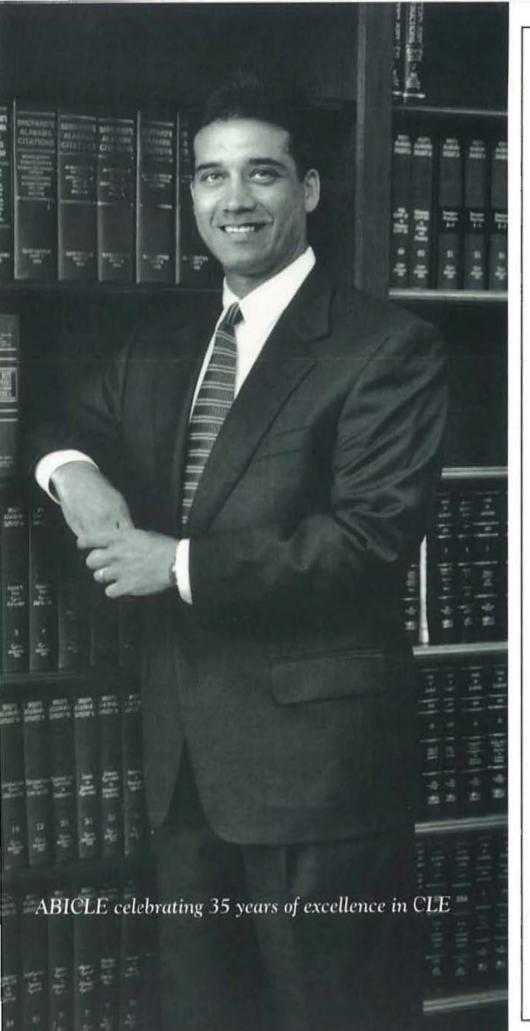
Alabama Law Foundation, Inc. Director Tracy Daniel
ALF Assistant
Volunteer Lawyers Program DirectorKim Oliver
VLP ParalegalGreta Chambless
Bookkeeper
Graphics Arts Director
Graphics Arts AssistantRoderick Palmer
Lawyer Referral Secretary
Receptionist
Alabama Center for Dispute
Resolution DirectorJudy Keegan (269-0409)

ALABAMA STATE BAR CENTER FOR PROFESSIONAL RESPONSIBILITY STAFF 415 Dexter Avenue, Montgomery, AL 36104 (334) 269-1515 • FAX (334) 261-6311

and better interest intereEqualities donor (not)
General CounselJ. Anthony McLain
Assistant General CounselL. Gilbert Kendrick
Assistant General CounselMilton L. Moss
Assistant General CounselRobert E. Lusk, Jr.
Secretary to General CounselVivian Freeman
Complaints Intake & Advertising Coordinator Kim Ellis

Client Security Fund, CSF &	
CLE Coordinator	Bonnie Mainor
Paralegals/Investigators	Peggy Garrett
	Cheryl Rankin
	Robin Key
Receptionist	

The Alabama Lawyer, (ISSN 0002-4287), the official publication of the Alabama State Bar, is published seven times a year in the months of January, March, May, June (bar directory edition), July, Septembar, November, Views and conclusions expressed in srticles herein are those of the authors, not necessarily those of the board of editors, officars or board of commissionere of the Alabama State Bar. Subscriptions: Alabama State Bar members receive The Alabama Lawyer as part of their annual dues paymon; \$15 of this goes toward subscriptions for The Alabama Lawyer. Other subscriptors do no receive the directory adition of the Lawyer as part of their subscription. Advertising rates will be turnished upon request. Advertising copy is carefully reviewed and must receive approval from the Office of General Counsel, but publication herein does not noccessarily imply endoteement of any product or service offered. The Alabama Lawyer reserves the right to reject any advertisement. Copyright 1996. The Alabama State Bar. Al rights reserved.



Alabama Bar Institute for Continuing Legal Education

ALABAMA LAWYERS SERVING ALABAMA LAWYERS

"CLE has something to offer everyone, from the recent graduate to the seasoned practitioner. I learn something every time that I attend a CLE seminar, whether as a listener or speaker. CLE is invaluable to our profession."

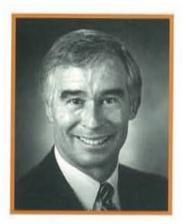
> David H. Marsh Law Offices of David H. Marsh, P.C. Birmingham, Alabama



Call ABICLE at 1-800-627-6514 or 205-348-6230 for program information.



Accentuate the Positive



Warren B. Lightfoot

I am amazed by the number of volunteer lawyers who are willing to give enormous amounts of their time to serve the public and make our professional lives easier. Of all the lawyers 1 asked to head committees and task forces, only one declined. These working groups are already meeting and 13 of them have submitted detailed action plans for the coming year.

Right away, we plan to address the problems in our indigent defense system. The most urgent need is to increase the compensation payable to lawyers in appointed criminal cases. Presently they receive \$20 an hour for out-of-court time and \$40 an hour for in-court time—a rate that puts us solidly in last place in the nation. By the time you read this article, we will have been to see the Governor as well as key legislative personnel to discuss this emergency situation.

On September 10, 1996, we conducted a bar leadership conference in Montgomery, at which several dozen judges, local bar presidents, state bar commissioners, section heads, committee and task force chairs, and state bar staff convened. Part of the day was devoted to informing the participants about our bar and the balance showcased the available staff, facilities and resources to help those bar leaders do their job and be effective in serving you and the public. One of our ongoing themes is to accentuate the positive aspects of our profession and there are no better spokespersons for us than you, the members. In the coming months we will be emphasizing all the good that lawyers do, professionally and personally, and I urge each of you to join us in this effort. Frankly, I have heard and read enough negative commentary about lawyers to last me a lifetime; we have colleagues who are working every day to make this state and nation a better place, and it is high time we talked about it. If we do not, be assured no one else will.

A long term priority project involves the selection of judges. All of us lawyers, judges and the public—regard the present system of judicial selection as unacceptable and inappropriate. Judges do not like to have to solicit contributions, and lawyers, likewise, do not like the process. The public views the system with profound distaste.

Here is the concept: a constitutional amendment would provide that any appellate judicial vacancy would be filled by gubernatorial appointment from among three candidates submitted by a judicial commission (we will seek input from all available sources as to how that commission would be constituted but it would obviously be very diverse and politically acceptable). The appointed judge then would serve for a limited period (say, two years) and then stand for election on his or her record-"should Judge Doe be retained?" This election would preserve the public's right to vote, which I believe to be pivotal in getting any change adopted. If elected, the judge would then serve a full term. If not elected, the process begins anew, with the defeated judge eligible for reappointment by the governor if the commission sees fit to resubmit that judge as a candidate.

In retention elections under this system, campaign expenditures by judges or opposition groups would either be non-existent or severely limited so as to be minimal. I believe that California has a similar procedure, and we are looking into that method. Another idea is that judicial elections be scheduled for off-years so that at the time judges are being voted on, no other campaign will occur. I believe that idea has some merit. If such a system were adopted and seemed to work well, it could conceivably, at some later date, be expanded to apply not only to appellate judges but also to circuit judges in circuits that wanted to use it. The present proposal will, however, only apply to appellate judges.

We may not be able to effectuate this change, but it is worth our efforts to try. Both pro-business and plaintiffs' lawyers have told me they have reservations about this idea, but I still have hope that a consensus can be developed. I have discussed the concept with the state bar Executive Council; they believe it has merit and that the bar commissioners should at least consider it. If we go slowly and carefully, I believe that we can get the board of bar commissioners to endorse it, or some variation of it.

Once the board of bar commissioners approves the basic framework of ideas, they could appoint, say, eight courtroom lawyers representing all factions to fine tune the idea and sign off on the language of a constitutional amendment. It is my firm belief that if the organized bar does not take the lead to correct the present situation no one else will. I hope each of you, our members, will let your respective bar commissioners hear your views as we move forward on this front. We will obviously go very cautiously and deliberately with the idea, but I believe our profession owes a duty to the public to try and restore dignity and order to our judicial races.

By the time you read this article, the

concept of appointment/retention will have been submitted to the board of bar commissioners, (maybe more than once) on an informational basis. Only after a consensus is developed, will it be presented for a vote with a view toward having the board's recommendations placed in the form of a constitutional amendment by a bi-partisan ad hoc committee as outlined above, and with that committee's work being submitted for legislative action. I hope that our members will help and support us in these efforts. We did not get to this point overnight, and we cannot solve all our problems in the short term, but piece by piece we can work toward solving them, and little by little, we can defuse the climate of polarization that presently exists in this state. As the ultimate guardians of our people's mores, our profession is obligated to try.

Health

Major Medical. Provides personalized comprehensive coverage to Lawyers, employees, and eligible family members. The Southern Professional Trust is totally underwritten by Continental Casualty Company, a CNA Insurance Company.

Life

Family Term Life. Provides benefits for Lawyers, spouses, children and employees. Coverage through Northwestern National Life Insurance Company.

Security

Disability Income. Features "Your Own Specialty" definition of disability with renewal guarantee and benefits available up to 75% of your income for most insureds. Coverage through Commercial Life, a subsidiary of UNUM.

Peace Of Mind

Business Overhead Expense Insurance. A financial aid to keep your office running if you become disabled. Coverage through Commercial Life, a subsidiary of UNUM.



If you're a Lawyer practicing in the State of Alabama, Insurance Specialists, Inc. offers the finest insurance coverage anywhere. We're here to help with all your insurance needs.



33 Lenox Pointe NE Atlanta, GA 30324-3172 404-814-0232 800-241-7753 FAX: 404-814-0782

INSURANCE SPECIALISTS, INC.



EXECUTIVE DIRECTOR'S REPORT

By Keith B. Norman

The ASB Home Page:

Alabama Lawyers Go On-Line for a Wealth of Information



Keith B. Norman

http://www.alabar.org

What does it mean? For those of you not yet familiar with the Internet, it is neither a typo nor a misprint. Instead, it is the Alabama State Bar's homepage address on the World Wide Web ("www"). The state bar is online to provide helpful information in a medium that is immediately accessible and as close as your computer.

The bar's website includes the Lawyer Referral Service, publications information and member services. You can check on upcoming CLE courses, sign up for the Volunteer Lawyers Program or review General Counsel opinions. By hypertext links, you can be instantly connected to a number of helpful legal sites and sources outside the bar's website. including the Alabama Supreme Court's website, AlaLink, other state bars, and our bar's own International Law Section's homepage. We are working to include other websites that will be of particular interest to Alabama lawyers. If you do not have an Internet account through an Internet service provider, you are missing the chance to be connected to a source that many people describe as a "tool of knowledge", not merely an information source.

E-Mail Beats Snail Mail

One of the most widely used Internet services is electronic mail ("e-mail"). The bar has e-mail addresses and boxes that will allow you to send messages directly to specific departments. You can send e-mail simply by clicking on one of the listed departments or staff names and typing your messages. In most situations, e-mail is superior to either voice mail or paper facsimiles. First class mail, or snail mail, cannot compete with e-mail because the message or the message with attached document is delivered instantly. E-mail can also be less expensive than other communication mediums because no paper is used and because of the speed with which the message is delivered to the addressee.



Our Presence on the World Wide Web Will Be an Evolving One

I am excited about the bar's website on the www. The bar staff will continue to improve and increase the information that is included on the bar's homepage. You can help us make the bar's homepage more useful by telling us what sort of bar information and hyperlinks to other law-related sites that you would find helpful. As we learn more about the needs of Alabama lawyers in this regard, I hope that the bar's homepage will become the jumping off site for Alabama lawyers "surfing the net."

If you would like to have more information about the bar's homepage including a Net-speak Glossary and Dictionary, you may contact us by e-mail or call 1-800-354-6154. Of course, you can write, but it will take longer!

With The Alabama State Bar,

The Guarantees Are Yours.



The Alabama State Bar helps you find safe and easy ways over the uncertainties of business. Now they have teamed up with AT&T to offer you an easy way to gain extra savings on long distance service that's guaranteed'.

AT&T Profit By Association gives you a special members-only discount on top of qualified AT&T business savings plans. The program includes all your domestic, international, toll-free and local toll² calling, at all your locations. And it puts everything on one bill, just to make it easy.

AT&T's guarantees are the most extensive in the industry. *Guaranteed* reliability'. *Guaranteed* domestic and international fax delivery'. And guaranteed competitive prices'.

Cross the bridge. Call 1 800 722-7756,

ext. 1235, to put the discounts and guarantees of AT&T Profit By Association to work for your business. And visit us at http://www.att.com/ business/pba.

AT&T. For the life of your business.*



1 Limitations on guarantees' coverage and remotives apply. Certain restrictions apply. 2 Where available. 3 Credit maximum for unastitutes to severe restoration per 12 months is \$00-\$000, depending on service. A Remotive include AT&T Fax Service Center assistance and complimentary overnight courier service. Call for details, 9 One-time credit based on last month's trill. Limitations and exclusions apply. Certain restrictions apply. ©1995 AT&T



ABOUT MEMBERS, AMONG FIRMS

About Members

D. Michael Barrett announces the relocation of his office to Brown-Marx Tower, 2000 1st Avenue, North, Suite 222, Birmingham, Alabama 35203. Phone (205) 326-8881.

Thomas R. Wolsoncroft announces the relocation of his office to 2068 Valleydale Road, Cahaba Building I, Suite C, Hoover, Alabama 35244. Phone (205) 987-2303.

Braxton Blake Lowe, formerly with Mitchell E. Gavin and Associates, announces the opening of his office at 29 Clay Street, Alexander City, Alabama 35010. Phone (205) 234-0724.

David B. Norton announces the relocation of his office to 1000 Water Avenue, Suite 201, Selma, Alabama 36701. Phone (334) 874-4400.

Cindy M. Calhoun announces the relocation of her office to 516 Quintard Avenue, Anniston, Alabama 36201. Phone (205) 237-2751.

Randall W. Nichols announces the opening of his office at the Lawyer's Title Building, Third Floor, 2105 Third Avenue, North, Birmingham, Alabama 35203. Phone (205) 326-3222.

Jack F. Norton announces his retirement as chief counsel, State of Alabama Department of Transportation, and the opening of his office at 235 S. McDonough Street, Montgomery, Alabama 36104. Phone (334) 269-0032.

Teri E. Lavette announces a change of address to 3625 Mountain Lane,



Birmingham, Alabama 35213. Phone (205) 879-3836.

Michael Lee Kidd announces a change of address to 304 Bonner Drive, Roanoke, Alabama 36274.

Laura Bowness Rice announces the opening of her office at 2163 Highway 31, South, Suite 211, Pelham, Alabama 35124. Phone (205) 982-1719.

Polly T. Ruggles announces the relocation of her office to 501 N. Montgomery Avenue, Suite 402, P.O. Box 492, Sheffield, Alabama 35660. Phone (205) 381-6790.

William W. Featheringill announces a change of address to 100 Brookwood Place, Suite 410, Birmingham, Alabama 35209. Phone (205) 879-2722.

Ronald E. Boackle announces a change of address to 1820 Third Avenue, North, Suite 103, Bessemer, Alabama 35020. The mailing address is P.O. Drawer 72, Shannon, Alabama 35142. Phone (205) 426-3600.

Among Firms

Thomas Jeffrey Huseman and Tracy Lane Roberts announce the relocation of their offices to 214 16th Street, North, Bessemer, Alabama 35020. Phone (205) 426-3402.

Glenn L. Davidson, Patrick B. Collins, Linda Collins Jensen and Fred G. Collins, of counsel, announce the formation of Collins, Davidson & Jensen. Offices are located at 1203 Dauphin Street, Mobile, Alabama 36604. Phone (334) 432-0400.

G. Henry Atchley, Jr., F.W. Neumann, III, Stephen W. Street and Cynthia Umstead announce the relocation of their offices to 1027 23rd Street, South, Birmingham, Alabama 35205.

Janecky, Newell, Potts & Wells announces that David M. Wilson has become a member and the name has changed to Janecky, Newell, Potts,

(Continued on page 332)

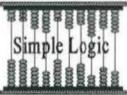


Software for Alabama Attorneys CHILD SUPPORT CALCULATOR

Calculate Guideline child support and print all forms required by ARJA Rule 32 on plain paper with information filled in. vAL95.10 (Updated for AOC changes effective 10/01/95). Cases saved to disk. ADHR Day Care amounts user updated. Calculate interest on child support arrearage. \$99.50 Shipping included.

FINANCIAL CALCULATOR

Perform 9 financial calculations: Simple Interest/Discount, Compound Interest/Discount, Sum/Present Value of Annuity, Worker's Compensation Lump Sum Settlement, Judgment Interest, and **Amortization**. Print detailed amortization schedules with calendar year analysis. Price: \$99.50. Shipping included.



SOFTWARE SOLUIONS MADE SIMPLE

Simple Logic, Inc. P. O. Box 110, Allgood, AL 35013, Ph. 205/625-4777 Fax. 205/274-0178

About Members, Among Firms

(Continued from page 330)

Wells, & Wilson and Michael D. Strasavich and Nicholas W. Woodfield have become associates. Offices are located at 1901 6th Avenue, North, Suite 3120, Birmingham, Alabama 35203-2618. Phone (205) 252-4441.

Leitman, Siegal & Payne announces that Victor C. Garlock has become an associate. Offices are located at 600 N. 20th Street, Suite 400, Birmingham, Alabama 35203. Phone (205) 251-5900.

Azar & Azar announces that Elizabeth C. Wible, former law clerk for Chief Justice Sonny Hornsby, Alabama Supreme Court, and for Judge Ed Carnes, Eleventh Circuit Court of Appeals, is of counsel. Offices are located at 260 Washington Avenue, Montgomery, Alabama 36102-2028. Phone (334) 265-8551.

Robert P. Bynon, Jr. & Associates announces that Stephen D. Keith and Gary R. Seale have joined the firm. Offices are located at 2205 and 2213 Forestdale Boulevard, Birmingham, Alabama 35214. Phone (205) 791-0028.

Holland & Knight announces that William R. Lane, Jr. has become a partner. The firm has offices in Atlanta, Ft. Lauderdale, Jacksonville, Lakeland, Miami, Orlando, St. Petersburg, Tallahassee, Tampa, Washington, D.C., and West Palm Beach.

Herring, Dick, Wisner & Walker announces that D. Ashley Jones has become an associate. Offices are located at 100 Washington Street, Suite 200, Huntsville, Alabama 35801. Phone (205) 533-1445.

Thorington & Gregory announces that Stephanie N. McGee, former law clerk to Presiding Judge William R. Gordon of the Fifteenth Judicial Circuit, has become an associate. Offices are located at 504 S. Perry Street, P. O. Drawer 1748, Montgomery, Alabama 36102. Phone (334) 834-6222.

Rosen, Cook, Sledge, Davis, Carroll & Jones announces that John P. Weber and Leon Y. Sadler, IV have become associates. Offices are located at 2117 River Road, West, Tuscaloosa, Alabama 35404. The mailing address is P.O. Box 2727, 35403. Phone (205) 344-5000.

James R. Engelthaler and Randy K. Thigpen announce the relocation of their offices to the Shoals Office Building, 412 S. Court Street, Suite 109, Florence, Alabama 35630. The new firm name is Thigpen & Engelthaler. Phone (205) 764-9997.

Corley, Moncus & Ward announces the relocation of their offices to 400



Shades Creek Parkway, Suite 100, Birmingham, Alabama 35209. The mailing address is P.O. Box 59807, 35209-0807. Phone (205) 879-5959.

Fine & McDowell announces a change in the firm name to McDowell, Beason & Pilati. Offices are located at 507 N. Jackson Avenue, Russellville, Alabama 35653. The mailing address is P.O. Box 818. Phone (205) 332-1660.

Akridge & Balch announces that Emily Briscoe has become an associate. Offices are located at 1702 Catherine Court, Auburn, Alabama 36830. Phone (334) 887-0884.

Shivers, Johnson & Wilson announces that the name of the firm has changed to Gleissner, Stallings & Rogers. Offices are located at 3000 Riverchase Galleria, Suite 785, Birmingham, Alabama 35244. Phone (205) 985-3580.

William M. Hammond, Daniel B. Feldman and Daniel P. Lehane announce the formation of Hammond, Feldman & Lehane. Offices are located in Suite 615 of the Frank Nelson Building, 205 N. 20th Street, Birmingham, Alabama 35203. Phone (205) 322-2260.

Cherry, Givens, Peters, Lockett & Diaz announces that A. Gary Jones has become an associate. Offices are located at 163 West Main Street, Dothan, Alabama 36302. The mailing address is P.O. Box 927, 36303. Phone (334) 793-1955.

Jill T. Karle and James V. Green, Jr. announce the opening of their office at 115 First Street, North, Alabaster, Alabama 35007. The mailing address is P.O. Box 878. Phone (205) 621-0301.

Maddox, Austill & Parmer announces that Conley W. Knott, former law clerk and staff attorney to the Honorable John Patterson, Alabama Court of Criminal Appeals, has become an associate. Offices are located at 3821 Lorna Road, Suite 101, Birmingham, Alabama 35244. Phone (205) 733-9455.

Pierce, Ledyard, Latta & Wasden announces that Mark P. Eiland has joined the firm. Offices are located at 1110 Montlimar Drive, Suite 900, Mobile, Alabama 36609. Phone (334) 344-5151.

Harris, Caddell & Shanks announces that J. Noel King and Arthur W. Orr have become partners. Offices are located at 214 Johnston Street, SE, Decatur, Alabama 35601. Phone (205) 340-8000.

Almon, McAlister & Baccus announces a name change to Almon, McAlister, Baccus & Hall, and that Rick Hall has become a partner. Offices are located at 106 W. 3rd Street, Tuscumbia, Alabama 35674. The mailing address is P.O. Box 148. Phone (205) 383-4448.

Albrittons, Givhan, Clifton & Alverson announces that John B. Givhan has retired and that the firm has incorporated under the name of Albrittons, Clifton & Alverson. Offices are located at 109 Opp Avenue, Andalusia, Alabama 36420. Phone (334) 222-3177. The firm also announces that Thomas B. Albritton has become a shareholder.

Woodroof & Woodroof announces that Patrick J. Anderson has joined the firm. Offices are located at 117 W. Washington Street, P.O. Box 1149, Athens, Alabama 35612, Phone (205) 232-0120.

Lange, Simpson, Robinson & Somerville announces that Harald E. Bailey has become associated with the Huntsville office. Jeffrey E. Holmes and M. Allison Taylor have become associated with the Birmingham office. David F. Ovson has joined the firm as of counsel with the Birmingham office. The firm has offices in Montgomery, Huntsville and Birmingham.

C. Deanne Simpson, formerly with the Tuscaloosa County District Attorney's Office, announces her recent appointment as Special Agent, Federal Bureau of Investigation, 201 E. Indianola, Suite 400, Phoenix, Arizona 85012. Phone (602) 279-5511.

Jerry Lynn Carpenter announces a change of address to Division of Risk Management, Department of Finance, 777 S. Lawrence Street, Montgomery, Alabama 36130. Phone (334) 223-6120.

Amanda S. Hunter, formerly a staff attorney for Judge Roger Monroe of the Alabama Court of Civil Appeals, is now an associate with the firm of **Richard F. Pate & Associates**, 56-58 S. Conception Street, Mobile, Alabama 36602. Phone (334) 433-0300.

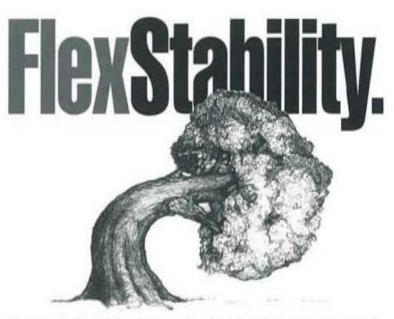
Edward B. McDonough, Jr. announces that Keith S. Miller has become an associate. Offices are located at 1400 First National Bank Building, Mobile, Alabama 36602. Phone (334) 432-3296. The Johnson Law Firm announces that David W. Adams has joined the firm. Offices are located at 140 Kathi Avenue, Suite G, Fayetteville, Georgia 30214. The mailing address is P.O. Box 187, 30214-0187. Phone (404) 719-2771.

Robert K. Lang announces a change of address to the Office of District Attorney, Thirty-Sixth Judicial Circuit, P.O. Box 625, Moulton, Alabama 35650. Phone (205) 974-2446.

Cheryl D. Eubanks and Richard P. Pettit announce the opening of their offices at 22787 U.S. Highway 98, Suite B-1, Fairhope, Alabama 36532. Phone (334) 990-2560. Energen Corporation announces that Amy Fortenberry McIntyre joined the legal department. Offices are located at 2101 Sixth Avenue, North, Birmingham, Alabama 35203. Phone (205) 325-2747.

J. Brooke Johnston, Jr. announces a change of address to MedPartners/Mullikin, Inc., 3000 Galleria Tower, Suite 1000, Birmingham, Alabama 35244. Phone (205) 733-8996.

Ralph Lawrence Dill, IV has joined the Madison County District Attorney's Office. His new address is 100 North Side Square, Huntsville, Alabama 35801. Phone (205) 532-3460.



Mississippi Valley Title has the strength and stability of over 50 years in the title business, consecutive A+ ratings from *Standard & Poor*, and the esteemed position of being the number one title insurer in both Mississippi and Alabama.

With our strength and experience, we combine the flexibility to solve your tough title problems with a willingness to work with you towards real solutions. Because at Mississippi Valley Title, FlexStability isn't just a concept; it's the way we do business.

MISSISSIPPI VALLEY TITLE

The Flexibility You Need. The Stability You Trust. 315 Tombigbee Street • Jackson, Mississippi 39205 • 601-969-0222 • 800-647-2124



 The American Bankruptcy Board of Certification announced that Lawrence
 B. Voit of the Mobile firm of Silver & Voit has successfully completed the requirements for national certification in the field of business bankruptcy law. The ABBC is a non-profit organization dedicated to serving the public and improving the quality of the bankruptcy bar. The rigorous ABBC certification standards are designed to encourage bankruptcy practitioners to strive toward excellence and recognize those attorneys who are experts in the bankruptcy field.

 Bill Alverson of Albrittons, Clifton & Alverson of Andalusia was recently selected for membership in the Association of Defense Trial Attorneys.

The association is a nationally recognized organization of civil defense lawyers. Presently, there are nine other members in the state of Alabama and 460 members nationally and in Canada and Puerto Rico.

• Donna S. Pate became president of the Huntsville-Madison County Bar Association at the August 7 meeting. As vice-president of the association, she automatically assumed the office of president upon the expiration of the one-year term of William K. Bell.

Installation of Pate as president sets a precedent for the association as its first female president. Pate is an attorney with Lanier, Ford, Shaver & Payne in Huntsville.

The association also elected **Daniel B. Banks, Jr.**, recently retired circuit judge, as vice-president; **Gregory Hopkins**, employed in the Huntsville City Attorney's office, as secretary; and **G. Bartley Loftin**, III, an attorney with the firm of Sirote & Permutt, as treasurer.

• Earle F. Lasseter, a partner in the firm of Pope, McGlamry, Kilpatrick & Morrison, recently became a member of the Board of Governors of the American Bar Association. Lasseter, who is from Columbus, Georgia, will serve a three-year term on the 37member board, which meets five times yearly to oversee administration and management of the association. With membership that peaked in 1995-96 at more than 370,000, the ABA is the largest voluntary professional association in the world. Lasseter is a section member-at-large, nominated from the ABA Section of General Practice.

Address Change Request Form	Firm Name	
	Office Mailing Address	
The ALABAMA STATE BAR is required to use mem- bers' office addresses, unless none is available or a member is prohibited from receiving state bar mail at the office. In addition, the <i>Alabama Bar Directory</i> is compiled from our mailing list and it is important to use business addresses for that reason. When changing an address, please include the following:	 County Fax Number e-mail Address AOC I.D. Number 	• Zip+4 ess (if different from mailing address
State Bar Identification Number (Social Security Number):	• City • Zip+4	• State
Choose (circle) one: Mr., Mrs., Hon., Miss, Ms., or Other Full Name Race• Sex• Birthdate Date of Admission Business Telephone Number	COMPLETE & RETURN TO: The ALABAMA STATE BAR 415 Dexter Ave. Montgomery, AL 36104	

Delinquent Notice Licensing/Special Membership Dues 1996-97

All Alabama Attorneys:

The dual invoice for licenses or special memberships was mailed in mid-September and was to be paid between October 1 and October 31. If you have not purchased an occupational license or paid special membership dues, you are now delinquent!

In Active Private Practice:

Any attorney who engages in the active private practice of law in Alabama is required to purchase an occupational license. The practice of law is defined in Section 34-3-6, *Code of Alabama*, 1975, as amended. (Act #92-600 was passed by the Alabama Legislature and amended Section 40-12-49, *Code of Alabama*, 1975, effective October 1, 1992.)

Occupational License: \$287.50 (includes automatic 15 percent late penalty)

Not in Active Private Practice:

An attorney not engaged in the active private practice of law in Alabama may pay the special membership fee to be a member in good standing. Judges, attorneys general, United States attorneys, district attorneys, etc., who are exempt from licensing by virtue of a position held, qualify for special membership. (Sections 34-3-17 & 18, *Code of Alabama*, 1975, as amended)

Special Membership Dues: \$125 (penalty not applicable)

Direct any questions to:

Diane Weldon, membership services director, at 1-800-354-6154 (in-state WATS), (334) 269-1515, or email: ms@alabar.org immediately!



Reinstatement

• Effective August 8, 1996, Birmingham attorney **David** Eliott Hodges was reinstated to the practice of law. Hodges had been suspended from the practice of law for noncompliance with the Mandatory Continuing Legal Education Rules of the Alabama State Bar. [CLE 96-24]

Disbarment

 On August 22, 1996, the Alabama Supreme Court entered an order disbarring Birmingham attorney James Lee Hoover, effective June 21, 1996. Hoover's disbarment was based upon a default judgment entered against him in ASB Nos. 95-117, 95-129, 95-136, 95-149, and 95-154. Hoover failed to answer the formal charges against him in the foregoing cases and, therefore, in accord with Rule 12(e)(1), Alabama Rules of Disciplinary Procedure, the charges were deemed admitted. Hoover was found guilty in each case of multiple violations of the Alabama Rules of Professional Conduct. In each case, Hoover was retained to handle an uncontested divorce. He was paid a fee of \$185 for his services. Hoover failed to prepare and file the uncontested divorce. Hoover abandoned his practice and his clients and failed to refund any monies paid by his clients. Hoover was ordered to make restitution in the amount of \$925 plus interest. [ASB Nos. 95-117, 95-129, 95-136, 95-149, and 95-154]

Suspensions

On August 1, 1996, the Alabama Supreme Court suspended Mobile attorney LeMarcus Alan Malone for a period of 12 months. This suspension was ordered to be retroactive to April 12, 1996, when the Disciplinary Commission of the Alabama State Bar interimly suspended Malone. The 12-month suspension was the result of an agreement between Malone and the Alabama State Bar. Malone had, on several occasions, accepted money from clients and then failed to perform the legal services they had contracted with him. [ASB Nos. 95-324, 95-354, 96-033, and 96-035]

• Pelham attorney **Irvin Harry Lyon** was suspended from the practice of law for a period of 45 days by order dated October 25, 1994. The Disciplinary Board also ordered Lyon to obtain psychiatric counseling. The board based its ruling on a finding that Lyon had engaged in harassing communication directed to judges, other members of the bar and public officials. Lyon served the 45-day suspension in 1994 but appealed that portion of the order requiring psychiatric evaluation to the Alabama Supreme Court which affirmed the Order of the Disciplinary Board. Lyon then petitioned for certiorari to the United States Supreme Court. The United States Supreme Court issued its order denying certiorari on January 24, 1996. [ASB No. 93-306]

 On July 31, 1996 the Disciplinary Commission of the Alabama State Bar interimly suspended Mobile lawyer
 Frank Dreaper Cunningham. This suspension was ordered under Rule 20 of the Rules of Disciplinary Procedure, and was effective immediately. [Rule 20; Pet. No. 96-004]

 Effective July 19, 1996, Pensacola, Florida attorney
 John Bennie Butts has been suspended from the practice of law in the State of Alabama for noncompliance with the Mandatory Continuing Legal Education Rules of the Alabama State Bar. [CLE 96-10]

 Effective July 19, 1996, Birmingham attorney David Elliott Hodges has been suspended from the practice of law for noncompliance with the Mandatory Continuing Legal Education Rules of the Alabama State Bar. [CLE 96-24]

 Effective July 26, 1996, Mobile attorney Charles T.
 Koch has been suspended from the practice of law in the State of Alabama for noncompliance with the Mandatory Continuing Legal Education Rules of the Alabama State Bar. [CLE 96-32]

 Effective July 29, 1996, Oliver Winston Loewy was suspended from the practice of law for noncompliance with the Mandatory Continuing Legal Education Rules of Alabama State Bar. Loewy has been practicing law in New York. [CLE 96-35]

 Effective July 29, 1996, Prattville attorney Karla Ann Shivers has been suspended from the practice of law for noncompliance with the Mandatory Continuing Legal Education Rules of the Alabama State Bar. [CLE 96-57]

 Effective July 29, 1996, Leeds attorney William R.
 Stephens has been suspended from the practice of law for noncompliance with the Mandatory Continuing Legal Education Rules of the Alabama State Bar. [CLE 96-63]

 Effective August 27, 1996, the Disciplinary Commission of the Alabama State Bar interimly suspended Mobile lawyer Paul Martin Foerster, Jr. This suspension was ordered under Rule 20 of the Rules of Disciplinary Procedure, and was effective immediately. [Rule 20; Pet. No. 96-009]

Public Reprimands

 Oneonta attorney William Alexander Ellis, III received a public reprimand without general publication on July 24, 1996. Ellis filed a motion for change of venue in the Circuit Court of Blount County, Alabama, Attached to his motion was an affidavit from his client which accused the circuit judge to whom the case was assigned of being biased and having "fixed" cases in his court. Ellis' motion was based entirely on hearsay and he failed or refused to investigate the allegations contained in the affidavit prior to filing his motion. At a subsequent hearing it was determined that there was in fact no evidence to support the allegations contained in Ellis' motion and in the affidavit of his client, Ellis' actions violated Rule 8.2 of the **Rules of Professional Conduct** which provides that a lawyer shall not make a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualification or integrity of a judge or other public legal officer. [ASB No. 95-335]

 Cullman attorney Michael Allen Stewart, Sr. received a public reprimand with general publication on July 24, 1996. Since February of 1993, Stewart had been arrested or had charges filed against him on 20 separate occasions. The charges against Stewart included criminal trespass, criminal mischief, assault, harassment, theft of property, interference with custody, burglary, menacing, and harrassing communications. All the charges against Stewart were brought by his ex-wife or members of her family in result of altercations involving domestic relations in child custody disputes between Stewart and his ex-wife. Stewart's conduct violated Rule 8.4(g) of the Rules of Professional Conduct which prohibits an attorney from engaging in conduct that adversely reflects on his fitness to practice law. [ASB No. 95-169]

Dothan attorney Blake Alan
 Green received a public reprimand

without general publication on July 24, 1996. Green was employed by a client to represent her in connection with losses allegedly sustained in the purchase of a flower shop. Green entered into an employment contract with the client dated July 12, 1994 under the terms of which he was paid a \$3,000 retainer in addition to a contingency fee. On or about October 24, 1994. Green withdrew from representation of the client and refunded approximately \$2,000 of her retainer. The statute of limitations had run by the time Green withdrew from representation. After formal charges were filed against Green he refunded the balance of the client's retainer. Green's conduct violated Rule 1.3 of the Rules of Professional Conduct which provides that a lawyer shall not willfully neglect a legal matter entrusted to him. [ASB No. 95-241]

 Birmingham attorney Earl Joseph Reuther received a public reprimand without general publication on July 24, 1996. During 1992. while practicing out of the Montgomery satellite office of Davis & Goldberg, Reuther represented seven individual bankruptcy clients. Reuther did not interview these clients prior to filing their bankruptcy petition and specifically failed to inform these clients they had the option to proceed under either Chapter 7 or Chapter 13 of the Bankruptcy Code. As part of the bankruptcy petition filed on behalf of these clients. Reuther signed a declaration by attorney for petitioner declaring that he had met with the clients and explained to them the relief available under Chapter 7 or Chapter 13 and had informed them they could proceed under either chapter. Reuther signed these declarations with full knowledge that the representations made



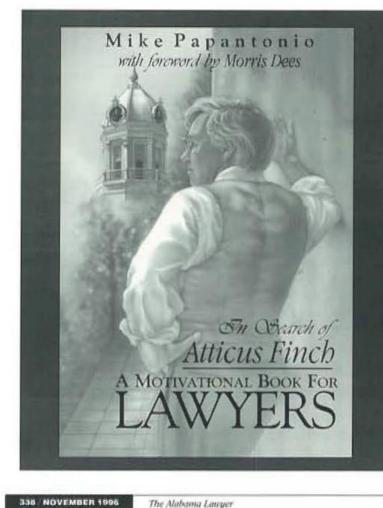
therein were false. Reuther also allowed his secretary to give legal advice to these clients. Reuther also failed or refused to return telephone calls from these clients or otherwise communicate with them concerning the status of their bankruptcy petitions. Reuther's actions violated the following Rules of Professional Conduct of the Alabama State Bar: Rule 1.1, Rule 1.4, Rule 8.4(a), Rule 5.3(b) and Rule 5.5(b). [ASB Nos. 92-405 (C), 92-451 (C)]

 Mobile attorney John William Parker received a public reprimand, without general publication, on July 24, 1996. Parker was reprimanded for having failed to keep his client reasonably informed about the status of the client's case and promptly comply with reasonable requests for information. Parker was further reprimanded for failing to explain the client's matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation and for willfully neglecting a legal matter entrusted to him.

In or around 1988, Parker was hired to handle the estate of a decedent. The decendent's sister hired Parker to pursue probate of the estate on her behalf, as well as the other heirs to the estate. The client experienced substantial and lengthy delays in the matter due to Parker's failure to adequately communicate with her about the status of the case, and Parker's failure to timely respond to her requests for information, both individually and through her Georgia attorney.

Parker tendered a conditional guilty plea which required. in addition to his receiving the public reprimand, that he receive an abated 91-day suspension from the practice of law and be placed on probation for a period of two years. During this two-year period, Parker is to participate in a mentoring program, is required to place \$25,000 in escrow to serve as security for reimbursement to any clients who may have sustained a loss as the result of any misconduct which Parker might have engaged in while serving as attorney for that individual, and submit to the Office of General Counsel a quarterly audit of his trust account for a period of two years, beginning June 30, 1996. [ASB No. 95-161]

 Tuscumbia attorney Steve Arnold Baccus received a public reprimand with general publication on July 24, 1996. On July 16, 1990 Baccus entered a plea of nolo contendre in the United States District Court of the Northern District of Alabama to the misdemeanor charge of failing to timely file an income tax return for the calendar year 1984 in violation of 26 U.S.C. 7203. Baccus's conduct constitutes a violation of Rule 8.4(b) which provides that it is professional misconduct for a lawyer to commit a criminal act that it reflects adversely on his fitness as a lawyer, [ASB No. 92-277]



A must read for every lawyer in America today!

"On a warm June night in 1966, I saw To Kill a Mockingbird. When Atticus Finch walked from the courtroom and the gallery rose in his honor, tears streamed down my face. I wanted to be that lawyer. Mike Papantonio's In Search of Atticus Finch shows how we can all be Atticus Finches, both as lawyers and people."

- Morris Dees

Southern Poverty Law Center

"This powerful and insightful book will be looked upon in years to come as the trial lawyer's guidebook to life. It is motivational! It is inspirational! It is thought provoking! And it is a book that needs to be read and understood by those advocates who try cases. Mike Papantonio has once again demonstrated his extraordinary abilities as a gifted author, a principled leader, and a human being, with a zest for living a full, complete and balanced life."

- John F. Romano, Editor Trial Diplomacy Journal

"Achieving excellence in lawyering is not possible until we understand that we must seek excellence in all areas of our lives. Papantonio does an excellent job explaining why." James O. Haley

Hare, Wynn, Newell and Newton

Order Today: 1-800-577-9499 Or by check to: Only \$24.95 plus \$3.00 S&H Seville Publishing, P.O. Box 12042 VISA Pensacola, FL 32590-2047 (Add Florida Sales Tax (f applicable)

338 NOVEMBER 1996



Linic Bruggink was Judge Bruggink was nominated by President Reagan and confirmed as a judge of the United States Claims Court on April 15, 1986. He is a *cum laude* graduate of Auburn University, receiving his bachelor's degree in 1, 1929.

1971, and master's degree in 1972. Judge Bruggink received his J.J. in 1975 from the University of Alabama School of Law, where he was note and comments editor of the Law Review.

He was appointed director, Office of Appeals Counsel of U.S. Merit Systems Protection Board, in November 1982, and served there until his appointment at the Claims Court. He served as lew clerk to Chief Judge Frank McFadden of the Northerm District of Alabama, and then was an associate at the Dothan firm of Hardwick, Hause & Segrest. From 1977-79, he was assistant director of the Alabama Law Institute, and from 1979-82 was an associate with the Montgomery firm of Steiner, Crun & Baker.

Born in Kalidjati, Indonesia of Dutch parents, he became a naturalized cilizen of the United States in 1960.

And in the other states of the states of the

By Judge Eric C. Bruggink

6.666

ne of the most interesting historical subplots coming out of the Civil War concerns the "exploits" (if you are Southerner) or "depredations" (if you are a Northerner) of the C.S.S. Alabama. During her brief life, that Confederate cruiser, sank or captured at least 64 United States-flagged merchantmen. Along with a handful of other Southern raiders, she caused a precipitous loss of U.S. flagged merchant shipping and arguably crippled forever the American maritime industry. She also very nearly brought the United States and England to the point of war. The exploits of the ship and its captain have at least two connections to the law. Perhaps the most interesting to lawyers in Alabama is that the captain of the Alabama, Raphael Semmes, practiced law in Mobile, both before and after his seagoing adventures. The second connection has to do with the fallout from the losses caused by the ship. In addition to sunken ships and destroyed cargo, the Alabama left in its wake two decades of international and domestic litigation. More recently, there has been litigation and international negotiation over salvage rights to the wreck.

My interest in the Civil War is that of the amateur historian, motivated by regional pride as well as admiration for some of the military leaders the Confederacy produced. That interest was shared and encouraged by one of my former colleagues at the Court of Federal Claims, Judge Mastin G. White. Mastin was a native of Texas and an acquaintance of Lyndon Johnson and Sam Rayburn. He maintained a graciousness, humility and civility that are rare in Washington. Shortly before his death in 1987, at age 86, Mastin gave me Francis Miller's ten-volume Photographic History of the Civil War, published in 1911. The volume on "The Navies" particularly piqued my interest in the Alabama."

The Background

At the outbreak of the war, the Confederacy was faced with having to improvise any sort of a Navy to respond to the North and to deal with the blockade of Southern ports. President Jefferson Davis entrusted that task to Secretary of the Navy Stephen Mallory. Because the South had virtually no

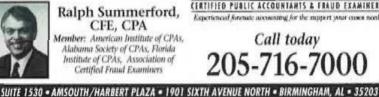
ship-building capacity, Mallory commissioned James Dunwoody Bulloch, a commercial captain, former officer in the Union Navy, and scion of a wealthy Georgia family, to go to England and attempt to purchase ships there, particularly cruisers. They would be used outside the blockade to attack Union commerce. Bulloch's job was nothing less than the creation in foreign shipyards of a Navy for the Confederacy. Bulloch was one of a host of emissaries, propagandists, spies, agents provocateurs, and diplomatic commissioners sent to England and France by the Confederacy. His arrival in Liverpool touched off a flurry of diplomatic and commercial espionage and intrigue. Bulloch's adversary in these affairs was Charles Francis Adams, America's ambassador to England. Bulloch had to be cagy about his work. Although during the early period of the war there was much pro-Southern sentiment in England, 7 the Queen had issued a Proclamation of Neutrality.¹ England's Foreign Enlistment Act forbade British subjects to enlist within the realm on vessels of either belligerent. The act also made it a misdemeanor to fit out armed ships for either side. This made

When you need expert valuation or litigation support, call the specialist.

Certified Fraud Examiner Ralph Summerford, CPA, has devoted a career to making sure attorneys get the expert testimony, deposition help, and caserelated analysis that your case's success depends on.

For over 20 years, attorneys have relied on him for business valuations, forensic accounting, investigative accounting (civil and criminal matters), and partnership and estate disputes. All in all, attorneys have found his help invaluable in calculating damages.

He can help you too. Call now for a free consultation.



The Alabama Lawyer



Summerford Accountancy, P.C. CERTIFIED PUBLIC ACCOUNTANTS & FRAUD EXAMINERS Experienced forenets accounting for the support your cases neer

Call today

205-716-700

it virtually impossible to build ironclads, because there was no way to conceal their purpose. * The act was silent, however, on merchantmen built in England and fitted out on the high seas. After consulting with English lawyers, private citizen Bulloch proposed to exploit this loophole.

The Ship

It was an open secret that Bulloch, in the guise of a private citizen, had commissioned the construction of merchantmen on behalf of the Confederacy. His first interest was in commissioning the Oreto, which later became the Confederate cruiser Florida. Meanwhile, he engaged the shipbuilding firm of Lairds & Sons to construct what later became the Alabama. In the shipyard, she had the designation No. 290 and was to be called the Enrica. Her displacement was 1,040 tons; she was 220 feet long and 32 feet in the beam. She was a barque-rigged, three-masted steamer with a lifting propeller, designed to rely chiefly upon sail, with steam available only in an emergency. She was therefore given an ambitious sail plan for such a small ship, with very long lower masts, giving an immense "drop" to the sails. She was not particularly fast, but she was agile. The ship was to have two horizontal engines. each of 300 HP. Under sail, she was capable of ten knots; with steam, up to 15. She was also equipped with an advanced apparatus for condensing fresh water from salt water. On the large double wheel was inscribed the provocative and perhaps not entirely biblical sentiment, "Aide Toi et Dieu T'Aidera" ("Help yourself and God will help you").

The Launching

Adams heard of No. 290 and complained of its obviously martial purposes to the British Customs authorities. His complaints generated something less than vigorous attention, however. He later obtained an affidavit from a seaman who had been engaged to sail on the ship. The sailor had been told No. 290 was to go into service for the Confederacy. Adams' continuous protests eventually embarrassed the English into action. Plans were made to seize the ship, but they were

delayed by accident, design or lethargy. By the time the English acted, the ship had escaped, flying the English colors and sailing under the name Enrica. She left Liverpool on July 28, 1862, with Bulloch, an English captain and a party of English ladies and their husbands, friends of the builder. The trip was ostensibly a sea trial. After a jaunt on the River Mersey, the passengers, including Bulloch, were disembarked on a tug and the ship proceeded on its way out to sea. The following day, July 29, the Enrica pulled into Port Lynas on the coast of Angelsea and lay there for 48 hours to complete her preparations. From there, the ship sailed for Port Praya in the Azores, which she reached on August 10th. On August 18th, by prearrangement, the Agripping arrived from London, bringing guns, ammunition, and a mostly English crew. In addition to smaller munitions, the ship was outfitted with six 32-pounder. muzzle-loading cannon, two guns on pivots on the upper deck, and a Blakely rifled gun on the forecastle capable of firing a seven-inch 100-pound shell. On the guarterdeck there was also a small nine-pounder.

On August 20th, the Bahama arrived from Nassau, via Liverpool, carrying Raphael Semmes, who had been designated by Mallory to captain the ship. A week later, Semmes took her into international waters and commissioned her into the Confederate service as the C.S.S. Alabama. The British made no serious effort to pursue at any point. The Government of the United States immediately gave notice to the British Government that it would demand satisfaction.

The Man— Raphael Semmes

The crew of the Alabama was almost entirely Irish or English. All of the officers were from the South, however. The most notable, of course, was the captain. Raphael Semmes was born in 1809 in Charles County, Maryland. His parents died when he was young and he was adopted by an uncle. He was appointed a midshipman in 1826 and served for six years. He studied at Norfolk Officers' Training School and was commissioned a Lieutenant in 1837. During this time he had taken a series of leaves of absence during which he studied law in Maryland, where his brother practiced, and in Ohio. In the 1840s he established his permanent home in Mobile, where he had served earlier as an officer in the Gulf Squadron. He bought a home near Perdido and began the practice of law,

Rear Admiral Raphael Semmes Confederate States Navy

specializing in maritime matters. In 1856, he was recalled to duty in the Navy. Just prior to the outbreak of the war he was a Commander, serving in Washington as Secretary of the Lighthouse Board. He resigned at the outbreak of the war and joined the Confederate Navy.

The Run of the Alabama

Semmes was instructed by Secretary of the Navy Mallory to "do Northern commerce the greatest injury in the shortest time."⁵ He fulfilled his mission. In her two-year life, the *Alabama* never docked in a Union or Confederate port. Instead she prowled the Atlantic and Indian oceans, the Gulf of Mexico and the Caribbean Sea like a shark. The *Alabama* captured at least 64 vessels, destroying 58. Others were kept or bonded. All tolled, Confederate cruisers such as the *Alabama*, the *Florida* and the *Shenandoah* captured or destroyed about 300 ships. The value of the ships and cargo seized or destroyed by the *Alabama* was estimated at over \$3 million. In addition, about 1,000 American ships transferred to British flag, out of fear of the cruisers.

The Union Navy was in hot pursuit of the Alabama all over the globe and narrowly missed her on several occasions. Only once, however, before her fateful engagement with the U.S.S. Kearsarge did she have an encounter with a federal warship. That was off Galveston, on January 11, 1863, when she sank the gunship Hatteras in less than 15 minutes.

The Sinking of the Alabama

The Alabama's last and most spectacular engagement took place in June 1864, off Cherbourg, France, Semmes had docked at Cherbourg hoping to have repairs made to the ship. The U.S.S. Kearsarge arrived, however, and waited offshore, trapping the Alabama. Semmes canceled his request to go into drydock and informed the U.S. and Confederate consuls, as well as John Winslow, the captain of the Kearsarge, that he would weigh anchor after the ship was reprovisioned. On June 19, Semmes took the Alabama out to meet the Kearsarge in what Semmes must have realized was an uneven contest. The Kearsarge was the more heavily armed of the two ships, with two 11inch Dahlgrens, four 32-pounders and one light 28-pounder. The Kearsarge was clad with chain armoring; the Alabama was not. The federal ship had a crew of 162; the Confederate ship 120. The Alabama was operating with worn out boilers and inferior powder. Nevertheless, the event took on the air of a medieval joust. As one chronicler

wrote, "Never did knightly tournament boast a more eager multitude of spectators."⁶ After a fierce fight, the *Alabama* was mortally wounded,⁷ and the crew abandoned ship, Semmes being among the last. Most of the crew, including Semmes, were picked up by the English steam-yacht, *Deerhound*. Survivors informed the *Kearsarge* that Semmes had drowned, so it did not attempt to remove him from the *Deerhound*, which took Semmes and the crew to Southampton. The *Kearsarge* took on board the balance of the survivors, whom Captain John Winslow paroled, much to the consternation of some in Washington. Nine men from the *Alabama* were killed in action and 12 men drowned.

Legal Jousting in the International Arena

During the run of the Alabama and the other cruisers, Northern newspapers and pamphleteers kept up a howl of protests against their actions.* They called for the United States to seek reparations from England on the grounds that the Alabama and other ships were built and outfitted in British ports, with British knowledge, in violation of international principles of neutrality in general and the Foreign Enlistment Act in particular. In October 1863, Secretary of State William Seward wrote the British Government, holding it responsible for the damages inflicted by the cruisers, and demanding indemnification. The British Government showed no inclination to concede liability, however, and President Lincoln was reluctant to press the matter during the war. With the end of the war and Lincoln's death, the issue came to life again. Concurrently, a change in government in London put England in a more accommodating mood.

Meanwhile, the claims of American citizens and corporations for direct losses as well as indirect losses such as increased insurance costs and lost business mounted. A feeble effort by the Johnson Administration to resolve the claims through the Johnson-Clarendon Convention of 1868 was rejected by the Senate. Senator Charles Sumner, one of the ringleaders calling for substantial reparations, declared that the total damages to private and public interests amounted to over \$2 billion. He asserted that the cruisers doubled the duration of the war. One of his purposes in advancing such exaggerated claims was to pressure England to cede Canada by way of reparation.

Cooler heads prevailed, however, and eventually the two countries negotiated the Treaty of Washington, signed on May 8, 1871 and ratified by the Senate. In it, England apologized for the

Richard Wilson & Associates Registered Professional Court Reporters

804 S. Perry Street Montgomery, Alabama 36104

264-6433

"escape" of the Alabama. Although the Alabama claims were its primary focus, the treaty also embraced certain Canadian fishery and boundary claims against the United States. The treaty was novel in certain important respects. It established the principle that a country cannot interpose its own domestic law as an excuse for failure to meet international obligations. Rather, it must exercise "due diligence" to prevent hostile expeditions from its territory." This principle was codified in the three famous Alabama rules. A neutral government is bound to use due diligence: (1) to prevent the fitting out, arming, or equipping within its jurisdiction of any vessel, which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace; (2) not to permit either belligerent to make use of its ports or waters as the base of naval operations or for the purpose of augmenting military supplies or recruiting men; and, (3) to prevent violation of the foregoing duties. These principles of equity and conduct were meant to serve as guiding principles between, on the one hand, justice in the abstract and the rule of decision on the other." They continue to have modern-day application with respect to the responsibilities of nations for terrorist acts launched from their soil and to licensing arms sales by private merchants.

The Treaty of Washington was also novel in establishing a multi-national arbitration award tribunal to hear America's claims against England arising out of the activities of the *Alabama* and the other cruisers. There had been earlier international arbitrations, such as the Jay Treaty, but they tended to concern limited claims of one state against the government of another. The *Alabama* claims, on the other hand, concerned a significant political issue—the limits of neutrality. They led to a number of treaties, particularly between the United States and Great Britain, providing for the arbitration of disputes."

Representatives to the arbitration were appointed from England, the United States, Switzerland, Brazil, and Italy. They met in Geneva. America's claims initially included "indirect" claims for extension of the war, increased insurance premiums, and loss of American-flagged shipping. The American arbitrator, Charles Adams, persuaded his countrymen to drop the indirect claims, however.¹⁰ The direct claims amounted to nearly \$20 million and were asserted in connection with the actions of 15 cruisers. The claims asserted were those of individuals, as well as the Government's claim for the costs associated with pursuit of the cruisers. All the claims, however, were presented by and on behalf of the United States.

The arbitrators announced their decision on September 15, 1872. They found against Great Britain with respect to the actions of the *Alabama*, the *Florida* and the *Shenandoah* and awarded \$15.5 million in gold as compensation for direct claims only. The award was in gross to the United States; it made no recommendation or provision for how the proceeds were to be divided. This sum was paid into the U.S. Treasury.¹⁰ The arbitrators found in favor of Great Britain with respect to the other ships.

Legal Jousting in the United States: The Court of Commissioners of Alabama Claims

In 1874, Congress passed legislation creating the Court of Commissioners of *Alabama* Claims, to hear claims against the fund." The President, with the advice and consent of the Senate, was to appoint five judges. The law excluded claims arising out of losses other than those caused by the three "inculpated" cruisers, i.e., the *Alabama*, the *Florida* and the *Shenandoah*. ¹⁵

The court had two distinct incarnations. During its first existence, its charter was extended several times in order to allow time for late claims to be filed and for the court to complete its work. The first five judges of the court were from Michigan, New Jersey, Pennsylvania, Mississippi, and Iowa. The court was vested with all the powers of other federal courts. There was no provision for appeal of the court's decisions, however. The court was to determine the amount and validity of claims arising out of the actions of the three cruisers. Only direct, non-reimbursed claims could be asserted. All indirect claims were rejected, including lost profits. Insurance companies could collect for their payouts only to the extent they could demonstrate a net loss for the war years. As with respect to all claims against the United States during this period, claimants had to take an oath that they had remained loyal to the Union during the war. Attorneys could claim part of the amount awarded.

The first court disposed of about \$14 million in direct claims. It awarded judgments of nearly \$10 million. With accumulated interest and premiums from a bond sale, however, the amount left was \$10,089,004.96.16 Allowing that money to revert to the treasury proved unsatisfactory to some legislators, particularly those who had bought up the theretofore-rejected indirect claims for something less than full value. Consequently, despite a loud chorus of allegations of scandal,17 a new statute was adopted in 1882 reconvening the Court of Commissioners of Alabama Claims for a period of two years.18

The new court had three instead of five judges and the grounds on which it could award damages were expanded. Most notably, claimants were no longer limited to persons damaged by the *Alabama*, the *Florida* or the *Shenandoah*. Instead, direct losses caused by any other Confederate cruiser could be compensated, despite the fact that the Geneva Arbitrators had declined to find England liable for other cruisers. In addition, any entity that paid increased war insurance premiums after the sailing of the cruisers could make a claim on the fund. The net effect was to treat the claims rejected in the Geneva arbitration as claims against the United States. The second court received over 6,000 new claims totaling about \$28 million. The court awarded \$19,658,960, more than all of the monies available. The direct loss claims were paid in full; claims for increased insurance costs were paid on a pro rata basis.

The judgments of the Court were not appealable.¹⁹ but peripheral litigation eventually sprang up in the Court of Claims over enforcement of judgments, attorney fees and ownership of recoveries.20 The Supreme Court took the position that the commission was a "quasicourt," in no material respect different from the various commissions that had been specially created in the 19th Century to settle and adjust disputed claims pursuant to various treaty stipulations or otherwise, such as the "Southern Claims Commission," the "Mexican Claims Commission," or the "Spanish Claims Commission."21

Epilogue for Captain Semmes

After the sinking of the Alabama, Semmes returned to the South by way of a roundabout route and was promoted to Rear Admiral. He took command of a small fleet on the James River that was scuttled in the final stages of the war. In the closing weeks of the war he was appointed a Brigadier General, thus becoming the only officer in the Confederacy who held flag rank in both services. He surrendered along with General Joseph E. Johnson's army, was arrested and indicted for piracy, and spent four months in prison. He was eventually released at President Andrew Johnson's direction in 1866, although he was never officially paroled. Semmes then returned to Mobile, where he resumed the practice of law. Although Semmes was elected a probate judge, the Reconstruction military authorities never allowed him to take office. He lived out his days in Mobile practicing law and writing extensively about his wartime experiences.

Epilogue for the Alabama

The last piece of litigation involving the

STILL WAITING ON YOUR STATIONERY ORDER?



CALL US.

A simple phone call is all it takes to receive your Free US Print Professional Stationery Sample Pack. See for yourself which of our fine cotton writing papers performs best for you and which stock color, finish and print process you prefer. Once you make your decision, you can place your order with confidence. It's really that simple.

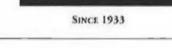
REORDERS SHIP NEXT DAY FREE SHIPPING NATIONWIDE NO SET-UP CHARGES PREPAY AND SAVE 10%

Professional Stationery • Professional Cards Professional Brochures • Annoancements Mailing Labels • Regular & Window Envelopes Mailing Envelopes • Legal Forms

> BIRMINGHAM AL 205 328-7737 FAX 205 328-0056

NATIONWIDE 800 962-6434 FAX 800 962-4344

US·PRINT



Ini

Alabama arose in connection with a bell, allegedly from the Alabama, that had surfaced in an English antique shop in the 1950s. Although there was a question as to the authenticity of the artifact, in United States v. Steinmetz,²² the United States established its ownership rights. The decision held that the government of the Confederate states owned the Alabama, that it was not a piratical vessel, and that the United States succeeded to ownership of the vessel and hence the bell.

The remains of the Alabama were located by French divers in 1984, in 200 feet of water, seven miles off the coast of France in French territorial waters. The wreck was the subject of negotiation between France and the United States and France ultimately agreed that the wreck and its artifacts belong to the United States. The parties agreed to create a joint scientific committee to oversee salvage, with the expectation that some of the recovered pieces will go on tour in various countries. Groups in the United States, England,21 France, and even South Africa are interested in



the remains of the vessel. The wooden portions of the ship above the water line are largely destroyed, but its armaments, engines and propeller remain. Several pieces have been recovered, including the copper rim of the wheel, which is now housed at the Navy Museum in Washington, D.C. Once again the spirit of the *Alabama* is on display to the world, "Aide Toi et Dieu T'Aidera."

Sources

 Kenneth Poolman, The Alabama Incident (William Kimber & Co., London, 1958).

2. Edna and Frank Bradlow, *Here Comes the Alabama* (A.A. Balkema, Cape Town, 1958).

3. Edward C. Boykin, *Ghost Ship of the Confederacy* (Funk & Wagnalls Co., New York, 1857).

4. Raphael Semmes, *The Cruise of the Alabama and the Sumter* (Vol. I & II, Sanders, Otley & Co., London, 1864).

5. William G. Littleton, *The Battle* Between the Alabama and the Kearsarge off Cherbourg France, Sunday, June 19, 1864 (1933).

6. Report From the Secretary of State Relating to the Court of Commissioners of Alabama Claims (Government Printing Office, Washington, D.C., 1877).

7. C.M. Robinson, III, *The Shark of the Confederacy* (Naval Institute Press, Annapolis, 1995).

 Frederick T. Hill, *Decisive Battles* of the Law (Harper & Bros. Publishers, New York, 1907).

9. Charles C. Beaman, *The National* and Private "Alabama Claims and Their Final and Amicable Settlement" (W.H. Moore, Washington, D.C., 1871).

10. H. Conquest Clarke, Reporter, Oral Opinions of the Court of Commissioners of Alabama Claims (Thomas McGill & Co., Washington, D.C., 1884).

11. Report From the Secretary of State with Accompanying Papers Relating to the Court of Commissioners of Alabama Claims (Government Printing Office, Washington, D.C., 1877).

12. Moore, J.B., *History and Digest of International Arbitration* (Vol. 1-IV, Government Printing Office, Washington, D.C., 1898).

13. The Alabama Arbitration, Geneva

1872 (Town Hall, Geneva, 1988).

14. Adrian Cook, *The Alabama Claims* (Cornell Univ. Press, Ithaca, 1975).

15.J.B. Holloway, *Laws of the United* States and Decisions of the Courts Relating to War Claims (Government Printing Office, Washington, D.C., 1908).

16.Charles P. Kirkland, Liability of the Government of Great Britain for the Depredations of Rebel Privateers (Anson

D.F. Randolph, New York, 1863). Dictionary of American Biography, vol. 8, part 1, 579-582.

Charles Torrey, museum researcher. Museum of the City of Mobile, 355

- Government St. 36602 (334) 434-7652. David Toifel 559 Williams Street, Mobile, 36606 476-0093 Co-Chair of the CSS Alabama Committee
- Phillip M. Nassar 1031 Uster Street, Mobile, 36608 342-4194
- Oliver Semmes 9026 Marseilles, Potomac Md. 32505 921-7014
- John Taylor 1939 Lorraine Ave. McLean, 22101 536-9871
- Sidney Shell (lawyer in Mobile, on Submarine Hunley)
- Peter Bernhardt 647-9616
- Kevin Foster National Park Service 343-5969, fax 343-1244. 800 N. Capitol Street.
- Professor John Norton Moore, Center for Oceans Law & Policy, University of Virginia School of Law (804) 924-7441. Professor Jack Grunewald Naval War College, Newport Rhode Island.
- Ashley Roach, ass't legal advisor for Oceans Affairs at State Department
- Professor Lewis Sohn Univ. of Georgia. (Arbitration)
- Ambassador Shabtai Rosenne from Israel Jerusalem

ENDNOTES

 My amateur research was given direction by a number of individuals who have spent much time considering the naval history of the Civil War. Special thanks to: David Lockwood, deputy librarian at the Court of Federal Claims; John Taylor, author of an excellent biography on Raphael Semmes, Confederate Raider; Kevin Foster, maritime historian at the U.S. Park Service; Charles Torrey, researcher at the Museum of the City of Mobile; and Mmme. Ulane Bonnel, president of the C.S.S. Alabama Association, Paris, France. Staff at the Library of Congress were also very helpful. In order to minimize foctnote clutter, I have used them only for specific details. The balance of the paper can be attributed to the sources listed at the end.

- For example, one of the exhibits later offered by the United States to defeat claims for reparations is a list of English purchasers of bonds to support the Confederacy through the "Southern Independence Association." The list is lengthy and contains the names of many prominent lawyers, judges, military personnel and clergymen. U.S. Court of Commissioners of Alabama Claims, Rules and Opinions, at 1882-1884 (Gibson Bros., Washington, D.C., 1885).
- The proclamation itself was an offense to the Union government, England recognized the South and North as "belligerents," The official position in Washington was that the South was a rebel portion of the entire United States and therefore could not be a distinct "belligerent" country.
- An effort was certainly made to build them, however. The notorious ironclad "Laird" rams were completed toward the end of the war, although never delivered to the Confederacy.
- Kenneth Portman, The Alabama Incident, at 80 (William Kimber & Co., London, 1958).
- Raphael Semmes, The Cruise of the Alabama and the Sumfer, at 285 (Vol. II, Sanders, Otley & Co., London, 1864).
- The Alabama was latally crippled by a shot to the stern post, ironically, an unexploded shell from Alabama's Blakely gun imbedded itself, without exploding, in the stern post of the Kearsarge.

- B. See, e.g., Charles Kirkland, Liability of the Government of Great Britain for the Depredations of Rebet Privateers (Anson D.F. Randolph, New York, 1863); Pamphlets on the Alabama Claims (Library of Congress) (a series of writings dating from the 1870s).
- Note, Nonenforcement of the Neutrality Act: International Law and Foreign Policy Powers Under the Constitution, 95 Harv. L. Rev. 1955 (1982).
- L. B. Sohn, Equity in International Law, 82 Am. Soc'y Int'l L. Proc. 277 (April 20-23, 1986); see Lillich & Paxman, State Responsibility for Injuries to Aliens Occasioned by Terrorist Activities, 25 Am. U. L. Rev. 217, 256 (1977).
- Judge Stephen M. Schwebel, The Performance and Prospects of the World Court, 6 Pace Int'l L. Rev. 253 (Spring 1904) (publication page references are not available for this document).
- See H.R. Res. 180, 42nd Cong., 2d Sess. (April 9, 1972); see generally William B. Lawrence, The Indirect Claims of the United States Under the Treaty of Washington (Sidney S. Rider & Brother, Providence, 1872).
- 13. 17 Stat. 601.
- 14. 18 Stat. 245, 249 at _ 18.
- 15. The Shenandoah sank a number of ships after General Robert E. Lee's surrender on April 14, 1865. Gaptain Iredell Waddell's explanation that he simply had not had reliable word of the surrender was generally accepted. He eventually

surrendered to the British in November 1865.

- 16. 24 Stat. 77.
- See, e.g., Richard Lathers, The History of the Geneva Award and an Appeal Against Congressional Fraud and Spoliation (Theo R. Lockwood, New York, 1882).
- 22 Stat. 98. This was later extended through the end of 1885. 23 Stat. 33.
- 19. In Williams v. Heard, 140 U. S. 529 (1891), it was held that the decisions and awards of the Court of Commissioners of Alabama Claims were conclusive as to the amount to be paid on each valid claim, but not as to the party entitled to receive it.
- See, e.g., William G. Weld & Co. v. United States, 23 Ct. Ct. 126, aff'd, 127 U.S. 51 (1888); George Howes & Co. v. United States, 24 Ct. Ct. 170 (1889); Great Western Ins. Co. v. United States, 19 Ct. Ct. 208 (1884).
- 21. Wright v. Tobbits, 91 U.S. 252 (1875).
- 763 F. Supp. 1293, 1294 (D.N.J. 1991), all'd, 973
 F.2d 212 (3d Cir. 1992), cert. denied, 113 S. Cl.
 1576 (1993). For an excellent discussion see, Susan Poser and Elizabeth Varon, United States
 v. Steinmetz: The Legal Legacy of the Civil War, Revisited, 46 Ala. L. Rev. 725 (1995).
- A group at Birkenhead, England has preserved No. 4 Drydock at Leirds Shipyard in anticipation of installation of a full-scale model of the ship.

Position Available

Coordinator, Law Office Management Assistance Program

The Aabama State Bar is seeking an attorney to develop and implement a program to disseminate information to Alabama attorneys relative to the management of their law practice, and provide consultations to lawyers about management and technological issues, with an emphasis upon the solo and small firm market. The successful candidate will be a member of a state bar, have private practice experience, knowledge of business and management issues, and experience or training in all phases of technology as applied to the practice of law. Skills in preparing/providing training and ability to understand needs of diverse groups essential. Excellent benefits; salary commensurate with experience. Send cover letter and resume to LOMAP Search Committee, Alabama State Bar, PO. Box 671, Montgomery, Alabama 36101. The Alabama State Bar is an equal opportunity employer. Deadline: December 15, 1996



The following in-state programs have been approved for credit by the Alabama Mandatory CLE Commission. However, information is available free of charge on over 4,500 approved programs nationwide identified by location date or specialty area. Contact the MCLE Commission office at (334) 269-1515, or 1-800-354-6154, and a complete CLE calendar will be mailed to you.

NOVEMBER

15 Friday

ALABAMA LAW UPDATE Mobile Admiral Semmes Hotel Mobile Bar Association CLE credits: 3.0 433-9790

BANKRUPTCY LAW Birmingham Civic Center Alabama Bar Institute for CLE CLE credits: 6.0 Cost: \$165 348-6230

PRACTICAL DEFENSE OF DUI & VEHICLE ACCIDENTS

Montgomery The Madison SBI Professional Development Seminars CLE credits: 6.0 Cost: \$129 (800) 826-7681

MUNICIPAL COURT PRACTICE AND PROCEDURE Mobile Cumberland Institute for CLE CLE credits: 6.0 (800) 888-7454

RECENT DEVELOPMENTS FOR THE CIVIL LITIGATOR

Birmingham Cumberland Institute for CLE CLE credits: 6.0 (800) 888-7454

17 Sunday

SECOND ANNUAL DEFENSE OF DRINKING DRIVERS Birmingham

Sheraton Civic Center Hotel Complex Southeastern Educational Institute, Inc. CLE credits: 6.3 Cost: \$165 457-9082

19 Tuesday

IMPACT OF THE ADA ON WORKERS' COMPENSATION Huntsville Lorman Business Center, Inc. CLE credits: 3.8 Cost: \$135 (715) 833-3940

22 Friday

JURY SELECTION Birmingham Civic Center Alabama Bar Institute for CLE CLE credits: 6.0 Cost: \$165 (205) 348-6230

MASTERING EVIDENCE AND OPENING STATEMENT AND FINAL ARGUMENT Birmingham Cumberland Institute for CLE

CLE credits: 6.0 (800) 888-7454

DECEMBER

3 Tuesday WIN AT EVERY LEVEL Orange Beach Emissary CLE credits: 6.3 Cost: \$155 (303) 417-0253

5 Thursday ALABAMA UPDATE Huntsville

Civic Center Alabama Bar Institute for CLE CLE credits: 6.0 Cost: \$165 (205) 348-6230

RULES OF EVIDENCE

Birmingham The Wynfrey Hotel Alabama Bar Institute for CLE CLE credits: 6.0 Cost: \$165 (205) 348-6230

PRACTICAL DEFENSE OF DUI & VEHICLE ACCIDENTS

Huntsville SBI Professional Development Seminars CLE credits: 6.0 Cost: \$129 (800) 826-7681

6 Friday

ALABAMA MINI-CODE Montgomery Video Presentation Cumberland Institute for CLE CLE credits: 6.5 (800) 888-7454

6-9

BENCH & BAR CONFERENCE Point Clear Grand Hotel Mobile Bar Association CLE credits: 4.6 (205) 433-9790

ESTATE PLANNING

Birmingham Pickwick Center Alabama Bar Institute for CLE CLE credits: 6.0 Cost: \$165 (205) 348-6230

RULES OF EVIDENCE Huntsville Civic Center Alabama Bar Institute for CLE CLE credits: 6.0 Cost: \$165 (205) 348-6230

PRACTICAL DEFENSE OF DUI & VEHICLE ACCIDENTS

Birmingham SBI Professional Development Seminars CLE credits: 6.0 Cost: \$129 (800) 826-7681

REPRESENTING ALABAMA BUSINESSES

Birmingham Cumberland Institute for CLE CLE credits: 6.0 (800) 888-7454

12 Thursday

RULES OF EVIDENCE

Mobile Riverfront Civic Center Alabama Bar Institute for CLE CLE credits: 6.0 Cost: \$165 (205) 348-6230

PRACTICAL DEFENSE OF DUI & VEHICLE ACCIDENTS

Montgomery SBI Professional Development Seminars CLE credits: 6.0 Cost: \$129 (800) 826-7681

13 Friday RULES OF EVIDENCE

Montgomery Alabama Bar Institute for CLE CLE credits: 6.0 Cost: \$165 (205) 348-6230

17 Tuesday

ALABAMA UPDATE Birmingham Civic Center Alabama Bar Institute for CLE CLE credits: 6.0 Cost: \$165 (205) 348-6230

18 Wednesday

ALABAMA UPDATE Montgomery Embassy Suites Alabama Bar Institute for CLE CLE credits: 6.0 Cost: \$165 (205) 348-6230

19 Thursday

ALABAMA UPDATE Mobile Riverfront Civic Center Alabama Bar Institute for CLE CLE credits: 6.0 Cost: \$165 (205) 348-6230

PRACTICAL DEFENSE OF DUI & VEHICLE ACCIDENTS Gadsden Days Inn SBI Professional Development Seminars CLE credits: 6.0 Cost: \$129 (800) 826-7681

20 Friday

MEDIATION Mobile Admiral Semmes Hotel Mobile Bar Association CLE credits: 3.0 (205) 433-9790

PRACTICAL DEFENSE OF DUI & VEHICLE ACCIDENTS

Phenix City SBI Professional Development Seminars CLE credits: 6.0 Cost: \$129 (800) 826-7681

CURRENT ISSUES IN

EMPLOYMENT LAW Birmingham Cumberland Institute for CLE CLE credits: 6.0 (800) 888-7454

30-31

CLE BY THE HOUR Birmingham Cumberland Institute for CLE CLE credits: 12.0 (800) 888-7454

Notice and Opportunity for Comment on Proposed Amended Rules

Pursuant to 28 USC§332(c)(11), notice is hereby given of proposed amended Rules Governing Complaints of Judicial Misconduct and Disability of the Eleventh Circuit (Addendum III). The proposed amended Rules may be obtained without charge from and comments may be submitted in writing to: Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth Street, NW, Atlanta, Georgia 30303. Phone (404) 331-

6187. Comments must be received by November 15, 1996.



The Alabama Law Institute

The Institute has begun revisions on the following major projects: Multiple Party Accounts, Interstate Family Support Act, UCC Article 5 "Letters of Credit", Revised Limited Partnership Act, Principal and Income Act, Custodial Trust Act, Transfer on Death, and Amendments to the Limited Liability Company and Limited Liability Partnership Acts,

The **Multiple Party Accounts** Committee is chaired by attorney Larry Vinson, Birmingham, and the reporter is Professor Marsh of the University of Alabama School of Law. Professor Marsh states that our revision will do the following:

The present State of Alabama law governing ownership of joint accounts is a maze, with outcomes based on the type of financial institution, when the account was created and whether there are two or more than two parties on the account. There are a variety of account and signature cards in play around the state, and a fairly constant stream of post-death litigation among survivors. Financial institutions and probate judges are often at the center of disputes when the individuals on the joint account fail to understand the terms and implications of the account arrangement.

The Multiple Party Accounts Committee is studying the Alabama law and is considering recommending adoption in Alabama of the Uniform Multiple-Person Accounts Act. The Act treats deposits in all types of financial organi-



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. zations and corrects the problem of inconsistent treatment of joint accounts among different financial institutions in Alabama. The Act contains several sections which resolve ownership questions affecting parties and death beneficiaries of accounts. Separate sections are devoted to protecting financial institutions if they make payment in accordance with the account contract terms.

The Act includes sample statutory forms that provide clear and simple instructions to both financial institutions and depositors in setting up multiple-person accounts. Many of the account agreements being used in Alabama now do not allow the depositor to distinguish among the different functions of the multiple-person account, with the result that the depositor's use of a joint account for one purpose may yield unwanted results after death.

The Uniform Family Support Act is chaired by attorney Gordon Bailey of Anniston and the reporter, Penny Davis, associate director, Alabama Law Institute, reports that this act is intended to do the following:

The Uniform Interstate Family Support Act (UIFSA) has been promulgated by the National Conference of Commissioners of Uniform Laws to update the laws relating to support. It will replace current Ala. Code §30-4-80 through 98.

The Act includes an expanded longarm jurisdiction section for the home state of the supported family. Furthermore, the UIFSA incorporates the principal of continuing, exclusive jurisdiction for support orders.

Under the new Act, the only court that can modify a support order is the one having continuing, exclusive jurisdiction over the orders. This is designed to substantially decrease the number of situations in which more than one valid support order may exist from different states because of modification. However, if the parties no longer reside in the issuing state, a court with personal jurisdiction over both parties or with the agreement of both parties has the power to modify.

A number of procedural improvements have been included to simplify the interstate support cases such as testimony by telephone conference. The Act explicitly authorizes parties to retain private legal counsel.

The Act includes direct enforcement procedures so that a support order may be mailed directly to an obligor's employer in another state which will trigger wage withholding by that employer without the necessity of a hearing unless the employee objects.

The UCC Article 5 Committee will revise this article which has not been addressed in 30 years in Alabama. The reporter is Professor Mike Floyd of Cumberland School of Law. The committee is chaired by attorney E.B. Peebles of Mobile.

Revised Limited Partnership Act-

These amendments are needed to conform the Limited Partnership Law with changes in the Partnership Act and interpretations by the Internal Revenue Service. This committee is chaired by attorney Bob Denniston of Mobile and Professor Howard Walthall of the Cumberland School of Law is the reporter.

Principal and Income Act-This revision is needed to bring Alabama into conformity with changing laws in other states. Alabama's Principal and Income Act was last addressed by the Legislature in 1939. Most states have since revised their laws in keeping with the 1995 changes made by the National Conference of Commissioners on Uniform State Laws. Reporter for this committee is Professor Tom Jones of the

(Continued on page 376)





Montgomery County

Established: 1816

The following continues a history of Alabama's county courthouses their origins and some of the people who contributed to their growth. If you have any photographs of early or present courthouses, please forward them to: Samuel A. Rumore, Jr., Miglionico & Rumore, 1230 Brown Marx Tower, Birmingham, Alabama 35203.



Montgomery was the site of the Whig Party political conventions of 1840 and 1844. Due to the publicity surrounding these conventions, many Alabama citizens viewed Montgomery as a significant political center.

These events also demonstrated the convenience of Montgomery to travelers. Transportation facilities in and around Montgomery were rapidly expanding during the 1840s. River traffic was growing. Stage coach arrivals and departures were increasing. Roadways were improving. And a railroad system was developing in the region. These transportation advantages contrasted favorably with those of the existing state capital at Tuscaloosa.

By 1843 a grassroots movement was

underway to relocate the state capital to Montgomery. Part of the motivation was that people felt that state institutions and the corresponding employment associated with them should be spread out around the state. Tuscaloosa was the home of both the capital and the state university. In 1839, Wetumpka became the site of the \$30,000 state penitentiary. Many citizens sought the movement of the seat of government to Montgomery so its economy could have the advantage of a government payroll.

The Alabama Journal published editorials promoting the campaign to name Montgomery the state capital. One such article supported the selection of Montgomery by asserting that "from its central position, its facilities for direct communication by steamboat, railroad, and stage with every section of the state, its salubrious and healthy location, the fertility and productiveness

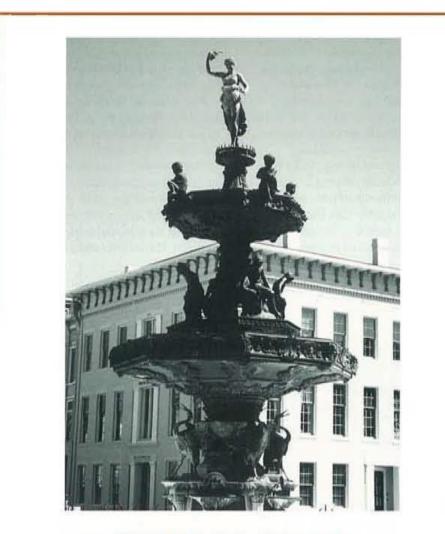


Montgomery County Courthouse; Montgomery, Alabama (1854)

of the adjacent country, its prosperity and increasing trade and population, and its possession of all those advantages deemed requisite in the location of the seat of government, there is no place in the interior that can for a moment hold comparison with it".

During the 1844-1845 legislative session, the state assembly sent to the people for a vote an amendment to the constitution authorizing the legislature to consider the relocation of the state capital. The amendment passed by a vote of 33,798 to 27,320. Strong opposition came from northern and western Alabama while strong support came from the southern and eastern portions of the state.

On January 28, 1846, the two houses of the legislature convened in Tuscaloosa to decide the future location of state government. Fourteen towns received votes and consideration in the early balloting. However, it was clear from the beginning that there were only three serious contenders. Tuscaloosa was the choice of north and west Alabama and received 39 votes. Wetumpka was the choice of east Alabama and received 28 votes. Montgomery was the choice of south and southeast Alabama and received 33



Court Square Fountain

Placed by the City over an artesian basin and crowned by Hebe, Goddess of Youth and Cupbearer to the Gods, the fountain was cast by J. L. Mott Iron Works of New York. It was restored by Robinson Iron of Alexander City in 1984 during the administration of Mayor Emory Folmar. votes. Since the selection required a majority, political maneuvering began in earnest. On the fifth ballot Tuscaloosa had 38, Wetumpka 33 and Montgomery 27 votes.

By the seventh ballot the vote was Tuscaloosa 43, Montgomery 35, and Wetumpka 25. On the eighth ballot a significant shift gave Montgomery the lead with 37 votes, Tuscaloosa 36 and



Wetumpka 31. On the 12th ballot Montgomery polled 46 votes and on the 13th ballot 47 votes.

It became apparent that the only way that the south and east Alabama delegates could secure the capital for their region was to combine their votes. Finally, on the 16th ballot, a group of Wetumpka supporters joined the Montgomery group. Montgomery received 68 votes, Tuscaloosa 39, Selma 11, Wetumpka nine, and Mobile three. The Speaker of the House declared that Montgomery received a majority of the votes cast and was the constitutionally elected seat of government of the State of Alabama.

Word reached Montgomery of its selection on the evening of January 30, 1846. A great celebration took place including a salute of 100 guns from atop Andrew Dexter's "Goat Hill." The grazing pasture and livestock there would soon be replaced by a capitol building and legislators.

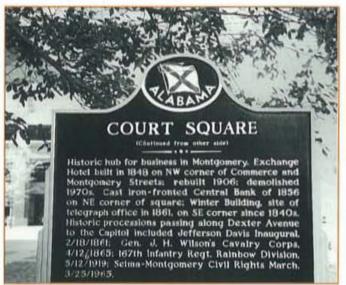
The legislature, in selecting a new state capital site, had mandated that the winning city must construct a new building without expense to the state. Soon a \$75,000 bond issue was subscribed, and by July 4, 1846, construction on the new capitol had begun. The architect was Stephen D. Button and the contractors were B.F. Robinson and R.N.R. Bardwell.

The new capitol was constructed in the Greek Revival style with Corinthian columns. It was completed by November 1847, and was ready for the legislative session of 1847-1848. Unfortunately, this was the only complete legislative session held in that building.

On the afternoon of December 14, 1849, exactly 30 years to the day after Alabama became a state, and while the growing the facilities there.

On May 8, 1852, James E. Belser and his wife, Adaline, executed a deed to Hugh V. Watson as judge of probate of Montgomery County, and his successors in office, "for the use and benefit of the County of Montgomery." The deed conveyed title to a lot at the southwest corner of Washington and Lawrence streets. On this site a new courthouse, befitting a state capital city, was erected in 1854.

Charles C. Ordeman, a German archi-



1849 legislature was in session, a fire broke out in the capitol. The flames quickly spread and within a few hours the capitol was destroyed. The legislators from Tuscaloosa immediately called for the return of the capital to their city which still had a capitol building standing. However, contractors assured the state legislature that a new capitol could be built and ready for use by November 1851, in time for the next legislative session. The legislature appropriated \$60,000 for the building which was reconstructed on its original site with its original design. This building, with its numerous additions, has served the state of Alabama as its seat of government ever since.

The population of Montgomery continued to grow in the 1850s because the city was the state capital. The economy also flourished. The courthouse site, which stood at the opposite end of Market Street, now Dexter Avenue, from the capitol building, became prime commercial real estate at a time when the county was outtect who had emigrated from Germany to New York and then moved to Montgomery, was chosen to design the building. John P. Figh, the local contractor who had built the 1838 courthouse, received the contract for the new structure.

The new courthouse was built in the Greek Revival style. It resembled a Greek temple and carried on the theme that courthouses in America were "temples" of democracy. Paired

curving exterior staircases rose to the main entrance. The building facade included four fluted Corinthian columns that supported a distinguished triangular pediment. The lower level had iron shutters on the windows that continued to be used until the structure was demolished more than a century later.

In a few short years, Montgomery had risen from a frontier village, to a county seat, to a state capital. The next step, which is rare indeed, is to become a national capital. In 1861, that is exactly what happened to Montgomery.

The election of 1860 would be a pivotal turning point in American history. Slavery was the key issue. Certain factions in America favored restricting slavery. Others favored abolishing slavery altogether. Still others desired to leave the states and territories alone concerning this highly divisive issue.

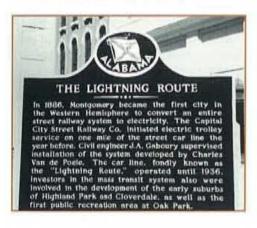
One of the leaders of this latter states' rights theory was Montgomery's William Lowndes Yancey. The "fire-eating" Yancey led the Alabama Democrats to the National Democratic Convention which met in Charleston, South Carolina, in April 1860. Since Alabama was first alphabetically, Yancey was the first to speak to the delegates on a proposed platform plank concerning the slavery issue and southern rights. He warned the convention that it must protect the institution of slavery or face southern secession. The convention did not pass the proposed plank. Further, it nominated a moderate. Stephen A. Douglas, for President. Yancey and the Alabama delegates walked out of the convention.

The Democratic Party split three ways in 1860. Stephen A. Douglas of Illinois had broad national support, but did not lead in any region. John C. Breckinridge of Kentucky, the sitting vice-president, led the southern faction. John Bell of Tennessee led a coalition of some conservative Democrats and others. Abraham Lincoln was the Republican nominee, but his name was not even placed on the ballot in Alabama.

Stephen A. Douglas brought his campaign to Montgomery on November 2, 1860, just four days before the Presidential election. He spoke on the steps of the state capitol pleading for moderation and support. He believed that sectional differences could be peaceably resolved. Later that evening Yancey responded in a speech that was highly critical of Douglas and his position. On election day Douglas received only eight percent of the vote in Montgomery. Though not on the Alabama ballot, Abraham Lincoln was elected President.

In reaction to Lincoln's election, the governor of Alabama, Andrew B. Moore, called for a convention to determine if Alabama would leave the Union. The meeting convened in Montgomery on January 7, 1861. At the conclusion of the convention on January 11, the vote for secession was 61 to 39. Thus, Alabama left the Union and cast its fate with the other seceding states.

Subsequent events rapidly took place. The leaders in South Carolina, the first state to secede on December 20, 1860, called for a meeting to be held in Montgomery to form a new government. The South Carolinians knew of Yancey from his appearance at the Democratic Convention in Charleston the previous spring. They chose Montgomery for the meeting site because it was centrally located in the Deep South, it could be defended if war came, and because the presence of



Yancey assured favorable local support for secession in the convention city.

On February 4, 1861, delegates from Alabama, Florida, Georgia, Louisiana, Mississippi, and South Carolina met in the chamber of the House of Representatives in Montgomery. By February 8, 1861, they had created a Confederate constitution. On February 9, they selected Jefferson Davis of Mississippi as their President.

Montgomery became the host city to the inauguration of the Confederate president on February 18, 1861. It is estimated that more than 10,000 people came to witness the ceremony. A procession led to the state capitol where Davis took the oath of office and gave his inaugural speech.

Montgomery served as capital of the Confederacy for four months. Its population almost doubled overnight. It became the focus of national and even international attention. Government officials, army officers, journalists, and contractors flocked to Montgomery. However, the single most important event to take place in Montgomery during its tenure as capital of the Confederacy occurred on April 11, 1861 when Secretary of War Leroy Pope Walker sent a telegram to Charleston authorizing General Beauregard to fire on Fort Sumter. This act began the fighting in the War Between the States.

Following the firing on Fort Sumter and Lincoln's call for troops, Virginia seceded from the Union and invited the Confederate Congress to move its capital to Richmond. A debate resulted. President Davis favored Montgomery as his capital. However, over the objection of the Alabama, Mississippi and South



Carolina delegations, Richmond was chosen as the permanent Confederate capital. The Confederate government left Montgomery on May 29, 1861.

Central Alabama was far removed from the warfront, and Montgomery was basically by-passed in the war until 1865. On April 12, three days after Robert E. Lee surrendered, Montgomery fell to Union General James Wilson. Wilson's men burned factories, powder magazines, and steamboats, but Montgomery was spared the extensive physical destruction that befell many other Southern cities.

Montgomery suffered through hard economic times following the Civil War; however, after the Reconstruction era ended, a renewed sense of optimism blossomed. The population expanded and new businesses thrived. New public works included paved streets, an improved sanitation system, a water system, and the electrification of the city street cars. In fact, in 1886, Montgomery had the first regularly operating electric street cars in the United States.

By 1892, more space was needed in the Montgomery County Courthouse. Instead of demolishing the old building, county officials chose to greatly expand, renovate and completely remodel the structure. The old building became the eastern portion of a new building, while a center section and west wing were added. Contractors removed the curving steps, portico and pediment. The main entrance was moved to the center of the expanded building. A soaring tower,



Montgomery County Courthouse, following the 1892-1893 renovation

twice the height of the building, graced the central section.

This structure retained its classical style. Four Corinthian columns were located on both the east and west wings. The central section contained an arched doorway also topped by four Corinthian columns. A large hallway extended the length of the building. The first floor the county for 102 years, was razed.

On May 12, 1958, the new courthouse was completed at a cost of \$1,675,107.48. The building was a modern multi-storied office structure built of reinforced steel and concrete. Open house took place from July 25 to July 27, 1958.

Local Montgomery architects Clyde C.



Montgomery County Courthouse (1958)

housed the probate court, circuit clerk, tax assessor and tax collector, and various other offices. The second floor included two courtrooms. This expanded structure had 26,000 square feet of space. It would serve the needs of the county for over 60 more years.

By the 1950s, space requirements and the need for repairs caused the county to explore plans for the construction of a new courthouse. The oldest portion of the existing structure was more than a century old. Some proponents argued for a building that was an exact replica of the existing one. After much debate, county officials decided to build a new courthouse on the same site that would reflect 20th Century design and use more modern building materials.

The county took over additional property on the same block for the new structure, removing the city curb market that had operated for many years at the southeast corner of Washington and Perry streets. Fresh vegetables purchased by county employees had been a common sight in the old courthouse. Now the curb market was gone and in 1956, the grand old Montgomery County Courthouse, which had served Pearson, Farrow L. Tittle and Parker A. Narrows designed the building. Bear Brothers, Inc., general contractors, built it.

This courthouse was constructed on three levels conforming to the natural slope of the terrain. There was a first floor entrance on Perry Street, a second floor entrance on Washington Avenue, and a third floor

entrance on Adams Avenue. The fourth floor of the building housed the Montgomery County jail. Also, the fourth floor included a sleeping area for jurors when sequestered. It should be noted that the building was designed at a time when only men served as jurors in Alabama.

This new building included most county offices, three circuit court-

rooms, a chancery courtroom, a court of common pleas, juvenile court, and probate court. The total area of the building was 125,000 square feet. It could be expanded for further growth, and the courthouse brochure issued at the time of completion predicted that the needs of the county would be served for 100 years, just as the previous courthouse was used that long.

The forecast of a century of use by the county may yet prove true for the 1958 structure. However, the building is no longer the Montgomery County Courthouse, but rather an administration building. As early as 1980, the county faced critical space shortages. The needs of an expanding court system in the 15th Judicial Circuit necessitated plans for another courthouse and a new jail.

In October 1980, Walter H. Sobel and Associates, consulting architects; the Ehrenkrantz Group, corrections planners; and Pearson, Humphries, Jones, and Associates, general architects, made a final report to the county on future needs and facilities. Because of the significant growth in the judicial system, constitutional issues regarding the jail, and the rapid expansion of county services, the county adopted their study which called for orderly growth, and included a complex of buildings rather than just one structure.

The first building in the plan was a new Montgomery County jail. The architectural firm of Pearson, Humphries, Jones, and Associates began overseeing this construction in April 1983. The new Montgomery County Detention Center began its operation in April 1987.

The next building in the complex was the new court facility. Construction bids were taken in May 1984. The architects worked with the County Commission Building Committee and with a "building user committee" to translate projected needs into an organized building



Montgomery County Administration Building (new Lawrence St. entrance)

plan. This facility was dedicated on Sunday, May 10, 1987.

The new Montgomery County Courthouse is a modern fourstory structure fronting on Lawrence Street. Circuit courts are located on the top two floors, district courts are located on the second floor, and the district and circuit clerks' offices are located on the first floor. Each floor is designed with two corridor systems. A public corridor allows easy access to all courtrooms. A rear corridor provides secure passageways for court personnel, jurors, judges, and prisoners in custody. A secure pedestrian bridge connects the second floor to the detention facility fronting on McDonough Street.

The new courthouse contains 100,000 square feet. The master plan provides for expansion of the building as needed. A large wing can be added to the north end of the building and a smaller wing can be added to the southern side. Also, the building can accommodate a fifth floor if the need for further expansion requires it.

A significant part of the multi-phased courthouse expansion was the renovation of the old courthouse between 1988 and 1990. This project cost approximately \$7 million. Pearson, Humphries and Jones again served as architects. The builder was Stallings and Sons, Inc. The official name of the old courthouse is now the Montgomery County Administration Building and Courthouse Annex. The new entrance to the expanded building is located at 100 Lawrence Street.

In 1991, Montgomery County acquired a building that was formerly part of the Compass Bank complex. This building, located at 125 Washington Avenue, was renovated under the direction of the firm Parsons, Wible, Brummel, and Alkire Architects, Inc. The project was completed in 1993 at a cost of approximately \$566,000. This Courthouse Annex II contains district attorney's offices, sheriff's department offices, and the Alabama Cooperative Extension.



Montgomery County Courthouse (1987)

The present Montgomery County facilities were built or renovated with an eye toward the needs of the future. These buildings should serve the county well into the 21st century.

The author acknowledges the assistance of Jackie Kennedy Amis, information specialist of the Montgomery County Commission, Mel and Belle Cleveland, and the Montgomery Area Chamber of Commerce for information or photographs used in this article.

Sources: Article on Montgomery by Thomas H. Clark in Northern Alabama Historical and Biographical, 1888; The Official Guide to The City of Montgomery Alabama, 1948; "The Selection of Montgomery as Alabama's Capital", Malcolm Cook McMillan, The Alabama Review, April 1948, p. 79-90; A Brief History of Montgomery, Alabama, Montgomery Chamber of Commerce, 1953; Alabama Historical Quarterly, Volume 18, 1956; The Early History of Montgomery and Incidentally of the State of Alabama, Clinton Ware Williams, 1979; Montgomery, An Illustrated History, Wayne Flynt, 1980; "Montgomery County Courthouses 1922-1981", Deane J. Edmondson, *The Alabama Lawyer*, January 1981, p.91-95; Dedication brochures-The Montgomery County Detention Facility and The Montgomery County Courthouse, Montgomery County Commission Office of Public Information, 1987; *Montgomery, The Biography of a City*, Wayne Greenhaw, 1993.



Samuel A. Rumore, Jr. Samue A. Rumore, Jr. Ia a graduate of the

a graduate of the University of Notre Dame and the University of Alabama School of Law. He served as founding chairperson of the Alabama State Bars

Family Law Section and is in practice in Birmingham with the firm of Miglionico & Rumore. Rumore serves as the bar commissioner for the 10th Circuit, place number four, and is a member of *The Alabama Lawver* Ecitorial Board.



...Outlining important aspects and considerations of buying on credit, this informative brochure explains the principal kinds of consumer credit plans as well as the disclosure of credit terms required by federal law. Other issues addressed include the cooling off right; repossession and suit; garnishment; the Fair Credit Reporting Act; denial of credit; and laws that can protect your credit. Also included are specific points to keep in mind in any consumer credit transaction.

Alabama State Bar Publications Order Form

The Alabama State Bar is pleased to make available to individual attorneys, firms and local 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 from the Alabama State Bar for distribution by local bar associations, under established guidelines.

Publications

Lawyers and Legal Feesa summary of basic information on common legal ques	\$7.00 per 100 it ons and procedures for	Qty	\$
Last Will & Testament covers aspects of estate planning and the importance of	\$7.00 per 100 f having a will	Qty	\$
Legal Aspects of Divorce offers options and choices involved in divorce	\$7.00 per 100	Qty	\$
Consumer Finances or "Buying on Time" outlines important considerations and provides advice			
MediationAnother Method for Resolving Disputes provides an overview of the mediation process in quest	\$10.00 per 100 ion-and-answer form	Qty	_ \$
Acrylic Brochure Stand individual stand imprinted with individual, firm or bar One stand per brochure is recommended.	\$5.00 each association name for use	Qty at distributi	\$ ion points.
Name to imprint on stand:		Sul	ototal \$
Mailing Address	Ship		dling\$ 5.00
		TC	DTAL\$
Please remit CHECK OR MONEY ORDER MA for the amount listed on the TOTAL line			

By Wayne Morse

SP

⁵⁵ ERISA, ³⁹ the acronym for Employee Retirement Income Security Act of 1974, strikes fear in the hearts and minds of many lawyers. Perceived as complex and hypertechnical, ERISA is actually based on the common law of trusts, although many of its rules differ from their common law counterparts. ERISA, when broken down to its essentials, is much less difficult to understand than most statutory schemes.

ERISA is federal law governing employee benefit plans and persons who manage them. ERISA affects many areas of substantive law. Employment law specialists face ERISA issues when reviewing severance pay problems, claims of wrongful terminations and issues regarding health and pension benefits. Securities lawyers face ERISA issues when they work on the investments of employee benefit plans. In any sizable business transaction, corporate lawyers focus on company liabilities for retiree medical, pension and other obligations under ERISA.

In litigation, ERISA issues should be spotted

before the initial pleading is filed. Otherwise, time and fees are wasted, and bad things can happen: for example, a lawsuit may be filed in the wrong court; federal court removal issues may be missed; a client may be deprived of a jury trial; and the wrong claims or defenses may be pleaded.

An "employee benefit plan" must be involved for ERISA to be a factor. Employee benefit plans may be pension plans or welfare plans. Generally, a pension plan provides retirement income to employees or "results in deferral of income" by employees until termination from employment or later.¹ Thus, pension and retirement funds in many types of different compensation arrangements or profit sharing situations may be "pension plans" under ERISA. A welfare benefit plan provides, among other things, medical, surgical or hospital care benefits or benefits in the event of sickness, accident, disability, death, or unemployment.² Health insurance and disability plans, and other programs designed to supplement an employee's income, in the event of sickness

ţ,

or injury, all may be "welfare plans" under ERISA. Severance plans, prepaid legal service plans, apprenticeship or other training programs may also be welfare benefit plans.³

Initially, a lawyer should determine whether an ERISA plan is involved. In an employment law dispute, ask about medical insurance, disability compensation, employer stock option plans and severance payment plans and find out whether the employee was close to vesting in any plan or benefit. In a security suit, see whether any "plan assets" were involved and who had "authority or control" over them. A person with authority or control over plan assets generally is regarded as a "fiduciary," and, therefore, subject to special ERISA duties. In any dispute over a commercial transaction with an employee benefit plan, identify all the parties to the transaction and determine whether they are "parties in interest" under ERISA.

As a relatively new statute, ERISA contains many issues that remain unresolved. The key substantive issues include ERISA rights and remedies, preemption, the right to contribution or indemnification, the right to trial by jury, and the ability to obtain attorney's fees. Among the most important procedural issues are jurisdiction, venue, service of process, and the applicable statutes of limitations. ERISA also presents several practical issues involving the role of the Department of Labor, problems with conflicts of interest and the

attorney/client privilege.

Many ERISA lawyers believe that Congress, in enacting ERISA, wanted federal courts to develop a body of federal common law governing pension and welfare rights and obligations. Courts are specifically authorized to do so under ERISA. Most federal courts, even the United States Supreme Court, however, have resisted. Generally, ERISA rights and obligations have been limited to those expressly set out in the statute.⁴

Due to the gaps in the total statutory scheme and the reluctance of courts to fill

in those gaps, litigants complain that ERISA does not fully protect certain rights. Plaintiffs may sue under § 1132(a)(1)(B) of ERISA to recover benefits and to clarify their rights to future benefits under a plan. Nevertheless, the statute makes no mention of consequential or punitive damages for the wrongful denial of benefits. In *Massachusetts Mutual Life Insurance Company v. Russell*, 473 U.S. 134 (1985), the United States Supreme Court rejected a participant's claim for consequential and punitive damages in such an action.

Similarly, there are problems in ERISA actions based on a fiduciary's duty. 29 U.S.C.§ 1109(a) holds a fiduciary personally liable for all losses suffered by the plan as a result of a breach of a fiduciary duty, and for any profits made by the defendant through the wrongful use of plan assets. The statute, however, does not provide for relief against *non-fiduciaries*, even though a common law principle of trusts provides that a non-fiduciary could be liable for "knowingly participating" in a breach of fiduciary duty. Although several circuits have held that ERISA intended to follow the traditional common law rule, that holding is doubtful today.⁶ Even ERISA express remedies may not be as useful as some plaintiffs have assumed. In 29 U.S.C.§1109(a), a plaintiff is permitted to seek "equitable relief." In *Mertens v. Hewitt Associates*, 508 U.S. 248 (1993), however, the term "equitable relief" was given a relatively narrow interpretation. The Supreme Court held that it permitted only those forms of relief typically available in equity cases, such as injunctions and restitutions, not compensatory damages.⁶ In response, plaintiffs are being creative about what constitutes "restitution." And, despite the United States Supreme Court's discussion in *Mertens*, other courts have endorsed ERISA actions based on equitable principles such as estoppel.

Preemption

If you represent defendants in civil litigation, the biggest reason to search for ERISA issues is preemption. In ERISA, Congress directed that federal law would preempt other applicable law.⁷ Because of ERISA preemption, some litigation claims for relief may be precluded. There are several important exceptions. ERISA does *not* preempt other federal law, criminal law or state laws regulating insurance, banking or securities. The key to ERISA preemption is the term "relate to." ERISA provides that its provisions "shall supersede any

n "employee benefit plan" must be involved for ERISA to be a factor. Employee benefit plans may be pension plans or welfare plans.

and all State laws insofar as they may now or hereafter *relate* to any employee benefit plan described in § 1003(a) of this title and are not exempt under § 1003(b) of this title."⁸ The statute does not define the term "relate to"; it has fallen to the courts to deduce Congress's intent and to apply this interpretation to the facts of each case."

Unfortunately, the United States Supreme Court has given little guidance in defining "relates to," saying only that it has been given a "broad common sense meaning,"¹⁰ And, a state law "relates to an employee benefit plan ... if it has a connection with or reference to such a plan."¹¹ Many courts and scholars had thought that the limitations of ERISA preemption were boundless. Recently, however, in *New York Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Company*, 115 S. Ct. 1671 (1995), the Supreme Court curbed the expansion of the preemption doctrine:

The governing text of ERISA is clearly expansive... If "relate to" were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course, for "[r]eally, universally, relations stop nowhere," H. James, Roderick Hudson xli (New York ed., World's Classics 1980). But that, of course, would be to read Congress's words of limitation as a mere sham, and to read the presumption against pre-emption out of the law whenever Congress speaks to the matter with generality. That said, we have to recognize that our prior attempt to construe the phrase "relate to" does not give us much help drawing the line here.

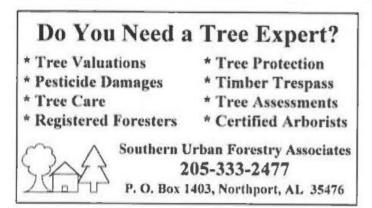
Id. In making its holding, the Court went on to rely upon the "connection with or reference to" language used in prior decisions.

A good example of how the tide on the expansion of the preemption doctrine has turned is found in Morstein v. National Insurance Services, Inc., No. 94-9152 (11th Cir. Aug. 19, 1996) (en banc). In Morstein, the Eleventh Circuit overruled Farlow v. Union Central Life Insurance Company, 874 F.2d 791 (11th Cir. 1989). Farlow held that ERISA preempted a designated beneficiary's state law misrepresentation and negligence claims against an insurance company and its agent. Citing the analysis of the Supreme Court in New York Blues, the Eleventh Circuit looked to see whether the state law claims brought by the insured or participant had a "connection with" the ERISA plan. Following the Fifth Circuit, the Eleventh Circuit held that when a state claim brought against a non-ERISA entity does not affect relations among principal ERISA entities, the claim is not preempted by ERISA. Insurance agents are not ERISA entities. Therefore, Morstein's claims for fraudulent inducement and negligent processing of an application for an ERISA-governed insurance plan were not preempted. Such claims do not fall within ERISA's broad preemptive scope, as they do not have a sufficient connection with the plan to "relate to" the plan

The fact that ERISA preempts a state law claim does not mean that ERISA will provide a remedy. ERISA claims may be preempted, even if that leaves the claimant without a remedy.¹⁰

Contribution and Indemnity

Just as a plaintiff might be shocked to find that he has no remedy under state law when his claim is governed by ERISA, an ERISA defendant may be surprised to learn that there is no



clear right to contribution nor indemnity under ERISA. As with other "implied" remedies under ERISA, courts have struggled with the tension between their authority to create federal common law and congressional omission of particular remedies from the statute. The circuit courts are split over whether ERISA creates a right of contribution.¹³ When faced with a need to assert or defend against a claim for contribution or indemnification, venue might be the key, depending on which circuit you find yourself.

Punitive or Extracontractual Damages

Until recently, there had been no question that ERISA remedies make no provision for recovery of punitive or extracontractual damages. Most federal courts agree that such damages are not recoverable under ERISA. *See, e.g., McRae v. Seafarers's Welfare Plan* 920 F.2d 819 (11th Cir. 1991). However, based on *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990), many courts, including the Alabama Supreme Court, have determined that "courts are authorized to award damages, both extracontractual and even punitive, where the facts support them, ... though they are not specifically provided for in ERISA." *Haywood v. Russell Corp.*, 584 So. 2d 1291 (Ala. 1991). *See also, East v. Long*, 785 F. Supp. 941 (N.D. Ala. 1992) (per Acker, J.). Nonetheless, other courts, including the Eleventh Circuit, since *Ingersoll-Rand* have concluded that ERISA does not authorize extracontractual or punitive damages."

Right to a Jury Trial

ERISA does not address a plaintiff's right to a jury trial. Until recently, ERISA claims generally were viewed as being "equitable" in nature, meaning that ERISA plaintiffs were not entitled to a jury.¹⁵

A recent United States Supreme Court decision has created some uncertainty on this point. In Firestone Tire & Rubber Company v. Bruch, 489 U.S. 101 (1989), the Supreme Court noted that ERISA "abounds with the language and terminology of trust law," but also suggested that claims for plan benefits resembled breach of contract actions. More significantly, the Supreme Court held that courts reviewing the acts or omissions of ERISA fiduciaries do so de novo, as opposed to the more deferential arbitrary and capricious standard. Taking their cue from this discussion, some lower courts have viewed benefits claims under § 1132(a)(1)(B) as being akin to breach of contract actions, even entitling a plaintiff to a jury trial." The Eleventh Circuit, however, has soundly rejected the argument that the change in standard of review converts a claim under § 1132(a)(1)(B) from an equitable claim to a breach of contract action thereby entitling a plaintiff to a jury trial under the Seventh Amendment.

In Blake v. Unionmutual Stock Life Insurance Company of America, 906 F.2d 1525 (11th Cir. 1990), the Eleventh Circuit held that the nature of a § 1132(a)(1)(B) action is for the enforcement of an ERISA Plan. Although plaintiffs may contend that such a claim is for money damages, "in effect they are claiming the benefits they are allegedly entitled to under the plan." Blake, 906 F.2d at 1526. Considering such claims to involve traditionally equitable relief, the Eleventh Circuit held that precluding a jury trial in such cases does not violate the Seventh Amendment guaranty of a jury trial.

If ERISA claims are brought in Alabama state court, a practitioner must scrutinize the claims closely to determine the plaintiff's right to a jury trial. If the claims are purely equitable in nature, no right to a jury trial exists. In *Ex parte Gurganus*, 603 So. 2d 903 (Ala. 1992), the Alabama Supreme Court held that an action brought under § 1132(a)(1)(B), to determine the insurer's right to cancel an ERISA-regulated plan was equitable in nature, and consequently, did not carry a right to trial by jury. On the other hand where punitive and extracontractual damages are sought, a plaintiff has a right to a jury trial in Alabama state courts. *See, e.g., Weems v. Jefferson-Pilot Life Ins. Co., Inc.,* 663 So. 2d 905 (Ala. 1995).

Attorney's Fees

ERISA provides for an award of attorney's fees. Section 1132(g)(1) provides that "[i]n any action [under Title I of ERISA] ...by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of the action to either party."

The award of fees is discretionary, and fees may be awarded to either party; there is no prevailing-party requirement under this section. ERISA also contains a mandatory fee-shifting provision applicable to cases brought under § 1145 of ERISA by multi-employer plans to collect contributions owed them; that provision is limited to prevailing parties.

In deciding whether to award attorney's fees, almost all appellate courts look to (1) the degree of the opposing party's culpability or bad faith; (2) the ability of the opposing party to satisfy an award of fees personally; (3) whether an award of attorney's fees against the offending party would deter other persons similarly situated; (4) whether the parties requesting attorney's fees sought to benefit all participants and beneficiaries of the plan or to resolve a significant ERISA legal question; and (5) the relative merits of the parties' positions.¹⁷

Jurisdiction and Venue

In federalizing the law of pensions and other employee benefits, Congress gave to the federal district courts exclusive jurisdiction over almost all actions brought under ERISA.¹⁸ There is one exception: Actions commenced by participants or beneficiaries to recover benefits or to enforce other rights under a plan may be brought in federal or state court. There is no amount in controversy requirement, so ERISA disputes involving even small sums of money often are brought in federal court.

ERISA has special rules for removing actions to federal court. Ordinarily, an action may be removed to federal court if a plaintiff asserts a federal claim in her "well-pleaded complaint." The existence of a federal *defense* is not a ground for removing the action from state court. Those rules do not apply to ERISA claims.

A claim for benefits under an employee benefit plan, even though styled as a state law breach of contract claim, is an ERISA claim, and the defendant may remove the suit to federal court.¹¹ Similarly, a state law claim that an employee was discharged to keep her from vesting in a benefit plan makes out a claim under ERISA, 29 U.S.C. § 1140, which prohibits such conduct. Even if the plaintiff never cites ERISA in the complaint, that claim also may be removed to federal court.²⁴

In 29 U.S.C. § 1132(3)(2), ERISA has its own venue provision. It affords plaintiffs great latitude to select a favorable district. Venue is proper in: the district where the employee benefit plan is administered; or the district where the breach of fiduciary duty occurred; or the district where a defendant resides or may be found. Thus, the ERISA plaintiff usually enjoys a wider choice of forum than under the venue provision of 28 U.S.C. § 1391.

When combined with the ability to serve and to obtain personal jurisdiction over a defendant in any district or state, these venue rules give ERISA plaintiffs some ability to "forum shop" for the jurisdiction with the most favorable interpretations of the relevant ERISA provisions.

Time Limitations

Congress failed to provide much guidance on statutes of limitations for ERISA claims. Of all of the claims available under ERISA, Congress specified a statute of limitations only for breach of fiduciary duty claims, which must be brought before the earlier of: (a) six years from the breach or violation, or (b) three years from when the plaintiff had actual knowledge of the breach of violation. In cases where the breach allegedly was the subject of "fraud or concealment," the action must be brought within six years of the discovery of the fraud or concealment.²¹ Other state or federal laws provide the applicable limitations period for claims alleging violations other than breach of fiduciary duty.

Whenever a court looks to state law, disputes will arise about which state limitations period to borrow. Some courts have analogized ERISA benefits claims to state claims for wages and have applied the corresponding state statute of limitation.²⁰ Others hold that a benefits action is similar to a breach of contract claim and apply that limitations period.²⁰ Because the limitations period can be critical, it is important to examine state law where jurisdiction and venue are proper prior to initiating a lawsuit.

Privileges and Conflicts

When a lawyer is approached about representation in a matter involving ERISA issues, it is important to determine the identity of her client and her client's interests. Are you representing an employee, participant or beneficiary? Are you representing the plan, a fiduciary or employer? An executive may have dual loyalties. As a corporate officer, she owes duties to the corporation. If she is a fiduciary under ERISA, her loyalties are to the plan and its participants and beneficiaries.

A lawyer may be unable to invoke the attorney-client privilege against participants and beneficiaries if the executive with whom she has had detailed discussions is acting as a fiduciary. At the incipient stages of the litigation, it is important to know the capacity of the person under ERISA of the person with whom you are dealing to avoid potential pitfalls.

Conclusion

Ignorance of ERISA's fundamental principles may be hazardous. Knowing when ERISA governs will avoid wasted efforts and put you in the proper court. Ultimately, ERISA practice does not differ materially from other areas of practice. For most practitioners ERISA work can be rewarding.



Wayne Morse

Wayne Morse, a member of the Birmingham firm of Clark & Scott, is a graduate of Birmingham-Southern College and the Cumberland School of Law. He is a member of the Alabama State Bar, the American Bar Association and the Tort-of-the-Month Club.

ENDNOTES

- 1. 29 U.S.C. § 1102(2)(A).
- 2. 29 U.S.C. § 1002(1).
- 3. Id.
- Massachusette Mut Life Ins. Co. v. Russell 473 U.S. 134, 146 (1985). 4.
- 5. Mortens v. Hewilt Associates, 508 U.S. 248 (1993).
- Id. at 255-58 6.
- 7. Shew v. Delte Air Lines, Inc., 463 U.S. 85 (1983).

- 8. 20 U.S.C. § 1144(a).
- Monstein v. Netional Ins. Services, Inc., No. 94-9152, slip op. al 2 (11th Cir, Aug. 19, 1998) (on banc).
- 10. Pilol Lile Ins. Co. v. Dedeaux, 481 U.S. 41, 47 (1987).
- 11. Shaw, 463 U.S. at 98-97.
- 12. Lee v. E. I. DuPont de Nemours & Co., 894 F.2d 755 (5th Cir. 1990). Contra, Perry v. P*I*E Nationwide, Inc., 872 F.2d 157 (6th Cir. 1989), cert. denied, 493 U.S. 1093 (holding common law claims not preempted because of absence of ERISA remedy).
- 13. Compare, Chemung Canal Trust Co. v. Souran/Maryland, 939 F2d 12 (2d Cir. 1991), cert. denied, 112 S.Ct. 3014 (1992), and Kim v. Fujikawe, 871 F.2d 1427 (9th Cir. 1989) (rejecting right to contribution).
- 14. See, e.g. McRae, 920 F.2d at 819; Harsch v. Elsenberg, 956 F.2d 651 (7th Cir.), cert. denied, 113 S.Cl. 61 (1992).
- 15. See, Bleke v. Unionmutual Stock Life Inc. Co. of America, 906 F.2d 1525, 1526 (11th Cir. 1990).
- 16. See, e.g., Sulliven v. L.T.V. Aerospace & Delense Co., 850 F. Supp. 202, 214 (W.D.N.Y. 1994).
- 17. Nachwelter v. Christie, 805 F.2d 955, 962 (11th Cir. 1966).
- 18, 29 U.S.C. § 1132(g)(2).
- 19. See, Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 56 (1987).
- 20. Cl. Ingersoll-Fland Co. v. McClendon, 498 U.S. 133 (1990) (holding a state wronglul discharge claim preempted by ERISA because it conflicted with § 1140).
- 21. 29 U.S.C. § 1113.
- 22. See, e.g. Clark v. Coats & Clark, Inc. 865 F.2d 1237 (11th Cir. 1989)
- 23. See, e.g. Flenegen v. Island Empire Elec. Workers Pension Plen & Truet, 3 F3d

We'ne Alabama Rules of Evidence A New Day With Charles Gamble and End

Your copy of Gamble's Alabama Rules of Evidence

December 5, 1996 The Wynfrey Hotel Riverchase Galleria Birmingham, Alabama

December 12, 1996 **Riverfront Civic Center** Mobile, Alabama

December 6, 1996

Von Braun Civic Center North Hall, Salon I Hunsville, Alabama

December 13, 1996 **Embassy Suites** Montgomery, Alabama



ABICLE celebrating 35 years of excellence To register call ABICLE at 800-627-6514 or 205-348-6230

The Alabama Lawyer



By J. Anthony McLain, general counsel

Alabama's Child Support Program: Ethical Procedures



J. Anthony McLain

QUESTION:

"I am writing on behalf of the Alabama Department of Human Resources (hereinafter "DHR") to request a formal Ethics Opinion from the Alabama State Bar regarding whether DHR child support policy, established to bring the state agency into compliance with certain federal laws and regulations governing the operation of the State's IV-D child support program, creates any ethical problems for attorneys handling child support cases for DHR through its IV-D program. In particular, the agency is requesting an opinion regarding whether this policy contains any potential conflicts of interest which would prohibit its attorneys from handling certain cases DHR refers for legal action.

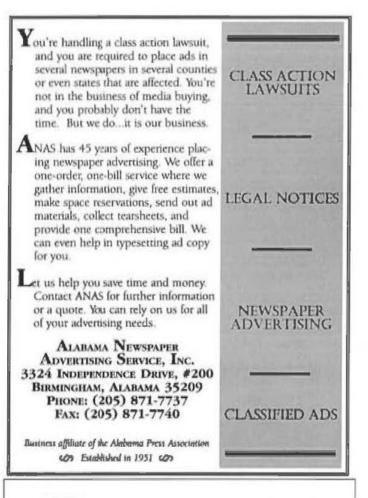
The Department of Human Resources is the state agency in Alabama charged with the establishment, modification, and enforcement of support obligations as provided for and required by Title IV-D of the Social Security Act (42 U.S.C. §651 et seq.). As such, the agency must provide support services to all eligible applicants as authorized or mandated by applicable federal and/or state law and regulations. Where necessary and appropriate, DHR establishes agency policy to ensure that proper state and federal laws and procedures are followed at each level of agency responsibility in the provision of support services. By necessity, this policy frequently impacts the provision of legal services in DHR child support cases.

The establishment or enforcement of child support usually requires legal action in Alabama. In these cases, DHR is represented by district attorneys or private attorneys authorized to represent the State of Alabama. DHR staff attorneys are utilized in Jefferson and Mobile counties. The parents or guardians are usually separate parties to the action.

It has long been the position of the state bar and of DHR that no attorneyclient relationship exists between the IV-D service recipient and the attorney handling IV-D cases for DHR, provided the service recipient has assigned his or her rights of support to DHR, either by operation of law or written assignment. (See, Ethics Opinion 87-57.) Under this rule, where the service recipient did not assign support rights, the IV-D attorney did represent the service recipient individually. However, in 1994 the Alabama Legislature passed Act 94-800 (now Code of Alabama 1975, §38-10-7.1), which provides that the attorney in a IV-D case represents DHR exclusively and that there is no attorney-client relationship between the IV-D attorney and any applicant or recipient of DHR's support services, regardless of the style of the case in which legal proceedings are initiated. This law went into effect May 6, 1994.

The federal Office of Child Support Enforcement has interpreted federal law and regulation to require that the state IV-D agency accept an application for support services from any individual, and where possible and appropriate, provide all available services to any applicant. Under this interpretation, DHR must accept applications from the noncustodial parent and must assist said applicants by providing all services such as establishing paternity, establishing a support obligation from an immediate

NOVEMBER 19967-351





WE SAVE YOUR TIME . . .

Now legal research assistance is available when you need it, without the necessity of adding a full-time associate or clerk.

With access to the State Law Library and Westlaw, we provide fast and efficient service. For deadline work, we can deliver information to you via common carrier. Federal Express, or FAX.

Farnell Legal Research examines the issues thoroughly through quality research, brief writing and analysis.

Our rates are \$35.00 per hour, with a three hour minimum.

For Research Assistance contact: Sarah Kathryn Farnell 112 Moore Building Montgomery, AL 36104

(334) 277-7937

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. income withholding order, and modifying an existing order of support.

Additionally, the Code of Federal Regulations, at 45 C.F.R. §303.8, provides that, effective October 13, 1993, the State must have procedures in place for the review and, where appropriate by application of the child support guidelines, adjustment of existing child support orders. This review must be performed every three years in all AFDC cases. Additionally, the three-year review must be performed at the request of either parent in a non-AFDC case, regardless of which parent originally applied for and/or received support services from DHR. The federal regulation further requires that where indicated by application of the guidelines, DHR must pursue modification of the child support order, whether the adjustment warranted is an increase or decrease of the existing order.

The above-referenced federal requirements present a real dilemma for DHR and its child support attorneys, since applying the federal principles outlined herein requires the agency to accept, investigate, and refer cases to its attorneys based solely on DHR's interest in pursuing proper awards of support and the enforcement thereof, without regard to which parent has requested the service and/or without regard to whether the other parent is or has been a IV-D service recipient through DHR. Since the federal review and adjustment mandates require that the IV-D agency pursue the guidelines regardless of the effect on the support amount, the possibility exists that, in some instances, the agency will be referring a case to its attorney to pursue a downward modification of support. In some of these cases, DHR, through the same attorney, may have previously pursued legal action for the establishment or enforcement of the existing order of support on behalf of or at the request of the custodial parent.

DHR takes the position that, because *Code of Alabama* 1975, §38-10-7.1 makes clear that there is never an attorney-client relationship between the IV-D attorney and the IV-D service recipient, there should be no attorney conflict of interest issue in IV-D cases originating since passage of the Act. However, since potential conflicts of interest may exist in some cases predating the enactment of this law, DHR policy has been established to address these issues in cases which were initiated prior to the passage of the law.

Under current policy, where there has always been an effective assignment of support rights from the original IV-D support service recipient, a child support case requiring legal action will be forwarded to the "regular" IV-D attorney, regardless of whether DHR is pursuing an increase or decrease in the current support amount, and regardless of which parent has requested the services presently being provided by DHR. However, if prior to the passage of Act 94-800, the child support case was handled by a particular attorney during a period of time when there was no assignment of support rights to DHR, referral for court action will be made to a different attorney when DHR seeks a reduction in support or other action at the request (or application) of the noncustodial parent or other party (such as a caretaker relative) who may have interests adverse to the "original" IV-D service recipient. A copy of the policy setting out these procedures is attached for your review and consideration.

There is some concern among attorneys representing DHR in child support matters that the pursuit of action at the request of the noncustodial parent gives at least the appearance of a conflict of interest for the IV-D attorney, particularly when services have previously been pursued on behalf of the custodial parent, and that the policy established by DHR does not adequately address the conflict problem. Therefore, I am requesting a formal opinion addressing the following questions:

 May an IV-D attorney, who had previously represented the State in an assigned IV-D case brought on behalf of one parent or guardian, continue representing the State in further or subsequent action for child support, modification, or enforcement referred by DHR at the request (or application) of another parent or individual who may have interests adverse to the "original" IV-D service recipient?

 Are there other ethical considerations, not identified by DHR in the above-outlined policy, which may affect the ability of the IV-D attorney to handle such cases for DHR on behalf of the State?"

ANSWER QUESTION ONE: A Title IV-D attorney, who previously represented the State in an assigned IV-D case brought on behalf of one parent or guardian, may continue representation of the State in subsequent actions for child support, modification, or enforcement referred by DHR at the request of another parent or individual who may have interests adverse to the "original" IV-D recipient.

ANSWER QUESTION TWO: The IV-D attorney who represents the State should make full disclosure to a IV-D service recipient as to the attorney's role in the proceedings and the fact that the attorney, pursuant to Code of Alabama 1975, \$38-10-7.1, has no attorney-client relationship with the applicant or recipient.

REASONING: Pursuant to the provisions of *Code of Alabama* 1975, §38-10-7.1, the IV-D attorney represents the State of Alabama, Department of Human Resources, exclusively, and has no attorney-client relationship with any applicant or recipient of the agency's Support Enforcement Services. The Commission hereby modifies RO-87-57 to reflect the mandates of this provision of the *Code of Alabama*, recognizing that the true client of the IV-D attorney in IV-D cases is DHR, "without regard to the style of the case in which legal proceedings are initiated."

The Commission further reasons that the role of the attorney in IV-D cases is an administrative act of procedure on behalf of DHR whereby the rights of service recipients under Title IV-D are effectuated. The IV-D attorney, as counsel for DHR, pursues the matters under IV-D, state law, or other rules and regulations of the federal Office of Child Support Enforcement. The federal agency's requirements, pursuant to 45 C.F.R. §303.8, which mandate DHR's reviewing all AFDC cases every three years, and the requirement that DHR pursue modification of any child support order, whether upward or downward, in no way abrogate the statutory provision which defines the attorney-client relationship as being between DHR and the IV-D attorney, and not the applicant or recipient of such services.

In an effort to ensure that IV-D service recipients understand that concept, the IV-D attorney should fully explain to any eligible recipient the attorney's role in the process. The service recipient should be made to understand that no attorney-client relationship exists between the IV-D attorney and the service recipient.

The IV-D attorney should explain to the service recipient the lack of confidentiality or privileged communication by and between the IV-D attorney and the service recipient, other than that where it might be established by federal or state law independent of the Rules of Professional Conduct. DHR is encouraged to develop some type of uniform disclosure requirements for its IV-D attorneys to ensure full and adequate disclosure to service recipients of the role of the IV-D attorney, and the fact that no privilege or confidentiality attaches to communications between the service recipient and the attorney other than those mandated by federal or state law.

[RO-96-02]

NEW IOLTA PARTICIPANTS

July

Groover & Holmes, Anniston Daniel B. Smith, Birmingham Melissa Bowman, Tuscaloosa Bradford & Donahue, Birmingham James L. Richev, Birmingham James V. Green, Jr., Birmingham Sterling L. DeRamus, Birmingham Hare, Hair & White, Birmingham Lori S. Collier, Dothan David H. Marsh, Birmingham Deborah N. Nickson, Montgomery Raymon & Raymon, Tuskegee Kenneth P. Roberson, Jr., Gadsden Hoyt L. Baugh, Rainsville Hill, Hill, Carter, Franco, Cole & Black, Montgomery Joe L. Tucker, Jr., Birmingham Barbara Neal Rogers, Tuscaloosa Thomas Scott McGrath, Huntsville Barnett & Driskill, Guntersville Edwards & Edwards, Wetumpka

August

Lateefah Muhammad, Tuskegee Richard R. Pettit, Fairhope Joel P. Smith, Jr., Eufaula Brent Gourley, Dothan



By David B. Byrne, Jr., Charles D. Cleveland, Rick Fernambucq and Wilbur G. Silberman

Recent Family Law Decisions

Court of Civil Appeals holds that best interest of child would override and create exception to Electronic Communications Privacy Act in certain situations

Silas v. Silas, 1996 WL 390954 Ala.Civ.App., (July 12, 1996). Children have a way of changing things. The Alabama Court of Civil Appeals expanded prior case law decisions in Silas v. Silas. The case concerned the custody of a minor child in a post-divorce modification. The non-custodial father had suspected that there were conversations between the child and the mother which were in some way detrimental to the child due to the reactions that he had personally observed. After taping some of the conversations, the father later used them in his post-divorce custody proceeding. Prior decisions had always disallowed wire taps such as this in Alabama. See Ex Parte O'Daniel, 515 So2d., 1250 (Ala. 1987). The federal legislation found in the **Omnibus Crime Control and Safe Streets** Act of 1968 also prohibited wire taps and Alabama did not have an exception to this federal statute (see 18 UCS § 2511).

Over the mother's objection the trial court allowed the taped recordings between her and the minor child into evidence. Neither party to the conversation knew that the conversation was being taped. After the hearing was con-



David B. Byrne, Jr.

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

cluded, the trial court modified the final judgment of divorce and awarded custody of the minor child to the father. On appeal, the mother contended that the tapes were inadmissible because neither she nor the minor child consented to the recording of the conversations. The court of civil appeals applied the case law decisions from other states in deciding that the circumstances here were in fact an exception to the Electronic **Communication Privacy Act under** applicable federal case law. The court also had to determine whether the minor child in guestion had the capacity to consent to the tape recording, or whether the father could consent on behalf of the minor child. This issue was one of first impression for the Alabama appellate courts. The court concluded that parents have a common law duty to protect their minor children and it is for them to decide what is actually necessary for the protection and preservation of the child as long as they act as a reasonable and ordinarily prudent parent would act in the like situation.

The court reasoned that there may be very limited instances where a parent may give vicarious consent on behalf of a minor child to the taping of telephone conversations where the parent has a good faith basis that is objectively reasonable for believing that the minor child is being abused, threatened or intimidated by the other parent. This exception hinged on the fact that the purpose in taping by the father was in his pursuit of the modification of child custody and what would be in the child's best interest. This exception can now be added to another important exception which deals with this same issue in piercing the psychologist/psychiatrist privilege in the same type case. Since the decision in the case of Matter of Von Goyt, 461 So2d 821 (Ala.Civ.App. 1984), the disclosure of privileged communications has been admissible in

court if custody of a child is in issue. As the theory in these two cases is expanded, there may be future decisions which also create exceptions to long standing rules if the welfare and best interests of a minor child are at stake.

Recent Decisions from the United States Supreme Court—Criminal

Search and seizure—pre-textual traffic stop

Whren v. United States, Case No. 95-5841____U.S. ____ (June 10, 1996). May a police officer stop and detain a vehicle after observing a traffic violation even if a reasonable officer would not have stopped the motorist without some additional law enforcement motive? The Supreme Court unanimously answered yes.

Plainclothes policemen patrolling a "high drug area" in an unmarked vehicle observed a truck driven by Brown waiting at a stop sign at an intersection for an unusually long time; the truck then turned suddenly, without signaling, and sped off at an "unreasonable" speed. The officers stopped the vehicle, assertedly to warn the driver about traffic violations, and upon approaching the truck observed plastic bags of crack cocaine in Whren's hands. Brown and Whren were arrested. Prior to trial on federal drug charges, Brown and Whren



Charles D. Cleveland

Charles D. Cleaveland is a partnar in the Birmingham firm of Corretti, Newsom, Cleveland, Hawkins & Cleveland, Hawkins & Cleveland, He is a 1952 graduate of the University of Alabama School of Law moved for suppression of the evidence arguing that the stop had not been justified by either a reasonable suspicion or probable cause to believe that they were engaged in illegal drug dealing activity. More specifically, the defendants asserted that the officers' traffic-violation ground for approaching the truck was pre-textual. The district court denied the motion to suppress; the D.C. Circuit affirmed.

The Court, led by Justice Antonin Scalia, rejected arguments that pre-textual traffic stops violate the Fourth Amendment's protection against unreasonable search and seizures. "Subjective intentions play no role in ordinary, probable cause Fourth Amendment analysis."

The Court reasoned that the temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective. The Court further specifically noted, "... This Court's cases foreclose the argument that ulterior motives can invalidate police conduct justified on the basis of probable cause. See e.g., United States v. Robinson, 414 U.S. 218, 221, n. 1, 236. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis."

The Court also rejected the petitioners' argument that the balancing of interest inherent in Fourth Amendment inquiries does not support enforcement of minor traffic laws by plainclothes police in unmarked vehicles, since that practice only minimally advances the government's interest in traffic safety while subjecting motorists to inconvenience, confusion and anxiety. Where probable cause exists, the Supreme Court has found it necessary to engage in balancing only in those cases involving searches or seizures conducted in a manner unusually harmful to the individual.

Selective Prosecution

United States v. Armstrong, Case No. 95-197, ____ U.S. ____ (May 13, 1996). Must criminal defendants who want to pursue selective prosecution claims show that people of other races were not prosecuted for the same crimes? The Court answered yes by an eight-to-one vote.

This decision makes it more difficult for defendants to force prosecutors to respond to selective prosecution accusations and reinstated criminal charges that have been dropped after federal prosecutors refused to respond to selective prosecution claim in crack cocaine cases. Chief Justice William Rehnquist, writing for the Court, critically noted, "... If the claim ... were well founded, it should not have been an insuperable task to prove that persons of a different race were not prosecuted." Justices Souter, Ginsburg, and Breyer wrote concurring opinions; Justice Stevens authored a dissent.

Fourth Amendment-Appellate Standard of Review

Ornelas v. United States, Case No. 95-5257, ____ U.S. ____ (May 27, 1996). In reviewing a trial judge's finding that a police search conducted without a warrant was based on probable cause, should an appellate court use a *de novo* standard? The Supreme Court answered yes in an eight-to-one decision. Chief Justice William Rehnquist, writing for the Court, held that the less stringent "clear error" standard of review should be confined to those cases in which a search warrant was obtained by the police before conducting the search.

"The Fourth Amendment demonstrates a strong preference for searches conducted pursuant to a warrant ... Were we to eliminate this distinction, we would eliminate the incentive for obtaining the warrant." Justice Scalia authored a terse dissent, and suggested that "law enforcement officers would still have ample incentive to proceed by warrant" even if appellate courts showed greater deference to trial judges' rulings on Fourth Amendment questions.

Recent Civil Decisions

Ex parte Alfa Mutual General Ins. Co., Ala. Sup. Case No. 1950476 (May 3, 1996), 30 ABR 13, 1892.

The court granted a writ of mandamus ordering the trial judge to set aside an order granting a Rule 60(b) motion for relief from a judgment. Unlike the denial of a Rule 60(b) motion, the granting of a Rule 60(b) motion is almost always interlocutory and not appealable. However, the court indicated that the granting of a Rule 60(b) motion could be reviewed by mandamus "in certain very narrow situations." The court did not explain when such narrow situations exist, except it noted that even though Alfa could appeal from any adverse judgment rendered after a trial, such an appeal would not be adequate because of the delay and expense of the trial.

Why 6,000 Lawyers use Chap7..13

- ★ Best TypeSet look in Bankruptcy Forms.
- ★ Fastest, friendliest software.
- * The only software with built-in Intelligent Help.
- Automatic Plan Drafting, 54 custom plans to satisfy all districts.
- ★ Filing check-lists, client questionnaire.
- Matrix-on-disk versions for all courts that take them.

DEMO DISK • REFERENCES MONEY BACK GUARANTEE

CALL 800 BEST-7-13

CHAP713**

Specialty Software

1111 S. Woodward . Royal Oak, Mich. 48067



Recent Decisions

Of course, this would be the case virtually every time the court erroneously granted a Rule 60(b) motion.

Ray Sumlin Construction Co., Inc. v. Wyser, Ala. Sup. Ct. No. 1940742 (May 3, 1996), 30 ABR 13, 1904.

The court reversed an order granting the defendant a new trial that was entered 97 days after the filing of a post judgment motion. Within the 90-day period provided by Rule 59.1, the court had entered an order denying the motion, ordering a remittitur of the \$500,000 judgment to \$125,000, and stating that a new trial would be ordered if the plaintiff refused to accept the remittitur. The plaintiff refused to accept the remittitur and the court ordered a new trial after the expiration of the 90day period. The court held that the order granting a new trial was void because it was not made within the 90-day period provided by Rule 59.1, the order of a remittitur was void, and the judgment for \$500,000 should be reinstated.

The order made within the 90-day period did not extend the time. Rule 59.1 contemplates only orders that grant or deny the post judgment motion which must be made within the 90-day period or an extension made in compliance with the rule. It does not contemplate an order to decide later whether to grant a new trial.

Justice Ingram wrote the opinion for the court, in which Justice Butts concurred. Justices Shores, Houston, Kennedy and Cook concurred in the result. Chief Justice Hooper and Justice Maddox dissented.

In his dissenting opinion, Justice Maddox said that the ruling within the 90-day period complied with Rule 59(f).



Rick Fernambucg

Pick Fernambucq Is a graduate of the University of Alabama and Birmingham School of Law, He is a partner with the Birmingham firm of Boyd & Fernambucq, and is a member of the Birmingham Bar Association, the Alabama

State Bar and the Arrerican Academy of Matrimonial Lawyers. He also teaches domestic relations at Birmingham School of Law. which provides that the court may require a remittitur as a condition to overruling the motion for new trial. He stated: "Remittitur practice in Alabama has not been without confusion."

The opinion in this case has not cleared up that confusion.

Ex parte Masonite Corporation, Ala. Sup. Ct. Case No. 1950963, (June 28, 1996), 30 ABR 17, 2451.

The trial judge certified a nationwide class of plaintiffs in a class action by signing an order prepared by plaintiffs' counsel that the defendants had not previously seen. The defendants filed a petition for writ of mandamus contending a violation of the Alabama Canons of Judicial Ethics, Canon 3(A)(4), which prohibits ex parte communications with the judge. The commentary to the rule permits a judge to request a party to submit proposed orders "so long as the other parties are appraised of the request and given an opportunity to respond." In denying the mandamus, the court said that any harm from failing to give the defendants notice prior to signing the order was cured by a hearing on the defendants' objections after the order was signed.

Titan Indemnity Company v. Riley, Ala. Sup. Ct. No. 1940312, (July 3, 1996), 30 ABR 17, 2619.

In a prior appeal of this case, the supreme court determined that, under the terms of its liability policy with the City of Montgomery, the insurance company was required to defend police officers in an action in the federal court for civil rights violations. After remand, the trial court rendered a judgment declaring that the insurance company was also required to indemnify the police officers in the event the plaintiff in the federal case recovered a judgment against them. The supreme court affirmed, holding that the prior judgment was the law of the case because the same conduct imposing a duty to defend also imposed a duty to indemnify. Three justices dissented. In his dissenting opinion, Justice Butts said that the first appeal was not controlling because the duty to defend was broader than the duty to indemnify.

Recent Bankruptcy Decisions

Attorney fee due divorced wife non-dischargeable under §523(a)(5) as being in nature of child support and/or alimony

In re Kenneth Strickland, 90 F.3d 444 (11th Cir. August 1, 1996). The parties were divorced in 1985 with the wife being awarded custody of the child and \$200 monthly child support. Thereafter, debtor was unsuccessful in a modification petition relative to reduction of support payments and custody of the child. The wife, as successful party in the modification proceeding, received an award of an attorney's fee of \$9,430.50. Debtor then filed bankruptcy, and in the bankruptcy case filed a complaint to hold the attorney's fee as dischargeable. The bankruptcy court held for debtor in determining that §523(a)(5) did not cover a post-dissolution child-custody proceeding. Section 523(a)(5) withholds from discharge a debt:

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record,...but not to the extent that—

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support...

The district court reversed and the Eleventh Circuit affirmed the district court. The Eleventh Circuit first stated that federal law controls the interpretation under §523(a)(5) as to whether the obligation is deemed "in nature of support", even if state law does not consider the award as "support". It further stated that state law does provide guidance in interpreting the federal law. Florida law provides that in a modification action, a spouse may be entitled to an award of attorney's fees based on need and ability to pay. The court noted that the state court in awarding fees to the wife determined that the ex-wife had a greater need and less ability to pay and for this reason the awarded fees should be entitled as support under the bankruptcy provision quoted above. Additionally, the Eleventh Circuit refused to remand to the bankruptcy court for further consideration of the issue stating that this would involve the bankruptcy court in

domestic relation matters, which should be reserved to state courts.

Comment: I have cited this case believing that its holding will apply in Alabama. See Alabama Court of Appeal cases Wilson v. Wilson, 537 So.2d 942; Ayers v. Ayers, 643 So.2d 1375, which establish the right of the spouse to seek award of attorneys fees in modification petitions.

Eleventh Circuit holds that IRS deficiency notice constitutes liquidated claim for purpose of determining jurisdictional amount in Chapter 13

United States v. Verdunn, 89 F.3d 799 (11th Cir, July 31, 1996). The IRS in the chapter 13 proceeding filed an unsecured proof of claim for \$297,000 for income tax deficiencies for 1982-1986. The bankruptcy case was filed at a time when the jurisdictional maximum amount for unsecured claims was \$100,000 (later changed to \$250,000). The IRS objected to the chapter 13 plan confirmation, and moved to dismiss because of the unsecured amount exceeding \$100,000. The debtor disputed his tax liability as well as the fraud claim of the IRS, and because of debtor's contention that the claim was unliquidated, contended that his petition was within the bounds of the law. Prior to the bankruptcy, the debtor had filed a petition in the tax court contending that the deficiency claims were erroneous.

The bankruptcy court granted a motion to lift the automatic stay to allow the tax court litigation to proceed and the tax court sustained the deficiency assessment. However, the bankruptcy court denied the motion to dismiss and confirmed the chapter 13 plan, which action the district court affirmed. The Eleventh Circuit reversed stating that even though the debtor vigorously disputed the deficiency tax and penalties, the concept of a liquidated debt relates to the amount of liability, not the existence of liability; only if the amount of the debt is dependent upon a future exercise of discretion, unrestricted by specific criteria, is the claim considered as liquidated. The court stated that the amount of the tax liability was evident from the statutory notice of deficiency which had been computed through application of fixed legal standards as contained in the Tax Code. It then reversed and remanded with instructions

that the bankruptcy court dismiss the chapter 13 petition.

Comment: Section 109(e), in determining the amount of claims, provides that the unsecured debts be "non-contingent, liquidated, and unsecured." Therefore, at first blush it would appear that if there be a legitimate dispute, one would think the tax claim as unliquidated. The Eleventh Circuit did not state that it was influenced by the fact that the tax court had found against the debtor, but ruled strictly on the basis of the deficiency notice. This appears to be a close question. Perhaps with a different set of facts to show a genuine dispute, there could be a different answer.

After foreclosure, debtor in Chapter 13 can cure default on residential mortgage only by exercise of Alabama Statutory Right of Redemption

In re Bruce Craig Smith, 85 F.3d 1555, 29 BCD 465 (11th Cir. July 3, 1996). Prepetition, debtor had allowed default on a residential mortgage to go to foreclosure sale. Debtor had moved from the premises after receiving a ten-day notice from the mortgagee as provided under Alabama law. Thus, the debtor preserved his right of redemption. Debtor, some six weeks later, filed chapter 13, and proposed to reinstate the mortgage through the plan. The bankruptcy court ruled that the debtor could exercise the statutory right of redemption in installments through the plan. The district court, following in In re Raysdale, 155 B.R. 578, N.D. Ala. 1993, affirmed. The Eleventh Circuit reversed, first stating that under Alabama law, foreclosure ends the equitable right of redemption, leaving only the one-year statutory right which can be exercised only by a lump sum payment of the foreclosure purchase price and all other legal charges. The Eleventh Circuit was not persuaded by the Ragsdale case, but instead followed the Southern District of Alabama case of In re McKinney, 174 B.R. 330 (1994), the reasoning of which was approved by the Sixth Circuit in In re Glenn, 760 F.2d 1420. Using these two cases as a foundation, the court held that the date of the foreclosure sale terminated the right to cure a default through a chapter 13 plan, stating that default can only be cured with a lump sum payment in exercise of the statutory right. In so

holding, the court distinguished *In re Saylors*, 869 F.2d 1434 (where no foreclosure, but a chapter 7 discharge of the debt), and *In re Hoggle* (cure of a postchapter 13 petition default by modification of the plan).

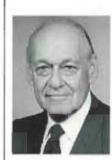
Comment: The Eleventh Circuit left no doubt that once foreclosure ensues, the only way to cure is to exercise the statutory right of redemption; unless the U.S. Supreme Court decides otherwise, this is final!

In Passing

Interest is allowed on allowance of professional fees and expenses, only from the time of the award, and not from time of submission of application. *In re Glados*, 83 3d. 1360, 29 BCD 178 (11th Cir. May 28, 1993).

Fifth Circuit rules that chapter 7 debtor must redeem collateral or reaffirm consumer debt in order to keep collateral. *Matter of William T. and Marilym A. Johnson*, 89 F.3d 249, (5th Cir. July 26, 1996); accord In re Taylor, 3 F.3d 1514 (11th Cir. 1993).

Tax liens arising under state statute and not from consensual agreement are not security interests for purpose of §1322(b)(2) allowing modification of rights of secured creditors except for a security interest held only in debtor's principal residence. In this case, the court also held that the proper amount of post-petition interest to charge under §1325(a)(5)(B)(ii), which mandates that the secured creditor receive under the plan an amount not less than the allowed amount of the claim, is the statutory amount of interest for late payment. Rankin, et. al. v. County of Alieghney, et. al., 89 F.3d 1123 (3rd Cir. July 30, 1996).



Wilbur G.

Silberman

Wilbur G. Siberman, of the Birmingham firm of Gordon, Siberman, Wiggins & Childs, altended Semford University and the University of Alabama and earned his law degree from the University's School of Law. He covers the bankruptcy decisions.



Charles F. Zukoski, Jr.

Birmingham was enriched mighti-ly at the beginning of the second half of the 1920s when it received a new vice-president for the First National Bank of Birmingham, now known as AmSouth Bank. This young man, a mid-westerner from St. Louis, Missouri, was a lawyer and a banker, but more so, a visionary, a progressive, a realist, a gentleman and a man. As Marvin Whiting so fittingly stated, "He was, above all else, a real gentleman. But he was also ... a man with a conscience. He stood up for causes that were not popular." Trained as a lawyer to think logically. Insightful as a banker to be a realist. A pragmatist. Charles F. Zukoski, Jr. became the first mayor of the City of Mountain Brook upon its incorporation in 1942. Subsequent to that, he was named "Shades Valley's Best Citizen" in 1950.

Zukoski challenged wrong. He was not afraid to speak out against evil. Using the pseudonym Button Gwinnett, who had been one of the signers of the Declaration of Independence and a Georgian, Zukoski wrote letters that were published in such newspapers as the Shades Valley Sun and The Birmingham Age Herald that attacked wrong. His foes, the Ku Klux Klan and the White Citizens Council, came to give him grief, but that only steeled him in his resolve to fight even harder. Two others that were his foes were uncontrolled population growth and McCarthyism. Charles Zukoski lived to see many of his causes come to fruition and certainly he outlived many of his foes.

Whereas, Charles F. Zukoski, Jr. was a member of the Birmingham Bar Association and champion of equal rights under the law; and

Whereas, Charles F. Zukoski, Jr. was one of the founding members of Planned Parenthood during the 1930s and later served as a board member of the national Planned Parenthood Organization; and,

Whereas, Charles F. Zukoski was one of the early organizers of the Birmingham Civic Symphony Association and served as its president and also a board member of the Birmingham Music Club; and,

Whereas, Charles F. Zukoski not only eschewed the damaging effects of uncontrolled population growth, he also was an organizer of the Birmingham Committee on Foreign Relations.

Therefore, be it resolved, that the members of the Birmingham Bar Association are sorrowed by the passing of this great man and this resolution is offered as a memorial to his sons.

Be it further resolved, that the Executive Committee of the Birmingham Bar Association at its regular meeting assembled has adopted this resolution and has directed that a copy thereof be spread upon the records of the association as a permanent memorial to this departed member. And, that copies of this resolution be furnished to his sons as the Birmingham Bar Association's expression to them of our deepest sympathy.

-M. Clay Alspaugh President, Birmingham Bar Association



James R. Sturdivant

Whereas, the Huntsville-Madison County Bar Association sorrowfully notes the untimely death of James R. Sturdivant, on August 17, 1996; and

Whereas, Jimmy was a native son of our community, graduating from Huntsville High School in 1951, followed by his graduation from Howard College, now Samford University, in 1955; and

Whereas, he met his call to duty by serving in the United States Navy and being honorably discharged therefrom, next followed by the earning of his law degree from Cumberland Law School in 1969; and

Whereas, he chose Huntsville and Madison County as the place where he would devote himself to the calling of his profession; and

Whereas, he distinguished himself in the practice of law over the past 27 years, always mindful of, and attentive to, the affairs of his clients and serving their interests to the very best of his ability and in keeping with all canons of ethics; and

Whereas, he further distinguished himself with 23 years

of dedicated public service as part-time municipal judge for the City of Huntsville; and

Whereas, Jimmy Sturdivant always upheld the highest standards of both bench and bar and fairly earned our great respect, love and affection and, on August 17, 1996, having completed his tour of duty in this life, now therefore,

Be it resolved by this association that we sincerely regret his passing and we are most thankful for his many positive contributions not only to our bar, but also to our community and state; and

Be it further resolved that this resolution be made a part of the permanent minutes of our association and that a copy of the same be provided to his loving wife. Jo Anne Staggs Sturdivant, to whom we extend our sincere and heartfelt condolences.

-Donna S. Pate

President, Huntsville-Madison County Bar Association

Sydney Leach Lavender

Be it resolved by the Executive Committee of the Birmingham Bar Association, that:

Whereas, Sydney Leach Lavender was born on September 8, 1932, in Newbern, Alabama, to Dora and Forrest Hellen Lavender; and,

Whereas, in 1956 Sydney received his law degree from Columbia University, where he was a Stone Scholar, and joined the law firm now known as Johnston, Barton, Proctor and Powell; and,

Whereas, Sydney's keen intellect, sound judgment and strength of character inspired the absolute confidence of clients and colleagues; and

Whereas, Sydney embraced all that is good in life, from his devotion to his family, to his membership in St. Mary's on the Highlands Episcopal Church, his love of books, movies, art, and travel, and his appreciation for the sublimely humorous story; and,

Whereas, Sydney's kind spirit and commitment to fairness evoked affection and respect from all who knew him.

Now, therefore, it is hereby resolved by the Executive Committee of the Birmingham Bar Association that this resolution be spread upon the records of the Birmingham Bar Association as a permanent memorial to Sydney Leach Lavender and that copies of this resolution be furnished to his widow, Caroline McNeal Lavender; his daughter, Caroline L. Nead; his mother, Dora Lavender; and his sister, Mary Lee Gibson.

-M. Clay Alspaugh President, Birmingham Bar Association

Curtis McLarty Holder

The Fayette County Bar Association lost one of its most respected and cherished members with the passing of Curtis McLarty Holder on January 2, 1996 at the age of 87. Mr. Holder was known to everyone as "Red", a nickname that attached during his youth as a result of his flaming red hair. Though the passage of years had turned the shade of his hair to silver white, the nickname remained an accurate one to describe this wonderful man's uniquely colorful life and personality.

Red was born in Joppa, Cullman County, Alabama on October 15, 1908, the son of Thomas B. Holder and Minnie Maude McLarty Holder. His family later moved to Albertville, Alabama, where he attended and graduated from public school. He then entered the University of Alabama and graduated with a business degree in 1930.

Upon graduation, Red traveled the country for two years through his employment with the W.T. Grant chain of mercantile stores. He then returned to Tuscaloosa, entered law school at the University of Alabama, and graduated in 1935. Red was licensed as an attorney-at-law and solicitor in chancery by the Supreme Court of Alabama on February 21, 1935.

Red commenced the practice of law in Fayette County, Alabama in March of 1935 in an office on the second floor of the First National Bank Building in Fayette. The firm he established remains in this same location today, over 60 years later, and Red was active in the firm until the last year of his life. He was for many years a member of the Fayette County, Alabama and American bar associations.

Throughout the six decades of his legal career, Red was known as the consummate "country lawyer." He was skilled and experienced in many areas of the law, and vigorously represented the interests of his clients, which consisted of a wide variety of the local populace, including farmers, small businesses and local governmental agencies.

The hallmarks of Red's legal career were honesty, integrity and straightforwardness. His fellow members of the bar, as well as the members of the bench, always knew exactly where Red stood on any given issue, and his stance was invariably shared in a humorous, plainspoken manner which was characteristic of the man's considerable wit. His local bar will genuinely miss Red's unique personality and character, as well as the aroma of his ever-present pipe.

Although Red loved practicing law, he also gave of his time and talents to his church, country and civic interests. He was a long-time member of and significant contributor to the First United Methodist Church of Fayette, having held practically



every office in the church. He served in the Fourth Infantry Division as an enlisted man through the Normandy invasion and the march through Europe during World War II. Red also served as mayor of the City of Fayette, was a charter member and former president of the Fayette Exchange Club, organized in 1936, and was active in other civic and charitable organizations too numerous to list. Red has provided a substantial legacy to the Fayette County Memorial Library.

Red was preceded in death by his first wife, Clarice Patrick "Bill" Holder, to whom he was married 57 years. He is survived by his widow, Billie Tillman Cargile Holder, and a sister, Bernice H. Tidwell.

No writing can adequately express the significance of the life of Red Holder. The legal profession has undergone tremendous changes since Red first stepped into a courtroom, not all of them for the better, and the present members of the bench and bar will be wise to strive for the standards of decency and honor exemplified by Red's legal career. Red Holder was a mentor to all the present members of the Fayette County Bar Association, and his devotion and adherence to the values long established as benchmarks of the legal profession should be an inspiration to all members of the bench and bar.

-J. Merrell Nolen, Jr. President, Fayette County Bar Association

Fred Blanton, Jr. Fultondale Admitted: 1946 Died: July 31, 1996

Oliver Wiley Brantley

Troy Admitted: 1939 Died: July 15, 1996

Ralph C. Burroughs Tuscaloosa Admitted: 1963 Died: August 13, 1996

James R. Cooley, Jr. Mobile

Admitted: 1979 Died: May 15, 1996

Maxwell C. Hudson Birmingham Admitted: 1949 Died: May 20, 1996 Thomas Nicholson Jasper Admitted: 1975 Died: July 17, 1996

Francis William Speaks, Sr. Verbena Admitted: 1950 Died: June 22, 1996

William Lane Strong Huntsville Admitted: 1969 Died: June 29, 1996

ASB 1996-97 COMMITTEES AND TASK FORCES

Committee on Access to Legal Services Chair:

Franklin Luke Coley, Jr., Mobile Vice-chair: Ronald David McDowell, Huntsville Laveeda Morgan Battle, Birmingham Rebecca Gail Brooks, Tuscaloosa Pamela Harnest Bucy, Tuscaloosa Patricia Cole Burns, Birmingham Betty Bobbitt Lee Byrne, Montgomery Kenneth Ray Cain, Jr., Birmingham Shelbonnie Coleman-Hall, Mobile Cedric Bernard Colvin, Montgomery Gladys Marie Daniels, Mobile Daniel Reese Farnell, Jr., Montgomery Lawrence Fredrick Gardella, Montgomery Frederick Mott Garfield, Jr., Birmingham John Collier Gullahorn, Albertville Windy Angela Hillman, Jasper Edward Andrew Hosp, Birmingham Paul Whitson Johnson, Tuscaloosa Thomas Grady Keith, Huntsville Hugh McLean Lee, Tuscaloosa Tamara Young Lee, Montgomery Brooks Pitman Milling, Mobile Anne White Mitchell, Birmingham Phillip Dinsmore Mitchell, II. Decatur Terry Allen Moore, Mobile Charles Howard Moses, III, Birmingham Katherine Elise Moss, Huntsville Laura Elizabeth Nolan, Montgomery Allen Clay Rankin, III, Mobile Robert Stafford Robertson, Huntsville Pamela Patrice Robinson, Montgomery Scott Alfred Rogers, ituntsville Robert David Segall, Montgomery Henry Floyd Sherrod, Jr., Florence James Opp Smith, Montgomery Mary Kathleen Willia Steele, Tuscaloosa Albert Loring Vreeland, Tuscaloosa Melinda Mitchell Waters, Montgomery Stanley Weissman, Montgomery Brian Mitchell White. Decatur Task Force on Adult Literacy

Task Force on Adult Literacy Chair:

Charles Randal Johnson, Birmingham Vice-chair:

Lynne Brauer Kitchens, Montgomery Allison Black Anderson, Gordo Felicia Marshea Brooks, Montgomery John Charles Coleman, Dothan Angela Long Cooner, Montgomery Gina Thomas Cross, Jusper Aurelius Evans Crowe, Mobile Theresa Smith Dean, Opelika Arthur Freeman Fite, III, Anniston Sabrie Gracelyn Graves, Eufaula Jerome Allan Hoffman, Tuscaloosa Mark Montgomery Hogewood, Birmingham Courtney Anne Loftin, Montgomery Julian Rushton McClees, Birmingham Jeffery Wayne McKinney, Huntsville Gina Marie Miller, Birmingham Robert Lester Pittman, Montgomery Stephen Barganier Porterfield, Birmingham Leslie Marie Proll, Birmingham Wynn Miles Shuford, Birmingham

Myra Beth Staggs, Birmingham Barrie Balzii Stokes, Birmingham Cynthia Holland Torbert, Montgomery Editorial Board, The Alabama Lawyer

Chair:

Robert Austin Huffaker, Montgomery Vice-chair, finance: David Baldwin Champlin, Birmingham Vice-chair: Susan Shirock DePaola, Montgomery William Tunstall Carlson, Jr., Montgomery Charles Douglas Cleveland, Rirmingham Glenda Gale Cochran, Birmingham Jonathan Samuel Cross, Tuscaloosa Mallory Donald Davis, Jr., Mobile LaJuana Sharonne Davis, Montgomery Joseph Michael Druhan, Jr., Mobile Linda Gail Flippo, Birmingham Victoria Jeanne Franklin-Sisson, Birmingham Sherri Tucker Freeman, Birmingham William Gilmore Gantt, Birmingham James William Gewin, Birmingham Debra Holly Goldstein, Birmingham William Roger Gordon, Montgomery Lisa Huggins, Birminoham Lynn Robertson Jackson, Clayton Michael Arthur Kirtland, Montoomery Pamela Lorraine Mable, Atianta Eugenia Hofammann Mullins, Birmingham Patricia Leigh O'Dell, Montgomery Samuel Anthony Rumore, Jr., Birmingham Robert Sellers Smith, Huntsville John Quincey Somerville, Birmingham **Committee on Alternative Methods of Dispute Resolution**

Chain:

Steven Alter Benefield, *Birmingham* Vice-chain Marshall Timberlake, *Birmingham*

Helen Johnson Alford, Mobile Edward Jackson Ashton, Birmingham John Bigham Barnett, III, Monroeville Mary Lynn Bates, Birmingham Delores Rosetta Boyd, Montgomery Deborah Susan Braden, Birmingham Walter Glenn Bridges, Bessemer John Newton Bryan, Jr., Birmingham Karen LaMoreaux Bryan, Tuscaloosa Frank Mark Caprio, Huntsville Joe Calvin Cassady, Jr., Enterprise William Robert Chandler, Montgomery John Charles Clarke, Montgomery Sue Bell Cobb, Montgomerg William Deal Coleman, Montgomery John Brantley Crawley, Montgomery Charles Homer Durham, III. Montgomery Hub Bost Harrington, Birmingham Clarence Theo Hellums, Jr., Centreville Broox Garrett Holmes, Jr., Mobile Ernest Clayton Hornsby, Jr., Alexander City Benjamin Lee Locklar, Monigomery Marion Dale Marsh, Enterprise Melissa Gasser Math, Montgomery Rodney Andrew Max, Birmingham Frank Hampton McFadden, Montgomery Edward Paul Meyerson, Birnaingham William Alexander Moseley, Mobile

Carnella Greene Norman, Birmingham John Lawrence Olszewski, Montgomery James Roy Pratt, III, Birmingham Pamela Patrice Robinson, Montgomery John David Saxon, Birmingham Andra Donell Sparks, Birmingham Charles Davis Stewart, Birmingham Wayne Paulk Turner, Montgomery Arny Catherine Vibbart, Montgomery Katharine Anne Weber, Birmingham Roger Courtland Williams, Tuscaloosa

The Alabama Lauger Bar Directory Committee Chair:

William Ronald Waldrop, Birmingham Vice-chair:

John Walter Sharbrough, III, Mobile Joseph Scott Ammons, Pike Road Donna Ward Black, Mobile John Oliver Cameron, Montgomery Teresa Richards Jacobs, Montgomery Brian Wesley Moore, Montgomery William Kent Upshaw, Birmingham

Task Force on Bench and Bar Relations Chairs

Elizabeth Ann McMahan, Birmingham Vice-chair:

Alva Hogh Maddox, Montgomeru Joseph Arlington Colquitt, Tuscaloosa Aubrey Ford, Jr., Tuskegee Margaret Lindsey Givhan, Montgomery William Roger Gordon, Montgomery Victor Lee Hayslip, Birmingham Harold Francis Herring, Huntsville Richard Lee Holmes, Montgomery William Arthur Jackson, Birminghum Frank Samuel James, III, Birmingham John Maxwell Karrh, Tuscaloosa Robert Gordon Kendall, III, Mobile Timothy Alan Lewis, Montgomery Loyd Hinton Little, Jr., Huntsville Edward Bermudez McDermott, Mobile Philip Ben McLauchlin, Jr., Ozark Tamara Olen Mitchell, Birmingham Samuel Holt Monk, II, Anniston Carnella Greene Norman, Birmingham Donald Howard Patterson, Florence Caryl Penney Privett, Birmingham Deborah Sue Sanders, Montgomery Kenneth Matthew Schuppert, Jr., Decatur Wayman Gray Sherrer, Onconta Charles Lynwood Smith, Jr., Huntseille William Howard Steele, Mobile Clement Clay Torbert, III, Montgomery Abigail Pruyn Van Alstyne, Birmingham Kenneth Dallon Wallis, II, Montgomery Joe Ramon Whatley, Jr., Birmingham Cathy Suzanne Wright, Birmingham Committee with the Birmingham Office of the IRS

Ronald Alan Levitt, Birmingham

Thomas Jeremiah Mahoney, Jr., Birmingham Advisory Committee to the Bosrd of Bar Examiners Chair:

Cathy Suzanne Wright, Birmingham David Boyd, Montgomery

Samuel Anthony Rumore, Jr., Birmingham

Character and Fitness Committee Chair:

Richard Norris Meadows, Montgomery John Gregory Allen, Montgomery Robert Larry Bradford, Birmingham David Bryson Byrne, Jr., Montgomery Jack Michael Conaway, Dothan Mark Everett Fuller, Enterprise Gwendolyn Bulger Garner, Montgomery Judith D'Alessandro Holt, Birmingham Robert Blake Lazenby, Talladega Howard Allyn Mandell, Montgomery Michael Dale McKibben, Birmingham John Percy Oliver, II, Dadeville Maibeth Jernigan Porter, Birmingham Carol Hardwick Stewart, Birmingham

Committee on Citizenship Education Chair:

Donna Wesson Smalley, Tuscaloosa Vice-chair:

Grady Milton McCarthy, Jr., Jasper Hoyt Luther Baugh, Jr., Rainsville Thomas Bentley, III, Birmingham Stephen Thorn Blackburn, Brookwood William Northington Clark, Birmingham Robert Ernest Cooper, Birmingham Michael Lawrence Cumpton, Mobile Ronald Paul Davis, Mobile George Capers Douglas, Jr., Birmingham Diane Leigh Dunning, Birmingham Michael Joseph Gamble, Dothan Robert Marcus Givnan, Birmingham Samuel Stephen Grimes, Gardendale Sandy Sanford Holliday, Roanoke Christopher Knight, Mobile James Douglas McElvy, Tuscaloosa Keith Anderson Nelms, Montgomery Lynne Stephens O'Neal, Birmingham James Lynn Perry, Mobile Kelli Wise Ray, Montgomery Mark Anthony Sanderson, Florence Thomas Claude Tankersley, Montgomery Harvey Jerome Thompson, Moulton John Cumming Watkins, Jr., Tuscaloosa **Client Security Fund Committee**

Chair: S. Dagnal Rowe, Hantsville Vice-chair Michael Eugene Ballard, Mobile Woodford Wyndham Dinning, Jr., Demopolis Patrick Howard Graves, Jr., Huntsville Lisa Milner Hancock, Guntersville Arnold Stewart O'Bannon, III, Florence Thomas Lee Rountree, Auburn Lowell Asher Womack, Birmingham **Committee on Correctional Institutions and** Procedures

Chair: Roberta Leatherwood Fulton, Birmingham Vice-chair: William Herman Broome, Anniston Cynthia Lee Almond, Tuscaloosa William Rives Blanchard, Jr., Montgomery Margaret Young Brown, Auburn John Henry England, Jr., Tuscaloosa Charles Allen Flowers, III, Birmingham John Hollis Jackson, Jr., Clanton John Charles Kelsey, Centre Charles Michael Law, Montgomery Peggy Allison McClure, Fairfield Gary Coultas Pears, Birmingham Mary Egleston Pilcher, Montgomery Andrew Weldon Redd, Montgomery William James Samford, II, Mt. Meigs Jon Martin Spechalske, Mobile Lewis Daniel Turberville, Jr., Birmingham David Johnson Varn, Birmingham Mark Douglas Wilkerson, Montgomery **Ethics Education Committee** Chair: Charles Perlis Miller, Montgomery Vice-chair:

John Franklin Janecky, Mobile Robert Richardson Baugh, Birmingham Bobby Neal Bright, Montgomery Paul Stribling Conger, Jr., Tuscaloosa Gary Wayne Farris, Birmingham William Burton Hairston, III, Barningham Mary Abbott Harkins, Birmingham Paula Whitley Higginbotham, Tuscaloosa Raymond Lymon Johnson, Jr., Birmingham Atley Asher Kitchings, Jr., Montgomery Cynthia G. Lamar-Hart, Birmingham James Brooks Leach, Birmingham Joe Hollis Little, Jr., Mobile Melinda Lee Maddox, Brewton James Edward Malone, Lineville Jenelle Mims Marsh, Tuscaloosa Edwin Jean McArthur, Jr., Montgomery Frank Timothy McCollum, Montgomery William Henry McDermott, Mobile Anne Reilly Moses, Birmingham Robert Wheeler Norris, Birmingham Robert Flowers Northcutt, Montgomery Robert William O'Neill, Birmingham Patrick David Pinkston, Wetumpka Bruce Frederick Rogers, Birmingham Robert David Segall, Montgomery Jock Michael Smith, Tuskegee Institute Helena Frances Tozzi, Birmingham Glenn Gerald Waddell, Birmingham James Jerry Wood, Montgomery Federal Tax Clinic Committee Woodham Wendell Cauley, Jr., Montgomery Bruce Peter Ely, Tuscaloosa Thomas Fearn Garth, Mobile Gerald Wade Hartley, Montgomery Henry Hamilton Hutchinson, III, Montgomery Scott Edward Ludwig, Huntsville Anne White Mitchell, Birmingham John William Rose, Jr., Birminaham Brian Thomas Williams, Birmingham Task Force on Fee Dispute Resolution Co-chair: Rodney Andrew Max, Birmingham Co-chain William Woodrow Sanderson, Jr., Huntsville James Harry Blalock, Homewood Donald Duane Doerr, Jr., Bay Minette Henry Frohsin, Birmingham William Burton Hairston, III, Birmingham Gregory Hascal Hawley, Eirmingham Peggy Christine Hooker, Birmingham Gary D. Hooper, Birmingham James Smith Lloyd, Birmingham Charles Noel McKnight, Mobile Michael Stephen McNair, Mobile Amy Kirkland Myers, Birmingham John Aubrey Nichols, Luterne Robert Griffin Robison, Newton William Haleem Saliba, Mobile Gordon Owen Tanner, Mebile George Augustus Tonsmeire, Jr., Mobile William Keith Watkins, Thoy **Indigent Defense Committee** Chair: Joel Lee Sogol, Tuscaloosa Vice-chair Stephen Roger Glassroth, Montgomery Randy Burns Brooks, Anniston Ernest Hampton Brown, Birmingham Timothy Roy Callins, Huntsville Katy Smith Campbell, Selma Michael Albert Crespi, Dothan Eric Clark Davis, Dothan John Wilson Dinsmore, Birmingham Donald Duane Doerr, Jr., Bay Minette Jeffery Clyde Duffey, Montgomery Frances Crouser French, Opelika

Bruce Alan Gardner, Huntsville

John Louis Knowles, Geneva

Joseph Henry Hilley, Birmingham

David Savage Luker, Birmingham John Earl Paluzzi, Carrollton Brenda Joyce Pierce, Mobile Maxwell Homer Pulliam, Jr., Birmingham Patricia Leigh Sansone, Montgomery James Dwight Smith, Tuscaloosa Bryan Allen Stevenson, Montgomery Randall Scott Susskind, Montgomery Seth Balfour Thompson, Cullman John Mark White, Birmingham Wendy Lee Williams, Birmingham Joel Lee Williams, Thoy Robert Von Wooldridge, III, Tusceloosa **Insurance Programs Committee** Chair: James Bentley Owens, III, Birmingham Vice-chair: Elizabeth Coen Bookwalter, Montgomery Clifford Louis Callis, Jr., Rainbow City James Alexander Haggerty, Jr., Birmingham Henry Thomas Henzel, Birmingham Ralph Nicolson Hobbs, Selma Randall Keith Hunter, Montgomery Rhon Eugene Jones, Montgomery Jeffery Wayne Kelley, Elba William Harrison Kennedy, Tuscaloosa Banks Christian Ladd, Mobile Rocco J. Leo, Birmingham Don Boyden Long, Jr., Birmingham Betty Cook Love, Talladega Elizabeth Cowart McAdory, Auburn Paul Albert Miller, Birmingham Michael Douglas Mulvaney, Birmingham Brian Kenneth Parker, Birmingham Glenn Allan Parker, Montgomery William Franklin Patty, Montgomery Thomas Joseph Saunders, Montgomery Kathy Elaine Segler, Montgomery Frederic William Sington, Jr., Gadsden Stuart Edwin Smith, Huntsville Lisa Dawn Van Wagner, Montgomery Judicial Conference for the State of Alabama Michael Leon Edwards, Birmingham William Lovard Lee, III, Dothan Charles Averett Stakely, Jr., Montgomery Law Day Committee Chair: Teddi Lane Carte-Turner, Montgomery Vice-chair: David Lawrence Faulkner, Jr., Birmingham Gordon Gray Armstrong, III, Mobile Shirley Zeigler Osborne Brown, Montgomery Chris Steve Christ, Birmingham Janie Baker Clarke, Montgomery Roy Scott Colson, III, Birmingham Marianne Tipton Cosse, Atlanta Charles David Decker, Dothan Lynda Leigh Flynt, Montgomery Richard Bartlett Garrett, Montgomery Dawn Wiggins Hare, Monroeville Thomas Bailey Klinner, Montgomery Charles D. Langford, Montgomery Walter Franklin McArdle, Birmingham Stephen Wright Mullins, Pascagoula Valerie Lynne Palmedo, Anniston Robert Jackson Russell, Jr., Montgomery Selma Dingler Smith, Mobile Terri Murrell Snow, Bessemer Charles Amos Thompson, Birmingham Alvin Holmes Whiddon, Jr., Mobile Committee on Lawyer Advertising and Solicitation Chair: Tony George Miller, Birmingham Vice-chair: Thomas Bynum Albritton, Andalusia Marcus Clay Alspaugh, Birmingham Julian Donald Banks, Mobile Billy Charles Bedsole, Mobile William Haynes Brooks, Birmingham

Toby Dawaine Brown, Mobile

William Crumbly Byrd, IL Birmingham Anthony Lee Cicio Jr., Birmingham David Stephen Conrad, Mobile Robert Chester Dillon, Anniston David Paul Dorn, Birmingham Stevan Kent Goozee, Birmingham Irvin Grodsky, Mobile Francis Hutcheson Hare, Jr., Birmingham Richard Freeman Horsley, Birmingham Thomas Marvin Little, Talladega Richard Hunley Monk, III, Birmingham William Alexander Moseley, Mobile John Milton Pennington, Birmingham Barry Alan Ragsdale, Birmingham William Boyd Reeves, Mobile John Paul Scott, Jr., Birmingham Kenneth Edward Sexton, II, Birmingham Patrick Michael Shegon, Montgomery Karla Ann Shivers, Prattville Dana Jill Simpson, Rainsville William Franklin Smith, II, Birmingham Marcus Lavon Whatley, Alabaster Clifton Earl Wright, Florence James Alexander Yance, Mobile **Committee on Lawyer Public Relations, Information** and Media Relations Chair: Gerald Raymond Paulk, Scottsboro Vice-chair: Frank Butler Potts, Florence Benjamin Howard Abritton, Mobile Jere Locke Beasley, Montgomery Howard McGriff Belser, Jr., Decatur Philip Russell Collins, Montgomery Mark Anthony Dutten, Moulton Gregg Brantley Everatt, Montgomery Denise Ann Ferguson, Huntsville Robin Hansen Graves, Birmingham Mac Bell Greaves, Birmingham John Ralph Gunn, Roanoke Stephen Van Hammond, Decatur Alicia Kay Haynes, Birmingham James Gorman Houston, Jr., Montgomery Woodrow Eugene Howard, III, Mobile Rhon Eugene Jones, Montgomery Walter Allen Kelley, Huntsville Ralph Peyton Loveless, Mobile Jacqueline Lee Lyon Mixon, Montgomery James Flynn Mozingo, Montgomery Lisa Ann Narrell-Mead, Birmingham Lisa Tinsley O'Hara, Mobile Robert Lester Pittman, Montgomery Ira Drayton Pruitt, Jr., Livingston Michael Dennis Rogers, Anniston Andrew John Rutens, Mobile Mitchell Khaled Shelly, Mobile Dale Rouse Waid, Clanton Kathrine Owens Wilburn, Birmingham Lawyer Referral Service Board of Trustees Chair: Gregory Allen Reeves. Decatur Vice-chair: Daniel Gary Hamm, Montgomery Glenn Nelson Baxter, Tuscaloosa Melissa Charlton Bowen, Prattville Robert Hosea Brogden, Ozark Daniel Hosmer Craven, Jr., Gulf Shores Donna Coon Crooks, Daleville Thomas Lewis Davis, Birmingham Robert Curry Faircloth, Troy Darla Tolomei Furman, Huntsville Timothy David Garner, Gulf Shores Jackie O'Neal Isom, Hamilton Vinson Wilson Jaye, Wetumpka James Alfred Kee, Jr., Birmingham James Wilson Mitchell, Florence Joseph Anthony Morris, Dothan Richard Russell Newton, Tuscaloosa Roger William Pierce, Auburn

James Hezekiah Seale, III. Greensboro Carl Brandon Sellers, III, Greenville Thomas Albert Smith, Jr., Cullman Vaughn Morton Stewart, II, Anniston Ronald Howard Strawbridge, Vernon David Windell Vickers, Montgomery Richard Warren Whittaker, Enterprise Clifton Earl Wright, Florence Thomas Fredrick Young, Jr., Alexander City Lawyers Helping Lawyers Committee Chair: Paul Archie Phillips, Birmingham Vice-chain: James Scott Langner, Birmingham Robert Brown Aderholt, Montgomery David Edward Avery, III, Montgomery Joel Victor Bowman, Anniston Bowen Hill Brassell, Phenix City William Terry Bullard, Dothan Ira David Cherniak, Mobile Geary Alfred Gaston, Mobile Robert Wellington Gwin, Jr., Birmingham Charles Bernard Hess, Ozark Preston Lee Hicks, Foley Thomas Roy Jones, Jr., Tuscaloosa John Charles Kelsey, Centre Barry Clayton Leavell, Montgomery Samuel Graham McKerall, Gulf Shores Nancy Howell Mitchell, Northport Leonard Kenneth Moore, Bessemer Michael Alan Newsorn, Birmingham Dorothy Ferrell Norwood, Montgomery Bennett Lee Pugh, Birminoham James Christopher Reilly, Birmingham Julien Massey Relfe, Jr., Birmingham James Middleton Sizemore. Jr., Montgomery James O. Standridge, Tuscaloosa Carlton Terrell Wynn, Jr., Birmingham **Task Force on Legal Education** Chair: William Holcombe Pryor, Jr., Montgomery Vice-chair: Colin Henry Luke, Birminoham Orrin Kaley Ames, III, Mobile Carl Michael Benson, Auburn Christoffer Peter Bolvig, III. Birmingham Charles Dubose Cole, Birmingham Wendy Brooks Crew, Binningham Gregory Stephen Cusimane, Gadsdon Michael Dwayne Ermert, Birmingham Denise Ann Ferguson, Huntsville Christopher Ralph Jones, Tuscaloosa Harold Beryl Kushner, Birmingham Edward Douglas Lanford, Jr., Tuscaloosa Jenelle Mims Marsh, Tuscaloosa Donna Sanders Pate, Huntsville Wesley Pipes, Mobile Royce Allen Ray, III, Mobile Robert Werner Rieder, Jr., Fuantsville Michael Reid Silberman, Birmingham James Timothy Smith, Birmingham James Frank Vickrey, Jr., Montgomery Susan Jane Walker, Montgomery Joel Lee Williams, Troy Committee on Local Bar Activities and Services Chair: Holman Harold Stephens, Fiuntsville Vice-chair: Edward Burns Parker, II, Montgomery Richard Martin Adams, Dothan James Tutt Barrett, Opelika Richard Goodwin Brock, Mobile Venessa Vann Campbell, Birmingham Mary Lynn Campisi, Birmingham Henry Crowell Chappell, Jr., Montgomery Deborah Ann Griffin, Mobile John Fredric Ingram, Birmingham Michael Dale McKibben, Birmingham Mark Anthony McWhorter, Birmingham

Joseph Anthony Morris, Dothan Joseph Trent Scofield, Birmingham Bradley Jerome Sklar, Birmingham Brenda Smith Stedham, Anniston Mark Thomas Waggoner, Birmingham Melinda Mitchell Waters, Montgomery Herbert Harold West, Jr., Birmingham John Curtis Wright, II, Gadsden

Task Force on Membership Services Chair:

Alva Manson Lambert, Montgomery Vice-chair:

Samuel Alexander Spoon, Montgomery Boyd Frederick Campbell, Montgomery Sarah Jean Carlisle, Birmingham Perryn Godbee Carroll, Birmingham Tammy Lorraine Frazier, Sausalito Roy Wylie Granger, III. Montgomery Ann Dunagan Marshall, Birmingham Roy Oliver McCord, Gadsden Michael Lyndon McKerley, Birmingham Michael Stephen McNair, Mobile Maryanne Elizabeth Melko, Montgomery Salem Nasaif Resha, Jr., Birmingham Michael Stephen Sealy, Montgomery Leon Bernard Smithart, Union Springs Gerald Bernard Taylor, Jr., Birmingham William Brice Woodward, Jr., Huntsville

Military Law Committee Chair: Bernard Boozer Downs, Jr., Birmingham Vice-chair: John Joseph Park, Jr., Montgomery Julian Donald Banks, Mobile Andrew Joseph Coleman, Birmingham Aziz David Fawal, Birmingham Conrad Murphree Fowler, Jr., Columbiana Thomas Elliott Jones, Auburn Cain James Kennedy, Mobile John Thomas King, Jr., Birmingham Michael Arthur Kirtland, Montgomery Sandra Kay Meadows, Mobile Robert Turner Meadows, III, Opelika Walter Darrell Phillips, Maxwell AFB William Harvey Roe, Oneonta William Edward Scully, Jr., Daphne Charles Larry Sparks, Birmingham Richard Allan Thompson, Jr., Tuscaloosa William Cox Tucker, Jr., Birmingham Jon Keith Turner, Montgomery Everett McRae Urech, Daleville Jack Wilfred Wallace, Jr., Montgomery

Task Force on Minority Participation and Opportunity Chair:

Russell Jackson Drake, Birmingham Vice-chair:

Charles Price, Montgomery Beverly Poole Baker, Birmingham Renee Blackmon-Hagler, Birmingham Delores Rosetta Boyd, Montgomery Houston Lanier Brown, Birmingham Paige McCoy Carpenter, Tuscaloosa Cynthia Williams Clinton, Montgomery John James Coleman, Jr., Birmingham Cedric Bernard Colvin, Montgomery Artur Genestre Davis, Montgomery Thomas Richard DeBray, Montgomery John Croom Falkenberry, Birmingham Thomas Henry Figures, Mobile Sara Frances Heidt, Birmingham Willie Julius Huntley, Jr., Mobile Tamara Young Lee, Montgomery Patricia Trott Mandt, Birmingham Tyrone Carlton Means, Montgomery Kenneth Jay Mendelsohn, Montgomery Demetrius Caiphus Newton, Birmingham Max Cleveland Pope, Jr., Birmingham Frederic Albert Ransom, Anniston Kenneth O'Neal Simon, Birmingham

Stewart Gregory Springer, Birmingham Cleophus Thomas, Jr., Anniston Robert Simms Thompson, Tuskegee **Prepaid Legal Services Committee** Chair: Robert Earl Sasser, Montgomery Vice-chair: John Brantley Crawley, Montgomery George Milton Beason, Jr., Huntsville William Terry Bullard, Dothan Hilary Coleman Burton, Huntsville Jennifer Michaels Chambliss, Montgomery Thomas Lewis Davis, Birmingham William Cater Elliott, Montgomery Kenneth Dewayne Hampton, Huntsville Billy Wayne Jackson, Cullman John Fred Kingren, Birmingham Lance Everett Kuykendall, Huntsville Gerald Lee Miller, Birmingham Dennis Lowell Rushing, Ashville Hattie Marie Hall Thornton, Montgomery **Committee on Rules of Professional Conduct** Chair: William Burton Hairston, III, Birmingham Vice-chair: Douglas Joseph Centeno, Birmingham Joseph Patrick Henican Babington, Mobile Anthony L. Cicio, Eirmingham Charles McDowell Crook, Montgomery Thomas Renfro Elliott, Jr., Birmingham Jesse Price Evans, III, Birmingham Bruce Lister Gordon, Birmingham Christopher Joseph Hughes, Montgomery Alex Walter Jackson, Montgomery Roger Glen Killian, Fort Payne Robert Dale McWhorter, Jr., Gadsden William Hayes Mills, Birmingham Larry Brooks Moore, Florence John Nick Pappanastos, Montgomery Patrick David Pinkston, Wetumpka John Paul Scott, Jr., Birmingham Benjamin Barnett Spratling, III, Birmingham Michael Edward Upchurch, Mobile James Eugene Williams, Montgomery David George Wirtes, Jr., Mobile Solo and Small Firm Practitioners Committee Chair: Paul Adams Brantley, Montgomery Vice-chair: William Harold Albritton, IV. Andalusia Patrick Joseph Anderson, Athens Eberhard Erich Ball, Boy Minette Thomas Hall Boggs, Jr., Demopolis Joseph Thomas Booth, IV, Montgomery Mary Lynn Campis, Birmingham Billy Lennard Carter, Montgomery Larry Joel Collins, Phenix City Neal Presley Conner, Decatur Edgar Cuthbert Gentle, III, Birmingham Laura Kate Gregory, Northport John Frank Head, Columbiana Willie Julius Huntley, Jr., Mobile John Maclin Kennemer, Tuscumbia Dan Cicero King, III, Bessemer William DeJarnette King, IV, Carrollton William Oliver Kirk, Jr., Carrollton Jennifer Lee Lunt, Montgomery Kendall Walton Maddox, Birmingham Samuel Maples, Birmingham Marla Yvette Newman, Dothan Everette Adolphe Price, Jr., Brewton Marcus Wendell Reid, Anniston Carter Alan Robinson, Huntsville Andrew Jackson Sinor, Jr., Birmingham Edward Lee Dingler Smith, Mobile Leon Bernard Smithart, Union Springs Elizabeth Couey Smithart, Union Springs Michael Glen Strickland, Montgomery Sarah Luberta Thompson, Tuscaloosa

William Callaway Veal, Birmingham James Steven Ward, Birmingham Walter Gregory Ward, Lanett Wade Kyle Wright, Guntersville James Gusty Yearout, Birmingham Special Liaison Tax Committee for the Southeast Region Thomas Hamilton Brinkley, Birmingham Glen Porter Brock, Jr., Mobile Stuart Joseph Frentz, Birmingham **Committee on Substance Abuse and Violence** in Society Chair: Elizabeth Brunson Baird, Birmingham Vice-chair: Emily Sides Bonds, Birmingham Robert Brian Allison, Bessemer Ashley Albert Ayers, Birmingham Julia Ann Beasley, Montgomery Veronica Lynn Bennett, Tuscaloosa David Crawford Bibb, Prattville John Alan Bivens, Tuscaloosa Walter Parker Crownover, Tuscaloosa Donald Edward Earnshaw, Saraland Hense Reynold Ellis, II, Montgomery William Roy Farmer, Birmingham Gregory Lee Gambril, Andalusia Stephen Willis Guthrie, Birmingham William Stephenson Halsey, III, Birmingham Gerald Maurice Hudson, Tuscaloosa Jeffrey Scott Miller, Birmingham Denise Jones Pomeroy, Birmingham Wanda Bracy Rahman, Mobile Lowell Landis Sexton, Montgomery Patricia Anne Snyder, Montgomery Myra Beth Staggs, Birmingham Joseph Peter Van Heest, Montgomery Spencer Brent Walker, Grove Hill Stephen Joseph Ziemkowski, Tuscaloosa Alabama State Bar Commissioners' Supreme Court Lisison Committee Chairs Donna Sanders Pate, Huntsville Wade Hampton Baxley, Dothan David Randall Boyd, Montgomery Unauthorized Practice of Law Committee Chair: Charles Noel McKnight, Mobile Vice-chair: Rufus Edward Elliott, III, Birmingham Karen Frances Bean, Birmingham William Marcus Brakefield, Tuscaloosa Larry Joel Collins, Phenix City Jimmy Hinson Fernandez, Mobile Randal Simpson Ford, Thucaloosa Nathan Phillip Friedlander, Mobile Stephen Van Hammond, Decatur Yancey Davis Lott, Jr., Mobile Anne White Mitchell, Birmingham Janice Boyd Neal, Opelika Nathan Robert Norris, Birmingham James Wallace Porter, II, Birmingham Samuel Anthony Rumore, Jr., Birmingham Yvonne A. H. Saxon, Montgomery Patricia Wayne Cobb Stewart, Scottsboro Harvey Jerome Thompson, Moulton George Augustus Tonsmeire, Jr., Mobile William Ora Walton, III, Opelika **Committee on Women in the Profession** Chair: Cecilia Josephine Collins, Mobile Vice-chair: Margaret Helen Young, Florence Beverly Poole Baker, Birmingham

Bargaret Helen Foung, Piorentee Beverly Poole Baker, Birmingham Claire Alexander Black, Tuscaloosa Delores Rosetta Boyd, Montgomery Pamela Harnest Bucy, Tuccaloosa Robin Lynn Burrell, Birmingham Susan Shirock DePaola, Montgomery

Wanda Davis Devereaux, Montgomery Victoria Jeanne Franklin-Sisson, Birmingham Dawn Wiggins Hare, Monroeville Lynn Robertson Jackson, Clayton Elizabeth Barry Johnson, Birmingham Cynthia G. Lamar-Hart, Birmingham Merceria Lavonne Ludgood, Washington, D.C. Marla Yvette Newman, Dothan Effie Teresa Miller Norman, Montgomery Apsilah Geer Owens, Tuscaloosa Deborah Bell Paseur, Florence Maibeth Jernigan Porter, Birmingham Jane Greene Ragland, Birmingham Elizabeth Couey Smithart, Union Springs Sarah Hicks Stewart, Mobile Ann English Taylor, Mobile Mary Dixon Torbert, Montgomery Cary Tynes Wahlheim, Birmingham Sharon Gilbert Yates, Montgomery

Legislative Wrap-Up

(Continued from page 348)

University of Alabama School of Law. Custodial Trust Act-Alabama does not have such a law but will be addressing this act under the leadership of attorney L.B. Feld of Birmingham. This law is designed to provide a statutory standby *inter vivos* trust for individuals who typically are not as affluent or sophisticated and are probably represented by attorneys engaged in general practice rather than specialized estate practice. The UCTA benefits the elderly as an alternative to court administration of assets in the event of disability or incapacity.

Transfer on Death Act-Upon the completion of the revision of the Custodial Trust Review, the committee will look at the law dealing with transfers on death.

When Alabama passed its limited liability company law it was the 14th state to do so. Now virtually every state has passed such a law. The Commission on Uniform State Laws has subsequently drafted a uniform act. Further, the Internal Revenue Service is considering new regulations which may need to be addressed. The Limited Liability Partnership Act was passed by the Legislature earlier this year and although it has not gone into effect, a standby committee is available to monitor the effect these two laws have and to answer questions that may be needed.

Anyone wishing any other or further information concerning the Institute or any of its projects may contact Bob McCurley, director, Alabama Law Institute, P.O. Box 861425, Tuscaloosa, Alabama 35486-0013, FAX (205) 348-8411, or phone (205) 348-7411.

Godbold Receives Devitt Distinguished Service to Justice Award

Senior Circuit Judge John C. Godbold of Montgomery was presented the **Edward J. Devitt Distinguished Service to Justice Award** in a ceremony at the Federal Courthouse in Montgomery. Judge Godbold becomes the 15th recipient of this national award and the second Alabamian. Senior Circuit Judge Frank M. Johnson received the Devitt award in 1983.

Judge Godbold was nominated to the U.S. Court of Appeals for the Fifth Circuit in 1966 by



U.S. Supreme Court Justice and Mrs. Anthony M. Kennedy and Senior Circuit Judge and Mrs. John C. Godbold

President Lyndon Johnson. In 1968, he began working toward the division of the Fifth Circuit into two separate circuits. His efforts and other judges did not succeed until 1981, the year he became chief judge of the Fifth Circuit. When the Fifth Circuit diviced into two circuits, Judge Godbold became the first chief judge of the new Eleventh Circuit. He is the only person to have been chief judge of two circuits. For five years, 1976-1981, Judge Godbold served as a member of the board of the Federal Judicial Center. He became a member of the Judicial Conference of the United States in 1981, Judge Godbold served as a member of the becard of the Federal Judicial Center. He became a member of the Judicial Conference of the United States in 1981, Judge Godbold served as a member of the United States in 1981, a member-ship he held through 1986. Shortly after resigning as chief judge in September 1986, Judge Godbold became director of the Federal Judicial Center in Washington, D.C., a post he held until he returned to duty as a senior judge with the Eleventh Circuit in March 1990. He continues to sit with the Eleventh Circuit and as a visiting judge with several other circuits.

Judge Godbold's selection as the 1996 recipient of the Devitt award recognized his administrative accomplishments and how he supervised dividing the Fifth Circuit when no model for such a spilt existed. The award further recognizes how, as director of the Federal Judicial Center, he precisely defined the function and goal of the FJC and how, through new means of teaching and decentralization, he made educational programs easier for thousands of judges to attend. As noted at the presentation of the Devitt award: "Judge Godbold's long career demonstrates that judicial independence fosters the originality, creativity, commitment, and diligence that all federal judges seek as they serve the cause of justice and freedom."

The selection panel for this year's Devitt award included Justice Anthony M. Kennedy, associate justice of the Supreme Court; Judge Procter Hug, Jr., U.S. Court of Appeals for the Ninth Circuit; and Judge Sarah Evans Barker, U.S. District Court for the Southern District of Indiana.

The Alabama State Bar hosted a dinner in honor of Judge Godbold following the presentation of the Devitt award.

with the INTENTIONAL INJURY EXCLUSION

by Bibb Allen

Bibb Allen

Bibb Allen, a senior partner with the Birmingham firm of Rives & Peterson, is a graduate of Auburn University and the University of Alabama School of Law, He is a member of the Birmingham Bar Association, the Alabama State Bar, the American Bar Association, the Alabama Defense

Lawyers Association, the American Board of Trial Advocates, and the International Association of Defense Coursel. He is also a Fellow of the American Bar Foundation and the American College of Trial Lawyers, and is a professor at Birmingham School of Law. Allen served as president of the ASB from 1976-77 and the Birmingham Bar Association from 1964-65. He recently published the Alabaina Insurance Liability Handbook, The Michie Company, 1996.

It is thought by some that where a liability insurance policy provides coverage for bodily injury or property damage which occurs during the policy period that the bodily injury or property damage must have been fortuitous. "The overwhelming majority of courts, including the Supreme Court of the United States. have adopted the fortuity doctrine and have limited insurance coverage, regardless of the language of a particular policy, to fortuitous or accidental events." Ostranger and Newman, Handbook on Insurance Coverage Disputes, Printice Hall Law and Business (5th Ed.). It may well be that the above rule is correct where all risk policies are involved but may not be the law in Alabama where third party coverage is involved, but on the other hand, it may. It all depends on what Alabama case one chooses to follow.

Some 11th Circuit cases have held that Alabama's public policy prohibits insurance coverage of intentional wrongs. The case of *Burnham Shoes, Inc. v. West American Ins. Co.*, 504 So.2d 238 (Ala.1987) expressly refused to comment on whether insuring against an intentional act violated public policy or not. *Titan Indem. Co. v. Riley,* ____So.2d

_____ (Ala.1996) correctly put that proposition to sleep. "...Alabama's public policy does not prohibit the enforcement of a contract where an insurer agrees to pay for injuries suffered by third parties as a result of intentional acts of the insured."

In 1957, the Fifth Circuit, in Thomason v. United States Fidelity & Guaranty Company, 248 F.2d 417 (1957), applying Alabama law, concluded that where an insured, not knowing that a row of stakes did not properly mark a boundary line. intentionally entered and cleared property belonging to a country club, there was no coverage because the act was an intentional one. The court said that, "Where the acts are voluntary and intentional and the injury is the natural result of the act. the result was not caused by accident even though that result may not have been unexpected, unforeseen and unintended." Id. at 419. The policy in that case insured against sums the insured was legally required to pay "caused by accident." That case clearly does not state the present Alabama law.

In 1973, the ISO form, used by the major insurers, broadened the coverage by providing protection for bodily injury and property damage caused by an "occurrence." The policy *defined* "occurrence" as an accident resulting in bodily injury or property damage neither "expected or intended from the standpoint of the insured." The definition of "occurrence" made it plain that intentional acts of an insured, where *he* either expected or intended the injury, was not covered.

The 1990 ISO form provides:

1. Insuring Agreement.

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result.

The "expected or intended" language was removed from the definition of "occurrence" but was included as an exclusion:

This insurance does not apply to: a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

The change does not effect the application of the provision.

The fortuity doctrine evolved in the context of maritime and all-risk insurance, however, there is a certain degree of that doctrine retained in third party insurance. The exclusion noted above, pertaining to "bodily injury or property damage expected or intended," clearly provides that damage which is intended or expected by an insured is not fortuitous and, therefore, not covered.

There should be no problem with the foregoing statements, however, there is a large problem in determining what standard is to be used as to whether an intentional act is covered. Several tests may be found in the Alabama decisions that have construed the effect of the words "bodily injury or property damage expected or intended from the standpoint of the insured."

Hartford Fire Ins. Co. v. Blackney, 340 So.2d 754 (Ala.1976) (reversed in Alabama Farm Bureau Mut. Ins. Co. v. Dyer, 454 So.2d 292 (Ala.1984)) stands for the proposition that if an insured could reasonably expect the injury from the act, there would be no coverage. In passing, it may be noted that Dyer is the most cited case in Alabama setting out the standard to be used in interpreting the "expected or intended" language, and where cited, except in one case, has always been followed.

Townsend Ford v. Auto-Owners Ins. Co., 656 So.2d 360 (Ala.1995), applying an objective standard, stands for the proposition that all intentional acts are excluded from coverage.

Smith v. North River Ins. Co., 340 So.2d 754 (Ala.1978) holds that a purely subjective test is necessary to determine whether damage was expected or intended from the standpoint of the insured. This is the overwhelming effect of the majority of Alabama cases.

State Farm Fire and Cas. Co. v. Davis, 612 So.2d 458 (Ala.1993) applied an inferred intent rule, i.e., an injury is inferred from the nature of the act, and applies to child sex abuse cases. This is the only Alabama case applying the "inferred intent" rule or, at least, the only one applying it as such.

As pointed out, most cases decided by the Alabama Supreme Court hold that the determination from the "standpoint of the insured" of what he thought the result of an intentional act would be requires a subjective test. The issue must be decided by a fact finder. In some other cases, the court has applied an objective test and concluded that it is not material what the insured thought and has treated the exclusionary language expected or intended "from the standpoint of the insured" to simply exclude intentional acts.

If this article accomplishes no other purpose, it collects the major Alabama cases deciding various Alabama interpretations that have been placed on the words "Bodily Injury or Property Damage expected or intended from the standpoint of the insured."

It has been pointed out that the most cited case in Alabama for the proposition that an intentional act would require coverage if the resulting injury was not expected or intended is *Alabama Farm Bureau Mt. Cas. Co. v. Dyer*, 454 So.2d 921 (Ala.1984). In that case, the insured intentionally shot and killed his brother, after an argument over a water ski. Probably filled with remorse, the insured committed suicide. The lower court found that although the shooting was intended, the injury to the brother was neither expected or intended from the standpoint of the insured. The insurer appealed. In affirming the lower court, the supreme court carefully explained the purely subjective standard:

We, therefore, hold that a purely subjective standard governs the determination of whether the insured Wavne Dver either expected or intended to inflict bodily injury on his brother, William. Under this subjective test, an injury is "intended from the standpoint of the insured" if the insured possessed the specific intent to cause bodily injury to another, whereas an injury is "expected from the standpoint of the insured" if the insured subjectively possessed a high degree of certainty that bodily injury to another would result from his or her act.

Id. at 925.

The court clearly distinguished subjec-



tive intent rationale from objective methodology by explaining: Because the presumption in tort and criminal law that a person intends the natural and probable consequences of his or her intentional acts has no application to the interpretation of the terms used in the "expected or intended from the standpoint of the insured" policy exclusion, the policy term, "expected or intended injury," cannot be equated with "foreseeable injury." *Id.* at 925.

The court has applied a subjective standard as set out and explained in Dyer in many cases: White v. Maryland Cas. Co., 589 So.2d 1294 (Ala.1991) (insured filed declaratory judgment action against his homeowners' insurance carrier, seeking an order requiring that the insurance company defend him and pay any judgment that might be rendered against him in a wrongful death action arising from an intentional shooting): United States Fidelity & Guar. Co. v. Armstrong, 479 So.2d 1164 (Ala.1985) (liability insurer sought declaratory judgment determining question of insurance coverage for a sewage overflow caused by insureds engaged in construction of sewage system where sewage line was intentionally crushed); Allstate Ins. Co. v. Portis, 472 So.2d 997 (Ala.1985) (homeowner's insurer filed declaratory judgment action to determine applicability of "intentional acts" exception after wrongful death action was filed by family of neighbor fatally shot by the insured); Allstate Ins. Co. v. Shirah, 466 So.2d 940 (Ala.1985) (automobile insurer asserted that insured intentionally caused injuries to police officer who was in pursuit of insured); Watson v. Alabama Farm Bureau Mut. Cas. Ins. Co., 465 So.2d 394 (Ala.1985) (insured filed a declaratory judgment action against the insurer, seeking to have insurer defend him in a pending assault and battery case arising from a shooting incident).

In State Farm Fire and Cas. Co. v. Davis, 612 So.2d 458 (Ala.1993), the court, after reviewing Dyer and other Alabama authorities, held in a child sex abuse case: "Alabama joins those jurisdictions that apply 'the inferred-intent rule." *Id.* at 464. Under the inferred intent rule, intent to injure is inferred as a matter of law from the nature of the act committed. Whether injury is expected or intended by the insured is of no matter.

The *Davis* court was very careful to point out that its "holding today does not alter the holding of *Dyer* and its progeny, *but only creates one narrow exception* of *sexual abuse of children.*" *Id.* at 464. (Emphasis added).

Despite how narrow the "one narrow exception" was meant to be, the court, in three months applied an objective standard in the case of *Jackson County Hospital v. Alabama Hospital Association*, 619 So.2d 1369 (Ala.1993) (*Jackson I*). In that case, the hospital was sued in the state court by Adkins, a terminated employee, alleging a retaliatory discharge. She alleged that the reason she was terminated was because she filed a workers' compensation action against the hospital. Adkins and another employee, Webb, filed sex discrimination actions against the hospital in the federal court. The insurer refused to defend the actions and sued for a declaratory judgment asking the court to declare that it provided no coverage as to those actions. The subject of *Jackson* I was only the sexual discrimination case. The policy of insurance provided coverage for injuries caused by an occurrence; occurrence was defined as an "accident...which results in personal injury or property damage neither expected nor intended from the standpoint of the member." The lower court granted summary judgment for the insurer. Affirming that ruling, the supreme court said: "Under the terms of its policy with the Trust, the hospital has coverage for *unintentional* acts; accordingly, the trial court properly determined that the Trust has no duty to defend the hospital on the sexual discrimination claims." (court's emphasis). *Id.* at 1372. The court reasoned that to sustain this "disparate treatment" cause of action the plaintiff must prove that the employer acted with discriminatory intent.

The doctrine of inferred intent was not mentioned nor was any number of Alabama cases where the court applied a purely subjective standard in interpreting the same policy language. The court merely held that sex discrimination was an intentional act and not covered. If it can be said that sexual discrimination acts, as a matter of law, cause bodily injury or property damage, the case is correct. It may be that that is what the court intended.

In October 1994, Jackson County Hospital v. Alabama Hospital Association Trust, 652 So.2d 233 (Ala.1994) (Jackson

"Alabama joins those jurisdictions that apply 'the inferred-intent rule'."

II), the supreme court determined the effect of the retaliatory discharge allegations which was not decided in *Jackson I*. The court affirmed the lower court's ruling on summary judgment in favor of the insurer. The court set out the definition of occurrence as personal injury or property damage "*neither expected or intended from the standpoint of the member*." (court's emphasis) and held:

After reviewing the record, we conclude that the trial court, on remand, properly entered the summary judgment in favor of the Trust. Adkins's wrongful termination claim was based upon an action alleged to be intentional on the part of the Hospital; that is, Adkins alleged that the Hospital intentionally discharged her because of her filing of a workers' compensation claim. E-Z Loader Boat Trailers, Inc., supra. In her complaint, Adkins alleges that the Hospital took "intentional conduct in terminating the Plaintiff' and alleges that the Hospital "intentionally terminated the Plaintiff, constructively or otherwise, solely because Plaintiff claimed rights under the Workmen's Compensation Law of the State of Alabama." To prove her allegations, Adkins would necessarily be required to show that the Hospital intentionally terminated her employment because she filed a workers' compensation claim. In accordance with this Court's holding in Jackson I, we hold that the

Trust's insurance agreement with the Hospital imposes on the Trust no duty to provide coverage for Adkins's wrongful termination claim.

Id. at 235-236.

The doctrine of inferred intent was not mentioned, nor were the many Alabama cases concerning the application of a subjective standard where an intentional act is involved, under substantially the same policy provisions. The case is correct only if it can be said that a wrongful termination, as a matter of law, will produce an injury expected or intended.

The subjective standard and inferred-intent doctrine seemed to have been abandoned in *Jackson I* and *II*, in favor of a rule that intentional acts are simply not covered. The court applied an objective standard. The only reasonable conclusion is that there are some intentional acts, that, because of their nature, demand an objective test. According to the *Jackson* litigation, retaliatory discharge because the plaintiff filed a workers' compensation action and discharge because of sexual discrimination are two such acts.

Prior to Jackson II, which was rendered on October 28, 1994, the court, on April 1, 1994, decided the case of Capital Alliance Ins. Co. v. Thorough-Clean, Inc., 639 So.2d 1349 (Ala.1994). Thorough-Clean was sued for negligent and wanton practices in hiring, managing and supervising an employee, who raped S.H., an employee of the Alabama Power Co. The Power Company had a contract with Thorough-Clean for janitorial services. The court pointed out that the employee of Thorough-Clean was not an additional insured because, in committing rape, he would have been acting outside his employment. As to Thorough-Clean, the court applied a "purely subjective standard" to "govern the determination of whether an insured either expected or intended" to inflict bodily injury and came to the conclusion there was no evidence to indicate that it knew of the propensity of the employee toward violence and did not know of past arrests.

Probably to avoid the rigors of State Farm Fire & Cas. Co. v. Davis, (Ala.1993) (involving allegations of sexual abuse and molestation of children), in which the inferred intent standard governed the determination of whether an insured "intended or expected" to inflict bodily injury on another, the Capital Alliance court said that the case was distinguishable on its facts and on the specific wording of the exclusion in the policy.

The exclusion in *Davis* exempted coverage for "a. bodily injury and property" (1) which is neither expected or intended by an insured; or (2) to any person or property which is the result of willful and malicious acts of an insured." The exclusion in *Thorough-Clean* was, "This insurance does not apply to 'a' bodily injury expected or intended from the standpoint of the insured." It is difficult to see any real difference between the two provisions. It is here noted that exclusion (2) in the *Davis* case was held by the court to be an intentional act exclusion.

Just a month prior to *Jackson II*, the court held, in *Haisten* v. Audubon Ind. Co., 642 So.2d 404 (Ala.1994) that a subjective test must be applied to determine the issue of coverage where an insured was charged with removal of a safety device causing a trench to collapse resulting in the death of the plaintiff's deceased. The court said that, in the past, it had "consistently interpreted insurance provisions phrased exactly like this one

at issue here, excluding coverage for injuries 'expected or intended from the standpoint of the insured' as requiring a subjective analysis of what the insured expected or intended." The court cited 11 Alabama cases for the stated proposition. One would have thought the decision was specifically meant to clearly notify the bench and bar that in this state a subjective test is required to determine whether or not an injury was expected or intended from the insured's standpoint. *Jackson II* came one month later!

On March 25, 1994, in the case of *Townsend Ford, Inc. v. Auto-Owners Ins. Co.*, 656 So.2d 360 (Ala.1995), the court opined that intentional fraud was not covered, holding it was an intentional act excluded by the words "bodily injury or property damage expected or intended from the standpoint of the insured." On rehearing, that decision was withdrawn and a substitute opinion was rendered on February 17, 1995, which at least as to intentional fraud, opined the same thing. During that period (11 months) *Jackson II* was decided (sex discrimination claims not covered because an intentional act) as was *Capital Alliance* (rape to be judged by subjective standard) and *Haisten* (intentional removal of safety device required subjective standard).

Some three months following Townsend came Jackson v. State Farm Fire and Cas. Co., 661 So.2d 232 (Ala.1995). In that case an insured shot and killed a person who stole his automobile. He was acquitted of charges of assault in the first degree. State Farm refused to defend an action filed by the deceased's representative on the basis of an exclusion exempting coverage for "a. bodily injury - - - (1) which is neither expected or intended." The supreme court held that whether the intentional shooting causing injury was expected or intended from the standpoint of the insured required a subjective standard. Justice Cook pointed out that, in Alabama Farm Bureau Mut. Cas. Co. v. Dyer, 454 So.2d 921 (Ala.1984), the court would not allow evidence to be admitted of the insured's conviction of manslaughter "which requires a finding of objective intent" to be used "as evidence that [the defendant] subjectively intended to injury [the decedent]" and commented:

If a conviction, standing alone, does not conclusively establish the elements of subjective intent to injure another, how can someone's acquittal be considered conclusive on the question of that person's intent? The facts of this case create a genuine issue of disputed fact as to whether Lambert, Jr., subjectively intended to shoot Goldsmith.

Jackson, 661 So.2d at 233.

It would appear that, if rape, shootings and intentional removal of a safety device require a subjective test to determine, from the standpoint of the insured whether or not he expected or intended bodily injury or property damage, *all* intentional acts should require the same test, with the exception of sexual molestation of children where intent to injure is inferred or if there are other acts that fall into the same category with sexual molestation of children. Where this is so, the supreme court should say so.

There are two cases that must be read together to understand the present status of at least intentional fraud. *City Realty, Inc. v. Continental Cas. Co.*, 623 So.2d 1039 (Ala.1993) (here referred to as Continental I) and Continental Cas. Co. v. City Realty, Inc., 673 So.2d 399 (Ala.1995), rehearing denied October 20, 1995, (here referred to as Continental II).

In Continental I, the court reinstated a \$300,000 verdict in favor of the plaintiffs, growing out of fraudulent misrepresentation in reference to the sale of residential property. In that same decision, it overturned a summary judgment ruling in favor of Continental to the effect that its policy was not applicable because the alleged fraud was intentional. On reversing, the court pointed out that there was evidence Cochran acted with intent to inflict the harm on the Forbuses and agreed that the summary judgment in Continental's favor was improper. The court pointed out that, "The summary judgment was based on evidence from the Forbus trial. There were issues of material fact at the trial; the culpability of Cochran was an issue of material fact at the trial, and is an issue of considerable fact here. Furthermore, a determination of Cochran's degree of culpability was not indicated by the jury's verdict." "The evidence before the trial court on the summary judgment motion, that from the Forbus trial, created genuine issues of material fact." Id. at 1047.

Continental I was decided prior to Townsend and only holds that there was evidence both ways as to whether the defendant's sales people acted intentionally to defraud. On remand, the trial court changed its mind and determined that the errors and omissions policy did provide coverage for the \$300,000 judgment.

Continental appealed that ruling, and in Continental II, the supreme court, relying on the cases of Alabama Farm Bureau Mut. Cas. Ins. Co. v. Dyer, 454 So.2d 921 (Ala.1984) (intentional killing of brother over a water ski

required a subjective standard) and United States Fidelity & Guar. Co. v. Armstrong, 479 So.2d 1164 (Ala.1985) (subjective test applied where insured intentionally crushed a sewer line), affirmed the lower court. The supreme court, applying a subjective test, said: "From a review of the record, we conclude that, although the evidence was disputed, there was evidence to support the trial court's finding that Cochran's actions were covered by the language of the errors and omissions policy, i.e., that Martha Cochran did not expect or intend the injury to the Forbuses as a result of her actions."

Townsend was decided prior to Continental II and needs elaboration. In that case, intentional fraud was alleged by a customer of Townsend in that an employee of Townsend, in the sale of an automobile, represented that it had only been driven by Ford managers under the constant ownership of Ford Motor Company and was being sold as a demonstrator, when actually the car had been used as a rental car. Auto-Owners brought a declaratory action, taking the position that an exclusion in its policy "a. 'Bodily injury' or 'property damage' expected or intended from the standpoint of the insured," excluded coverage for claims of intentional fraud. The trial court agreed with Allstate and Townsend appealed. The supreme court, relying on Tapscott v. Allstate Ins. Co., 526 So.2d 1208 (Ala.1977) (malicious and false imprisonment, detaining and arresting the plaintiff, intentional infliction of emotional distress were not covered "because there was no dispute over the fact that this

case involved only claims for intentional conduct.") and *Ladner* v. Sou. Guar. Ins. Co., 347 So.2d 100 (Ala.1977) (misrepresentations involved in the sale of property alleged as intentional) held: "The complaints in the underlying actions allege that the plaintiff suffered damages as a proximate result consequence of intentional acts of fraud by Townsend Ford's agents. Under *Ladner* and *Tapscott* there is no duty under the insurance policy to defend the allegations of intentional fraud." *Townsend*, 656 So.2d at 363.

The court went further to say there is coverage under the cause of action suppression of a material fact since that cause of action is not necessarily an intentional act "although" if shown to have been committed intentionally, it can come under *the same exclusion*.

It is here respectfully stated that the court, in *Townsend*, may have confused the exclusion which refers to damages as expected from the standpoint of the insured as being an intentional act exclusion, rather than an intentional injury exclusion as the provision seems, with no ambiguity, to be an injury exclusion, not an act exclusion.

The question remains: Where intentional fraud is alleged, is

... the court applied a "purely subjective standard" to "govern the determination of whether an insured either expected or intended" to inflict bodily injury ...

> coverage, as a matter of law, excluded (*Townsend*) or is it necessary to apply a subjective test to determine the state of mind of the insured (*Continental II*)? Surely the two cases cannot be distinguished on the basis that intentional fraud in *Townsend* was in the sale of an automobile and the intentional fraud in *Continental II* the sale of real estate. It is supposed that *Continental II*, since it was the court's last declaration, takes precedence over *Townsend*.

> The words of the dissenting judge, in *Thomason Contractor* v. U.S.F.&G., 248 F.2d 417 (5th Cir.1979) (applying Ala. law) quite effectively point out where a rule denying coverage mere-ly because an act is intention would lead:

As truly so as innumerable similar cases which might be conjectured, such as (a) a wife takes her husband's medicine by mistake and the resultant injury to her is caused by accident; (b) a hunter is mistaken for a deer and fatally shot by his companion and his death is caused by accident; (c) the owner of a prospective roadside business has just paved the approach from the highway to his business, a motorist mistakes the line of the right of way and drives over the property line, damaging the newly laid pavement, against by accident.

In the case of Universal Underwriters Ins. Co. v. Stokes, 990 F.2d 598 (11th Cir.1993), applying Alabama law, the court affirmed a lower court ruling that intentional interference with contractual and business relations were covered, if the insured did not expect or intend harm and the determination of that question was a question of fact for the jury. The court commented on the troublesome and unexplainable cases of *Tapscott* and *Ladner*. In distinguishing those cases, the Court said:

Universal argues, however, that Alabama has adopted an exception to this general construction when the insured is charged with an intentional tort. According to Universal, Alabama has established that intentional torts will always be barred from coverage under policy provisions limiting coverage to injuries not "intended or expected" by the insured. See *Tapscott v. Allstate Ins. Co.*, 526 So.2d 570, 573-75 (Ala.1988); *Ladner & Co. Inc. v. Southern Guaranty Ins. Co.*, 347 So.2d 100, 103-04 (Ala.1977).

Our review of Alabama law indicates that although Alabama courts have indicated some willingness to presume that an intentional tortfeasor intends or expects injury by its actions, the Alabama decisions rendered thus far have not abandoned the traditional analysis of determining the insured's subjective intent to injure. Thus, in Ladner and Tapscott, the pleadings themselves alleged that the insured parties subjectively intended or expected injury to result from their tortious actions. See Tapscott, 526 So.2d at 572 (complaint alleging intentional infliction of emotional distress and malicious and false imprisonment, detainment, and arrest indicated that the defendant intentionally caused the defendant's injuries, and the plaintiff testified under oath that the insured intentionally acted to harm him); Ladner, 347 So.2d at 102-03 (the insured necessarily "expected" the flood damages suffered by the plaintiffs under the plaintiffs' allegation that the insured fraudulently sold them property which it knew would flood).

Moreover, the court in Tapscott did not hold, as it might have, that insurers are automatically relieved of coverage under "intended or expected" injury limitations whenever a complaint alleges only intentional torts. Rather, the court held that when an intentional tort is alleged, courts must proceed to "look[] to the allegations in the complaint, as well as available admissible evidence to determine the insurer's responsibility to defend and indemnify pursuant to the contract." Tapscott, 526 So.2d at 574. In light of Alabama's position that the general tort doctrine of "presumed intent" has "no application" to intentional injury exclusions, we conclude that the Alabama courts would construe the policy's occurrence clause as affording coverage unless SCI subjectively intended to injure Atkinson through its interference actions. See White, 589 So.2d at 1295; Armstrong, 479 So.2d at 1167.

Universal Underwriters, 990 F.2d at 603-604

It is of further interest to note that the federal court (Stokes) distinguished Tapscott and Ladner. The state court (Townsend) followed Tapscott and Ladner. It is here respectfully suggested that if those two cases, which appear to have created a misunderstanding of the difference between an *injury* exclusion and an act exclusion, are going to continue to confuse, they be specifically overruled or that the many, many cases involving all sorts of intentional acts which require a subjective standard to determine if an intentional act is covered be specifically overruled.

It is interesting to note that *Stokes* followed *Dyer* and *Tapscott* distinguished it. *Tapscott* is the only Alabama case that mentions *Dyer* that does not follow its announcement that whether an insured expects or intends injury to result from an intentional injury is a subject for a fact finder. It is not exactly clear why *Dyer* was rejected by the *Tapscott* court.

It is simply not true that insurers, in General Liability Policies, exempt coverage for intentional acts. Insurers expect to pay all damages that are not expected or intended resulting from bodily injury or property damage. For that very reason the exclusion reads as it does. An insurer is perfectly able to restrict the coverage it offers in any manner it chooses, so long as it does not offend public policy. The problem with narrow coverage is it is hard to sell. If an insurer desires to exclude intentional acts, it may easily adopt language to the effect that bodily injury and property damage are excluded if caused by an intentional act. It couldn't sell the policy, but nevertheless, it could adopt such a provision.

Intentional acts are the specific subject of some exclusions usually found in special coverages. By such provisions, an insurer, without ambiguity, can let his policyholder know that intentional acts are not covered.

In Universal Underwriters Ins. Co. v. Stokes Chevrolet, Inc., 990 F.2d 598 (11th Cir.1993), applying Alabama law, Universal first took the position that *Tapscott* and *Ladner* were clearly the law and that intentional interference with contract and business relations, being an intentional act, was excluded from coverage. The court correctly disagreed and held whether such charges were covered or not depended on whether the insured expected or intended the injury, alleged by the plaintiff. The court, in face of the great number of Alabama cases to the same effect, could hardly have concluded otherwise.

Universal's second position was that the policy contained a specific provision exempting intentional acts as opposed to intentional injuries. The exclusion provided:

EXCLUSIONS - This insurance does not apply to (a) injury, product related damages or legal damages, if caused by any dishonest, fraudulent, *intentional* or criminal *act* committed by any Insured (Emphasis supplied).

The lower court, in its consideration of the exclusion, held that it was ambiguous. The appellate court found no ambiguity concluding:

...that Atkinson's intentional interference claim fell within the policy's intentional acts exclusion. The complaint alleges that SCI intentionally interfered with Atkinson's business and contractual relations, and Atkinson could not have succeeded on the claim on any lesser showing of intent. See Underwood v. South Central Bell Telephone Co., 590 So.2d 170, 177 (Ala.1991) (plaintiff must prove that the defendant's interference was intentional to recover for interference with business and contractual relations). Therefore, we hold that any liability arising from SCI's intentional interference with Atkinson's contractual and business relations was expressly excluded from coverage under the terms of SCI's insurance policy. This result is consistent with Alabama's requirement that the insured's duty to indemnify be determined by examining the language employed in the insurance policy and the allegations of the complaint. See *Tapscott*, 526 So.2d at 574.

Id. at 605.

The lower court, in finding coverage, determined that the policy was ambiguous in that the intentional act exclusion conflicted with other parts of the policy that clearly covered certain specified intentional acts. The appeals court, in reference to that holding, said: "We agree with the district court that although the policy may be ambiguous with respect to the intentional torts specified for coverage, this does not make the exclusion ambiguous with regard to intentional torts not named in the insurance policy." *Id.* Footnote at 605.

In Titan Ind. Co. v. Riley, 641 So.2d 766 (Ala.1994), the City

Once the court incorrectly determined that the policy "does preclude coverage for intentional acts," the decision is absolutely correct. There was ambiguity.

of Montgomery had in force a "Law Enforcement Officers' Liability Coverage" policy providing coverage for all city law enforcement officers. The policy provided coverage for an "occurrence" which was defined as "an event ...that results in : 1. personal injury the insured did not expect or intend" Personal injury was defined as "Bodily injury...." The policy then provided coverage for certain intentional acts—false arrest, malicious prosecution, etc. Titan's defense (relying on the "expected or intentional" exclusion), was that "the acts were" intentional wrongs and could not give rise to a duty to defend under the policy. It contended for the application of an objective standard.

The court held the policy was ambiguous and because of the ambiguity, the insured was entitled to coverage. The court said:

The language of the policy *does preclude coverage for intentional acts*, but it also specifically provides coverage for acts of malicious prosecution, assault and battery, wrongful entry, piracy, and other offenses that require proof of intent. Further, the policy specifically provides coverage for claims brought under the Federal Civil Rights Act. The conflict between these provisions creates an inherent ambiguity within the policy, and it is well settled in this state that when there is any doubt as to whether insurance coverage exists under a policy, the policy must be construed for the benefit of the insured...because the policy is ambiguous on its face, we construe it against Titan and conclude that Titan must defend the defendant on the claims against them. (Emphasis added). *Id.* at 768.

Once the court incorrectly determined that the policy "does preclude coverage for intentional acts," the decision is absolutely correct. There was ambiguity.

The Alabama court has interpreted exclusions that do not contain the specific word "intention" as intentional act exclusions. In *State Farm v. Davis*, 612 So.2d 458, 465 (Ala.1993) (intent will be inferred in child sexual molestation cases) the court held that an exclusion exempting coverage for bodily injury or property damage "(2) to any person or property which is the result of willful and malicious acts of an insured." said:

There is another reason why the judgment of the trial court is due to be affirmed. The discussion above is based on the policy exclusion precluding coverage for bodily injury "which is either expected or intended by an insured," but we also hold, based on the facts and

> circumstances presented here, that coverage would likewise be precluded under the objective standard of the second policy exclusion, which denies coverage for bodily injury or property which is the result of willful and malicious acts of an insured." It is interesting to note that the policy, in *Continental II*, has an exclusion almost identical to the one referred to by the *Davis* court. Apparently, the court did not consider that exclusion or was not called upon to consider it. *See also Edward Dodge v. Penn. Nat. Mut. Cas. Ins. Co.*, 510

So.2d 225 (Ala.1987) and St. Paul Fire and Marine Ins. Co. v. Moulton, Allen and Williams, 592 So.2d 199 (Ala.1991), interpreting a similar exclusion and arriving at the same result.

In conclusion, the law, as it presently stands, is far from clear—retaliatory discharge (Jackson I); sexual discrimination (Jackson II); detaining and arresting (Tapscott); intentional fraud (Ladner, Townsend); and intentional infliction of emotional distress, false imprisonment, intentional suppression of material facts (Townsend) are excluded because they are intentional acts. Manslaughter (Dyer); assault and battery (State Farm Fire & Cas. Co. v. Dyer); intentional fraud (Continental II); and literally a dozen or more cases involving intentional acts are excluded only if the insured intended or expected the injury.

Perhaps there are certain intentional acts that are so extreme that they simply should not be covered. An extreme case perhaps is illustrated by the facts in *Titan Ind. Co. v. Riley*, 631 So.2d 766 (Ala.1994). If that is so, those acts should be named and a formula given so one may intelligently determine what other intentional acts are not covered. The inferred intent doctrine should be specifically adopted in those cases, however, acts should not be rejected on the basis that they are intentional acts, unless the policy so provides. The insurers never intended intentional acts not to be covered or they would, as some have, specifically excluded such acts.



RATES: Members: 2 free listings of 50 words or less per bar member per calendar year EXCEPT for "position wanted" or "position offered" listings- \$35 per insertion of 50 words or less, \$.50 per additional word; Nonmembers: \$35 per insertion of 50 words or less, \$.50 per additional word. Classified copy and payment must be received according to the following publishing schedule: November '96 Issue — deadline September 15, 1996; January '97 Issue — deadline November 15, 1996. No deadline extensions will be made.

Send classified copy and payment, payable to The Alabama Lawyer, to: Alabama Lawyer Classifieds, c/o Rita Gray, P.O. Box 4156, Montgomery, Alabama 36101.

SERVICES

FORENSIC DOCUMENT EXAMINER: Handwriting, typewriting, altered documents, medical records, wills, contracts, deeds, checks, anonymous letters. Court-gualified. Eighteen years' experience. Certified: American Board of Forensic Document Examiners. Member: American Society of **Questioned Document Examiners**, American Academy of Forensic Sciences, Southeastern Association of Forensic Document Examiners. Criminal and civil matters. Carney & Hammond Forensic Document Laboratory, 5855 Jimmy Carter Boulevard, Norcross (Atlanta), Georgia 30071. Phone (770) 416-7690. Fax (770) 416-7689.

· DOCUMENT EXAMINER:

Examination of Questioned Documents. Certified Forensic Handwriting and Document Examiner. Twenty-nine years' experience in all forensic document problems. Formerly, Chief Questioned Document Analyst, USA Criminal Investigation Laboratories. Diplomate (certified)-ABFDE. Member: ASQDE; IAI; SAFDE; NACDL. Resume and fee schedule upon request. Hans Mayer Gidion, 218 Merrymont Drive, Augusta, Georgia 30907. Phone (706) 860-4267.

- GRAPHICS: Powerful, professional, presentations, posters and photomurals prontol We copy and enhance, caption and enlarge, print and mount photographs, documents, charts and graphs in bold color. Call toll-free for a sample and discount coupon. Phone (888) 347-4161. E-mail us at impact4161@aol.com.Impactl Graphics, P.O. Box 1622, Enterprise, Alabama 36331.
- DOCUMENT EXAMINER: Certified Forensic Document Examiner. Chief document examiner. Alabama Department of Forensic Sciences, retired. American Board of Forensic Document Examiners, American Academy of Forensic Sciences, American Society of Cuestioned Document Examiners. Over 20 years' experience in state and federal courts in Alabama. Lamar Miller, 11420 N. Kendall Drive, Suite 206-A, Mlami, Florida 33176. In Birmingham, phone (205) 988-4158. In Miami, phone (305) 274-4469. Fax (305) 596-2618.
- HANDWRITING EXPERT/FORENSIC DOCUMENT EXAMINER: ABFDE certified; past president, Southeastern Association of Forensic Document Examiners; American Academy of Forensic Sciences fellow, Federal court qualified. Seventeen years' experience. Civil and criminal. Handwriting comparision, forgery detection, detection of altered medical records and other documents. L. Keith Nelson,

Stone Mountain, Georgia. Phone (770) 879-7224.

- TRAFFIC ACCIDENT RECON-STRUCTIONIST: Case evaluation performed with respect to issues. Legal testimony, including deposition and trial. Accident analysis, scene scale drawing, and evidence evaluation. Registered professional engineer. Technical society member. Over 18 years' engineering experience. Traffic accident investigation training. Background includes technical and communication skills, adversarial experience, and legal process familiar-Ity, Contact John E. Reinhardt, P.O. Box 6343, Huntsville, Alabama 35824. Phone (205) 837-6341.
- LEGAL RESEARCH:Legal research help. Experienced attorney, member of the Alabama State Bar since 1977. Access to State Law Library. WEST-LAW available. Prompt deadline searches. Sarah Kathryn Farnell, 112 Moore Building, Montgomery, Alabama 36104. Phone (334) 277-7937. No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.
- INSURANCE EXPERT WITNESS: Bad faith/fraud/insurance coverage/claims matters/marketing issues. Former claim attorney with prior sales background available to

consult and testify in cases with life or health insurance disputes. Experienced in trial testimony. Excellent credentials. A.C. Jones, Jr. J.D., CLU, Birmingham, Alabama. Phone (205) 988-3210. No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.

- COURTROOM ANIMATION: Let attorneys and engineers with Silicon Graphics workstations produce broadcast quality 3D animation for your case: mechanical failure, industrial accidents, automotive, patent infringement, railroad, medmal, manufacturing. Chimera Digital Imaging, 833 Baronne, New Orleans, Louisiana 70113. Phone (504) 529-4949. Contact Andrew Wisdom for demo reel and brochure.
- FORENSIC AUDIO: Audiotape restoration and clarification audio engineer. Without altering or damaging your original tape we can: reduce tape noise; increase intelligibility; maximize speech levels; lower background noise to reveal voice; digitally enhance recording clarity. Cherry Orchard Studios, 713 Oliver Road, Montgomery, Alabama 36117. Phone (800) 865-4355.

· FEDERAL TAX CONSULTATION:

Enrolled Agent. Former senior IRS revenue officer. Extensive experience in tax lien matters; levies and sales; offers-incompromise; 100 percent penalty; IRS policy, procedure and practice; all facets of IRS collection activities. James W. Clark, 951 Government Street, Suite 219, Mobile, Alabama 36604. Phone (334) 432-9992.

DRIVERS LICENSE REINSTATED:

Let us do the work getting your client's Alabama driver's license reinstated. Call with your client's name, birthday and driver's license number. We will find out what the state requirements are for reinstatement of the license. We can usually have the licenses eligible for reinstatement within 24 hours. TIMESAVERS, P.O. Box 1431, Columbia, Tennessee 38402-1431, Phone (800) 809-0589.

- SKIP TRACING-LOCATOR: Need to find someone? Will find the person or no charge and no minimum fee for basic searches. Nationwide confidential service with 87 percent success rate serving only the legal community. Verify USA. Call toll-free (888) 2-VERIFY.
- CONSULTATION-RECORD REVIEW: Experienced R.N./J.D. available for consultation, record review, case evaluation, litigation support. Expert finder services also available.
 Prompt and reasonable. Phone (205) 621-0301. No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.

POSITIONS OFFERED

- ATTORNEY JOBS: Indispensable monthly job-hunting bulletin listing 500-600 current jobs (federal/state government, courts, Capitol Hill, public interest, corporations, associations, law firms, universities, international organizations, RFPs) for attorneys at all levels of experience in Washington, D.C., nationwide and overseas. Order the National and Federal Legal Employment Report, 1010 Vermont Avenue NW, #408-AB, Washington, D.C. 20005, \$39-3 months; \$69-6 months. Phone (800) 296-9611. Visa/MC.
- ATTORNEY JOBS: Associate attorney wanted for conservative public interest law firm. Strong experience in state and federal litigation, excellent research and drafting skills. Prefer attorney with two to five years' experience. Send resume and salary history to The American Center for Law and Justice of Alabama, 120 Zeigler Circle East, Mobile, Alabama 36608.

 WANTED: Anyone having knowledge of the preparation of a last will and testament for Sam E. Campbell, Jr. of 356 Linda Avenue, Birmingham, Alabama 35226, please contact Judi Bargainnier at (205) 979-0333.

FOR SALE

- LAWBOOKS: William S. Hein & Co., Inc., serving the legal community for over 60 years. We buy, sell, appraise all lawbooks. Send want lists to fax (716) 883-5595 or phone 1-800-4WM-HEIN.
- ANTIOUE ALABAMA MAPS: 1820s-1860s. Excellent for office wall decoration or gift. Guaranteed authentic. Write, call, fax or e-mail for list and photos. Sol Miller, P.O. Box 1207, Huntsville, Alabama 35807. Phone (205) 536-1521. Fax (205) 534-0533. E-mail SIM55@aol.com.
- TAX REPORTER: U.S. Tax Cases, Tax Court Memorandum Decisions, U.S. Board of Tax Appeals, Standard Federal Tax Reporter with Citators A-L, M-Z and Advance Sheets, Alabama State Tax Reporter, S Corporations Guide, Federal Estate and Gift Tax Reporter, four sets updated Code of Alabama, IRS Cumulative Bulletins, \$2 per book. Phone (205) 349-4328, ext. 239.
- LAWBOOKS: Save 50 percent on your lawbooks. Call National Law Resource, America's largest lawbooks dealer. Huge Inventories. Lowest prices. Excellent quality. Satisfication guaranteed. Call us to sell you unneeded books. Need shelving? We sell new, brand name, steel and wood shelving at discount prices. Free quotes. 1-800-279-7799. National Law Resource.

Alabama Code Of Ethics For Mediators

Adopted by order of the Supreme Court of Alabama December 14, 1995 and effective March 1, 1996.

I. INTRODUCTION

This Code of Ethics for Mediators sets forth Standards to guide mediators in their mediation practices. These Standards are intended as rules of reason and should be interpreted with reference to the purposes of mediation. This Code does not exhaust the moral and ethical considerations that should guide a mediator. Rather, this Code provides a framework for the ethical practice of mediation.

Failure to comply with a Standard set out in this Code may be the basis for removal from the roster of mediators maintained by the Alabama Center for Dispute Resolution and for such other action as may be taken by the Alabama Supreme Court Commission on Dispute Resolution.

This Code is designed to provide guidance to mediators. Violation of a Standard shall not give rise to a cause of action nor shall it create any presumption that a legal duty has been breached. Nothing in this Code should be deemed to establish or augment any substantive legal duty on the part of mediators.

II. SCOPE, DEFINITION, MEDIATOR'S ROLE, GENERAL PRINCIPLES, AND EFFECTIVE DATE

(a) Scope. The Standards set out in this Code shall apply to:

(1) Mediation of cases pending in courts of the State of Alabama; and

(2) Mediation conducted by persons whose names are listed on the roster of mediators maintained by the Alabama Center for Dispute Resolution.

(b) Definition of Mediation. Mediation is a process whereby a neutral third party encourages and facilitates the resolution of a dispute without deciding what that resolution should be. It is an informal and non-adversarial process whose objective is helping the disputing parties reach a mutually acceptable agreement.

(c) Mediator's Role. In mediation, decision-making authority rests with the disputing parties. The role of the mediator includes, but is not limited to, assisting the disputing parties in identifying issues, facilitating communication, focusing the cisputing parties on their interests, maximizing the exploration of alternatives, and helping the disputing parties reach voluntary agreements.

(d) General Principles. Mediation is based on communication, negotiation, facilitation, and the technique or method of solving problems. It emphasizes:

- (1) The needs and interests of the disputing parties;
- (2) Fairness;
- (3) Procedural flexibility;
- (4) Privacy and confidentiality;
- (5) Full disclosure; and
- (6) Self-determination.

e) Effective Date. This Code shall govern all mediation proceedings commenced on or after March 1, 1996.

III. STANDARDS

STANDARD I. GENERAL

(a) Integrity, Impartiality, and Professional Competence. Integrity, impartiality, and professional competence are essential qualifications of any mediator. Professional competence means the knowledge, skill, and thoroughness reasonably necessary for the mediation.

 A mediator shall not accept any engagement, perform any service, or undertake any act that would compromise the mediator's integrity.

(2) A mediator shall maintain professional competence in mediation skills. This includes, but is not limited to:

(A) Staying informed of, and abiding by, all statutes, rules, and administrative orders relevant to the practice of mediation; and

(B) Regularly engaging in educational activities promoting professional growth.

(3) If the mediator decides that a case is beyond the mediator's competence, the mediator shall decline appointment, withdraw, or request technical assistance.

(b) Concurrent Standards. Nothing contained herein shall replace, eliminate, or render inapplicable relevant ethical standards not in conflict with these rules that may be imposed upon any mediator by virtue of the mediator's profession.

STANDARD 2. RESPONSIBILITIES TO COURTS

A mediator shall be candid, accurate, and fully responsive to a court concerning the mediator's qualifications, availability, and other matters pertinent to his or her being selected to mediate. A mediator shall observe all administrative policies, procedural rules, and statutes that apply to mediation. A mediator shall refrain from any activity that has the appearance of improperly influencing a court to secure placement on a roster of mediators or appointment to a case.

STANDARD 3. THE MEDIATION PROCESS

(a) Orientation Session. In order for parties to exercise self-determination they must understand the mediation process. At the beginning of the mediation session, the mediator should explain the mediation process. This explanation should include:

(1) The role of the mediator as a neutral party who will facilitate the discussion between the disputing parties but who will not decide the outcome of the dispute;

(2) The procedure that will be followed during the mediation session or sessions:

(3) The pledge of confidentiality that applies to the mediation process;

(4) The fact that the mediator does not represent either party and will not give professional advice in the absence of a party's attorney and that, if expert advice is needed, the parties will be expected to consult with experts other than the mediator; and

(5) The fact that the mediation can be terminated at any time by the mediator or by any of the parties. Further, in the event a party is not represented by an attorney, the mediator should explain:

(1) That the parties are free to consult legal counsel at any time and are encouraged to have any settlement agreement resulting from the mediation process reviewed by counsel before they sign it; and

(2) That a mediated agreement, once signed, is binding and can have a significant effect upon the rights of the parties and upon the status of the case.

(b) Continuing Mediation. A mediator shall withdraw from a mediation if the mediator believes the mediation is being used to further illegal conduct. A mediator may withdraw if the mediator believes any agreement reached would be the result of fraud, duress, overreaching, the absence of bargaining ability, or unconscionability. A mediator shall not prolong a mediation session if it becomes apparent that the case is unsuitable for mediation or if one or more of the parties is unable or unwilling to participate in the mediation process in a meaningful manner.

(c) Avoidance of Delay. A mediator shall perform mediation services in a timely and expeditious fashion, avoiding delays whenever reasonably possible. A mediator shall refrain from accepting additional appointments when it becomes apparent that completion of mediation assignments already accepted cannot be accomplished in a timely fashion.

STANDARD 4. SELF-DETERMINATION

(a) Parties' Right to Decide. A mediator shall assist the parties in reaching an informed and voluntary agreement. Substantive decisions made during mediation are to be made voluntarily by the parties.

(b) Prohibition of Coercion. A mediator shall not coerce or unfairly influence a party into entering into a settlement agreement.

(c) Misrepresentation Prohibited. A mediator shall not intentionally misrepresent material facts or circumstances in the course of a mediation.

(d) Balanced Process. A mediator shall promote a balanced process and shall encourage the parties to participate in the mediation proceedings in a non-adversarial manner.

(e) Responsibility to Nonparticipating Parties. A mediator may promote consideration of the interests of persons who may be affected by an agreement resulting from the mediation process and who are not represented in the mediation process.

STANDARD 5. IMPARTIALITY AND CONFLICTS OF INTEREST

(a) Impartiality. A mediator shall be impartial and shall advise all parties of any circumstances that may result in possible bias, prejudice, or impartiality on the part of the mediator. Impartiality means freedom from favoritism or bias in work, action, and appearance. Impartiality implies a commitment to aid all parties, as opposed to one or more specific parties, in moving toward an agreement.

 A mediator shall maintain impartiality while raising questions for the parties to consider concerning the fairness, equity, and feasibility of proposed settlement options.

(2) A mediator shall withdraw from mediation if the mediator believes the mediator can no longer remain impartial.(b) Required Disclosures and Conflicts of Interest.

(1) A mediator must disclose to the disputing parties the following:

(A) Any current or past representation of or consulting relationship with any party or the attorney of any party involved in the mediation.

(B) Any pecuniary interest the mediator may have in common with any of the parties or that may be affected by the outcome of the mediation process.

(C) Known potential conflicts, including membership on a board of directors, full- or part-time service as a representative or advocate, consultation work performed for a fee, current stock or bond ownership other than mutual fund shares or appropriate trust arrangements, or any other form of managerial, financial, or immediate family interest with respect to a party involved. A mediator who is a member of a law firm is obliged to disclose any representation of any of the disputing parties by the mediator's firm or a member of that firm of which the mediator is aware.

(D) Any close personal relationship or other circumstance, in addition to those specifically mentioned in this Standard, that might reasonably raise a question as to the mediator's impartiality.

(2) Mediators establish personal relationships with many representatives, attorneys, other mediators, and members of various other professional associations. Mediators should not be secretive about such friendships or acquaintances, but disclosure of these relationships is not necessary unless that relationship is one of those mentioned in this Standard or some feature of a particular relationship might reasonably appear to impair impartiality.

(3) Prior service as a mediator in a mediation involving a party or an attorney for a party does not constitute representation of the party or consultation work for the party. However, mediators are strongly encouraged to disclose such prior relationships. Mediators must disclose any ongoing relationship with a party or an attorney for a party involved in a mediation, including membership on a panel of persons providing mediation, arbitration, or other alternative dispute resolution services to that party or attorney.

(4) A mediator shall not provide counseling or therapy to any party during the mediation process, and a mediator who is a lawyer shall not represent a party in any matter during the mediation.

(5) All disclosures required by this Standard shall be made as soon as practicable after the mediator becomes aware of the interest or the relationship.

(6) The burden of disclosure rests on the mediator and continues throughout the mediation process. After appropriate disclosure, the mediator may mediate the dispute if all parties to the mediation agree to the mediator's participation and that agreement is reduced to writing. If the mediator believes that the relationship or interest would affect the mediator's impartiality, he or she should withdraw, irrespective of the expressed desires of the parties.

(7) A mediator shall not use the mediation process to solicit any party to the mediation concerning future professional services.

(8) A mediator must avoid the appearance of a conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a substantially related matter.

STANDARD 6. CONFIDENTIALITY

(a) Confidentiality. A mediator shall preserve and maintain the confidentiality of all mediation proceedings except where required by law to disclose information gathered during the mediation.

(b) Records and Research Data. A mediator shall store and dispose of records relating to mediation proceedings in a confidential manner and shall ensure that all identifying information is removed and the anonymity of the parties is protected when materials included in those records are used for research, training, or statistical compilations.

STANDARD 7, PROFESSIONAL ADVICE

(a) Generally. A mediator shall not provide information the mediator is not qualified by training or experience to provide. (b) Independent Legal Advice. When a mediator believes a party does not understand or appreciate how a potential agreement reached through the mediation process may adversely affect the party's legal rights or obligations, the mediator should advise the participants to seek independent legal advice.

(c) Absent Party. If one of the parties is unable to participate in the mediation process for psychological or physical reasons, a mediator should postpone or cancel mediation until such time as all parties are able to participate.

(d) Personal or Professional Opinion. A mediator may discuss possible outcomes of a case, but a mediator may not offer a personal or professional opinion regarding the likelihood of any specific outcome except in the presence of the attorney for the party to whom the opinion is given.

STANDARD 8. FEES AND EXPENSES; PRO BONO SERVICE

(a) General Requirements. A mediator occupies a position of trust with respect to the parties and the court system. In charging for services and expenses, the mediator must be governed by the same high standards of honor and integrity that apply to all other phases of the mediator's work. A mediator shall be scrupulous and honest in billing and must avoid charging excessive fees and expenses for mediation services.

(b) Records. A mediator shall maintain adequate records to support charges for services and expenses and shall make an accounting to the parties or to the court upon request.

(c) Referrals. No commissions, rebates, or similar remuneration shall be given to or received by a mediator for referral of persons for mediation or related services.

(d) Contingent Fees. A mediator shall not charge or accept a contingent fee or base a fee in any manner on the outcome of the mediation process.

(e) Minimum Fees. A mediator may specify in advance minimum charges for scheduling or conducting a mediation session without violating this Standard.

(f) Disclosure of Fees. When a mediator is contacted directly by the parties for mediation services, the mediator has a professional responsibility to respond to questions regarding fees by providing a copy of the basis for charges for fees and expenses.

(g) *Pro Bono* Service. Mediators have a professional responsibility to provide competent services to persons seeking their assistance, including those unable to pay for their services. As a means of meeting the needs of the those who are unable to pay, a mediator should provide mediation services *pro bono* or at a reduced rate of compensation whenever appropriate.

STANDARD 9. TRAINING AND EDUCATION

(a) Training. A mediator is obligated to acquire knowledge and training in the mediation process, including an understanding of appropriate professional ethics, standards, and responsibilities. Upon request, a mediator is required to disclose the extent and nature of the mediator's education, training, and experience.

(b) Continuing Education. It is important that mediators continue their professional education as long as they are actively serving as mediators. A mediator shall be personally responsible for ongoing professional growth, including participation in such continuing education as may be required by law or rule of an appropriate authority.

(c) New Mediator Training. An experienced mediator should cooperate in the training of new mediators, including serving as a mentor.

STANDARD 10. ADVERTISING

Advertising or any other communication with the public concerning mediation services offered by the mediator or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from making promises and guarantees of results.

STANDARD 11. PROHIBITED AGREEMENTS

A mediator shall not enter into a partnership or employment agreement that restricts the rights of the mediator to mediate after the relationship forming the basis of the agreement is terminated, except that a mediator may enter into an agreement concerning benefits upon retirement.

STANDARD 12, ADVANCEMENT OF MEDIATION

A mediator should support the advancement of mediation by encouraging and participating in research, evaluation, or other forms of professional development and public education.

United States District Court, Northern District of Alabama Standing Order

Effective July 15, 1996, the appearance in any civil case pending in this court by any counsel in addition to, or in substitution of, a previously appearing counsel for the same party shall, if such appearance would or might constitute grounds for recusal or disqualification of the judge to whom the case is assigned (which did not already exist by reason of the identity of the previously appearing counsel), be ineffective until such time that a motion, seeking leave to add or substitute such new counsel, is approved by a district judge or magistrate judge of this court. Ordinarily, such a motion shall be referred automatically and at random to a magistrate judge of this court for prompt hearing and decision. There shall be a strong, but rebuttable, presumption that the reason for such a proposed addition or substitution of counsel is to cause recusal or disqualification of the assigned judge; and the judge to whom such motion is referred may also consider the disruptive effect, if any, reassignment of the case to another judge would have upon the court and other parties. Ordered for the court this the 12th day of July 1996.

Sam C. Pointer, Jr. Chief Judge In the United States District Court for the Northern District of Alabama In Re: General Order for Referral of Civil Matters to the United States Magistrate Judges General Order The increasing caseload being experienced by the Court, coupled with the loss of a t

The increasing caseload being experienced by the Court, coupled with the loss of a temporary judgeship, has caused the Court to consider ways in which civil matters may be assigned to provide more efficient and expedient handling. Full utilization of the judicial skills of the magistrate judges of the Court is one of the ways identified. The Court has and continues to encourage litigants to consent to the exercise of full, case-dispositive jurisdiction by magistrate judges. With this in mind, it is, therefore, ordered as follows:

1. Beginning September 1, 1996, the Clerk shall assign every eighth newly filed civil case, subject to the exclusions identified below, to a magistrate judge randomly selected, who shall be responsible for all pretrial management of the cases assigned to him or her in this manner, including determination of all non-dispositive motions in the case. The assignment shall be to the magistrate judge and neither the court file, the docket sheet, nor any other court record shall reflect an assignment to a district judge, except as provided below.

2. Excluded from the civil cases assigned to magistrate judges pursuant to this Order are Social Security appeals, administrative agency appeals, bankruptcy matters (including motions to withdraw the reference) and any case in which a temporary restraining order or other emergency relief is sought. Consistent with the present practice, magistrate judges shall be referred all prisoner cases assigned to district judges.

3. The Clerk shall continue in all cases to forward to the parties, in the manner provided by LR 73.2(a), notice of their option to consent to jurisdiction by a magistrate judge under 28 U.S.C. §636(c). If consent is given by all parties in a case already assigned to a magistrate judge pursuant to this Order, the case will be assigned to the magistrate judge for all matters and he or she will exercise full dispositive jurisdiction. If consent is given by all parties in a case assigned to a district judge, the district judge may, in the exercise of discretion, reassign it to a magistrate judge or may decline to do so. In such a case reassigned to a magistrate judge by the district judge, the magistrate judge shall exercise full dispositive jurisdiction under §636(c) and LR 73.2.

4. In cases assigned pursuant to this Order to a magistrate judge for management of pretrial matters but for which §636(c) consent has not yet been given, parties retain the right to seek review of a magistrate judge's rulings and orders on non-dispositive matters in the manner provided by 28 U.S.C. §636(b)(1)(A) and Rule 72(a) of the *Federal Rules of Civil Procedure*. In the event a party seeks review of such a matter, the Clerk shall randomly select a district judge for that purpose and that purpose only; the case will not be reassigned for any other purpose to the district judge to whom a review of a magistrate judge's order is referred. Each such order or ruling by a magistrate judge on which a review is sought shall be randomly referred to a district judge, who shall be responsible only for reviewing the specific order or ruling in question. The selection of the cistrict judge shall be from a special draw without regard to the court's divisions. During and upon completion of the review by the district judge, the magistrate judge shall retain management of all other pretrial matters.

5. In cases assigned pursuant to this Order to a magistrate judge for management of pretrial matters but for which

§636(c) consent has not been given by all parties, the magistrate judge may deny motions for remand and motions to dismiss for failure to state a claim. If the magistrate judge believes any such motion is due to be granted he or she shall prepare and file a report and recommendation. Upon the filing of a report recommending the granting of such a motion, the Clerk shall randomly select a district judge to review the recommendation of the magistrate judge, any objections to it, and to determine the motion. The selection of the district judge will be from a special draw without regard to the court's divisions and it shall be for the purpose only of reviewing the particular motion the magistrate judge has recommended granting. If the motion is granted, the district judge will enter such orders as are appropriate. If the district judge denies the motion, the magistrate judge shall resume management of all other pretrial matters.

6. In cases assigned pursuant to this Order to a magistrate judge for management of pretrial matters but for which §636(c) consent has not been given by all parties, the magistrate judge shall prepare a report and recommendation on all case-dispositive motions and other motions specified in §636(b)(1)(A). Upon the filing of a case-dispositive motion, except those specified in the preceding paragraph, the magistrate judge shall conduct such proceedings and enter such orders as are necessary to bring the motion under submission. When the motion is taken under submission, the magistrate judge shall enter an order notifying the parties that the motion has been taken under submission and that they must notify the Clerk of Court in writing within fifteen (15) days whether they wish for the magistrate judge to exercise §636(c) jurisdiction for all purposes including determination of the motion, or whether they decline to consent to §636(c) jurisdiction and wish for the motion to be determined by a district judge. In the event all parties consent to §636(c) jurisdiction, the case will be assigned to the magistrate judge pursuant to LR 73.2 and he or she shall proceed to determine the motion and exercise jurisdiction for all purposes, including trial and final judgment. In the event one or more parties declines to consent, the magistrate judge will prepare a report and recommendation with regard to the motion and the Clerk will randomly select a district judge to whom the case will be reassigned for all further purposes. The selection of the district judge will be from a special draw without regard to the Court's divisions. Neither the magistrate judge nor the district judge will be informed of the identity of any party declining to consent to §636(c) jurisdiction. Notwithstanding the reassignment of a case to a district judge, he or she remains free to make specific references of any motion or matter to the magistrate judge pursuant to §636(b)(1)(A) and (B) and LR 72.1.

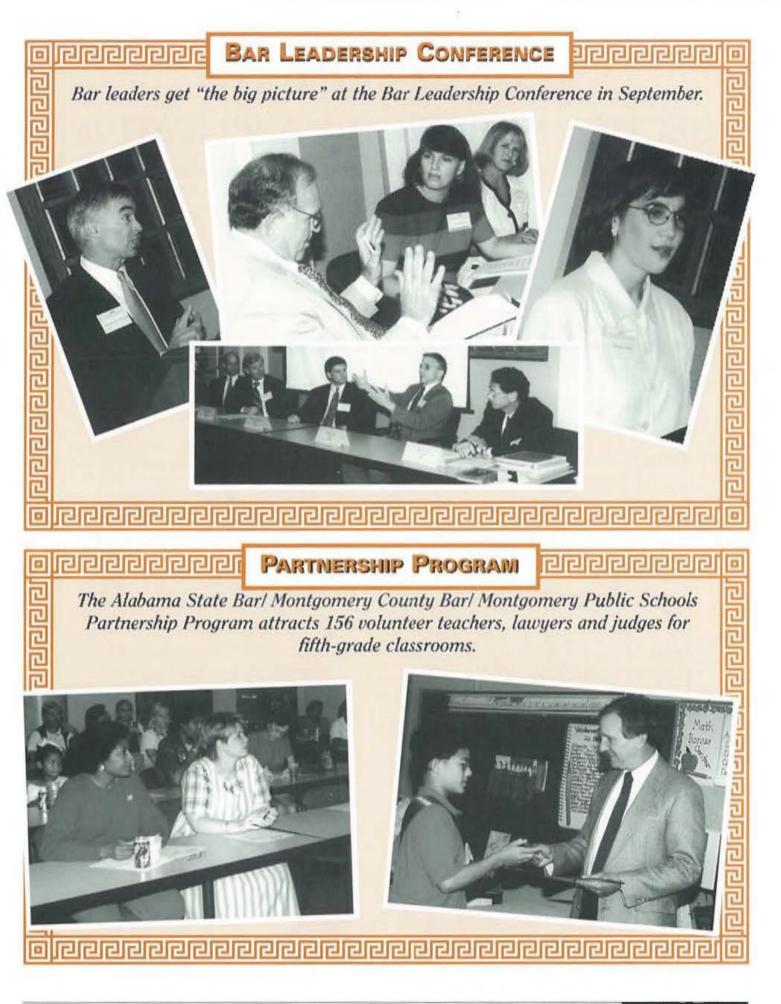
Except as provided herein, all other local rules and standing orders dealing with the assignment of cases remain unchanged.

Done and ordered this 25th day of July 1996, on behalf of the other judges of this court with their express permission.

Sam C. Pointer, Jr. Chief Judge

POSTAL MAYER, BIA	(Reported by Mi UBC : The American States In Para Date
1 Russington Vite	In the second
The Alaboma Lowyst	5 5 8 7 5 6 7 4 7 increaser 1, 1994
a new fragmenty another, with opportal to	6.00 6. Nurster af hauser Fakt pract Averafit af far and Balance and Balance Fakt practices and first in the second statement of the second se
I descende blattery buildens of from this of Parriegian	n. Harr prevers i forwart ofte unsuring, states, and Billings Constant Haran
Alabome Obate Set	Racinces Hurph Repairies (554) 268-1515
Band a manual y . Al. 391300	harness office of Page-ana- And prevent
Ataicams Stote Bat	
Barriel domain and a Add BALDA. B Full hannan and tampatan landing between at P at the Automa Dama and serve at a net ing instrump	a Tani ya mpogog Kilisi Kana mpo mpoly
Alabour State Bar	
all Builds Asened	
Board Romer's AL 20.325	
hobers A. Haffeber 184 Commerce Streve	
Beel down () . Al. 35 (64 serapsy filter mana and senares many series	
dergarab Warpby	
dargarat. Murphy 615 Ductor Automot	
dargarat. Murphy 615 Ductor Automot	for a subsection. (I we fire some a subsection of the system takes another the sources for pro- bances of the source of the source source of the source of the sources of the sources of the sources of the source o
dargarat. Murphy 615 Ductor Automot	by a surfacement, give the spectra and address of the systemic and address provide the spectra structure of the spectra structure of the systemic address and structure of the of a structure of the structure of the spectra structure of a structure of a structure of the structure of the structure of the structure of a structure of the structure of the structure of the structure of a formation of the structure of the structur
dergannen Merrier 115 Beuter Jehnmen Mendigemeinen A. <u>36108</u> Urden und einen eine Freinigenen einer Aufers ein der einer die Verlanderen einer gilt he dertes ein gehannen die die unterfahrte angehannen for mehr dertes einer einer die die unterfahrte angehannen for	To a concession, give the spine and advance of the systematic biocharges memory of a second of the spine of the spin biocharge of the systematic biological and the spine of
dergenet. Warpher \$15 Deutier Artenine Bendammer, A. 36168. In deve (Im an even prov. I man Antonio in the adverse of adverse of an adverse the second of a barren of adverse of a second of a second of a second of adverse of a second of a second of a second of adverse of a second of a provide adverse of a second of a second of adverse of a second of a provide adverse of a second of a second of a provide adverse of a second of a second of a provide adverse of a second of a second of a second of a provide adverse of a second	Uprogram Manuel Belefen
dergenet. Warpher \$15 Deutier Artenine Bendammer, A. 36168. In deve (Im an even prov. I man Antonio in the adverse of adverse of an adverse the second of a barren of adverse of a second of a second of a second of adverse of a second of a second of a second of adverse of a second of a provide adverse of a second of a second of adverse of a second of a provide adverse of a second of a second of a provide adverse of a second of a second of a provide adverse of a second of a second of a second of a provide adverse of a second	Uprogram Manuel Belefen
dergenet. Warpher \$15 Deutier Artenine Bendammer, A. 36168. In deve (Im an even prov. I man Antonio in the adverse of adverse of an adverse the second of a barren of adverse of a second of a second of a second of adverse of a second of a second of a second of adverse of a second of a provide adverse of a second of a second of adverse of a second of a provide adverse of a second of a second of a provide adverse of a second of a second of a provide adverse of a second of a second of a second of a provide adverse of a second	Uprogram Manuel Belefen
dergenet. Warpher \$15 Deutier Artenine Bendammer, A. 36168. In deve (Im an even prov. I man Antonio in the adverse of adverse of an adverse the second of a barren of adverse of a second of a second of a second of adverse of a second of a second of a second of adverse of a second of a provide adverse of a second of a second of adverse of a second of a provide adverse of a second of a second of a provide adverse of a second of a second of a provide adverse of a second of a second of a second of a provide adverse of a second	Uprogram Manuel Belefen
dergenet. Warpher \$15 Deutier Artenine Bendammer, A. 36168. In deve (Im an even prov. I man Antonio in the adverse of adverse of an adverse the second of a barren of adverse of a second of a second of a second of adverse of a second of a second of a second of adverse of a second of a provide adverse of a second of a second of adverse of a second of a provide adverse of a second of a second of a provide adverse of a second of a second of a provide adverse of a second of a second of a second of a provide adverse of a second	Uprogram Manuel Belefen
dergenet. Warpher \$15 Deutier Artenine Sentenense in A. 36166 . Understandig von der ander anderstanden einer alle bereich understandig von der anderstanden einer alle bereich beitrage ander ander von der anderstanden einer sente solutionen einer von der vonderen angemeinen für Paul teren	Uprogram Manuel Belefen
Rergerst. Waryby Ris Pacter Antonio Phantingummers, AL 36186. U churd: The one one pane. It is a character is stored in the one of the second second second second second dense (second second second second second second second second second second second second second second Pantingum Allaheade State Ref	Newsyng Menng Adres 415 Bestrr Armone, Histgewery, 48. 16104
dergenet. Naryby 115 Stucies Annotae Bandgemetre, AL 2018. Under Bandgemetre, AL 2018. Under Studies and point of a distance is the advected by any other studies and a start advected by any other start of a start start demands and any other start of a Alabian and Bandgemetre for Alabian and Bandgemetre for Start and Start and Start Start (1. Novem Bandfeeling Marguest and they be accept index of Physical Bandgemetre for Start of Physical Bandgemetre for Start of Physical Bandgemetre for Start Bandgemetre for a finge Annota to Bandgemetre Start Bandgemetre for a finge for the finge Start of Physical Bandgemetre for Start	Newsyng Menng Adres 415 Bestrr Armone, Histgewery, 48. 16104
Rergerst. Waryby Ris Pacter Antonio Phantingummers, AL 36186. U churd: The one one pane. It is a character is stored in the one of the second second second second second dense (second second second second second second second second second second second second second second Pantingum Allaheade State Ref	I Berning Maring Kalena A15 Beater Aresone, Mintgrowry, 48. 36104
dergenet. Naryby 115 Stucies Annotae Bandgemetre, AL 2018. Under Bandgemetre, AL 2018. Under Studies and point of a distance is the advected by any other studies and a start advected by any other start of a start start demands and any other start of a Alabian and Bandgemetre for Alabian and Bandgemetre for Start and Start and Start Start (1. Novem Bandfeeling Marguest and they be accept index of Physical Bandgemetre for Start of Physical Bandgemetre for Start of Physical Bandgemetre for Start Bandgemetre for a finge Annota to Bandgemetre Start Bandgemetre for a finge for the finge Start of Physical Bandgemetre for Start	I Berning Maring Kalena A15 Beater Aresone, Mintgrowry, 48. 36104
dergenet. Naryby 115 Stucies Annotae Bandgemetre, AL 2018. Under Bandgemetre, AL 2018. Under Studies and point of a distance is the advected by any other studies and a start advected by any other start of a start start demands and any other start of a Alabian and Bandgemetre for Alabian and Bandgemetre for Start and Start and Start Start (1. Novem Bandfeeling Marguest and they be accept index of Physical Bandgemetre for Start of Physical Bandgemetre for Start of Physical Bandgemetre for Start Bandgemetre for a finge Annota to Bandgemetre Start Bandgemetre for a finge for the finge Start of Physical Bandgemetre for Start	I Berning Maring Kalena A15 Beater Aresone, Mintgrowry, 48. 36104
dergenet. Naryby 115 Stucies Annotae Bandgemetre, AL 2018. Under Bandgemetre, AL 2018. Under Studies and point of a distance is the advected by any other studies and a start advected by any other start of a start start demands and any other start of a Alabian and Bandgemetre for Alabian and Bandgemetre for Start and Start and Start Start (1. Novem Bandfeeling Marguest and they be accept index of Physical Bandgemetre for Start of Physical Bandgemetre for Start of Physical Bandgemetre for Start Bandgemetre for a finge Annota to Bandgemetre Start Bandgemetre for a finge for the finge Start of Physical Bandgemetre for Start	I Berning Maring Kalena A15 Beater Aresone, Mintgrowry, 48. 36104
dergenet. Naryby 115 Stucies Annotae Bandgemetre, AL 2018. Under Bandgemetre, AL 2018. Under Studies and point of a distance is the advected by any other studies and a start advected by any other start of a start start demands and any other start of a Alabian and Bandgemetre for Alabian and Bandgemetre for Start and Start and Start Start (1. Novem Bandfeeling Marguest and they be accept index of Physical Bandgemetre for Start of Physical Bandgemetre for Start of Physical Bandgemetre for Start Bandgemetre for a finge Annota to Bandgemetre Start Bandgemetre for a finge for the finge Start of Physical Bandgemetre for Start	I Berning Maring Kalena A15 Beater Aresone, Mintgrowry, 48. 36104
dergenet. Naryby 115 Stucies Annotae Bandgemetre, AL 2018. Under Bandgemetre, AL 2018. Under Studies and point of a distance is the advected by any other studies and a start advected by any other start of a start start demands and any other start of a Alabian and Bandgemetre for Alabian and Bandgemetre for Start and Start and Start Start (1. Novem Bandfeeling Marguest and they be accept index of Physical Bandgemetre for Start of Physical Bandgemetre for Start of Physical Bandgemetre for Start Bandgemetre for a finge Annota to Bandgemetre Start Bandgemetre for a finge for the finge Start of Physical Bandgemetre for Start	I Berning Maring Kalena A15 Beater Aresone, Mintgrowry, 48. 36104

15 Futuretor Tra		ne maan pare te 2 malater Den Bane		
The Alabi	ne lavat	September 1999.		
6	Butterint and Manuals of Environments	Growing the Capter Sent Mass Buring Proceeding 12 Bottlin	Autom An. Generate of Straight store	
a Yang Nambale at Sagana Alter prant Are		11.739	55,650	
s feil press hegeneter	Its Same Person Come a sus Corme, Soon revenue, and Capital Same Personal	+	-+-	
	(1) Palat as Resources that & descriptions (Palaship pulsarine & proof anyme and postering regimes	11,095	11.944	
a. Sound Pland aster globalit of Libra's	te fangenet Consume Land Master	11,833	11.366	
Proje [distribution by 5055 [distribute, constrainting and other 5640]		35	76	
a free Devilution forbits for that star re-s of other means:		-+-	-0-	
t Tutoi Free Queri	ana ana arang a	31	76	
g Trans Descriptions (Research Table and Table		11,099	11,410	
n Capita Int Startantes	it) Office Unit. Lathoriza, Bandred	160	130	
	12, Network Date: Notice Advertise	-81	-6-	
Tanan allann ar 1 dag. 1994 (1. avril 1 Derby)		11.356	11,650	
Persone Persona Responses Generation (Me / King + 1002		89X	992	
AMARA IN	Barrange of During on the Bringshill 1980 and anyoned with a provide to the Bringshill 1980 and anyoned Barrange Barrange Managari 19 Direct galanti T, MM phys. MM2 and the State of the State of the State Managaria 1990 and the State of the State of the State Managaria 1990 and the State of the State of the State Managaria 1990 and the State of the State of the State Managaria 1990 and the State of the State of the State Managaria 1990 and the State of the State of the State Managaria 1990 and the State of the State of the State Managaria 1990 and the State of the State of the State Managaria 1990 and the State of the State of the State Managaria 1990 and the State of the State of the State Managaria 1990 and the State of the State of the State Managaria 1990 and the State of the State of the State Managaria 1990 and the State of the S	and the sector sector and a sector sector and a sector sec	Destation 1, 19	
L. Europera av	n fo Publishern d da see sopy of the face atte peur poermeter see	uaty set al service Ostaber 1. Ranu i	a copy of the completed late for	
solution that be many of the t brank photos	ang big approximation or economy harbor in a incession with states in polymer, when instruction the neurone and antibiotic using approach of bounds, mining apple, in a their particular is some approximation or economical.	of the publication of the publication of the	n II, Frank, shark the box. Out	
Be more ba la	map at should in observation values for a best 16.1	THE WORLDARD RUP DO BOOM & N	1 THE LOW & ROOT	
	men had adjunid of also put in particular a gended ar men be printed and is must be primat in any develor (a blar Childan	romer of a side bissinguist is carbo	delater during Candres, the first	
Circulation # Relate (#3164		A Characteria and the post-shifts		
Cintufaction # Result (#11164	deals the same of the sec. It is which the Deserver's			
Constantion a Reset pricing E. In Base 10. 7 E. Base 17 Foct	ideality the slate of it's security in which this Distance it is I be asynchic			
Constantion n Relief (n) (n) E. In Bain 10. 7 E. Sam 17 Rel	deale he date of it's serve in which the Determinity			



	To join one or more sections, complete this form and attach separate checks payable to each section you wish to join.	
	me	-
	m or Agency	
ffi	ice Location	_
ffi	ice Telephone Number	
	tion Annual I	Jues
	Administrative Law	.\$20
	Bankruptcy and Commercial Law	.\$20
1	Business Torts and Antitrust Law	.\$15
1	Communications Law	.\$15
1	Corporate Counsel	.\$30
]	Corporation, Banking and Business Law	\$10
1	Criminal Law	\$10
1	Disabilities Law	\$20
]	Environmental Law	
]	Family Law	\$30
I	Health Law	\$15
1	Labor and Employment Lawif practicing less than 5 years-	\$10
	if practicing 5 or more years-	\$30
l	Litigation	\$15
1	Oil, Gas and Mineral Law	\$15
	Professional Economics and Technology Law	\$25
	Real Property, Probate and Trust Law	\$10
]	Taxation	\$15
1	Workers' Compensation Law	\$20
	Young Lawyers'	-

Remember: Attach a separate check for each section.

Mail to: Sections, Alabama State Bar, P.O. Box 671, Montgomery, AL 36101

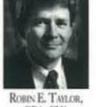
Your clients didn't retain "just any attorney" to represent their legal interests.

Don't retain "just any valuation firm" to establish their business valuations.

WILLIAMS, TAYLOR & ASSOCIATES, P.C., IS A NATIONALLY RANKED ACCOUNTING AND CONSULTING FIRM WITH FIVE CERTIFIED BUSINESS VALUATION ANALYSTS ON PERMANENT STAFF. EVER VIGILANT ON BEHALF OF YOUR CLIENTS' INTERESTS, WTA'S PROFESSIONALS OFFER SWIFT, ACCURATE BUSINESS VALUATIONS, WHICH ARE CRITICAL TOOLS ON MANY FRONTS IN TODAY'S WORLD. WILLIAMS, TAYLOR & ASSOCIATES - SERIOUS ABOUT YOUR CLIENTS' BUSINESS.



CPA, CVA



CPA, CVA



WILLIAM K. NICROST II, CPA, CVA



TIMOTHY W. YORK, CPA, CVA

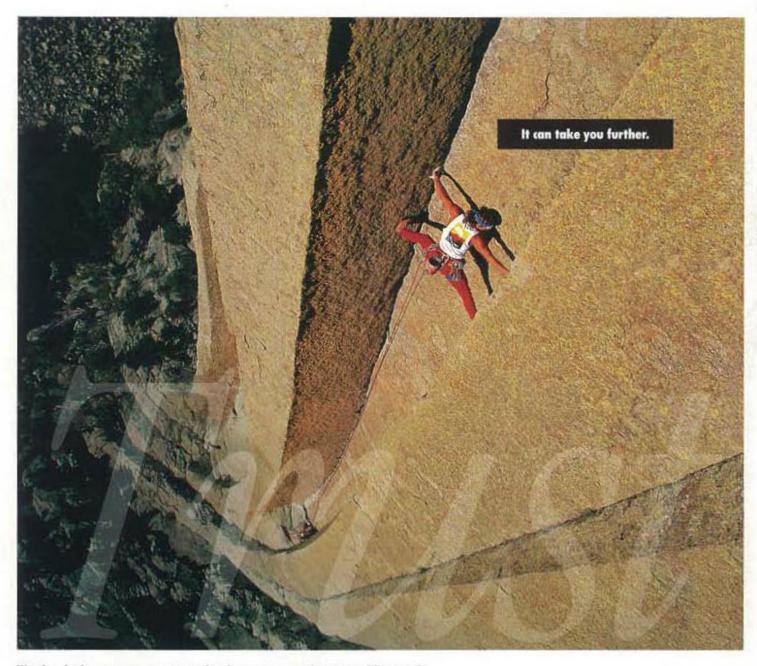


J. BARRY TIDWELL, CPA, CVA



WILLIAMS, TAYLOR & ASSOCIATES

2140 ELEVENTH AVENUE SOUTH, SUITE 400 • THE PARK BUILDING • BIRMINGHAM, ALABAMA 35205 (205) 930-9111 • (800) 874-8552 • FACSIMILE (205) 930-9177



Westlaw is the source you can trust for the most comprehensive public records.

You've got absolute trust in yourself. Put that same trust in WESTLAW" to deliver public records that can hold the key to saccess.

For starters, WESTLAW gives you broader coverage than any other source. That helps you reliably check out potential jurors' backgrounds, locate hard-to-find witnesses, qualify prospective clients or business associates, and more.

wave another lives

And only WESTLAW gives you important links between related information with exclusive investigative tools such as People Finder," Sleuth" and Asset Locator."

So you can uncover important relationships among people, businesses and their assets that you may otherwise miss searching any other source. With sweeping public records at your fingertips, you can trust in WESTLAW to take you further, Learn more about how to find the public records you need on WESTLAW. Call 1-800-328-9963. C=



U 1915 West Publishing 74536-3/1115 641494 1-349-593-0

hello lloud lloud de la llo