

FEBRUARY 2017

ADDENDUM

PUBLISHED BY THE ALABAMA STATE BAR



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Short articles of general interest are always welcomed from ASB members. All materials submitted for publication in the *Addendum* are subject to editing for style, space and content. Send submissions as Word documents to Allison Skinner, editor, askinner@acesin.com, or Margaret Murphy, managing editor, margaret.murphy@alabar.org.

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> CORRECTION

In the December 2016 issue of the *Addendum*, Brooke Marshall was incorrectly listed as the author of "Willow, the Wonder Dog." The actual author was Tamara Martin. We apologize for the oversight.



> IMPORTANT NOTICES

Notice of Election and Electronic Balloting

Notice is given here pursuant to the *Alabama State Bar Rules Governing Election and Selection of President-elect and Board of Bar Commissioners* that the election of these officers will be held beginning Monday, May 15, 2017 and ending Friday, May 19, 2017.

On the third Monday in May (May 15, 2017), members will be notified by email with a link to an electronic ballot. Members who wish to vote by paper ballot should notify the secretary in writing on or before the first Friday in May (May 5, 2017) requesting a paper ballot. A single written request will be sufficient for all elections, including run-offs and contested president-elect races during this election cycle. All ballots (paper and electronic) must be voted and received by the Alabama State Bar by 5 p.m. on the Friday (May 19, 2017) immediately following the opening of the election.

■ Nomination and Election of Board of Bar Commissioners

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

8th Judicial Circuit
10th Judicial Circuit, Place 4
10th Judicial Circuit, Place 7
10th Judicial Circuit, Bessemer Cutoff
11th Judicial Circuit
13th Judicial Circuit, Place 1
13th Judicial Circuit, Place 5
15th Judicial Circuit, Place 5
17th Judicial Circuit
18th Judicial Circuit, Place 1
18th Judicial Circuit, Place 3
19th Judicial Circuit
21st Judicial Circuit

22nd Judicial Circuit
23rd Judicial Circuit, Place 1
28th Judicial Circuit, Place 2
30th Judicial Circuit
31st Judicial Circuit
33rd Judicial Circuit
34th Judicial Circuit
35th Judicial Circuit
36th Judicial Circuit
40th Judicial Circuit
41st Judicial Circuit

Additional commissioners will be elected for each 300 members of the state bar with principal offices therein. New commissioner positions for these and the remaining circuits will be determined by a census on March 1, 2017 and vacancies certified by the secretary no later than March 15, 2017. All terms will be for three years.

A candidate for commissioner may be nominated by petition bearing the signatures of five members in good standing with principal offices in the circuit in which the election will be held or by the candidate's written declaration of candidacy. **Nomination forms and/or declarations of candidacy must be received by the secretary no later than 5 p.m. on the last Friday in April (April 28, 2017).**

■ Election of At-Large Commissioners

At-large commissioners will be elected for the following place numbers: 3, 6 and 9. **Petitions for these positions, which are elected by the Board of Bar Commissioners, are due by April 1, 2017.**

■ Submission of Nominations

Nomination forms, declaration of candidacy forms and applications for at-large commissioner positions must be

submitted by the appropriate deadline and sent to the secretary as follows:

Keith B. Norman
Secretary
Alabama State Bar
P.O. Box 671
Montgomery, AL 36101

These forms may also be emailed to elections@alabar.org or faxed to (334) 261-6310.

It is the candidate's responsibility to ensure the secretary receives the nomination form by the deadline.

Election rules and petitions for all positions are available at www.alabar.org.

Alabama Lawyers' Hall of Fame

May is traditionally the month when new members are inducted into the Alabama Lawyers' Hall of Fame which is located at the state judicial building. The idea for a hall of fame first appeared in the year 2000 when Montgomery attorney Terry Brown wrote state bar President Sam Rumore with a proposal that the former supreme court building, adjacent to the state bar building and vacant at that time, should be turned into a museum memorializing the many great lawyers in the history of the state of Alabama.

The implementation of the idea of an Alabama Lawyers' Hall of Fame originated during the term of state bar President Fred Gray. He appointed a task force to study the concept, set up guidelines and then provide a recommendation to the Board of Bar Commissioners. The committee report was approved in 2003 and the first induction took place for the year 2004. Since then, 55 lawyers

have become members of the hall of fame. The five newest members were inducted May 6, 2016.

A 12-member selection committee consisting of the immediate past-president of the Alabama State Bar, a member appointed by the chief justice, one member appointed by each of the three presiding federal district court judges of Alabama, four members appointed by the Board of Bar Commissioners, the director of the Alabama Department of Archives and History, the chair of the Alabama Bench and Bar Historical Society and the executive secretary of the Alabama State Bar meets annually to consider the nominees and to make selections for induction.

Inductees to the Alabama Lawyers' Hall of Fame must have had a distinguished career in the law. This could be demonstrated through many different forms of achievement—leadership, service, mentorship, political courage or professional success. Each inductee must have been deceased at least two years at the time of their selection. Also, for each year at least one of the inductees must have been deceased a minimum of 100 years to give due recognition to historic figures as well as the more recent lawyers of the state.

The selection committee actively solicits suggestions from members of the bar and the general public for the nomination of inductees. We need nominations of historic figures as well as present-day lawyers for consideration. Great lawyers cannot be chosen if they have not been nominated. Nominations can be made throughout the year by downloading the nomination form from the bar's website and submitting the requested information. Plaques commemorating the inductees are located in the lower rotunda

of the judicial building and profiles of all inductees are found at www.alabar.org.

Download an application form at <https://www.alabar.org/assets/uploads/2016/09/Lawyers-Hall-of-Fame-Nomination-Form-2017-fillable.pdf> and mail the completed form to:

Sam Rumore
Alabama Lawyers' Hall of Fame
P.O. Box 671
Montgomery, AL 36101

The deadline for submission is March 1, 2017.

Judicial Award of Merit

The Alabama State Bar Board of Bar Commissioners will receive nominations for the state bar's Judicial Award of Merit through March 15, 2017. Nominations should be mailed to:

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

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

Nominations are considered by a three-member committee appointed by the president of the state bar, which then makes a recommendation to the board of bar commissioners with respect

(Continued on page 4)

Let Me Hear from You!



I recently sent a letter to all members of the Alabama State Bar, letting you know that this is your bar. In the letter were three ways to contact me:

- > Click on the "Better Bar" banner on the home page at www.alabar.org;
- > Send an email to me at cole.portis@beasleyallen.com; and
- > Call/text me at (334) 451-0856

I want to hear from you. I want to hear the good and the bad. I want to hear praise. I want to hear criticism. And, mostly, I want to listen to your ideas about how we can improve our bar!

—JCP

to a nominee or whether the award should be presented in any given year.

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

Local Bar Award of Achievement

Cole Portis, Alabama State Bar president, and the ASB Local Bar Task Force want you to apply this year! This award recognizes local bars for their outstanding contributions to their communities. Awards will be presented during the Alabama State Bar's 2017 Annual Meeting at the Grand Hotel Marriott Resort in Point Clear.

Local bar associations compete for these awards based on their size—large, medium or small.

The following criteria are used to judge the applications:

- The degree of participation by the individual bar in advancing programs to benefit the community;
- The quality and extent of the impact of the bar's participation on the citizens in that community; and
- The degree of enhancements to the bar's image in the community.

To be considered for this award, local bar associations must complete and submit an application by Friday, June 2, 2017. Applications may be downloaded from www.alabar.org or obtained by contacting Mary Frances Garner at (334) 269-1515 or maryfrances.garner@alabar.org.

J. Anthony "Tony" McLain Professionalism Award

The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the J. Anthony "Tony" McLain Professionalism Award through April 15, 2017. Nominations should be prepared on the appropriate nomination form available at www.alabar.org and mailed to:

Keith B. Norman
Executive Director
Alabama State Bar
P.O. Box 671
Montgomery, AL 36101

The purpose of the J. Anthony "Tony" McLain Professionalism Award is to honor the leadership of Tony McLain and to encourage the emulation of his deep devotion to professionalism and service to the Alabama State Bar by recognizing outstanding, long-term and distinguished service in the advancement of professionalism by living members of the Alabama State Bar.

Nominations are considered by a five-member committee which makes a recommendation to the Board of Bar Commissioners with respect to a nominee or whether the award should be presented in any given year.

William D. "Bill" Scruggs, Jr. Service To the Bar Award

The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the William D. "Bill" Scruggs, Jr. Service to the Bar Award through April 15, 2017.

Nominations should be prepared on the appropriate nomination form available at www.alabar.org and mailed to:

Keith B. Norman
Executive Director
Alabama State Bar
P.O. Box 671
Montgomery, AL 36101

The Bill Scruggs Service to the Bar Award was established in 2002 to honor the memory of and accomplishments on behalf of the bar of former state bar President Bill Scruggs. The award is not necessarily an annual award. It must be presented in recognition of outstanding and long-term service by living members of the bar of this state to the Alabama State Bar as an organization.

Nominations are considered by a five-member committee which makes a recommendation to the Board of Bar Commissioners with respect to a nominee or whether the award should be presented in any given year.

Law Books for Sale

The Supreme Court and State Law Library has for sale the following law books:

- 2013 *Alabama Pattern Jury Instructions—Civil* @ \$50
- 2016-2017 *Alabama Pattern Jury Instructions—Civil* @ \$175

- 2015 *Alabama Rules of Court–State* @ \$40

Note: All rule changes and effective dates are available at <http://judicial.alabama.gov/rules/Rules.cfm>.

Mail a check or money order made payable to “AL Supreme Court and State Law Library” to:

AL Supreme Court and State Law Library
ATTN: Public Services–Book Sale
300 Dexter Ave.
Montgomery, AL 36104

Please contact any public services staff member at (334) 229-0563 or (800) 236-4069 prior to mailing payment to inquire about availability.

–Courtney E. Britt, public service technician

Notice from the Clerk of the Supreme Court of Alabama

Counsel practicing law in the state of Alabama should be particularly mindful of a recent amendment to the *Alabama Rules of Appellate Procedure*, effective January 1, 2017.

Rule 3(c) has been amended to require parties to an appeal to list with specificity all appellants and/or appellees in the notice of appeal, and appellants may no longer designate multiple, unnamed parties by the use of “et al.” or “etc.” In cases with multiple parties, the appellant or cross-appellant may attach a separate sheet of paper listing the parties and their designations with specificity if the parties are too numerous to fit into the spaces allotted for the same on the notice of appeal form. Notice of the amendment to this rule and its effective date appeared in the December *Addendum* and the January *Alabama Lawyer*.

Counsel are also advised to periodically check for the latest amendments to all *Rules of Court* (civil, criminal, appellate, etc.), which are listed on the Alabama Appellate Courts website (<http://judicial.alabama.gov/rules/Rules.cfm>).



> Lawyer University Brings Practical Information to ASB Members

Alabama State Bar members have a new option for high-quality, low-cost, practical continuing legal education programs that will help them make running a law firm easier while also improving the bottom line through Lawyer University.

An initiative of Alabama State Bar **President Cole Portis**, the Lawyer University curriculum is being designed by the Lawyer University Task Force, chaired by **Kelly Pate**, with assistance from the ASB Practice Management Assistance Program. Bar commissioners **Flynn Mazingo** and **Brannon Buck** serve on the Lawyer University executive committee.

Lawyer University was created to provide solo practitioners and members of firms with the skills they need to thrive in the changing legal climate. Small-firm lawyers must now handle business planning, client development and marketing, and firm technology, while also trying to find time to practice law. In addition, they have to cope with a changing legal landscape that sees some practice areas disappearing while alternative legal services providers, such as LegalZoom, move in to provide services that were once the sole domain of law firms.

The initial Lawyer University class, Legal Marketing 101, was held at the state in January to a sold-out crowd of 75 attorneys from around the state. The program featured Jabez LeBret, international speaker and best-selling author of *Online Law Practice Strategies*, a founding partner and chief marketing officer of Get Noticed Get Found, a legal marketing consultancy and a contributor to *Forbes*, and Thomas J. Methvin, managing attorney at Beasley Allen. The course was designed to help attendees set and meet or exceed their client development goals for 2017.

In the first segment of the program, LeBret provided the attendees, many of whom did not have a website or other online presence, with information on how to make the most of the digital landscape to be found and selected by the clients they would most like to serve, including everything lawyers need to know about ethically using lawyer websites, online content and social media to establish a successful marketing program. The final hour included simple, practical suggestions by Methvin for easy-to-implement steps to keep at the top-of-mind with current clients and other attorneys so that they remember you when it's time to make referrals. All attendees received a copy of LeBret's *Online Law Practice Strategies* as the course handout.

The attendees' evaluations of the program were excellent overall, with one attendee saying, “Mr. LeBret provided so much information in such a short period that I thought there would be information overload, however, that was not the case. I enjoyed his use of real-life situations. He was an absolutely awesome speaker. Mr. Methvin was very enjoyable. He knew his stuff and discussed it in a manner that was easy to follow along with. I look forward to more programs like this! Thank you.”

The Lawyer University Task Force is planning three more sessions on technology, business planning and management, and emerging areas of practice for solos and small firms between now and the end of the bar's fiscal year in July. The next session will be Technology 101, and is expected to take place in late April or early May. Watch for the broadcast email message announcing the date, time and registration link for the next course, or contact the Practice Management Assistance Program at (334) 517-2242, (800) 354-6154 or pmap@alabar.org.



J. Anthony "Tony" McLain

Long-time Alabama State Bar General Counsel J. Anthony "Tony" McLain passed away Sunday, January 1. He was a member of the bar's staff for more than 28 years and was named as general counsel in 1995.

"Tony McLain was an encourager. He possessed wisdom and he was a servant leader. These three traits are vital when one holds the position of general counsel for the Alabama State Bar," said Cole Portis, state bar president. "I think his most important trait, though, was his ability as the prosecutor to show compassion even when discipline was being leveled against an attorney. In his role as general counsel, I am certain that Tony wasn't beloved by every lawyer, but Tony, who was universally respected, became one of the icons in our bar."

As general counsel, McLain was responsible for overseeing the operations of the Center for Professional Responsibility, which investigates and prosecutes bar complaints, issues ethics opinions to lawyers, represents the bar in state and federal litigation and provides legal advice to the bar's governing and policy-making body, the Board of Bar Commissioners.

"Although he served in a very tough position, enforcing the legal profession's ethical rules, he did so with fairness,

professionalism and great compassion," said Alabama State Bar Executive Director Keith Norman. "Tony has left an indelible mark on the legal profession in Alabama and his state bar colleagues and fellow lawyers mourn his loss and will miss his wisdom and friendship."

McLain was raised in Headland. He received his undergraduate degree from Auburn University and earned his law degree from Samford University's Cumberland Law School. After graduating from law school, he served as an assistant attorney general during the administrations of Attorneys General Bill Baxley and Charlie Graddick. He then practiced law in the firm of McLain & Hampton for nine years before joining the state bar in 1988 as assistant general counsel.

He was widely known as an expert in legal ethics and conducted numerous continuing legal education seminars on the subject. He served as president of Cumberland's National Alumni Association and was the recipient of the school's distinguished alumnus award. In 2014, the bar awarded McLain with the Alabama State Bar Professionalism Award. Following the presentation, it was announced that the award would be further known as the J. Anthony "Tony" McLain Professionalism Award. <

2017 ASB Annual Meeting

The Grand Hotel Marriott
Resort Golf Club & Spa
Point Clear, Alabama

July 12-15, 2017

Thank you very much for planning so many family activities and making the meeting so kid friendly. My whole family had a blast.

This was my first time to attend and I brought my whole family. We have a 3-year old and a 1-year old. We found the whole event very family friendly! Big relief!

Overall, the conference was excellent, well organized, quality speakers and panels and plenty of networking opportunities.

All the meetings I attended were great. I enjoyed the subjects offered this year, and enjoyed networking as well.

It's nice to have so many options!

• EVENT SPECIAL •

ABF Fellows Dinner

July 13, 2017

Speaker: Dr. Wayne Flynt,
Alabama historian



> The Rewards of a GAL Practice

By Jasmine A. Fells

“The King will reply, ‘Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me.’”

Matthew 25:40

I reflect on this passage occasionally and hope to live up to its true meaning in the practice of law.

J. Brent Helms, a Faulkner Law graduate and state bar member, encouraged me to serve as guardian ad litem during my internship at the Elmore County Probate Court. The court clerks assigned me a case, and from that point on, I was acting as the responsible attorney. My client, a 20-year-old young man, suffers from autism. At the time I was assigned the case, he was at risk of aging out of his current residential facility upon his 21st birthday. My client’s mother, the petitioner, was seeking a guardianship so that she would be able to make the decision pertaining to his placement into an adult residential facility.

Helms accompanied me to the Learning Tree in Tallassee to interview my client.

Once inside, we met with my client and the facility regional director, Whitney Hester. During the interview, I observed that my client was not able to have fluid conversations with me. He would rock back and forth from nervousness, and

when asked questions he would merely repeat what was said to him. Hester works closely with my client and she made mention of the fact that my client has progressed exponentially because of the classes at the Learning Tree. However, it would be unlikely for him to be a fully functioning adult who be able to care for himself. Therefore, the guardianship granted to the petitioner would be in the best interest of my client. Hester explained that without the guardianship, the petitioner would not have any preference to which adult facility her son would be placed.

After meeting with Mrs. Hester and my client, I met with the petitioner. In particular, we discussed her interest in being granted the guardianship. The petitioner spoke to me with tears in her eyes as she stated that she just wanted to do what she felt would result in the best care for her son. Mr. Helms and I left the Learning Tree with a general understanding of my client’s situation. From that point, I drafted court documents and a guardianship report in preparation for the upcoming

hearing. During the hearing, the petitioner was moved to tears. She stated her interests to the judge, and he granted the guardianship. At the end of the hearing, she expressed her extreme gratitude for my services for her son.

My first guardian ad litem case taught me humility. I was humbled to know that I had a part in protecting someone’s rights. As a law student drawn to public interest work, this experience reassured me that I am in this profession for the right reasons. I am currently a third-year law student at Faulkner Law. I have thoroughly enjoyed learning the law at a Christian university from law professors who encourage students to serve the community. Extra-curricular involvement in the Jones Public Interest Law Foundation and the Volunteer Lawyers Program Initiatives have afforded me the opportunity to grow my passion of seeking justice for the less fortunate. There are many people in Alabama who are in need of legal assistance, but are not financially able to secure legal help by their own means. Knowing that I am able to do something to help someone in need is the main reason why I was interested in serving as a pro bono guardian ad litem.

Jasmine A. Fells is a third-year student at Faulkner University’s Jones School of Law.

> The Challenge Facing Law Schools

By Allen P. Mendenhall

Many law school administrators have begun the new year anxious about the future. Since the financial crisis of 2008, the number of law-school applications and LSAT takers has plummeted, while tuition costs have continued to rise. Faced with the probability of heavy student-loan debt, a saturated legal market and stagnant starting salaries for attorneys, some aspiring attorneys have decided that law school is simply too risky an investment and are looking elsewhere to begin their careers.

The decrease in applications for admission and the low matriculation rates have hit lower-ranked law schools particularly hard. These schools have struggled to compete for applicants and have decreased the size of their classes to maintain competitive admissions data. Even Ivy League schools have been forced to find creative solutions to contracting enrollment. Harvard Law School, for instance, has accepted more transfer students—whose entering LSAT scores do not have to be reported to publications that rank law schools—presumably to make up for shrinking tuition revenues.

Law schools face a dual threat: the American Bar Association (ABA) and the Department of Education (DOE). The DOE is cracking down on law schools for allegedly deceptive enrollment practices just years after a string of lawsuits across the country claimed that certain law schools misrepresented employment statistics for their recent graduates.

Last year, the DOE recommended that the ABA lose its accreditation powers for one year. Under pressure from the DOE, the ABA has grown more aggressive, demanding that law schools come into compliance with ABA admission standards or suffer potential reprimands, sanctions, probation or worse. The ABA

imposed a remedial plan on Ave Maria School of Law to improve the school's admissions practices and bar-passage rates. Then, in November 2016, the ABA publically censured Valparaiso University School of Law and placed Charlotte School of Law on probation.

Despite the fact that Charlotte School of Law remains accredited by the ABA, the DOE announced in December 2016 that it was terminating that school's access to federal student aid. In response, students there have filed a federal class-action lawsuit alleging, among other things, that the school and InfiLaw—its parent company—misled them and misrepresented the scope and degree of the school's problems.

The blogosphere abounds with rumors about law-school closings. Indiana Tech Law School is, in fact, shutting down this June, and in 2015 the William Mitchell College of Law merged with Hamline University School of Law to offset costs and avoid shutting their doors.

In light of the foregoing, law schools should be transparent about the condition they are in and the difficulties they face, lest they find themselves the target of lawsuits like the one filed against Charlotte School of Law. The future of law schools and the legal profession remains uncertain. We are in a transitional—and perhaps unprecedented—moment. How legal administrators deal with it may test not only their patience, courage and leadership, but also the long-term viability of legal education as we know it today. <

Allen P. Mendenhall is an associate dean at Faulkner University Thomas Goode Jones School of Law and executive director of the Blackstone & Burke Center for Law & Liberty. Visit his website at AllenMendenhall.com.



In light of the foregoing, law schools should be transparent about the condition they are in and the difficulties they face, lest they find themselves the target of lawsuits like the one filed against Charlotte School of Law.

> Legal Services Alabama: A Helping Hand

By Michael L. Forton

More than 25 years ago, Mr. Summers purchased a car through dealer financing in another state. After making payments for some time, he was no longer able to continue to do so for financial reasons. He called the dealership and asked them to come and pick up the vehicle. Several years later, after Summers had moved to Alabama, the dealership sued him for a deficiency balance. A judgment was entered against him in 1999 for \$3,115.05 plus costs. For a long time, Summers did not hear from anyone regarding the debt.

Summers worked for years hard building and installing cabinets for in a rural Alabama town. Although he did not become rich or accumulate much over these years, he was able to provide for his family, making little over the poverty line. As of 2016, Summers was the sole means of support for his wife and their one-year-old granddaughter.

On June 7, 2016, a Birmingham debt collection firm took on the collection of the debt and began the process of garnishing Summers. The garnishment requested that \$9,376.58, comprised primarily of interest, be withheld from his paycheck. Although Summers was not served with the garnishment, his employer was and, in early July, a quarter of his paycheck suddenly disappeared.

Within a week, Summers had contacted Legal Services Alabama and was assigned an attorney in his local office. The attorney explained to him that Alabama's constitution has allowed citizens to protect up to \$1,000 of their personal property since 1901. The attorney went on to explain that many low-income Alabamians choose to use this protection to maintain their paychecks so that they can continue to feed and house their families. The attorney assisted Summers in filing a claim of exemption which asserted his right to protect his wages.



After learning how little Summers made and that a **quarter** was being **taken from his paycheck**, the judge indicated he was very concerned that Summers would be unable to survive and would likely be forced to file **bankruptcy**.

Within 15 days, the debt collection firm filed an objection to his claim, stating that a recent statute passed by the Alabama legislature had modified the constitutional provision so that it no longer allowed wages to be considered personal property. The debt collection firm claimed that Summers had no right to protect his paycheck other than the federal restriction limiting garnishments to 25 percent of an individual's wages.

For two months, Summers continued to be garnished while he waited for a court date. Over that time he and his family fell behind on rent and other bills as well as restricting many on the necessities of life.

On the day of his hearing, the attorneys presented their case to the judge. After learning how little Summers made and that a quarter was being taken from his paycheck, the judge indicated he was very concerned that Summers would be unable to survive and would likely be forced to file bankruptcy. The attorney for

the debt collection firm advised the judge that he was unconcerned with whether or not Summers had to file bankruptcy. The judge was not entirely happy with this response. Ultimately, the circuit court judge determined that previous case law was controlling in interpreting the constitution in spite of the recent legislation. The judge ruled that not only was Summers entitled to protect his paycheck going forward, but that the debt collection firm would need to return any money already taken from him.

Although Summers and his family have mostly recovered from the ordeal, he is continuing to deal with many of costs and fees created by the two months he was garnished. Although he remains troubled by his experience, he says that he is very glad that LSA was able to help him when he needed them most. >

Michael L. Forton is the director of advocacy for Legal Services Alabama.

> What's in Your Top Ten?

At the Local Bar Retreat in October, Birmingham attorney Sam Franklin addressed the group on professionalism at an early morning breakfast. He shared the "10 Commandments" listed below that were

written by the grandfather of one of his firm's associates, **Molly Drake**.

Molly's grandfather was the late Frank Hastings Griffin, Jr. of Dechert, Price & Rhoads in Philadelphia, who died this past fall at age 95 after a distinguished

legal career. Hastings was the great-great-grandson of the 10th U.S. President, John Tyler. Drake found the "10 Commandments" in her grandfather's office and now keeps them on display in hers. <

Griffin's Ten Commandments of Trial Advocacy

- 1 Do not lose because you cannot **BE HEARD**.
Study voice.
- 2 Do not lose because you do not **COMMAND ATTENTION**.
Study acting. Don't be boring.
- 3 Do not lose because you cannot **BE UNDERSTOOD**.
Speak English clearly.
- 4 Do not lose because you do not **PAY ATTENTION**.
Do not take extensive notes or let your mind wander.
- 5 Do not lose because you do not **REMEMBER**.
Write down the important things you really need to remember.
- 6 Do not lose because you fail to make a motion or file a pleading at the right time or because you fail to **KNOW THE RULES OF PROCEDURE**.
- 7 Do not lose because you do not **KNOW THE RULES OF EVIDENCE**.
- 8 Do not lose because you fail to **THOROUGHLY PREPARE YOUR WITNESSES**.
- 9 Do not lose because you did not **LEARN ABOUT THE TECHNICAL FIELD** which your case involves.
- 10 Do not lose because you fail to **HAVE EMPATHY** for your opponent.



Law Offices of Jacqueline E. Austin, Wetumpka

> MEMBER PROFILE:

Jacqueline Austin— Fearless and Unflappable

By Linda G. Flippo

Jacqueline E. Austin may be the female equivalent of Dos Equis's Most Interesting Man in the World—the suave, gray-bearded man, and not the new guy. She voices strong opinions about the legal profession, how lawyers behave and how women lawyers are treated and treat each other. She's not trying to offend, but to provoke thought, conversation and action.

A native of Wetumpka, Jacqueline was influenced by the strong women in her family. Her grandmother, who lived to be 103, was one of the first wardens at Julia Tutwiler Prison and was the first female sheriff in Alabama. Her mother continued running a timber business and rental properties into her 80s.

Jacqueline's drive, and the fact she was "bored," pushed her to leave high school after her junior year to early enroll in the Oxford College of Emory University. From Oxford College, she pursued her love of history attending Auburn University. From Auburn, she headed to Cumberland School of Law, where she received her J.D. in 1968. After eight years raising her family in Mountain Brook, Jacqueline returned to Wetumpka.

A member of the bar since 1968, she is the oldest active practicing attorney in Elmore County. During her career, she served as Wetumpka's city attorney and city judge, and, working with the local district attorney, helped establish a child support system in Elmore County.

When asked about cases that were memorable or that she enjoyed handling, she recalled a "really good land line case." Well, who doesn't enjoy a really good land line case? She then explained that what she enjoyed was researching the history of the property and what she learned about the people involved.

In a career spanning decades, Jacqueline has been in many courtrooms and enjoyed her share of heated debate with colleagues. Because of these experiences and what she observes presently happening in the legal profession, she is troubled by the lack of respect exhibited by lawyers and judges. She laments that no longer can you just pick up the phone, call opposing counsel and settle a case. No longer can you respectfully disagree; now, everything is too personal.

She sees an increase in lawyers lying to judges, judges being condescending to lawyers and parties, lawyers so focused on money that it clouds professional ethics and the practice of "home-cooking," which we complain about, but do not fix. She is troubled when such disrespect, condescension and inequality are directed at women, even by women. Despite these concerns, she isn't quitting; instead, she challenges us to find ways to solve these problems.

Linda G. Flippo practices in Birmingham with White, Arnold & Dowd PC.

Hire a Private Judge

to Hear Any Case in Domestic
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> Law Students, Law Schools and Student Loan Debt

By Brooke Marshall

fresh lawyers face. The pay for new lawyers does not bring the promise of financial security it once did, especially when considering the student loan debt of recent graduates is increasingly higher than in years past.¹ However, despite all the negative press in national media, students thinking about the practice of law today should not be turned away from the profession as a whole. There are organizations, such as the ABA, which look out for prospective and current lawyers' interests.

Just recently, the ABA filed a lawsuit against the Department of Education (DOE) over retroactive denials to lawyers seeking student loan forgiveness under the Public Service Loan Forgiveness Program.² Additionally, the ABA recently put Charlotte School of Law, a for-profit institution, on probation for being out of compliance with ABA standards, which included allegations of misleading current and prospective students.³ Following that ruling by the ABA, the DOE has issued press releases providing that Charlotte School of Law may no longer receive federal student aid.⁴ These actions exemplify how concerned professionals and law schools work to help prospective and current lawyers.

Prospective lawyers should know that the legal profession is aware of these negative trends and is working to find a solution. Top universities are making class sizes smaller⁵, the ABA continues to look into solutions such as the "gainful employment" rule imposed on for-profit schools⁶ and professors, law schools and other organizations continue the discussion.

The key to moving forward is to not only look at the negative media surrounding

the law profession, but to also examine the success stories, and what made them successes. We need to start the discussion from a larger picture instead of an individualized look at each law school, each statistic and each negative story. We need to help our prospective and current lawyers overall, from those in small town law offices to those in your big city law firms and businesses, and those in governmental positions. Speak with your associates, interns and partners. Let's network together to continually improve our profession. <

Brooke Marshall practices with CB&I in The Woodlands, Texas.

■ Endnotes

1. See New York Times, Noam Scheiber, *An Expensive Law Degree, and No Place to Use It*, http://www.nytimes.com/2016/06/19/business/dealbook/an-expensive-law-degree-and-no-place-to-use-it.html?_r=0 (last visited Jan. 2, 2016).
2. American Bar Association, News Archives, *ABA Sues Department of Education over Retroactive Denials to Lawyers under Public Service Loan Forgiveness*, https://www.americanbar.org/news/abanews/aba-news-archives/2016/12/aba_files_lawsuitag.html (last visited Jan. 2, 2017).
3. ABA Journal, Daily News, *Charlotte School of Law Students Express Anger at School, Circulate Petition for Free Tuition*, http://www.abajournal.com/news/article/charlotte_school_of_law_students_express_anger_at_school_circulate_petition (last visited Jan. 2, 2017).
4. ABA Journal, Daily News, *Federal Student Financial Aid Yanked at Charlotte School of Law*, http://www.abajournal.com/news/article/federal_student_financial_aid_yanked_at_charlotte_school_of_law (last visited Jan. 2, 2017).
5. Bloomberg, Natalie Kitroeff, *The Best Law Schools Are Attracting Fewer Students*, <https://www.bloomberg.com/news/articles/2016-01-26/the-best-law-schools-are-attracting-fewer-students> (last visited Jan. 2, 2017).
6. Forbes, Stephen Dash, *How Law Schools Will Pull out of 'Death Spiral'*, <http://www.forbes.com/sites/stephendash/2015/11/03/how-law-schools-will-pull-out-of-death-spiral/#7c5e423612a7> (last visited Jan. 2, 2017).

Today, a quick Internet search on law school enrollment or student loan debt of prospective lawyers results in hundreds of hits. More bad press than good press describes the increased lack of interest in what, just over a decade ago, was a popular as well as lucrative career choice.

Media reports and statistical analysis from the American Bar Association (ABA) tell us that fewer students are taking the LSAT, fewer students are enrolling in law school and graduates are finding it more difficult to land legal jobs. While professors, law school deans, students and professional legal associations each have their own varying opinions on why enrollment in law school is declining, they all agree that the decline exists and that the legal job market is more competitive than it was less than a decade ago for new graduates. For example, the job market competition has now moved from coveted top law firm jobs and federal clerkships into public service jobs, such as assistant district attorney and legal service positions.

As a recent graduate, I can attest all too well the difficult job market that

> Appellate Mediation Training

Appellate mediation training has become an annual event held at the Alabama State Bar to provide trained and qualified appellate mediators for the Appellate Mediator Roster of the Appellate Mediation Program.

This full day of MCLE for mediators is sponsored by the Supreme Court of Alabama, the Alabama Court of Civil Appeals, the Alabama Appellate Mediation Office and the Alabama Center for Dispute Resolution, Inc. For the past 13 years, 50 percent of the cases sent to appellate mediation by the courts have settled in mediation.

This year's training took place February 1 and was attended by 26 attorneys. Speakers and trainers included Jim Rives of Ball, Ball, Matthews & Novak PA; Allison Skinner of Skinner Neutral Services LLC; Judy Keegan of the Alabama Center for Dispute Resolution Inc.; Michelle Ohme, executive director of the Appellate Mediation Program;

and Lynn DeVaughn, appellate mediation administrator for the court of civil appeals.

The panel of expert appellate mediators, who spent two hours sharing information and tips with the class, included Marty Van Tassel of Upchurch, Watson, White & Max; Sally C. Bowers of Proctor & Vaughn LLC; and Bill Ratliff of Wallace, Jordan, Ratliff & Brandt LLC.

Acting Chief Justice Lyn Stuart addressed the group, as did William C. Thompson, presiding judge of the court of civil appeals. Julia Weller, clerk of the supreme court, and Rebecca Oates, clerk of the court of civil appeals, also spoke about the success of the program and about their appreciation for appellate mediators.



Stuart

Benefits of Appellate Mediation Checklist

✓ Cost Savings

- Transcription costs
- Record costs
- Attorneys' fees
- Opponent attorneys' fees
- Cost to court
- Post-judgment interest
- Emotional costs

✓ Closure

- Time for appeal
- Motion for rehearing
- Rehearing *en banc*
- Possible lack of stay during appeal
- Emotional non-closure
- Timing to complete record

✓ Certainty of Result

- Composition of panel
- Possible changes to panel
- Possible *en banc* review
- Primary judge
- Predictability of outcome
- Possibility of PCA
- Possibility change in law
- Is the judgment collectible

✓ Avoidance of Future Legal Proceedings

- Mediated settlement offer compliance
- Mediated settlement reduce later actions for modification or collateral relief
- Re-trial (1st trial showed strengths & weaknesses)
- Avoid stalling

✓ Flexibility of Resolution

- Not confined to legal remedies
- Non-economic remedies (i.e. apology)
- Structured payment plans
- Trade-offs
- Resolution of other pending cases
- Partial resolution

✓ Maintaining/Enhancing the Relationship

- Family context
- Employment context

✓ Avoidance of Unfavorable Precedent

- Use in later case proceedings in same case
- One decision affecting thousands of others
- "Love it so much—don't risk losing it"

✓ Avoidance of Publicity

- Appellate opinions more widely dispersed
- Possible derogatory information highlighted in opinion
- Publicity (may hurt mediation)
- Confidentiality

✓ Graceful Way Out

- Nominal "compromise vindicates appeal"
- Allows loser at trial to feel like a partial winner

✓ Advantageous for Attorneys

- Reduce or eliminate risk of malpractice
- Avoid failure to preserve error
- Stop post-judgment interest
- Attorneys stop talking on appeal
- Better outcome than original outcome at trial

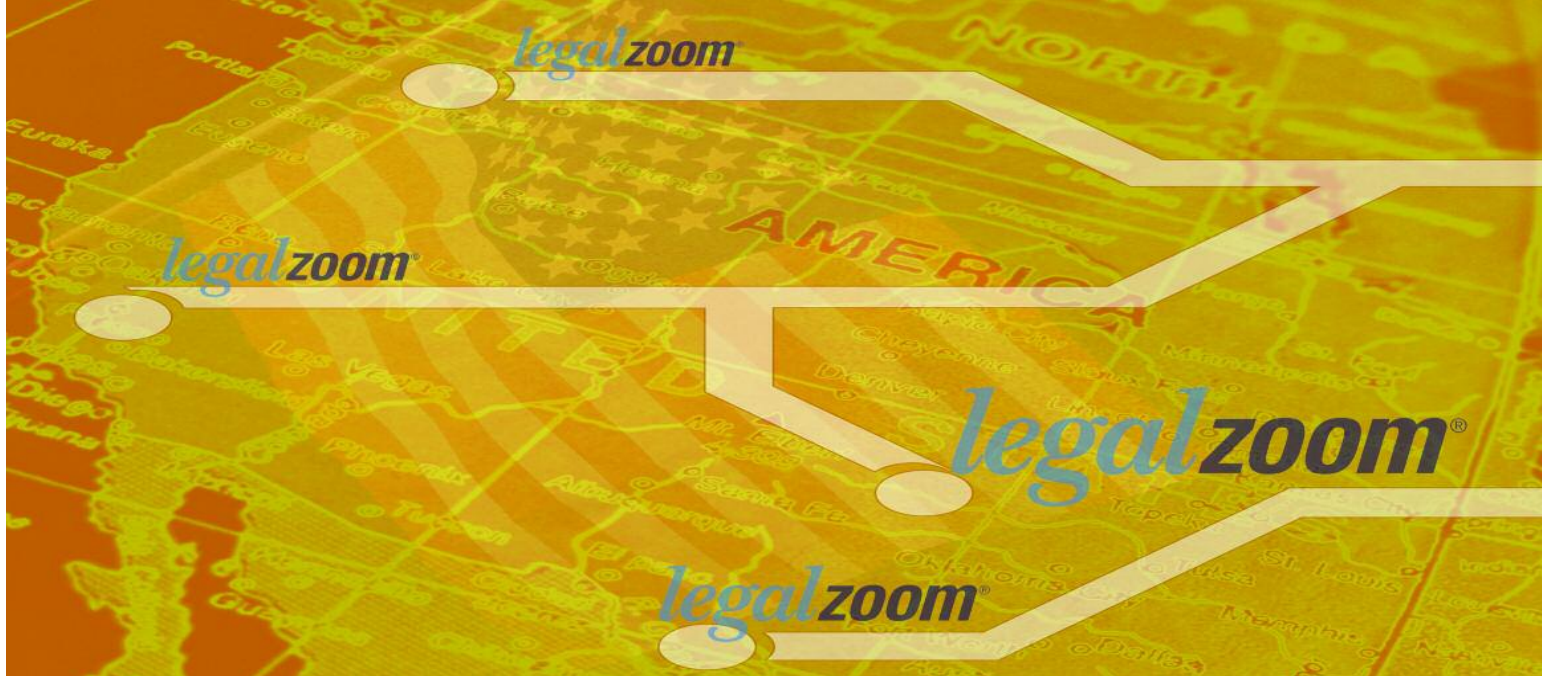
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> North Carolina Settles LegalZoom Litigation

By Jeremy McIntire

Below is a recent memorandum prepared by Jeremy McIntire of the Office of General Counsel to the Alabama State Bar President and Board of Bar Commissioners.

Like a growing number of companies, LegalZoom offers interactive self-help legal form documents for sale, via the Internet, in all 50 states. Efforts to enjoin LegalZoom have been largely unsuccessful.¹ In 2014, the Supreme Court of South Carolina approved a settlement agreement with LegalZoom in which it was stipulated that the sale of blank legal documents was not the unauthorized practice of law. In return, LegalZoom agreed to have all legal forms reviewed by a licensed South Carolina attorney before being offered for sale and refrain from suggesting which form the customer should buy or what words to enter into the form's blanks. LegalZoom also agreed to include a disclaimer that "LegalZoom is not a law firm or a substitute for an attorney or law firm."

Since 2008, LegalZoom and North Carolina have been involved in a long-running dispute regarding the online sale of legal documents. The dispute was exacerbated in June 2015 when LegalZoom filed a \$10.5 million anti-trust lawsuit against the North Carolina State Bar after the bar refused to approve

LegalZoom's prepaid legal services plan. In 2010, LegalZoom began selling prepaid legal services plans. These plans provide their members with access to attorneys licensed in their respective states who have contracted with LegalZoom to provide plan members with certain legal advice and services defined in the plans. LegalZoom currently sells prepaid legal plans in 42 states and the District of Columbia. Soon it expects to begin selling its plans in several more states.

LegalZoom offers two plans. Business Advantage Pro is designed for small businesses. Legal Advantage Plus is designed for individuals. Both plans provide their members with defined legal services from licensed attorneys, including: (1) telephone consultations; (2) review of legal documents; (3) a yearly legal checkup; and (4) a 25 percent discount from the attorneys' standard rates for additional legal services not included in the plans. Customers who buy LegalZoom's prepaid legal services plans also receive additional, free non-legal services provided by LegalZoom and other third-party providers, such as access to LegalZoom's blank form library

and "cloud" electronic document storage services.

LegalZoom alleged that the North Carolina State Bar refused to register LegalZoom's prepaid legal plans in violation of the Sherman Act and of the United States Supreme Court's holding in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S.Ct. 1101 (2015). In that matter, the Supreme Court determined that the North Carolina Dental Board was not entitled to state-action immunity from federal antitrust law after the dental board sent a series of cease-and-desist letters to non-dentists who were providing teeth-whitening services. The Court determined that the board was not entitled to state-action immunity because the board was controlled by active market participants (dentists) who were not under active state supervision. LegalZoom filed suit against the North Carolina State Bar alleging the bar had no state sanctioned authority to refuse to register LegalZoom's prepaid legal plans.

This dispute, as well as the dispute over the sale of online blank legal forms, was settled in October 2015 when the



North Carolina State Bar and LegalZoom entered into a settlement. The settlement approved LegalZoom's prepaid legal services plans and online sale of legal document forms. In exchange, LegalZoom agreed to the following:

- Consumers get to see the blank template or the final document before finalizing the purchase;
- A North Carolina lawyer has reviewed all of the templates, and the name and address of each reviewing lawyer are kept on file and provided to the consumer upon written request;
- The provider tells the consumer that the forms aren't a substitute for an attorney;
- The company discloses its name, physical location and address;
- The provider doesn't disclaim any warranties or liability, nor does it limit the consumer's recovery of damages or other remedies; and
- The company doesn't require consumers to agree to jurisdiction or venue in any other state.

In return, the North Carolina State Bar agreed to help LegalZoom in its effort to get legislation passed through the General Assembly that clarifies the state's unauthorized legal advice law.

Like other states, the UPL Committee of the Alabama State Bar has also viewed the mere sale of blank legal

forms as permissible. While the sale of blank legal forms in Alabama is permissible, assisting customers in filling out those forms is considered the unauthorized practice of law. In *Coffee County Abstract and Title Co. v. State ex rel. Norwood*, 445 So. 2d 852 (Ala. 1983), the Supreme Court of Alabama held even the "filling out blanks of deeds" constitutes the unauthorized practice of law. LegalZoom has indicated that it has plans to further expand services beyond the online sale of blank legal documents and pre-paid legal service plans. These undisclosed services may present future concerns regarding whether LegalZoom (and similar companies) is engaging in the unauthorized practice of law and what efforts can be made by state bars to curtail those activities in light of the Supreme Court's decision in the *North Carolina State Board of Dental Examiners v. Federal Trade Commission*. <

■ Endnote

1. In 2011, a suit was brought against LegalZoom by an Alabama attorney in state court claiming that LegalZoom was engaged in the unauthorized practice of law. The case was subsequently dismissed at the request of the plaintiff without any adverse findings against LegalZoom. Also in 2011, the DeKalb County Bar Association brought suit against LegalZoom alleging that they were engaged in the unauthorized practice of law. The court dismissed the suit after the bar association failed to pay a \$20,000 security deposit as ordered by the court. The dismissal of the case was later affirmed by the Supreme Court of Alabama.

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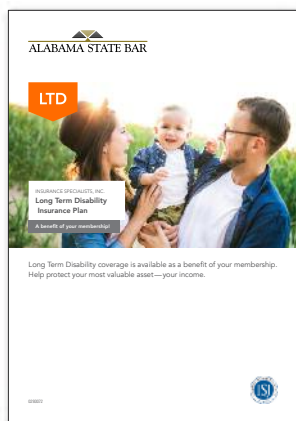
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> MEMBER BENEFITS SPOTLIGHT

Rocket Matter Adds New Features

Rocket Matter, cloud-based practice management software, recently announced the addition of several new features, including new billing functionality, workflow improvements and user interface enhancements.

The system now allows users to set up monthly billing agreements, enter the client's credit card information once and automate recurring charges, saving attorney and staff time while boosting collections.

Rocket Matter also offers updated templates, making it easy to streamline dates, deadlines, case roles, billing setup and tasks for different matter types, saving you tons of time when you create a new matter. And, with updated single-page architecture design, you can reach more features from whichever page you're on and, when you must change pages, load time is reduced 80 percent.

Alabama State Bar members receive a 25 percent discount for the first six months. See www.rocketmatter.com and use discount code AL6MOS.

ABA Webstore Discount Available

The Alabama State Bar, through an arrangement with the American Bar Association, offers a full selection of materials from the ABA Web Store, includ-

ing great books on law firm finance, management, marketing and technology produced by LPM Publishing, at a 15 percent discount. Place your order at <http://shop.americanbar.org/ebus/store.aspx> and use discount code ALABAR. Orders will be shipped directly from the ABA within seven to 10 business days.

ISI Offers Long-Term Disability Insurance Exclusively for ASB Members

A recent survey found that more than 100,000,000 workers are without private disability income insurance. Even if you have group coverage through your employer, it may not be enough and may not cover other sources of income—like bonuses—at all. Through your ASB membership, you are eligible for up to \$11,000 in total monthly coverage through ISI ALABAMA. Go to <http://www.isi1959.com/documents/ISI-LTD-Alabama.PDF> for the brochure and <http://tinyurl.com/j8729qg> for the application. Call (888) 474-1959 or email sales@isi1959.com.

CosmoLex Hosts Free Legal Finance Webinar Series

During February, member benefit provider CosmoLex (www.cosmolex.com) is offering a series of free webinars

designed to help improve the financial practices of Alabama State Bar Members. *Do's and Don'ts of Handling Client Funds*, *What Every Lawyer Using QuickBooks Should Know* and *Understanding Revenue Distribution for Law Firms* make up the three-part series. For more information or to register, log in to the bar's website and click on the Events link at the bottom of the page, or go to <https://www.alabar.org/events/>.

ABA TECHSHOW 2017 Discount Still Available

It's not too late to register for ABA TECHSHOW and take advantage of the \$150 Alabama State Bar members' discount with discount code **EP 1715**. Held in Chicago March 15-18, this three-day CLE conference and legal technology expo offers more than 50 educational sessions in tracks such as EDiscovery, Cybersecurity, Core Production Tools, Project and Process Management, Mobile Apps, Marketing and the Media, the Business of Law and more. For the full schedule and to see which vendors have already signed up, go to <http://www.techshow.com/schedule/>.

If you have questions about the benefits of attending ABA TECHSHOW 2017, check out the First Time Experience Guide (<http://www.techshow.com/conference/experience/>) or contact Laura Calloway or Kristi Skipper at pmmap@alabar.org or (334) 517-2242.