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ADDENDUM

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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; [Linda Flippo](#), assistant editor; or [Margaret Murphy](#), managing editor.

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> INTRODUCTION

On September 8, 2017, the Alabama State Bar Board of Bar Commissioners approved the report of the Long-Range Planning Task Force (the “Plan”). “The 2017 Long-Range Task Force was made up of members who reflect the diversity of the Bar. Members of this task force varied in their race, gender, practice area, geography, and firm size.” The members of the Task Force included:

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Lee H. Copeland

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James Rebarchak

R. Cooper Shattuck

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In keeping with the Bar’s motto, “Lawyers Render Service,” the *Addendum* is reporting excerpts from the Long-Range Plan in a two-part series: Service to the Public and Service to the Members. This month’s issue focuses on service to the public. It is appropriate to feature service to the public during October, which, by proclamation signed by Governor Kay Ivey, is Pro Bono Month. The statewide celebration event was held at the federal courthouse in Tuscaloosa on October 12.

The Plan found several areas central to the Bar’s service to the public, as represented below. These include Communication, Discipline, Access to Justice and the Volunteer Lawyers Program (VLP), Administration of Justice, Education, Licensing, Political Public Service, and Charitable Public Outreach. For each of these areas, the

Plan sets forth core areas to reach the Bar’s goals. The Plan explains the importance of each core area.

“Again, while the traditional roles of communication, licensing, and discipline are central to any Bar service, the changing demands upon lawyers and the unique difficulties they face cannot be overlooked. The Bar’s core goal is to assure its members adhere to the highest standards of professionalism in our industry. To meet this goal, the Bar must vigilantly require high standards for Bar admission, professional conduct, and professional competence and service. These central areas protect the public through a system that promotes public awareness and transparency. It also should develop a system for its members which simultaneously promotes competency and wellness.”



Members of the ASB Pro Bono Celebration Task Force with Governor Kay Ivey, as she signs the proclamation declaring October Pro Bono Month in Alabama

> WHO ARE WE?

Mission and Value Statements



“The governing philosophy of the Alabama State Bar is stated in two related statements. First, the Bar **mission statement** emphasizes our dedication to the following:

Promoting the professional responsibility, competence, and satisfaction of its members; improving the administration of justice; and increasing the public understanding of and respect for the law.

Second, the Bar **values statement** makes clear that our core values include the following:

Trust • Integrity • Service

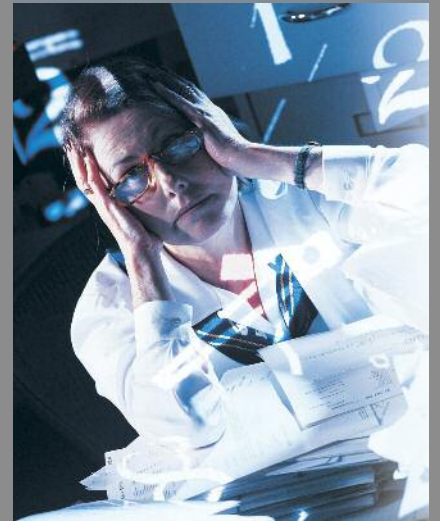
Former Bar President Rich Raleigh summarized the preceding as ‘lawyers serve; the Bar serves lawyers; together we serve the public.’

While these statements provide guidance, their themes must be viewed in

the light of the changing demographics of our Bar membership. At last analysis, the Bar consisted of 17,925 members. Approximately 68% of Bar members are male; 32% are female. The Bar membership is overwhelmingly (92%) white; approximately 7% of Bar members are African-American; and 1% identify as having another ethnic background. Our Bar, like many professions nationwide, is aging. Approximately 25% of Bar members are age 61 or older and nearing retirement. Fewer than 21% of our members are under age 37.

This is a contrast from the overall demographics of the State of Alabama where, out of an estimated population of more than 4.86 million people, 51.6% of Alabamians are female, 26.8% are African-American, and only 15.7% of the population of Alabama are age 65 or older.”

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OVERVIEW OF THE PROGRAM

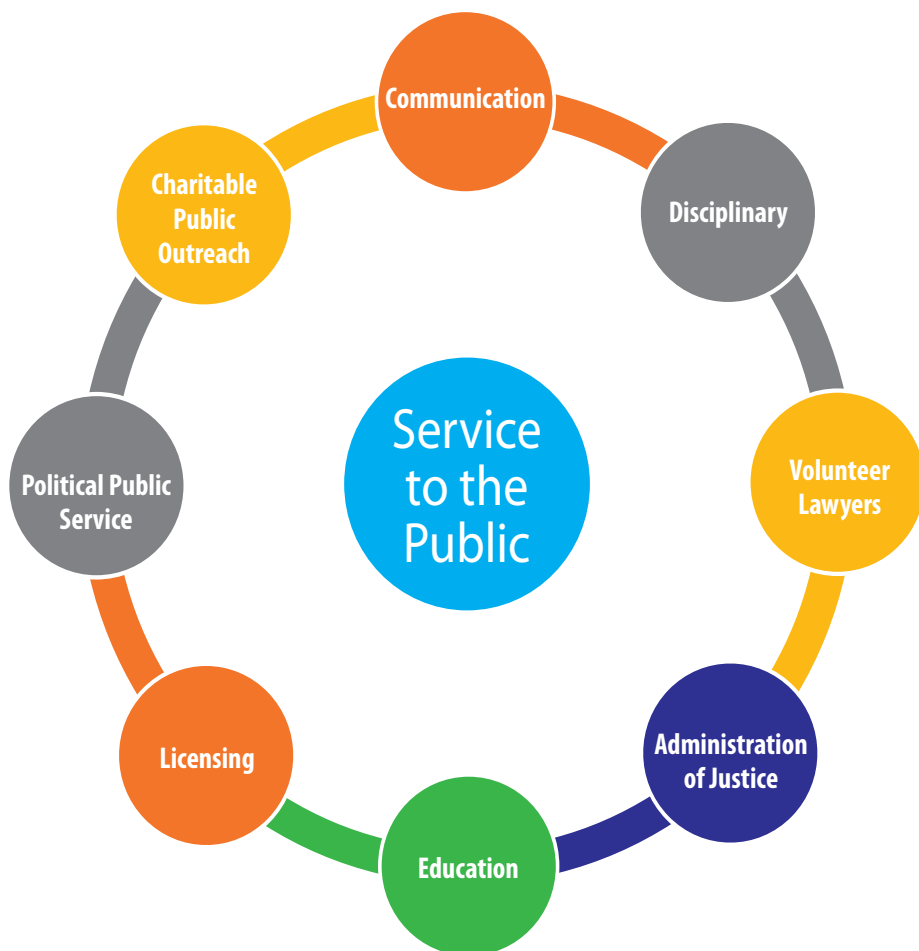
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➤ OUR GOALS TO SERVE THE PUBLIC



Goal 1: Communication

Core Areas: Promote effective communication with the public as to Bar initiatives and programs; Promote the use of advancing technology in the effective and efficient practice of the law in Alabama

Goal 2: Discipline

Core Area: Promote effective oversight of members and transparency to public

Goal 3: Access to Justice

Core Areas: Promote public access to high-quality legal services regardless of financial or other circumstances; Advocate for proper funding of VLP

Goal 4: Administration of Justice

Core Areas: Increase public and legislative understanding of the importance

of courts and independent judiciary; advocate for adequate court funding with the Alabama State Legislature; and support the merit-based selection of justices and judges

Goal 5: Education

Core Area: Promote public understanding

Goal 6: Licensing

Core Area: Ensure best practices and appropriate measures of competency

Goal 7: Political Public Service

Core Area: Promote greater participation of lawyers in public service

Goal 8: Charitable Public Outreach

Core Area: Expand charitable endeavors beyond the legal arena



Communication

“Like every other area of life, technology changes the way lawyers practice their profession. Technology has changed the manner in which lawyers interact with each other, with courts, and with their clients and potential clients. This type of rapid change results in unaddressed ethical considerations. Without proper attention, technological developments threaten the core competency of our members and the Bar as an institution. As recently noted by the American Bar Association, ‘[L]awyers who refuse to keep up with modern technology risk violating ethical obligations and face becoming obsolete.’ Although the course and growth of technology are impossible to predict, the Task Force recognizes lawyers must timely incorporate relevant technological changes into their practice. This can range from adoption of electronic discovery concepts, to the distribution of appropriate and secure client communications, to information security protocols to guard client confidentiality.

Lawyers have for too long allowed technology to advance more quickly than they were willing to regulate. In the age of data breaches and ransomware attacks, however, we can no longer wait and see. Deceptive cyberattacks have been executed successfully against Alabama lawyers and law firms of all sizes. These successful attacks show that none of us are immune from this risk. Even on the Alacourt electronic filing system, inattentiveness of Alabama lawyers has exposed the personally-identifying information of Alabama citizens. We recommend the Bar immediately begin to adopt and utilize best practices including development of content for a one-hour mandatory technology competency CLE that all Bar members should attend within 12 months of its development. This CLE should be offered at no or low cost, and be available both on-site in a ‘roadshow’ format and on-demand as an online offering.

... This CLE should include components of both cybersecurity and effective use of technology. The effective use of

technology components should include hands-on tutoring for lawyers who desire to become more technologically proficient in their practice.

The Task Force also recommends the Bar establish ethical standards and guidance for the use of artificial intelligence (“AI”) in document production and research, including whether the use of AI constitutes the unauthorized practice of law. We believe that effective regulation of this new technology, rather than protectionist denial of its existence, is the more prudent course of action for the law practice of the future.

The Task Force understands the public uses social media platforms and search engines to locate, engage, and evaluate lawyers. The Bar should develop methods that recognize these changes and help both lawyers and the public make informed decisions regarding the role these tools play in how legal services are provided. We encourage the Bar office of general counsel to provide effective guidance regarding these issues.

Ultimately, the Task Force proposes the Bar take action similar to other bars, including the Missouri Bar, to address technology concerns through active investigation, reporting, and implementation under canons of legal ethics. The following issues must be addressed completely:

- Consider mid-to-long-term technology issues through standing committees; and
- Assist members as to relevant technology through education so the membership can maintain a minimum standard of competency in emerging technological trends—this should address the issue of an aging bar which is, at times, resistant to the technological changes.”



the Madison County VLP, and the Montgomery County VLP.

Funding has always been the anchor that has dragged down the Bar VLP and the local VLPs. The programs derive funding from state IOLTA programs, grants from Legal Services Alabama (LSA), bar associations and private foundations, and local fundraising. Occasionally a program(s) will receive a *cy pres* award. The Alabama Law Foundation is the largest single funder of the VLP programs in the state. Legal Services Alabama is the second-largest. Congress requires LSA, which is our state affiliate of the Legal Services Corporation, to spend 12.5% of its grant monies on private attorney involvement programs. For the past several years, all of the VLPs, regardless of program size or service area, have received a \$70,000 sub-grant from LSA. The State VLP's sub-grant agreement contains a clause that if LSA should receive a funding cut from Legal Services Corporation, its funding would be cut in an equal percentage. Therefore, reduced interest rates which affect IOLTA revenue or reduced funding by Congress of the Legal Services Corporation directly affect funding for the state's VLPs.

VLP funding is constantly under threat. The Task Force recommends that the Bar should provide advocacy for LSA funding for LSA and Legal Services Corporation. The Task Force also recommends that the Bar explore alternative methods to provide legal services for communities that have no access to affordable legal services.

In 2005, the Task Force recommended enhanced public recognition by state and local bars for lawyers excelling in providing pro bono services. The Bar has a standing Task Force devoted to dealing with access to justice and pro bono work. Included within this is the award of several state awards; numerous county bars award similar awards. Our Bar has been nationally recognized for its high level of participation in providing pro bono services. The Task Force recommends further support of this effort.

Discipline

"The Bar's oversight of our members demands, at the least, a minimum competency among our members for the public to maintain its trust in our profession. It is similarly key for transparency amongst the Bar and to promote wellness for our members. This Task Force, like its predecessor, recommends:

- Periodic review and recommendations regarding disciplinary rules and procedures;
- Consideration of uniformity and expediency in disciplinary rules, utilizing the nation model as a resource;
- Address the regulation of lawyers not licensed to practice in Alabama and including non-lawyer litigation support services; and
- Develop progressive diversion and non-disciplinary system for intervention with respect to aging and impaired lawyers."



Access to Justice

"The Volunteer Lawyers Program has grown and changed significantly since its founding more than 25 years ago. The greatest positive change is the cooperation the State VLP has with the four local Alabama VLPs: the South Alabama VLP, the Birmingham Bar VLP,

Access to justice does not stop with people [for whom pro bono service is their only avenue for legal assistance.] There are substantial numbers of people who are in the gap between those who qualify for pro bono services through LSA or another organization and those who are able and sophisticated consumers of legal services. The Task Force recommends that the Bar examine all avenues through which lawyers willing to serve these people and the people in need of legal services can be matched.

One such method would be incubators in which recent graduates are provided office space and other overhead in exchange for a commitment to serve only those persons within a defined geographic area whose legal needs fit certain defined practice areas and their financial resources were greater than what would qualify for pro bono legal services. According to the American Bar Association, 'There are over 60 incubators nationwide.' These young lawyers could receive mentoring, training, and other benefits in exchange for their commitment to this incubator practice for a period of two years. Incubator programs already exist in other southeastern states, including Georgia, Mississippi, Florida, North Carolina, Virginia, and Louisiana. The Bar should work collaboratively with local bar associations, legal aid groups, and other interested parties to determine the location and manner in which such a pilot program could be established in Alabama. Additionally, the implementation of using various ADR processes should be considered." <

Administration of Justice

"The Alabama Unified Judicial System faces reduced funding, reduced filings, and increased pressure to generate revenue for an underfunded state general fund budget. These revenues mask, but



do not solve, the structural flaws in the way state government funds our courts and allocates governmental resources. It is imperative that lawyers become more educated about the system from which they make their living. The Unified Judicial System, deemed ahead of its time when implemented, is becoming less unified with every legislative session. Filing fees and costs now vary from county to county with the passage of local fee bills and Constitutional Amendments creating a lack of uniformity and resulting in some of the highest court costs in the country. The Court system should not be used as a fundraising mechanism for state government and other well-meaning causes. This not only erodes the unified system, but high costs and fees prohibit the Access to Justice that should be available to all."

Reduced Funding Impairs The Administration of Justice

"The Bar recently reported that PARCA, the Public Affairs Research Council of Alabama, 'review[ed] our current court cost structure' to evaluate funding by the Alabama Legislature relative to the services provided by the court system. 'PARCA's court costs study found the current structure to be archaic, inefficient,

and without transparency. PARCA further found that the use of court costs as a source of court funding is inadequate.'

The Alabama Unified Judicial System typically is appropriated less than 2% of the total budget of the State of Alabama. The total FY 2018 budget for the judicial branch of state government was approximately \$120M. Ala. Act 2017-338. The judicial system also generates revenues for the state. During FY 2015, for example, the General Fund budget received approximately \$63.6M in revenues from court costs, which was 3.43% of the revenue generated for the General Fund. Only a portion of this is returned to the courts for operations; the remaining amount collected is earmarked to be distributed by the clerks of the court in each county on a monthly basis. Except on a limited basis, this collection and distribution of monies to state agencies, District Attorneys, city and county governments, and many others is without compensation to the clerks or the court system. The 2016 County Court disbursement reports obtained by the Alabama State Bar illustrate this finding and also confirm the role of the court system in providing revenue to the local and state economies. More recent data as made available should be studied."

Reduced Filings Create Risk For Fee-Based General Fund Revenues

“The amount of cases being filed in our court system has declined for many years. PARCA conducted a limited survey to determine if the rising court costs had any relationship to the decreased filings. The results from that survey did find such a relationship, although it is not the sole contributing cause. PARCA provided a chart illustrating the decline of court filings and distributions due to that decline over a ten-year period (2002-2011). The Bar has supplemented that information with comparative data for the period of 2009 through 2016.”

Recovering Court Costs Is Difficult and an Inefficient Way to Administer Justice

“Statewide court costs to benefit the court system have increased only once in the past decade. Local court costs, by contrast, have risen at an alarming rate. In many instances, the local costs do not benefit the court system or its operations. If the local costs were implemented to assist the local court operations, much of that revenue is now being used to pay for employees who, as a result of decreased General Fund Budget appropriations, would otherwise have been laid off. PARCA found that without these local court payments for court employees, the staff within our state court system would be decreased dramatically.

Court costs are charged in both civil and criminal cases. Costs are normally collected in civil cases at rate of nearly 100 percent. Collecting fees, fines, and costs in criminal cases is difficult in criminal cases. The courts have implemented collection dockets to attempt to collect these fees, fines, and costs, but without any additional staff. The Bar Leadership alumni group, in conjunction with the Administrative Office of Courts (AOC), studied the difficulty in collecting these criminal court costs in 2012. That group also assisted AOC in creating county-by-

county charts regarding the collection and distribution of costs in each area. The 2014 Baldwin County Court collections and distributions report obtained by the Bar also illustrates this information. The wisdom of jailing Alabamians who are unable to pay fees, fines, and costs in traffic or criminal matters also is an issue, and has been challenged in Federal court. In March 2017, the Southern Poverty Law Center announced a \$680,000 class-action settlement with Alexander City based on the Alexander City Police Department’s practice of jailing persons who could not pay court costs owed to the Alexander City Municipal Court. Additionally, there are other lawsuits pending challenging the validity of several other court costs and fees imposed in the last few years.

PARCA has noted that the amount of collections in both the civil and criminal courts has dramatically decreased over this same time period of decreased filings. This data has been updated to include 2014 in comparison to the prior three fiscal years.

The PARCA study suggested the following as ways of promoting a properly-funded and efficient judiciary through uniform administration and funding and to require appropriations to be adequate and reasonable. The Task Force recommends the Bar continue its advocacy for these issues as discussed more fully in the PARCA study and as further developed.”

Merit Selection of Judges

“The Bar has long supported the selection of justices and judges in a manner that insulates the judiciary from political pressures and influences. To this extent, the Task Force recommends, as did its predecessor, efforts to implement the recommendation made by the Board of Bar Commissioners in 2004 for establishing merit selection of appellate judges.

–To maintain and/or establish a committee or task force

- To study the issue of selection of circuit and district judges and, where

- appropriate, coordinate with the efforts of the various circuit and district judges associations; and
- To consider the effectiveness of setting minimum standards and experience levels for judge selection.

Finally, the Bar should continue to enhance the relationship between the Bar and Judiciary. Two areas to develop this relationship are through setting annual meeting sites and dates to correspond with State Circuit Judges’ meetings, and to consider appointing a task force comprised of judiciary and bar members to address both attorneys’ behavior before judges and judges’ behavior before attorneys.”

Increase Public Understanding and Legislative Understanding of Importance of Courts and Independent Judiciary

“The Bar and its members should actively participate in public discourse in a manner that will increase public understanding of the importance of the rule of law, our judicial system, and an independent judiciary. We similarly should seek to inform and educate our local legislators regarding those issues and others. Among those issues we should advocate in favor of are adequate funding of the judicial system; wise allocation of judicial resources across the State; the importance of judicial discipline, including the Judicial Inquiry Commission and the Court of the Judiciary; and any necessary updates to the Alabama Constitution that would improve the administration of justice. The Task Force recommends immediate efforts to promote awareness to attorneys regarding the funding of our judicial system. The Task Force recommends the creation of a task force to develop a plan for furthering these goals.”

*Does your local bar want to talk more about these funding issues?

Contact [Suzi Huffaker](#) to learn more. <

> MEMBER BENEFITS SPOTLIGHT



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The Alabama State Bar, through an arrangement with the American Bar Association, offers a full selection of materials from the [ABA Web Store](#), including great books on law firm finance, management, marketing and technology produced by LP Publishing, at a 15 percent discount when you use the discount code ALABAR. Orders will be shipped directly from the ABA within seven to 10 business days.



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> IMPORTANT NOTICES



Annual License Fees and Membership Dues

Renewal notices for payment of annual license fees and membership dues were emailed September 5. The fee for an Occupational License is \$325 (plus the statutory late fee for payments made after October 31) and the dues for a Special Membership are \$162.50. *We are paperless this year, so you did not receive a paper invoice in the mail.*

Online payments may be made by clicking [here](#) or you may create and print a voucher to mail with your check. Log in to the website and select "Consolidated Fee Invoice" from your MyDashboard page to make an online payment or print a voucher. Instructions for the payment process and help with logging in are available online as needed.

Public Notice for Appointment of United States Magistrate Judge

A vacancy is expected to exist requiring the appointment of a full-time United States Magistrate Judge for the Middle District of Alabama at Montgomery, Alabama. This appointment is for a full eight-year term beginning upon appointment. The duties of the position are demanding and wide ranging and will include: (1) conduct of most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pretrial matters and evidentiary proceedings on delegation from the judges of the district court; (4) trial and disposition of civil cases upon consent of the litigants; (5) examination

and recommendations to the judges of the district court in regard to prisoner petitions and claims for Social Security benefits; and (6) conduct of mediations.

The basic jurisdiction of the United States Magistrate Judge is specified in 28 U.S.C. §§ 631 *et seq.* To be qualified for appointment, an applicant must:

- Be a member in good standing of the bar of the highest court of the state in which the magistrate judge is appointed. A nominee must have been for at least five years a member in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico or the Virgin Islands of the United States;
- Have been engaged in the active practice of law for a period of at least five years (with some substitutes authorized);
- Be competent to perform all the duties of the office; be of good moral character; be emotionally stable and mature; be committed to the rule of law and to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;
- Be less than 70 years old; and
- Not be related to a judge of the U.S. District Court for the Middle District of Alabama.

A merit selection panel comprised of attorneys and other members of the community will review all applicants and recommend to the judges of the

District Court, in confidence, the five persons whom it considers to be qualified. The Court will make the appointment, following an FBI and IRS investigation of the appointee. An affirmative effort will be made to give due consideration to all qualified candidates, including women and members of minority groups. The salary of the position is \$188,692 per annum.

Magistrate judge application forms may be obtained on the U.S. District Court's [website](#). Further information on the magistrate judge position may be obtained from Debra P. Hackett, clerk of the District Court, One Church St., Montgomery, AL 36104. Application packets should include the completed application, a cover letter and resume and no more than three letters of recommendation. The cover letter is limited to two pages and should address why you want to be a United States Magistrate Judge. To ensure impartiality please do not have references directly contact the court or members of the merit selection panel. The original signed application packet and 10 copies must be received by Debra P. Hackett, clerk of the Court, no later than Thursday, November 9, 2017.

Application packets may be delivered personally to the Clerk's office in a sealed envelope addressed to Debra P. Hackett, Clerk of Court, or they may be mailed to Clerk, U.S. District Court, Attention: Debra P. Hackett, One Church St., Montgomery, AL 36104. <

