

Addendum

Published by the Alabama State Bar / www.alabar.org

Dothan Firm Helps Play Santa

Community comes together, children receive gifts during "Christmas Festival in Justice Park"

Joy Knight, eight, sat on Santa's lap smiling for the camera. Bubbles floated behind her while melodies from Greater Beulah Baptist Church's choir filled the air. Nearby, one of Santa's elves rolled out a brand new bright pink and purple bicycle with Joy's name on it. The smile grew even bigger as did her eyes.

"Wow," she said in disbelief.

She was one of 100 kids who received gifts from Santa with the help of the **Law Offices of Cochran, Cherry, Givens, Smith, Lane & Taylor**. The firm had requested the names of 100 of the Salvation Army's "angels."

Judy Sewell, Joy's mom, said the whole thing was wonderful. In addition to the bikes her son and daughter received they got a giant trash bag filled with gifts to put under the tree.

"Not everyone is fortunate enough to get all the stuff they want or need," she said referring to the Angel Tree program. "This kind of thing, that's what the community needs. The community needs to come together to help each other." She said she thought it was great that there was an entire program with music and prayer instead of just handing out gifts.

That was the plan, attorney **Sam Cherry** said.

"I think this is an important program because it causes us to come together as a community," he said. "It is one thing to just give money, but this is more than that. The spirit of Christmas is definitely here. To see the faces of these children is really something special."

The firm, with the help of local sponsors, purchased all the gifts and organized what they are calling the first "Christmas Festival in Justice Park." In addition to the entertainment, there was face painting, hot chocolate, popcorn and hot dogs.



Members of Greater Beulah Baptist Church sing Christmas songs. (Danny Tindell)

Salvation Army Capt. Becky Gilliam said they had about 1,100 names of children for their Angel Tree this year and it helped them out tremendously that the firm took on 100 of those names. Gilliam stressed that without assistance from people or groups like the law firm, many of the families at the festival would have nothing to put under their trees.

Program coordinator Sharon Cherry said this is an event they plan to continue to do and they hope it grows and becomes bigger each year. Sam Cherry stressed that the program isn't just for those receiving gifts but for the whole community.

"We really want the whole community to enjoy the magic of giving," he said, gesturing to all the smiling children running around with new bikes. "And, so far, this has been an incredible success and has meant so much to us."

—Abbey Brown, **Dothan Eagle**, December 20, 2006 edition

Notice of Election – President-Elect

The Alabama State Bar will elect a president-elect in 2007 to assume the presidency of the bar in July 2008. Any candidate must be a member in good standing on March 1, 2007. Petitions nominating a candidate must bear the signature of 25 members in good standing of the Alabama State Bar and be received by the secretary of the state bar on or before March 1, 2007. Any candidate for this office must also submit with the nominating petition a black and white photograph and biographical data to be published in the May 2007 **Alabama Lawyer**. Ballots will be mailed between May 15 and June 1 and must be received at the state bar by 5 p.m. on the second Friday in June (June 8, 2007).



Proper E-mail Practices Helpful in Minimizing Clutter and Virus/Spam Proliferation

Hidden viruses can be in your e-mails that your virus protector can't detect. So, when you forward an e-mail from someone, even though you may know them, this is how spammers and others get your e-mail address or friends get a hidden virus. With more people getting PCs but not virus programs, you need the following information for your own protection.

Do you *really* know how to forward e-mails? About half of us don't. Do you wonder why you get viruses or junk mail? Do you hate it? Every time you forward an e-mail there is information left over from the people who got the message before you, namely their e-mail addresses and names. As the messages get forwarded along, the list of addresses builds, and builds, and builds, and all it takes is for some poor sap to get a virus, and then his or her computer can send that virus to every e-mail address that has come across his computer. Or, someone can take all of those addresses and sell them or send junk mail to them in the hopes that you will go to the site and he will make five cents for each hit. That's right, all of that inconvenience over a nickel! How do you stop it? There are several easy steps.

When you forward an e-mail, delete all of the other addresses that appear in the body of the message (at the top). That's right, *delete them*. Highlight them and delete them, backspace them, cut them, whatever it is you know how to do. It only takes a second. You must click the "Forward" button first and then you will have full editing capabilities against the body and headers of the message. If you don't click on "Forward" first, you won't be able to edit the message at all.

When you send an e-mail to more than one person, do not use the "To:" or "CC:" fields for adding e-mail addresses. Always use the "BCC:" (blind carbon copy) field for listing the addresses. The people you send to will only see their own e-mail address. If you don't see your "BCC:" option click on "To:" and your address list will appear. Highlight the address and choose "BCC:"—that's it, it's that easy. When you send to "BCC:" your message will automatically say "Undisclosed

Recipients" in the "TO:" field of the people who receive it.

Remove any "FW:" in the subject line. You can re-name the subject if you wish or even fix spelling.

Always hit your "Forward" button from the actual e-mail you are reading. Ever get those e-mails that you have to open ten pages to read the one page with the information on it? By forwarding from the actual page you want someone to view, you stop them from having to open many e-mails just to see what you sent.

Have you ever gotten an e-mail that is a petition? It asks you to add your name and address and then forward it to your friends. The e-mail can be forwarded on and on and collect thousands of names and e-mail addresses. The completed petition is actually worth a couple of bucks to a professional spammer because of the wealth of valid names and e-mail addresses in it. If you want to support the petition, send it as your own personal letter to the intended recipient. Your position may actually carry more weight as a personal letter than a "laundry list" of names and e-mail addresses on a petition. (And don't believe the ones that say that the e-mail is being traced, 'cause it just ain't so!)

Some other irritating e-mails include:

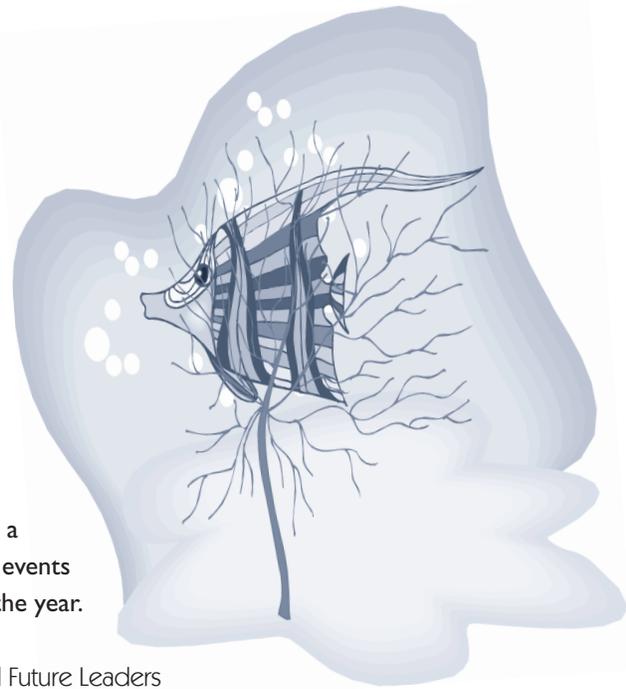
1. The one that says, "Send this e-mail to ten people and you'll see something great run across your screen." Or, sometimes they'll just tease you by saying "something really cute will happen." It ain't gonna happen!

2. Don't let the bad luck ones scare you either—they get trashed. (This could be why I haven't won the lottery...)

3. Before you forward an 'Amber Alert' or a 'Virus Alert' or some of the other e-mails floating around, check them out. Most of them are junk mail that have been circling the net for years! Just about everything you receive in an e-mail that is in question can be checked out at Snopes (www.snopes.com.) It's really easy to find out if it's real or not. If it's not, please don't pass it on.

Here's an idea! Let's send this to everyone we know. This is something that *should* be forwarded. Amen!

The Best Way to "Catch" New Clients? Find Their Associations and Get Actively Involved, Part II



In the December issue of the *Addendum*, readers learned from an expert in law firm marketing how to convert a prospect into a client. Suggestions included staying out of “bars;” figuring out what you want to “catch;” thinking industry and not just an area of law; doing your research and developing a short list (of possible contacts); and picking one (group) and going deep. Here are more ways to maximize client development from involvement in associations.

#5) Jump in with Both Feet

Once you’ve found the right organization, get actively involved. And, frankly, this is where most lawyers fall down. They join and then never go.

Getting meaningful results through organizational involvement is like joining the gym. If you want results, you have to go and you have to exercise. It has to be a top priority.

Get involved by going to monthly meetings. You start to meet people. You develop friendships. Remember that it takes eight to 11 “impressions” to turn a prospect into a client. Here’s where they start to happen fast.

#4) Join a Committee and Perform

Join a committee, preferably with programs or membership. Both tend to be active and visible within the organization and will afford you the opportunity to meet lots of people. Then volunteer to lead a highly visible project and perform like crazy. Do a great job and people will notice.

Remember those eight to 11 impressions? Here’s where they start to happen really, really fast...and it all happens very naturally.

#3) Throw Some Money at Them

Sponsor a meeting or two, or run an ad in the membership directory. Make an impact with your dollars and resist the temptation to spread them too thinly. It is far more effective to pick one high-profile annual event and own it as the primary sponsor, rather than being one of three dozen bronze

sponsors for a multitude of events throughout the year.

#2) Befriend Future Leaders

Befriend key leaders (both current and future) of the organization. Seek them out at meetings. Set up a breakfast or lunch meeting twice a month with selected board members and committee chairs. Do some research and ask about their company, its plans for the future and their role in the organization. Get to know them on a personal level. Be sincere and, by all means, don’t ask for business too soon. You’ve got to build trust and that takes time...remember, it takes eight to 11 impressions.

#1) Achieve a Leadership Position

In time, seek to chair a committee. This can be realistically achieved within two years. A year or so later, you are likely to find yourself in a position to run for a seat on the board of directors. You can become president of almost any organization you want within five years if you set your sights on the prize and go for it.

As you climb within the organization, seek opportunities to participate in programs and contribute articles to the newsletter or Web site on a regular basis. Find out what they need and help them get it.

If you find the right organization and do the things set forth in these articles, you will be recognized as a can-do person who knows and understands the concerns and issues facing the industry. Along the way, you will have developed relationships with persons in a position to hire or refer you. It doesn’t get much better than that.

But it takes time, commitment and perseverance. Get out there. Get active. Start today.

—John Remsen, Jr., president, *TheRemsenGroup*, ©2007



Scott Burnett Smith, Justice Clarence Thomas and Ivan B. Cooper in Atlanta at the first ECAPI

United States Supreme Court Justice Clarence Thomas was a featured speaker at the inaugural Eleventh Circuit Appellate Practice Institute (“ECAPI”) held in Atlanta in October at the Georgia Bar Center. The ECAPI was the first event of its kind in the Eleventh Circuit, and was the result of a collaborative effort of the Appellate Practice sections of the Alabama, Florida and Georgia state bars. Representing Alabama on the ECAPI Planning Committee were **Scott Burnett Smith** of Bradley Arant Rose & White LLP in Huntsville, and **Ivan B. Cooper** of Lightfoot, Franklin & White LLC in Birmingham.

“Justice Thomas is the circuit justice for the Eleventh Circuit, so we were especially happy that he was able to come speak to the ECAPI. Justice Thomas spoke and answered questions from the participants for over an hour and, afterwards, he was gracious enough to stay and talk individually with many people in the audience,” said Smith.

Cooper explained, “We thought that there was a need for a seminar focusing on Eleventh Circuit issues and, based on the response, it seems we were right. Early enrollment to the ECAPI was offered to members of the Appellate Practice sections of the three state bars, and it sold out quickly.” Cooper was also chair of the Alabama Appellate Practice Section during the planning of the ECAPI.

In addition to Justice Thomas, another highlight was a mock oral argument presented by two of the nation’s leading oral advocates, Miguel Estrada of Washington, D.C., and

Eleventh Circuit Kicks Off Appellate Practice Institute in Atlanta

Justice Clarence Thomas guest speaker at joint effort of Alabama, Florida and Georgia state bars

Jim Fleissner, professor of law at Mercer University Law School in Macon. Estrada and Fleissner argued a mock case based on the Judith Miller/Valerie Plame reporter’s privilege issue. Eleventh Circuit judges, the **Hon. William Pryor**, **Hon. Phyllis Kravitch** and **Hon. Stanley Marcus**, served as the judicial panel for the mock argument.

Other Alabama attorneys who spoke at the seminar were **Harlan I. Prater, IV** of Lightfoot, Franklin & White LLC, and **G. Douglas Jones** of Whatley Drake LLC.

Addendum (USPS 013-915), official newsletter of the Alabama State Bar, is published six times a year (December, February, April, June, August, October) by *The Alabama Lawyer* Board of Editors, P.O. Box 4156, Montgomery 36101-4156.

Contributions from members are welcomed and encouraged. Views expressed are those of the authors, not necessarily those of the board of editors, officers or board of bar commissioners of the Alabama State Bar. Subscriptions: ASB members receive *Addendum* as part of their annual dues payment; \$15 of this goes to subscriptions for *The Alabama Lawyer* and *Addendum*. Copyright 2007 The Alabama State Bar. All rights reserved. Periodicals postage paid at Montgomery, AL. Postmaster: Send address changes to *Addendum*, P.O. Box 4156, Montgomery, AL 36101-4156

Editor: Ashley H. Hamlett, Montgomery,
jhamlett@knology.net

Mediators and Mediation Confidentiality

Alabama is one step closer to its goal of maintaining confidentiality in the mediation process

Truth be told, a key element in mediation is confidentiality. Just as in any other attempt to negotiate a settlement before trial, parties do not want their offers, discussions, demands and details revealed in court at a later time if agreement isn't reached. Nor do they want to see their mediator on the stand testifying and violating the promise of impartiality. Indeed, an important part of the acceptance of mediation in Alabama over the past 13 years has been the goal of maintaining confidentiality in the process.

As a best practice, parties will sign an agreement to mediate before the mediation begins, and will agree to keep negotiations confidential. If the case is in court, confidentiality is covered by the Alabama Civil Court Mediation Rules at Rule 11 (applies in district and circuit court), and the Alabama Appellate Mediation Rules at Rule 8. Both rules state that the mediator cannot be compelled to testify on behalf of one party or another. At present, however, there is no statutory provision in the *Code of Alabama* ensuring confidentiality of mediation, and in particular, nothing stating that the mediator cannot be compelled to testify about the mediation at a later date. Mediators (99 percent of whom are lawyers) who mediate pre-suit, or who are not mediating at court order, may later find themselves not covered by rule or statute. Alabama statistics show that about two-thirds of mediations are not court-ordered.

To rectify this situation a bill will be introduced in the next session of the Alabama legislature. It is similar to legislation passed in most states in the country. It is supported by the ASB Board of Bar Commissioners, the Alabama Supreme Court Commission on Dispute Resolution, the ASB Committee on ADR and the courts' Legislative Coordinating Council. In past years, it has passed both houses of the Alabama legislature, but not in the same session. (Most recently, it was a casualty of the log-jam that occurs at the end of most sessions.)

The bill, if enacted, would provide, in pertinent part: "A



mediator shall not be compelled in any adversary proceeding or judicial forum, including, but not limited to, a hearing on sanctions brought by one party against another party, to divulge the contents of documents received, viewed, or drafted during mediation or the fact that such documents exist nor shall the mediator be otherwise compelled to testify in regard to statements made, actions taken, or positions stated by a party during the mediation." This language is the same as in Rule 11(d), Alabama Civil Court Mediation Rules, and similar to the language in Appellate Mediation Rule 8. It will be a clear direction for mediator confidentiality.

—Jim Vickrey, J.D., Ph.D., member of the ASB ADR Committee and professor of speech communication, Troy University Montgomery

ABA TECHSHOW[®] 2007
PRESENTED BY THE **ABA** LAW PRACTICE MANAGEMENT SECTION
MARKETING • MANAGEMENT • TECHNOLOGY • FINANCE

The World's Premier Legal Technology Conference & Expo

ABA TECHSHOW 2007 Highlights:

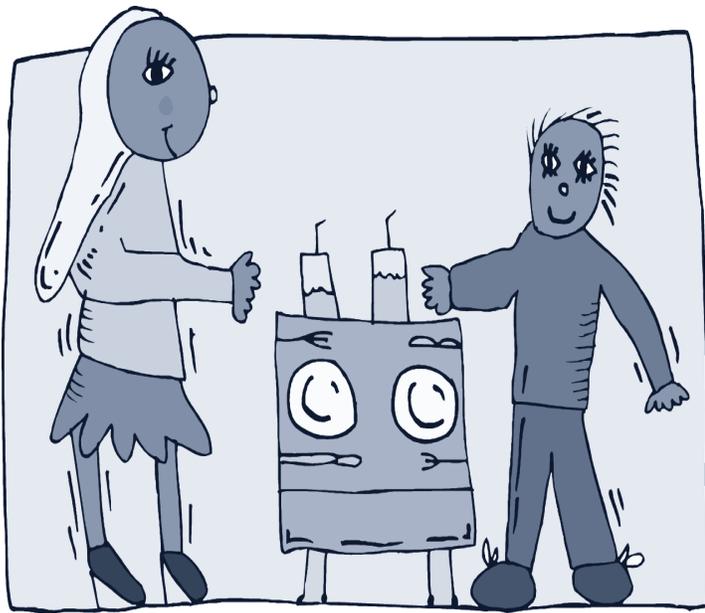
- More Than 50 Educational Sessions
- Two-Day Expo Featuring Over 100 Vendors
- Law Firm Discounts
- Free Thumb Drive
- Three Days of CLE
- Product Information Sessions
- Networking Reception
- Passport to Prizes Drawing
- Deep Discounts on LPM Publications

Register early and save up to \$300!
Visit www.techshow.com today!

March 22–24, 2007
Sheraton Chicago Hotel & Towers, Chicago, IL

Special One-Day Rate for Solo/Small Firm Day at ABA TECHSHOW—Friday, March 23

ALABAMA STATE BAR
PP 707



Missed Opportunities

Motion to Compel Lunch

A generation ago, when I was a young lawyer in a hurry, I seldom took the time to go out for lunch. I did not want to waste a billable hour in the middle of the day by doing something as foolish as leaving the office to break bread and enjoy stimulating conversation with fascinating friends. Instead, like Thomas Jefferson, I dined alone, if you call wolfing down a bologna sandwich at your desk “dining.” Actually, what I was doing was a sure-fire recipe for at best, indigestion, and at worst, a myocardial infarction.

One day I was grabbing lunch at a sandwich shop. As I dashed from the deli with a briefcase in one hand and a paper bag in the other, I ran into the legendary Lucius Burch, a giant of the Tennessee Bar. This will always be filed in my brain under the category “Missed Opportunities.” Mr. Burch said to me, “Son, where are you headed in such a hurry?”

“Oh, I’m just going back to the office.”

“But what about lunch?” asked the great lawyer.

“I’m just going to eat a sandwich at my desk. I have a lot of work to do,” I explained, thinking my work ethic would win Mr. Burch’s approval.

“Is a statute of limitations about to run on ya’ today?” asked Mr. Burch, who was clearly in no hurry.

“Umm . . . well . . . um, no sir,” I replied.

“Well, in that case, son,” said Mr. Burch with a smile, “let me take you to lunch at the Wolf.” He was referring to the Wolf River Society, a great non-club lunch club Mr. Burch founded in downtown Memphis back in the ‘60s.

For reasons I will never be able to explain, I politely asked if I could have a rain check. Mr. Burch said that would be fine, but he added, “Son, you shouldn’t eat lunch at your desk. You should always go out for lunch and enjoy good food, camaraderie and stimulating conversation with friends.”

I never cashed my rain check, and now it’s too late. Mr. Burch has joined Clarence Darrow, Raymond Burr and

Gregory Peck at that big courtroom in the sky.

I have no idea what case I was working on that memorable day back in the 1980s, but trust me, it was not *Brown v. Board of Education*, *Bush v. Gore* or even *The People v. Larry Flynt*.

I recently thought about the lunch that never was when I read about Judge Pendleton Gaines, a Superior Court Judge in Arizona, who granted a Motion to Compel Acceptance of Lunch Invitation. You read that right, notice-pleading-breath!

In the case of *Physicians Choice of Arizona, Inc. v. Mickey Miller*, plaintiff’s counsel extended a lunch invitation to defense counsel “to have a discussion regarding discovery and other matters.” Plaintiff’s counsel even offered to pay for lunch, but defense counsel (who was apparently pretty busy working at his desk) failed to respond, and so the plaintiff filed a motion.

Judge Gaines considered the motion, reportedly over a fine meal at his favorite eatery in Phoenix. He then went back to his office and entered an Order Granting Plaintiff’s Motion to Compel Acceptance of Lunch Invitation, providing in pertinent part as follows: “Total cost (of lunch) will be calculated by the amount of the bill, including appetizers, salads, entrees and one non-alcoholic beverage per participant. A 20 percent tip will be added to the bill, which will include tax. Each side will pay his pro rata share according to number of participants. The court may reapportion the cost on application for good cause or may treat it as a taxable cost.”

I wish that Judge Gaines had been around when I was too busy to have lunch. Had he simply issued an order for me to be at the Wolf River Society at high noon and break bread with Lucius Burch, my life would be immeasurably better.

But I don’t need a court order anymore. I’m hungry. Now, if you’ll excuse me, I’m headed to lunch.

—Bill Haltom, Thomason, Hendrix, Harvey, Johnson & Mitchell,
Memphis

(Reprinted from the October 2006 *Tennessee Bar Journal*)

Alabama's Latino Population Now Has a Voice in the Legal Arena

At the organizational meeting of the Ad Hoc Committee of Spanish Speaking Lawyers, Birmingham attorney Wendy Padilla-Madden (Balch & Bingham LLP) was selected interim chair and Michael Congiardo of Mobile (Legal Services Alabama) was chosen as interim vice chair. The purpose of this meeting was to gather together those lawyers who have indicated an interest in forming a new ad hoc committee that will devise and implement projects to serve the legal needs of Alabama's Latino population. This new entity is an outgrowth of a demonstration project created by the state bar last year working in partnership with Legal Services Alabama. LSA provided a toll-free number that connected any Spanish-speaking caller with a bi-lingual attorney in their call center. That attorney determined if the caller could be assisted by LSA and, if not, then the caller was referred to the bar's Lawyer Referral Service. A referral was then made to an attorney member



Michael Congiardo and Wendy Padilla-Madden

of the LRS who spoke Spanish or whose office has a Spanish speaking staff member.

Members of the Alabama State Bar who believe they can meaningfully contribute to the work of the committee and would like to become a member are asked to send an e-mail with all pertinent contact information and indicating such interest to marcia.daniel@alabar.org. There are a number of potential projects including: translating the ASB public information brochures into Spanish, working with the AOC to develop a cadre of trained Spanish language interpreters to assist judges in court, and expanding the number of bi-lingual attorneys currently enrolled in the LRS Spanish Speaking Lawyers panel.

Preliminary Draft of Proposed Amendments to the Federal Rules of Practice and Procedure

The Judicial Conference of the United States Committee on Rules of Practice and Procedure has requested public comments on the preliminary draft of proposed amendments to the Federal Rules of Bankruptcy and Criminal Procedure and the Federal Rules of Evidence. The full text of the proposed rules amendments and explanatory Committee Notes are posted at www.uscourts.gov/rules and available on request from the Secretary to the Standing Committee. All comments are welcomed and will be considered carefully by the respective rules committees. Written comments or comments sent electronically must be received by the Secretary no later than February 15, 2007. Send comments to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544 or to Rules_Comments@ao.uscourts.gov.

2007 Alabama State Bar Annual Meeting



July 18 -21
Grand Hotel Marriott Resort
Point Clear, Alabama



Published by the Alabama State Bar

Published by the
ALABAMA STATE BAR

P.O. Box 4156
Montgomery, Alabama 36101

Periodicals Postage
Paid
Montgomery, AL