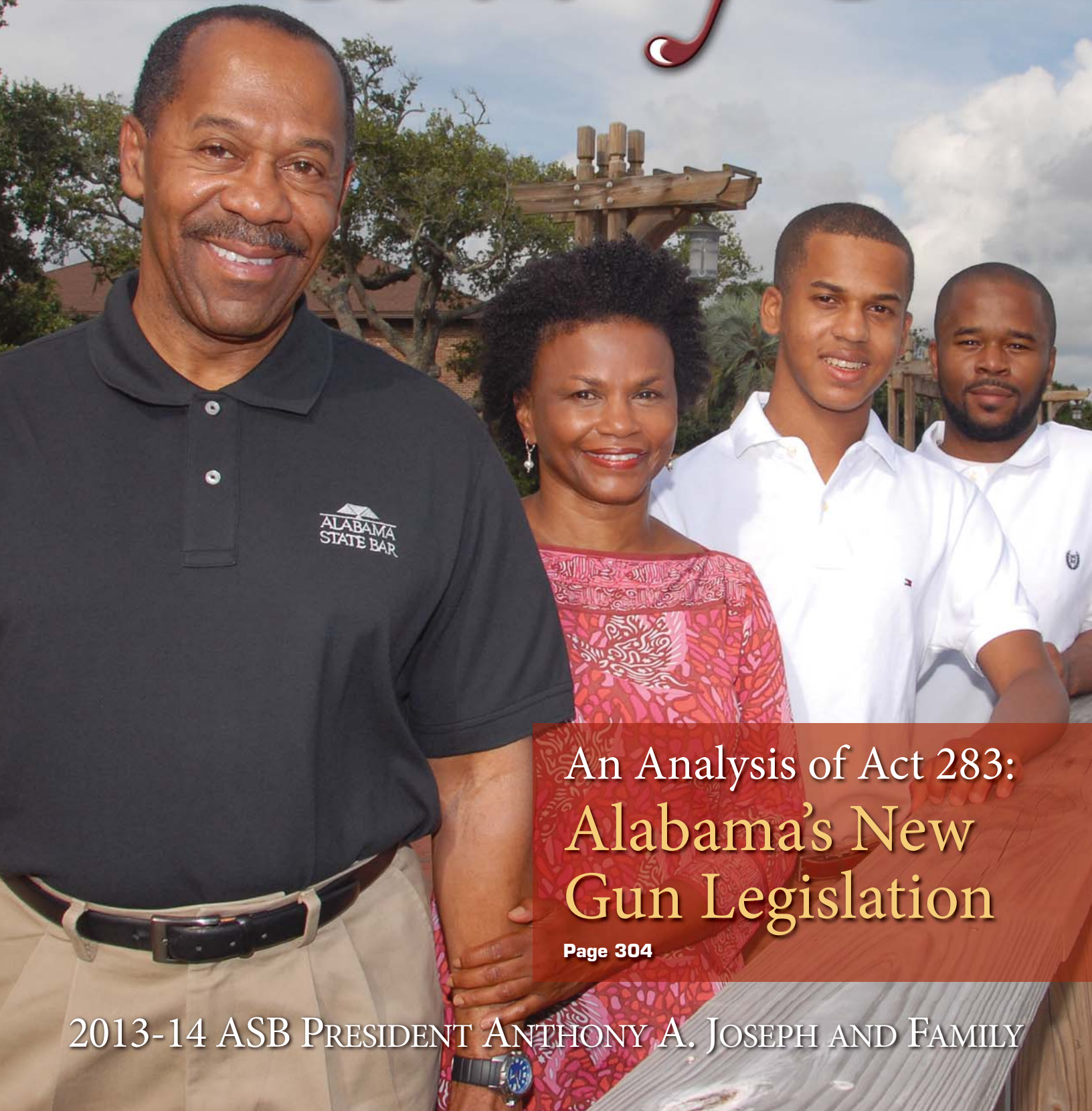


The Alabama Lawyer

September 2013 | Volume 74, Number 5



An Analysis of Act 283:
Alabama's New
Gun Legislation

Page 304

2013-14 ASB PRESIDENT ANTHONY A. JOSEPH AND FAMILY

Is your practice more demanding than ever?



The best malpractice insurance takes no time to find. AIM makes it easy.

Dedicated to insuring practicing attorneys.



**Attorneys Insurance Mutual
of the South®**

**200 Inverness Parkway
Birmingham, Alabama 35242**

**Telephone 205-980-0009
Toll Free 800-526-1246
Fax 205-980-9009**

www.AttysInsMut.com

“Insuring and Serving Practicing Attorneys Since 1989”

Copyright 2013 by Attorneys Insurance Mutual of the South®

Scan for Application



NEW



THE NATIONAL ACADEMY OF
DISTINGUISHED NEUTRALS
ALABAMA CHAPTER

*The following Alabama attorneys are recognized for
Excellence in the field of Alternative Dispute Resolution*



Phil Adams
OPELIKA



Danny Banks
HUNTSVILLE



William Coleman
MONTGOMERY



Sam Crosby
DAPHNE



Charles Denaburg
BIRMINGHAM



Charles Fleming
MOBILE



Arthur Hanes
BIRMINGHAM



Bernard Harwood
TUSCALOOSA



Braxton Kittrell
MOBILE



Rodney Max
BIRMINGHAM



Ed McDermott
MOBILE



William Ratliff
BIRMINGHAM



Allen Schreiber
BIRMINGHAM



Kenneth Simon
BIRMINGHAM



Fern Singer
BIRMINGHAM



Clarence Small
BIRMINGHAM



Glynn Tubb
DECATUR



Harold Stephens
HUNTSVILLE



Michael Upchurch
MOBILE



Michael WALLS
BIRMINGHAM



Brad Wash
BIRMINGHAM

Wednesday

17



Attention Litigators - Check Available Dates & Schedule Online FREE at

WWW.ALABAMA-MEDIATORS.ORG

*The National Academy of Distinguished Neutrals is an invite-only professional association of over 800 senior mediators & arbitrators throughout the US.
For more information, please visit www.NADN.org/about. To search our free national database, visit www.nadn.org/directory*



Cumberland School of Law

where good people become exceptional lawyers

Fall 2013 CLE Programs

Sept. 20	Developments and Trends in Health Care Law 2013
Sept. 27	DUI: From Arrest to Appeal
<hr/>	
Oct. 4	Annual Bankruptcy Law Seminar
Oct. 11	Social Media and Ethics featuring Stuart Teicher
Oct. 18	Mandatory Professionalism
Oct. 24–25	Southeastern Business Law Institute 2013
<hr/>	
Nov. 1	Anatomy for Lawyers featuring Samuel D. Hodge
Nov. 8	Recent Developments in Alabama Law
Nov. 15	Trends in Commercial Real Estate Law 2013
Nov. 22	Mandatory Professionalism
<hr/>	
Dec. 6	Annual Employment Law
Dec. 12	Combating Obstructionism and Attacking “I Don’t Know” and “I Don’t Remember” at Deposition featuring Robert Musante
Dec. 20	CLE by the Hour

Online Courses

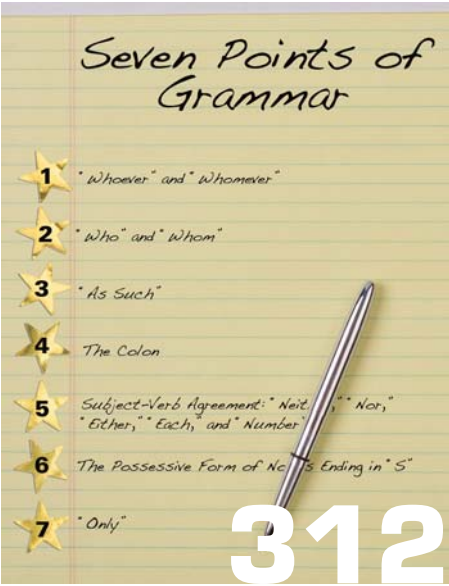
Cumberland CLE offers a wide range of online CLE courses. Conveniently view anywhere, 24/7, in increments of time that are convenient for you, and without the time and expense of travel away from your office.

Pursuant to Alabama CLE Rule 4.1.16, you can receive half (6) of your CLE credit hours per year online. Start earning 2013 credit now.



cumberland.samford.edu/cle • 205-726-2391 or 1-800-888-7454 • lawcle@samford.edu

Samford University is an Equal Opportunity Institution that complies with applicable law prohibiting discrimination in its educational and employment policies and does not unlawfully discriminate on the basis of race, color, sex, age, disability, veteran status, genetic information, or national or ethnic origin.



FEATURES

294 Note from the Editor
Lawyers: We Want Your Ideas
By Gregory H. Hawley

300 ASB Spring 2013 Admittees

304 An Analysis of Act 283:
Alabama's New Gun Legislation
By Aaron L. Dettling

312 Seven Points of Grammar
By Allen Mendenhall

316 Annual Meeting Highlights

322 Book Review:
The Alabama Appellate Practice Guide, 2013 Edition
By Ed Haden
Reviewed by Judge R. Bernard Harwood, Jr.

323 The Women's Section of the Alabama State Bar:
**Honoring the Past, Preparing for the Future,
Concerned about the Present**
By Sherrie L. Phillips and Dean Anita K. Hamlett

326 In Alabama We've Done Well, but the Challenge
Has Only Begun
By J. Flynn Mozingo

329 New Eleventh Circuit Pattern Jury Instructions
By Will Hill Tankersley

330 State Bar Leadership Forum Receives National
Award from American Bar Association

332 Addiction and Mental Illness, and the
Benefits of Recovery
By Robert B. Thornhill



ON THE COVER

Pictured on the cover are 2013-14 ASB President Anthony Joseph and wife Cassandra, with two of their sons, Aaron and Kevin. Not pictured is son Justin.

—Photographed at the Grand Hotel Marriott Resort, Golf Club & Spa by Manual Chavez, www.mcphotos.com

ADVERTISERS

Alabama Crime Victims
 Compensation.....335

Attorneys Insurance Mutual
 of the South282

Birmingham School of Law306

Cain & Associates Engineers.....331

CLE Alabama.....291

Cumberland School of Law284

Davis Direct.....343

J. Forrester DeBuys, III.....331

Expedited Process
 Serving, LLC307 & 354

The Finklea Group.....347

Freedom Court Reporting.....355

Gilsbar Management Services, LLC356

LawPay295

The Locker Room293

National Academy of
 Distinguished Neutrals283

Professional Software Corporation334

Thomson Reuters.....insert

Upchurch Watson White & Max289

Vowell & Goldsmith299

ALABAMA STATE BAR

415 Dexter Avenue
 Montgomery, AL 36104
 (334) 269-1515 • (800) 354-6154
 FAX (334) 261-6310
www.alabar.org

ALABAMA STATE BAR STAFF

Executive DirectorKeith B. Norman
 Director of Personnel and Operations.....Diane Locke
 ASB Foundation Assistant/
 Executive AssistantAnn Rittenour
 Assistant Executive Director.....Edward M. Patterson
 Director of External Relations
 and Projects.....Christina Butler
 Administrative Assistants for External Relations
 and ProjectsMary Frances Garner
 Marcia N. Daniel
 Director of Digital Communications.....J. Eric Anderson
 Director of Information TechnologyDolan L. Trout
 ProgrammerLarry D. Pratt
 Website AdministratorWillie Murphy
 Information Systems Manager.....O. Hunter Harris
 Director of Regulatory Programs.....Angela Parks
 MCLE Administrative AssistantCarol Thornton
 Membership
 Administrative Assistant.....Cathy Sue McCurry
 Regulatory Programs
 Administrative Assistant.....Doris McDaniel
 Director of Publications.....Margaret L. Murphy
 Director of AdmissionsDorothy D. Johnson
 Admissions Administrative Assistants.....Crystal Jones
 Sonia Douglas
 Director of CommunicationsBrad Carr
 Financial AdministratorGale Skinner
 Financial Assistant/Scanning OperatorKristi Neal
 Graphic Arts DirectorRoderick Palmer
 Receptionist.....Stephanie Oglesby
 Director of Service ProgramsLaura A. Calloway
 SP Administrative AssistantKristi Skipper
 Lawyer Referral Service Representative.....John Dunn
 Volunteer Lawyers Program DirectorLinda Lund
 VLP AssistantKatherine L. Church
 Intake Specialists.....Deborah Harper
 Carrie Black-Phillips
 Alabama Lawyer Assistance Program
 DirectorRobert B. Thornhill (334-224-6920)
 ALAP Case ManagerShannon Knight
 ALAP Administrative AssistantSandra Dossett
 Alabama Law Foundation, Inc. DirectorTracy Daniel
 ALF Administrative AssistantsSharon McGuire
 Sue Jones
 Access to Justice Coordinator.....Chandler Barrett
 Alabama Center for Dispute Resolution
 DirectorJudith M. Keegan (269-0409)
 ADR Assistant.....Patsy Shropshire

ALABAMA STATE BAR CENTER FOR PROFESSIONAL RESPONSIBILITY STAFF

General Counsel.....J. Anthony McLain
 Secretary to General Counsel.....Julie Lee
 Assistant General CounselJeremy W. McIntire
 Assistant General Counsel.....Mark B. Moody
 Assistant General CounselJohn E. Vickers, III
 Complaints Intake Coordinator.....Kim Ellis
 Disciplinary Clerk.....Bonnie Mainor
 Client Security Fund CoordinatorLaurie Blazer
 Client Security Fund Assistant.....Yvette Williams
 Paralegals/Investigators.....Dianne T. Gray
 Cheryl L. Rankin
 Carol M. Wright
 ReceptionistSherry Langley

Gregory H. Hawley, Birmingham.....Chair and Editor
ghawley@joneshawley.com
 Linda G. Flippo, BirminghamVice Chair and Associate Editor
lflippo@whitearnold.com
 Wilson F. Green, Tuscaloosa.....Vice Chair and Associate Editor
wgreen@fleenorgreen.com
 Margaret L. Murphy, Montgomery.....Staff Liaison and
 Director of Publications
margaret.murphy@alabar.org

Robert A. Huffaker, Montgomery...Chair and Editor, 1983-2010

BOARD OF EDITORS

Melanie M. Atha, Birmingham • Marc J. Ayers, Birmingham • David A. Bagwell, Fairhope • LaVeeda M. Battle, Hoover • Jennifer M. Bedsole, Birmingham • H. Lanier Brown, II, Birmingham • Henry L. (Max) Cassidy, Jr., Fairhope • Rhonda P. Chambers, Birmingham • Cason Crosby Cheely, Daphne • Amy M. Hampton, Alexander City • Walter E. McGowan, Tuskegee • Rebecca Keith McKinney, Huntsville • Jeffrey R. McLaughlin, Guntersville • James R. Moncus, III, Birmingham • Joi T. Montiel, Montgomery • Anil A. Mujumdar, Birmingham • Sherrie L. Phillips, Montgomery • Allison O. Skinner, Birmingham • Marc A. Starrett, Montgomery • M. Chad Tindol, Tuscaloosa • Jason B. Tompkins, Birmingham

OFFICERS

Anthony A. Joseph, Birmingham.....President
 Richard J.R. Raleigh, Jr., Huntsville.....President-elect
 Phillip W. McCallum, Birmingham.....Immediate Past President
 W. N. (Rocky) Watson, Fort Payne.....Vice President
 Keith B. Norman, Montgomery.....Secretary
 W. Christopher Waller, Jr., Montgomery.....Young Lawyers' Section President

BOARD OF BAR COMMISSIONERS

1st Circuit, Halron W. Turner, Chatham • 2nd Circuit, Jerry L. Thornton, Hayneville • 3rd Circuit, Christina D. Crow, Union Springs • 4th Circuit, Jana Russell Garner, Selma • 5th Circuit, Charles G. Reynolds, Jr., Lanett • 6th Circuit, Place No. 1, Terri O. Tompkins, Tuscaloosa • Place No. 2, R. Hays Webb, Tuscaloosa • 7th Circuit, William H. (Bill) Broome, Anniston • 8th Circuit, Phil D. Mitchell, II, Decatur • 9th Circuit, W. N. (Rocky) Watson, Fort Payne • 10th Circuit, Place No. 1, Leslie R. Barineau, Birmingham • Place No. 2, S. Greg Burge, Birmingham • Place No. 3, Barry A. Ragsdale, Birmingham • Place No. 4, Robert G. Methvin, Jr., Birmingham • Place No. 5, Augusta S. Dowd, Birmingham • Place No. 6, Teresa G. Minor, Birmingham • Place No. 7, Joseph A. Fawal, Birmingham • Place No. 8, Brannon J. Buck, Birmingham • Place No. 9, Derrick A. Mills, Birmingham • Bessemer Cutoff, William A. (Pete) Short, Jr., Bessemer • 11th Circuit, Albert J. Trousdale, II, Florence • 12th Circuit, Thad Yancey, Jr., Troy • 13th Circuit, Place No. 1, Henry A. Callaway, III, Mobile • Place No. 2, Walter H. Honeycutt, Mobile • Place No. 3, Clay A. Lanham, Mobile • Place No. 4, Juan Ortega, Mobile • Place No. 5, Harry V. Satterwhite, Mobile • 14th Circuit, James R. Beaird, Jasper • 15th Circuit, Place No. 1, George R. Parker, Montgomery • Place No. 2, Les Pittman, Montgomery • Place No. 3, J. Flynn Mazingo, Montgomery • Place No. 4, J. Cole Portis, Montgomery • Place No. 5, Jeffery C. Duffey, Montgomery • Place No. 6, Lee H. Copeland, Montgomery • 16th Circuit, Donald R. Rhea, Gadsden • 17th Circuit, K. Scott Stapp, Demopolis • 18th Circuit, Place No. 1, W. Randall May, Birmingham • Place No. 2, Julia C. Kimbrough, Birmingham • 19th Circuit, David A. McDowell, Prattville • 20th Circuit, Hamp Baxley, Dothan • 21st Circuit, John L. Jernigan, III, Brewton • 22nd Circuit, John M. Peek, Andalusia • 23rd Circuit, Place No. 1, H. Harold Stephens, Huntsville • Place No. 2, John A. Brinkley, Jr., Huntsville • Place No. 3, Rebekah Keith McKinney, Huntsville • 24th Circuit, Hon. John Earl Paluzzi, Carrollton • 25th Circuit, J. Daryl Burt, Winfield • 26th Circuit, F. Patrick Loftin, Phenix City • 27th Circuit, Jerry Wayne Baker, Jr., Albertville • 28th Circuit, Place No. 1, Allan R. Chason, Bay Minette • Place No. 2, Samuel W. Irby, Fairhope • 29th Circuit, Robert L. Rumsey, III, Sylacauga • 30th Circuit, Elizabeth S. Parsons, Pell City • 31st Circuit, Braxton W. Ashe, Tuscumbia • 32nd Circuit, Jason P. Knight, Cullman • 33rd Circuit, Robert H. Brogden, Ozark • 34th Circuit, Rebecca Green Thomason, Russellville • 35th Circuit, J. Milton Coxwell, Jr., Monroeville • 36th Circuit, H. Jerome Thompson, Moulton • 37th Circuit, Roger W. Pierce, Auburn • 38th Circuit, Stephen M. Kennamer, Scottsboro • 39th Circuit, John M. Plunk, Athens • 40th Circuit, Gregory M. Varner, Ashland • 41st Circuit, Alexander M. Smith, Oneonta

AT-LARGE BOARD MEMBERS

Diandra S. Debrosse, Hoover • R. Cooper Shattuck, Tuscaloosa • Meredith S. Peters, Andalusia • Rebecca G. DePalma, Birmingham • Alicia F. Bennett, Chelsea • LaBarron N. Boone, Montgomery • Jeanne Dowdle Rasco, Talladega • Monet M. Gaines, Montgomery • Ashley Swink Fincher, Auburn

The Alabama Lawyer (USPS 743-090) is published six times a year by the Alabama State Bar, 415 Dexter Avenue, Montgomery, Alabama 36104. Periodicals postage paid at Montgomery, Alabama, and additional mailing offices. POSTMASTER: Send address changes to *The Alabama Lawyer*, P.O. Box 4156, Montgomery, AL 36103-4156.

The Alabama Lawyer is the official publication of the Alabama State Bar. Views and conclusions expressed in articles herein are those of the authors, not necessarily those of the board of editors, officers or board of commissioners of the Alabama State Bar. Subscriptions: Alabama State Bar members receive *The Alabama Lawyer* as part of their annual dues payment; \$15 of this goes toward subscriptions for *The Alabama Lawyer*. Advertising rates will be furnished upon request. Advertising copy is carefully reviewed and must receive approval from the Office of General Counsel, but publication herein does not necessarily imply endorsement of any product or service offered. *The Alabama Lawyer* reserves the right to reject any advertisement. Copyright 2013. The Alabama State Bar. All rights reserved.



COLUMNS



288 President's Page

Relevancy Is the Cornerstone That Binds Us Together

292 Executive Director's Report

More Work Needed to Increase Lawyers in the Legislature

296 Important Notices

Position Available: Alabama State Bar Director of Admissions

The United States District Court for the Northern District of Alabama:

1. Reappointments of Harwell G. Davis, III and John E. Ott as United States Magistrate Judges
2. Appointment of New United States Magistrate Judge

336 Memorials

338 The Appellate Corner

344 Disciplinary Notices

348 Opinions of the General Counsel

The Nuts and Bolts of The Disciplinary Process

351 Bar Briefs

352 Legislative Wrap-Up

354 About Members, Among Firms

CONTRIBUTORS



Aaron L. Dettling is a partner in the Birmingham office of Balch & Bingham LLP. Reared in Atmore, he studied mechanical engineering at Vanderbilt University before going to

law school at Washington & Lee. After law school, Dettling served for two years as a law clerk for the Honorable W. B. Hand, senior district judge, in the U.S. District Court for the Southern District of Alabama. His litigation and consulting practice centers on labor & employment and civil rights law.



Anita K. Hamlett serves as the associate dean of student services at Faulkner University's Thomas Goode Jones School of Law. She is a 1992 graduate from the University of Alabama

School of Law. She began her legal practice with Lanier, Ford, Shaver & Payne PC. She worked with the Alabama State Bar from 2005 to 2008 and has over 13 years of experience in higher education.



Judge R. Bernard Harwood, Jr. obtained a degree in commerce and business administration at the University of Alabama and his law degree from the university's school of law in 1963. He practiced

in Tuscaloosa until 1991, when he was appointed by the governor to the Circuit Court of Tuscaloosa County. He was then elected twice to that judgeship. In November 2000, he was elected an associate justice of the Alabama Supreme Court and served in that position from January 2001 to January 2007, when he voluntarily retired to return to Tuscaloosa. He rejoined his former law firm and the firm resumed its original name of Rosen Harwood. Judge Harwood is a Fellow of the American Bar Foundation, the Alabama Law Foundation and the American College of Trial Lawyers and is a Diplomat of the American Board of Trial Advocates. He is chair of the Advisory Committee on the Alabama Rules of Evidence and teaches an advanced evidence course at the University of Alabama School of Law.

Allen Mendenhall is a staff attorney to Alabama Supreme Court Chief Justice Roy S. Moore and a doctoral candidate in English at Auburn University.



J. Flynn Mozingo practices with Melton, Espy & Williams PC in Montgomery. He is a graduate of the Cumberland School of Law, a member of the Board of Bar

Commissioners, a member of the Disciplinary Commission and a graduate of the Leadership Forum (Class IV). He is also a past member of the Alabama Law Institute and was recently inducted into the Fellows of the American Bar Foundation.



Sherrie L. Phillips

serves as of counsel at Sasser, Sefton, Brown, Tipton & Davis PC in Montgomery. She is a 1996 graduate from the University of Alabama School of Law and practices primarily in the areas of creditors' rights and bankruptcy.



Will Hill Tankersley was the first chair of the Alabama State Bar Intellectual Property Section and is a partner at Balch & Bingham LLP. He served on both the copyright and trademark

11th Circuit pattern jury instruction drafting working groups. After college and before law school, he was a soldier.



Robert B. Thornhill holds a bachelor's degree in psychology and a master's degree in counseling and human development. He is a Licensed Professional Counselor (LPC), a Master's Level

Addiction Professional (MLAP), an Internationally Certified Alcohol and Drug Counselor (ICADC) and a Certified Adolescent Alcohol and Drug Counselor (CAADC). He has worked as a primary therapist at the Lighthouse Counseling Center and Bradford Health Services. Thornhill also served as clinical director of the Alabama Physician Health Program. He has had the opportunity to work as a clinician for the past 17 years. Thornhill currently serves as director of the Alabama Lawyer Assistance Program, providing services to law students, lawyers and judges who may have a problem with substance abuse or another mental health issue.



Anthony A. Joseph

ajoseph@maynardcooper.com

Relevancy Is the Cornerstone That Binds Us Together

As lawyers we are trained to focus on the most relevant issue. Relevancy is the compass that keeps us on track.

As I approached this year, ideas and excellent suggestions from others have been plentiful. I quickly realized that no matter how hard I worked, there was no way I was going to accomplish all the goals that I was formulating. So I began to narrow my focus.

Reviewing the list, I continued to ask myself whether those goals were “relevant” to our membership or our mission. Do they serve our entire membership or do they serve our role to the greater community? Stated differently, are they relevant to our members or our role as lawyers?

As members of the state bar, we understand that this is a bar charged with licensing, self-regulation, promotion of the fair administration of justice and improvement of the quality of legal services for all our citizens. It is that moral imperative that drives our purpose and solidifies our bar’s motto: “Lawyers Render Service.” That is the core relevancy that binds us together.

This Year’s Focus

Seeking relevance and focus does not mean reinventing the wheel. It requires a deliberate focus on those areas where there is a current need, with a vision for the future. With that in mind, I settled on:

- Access to Justice
- Adequate Court Funding
- Digital Communication
- Succession Planning for Bar’s Senior Management

Access to Justice

While our current volunteers are doing an outstanding job, we still have the capacity to do more. Over 17 percent of Alabamians (over 720,000) fall below the federal poverty level, and that number continues to rise. Additionally, many returning veterans do not have the resources to address pressing legal issues. This is especially true in rural areas where lawyers are in short supply.

We have over 4,000 active members of the Alabama State Bar who

are involved in areas of access to justice initiatives such as the **Volunteer Lawyers Program**, pro bono programs and reduced-fee arrangements. Lawyers with **Legal Services Alabama** are also playing a significant role in this regard.

Access to justice is relevant to the bar because we are built for “service.” There is no better way to serve than to use our special skills to help those in need. Toward that end, we must employ creative strategies to promote, encourage and support our lawyers to volunteer for access to justice initiatives.

While many Alabama lawyers have been generous in sharing their time, talents and resources, I encourage more of us to join the ranks.



We will seek ways to encourage our young lawyers, inactive lawyers and corporate lawyers to participate in volunteer legal clinics and other pro bono efforts. Again this year, we will have a major push during the fourth week in October during our annual **Pro Bono Week**, where we will gather across the state to recognize the importance of pro bono service and to thank those thousands of volunteers who work tirelessly to serve others. It is important to recognize that pro bono service is relevant to our moral obligation and

commitment to the fundamental principle of being a lawyer. We want to disseminate that message and encourage others to participate.



Upchurch Watson White & Max Mediation Group is the leading alternative dispute resolution firm in the Southeast.

Led by Rodney Max, the firm's experienced local team includes Mike Walls, Brad Wash and former Circuit Court Judge Art Hanes.

This team of outstanding mediators serves to assist law firms and their clients in every phase of dispute resolution and has acquired a national reputation for settling major litigation in the state of Alabama and beyond.

Visit us at: uww-adr.com



Upchurch Watson White & Max
MEDIATION GROUP

uww-adr.com

Daytona Beach

Maitland/Orlando

Jacksonville

Miami

Birmingham

Adequate Court Funding

One of the greatest challenges to our judicial system is significant underfunding. As stakeholders in the system, we have a fundamental obligation to help ensure adequate funding that is necessary to maintain the sanctity of the administration of justice, and a fair and independent judiciary. Without adequate funding, access to justice is in peril, and the fair administration of that justice is jeopardized.

Over the last few years, our bar has taken an active role in promoting adequate funding for the courts. As part of the greater legal community, we must continue that participation in partnership with the state judiciary, and take steps to ensure that the public is also engaged. Our bar must play a pivotal role in organizing events, engaging our legislators to make sure that our courts are adequately funded.

Last year, our bar commissioned the **PARCA** group, a think tank housed on Samford University's campus, to conduct a court-cost study. It was the first study of its kind. The goal was to provide an in-depth review of court costs across the state, a comparative review of how cases are weighted in districts around the state and a determination of how fees and court costs are distributed and used to fund the courts. As part of our efforts to ensure adequate funding, we will take what we learned from the PARCA study, partner with the judiciary and develop a forum through which we can provide information the public needs to understand that funding the courts is essential and fundamental to the Rule of Law.

Digital Communication

Our bar is becoming more diverse by age, geographic locations and practice models. That diversity requires that we remain sensitive to the various needs of our membership. Our ability to remain relevant to our members rests with our ability to provide value. The ability to communicate, and receive, information digitally is critical to that effort.

Last year, **President Phillip McCallum** appointed a **Digital Communication Task Force** to review the design, content and functionality of the bar's website. The task force was also asked to revamp our website and find ways to improve communication with all our members through a more user-friendly base, greater substantive content and better functionality. The task force and the newly-hired director of digital communications, **Eric Anderson**, continue to make tremendous progress in accomplishing that mission.

While I continue to believe that personal interactions with fellow lawyers at CLE seminars, annual meetings and participation in bar sections, committees and task forces remain important, I also recognize that many of these functions can also be accomplished through technology. Communication upgrades will require a greater investment of resources, time and manpower, but will pay huge dividends as we seek ways to become more relevant to all our members.

Succession Planning for the Bar's Senior Management

Our most valuable assets are the great folks who work at the bar. I am biased—but I am fully convinced that “our people” are the best! As I look internally at our senior management, we are blessed to have many valuable treasures of institutional knowledge, experience and wisdom, spanning 25 years or more. However, we must also be prepared for the transition that will come within the ranks of that



Johnson

senior leadership over the next few years. As I have reported previously, **Dorothy Johnson**, our director of admissions, who has done an outstanding job for 22 years, is retiring in August 2014. She will be sorely missed, but we are actively working on that transition. Recognizing that void and planning for the future is important for us to maintain the vibrancy and relevancy of our bar. (See the “Position Available” notice on page 296 of this issue.)

Conclusion

I thank you for giving me this tremendous honor and opportunity to serve your bar. I approach this year with great anticipation, not because of the focus just discussed, but because of my knowledge and experience with the servant leaders who volunteer their time and talents to ensure the continued success of access to justice initiatives, and for service on boards, sections, committees and task forces. I cannot tell you the number of lawyers who have approached me during the course of this year, and given me a pat of encouragement, and also extended an offer of their services for *any* project. I am so blessed. I look forward to working with all the lawyers, volunteers and great folks at the bar to make us truly relevant. | [AL](#)

MEMBERSHIP Club

Membership period:
Sept. 1, 2013 – Aug. 31, 2014

JOIN OUR CLE ALABAMA MEMBERSHIP CLUB

A SAVINGS OF \$250 and over!

Choose the option that is most convenient for you! Both of these options are structured to provide you with the mandatory 12 hours of annual CLE credit needed for Alabama. You will also receive other special discounts and services that add to your savings - the more you learn, the more you save!

Visit www.clealabama.com/membership.php for more information.

Individuals may choose one of the following membership options. Either option can fulfill your annual MCLE requirement for Alabama.

 **Individual Live Membership: \$500** (A total savings of \$250 or more!)
Your Membership Includes: Registration for **two** live seminars* or **two** live webcasts*, **PLUS** your choice of 3 downloads from our large selection of CLE seminar materials online (a \$150 value!), **PLUS** a \$100 discount off the regular registration fee when you sign up for additional live programs.

 **Individual Online Membership: \$500** (A total savings of \$250 or more!)
Your Membership Includes: Six hours of on-demand, online courses AND one live webcast or one live seminar*, **PLUS** your choice of 3 downloads from our large selection of CLE seminar materials online (a \$150 value!), **PLUS** a \$100 discount off the regular registration fee when you sign up for additional live programs.

*handouts provided via download link
**Multi-day seminars excluded from this offer

Join now!

**Greater
CLE Flexibility
Savings of
\$250**

For more information or to join:
Call: **205-348-6230** or **800-627-6514**
Email: CLEalabama@law.ua.edu

- Individual Memberships are non-transferrable.
- All seminar cancellations must be received before noon the day before the seminar. No-shows will be counted towards your allowance.
- No membership walk-ins. Registration must be complete by noon the day before the seminar.
- Seminars must be claimed during membership year of September 1, 2013 – August 31, 2014.

Members may contact our office at 800-627-6514 or 205-348-6230 or email us at CLEalabama@law.ua.edu to register for each seminar.

2013 FALL CALENDAR

SEPTEMBER

- 13 Practical Criminal Defense Law – Tuscaloosa
20 Auto Accident – Tuscaloosa

OCTOBER

- 11–12 20th Annual Family Law Retreat to the Beach
– Orange Beach
18 Real Estate Law – Tuscaloosa
25 Fundamentals of Will Drafting – Tuscaloosa

NOVEMBER

- 1 Social Security Disability Law – Tuscaloosa
8 Healthcare Law – Birmingham
15 Bankruptcy Law Update – Birmingham

DECEMBER

- 4 Alabama Update Montgomery – Montgomery
6 Tort Law – Birmingham
13 Estate Planning – Birmingham
18 Employment Law – Birmingham
19 Alabama Update Birmingham – Birmingham
20 Trial Skills – Birmingham

LIVE SEMINARS

Register at CLEalabama.com or call 800.627.6514 or 205.348.6230 for more information.

CAN'T ATTEND IN PERSON? Check out our other opportunities.

Webcasts: Many of our spring seminars will be webcast. Watch the seminar as it happens from your own computer!
On-line: Visit CLEalabama.com for 24/7 access to over 200 online seminars and teleconferences.

THE UNIVERSITY OF
ALABAMA
SCHOOL OF LAW

Register now at CLEalabama.com



Keith B. Norman

keith.norman@alabar.org



More Work Needed to Increase Lawyers in the Legislature

In my January 2006 "Executive Director's Report," I expressed concern over the dramatic decline of lawyers serving in the state legislature since the mid-1970s. I suggested that this steep decline was largely due to two factors: (1) the demise of fee schedules prompted by a ruling of the United States Supreme Court¹ and the subsequent increased significance of the "billable hour" and (2) the Alabama Legislature replacing biennial sessions with annual sessions, thereby effectively doubling the number of legislative days² and the amount of time legislators must spend in Montgomery. As a result of the increased utilization of the "billable hour" and the additional time required to fulfill legislative responsibilities, service in the legislature became less appealing for lawyers.

In 1973, lawyers made up 20 of the 35 members of the senate, or 57 percent. In the 105-member house, 33, or 31 percent, were lawyers. By 2006, the number of lawyers in the senate had dropped to 11, or to 31 percent. In the house, there were just

nine lawyers or eight percent of the membership. When the final session of the 2010–2014 quadrennium begins in February, the senate will count 11 lawyers among its ranks: **Tammy Irons**, Florence; **Arthur Orr**, Decatur; **Roger Bedford**, Russellville; **Jerry Fielding**, Sylacauga; **Cam Ward**, Alabaster; **Rodger Smitherman**, Birmingham; **Marc Keahey**, Grove Hill; **Tom Whatley**, Auburn; **Hank Sanders**, Selma; **Bryan Taylor**, Prattville; and **Phil Williams**, Rainbow City.³

In the house, there will be 12 lawyer members, or 11 percent of the total number of house members. This is a slight increase over the last quadrennium. The lawyer members are **Greg Burdine**, Florence; **Marcel Black**, Tuscumbia; **Daniel Boman**, Sulligent; **Wes Long**, Guntersville; **Paul DeMarco**, Homewood; **Demetrius Newton**, Birmingham; **Juandalyn Givan**, Birmingham; **Bill Poole**, Tuscaloosa; **Chris England**, Tuscaloosa; **Mike Jones**, Andalusia; and **Paul Beckman**, Prattville.

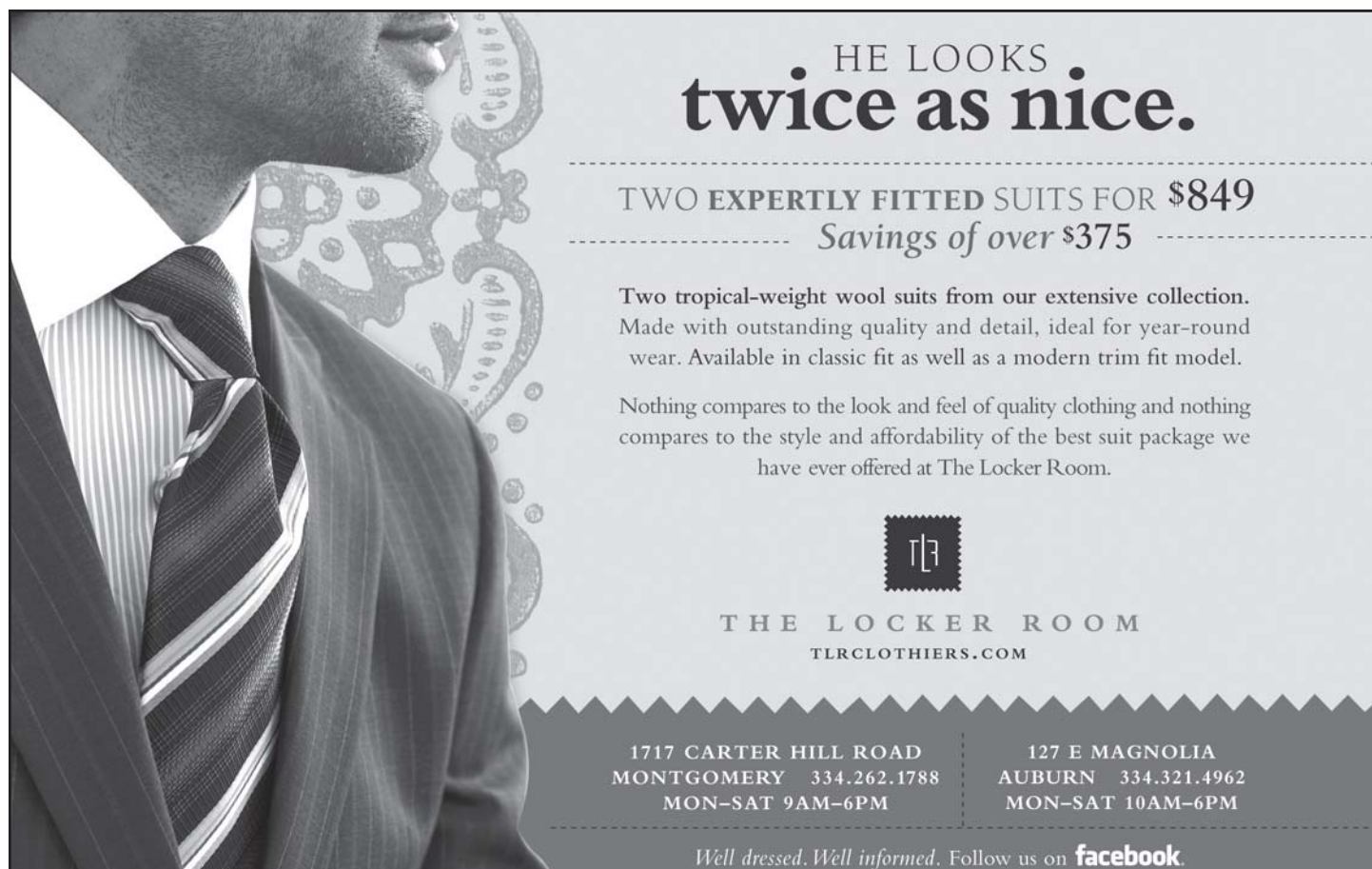
In a recent conversation with Rep. DeMarco, we discussed the dearth of lawyers in the legislature and the benefit of increasing those numbers. I told him that as long the legislature continues to meet annually, I did not think more lawyers would be willing to devote such a large block of time to serve. I remarked that returning to biennial sessions might encourage more lawyers to pursue legislative office. In response, Rep. DeMarco offered a slight variation to returning to biennial sessions as before. He suggested that in the off year of a biennial session, the legislature would have a limited number of legislative days to meet and pass the operating budgets for the state. This would allow the state to continue annual budgeting, but non-budget-related legislation would be considered every other year. I think his idea makes a great deal of sense, especially with our state's chronic budget problems.

I firmly believe that returning to biennial sessions, but with annual budget sessions, would make legislative service more

attractive by decreasing the amount of time a legislator must spend in Montgomery. Moreover, I feel sure that not just lawyers, but other working citizens who wish to seek legislative office, would welcome this change. Consequently, I am hopeful that legislation will be drafted and introduced to return to biennial sessions. In the meantime, with legislative races looming in 2014, I hope that fellow lawyers who read this and feel called will consider serving their state and profession by seeking legislative office. | [AL](#)

Endnotes

1. *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975).
2. Annual sessions run for 30 legislative days within 105 calendar days. Session days do not include travel or committee meeting days. During a typical legislative week, legislators from outside Montgomery typically arrive on Monday afternoon or Tuesday morning to attend sessions generally held on Tuesdays and Thursdays. They attend committee hearings on Wednesday and return home Thursday night.
3. The 2010-2014 quadrennium actually began with 12 lawyers in the senate. **Ben Brooks** of Mobile was later appointed circuit judge by Governor Bentley to fill a vacancy on the bench for the 13th Judicial Circuit.




HE LOOKS
twice as nice.

TWO EXPERTLY FITTED SUITS FOR \$849
Savings of over \$375

Two tropical-weight wool suits from our extensive collection. Made with outstanding quality and detail, ideal for year-round wear. Available in classic fit as well as a modern trim fit model.

Nothing compares to the look and feel of quality clothing and nothing compares to the style and affordability of the best suit package we have ever offered at The Locker Room.


THE LOCKER ROOM
TLRCLOTHIERS.COM

1717 CARTER HILL ROAD
MONTGOMERY 334.262.1788
MON-SAT 9AM-6PM

127 E MAGNOLIA
AUBURN 334.321.4962
MON-SAT 10AM-6PM

Well dressed. Well informed. Follow us on **facebook**.



Gregory H. Hawley

ghawley@joneshawley.com

Lawyers: We Want Your Ideas

I like the company of lawyers. I like the camaraderie. I like the war stories. I like the culture of sharing different points of view. I like the humor. I like the art of persuasion, the written word, the oral argument. I like our bar and being a part of it. I like our bar organization. I like its staff, mission and culture. When you and I volunteer our time for bar activities, together with the excellent bar staff, we strengthen the bar. Thank you for allowing me to perform the role of editor of *The Alabama Lawyer*.

One of the reasons that I enjoy being editor is the interaction with lawyers and listening to your ideas about issues and trends that we should cover in the *Lawyer*. I even enjoy constructive criticism of areas that we may overlook from time to time or areas on which we dwell too much. The sharing of ideas strengthens the bar. *The Alabama Lawyer* serves lawyers, so when you call Margaret Murphy or me, we enjoy the collaborative work—creating something that serves you.

With that in mind, let me pose a question: Which of the following scenarios do you think best fits purpose of *The Alabama Lawyer* and will lead to an article that will be topical, timely and most likely to be widely read and appreciated by our 17,000+ members?

- A. Phone call: “Hi Greg, this is Joan Jones. We met at the state bar meeting last year and then saw each other at a motion docket in Baldwin County last fall. Please tell your law partner I said hello. You may not know it but I have done a lot of work in the last year in the area of tort liability in food poisoning. It is a hot topic in the restaurant business, and it touches on the buy local/organic food movement and issues related to farm labor practices. Our mutual friend, David Bagwell—one of your Editorial Board members—thought that you might be interested in discussing the idea of an article in *The Alabama Lawyer* on the subject. Call me at your convenience if you have time to brainstorm on this subject. Please tell Margaret Murphy I said hello, and keep up the good work!”
- B. Unsolicited voicemail: “Mr. Hawley: I am the new marketing director at Dewey, Cheatham & Howe. One of our lawyers in our firm’s health care practice group is trying to develop an expertise in the field of infections arising from the installation of dental braces. I believe that it will help him develop this expertise if he were to publish an article on the subject. Please call me to discuss. Please also tell me the publishing schedule and the publishing requirements of the Alabama Bar Bulletin. Our firm marketing meeting is at 9 a.m. on Friday, so if you could call me tomorrow between 8:30 and 8:45, I would appreciate it.”

If you have anything approaching a soft spot in your heart for the Alabama State Bar or bar activities, generally (and I assume you do if you have read this far), the answer is obvious. Lawyers brainstorming with lawyers edifies our bar and our publication.

This is not a slight to marketing directors. I have enjoyed working with them on strategic planning for law firms where I have practiced, but this is your publication for your state bar. Writing an article is your chance to get involved in the bar. We want *The Alabama Lawyer* to serve the needs of your law practice. We want your ideas. If you have a suggestion for articles, please contact one of your colleagues on the Editorial Board of the *Lawyer*, the state bar Publications Director, Margaret Murphy, at margaret.murphy@alabar.org or me, at ghawley@joneshawley.com. We look forward to your call. | AL



THE CORRECT WAY TO ACCEPT PAYMENTS!

Trust your credit card transactions to the only merchant account provider recommended by 32 state and 48 local bar associations!

- ✓ Separate earned and unearned fees
- ✓ 100% protection of your Trust or IOLTA account
- ✓ Complies with ABA & State Bar Guidelines
- ✓ Safe, simple, and secure!

Reduce processing fees and avoid commingling funds through LawPay.



Process all major card brands through LawPay



Secure web payments

Mobile Swiper
iPhone, iPad, Android

866.376.0950
LawPay.com/alabar

TRUST YOUR TRANSACTIONS TO LAWPAY
**THE PREMIER PROCESSOR
FOR THE LEGAL INDUSTRY**

IMPORTANT NOTICES



Position Available: Alabama State Bar Director of Admissions

The United States District Court for the Northern District of Alabama:

Reappointments of Harwell G. Davis, III and John E. Ott as United States Magistrate Judges

Appointment of New United States Magistrate Judge



Position Available: Alabama State Bar Director of Admissions

Description of Position

The director of admissions is a highly responsible administrative and supervisory position which reports to the executive director of the Alabama State Bar who serves as secretary of the Alabama State Bar Board of Examiners. The admissions department is responsible for reviewing and certifying applications to sit for the Alabama State Bar examination and applications for admission under the reciprocity rule. The department works closely with the Alabama State Bar Board of Examiners as well as the National Conference of Bar Examiners, to prepare, administer and score the February and July bar examinations. The staff likewise will assist the Character and Fitness Committee of the Alabama State Bar. The department receives and processes almost \$700,000 a year in bar examination and related fees.

Responsibilities

Responsibilities of the director of admissions include:

- Reviewing and certifying law student registration applications, bar examination applications and applications for admission on motion (reciprocity);
- Determining whether an applicant should be referred to the Character and Fitness Committee;
- Serving as the liaison for the Character and Fitness Committee in scheduling hearings and assisting the chair in carrying out its responsibilities;
- Reviewing requests for testing accommodations under the Americans With Disabilities Act, preparing and sending a candidate's documentation to the Alabama State Bar's medical consultants and evaluating, along with the executive director, the general counsel and the chair of the Board of Bar Examiners, whether an applicant's request to receive special testing accommodations will be granted;

- Assisting the Board of Bar Examiners in developing policies and procedures related to the format and administration of the bar examination;
- Administering the bar examination including examination logistics, scheduling proctors and security staffing;
- Organizing the delivery of examination answers to the members of the Board of Bar Examiners for grading, receiving and posting, recording the essay grades provided by the examiners, coordinating the calibration of the essay and Uniform Bar Examination scores and certifying bar examination results to the Alabama Supreme Court;
- Preparing and providing files to the membership department for the newly-admitted applicants;
- Coordinating the preparation of the admissions program with the Young Lawyers' Section;
- Assigning and supervising all admission staff duties and responsibilities; and
- Managing the receipt of all admission department fees and preparation of fee deposits as well as periodic reconciliation of those deposits with the state bar's finance office.

Qualifications

Education—It is preferred but not required that the director of admissions have a juris doctorate from an American Bar Association-accredited law school. If not, the applicant should have a post-graduate degree with professional licensing experience or a strong working knowledge of high-stakes examinations.

Experience—The candidate must have strong supervisory skills and several years of experience of responsibility for managing multi-faceted programs. In addition, the candidate should have experience working with a board of directors in a public, private or non-profit organization as well as coordinating volunteers.

Preferred—Familiarity with issues involving disabilities and reasonable accommodations is a plus.

Skill Set

- Exceptional knowledge of information technology and software including social media as well as word processing, spreadsheet databases, email and management software;
- Ability to interpret bar examination rules, exercise independent judgment, identify potential issues and plan a course of action;

- Demonstrated leadership ability including good decision-making, problem-solving and interpersonal skills;
- Ability to lead a team and effectively manage interpersonal conflict and the admission office's flow of work;
- Ability to develop and implement short- and long-term plans, set priorities and manage multiple activities simultaneously and within specific deadlines;
- Excellent oral and written communications skills, organizational ability and attention to detail;
- Ability to communicate information and explanations as well as interact effectively in a patient and tactful manner with department staff, other co-workers, volunteers and the general public;
- Ability to perform all essential functions of the position; and
- Any qualified juris doctorate candidate should have the demonstrated experience and ability to assume responsibility as counsel to assist the Office of General Counsel and the Board of Bar Commissioners in responding to legal challenges brought by applicants and inquiries from the Alabama Supreme Court, including but not limited to challenges and inquiries regarding character and fitness determinations, waivers of and amendments to bar admissions rules and admissions and testing procedures, deadlines and determinations.

Location

The admissions office and its staff are located in the Alabama State Bar building in Montgomery, Alabama. The director must operate the department from this location.

Salary and Benefits

The salary will be commensurate with experience. Benefits include participation in the State Employees' Health Insurance Program and the Retirement Systems of Alabama.

Application

Submit a resume with a cover letter of no more than two pages explaining why you would like this position and why you believe you are qualified for it to:

Keith B. Norman
Executive Director
Alabama State Bar
P.O. Box 671
Montgomery, AL 36101-0671

The deadline for applications is October 11, 2013.

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA:

Reappointments of Harwell G. Davis, III and John E. Ott as United States Magistrate Judges

Notice

The current terms of the offices of United States Magistrate Judges Harwell G. Davis, III at Huntsville, Alabama and John E. Ott at Birmingham, Alabama are due to expire March 18, 2014 and April 5, 2014, respectively. The United States District Court is required by law to establish a panel of citizens to consider the reappointments of the magistrate judges to a new eight-year term.

The duties of a magistrate judge in the Northern District of Alabama include:

- (1) The trial and disposition of virtually all categories of civil actions with consent of the parties in accord with 28 U.S.C. § 636(c);
- (2) The trial and disposition of misdemeanor cases;
- (3) Pursuant to the court's General Orders of Reference, presiding over all aspects of civil cases, through the entry of a recommendation for final disposition under 28 U.S.C. § 636(b);
- (4) Ruling on various pretrial matters and holding evidentiary proceedings on references from the district court judges made in addition to the general orders, including discovery issues and other non-dispositive motions;
- (5) Conducting settlement conference or mediation in civil actions by reference;
- (6) Performing such other duties as set out in LR 72.1 through 73.2, *Rules of the Northern District of Alabama* and the court's General Orders of Reference;
- (7) Conducting preliminary proceedings in felony criminal cases, including initial appearances, bond/detention hearings and arraignments;
- (8) Issuing warrants of arrest, search warrants and warrants in administrative actions;

- (9) Ruling on all non-dispositive motions in felony criminal cases or entering findings and recommendations with respect to dispositive criminal motions such as motions to dismiss or to suppress evidence; and
- (10) Conducting preliminary reviews and making recommendations regarding the disposition of prisoner civil rights complaints and habeas corpus petitions and conducting such evidentiary proceedings as may be required in prisoner and habeas corpus actions.

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

Sharon N. Harris, Clerk of Court
 United States District Court
 Northern District of Alabama
 1729 Fifth Ave., N.
 Birmingham, AL 35203

Comments must be received by November 1, 2013.

Appointment of New United States Magistrate Judge

The Judicial Conference of the United States has authorized the appointment of a full-time United States Magistrate Judge for the Northern District of Alabama in Birmingham, Alabama.

The duties of the position are demanding and wide-ranging. The basic authority of a United States Magistrate Judge is specified in 28 U.S.C. § 636. The duties of a magistrate judge in the Northern District of Alabama include:

- (1) The trial and disposition of virtually all categories of civil actions with consent of the parties in accord with 28 U.S.C. § 636(c);
- (2) The trial and disposition of misdemeanor cases;
- (3) Pursuant to the court's General Orders of Reference, presiding over all aspects of civil cases, through the entry of a recommendation for final disposition under 28 U.S.C. § 636(b);

- (4) Ruling on various pretrial matters and holding evidentiary proceedings on references from the district court judges made in addition to the general orders, including discovery issues and other non-dispositive motions;
- (5) Conducting settlement conference or mediation in civil actions by reference;
- (6) Performing such other duties as set out in LR 72.1 through 73.2, *Rules of the Northern District of Alabama* and the court's General Orders of Reference;
- (7) Conducting preliminary proceedings in felony criminal cases, including initial appearances, bond/detention hearings and arraignments;
- (8) Issuing warrants of arrest, search warrants and warrants in administrative actions;
- (9) Ruling on all non-dispositive motions in felony criminal cases or entering findings and recommendations with respect to dispositive criminal motions such as motions to dismiss or to suppress evidence; and
- (10) Conducting preliminary reviews and making recommendations regarding the disposition of prisoner civil rights complaints and habeas corpus petitions. Conducting such evidentiary proceedings as may be required in prisoner and habeas corpus actions.

To be qualified for appointment an applicant must:

- (1) Be, and 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, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, and have been engaged in the active practice of law for a period of at least five years (with some substitutes authorized);

- (2) Be competent to perform all the duties of the office, be of good moral character, be committed to equal justice under the law, be patient and courteous, and be capable of deliberation and decisiveness;
- (3) Be less than 70 years old; and
- (4) Not be related to a judge of the district court.


A merit selection panel composed of attorneys and other members of the community will review all applicants and recommend to the district judges in confidence the five persons it considers best qualified. The court will make the appointment following an FBI full-field investigation and an IRS tax check of the applicant selected by the court for appointment. An affirmative effort will be made to give due consideration to all qualified applicants without regard to race, color, age (40 and over), gender, religion, national origin, or disability. The current annual salary of the position is \$160,080. The term of office is eight years.

The application form is available on the court's website at <http://www.alnd.uscourts.gov>. Applications should be mailed to:

Sharon Harris, Clerk of Court
 Northern District of Alabama
 1729 Fifth Ave., N.
 Birmingham, AL 35203

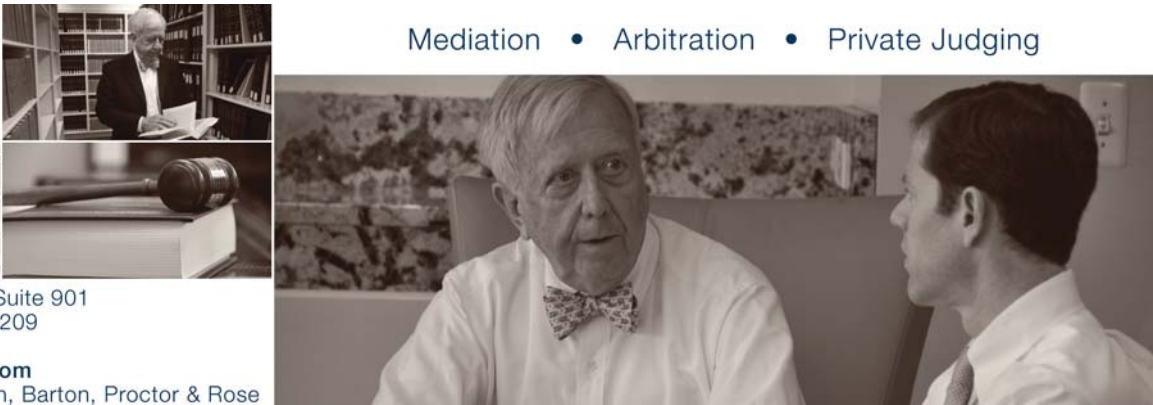
Applications must be submitted only by applicants personally and must be received by November 1, 2013.

All applications will be kept confidential, unless the applicant consents to disclosure, and all applications will be examined only by members of the merit selection panel and the judges of the district court. The panel's deliberations will remain confidential. | [AL](#)



569 Brookwood Village, Suite 901
 Birmingham, Alabama 35209
 P: 205.214.7320
www.vowellgoldsmith.com
 In the offices of: Johnston, Barton, Proctor & Rose

Mediation • Arbitration • Private Judging





(Photograph by FOUTS COMMERCIAL PHOTOGRAPHY, Montgomery, photofouts@aol.com)

Alabama State Bar

SPRING 2013 Admittees

STATISTICS OF INTEREST

Number sitting for exam	207
Number certified to Supreme Court of Alabama	98
Certification rate *	47.3 percent

CERTIFICATION PERCENTAGES

University of Alabama School of Law	82.4 percent
Birmingham School of Law	35.7 percent
Cumberland School of Law	37.5 percent
Jones School of Law	53.8 percent
Miles College of Law	6.7 percent

**Includes only those successfully passing bar exam and MPRE*

For full exam statistics for the February 2013 exam, go to
www.alabar.org/admissions/files/FEB2013-Statistics-Detailed.pdf.

Alabama State Bar

SPRING 2013

Admittees

Akin, Matthew Joseph
Allums, Melanie Welsch
Alvarez, Charlotte Caroline
Angwin, Oscar Reed
Asthana, Deepti
Austin, Wykeenia Evette
Battles, Gregory Rhys
Bethea, Barron Augustus
Bishop, Karen Sue
Blackburn, Crystal Michelle
Boswell, Coby McEachern
Bridges, Adrian Revell
Brooks, Cassandra Gross
Brown, Christina Lynn
Brown, Katrina Denise
Buchanan, Sonya Maria
Burford, Daniel Preston
Campbell, Raymond Alexander
Christopher, IV, Ralph Coleman
Dalton, John William
Davis, Ruby Yvette
Dearing, David Patrick
Dendy, Aaron Phillip
DeSilva, Channika Shalini
Dibert, Eric Alan
Edens, Phillip Joseph
Emmel, Jennifer Kathryn
Fant, Jr., Michael Allen
Ford, Virgil Cornelius
Freeman, Lauren Ledbetter
Fuller, Javee Dianne
Gill, Mary Ellen
Green, Philip Justin

Griffin, Kaitlyn Lallier
Griffin, Kayla Welch
Hall, Brandon Wayne
Harper, III, Louis Eugene
Harrison, Jr., Donald Richard
Heudebert, Gustavo Antonio
Hickman, Nora Frances
Hon, Kevin Duane
Horn, Simone Patricia
Jones, Jeannie Clegg
Jones, Leigh Alexandria
Kelly, Rachel Elise
Killcreas, April Hendricks
Knight, Hal Michael
Lang, John Keagan
Lewis, IV, Albert Gamaliel
Lipinsky, Elliott Owen
Marshall, Patrick Clayton
Matthis, II, James Donald
Maxwell, Jr., Leroy
McDermott, Elizabeth Bradley
McWilliams, Leanne Noel
Metzger, Rose Impastato
Miller, Kathryn Elizabeth
Moore, Dakota Jasper
Moorer, Suzanah Renee
Moss, Michael Glenn
Nissenbaum, Michael Stuart
Nolin, Nathan Garrett
O'Neill, Mary O'Keefe
Ortiz, Michelle Noel
Osorio, Alberto Jesus
Patel, Rima Prakash

Patterson, III, Cleveland Martin
Powell, Charles Franklin
Price, Meghan Elise
Puccio, Karen Lynette
Quijano-Sorrells, Viviana Angelica
Quinlan, Krystal Erin
Runyan, Christopher Allen
Sajjadih, Megan
Schaub, Jessica Weathers
Scott, Corlandos Ra-Mon
Selden, John Armistead
Sheehan, John Randall
Short, Caren Elaine
Simon, Nathan Vincent
Sims, Laura Tiffany Dean
Singh, Satinder Jit
Smith, Daniel Brian
Smith, Justin Donald
Song, Minjae
St. John, John Jefferson
Stanley, Gregory Scott
Taft, Kimberly Brooke
Thetford, Jr., Joseph Dimmick
Thomas, Phillips Newbern
Tingle, Manley Inge
Tucker, Allie Christiansen
Walker, Jason Darba
Whetstone, Christopher Lindsey
Whittaker, Clay Henderson
Willis, Robbie Elizabeth
Young, Bethany Janese
Zampierin, Sara Michelle

LAWYERS IN THE FAMILY



1. John Jefferson St. John (2013),
Finis Ewing St. John (1982) and
Gaynor Lee St. John (1987)
Admittee, father and stepmother



2. Donald R. Harrison, Jr. (2013),
Donald R. Harrison (1973) and
Jackson Brett Harrison (2006)
Admittee, father and brother



3. Brandon Hall (2013) and JoLayne
Hall (2004)
Admittee and wife



4. DeWanna Worshek (2013) and
Christopher Worshek (2009)
Admittee and husband



5. Elizabeth Nelson (2013) and Pat
Nelson (1973)
Admittee and father



6. Robbie Willis (2013) and Luann
Springer (2004)
Admittee and mother



7. Leigh A. Jones (2013) and George
E. Jones, Sr. (1973)
Admittee and father



8. Phillips Newbern Thomas (2013)
and Cleophus Thomas, Jr. (1982)
Admittee and father

LAWYERS IN THE FAMILY



9. Albert Lewis, IV (2013), Albert Lewis, III (1979), Mary Lane Falkner (2010), Laura Youngpeter (1987), and Hon. Mike Youngpeter (1987)
Admittee, father, sister, aunt, and uncle

10. Coby M. Boswell (2013), Daniel C. Boswell (1977), Alice Ann Byrne (1984), David B. Byrne (1966), and Marc Sandlin (1977)
Admittee, father, aunt, uncle, and father-in-law

11. Manley Inge Tingle (2013) and Charles H. Tingle (1969)
Admittee and father

12. Phillip Edens (2013) and John Edens (1978)
Admittee and father

13. Javee Dianne Fuller (2013) and L. Dale Fuller (1989)
Admittee and father

14. John Lang (2013) and Greg Lang (2006)
Admittee and father

15. Joseph Thetford, Jr. (2013), Joseph Thetford, Sr. (1981) and Robin Brigham Thetford (1981)
Admittee, father and mother

16. Megan Price Fuller (2013) and Everette A. Price, Jr. (1965)
Admittee and uncle



An Analysis of Act 283: Alabama's New Gun Legislation

By Aaron L. Dettling

Americans own no fewer than 200 million small arms.¹

And, by one estimate, over 160,000 Alabama citizens—about three percent of the state's population—have a permit to carry a concealed pistol² There is no doubt that America's long tradition of private firearm ownership is unique in the world, and that Alabamians relish it about as much as anyone else.

After more than two centuries of relative silence on the meaning of the Second Amendment, the United States Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. ___, 130 S. Ct. 3020 (2010), established that the Second Amendment guaranteed an individual right to bear arms, and that the right was protected from infringement by the state and the federal governments alike.

Meanwhile, crazed individuals have used firearms in particularly horrific criminal acts, leading some in Congress and in

various state legislatures to propose stricter limits on private firearm ownership. So many forces pulling in opposing directions made it inevitable that individuals' rights under the Second Amendment, traditional concepts of private property rights and employers' prerogatives to govern employee conduct would come into contact with one another.

On May 21, 2013, Governor Bentley signed into law Act 2013-283 ("Act 283" or "the Act"). Act 283 is a wide-ranging revision of the law relating to firearms in Alabama. At 38 pages, the Act addresses a broad range of firearms-related topics, some of which have received attention in local news media, and some of which have not been as widely discussed or understood.

Most of the provisions of Act 283 do not directly affect employers' employment policies, but some certainly do. This article provides an overview of the provisions of the Act, with particular emphasis on employers' and businesses' rights and obligations under it.

Background: Alabama Firearms Laws before Act 283

To understand Act 283, it may help first to clarify a few high points about Alabama firearms law as they existed before the Act became effective.

First, it is important to know what a “pistol permit” is, and what it is not, under Alabama law. The phrase “pistol permit” is often used in imprecise ways tending to suggest, incorrectly, that one must have a permit or license to buy or possess a pistol. No permit or license is required to purchase, own or possess a pistol or any other common firearm in Alabama. That said, however, Alabama law has long prohibited the *concealed carrying* of pistols.³ Present-day law prohibits any person from “carry[ing] a pistol in any vehicle or concealed about his or her person,” unless the person has a permit either issued by the sheriff of the Alabama county of his or her residence, or issued by another state and recognized through reciprocity.⁴ A “pistol permit” allows the holder legally to carry a pistol outside his or her own home or business, *concealed* on or about his or her person, or *in his or her vehicle*. That has always been the purpose of a “pistol permit” under Alabama law.⁵

That leads to the “may issue” versus “shall issue” distinction. Alabama sheriffs have long enjoyed fairly broad discretion to refuse to issue a pistol permit to anyone deemed not to be “a proper person” to hold such a permit: the standard in Alabama has long been that a sheriff “may issue” a permit if deemed appropriate.⁶ Under a “shall issue” statute, by contrast, the sheriff is presumptively required to issue a pistol permit upon application, unless cause is affirmatively shown why the permit ought not to be issued. You may be surprised to learn that Alabama, one of the reddest of the red states, was, until now, one of the few remaining “may issue” states. In recent years, most other states have either changed their laws to the “shall issue” standard or altogether abolished their permit requirements.⁷ Act 283 makes Alabama a “shall issue” state.

Subject to certain restrictions, starting August 1, Alabama employers must allow their employees to keep firearms in their vehicles in the parking lot.

Enter Act 283

Act 283 covers a lot of ground, and the primary focus in this article is on the provisions directly affecting employers and business owners. To provide a broad overview of the scope of Act 283, however, the following are a few examples of the range of other topics covered in the legislation:

- It clarifies the legal status of “open carry” in Alabama by creating a rebuttable presumption that merely carrying “a visible pistol, holstered or secured, in a public place” does not, by itself, constitute the offense of disorderly conduct;

- It provides, as noted above, that sheriffs “shall issue” a pistol permit unless there are specific, documented grounds for denying issuance of the permit;

- It creates procedures and standards for judicial review of the denial or revocation of pistol permits;

- It makes changes to Alabama’s law regarding reciprocity with other states’ pistol permits; and

- It rewrites Alabama law relating to the legislature’s preemption of local regulation of firearms.

The effective date of Act 283 was August 1, 2013.

Workplace Implications: The Parking Lot Rule

The central feature of Act 283 relating to the employer-employee relationship is the “parking lot rule.” Subject to certain restrictions, starting August 1, Alabama employers must allow their employees to keep firearms in their vehicles in the parking lot.

Act 283 does not allow employees *carte blanche* to carry and possess firearms during the course of employment. To the contrary, Act 283 expressly reaffirms the employer’s preexisting, common-law authority to regulate the possession of firearms by employees.⁸ Section 4(a) of Act 283 says:

Except as provided in subdivision (b), a public or private employer may restrict or prohibit its employees, including those with a license issued or recognized under Section 13A-11-75, *Code of Alabama* 1975 [*i.e.*, a “pistol permit”], from carrying firearms while on the employer’s property or while engaged in the duties of the person’s employment.

While reaffirming that general common-law authority, Act 283 creates a narrow exception from the employer’s prerogative to prohibit the possession of firearms in the workplace. The exception is limited to the employee’s privately owned car, in the parking lot. The relevant part of the Act, found in Section 4(b), provides:

BIRMINGHAM SCHOOL OF LAW
Affordable Quality Legal Education Since 1915
Week Night & Saturday Programs

 **(205) 322-6122**

www.bsol.com
New Classes Begin in January & August.
Now Accepting Applications. See Website for Deadlines.

(non-ABA accredited)

(b) A public or private employer may not restrict or prohibit the transportation or storage of a lawfully possessed firearm or ammunition in an employee's privately owned motor vehicle while parked or operated in a public or private parking area if the employee satisfies all of the following:

- (1) The employee either:
 - a. Has a valid concealed weapon permit; or
 - b. If the weapon is any firearm legal for use for hunting in Alabama other than a pistol:
 - i. The employee possesses a valid Alabama hunting license;
 - ii. The weapon is unloaded at all times on the property;
 - iii. It is during a season in which hunting is permitted by Alabama law or regulation;
 - iv. The employee has never been convicted of any crime of violence as that term is defined in Section 13A-11-70, *Code of Alabama* 1975, nor of any crime set forth in Article 6 of Title 13A, *Code of Alabama* 1975, nor is subject to a Domestic Violence Order, as that term is defined in Section 13A-6-141, *Code of Alabama* 1975;
 - v. The employee does not meet any of the factors set forth in Section 13A-11-75(a)(1)a.1-8; and
 - vi. The employee has no documented prior workplace incidents involving the threat of physical injury or which resulted in physical injury.
- (2) The motor vehicle is operated or parked in a location where it is otherwise permitted to be.
- (3) The firearm is either of the following:
 - a. In a motor vehicle attended by the employee, kept from ordinary observation within the person's motor vehicle.
 - b. In a motor vehicle unattended by the employee, kept from ordinary observation and locked within a compartment, container or the interior of the person's privately-owned motor vehicle or in a compartment or container securely affixed to the motor vehicle.

To qualify for the parking lot rule, the employee must satisfy the requirements set out in Section 4(b), and all of subparagraphs (1), (2) and (3). There are two separate and independent ways by which the employee may satisfy subparagraph (1), so we'll take up those last.

The Common Requirements: Section 4(b), 4(b)(2)-(3)—In all cases, in order for the parking lot rule to apply, the firearm or ammunition must be “lawfully possessed” (for example, it must be lawful for the employee to possess a firearm in the first place,⁹ and, if the firearm is a pistol, the employee must not be a minor,¹⁰ and generally must have a valid pistol permit¹¹); the firearm must be kept in the employee's vehicle in the parking lot where the

vehicle is otherwise allowed to be; and the firearm must be kept from public view. While the vehicle is not attended by the employee, then the firearm must also be locked either inside the passenger compartment or in a “compartment or container securely affixed to the motor vehicle,” such as a toolbox affixed to the bed of a pickup truck. The parking lot rule does not extend to the employer's buildings, grounds (other than the parking lot) or business vehicles; it only applies to “an employee's privately-owned motor vehicle” while the employee's vehicle is in the parking lot.

As noted above, if the common requirements of Section 4(b), (b)(2) and (b)(3) are met, there are two separate and independent ways of satisfying Section 4(b)(1): one applies if the employee has a pistol permit, and the other applies if the employee does not have a pistol permit.

Section 4(b)(1) If the Employee Has a Pistol Permit—If the employee has a valid pistol permit, then Section 4(b)(1) is automatically satisfied through subparagraph (a). Most applications of the parking lot rule are likely to travel under subparagraph (a). That is because pistols are more frequently carried for personal defense than rifles or shotguns, a pistol permit is usually required by law in order to carry a pistol in a motor vehicle and Act 283 made it more convenient for an individual to obtain and keep a pistol permit by transitioning to the “shall issue” standard and by providing that a pistol permit can be good for up to five years at a time. (Under prior law, a pistol permit could be valid for no more than one year.) In instances where the employee has a valid pistol permit, application of the parking lot rule should be relatively straightforward.¹²

Section 4(b)(1) If the Employee Does Not Have a Pistol Permit—A separate and far more detailed set of requirements applies if the employee does not have a pistol permit. If the employee does not have a pistol permit, Section 4(b)(1) must be satisfied through subparagraph b, which, in turn, requires that the employee satisfy all of the requirements of clauses (i) through (vi). If the employee does not have a pistol permit, then the parking lot rule applies only if the firearm is not a pistol and is legal for hunting in Alabama; the employee has a valid hunting license; the firearm is unloaded; it must be during a hunting season; the employee must not have any disqualifying criminal history; and the employee must not have any “documented prior workplace incidents involving the threat of physical injury or which resulted in physical injury.” In practice, it will be difficult,



Expedited Process Serving, LLC
“We serve you by serving others”

- Automatic Status Updates Via Email
- Serving You Throughout Alabama
- Never A Mileage Fee
- Volume Discounts

P: 205-995-9633
F: 205-995-9733
expeditedps@aol.com
www.ExpeditedProcessServing.com

if not impossible, for employers to determine whether an employee meets all of these criteria in advance. If, however, an employer learns that an employee has a firearm in his or her vehicle, does not have a pistol permit and does not meet all of these conditions, then Act 283 presents no obstacle to the employer disciplining the employee.

There are two subtle but important differences between Section 4(b)(1)a and Section 4(b)(1)b. *First*, if the employee satisfies Section 4(b)(1)a by having a pistol permit, that is good for *any lawfully possessed firearm*, whereas the Section 4(b)(1)b approach is available *only for long guns* that are legal for hunting. *Second*, there is no requirement that the firearm be unloaded if the employee has a pistol permit. If the employee satisfies Section 4(b)(1) only through subparagraph b, however, then the firearm must be unloaded.

Employee Suits to Enforce the Parking Lot Rule

Sections 4(c)(2) and 4(d) of the Act prohibit an employer from taking any adverse action against an employee “solely” because the employee has stored or transported a firearm or ammunition in compliance with the parking lot rule. Section 4(g) provides that, after a demand and 45-day waiting period, an employee improperly discharged or disciplined “solely” for possessing a firearm in compliance with the parking lot rule may bring a civil action to recover any lost wages or remuneration. The Act does not provide for any other form of compensatory, punitive or liquidated damages.

The legislature’s use of the word “solely” in Section 4(c)(2) and Section 4(d) is noteworthy because it mirrors the language of the retaliatory discharge provision in the Workers’ Compensation Act.¹³ In light of the legislature’s use of the word “solely,” Alabama courts faced with wrongful discharge suits under Section 4(g) will likely apply a test similar to that applied in retaliatory discharge cases. Under that test, “if there is uncontradicted evidence of an independently sufficient basis for the discharge then the defendant is entitled to a judgment as a matter of law.”¹⁴ If an employer has *any* substantiated reason for discharge independent of the employee’s possession of a firearm in compliance with the parking lot rule, then the employer will likely prevail.¹⁵

Employer Immunity Provisions

While Act 283 restricts, to a limited extent, an employer’s latitude to prohibit the presence of firearms on its premises, it also provides employers broad protection from legal liability that might otherwise arise from the presence or use of any firearms brought upon the employer’s premises by an employee. Section 5(b) provides in broad terms that:

an employer and the owner and/or lawful possessor of the property on which the employer is situated shall be absolutely immune from any claim, cause of action or law-

suit that may be brought by any person seeking any form of damages that are alleged to arise, directly or indirectly, as a result of any firearm brought onto the property of the employer, owner or lawful possessor by an employee, including a firearm that is transported in an employee’s privately-owned motor vehicle.

Section 5(c) further provides that employers have no legal duty:

- (1) To patrol, inspect, or secure:
 - a. Any parking lot, parking garage or other parking area the employer provides for employees; or
 - b. Any privately-owned motor vehicle located in a parking lot, parking garage or other parking area the employer provides for employees; or
- (2) To investigate, confirm or determine an employee’s compliance with laws related to the ownership or possession of a firearm or ammunition or the transportation and storage of a firearm or ammunition.

These provisions may have been conceived as something of a *quid pro quo*: something to assuage the liability concerns of employers who would have preferred to prohibit altogether the possession of firearms by employees, but would now be required to allow guns in the parking lot. Note well, though: the text does not limit the scope of the immunity to those employers whose policies restrict the possession of firearms in the workplace. To the contrary, the immunity principles of sections 5(b) and (c) extend to *all employers*, including employers that have no policies whatsoever toward firearms, and even those that encourage or require the possession of firearms in the workplace.

Don’t Ask, Don’t Tell?

In response to Act 283, employers might reasonably wonder whether they should require employees to seek advance permission or otherwise identify themselves if they intend to possess firearms under the parking lot rule. That deserves careful consideration, because there could be some question about the scope of permissible inquiries, and the law generally relieves employers of the obligation to ask.

The text and legislative history of Section 4(c) create some ambiguity as to whether an employer may ask its employees if they are transporting or storing firearms in their vehicles under the parking lot rule. The Senate version of SB286, which later became Act 283, clearly prohibited employers from asking employees whether they had a firearm in the car.¹⁶ That prohibitory language didn’t make it into the final version of Act 283, but some other slippery language did. Section 4(c) of the Act does not expressly prohibit inquiries about firearm possession, but says that “[i]f an employer believes that an employee presents a risk of harm to himself/herself or to others, the employer may inquire as to whether the employee possesses a firearm in his or her private motor vehicle.” This language is awkward. From a textual standpoint, there is nothing in Act 283 that prohibits an employer from asking its employees any questions about gun ownership or possession, so language expressly authorizing the employer to ask the question *if a specific condition is met* would appear to be nothing more than sheer *dictum*. But courts interpreting statutes sometimes “presum[e] that every word, sentence,

or provision . . . was intended for some useful purpose, has some force and effect, and that some effect is to be given to each, and also that no superfluous words or provisions were used.”¹⁷ The courts may have to sort out whether that maxim applies here.¹⁸

Section 5(c) explicitly relieves employers of any affirmative duties to search their employees’ vehicles for firearms, or to investigate or determine whether their employees are in compliance with the firearms laws. In light of this (in addition to the practical difficulties that may sometimes attend determining whether a particular employee is in compliance with the parking lot rule, particularly when the employee does not have a pistol permit), employers should carefully weigh whether they should seek to know whether employees are possessing, storing or transporting firearms in their vehicles in accordance with the parking lot rule. In some cases, “don’t ask, don’t tell” may be sound policy.

On the other hand, in some circumstances, it would be both reasonable and entirely consistent with Act 283 to investigate certain facts or take appropriate disciplinary actions. Here are some examples:

- Employee A is a known felon. Employer learns that Employee A regularly keeps a pistol in his vehicle, including in the employer parking lot. It would be permissible to investigate and to take appropriate disciplinary action, because the employee would not have a “lawfully possessed firearm” as required by Act 283. It would also be appropriate to report to the relevant authorities that Employee A may be in violation of federal and state laws prohibiting felons from possessing firearms.
- Employer’s written policies prohibit the possession of firearms at work other than in accordance with the parking lot rule. In the employee break room, Employee B notices a bulge in Employee C’s pants in the shape of a pistol. Because the parking lot rule does not apply to carrying pistols in the break room, it would be permissible for Employer to investigate to determine whether the bulge is in fact a pistol, and, if so, to take appropriate disciplinary action. (If Employee C does not have a valid pistol permit, criminal sanctions may also be possible.)
- Employer’s written policies prohibit the possession of firearms at work other than in accordance with the parking lot rule. Employee D drives a pickup truck to work and parks it in the employee parking lot. Visible in the rear window rack is a deer rifle, but it is not deer season. It would be appropriate to investigate and/or take appropriate disciplinary action against Employee D, because the firearm is not being “kept from ordinary observation” as required by Act 283.¹⁹

Of course, in any case involving a credible, imminent threat to safety, the employer should do everything necessary to protect lives and property. In other circumstances, it may be prudent to seek legal counsel before taking any action.

Of course, in any case involving a credible, imminent threat to safety, the employer should do everything necessary to protect lives and property.

Form Policy Language

Some Alabama employers have policies prohibiting their employees from possessing firearms and other weapons in the workplace, and other employers may want to put such policies in place. Act 283 expressly reaffirms that they may do so, as long as the parking lot rule is observed. Other employers have not addressed the subject in their employment policies and may see no reason to. Act 283 does not require these employers to promulgate any written policies toward firearms in the workplace, pro or con. For employers who want to implement specific written-policy guidance implementing the parking lot rule, however, the following form language may be used as a starting point:

Parking Lot Rule

In accordance with Alabama law (Act 2013-283), ACME does not prohibit the presence of a firearm or ammunition in your personal vehicle under the following conditions:

- The firearm or ammunition must be “lawfully possessed” (e.g., you must not be prohibited from possessing firearms under 18 U.S.C. § 922(g) or any other applicable law); and
- The firearm or ammunition must be kept in your personal vehicle in the parking lot where the vehicle is otherwise allowed to be; and
- The firearm must be kept from public view, and when you are not in the vehicle, the firearm must also be kept locked in the trunk, glove box or some other secure container inside the passenger compartment of the vehicle or attached to the vehicle; and
- You must *either* hold a valid Concealed Weapons Permit issued under *Ala. Code* § 13A-11-75 or recognized under *Ala. Code* § 13A-11-85, *or* meet all of the alternate requirements set forth in Section 4(b)(1)b of the Act.

You are responsible for knowing, understanding and complying with all requirements of the law. No adverse employment action will be taken against an employee who possesses a firearm or ammunition in his or her vehicle in full compliance with Act 2013-283 and all other applicable laws. ACME reserves the right to take appropriate disciplinary action against any employee who possesses, carries or uses a firearm on ACME property in violation of ACME policies other than in full compliance with Act 2013-283 and all other applicable laws.

Section 6 and Unresolved Questions

As with virtually any new legislation, Act 283 raises many new issues and questions for gun owners, employers, property owners

and governmental agencies. Many of these unresolved questions arise out of Section 6 of the Act.

Section 6 of the Act creates new categories of places where it is generally unlawful for any person—employee or not—to possess any firearm “without the express permission” of a person in charge of the property. Section 6 creates entirely new criminal offenses: It does not merely expound upon traditional trespassing theories of civil or criminal liability, nor does it directly affect an employer’s or landowner’s right to treat a person carrying a gun as a trespasser.^{20,21} Rather, the Section 6 offenses are complementary to preexisting trespass doctrines. The main effect of Section 6 is to add the prospect of arrest, criminal prosecution and up to three months in jail for possessing a firearm in one of the newly specified locations.²²

The new categories of locations are:

- (1) Inside the building of a police, sheriff or highway patrol station;
 - (2) Inside or on the premises of a prison, jail, halfway house, community corrections facility or other detention facility for those who have been charged with or convicted of a criminal or juvenile offense;
 - (3) Inside or on the premises of a facility which provides inpatient or custodial care of those with psychiatric, mental or emotional disorders;
 - (4) Inside a courthouse, a courthouse annex, a building in which a district attorney’s office is located or a building in which a county commission or city council is currently having a regularly scheduled or specially called meeting;
 - (5) Inside any facility hosting an athletic event not related to or involving firearms which is sponsored by a private or public elementary or secondary school or any private or public institution of postsecondary education, unless the person has a permit issued under Section 13A-11-75(a) (1) or recognized under Section 13A-11-85;
 - (6) Inside any facility hosting a professional athletic event not related to or involving firearms, unless the person has a permit issued under Section 13A-11-75(a) (1) or recognized under Section 13A-11-85; or
- (b) . . . inside any building or facility to which access of unauthorized persons and prohibited articles is limited during normal hours of operation by the continuous posting of guards and the use of other security features, including, but not limited to, magnetometers, key cards, biometric screening devices or turnstiles or other physical barriers;

A few details about Section 6 are noteworthy. *First*, in most cases, Section 6 applies even to a person who has a valid pistol permit, but the criminal sanctions do not apply to a person who has a pistol permit carrying inside a facility hosting athletic events. *Second*, pay careful attention to the precise language of each subparagraph: Most of the Section 6 locations refer specifically to places inside buildings or facilities, but two Section 6 locations (correctional facilities and hospitals) are broader, using the phrase “inside or on the premises of” the building or facility in question. (And, it also bears noting that Section 6(a)(3) is drafted

broadly enough to encompass, at least arguably, any hospital that I’ve ever been to.)

Section 6 brings its own set of thorny legal issues to the table. Here are a few unresolved questions about the scope and effect of Section 6:

- Section 2 of the Act amends *Ala. Code* § 13A-11-75 to include a new subsection (f), which reads, “A concealed pistol permit issued under this section shall be valid for the carrying of a pistol in a motor vehicle or concealed on the permittee’s person throughout the state, unless prohibited by *this section*.” How does this new subsection apply in light of Section 6 of the Act (which is not an amendment to “this section,” *i.e.*, *Ala. Code* § 13A-11-75)?
- In the main, the Section 6 locations do not include the employer parking lots that would be covered by the parking lot rule. In the cases of correctional facilities and hospitals, however, an employer parking lot might be “on the premises of” a location where Section 6 makes it a misdemeanor to possess any firearm. In these cases, do employees have no rights under the parking lot rule, or does the parking lot rule under Section 4 create the legal equivalent of, or stand as a substitute for, the property owner’s “express permission” under Section 6(a)?
- Section 6(b) provides that a person “may not, without the express permission of a person or entity with authority over the premises, knowingly possess or carry a firearm inside any building or facility” where guards and security measures are present, but the consequence of a violation of Section 6(b) is not clear. Section 6(e) designates “a violation of subsections (a) or (d)” as “a Class C misdemeanor,” but no such designation is included with reference to Section 6(b). What, therefore, is the effect of a transgression of Section 6(b)?²³
- Section 6(c) provides that persons or entities with authority over Section 6 locations “shall place a notice at the public entrances of such premises or buildings alerting those entering that firearms are prohibited.” Just as with Section 6(b), however, there is no legal consequence expressly connected to this mandate. Will courts construe the absence of such a sign as tantamount to “express permission” to carry a firearm under Section 6(a)? Or, stated differently, will courts consider the presence of a sign to be an element of the Class C misdemeanor offense created under Section 6(e)?

Conclusion

Much of what has been written and said about Act 283 during the debates leading up to its passage and afterward can be chalked up to rhetorical license on one side of the debate or another. Some of it has been categorically wrong, though. It is easy to get it wrong, too, because the Act is full of twists, turns and detours. All lawyers should read the Act for themselves—all 38 pages of it—and test everything they read against the actual language of the Act. There is no question that skilled lawyers representing businesses and individuals will be studying the language of Act 283 for years

to come and that, over time, courts will be called upon to interpret its more difficult provisions. | AL

Endnotes

1. Philip J. Cook and Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms* (U.S. Department of Justice, National Institute of Justice, May 1997), available at <https://www.ncjrs.gov/pdffiles/165476.pdf>.
2. Lee Roop, "Armed in Alabama: Permits show guns increasingly prominent," October 17, 2012, available at http://blog.al.com/breaking/2012/10/armed_in_alabama_permits_show.html.
3. See Act 1909-215.
4. *Ala. Code* §§ 13A-11-73, -74.
5. It would be an interesting academic exercise to trace the development of *Ala. Code* § 13A-11-52 from 1909 through the amendments affected by Act 283, and the impact of that section on the proper boundaries of "open carry" in Alabama. See, e.g., *K.J. v. State*, 690 So. 2d 541 (Ala. Crim. App. 1997); 79 Ala. A.G. 31 (May 26, 1955). That exercise is not undertaken here, however, because it has little to do with employers' rights and obligations under Act 283.
6. See, e.g., *Hess v. Butler*, 379 So.2d 1259 (Ala. 1980) (holding that sheriff did not abuse his discretion in refusing to issue a permit to applicant with various criminal convictions); Ala. A.G. Op. 2000-163 ("The word 'may' is generally used to imply permissive, optional, or discretionary, and not mandatory action or conduct. . . . The use of 'may' in the statute allows a sheriff not to issue a pistol permit to a person not qualified to carry a pistol, or to use his sound judgment to refuse to issue a permit to a person if there are circumstances causing the sheriff to believe reasonably that the person should not possess or own a pistol."); Ala. A.G. Op. 91-227 ("A sheriff has some measure of discretion in determining whether an applicant for or a holder of a license to carry a pistol is a suitable person to be so licensed. . . . The question of whether a person is a suitable person to be licensed is a factual determination to be made considering the facts in each case."); Ala. A.G. Op. 89-436 (Opining that "a sheriff in his sound discretion may refuse to issue a pistol permit to [a person convicted of incest] if there are circumstances which lead the sheriff to believe that the person should not possess or own a pistol," even though such a person would not be legally prohibited from owning or possessing a pistol).
7. See http://en.wikipedia.org/wiki/Concealed_carry_in_the_United_States (visited on May 24, 2013).
8. Of course, there is nothing in Act 283 that requires an employer to exercise this prerogative.
9. See, e.g., 18 U.S.C. § 922(g); *Ala. Code* § 13A-11-72.
10. See *Ala. Code* § 13A-11-57.
11. See *Ala. Code* §§ 13A-11-52, -73.
12. Section 4(b)(1)a refers to "a valid concealed weapon permit;" it doesn't explicitly say whether the permit must be an Alabama resident permit, or whether a permit issued by another state and recognized through reciprocity is sufficient. Elsewhere, the Act uses the phrase "a permit issued or recognized under Section 13A-11-75, *Code of Alabama*" to make it explicit that both categories of permits may be valid in particular circumstances. However, I can't think of any reason why a permit issued by another state and valid in Alabama through reciprocity should not satisfy Section 4(b)(1).
13. *Ala. Code* § 25-5-11.1.
14. See, e.g., *Blue Circle Cement, Inc. v. Phillips*, 989 So. 2d 1025, 1039 (Ala. 2011).
15. The Act itself supplies examples. Section 4(f) expressly allows an employer to discipline an employee "[i]f law enforcement officers, pursuant to a valid search warrant or valid warrantless search based upon probable cause, exigent circumstances, or other lawful exception to the search warrant requirement, discover a firearm prohibited by state or federal law, stolen property, or a prohibited or illegal item other than a firearm." But Section 4(f) obviously does not exhaust the possible causes for disciplinary action or the means by which they might be discovered.
16. See SB286, 2013 Reg. Sess., engrossed version, § 4(b) ("A public or private employer may not inquire or require an employee to disclose whether an employee is transporting a firearm or has stored a firearm in his or her private motor vehicle.").
17. *Richardson v. Stanford Properties, L.L.C.*, 897 So. 2d 1052, 1058 (Ala. 2004).
18. In similar fashion, Section 4(e) provides that the Act does not prohibit an employer from making an otherwise proper report to law enforcement if it receives credible evidence of illegal activity, including "a firearm prohibited by state or federal law," "stolen property or a prohibited or illegal item other than a firearm" or "a threat made by an employee to cause bodily harm to themselves or others." This language merely enumerates a non-exhaustive list of possibly permissible grounds for doing things that the Act does not otherwise prohibit. There is nothing in Act 283 that prohibits an employer from making any report of anything to law enforcement authorities.
19. It is natural to think of a factual scenario involving a "deer rifle" as a Section 4(b)(1)b case, but it may or may not be. The simpler (and correct) approach to this hypothetical is to note that the parking lot rule always requires that the firearm be hidden from public view, and in this case, it was not. Even if it were a Section 4(b)(1)b case, employers should exercise caution making judgments about what sorts of firearms are legal for hunting during certain seasons. Although I described the visible rifle as a "deer rifle" and stipulated that it wasn't "deer season," feral swine may be hunted in Alabama year-round, and they may be hunted with virtually any common rifle or shotgun that is not fully automatic and does not have a light source or silencer attached. See Alabama Administrative Code §§ 220-2-.01, -.02, -.86.
20. See, e.g., *Ala. Code* § 13A-7-1(4) ("A person 'enters or remains unlawfully' in or upon premises when he is not licensed, invited or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person."); *Georgiacarry.org v. State of Georgia*, 687 F.3d 1244, 1264 (11th Cir. 2012) ("Quite simply, there is no constitutional infirmity when a private property owner exercises [its]right to control who may enter, and whether that invited guest can be armed and the State vindicates that right."); *Satterwhite v. City of Auburn*, 945 So. 2d 1076 (Ala. Crim. App. 2006) (Defendant properly convicted of trespassing in the third degree for refusing to leave bookstore with dog after the shopkeeper requested that she leave).
21. The Senate Engrossed version of SB286 did, by contrast, contain some language that addressed, and in some ways seemed to qualify, a property owner's right to treat a person possessing a firearm as a trespasser. See SB286, 2013 Reg. Sess., engrossed version, § 6(a). That language, however, was not included in the final Act.
22. See *Ala. Code* § 13A-5-7(a)(3).
23. A transgression of Section 6(b) might be argued to be a "violation" under *Ala. Code* § 13A-5-4. Under that logic, however, a business owner's failure to place signs in accordance with Section 6(c) would probably be a violation, too, and that is probably not what the legislature intended.

Seven Points of Grammar

By Allen Mendenhall

1

"Whoever" and "Whomever"

2

"Who" and "Whom"

3

"As Such"

4

The Colon

5

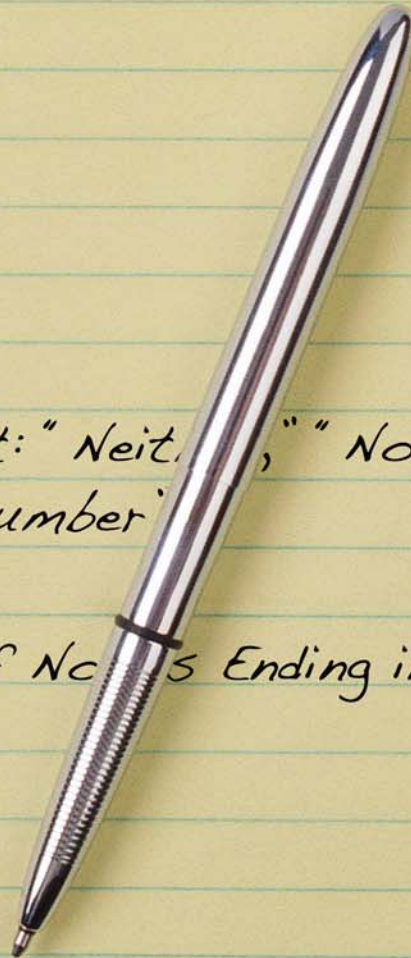
Subject-Verb Agreement: "Neither," "Nor,"
"Either," "Each," and "Number"

6

The Possessive Form of Nouns Ending in "S"

7

"Only"



As a staff attorney to Chief Justice Roy S. Moore, I read several briefs and petitions each day. I have noticed that certain grammatical errors are systemic among attorneys. Some errors are excusable; others aren't. Here are seven errors that are inexcusable.



"Whoever" and "Whomever"

Many attorneys do not know the difference between whoever and whomever. Test your knowledge by answering these questions:

Which of the following sentences is correct?

- A. Give the document to whoever requests it.
- B. Give the document to whomever requests it.

Which of the following sentences is correct?

- A. Whoever arrives first will get a copy.
- B. Whomever arrives first will get a copy.

If you answered A to both questions, you were correct. Here is a trick to help determine whether to use *whoever* or *whomever*:

STEP ONE: Imagine a blank space where you wish to use *whoever* or *whomever*.

Example: Give the document to _____ requests it.

STEP TWO: Split the blank space to create two sentences; then fill in the blanks with the pronouns *he* or *him*.

Example: Give the document to *him*. *He* requests it.

STEP THREE: Whenever you fill in the blank space with a *him/he* combination, use *whoever*. As we have already seen, the previous sentence should read, "Give it to whoever requests it." Whenever you fill in the blank space with a

him/him combination, use *whomever*.

Him/He = *whoever*

Him/Him = *whomever*

Here are more examples:

STEP ONE: You should hire _____ Pete recommends.

STEP TWO: You should hire *him*. Pete recommends *him*.

STEP THREE: You should hire *whomever* Pete recommends.

STEP ONE: This letter is to _____ wrote that brief.

STEP TWO: This letter is to *him*. *He* wrote that brief.

STEP THREE: This letter is to *whoever* wrote that brief.

STEP ONE: The prize is for _____ wins the contest.

STEP TWO: The prize is for *him*. *He* wins the contest.

STEP THREE: The prize is for *whoever* wins the contest.

STEP ONE: The lawyer made a good impression on _____ he met.

STEP TWO: The lawyer made a good impression on *him*. He met *him*.

STEP THREE: The lawyer made a good impression on *whomever* he met.

STEP ONE: The lawyer tried to make a good impression on _____ was there.

STEP TWO: The lawyer tried to make a good impression on *him*. *He* was there.

STEP THREE: The lawyer tried to make a good impression on *whoever* was there.



"Who" and "Whom"

The difference between *who* and *whom* has fallen out of favor in common speech, but retains its importance in formal writing. Use *who* if the pronoun is a subject or subject complement in a clause. Use *whom* if the pronoun is an object in a clause. A trick to help determine whether to employ *who* or *whom* is to rephrase the sentence using a personal pronoun such as *he* or *him*. Consider the following:

- A. Proper: *Whom* did you meet? (Rephrase: *I met him*.)

Him is objective, so *whom* is proper.

Improper: *Who* did you meet?

- B. Proper: *Who* do you think murdered the victim? (Rephrase: *I think he murdered the victim*.)

He is subjective, so *who* is proper.

Improper: *Whom* do you think murdered the victim?

- C. Proper: *Who* was supposed to finish that brief last week? (Rephrase: *He was supposed to finish that brief last week*.)

He is subjective, so *who* is proper.

Improper: *Whom* was supposed to finish that brief last week?

- D. Proper: Justice Brown is the man for whom I voted. (Rephrase: *I voted for him*.)

Him is objective, so *whom* is proper.

Improper: Justice Brown is the man who I voted for.



"As Such"

I used to practice at a mid-sized law firm in Atlanta. Tasked with reviewing the writing of all associate attorneys at the firm, one partner became hardheaded about two words: "as such." He always struck through the word "therefore" and replaced it with the words "as such." He did this so often that I finally decided to correct him. I was tired of watching him substitute a grammatical error for a sound construction.

When I spoke up, he got defensive. "As such means 'therefore,'" he said.

He was wrong.

The Random House Dictionary (2013) describes "as such" as an "idiom" that means "as being what is indicated" or "in that capacity." In other words, after you have described something, you use the phrase "as such" to refer back to that something "as described." Here are examples:

- A. He is the president of the university; as such, he is responsible for allocating funds to each department.
- B. This is a matter of law; as such, it is subject to *de novo* review.
- C. Theft is a crime; treat it as such.

In these examples, "as such" properly refers back to a definite antecedent.

"As such" appears regularly in legal writing. Whenever I see this construction misused, I think about that partner in Atlanta and become agitated.

"As such" is a simple construction; as such, it entails a simple application. Don't be shy about calling out your colleagues when you see them misuse this construction, even if you are a "lowly" associate. You might just save them—and the partners—from embarrassment.



The Colon

Although many rules govern the use of colons, I want to focus on this one: Never place a colon between a preposition and its object or between a verb and its complement. Likewise, never place a colon after such words or phrases as *especially*, *including* or *such as*.

These sentences violate this rule:

- A. He was convicted of several crimes, including: first-degree robbery, arson, third-degree burglary and second-degree forgery.
- B. Some affirmative defenses are: statute of frauds, waiver, statute of limitations, and contributory negligence.
- C. Most restrictive covenants have provisions about the developer or declarant such as: "Property Subject to the Declaration," "Easements," "Assessments" and "Membership."
- D. She enjoys the sites, especially: the courthouse, the town square and the memorial.

No colon is necessary in these sentences.



Subject-Verb Agreement: "Neither," "Nor," "Either," "Each," and "Number"

Attorneys generally understand subject-verb agreement. A verb must agree with its subject in number. That is, a singular

subject must take a singular verb; a plural subject must take a plural verb. The following words, however, give attorneys trouble: *neither*, *nor*, *either*, *each*, and *number*. What follows should clarify how to make these nouns agree with a verb.

Neither Mel's clients nor his associate ___ going to the meeting tomorrow.

When you pair *neither* and *nor* as conjunctions linking two nouns, choose the noun closest to the verb and let that noun determine whether you use *is* or *are*. In the example above, *associate* is closest to the verb. *Associate* is singular, so the proper verb is *is*.

Neither of the partners ___ attending the meeting.

Neither is singular and the subject of the sentence. It requires a singular verb: *is*. The verb is not *are* if the plural noun (*partners*) is not the subject. *Partners* is not the subject; it is part of a prepositional phrase.

___ *either of you* available to take his deposition tomorrow?

Either is singular and the subject of the sentence. It requires a singular verb: *is*. The verb is not *are* if the plural noun (*you*) is not the subject. *You* is not the subject; it is part of a prepositional phrase.

Each of you ___ contributed valuable insights to the case.

The pronoun *each* is the subject of the sentence. *Each* is singular and requires a singular verb: *has*. Many attorneys will write *have* because they think that *each* is plural or that the verb must modify the plural noun *you*. *You* is part of a prepositional phrase and cannot serve as the subject of the sentence.

The number of thefts ___ increasing.

Number can be singular or plural depending on the context. Here, *number* is used with the definite article *the*. Therefore, the singular verb (*is*) applies. In most cases, if *number* is used with the indefinite article *a*, then the plural verb (*are*) applies.

6 The Possessive Form of Nouns Ending in "S"

My sixth-grade teacher instructed me never to add 's after a singular noun ending with an *s* or *s* sound. She was wrong. The trick to nouns ending with an *s* or an *s* sound is that no trick exists: the rule is the same for these nouns as for all other nouns (with a few notable exceptions, such as the words "its" and "yours"). To form a singular possessive, add 's to the singular noun. To form a plural possessive, add an apostrophe to the plural noun. Here are some examples:

Singular Noun

Mr. Jones	Mr. Jones's
Mrs. Burnes	Mrs. Burnes's
The boss	The boss's

Plural Noun

The Joneses	The Joneses'
The Burnses	The Burnses'
The bosses	The bosses'



Only is one of the most regularly used words in the English language. It is also one of the most regularly *misused* modifiers. Below are examples of how attorneys misuse *only* in petitions and briefs. I have altered the language in these examples to conceal the identity of the authors.

A. "The appellant *only* references the reason why the appellee did not seek counseling."

This sentence implies that the appellant does nothing—nothing at all—but reference the reason why the appellee did not seek counseling. The appellant does not eat, sleep, think, talk, love, feel, or breathe. The *only* thing he does is reference the reasons why the appellant did not seek counseling. He must be a robot. The author of this sentence intended to say the following: "The appellant references *only* the reason why the appellee did not seek counseling." This revised sentence means that, of all the reasons from which he could have chosen, the appellant referenced *only* one. The appellant could have referenced other reasons, but did not.

B. "He *only* robbed two people."

This example suggests that "he" has never done anything—anything at all—but rob two people. If all you have ever done is rob two people, your entire existence has been a crime. The author of this sentence intended to say the following: "He robbed *only* two people." This revised statement should cause one to ask, "That's it? Just two people?"

C. "The agency granted the application on the condition that the hospital *only* will move 300 beds."

A hospital that does nothing but move 300 beds will not help sick patients. The author of this sentence should have written, "The agency granted the application on the condition that the hospital will move *only* 300 beds." In this revised sentence, "*only*" modifies "300 beds" rather than the verb "will move."

Attorneys are educated; we tend to avoid using language if we aren't certain about its grammatical soundness. Something about the foregoing rules baffles us, though.

The rules, though, are easy. What's difficult is overcoming habits and industry-wide error. If you aren't certain about a rule, don't just ask your colleagues for the solution. And don't take your colleagues' suggestions at face value. Consult a good, reliable grammar book. Doing so will improve your writing and possibly raise the quality of writing within the entire profession. | AL



2013 Award Recipients

William D. "Bill" Scruggs, Jr. Service to the Bar



Recipient David M. Wooldridge of Birmingham (center), with Alabama Lawyer Assistance Program Director Robert Thornhill and ASB President Phillip W. McCallum

This award honors the memory and the accomplishments of Bill Scruggs and encourages the emulation of his deep devotion and service to the Alabama State Bar by recognizing outstanding, long-term service by living members of the bar to the ASB. Wooldridge's service to the bar has been marked by compassion and support to the recovering community. He has served as a board member of the Alabama Lawyer Assistance Foundation since its inception in 2000 and also was chair and board member of the Lawyer Assistance Program and its predecessor, the Lawyers Helping Lawyers Committee. He has written and lectured extensively about dependency problems affecting lawyers and law students. In 2009, he and Squire Gwin were recognized with the Award of Merit for their outstanding constructive service to the legal profession through their tireless work with the ALAP.

President's Award Presented in Recognition of Exemplary Service to the Profession



President McCallum chose as the 2013 recipients those who best exemplified the state bar motto, "Lawyers Render Service."

Accepting a President's Award on behalf of her late husband, W. Eason Mitchell, is Nancy Mitchell, with David Wooldridge and President McCallum (see other recipients below).



President McCallum with additional President's Award recipients, including, left to right, Jana Russell Garner, Suzanne D. Edwards, Ashley Swink Fincher, Charles A. McCallum, III, Rebecca G. DePalma, David E. Rains, and Othni J. Lathram. Not pictured are recipients Tracy T. Leonard, Angela Slate Rawls and Edward S. Sledge, IV.

Award of Merit



Recipient James R. Pratt, III (center), with Executive Council member Christina Crow and President McCallum

The Award of Merit recognizes outstanding constructive service to the legal profession in Alabama. Pratt is a past president of the state bar and is most notably identified with strengthening the bar's legislative advocacy program to monitor all legislative, judicial and administrative developments that affect the legal profession and the justice system. He created a novel, bi-partisan plan for the state bar called the "Panel of Neutrals" which assists the legislature in seeking consensus, working through discord and resolving barriers to progress. He served two terms as a member of the Board of Bar Commissioners and as a member of a disciplinary panel.



Judicial Award of Merit



Recipient Judge Eugene R. Verin (center), with President-elect Anthony A. Joseph and President Phillip McCallum

The Judicial Award of Merit is presented to a judge who is not retired, whether state or federal court, trial or appellate, and is determined to have contributed significantly to the administration of justice in Alabama. Judge Verin is the senior circuit judge for the 10th Judicial Circuit (Bessemer Division), a position he has held since 1998. He is a 1978 honors graduate of Rutgers University and earned his law degree from Howard University. Judge Verin serves as executive director of the Birmingham Bar Association New Lawyer Mentoring Program and as chair of the Magic City Bar Association's Judicial Council. Judge Verin is married to Circuit Judge Annetta H. Verin.

Chief Justice's Professionalism Award



Recipient Alabama Supreme Court Justice (ret.) A. Hugh Maddox with his son, Robert H. Maddox

This award was created jointly by the Chief Justice's Commission on Professionalism and the Alabama State Bar, recognizing a judge or lawyer for his or her outstanding contribution in advancing the professionalism of the legal profession in Alabama. Maddox is known as a tireless advocate for improving professionalism throughout the American and Alabama legal communities. Justice Maddox retired in January 2001 as the senior associate justice on the Alabama Supreme Court, where he was considered by many to be its intellectual cornerstone. After being appointed to the supreme court by then-Governor Brewer in 1969, he was elected on five different occasions. During his 31 years on the court, he established a work product that no other Alabama jurist is likely to equal, including 1,650 majority opinions. With a journalistic background, he is a prodigious writer of books, articles and stories, including a children's book he not only authored but illustrated.

Volunteer Lawyers Program Pro Bono Awards



Linda Lund, VLP director; James Terrell, chair, Pro Bono & Public Service Committee; recipients Royal C. Dumas; Derek W. Simpson (also accepting for J. Barton Warren); Anita K. Hamlett (accepting for Virginia Lemon); and J. Payne Baker, Jr.; and President McCallum

Royal Dumas, recipient of the Al Vreeland Award, recruited 20 new volunteers to provide counsel to the poor and disadvantaged who seek assistance through the Montgomery County Bar Association Legal Clinic. He also is willing to provide representation in complicated pro bono cases that require litigation to resolve the matter and, in 2012, accepted 13 cases.

Derek Simpson, accepting for Warren & Simpson PC, recipient of the Firm/Group Award, approached the Madison County VLP several years ago, asking about the possibility of holding a large fundraiser. He and his law partner, Barton Warren, offered to underwrite the entire event. The first event focused on the legal community and more than \$9,000 was raised. Last year, the event took on an Oktoberfest theme and raised \$13,000 for the MCVLP. These events also create invaluable community awareness of the need for increased access to justice and the good work volunteer lawyers are doing.

Virginia Lemon, recipient of the Law Student Award, led the Jones Public Interest Law Foundation (JPILF) as its student-president. The JPILF raises money for stipends to support students with unpaid summer jobs in public interest/service law offices in preparation for careers of service. Lemon logged nearly 400 hours in the program and was the recipient of the law school's 2012-13 Distinguished Public Interest Award.

Payne Baker, recipient of the Mediation Award, is the coordinator of the Jefferson County District Court Mediation Program. Begun in 2000, it is one of the longest-running volunteer programs in the state, providing conflict resolution by qualified, dedicated volunteers. Pro bono mediation/services are provided to pro se parties on the small claims docket. Volunteer mediators donated approximately 450 pro bono hours in 2012.

Local Bar Awards of Achievement



President-elect Joseph with recipients C. Daniel White (Escambia County Bar Association), Tazewell T. Shepard, III (Huntsville-Madison County Bar Association), Robin L. Burrell (Birmingham Bar Association) and Gabriela Watson (Marshall County Bar Association)

The awards recognize local bar associations for their outstanding contributions to their communities. Associations compete for these awards based on their size – large, medium or small. Criteria used to judge the contestants includes the degree of participation by the bar in advancing programs to benefit the community, the quality and extent of the impact of the bar's participation on the community and the degree of enhancements to the bar's image in the community.



Wednesday Highlights/Exhibitors



The cast and crew of "Things I Find Interesting" include Judge Eugene Verin, Justice Thomas Woodall, President-elect Anthony Joseph, Chief Justice (ret.) Sue Bell Cobb, Barry Ragsdale, Judge Michael Graffeo, and Judge Jimmy Pool.



Enjoying the slower pace of the Grand Hotel are Everett Price, Terrie Biggs and Donna Price.



Cleve Poole with his captive audience (Bob McCurley and Steve Shaw), explaining the goals and accomplishments of the Digital Communications Task Force

2013 ASB Annual Meeting Exhibitors

AAL ... The Association for Legal Professionals

ABA Retirement Funds™ Program*

Alabama Appleseed Center for Law & Justice, Inc.

Alabama Center for Dispute Resolution

Alabama Law Foundation

Alabama's CollegeCounts™ 529 Fund

Alacourt.com™

Attorneys Insurance Mutual of the South, Inc.

Baker & Baker Reporting and Video Services, Inc.

Bradford Health Services

Cain & Associates Engineers & Constructors, Inc.

Casemaker®*

CLE Alabama

Clio*

Comprehensive Investigative Group

DrugProof

Expedius Envoy, Inc.

Freedom Court Reporting, Inc.

GEICO®*

GilsbarPRO

Henderson & Associates Court Reporters, Inc.

ISI Alabama, Inc.*

Jackson Thornton & Co.

LawPay*

Legal Nurse, Inc.

LexisNexis®

LocalLawyers.com.*

Merrill Corporation

Paralegal Solutions Plus

Southern Technology Group

Thomson Reuters

Volunteer Lawyers Program

*Denotes an Alabama State Bar Member Benefit Provider



Jim Pratt, David Perry, Judge John Carroll, Jim Williams, and Cooper Shattuck headed up Thursday's discussion on court-funding problems and solutions.



Just one of the many ways to relax at the Grand!



A great team – Mike and Mickey Turner of Freedom Court Reporting

2013 ASB Annual Meeting Sponsors

PLATINUM

Freedom Court Reporting, Inc.
 ISI Alabama, Inc.*
 Litigation Section
 Maynard Cooper & Gale PC
 McCallum Methvin & Terrell PC

GOLD

Faulkner University, Thomas Goode Jones School of Law
 GEICO®*
 Hare Wynn Newell & Newton LLP
 Samford University, Cumberland School of Law
 White Arnold & Dowd PC
 Young Lawyers' Section

SILVER

Alacourt.com™
 Bradford Health Services

CapVal-American Business Appraisers
 Copeland Franco Screws & Gill PA
 Family Law Section
 Gentle Turner Sexton Debrosse & Harbison
 Health Law Section
 Jinks Crow & Dickson PC
 Legal Directories Publishing Company, Inc.*
 McCallum Hoaglund Cook & Irby LLP
 Wilkins Miller Hieronymus LLC
 Wilmer & Lee PA

BRONZE

Administrative Law Section
 Appellate Practice Section
 Attorneys Insurance Mutual of the South, Inc.

Baker Donelson Bearman Caldwell & Berkowitz PC
 Beasley Allen Crow Methvin Portis & Miles PC
 Business Torts & Antitrust Law Section
 Cain & Associates Engineers & Constructors, Inc.
 Carr Allison
 Clio*
 Construction Industry Law Section
 Federal Court Practice Section
 Freese & Goss PLLC
 GilsbarPRO
 Harris Caddell & Shanks PC
 Hill Hill Carter Franco Cole & Black PC
 Daisy M. Holder
 Intellectual Property, Entertainment & Sports Law Section

International Law Section
 Jones & Hawley PC
 Knight & Knight LLC
 Labor & Employment Law Section
 Leadership Forum Section
 LexisNexis®
 Lightfoot Franklin & White LLC
 LocalLawyers.com*
 Merrill Corporation
 Real Property, Probate & Trust Section
 Rosen Harwood PA
 Sirote Permutt PC
 Stone Granade & Crosby PC
 Workers' Compensation Law Section

**Denotes an Alabama State Bar Member Benefit Provider*



Making new friends at the "Madagascar" Circus Party



Young at heart are past presidents (front row) John Owens, Walter Byars, Fred Gray, Broox Holmes, Wade Baxley, Tom Methvin, (back row) Vic Lott, Ben Harris, Bill Clark, Jim Pratt, Sam Rumore, and Sam Crosby. Missing in action was Alyce Manley Spruell, who had already sprinted to her next meeting.



Magistrate Judge (ret.) Vanzetta McPherson and Circuit Judge Annetta Verin visit during the Women in the Law reception.



Proof that it's not just seminars and committee meetings.



All dressed up with someplace to go!



Enjoying the Young Lawyers' Section/Leadership Forum Beach Party are JR Gaines, Monet McCorvey Gaines, Ashley Swink Fincher and Cody Fincher...



...as well as always-young Tutt Barrett and Kathy Barrett.



Still serving the profession are 50-year members, front row, Robert B. French, Jr.; Charles D. Rosser; Billy C. Bedsole; and Judge (ret.) Gerald S. Topazi. On the middle row are Charles A. Trost; Emmett F. Hildreth, Jr.; Thomas S. Lawson, Jr.; Augustine Meaher, II; and Thad G. Long. In the back row are William J. Baxley and Julian D. Butler.



Christie Archer, longtime assistant to Phillip McCallum, President McCallum and Kelley McCallum are all smiles as the 2013 Annual Meeting winds down.



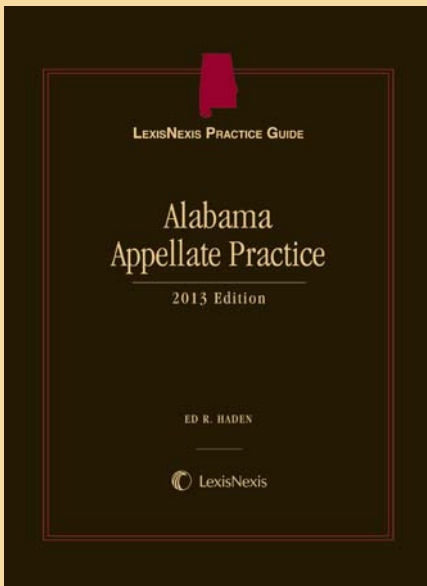
Brett Adair (far right), winner of the Grand Prize Getaway, with Bill Bass and Charlotte Bass Gardner of ISI Alabama, Inc., prize sponsor



Faces of the bar: 2011-12 past President Jim Pratt, President Anthony Joseph and immediate past President Phillip McCallum



Priceless!



Ed Haden

The Alabama Appellate Practice Guide, 2013 Edition

By Ed Haden

Reviewed by Judge R. Bernard Harwood, Jr.

The Alabama Appellate Practice Guide (2013 Edition) comprehensively updates its predecessor (1st Edition, 2009), and adds new chapters on post-judgment motions, agency appeals and criminal appeals. This helpful publication continues its role as the in-depth, yet fully “user-friendly” handbook on Alabama appellate procedure, and one that no practitioner who has any sort of appellate case can afford to be without.

Author Ed Haden of Balch & Bingham LLP has drawn on his extensive knowledge of the ins and outs of appellate procedure to put together a remarkable “field guide” that shepherds appellate counsel through every stage of every type of appellate proceeding. An essential tool for the novice appellate lawyer, the cogent, thoroughly citation-supported text also provides plenty of direction and advice for even the well-seasoned appellate practitioner.

The guide harmonizes the interactions of the applicable *Alabama Rules of Civil Procedure*, *Rules of Criminal Procedure* and *Rules of Appellate Procedure*, together with the interpretive case law. It is an unfailingly accurate “GPS” that guides counsel through the intricacies of every appellate undertaking—be it a regular appeal, one of the permissible interlocutory appeals or one of the extraordinary writ procedures, such as

mandamus and certiorari. This is facilitated by a detailed table of contents, a well-organized text, appendices of forms, an ample table of cases, and a thorough index. The book contains 20 chapters, each of which covers an area of appellate procedure in a logical order. Numerous charts and time-tables are also helpful. Additionally, a host of secondary matters are fully explained, including preserving error, cross appeals, applications for rehearing, appellate motion practice, staying judgments, and proper composition of the record on appeal. Specialized matters such as amicus curiae briefs, federal certified questions and advisory opinions receive their own full treatment.

As one who does a fair amount of appellate work, I can truthfully say that I never proceed without consulting this splendid resource, and doing so has, on more than one occasion, kept me from neglecting some necessary procedural step or omitting some essential content from an appellate filing.

Paper and electronic copies of this “must-have” handbook can be obtained from the LexisNexis website under Bookstore, LexisNexis Store, Jurisdiction and Alabama, or by going to *balch.com* and selecting Practices and Appellate. The book retails for \$79. | AL

Honoring the Past, Preparing for the Future, Concerned about the Present

By Sherrie L. Phillips and Dean Anita K. Hamlett

The Women's Section of the Alabama State Bar focuses on many projects; however, two of the section's primary goals are to recognize the value, legacy and work of female attorneys who paved the way for other female attorneys and to herald the accomplishments of young female law students establishing themselves as future leaders.

Honoring the Past

On July 19, 2013, at the Alabama State Bar's Annual Meeting, the Women's Section held its Maud McLure Kelly luncheon. Ms. Kelly was the first woman to graduate from the University of Alabama School of Law and the first woman to practice law in Alabama. She was one of the first southern women to argue a case before the United States Supreme Court. Ms. Kelly was a true groundbreaker for female attorneys in Alabama.

The 2013 honoree for the Maud McLure Kelly Award was Mary Lee Stapp. She embodies the spirit of Maud McLure Kelly. She graduated from the University of Alabama School of Law in 1951 and is best known for her service as an assistant attorney general, Department of Human Resources, and chief legal counsel and director of legal services for the Department of Pensions and Security. She is widely known and respected as an advocate for children and the elderly, arguing cases at all court levels, including the United States Supreme Court.



Kelly



Stapp

Preparing for the Future

Just as the Maud McLure Kelly Award honors female leaders of the past, the Women's Section also looks to the future of the women's bar in Alabama. The Justice Janie L. Shores Scholarship is awarded to a worthy female law student who is an Alabama resident and attends an Alabama law school. To fund this scholarship, the Women's Section sponsors a silent auction during the state bar's annual meeting.

The 2013 recipient of the Justice Janie L. Shores Scholarship was Hannah Hooks. The Women's Section presented Hooks with a check for \$4,500. The section sincerely appreciates every donor,

bidder and volunteer for participating in the auction and assisting future female attorneys in Alabama.

Concern for the Present

While Alabama's female attorneys have made great strides, national data suggests that retaining female attorneys in the practice of law is a challenge. If left unaddressed, this problem could be detrimental to young women seeking legal careers and to the legal community as a whole.

Statistics released this year by the American Bar Association's Commission on Women in the Profession show that only 19.9 percent of law firm partners are women and only 15 percent of equity partners are women.¹ In addition, in the 200 largest law firms surveyed, only four percent of the managing partners are women.² In contrast, 46.3 percent of summer associates and 45 percent of associates are women.³

These numbers reflect what has been called the "leaky pipeline;" female associates are leaving the profession in large numbers before they reach the level of partner or manager.⁴ One study found that a female attorney practices law for an average of nine and a half years, while a male attorney practices law an average of 19.5.⁵

This trend is cause for concern. First, it is disheartening to see so few women on the management or partnership track given the investments they have made in their legal careers. These women worked hard to earn their degrees, likely incurring a high debt-load to do so. They have likely logged many hours as an associate, making personal sacrifices for the sake of their careers.

Second, there is an economic impact on the firms that employ these women. Firms invest time and money in their associates with the expectation that the investment will be recouped by the time the associates become partners. If a female associate does not continue with the law firm that has invested in her, however, the firm's investment is lost, and the knowledge and wisdom that the would-be female partner could have contributed to the firm is also lost. Law firms should also be concerned about the trend given that corporate clients are requiring firms to match the corporate client's emphasis on race and gender equality.

Identifying the Cause

What happens to a female attorney in between the year that she may be a Janie L. Shores Scholarship winner and the year she may

be a Maud McLure Kelly honoree? It is likely that the scarcity of women on the equity partnership track—evident to women at lower levels of the profession—contributes to the “leaky pipeline”:

[T]he scarcity of visible, senior, successful women in large law firms sends a powerful message to other women, either those coming up the ranks within firms or those who are making a decision whether to attend law school or to apply for an associate position in BigLaw. The message—whether or not intended by those in power—is clear and simple: “You do not belong here.” Perhaps this, as much as anything, is responsible for a trend . . . first noted in the 2011 Survey: the declining percentage of women attending law school.⁶

Anne-Marie Slaughter’s article, “Why Women Still Can’t Have It All,” further identifies some possible causes and potential solutions.⁷ Slaughter discusses the myth that women can, all at the same time, have a successful career, raise beautiful and well-behaved children, be a good wife, be a good home administrator, be a good friend, and take care of aging parents. The premise of Slaughter’s article is that the pressure to do all of these things simultaneously and perfectly is a large reason women do not remain in high-pressure/high-power positions.⁸

Slaughter was the first female director of policy planning at the State Department.⁹ When asked why she left her government career, she explained her desire to spend more time with her family and her conclusion that a high-level government job was not conducive to that. She recounts the reactions from other women as being either “disappointed” or “condescending.”¹⁰

Slaughter admitted that, prior to her stint at the State Department, she had always been the woman “on the other side of this exchange”—“smiling the faintly superior smile” as another woman explained her decision to take time off and “congratulating herself on her unswerving commitment to the feminist cause.”¹¹ Slaughter’s opinion changed, though, and she concluded that women cannot have it all simultaneously.¹²

She argues that “having it all at the same time” is simply “air-brushing reality.”¹³ The reality for most women is that, in addition to working long hours full of stress and pressure, they are generally the caretakers at home and the general administrators of their families.

Moreover, women have few female mentors with whom to discuss the demands on their time, because those potential mentors have left the profession. Or the potential mentors have made sacrifices that young female attorneys are not willing to make. Slaughter mentions a young female attorney who cannot find any role models because the female partners or managers have made sacrifices the young attorney is not willing to make.¹⁴ As this young female attorney states, “They take two years off when their kids are young but then work like crazy to get back on track professionally which means that they see their kids when they are toddlers but not teenagers or really barely at all.”¹⁵

Slaughter calls on women of her generation—women who have reached the top of their respective careers—to be completely forthright with young women (and men). They must stop perpetuating the “have-it-all” mentality and admit that work-life balance in today’s economy and society is extremely difficult, if not impossible.¹⁶ In addition, the leadership gap must be narrowed so that women are equally represented in the political, corporate and legal fields.¹⁷ To do that, firms must retain female attorneys between the associate and the partnership level.

The Women’s Section Addresses the Challenge

There is no easy solution, but mentoring seems to be a large piece of the puzzle.¹⁸ Mentoring has always been a benefit of joining and being active in the Women’s Section, although it is not a specific goal of or reason for creating the section. With these alarming statistics, however, the section has begun to study and create structured mentoring projects. To initiate these efforts, the Women’s Section has consulted Anita Hamlett, associate dean of student services at Faulkner University’s Thomas Goode Jones School of Law.

Dean Hamlett’s response paints a picture of how many female attorneys view mentoring and why it still matters. Her response reads in part:

“I graduated law school in 1992. I was a first-generation lawyer. Firms were actively recruiting young females and we were confident that if there were any differences between male and female lawyers at that time, the scales were generally tipped in our favor. Frankly, I credit my first job with a law firm to a shortage of women practitioners prepared to hit the ground running.

“I am so thankful that Lanier, Ford was my first step in my career as a lawyer. Although she might never have recognized the extent of her influence, Donna Pate served as an outstanding mentor to me. I watched how she balanced her deep spiritual convictions with her commitment to her family and her practice. Her dedication to her clients was genuine.”

Dean Hamlett explains her current view of mentoring by discussing how her peer group’s views have changed.

“I have noticed that several of the female lawyers of my generation have found ways to come of age with contentment. There are some who have used their financial success to pay for assistance with maintaining the home, preparing meals and taxiing children to afterschool activities. Others have made the decision to move off the partnership track to allow them time to make field days and slumber parties. A few have switched to practice areas that allow for more flexibility, leaving behind the courtroom for research or transactional practice. Still others have left the practice altogether for very successful careers that allow them to use their law degree as a professor, librarian, administrator or regulator.

“In a nutshell, there is no perfect solution to our finding comfort with the issues we face as women. If we ‘like’ where we are, we should be sharing directions to get there with young lawyers.

“Unfortunately, we have been taught that the law, unlike most professions, is a call to perfection. Since none of us is perfect, this mindset predestines us for failure. As women in the law, we have a unique responsibility and opportunity to encourage one another (individually and as a community) to redefine success and professionalism.”

As the women who founded the Women’s Section know, female-to-female advice, networking and mentoring are blessings with value beyond the legal profession. Thus, the need for mentoring should be met with creative and innovative solutions, both by the section and the bar as a whole.

To address the female attorney retention challenge, and also to partner young attorneys with more experienced attorneys, mentoring programs sponsored by the Women's Section are being scheduled around the state in the upcoming year. As the section seeks to sponsor these events and speak to these issues, consider giving freely of your time, wisdom, knowledge and energy—female and male attorneys alike. Please attend, get involved, mentor and sponsor young attorneys, and honor those who have paved the way for women in the profession in the state of Alabama. | AL

Endnotes

1. American Bar Association Commission on Women in the Profession, *A Current Glance at Women in the Law 2013*, January 2013 (quoting National Association for Law Placement, *Representation of Women Among Associates Continues to Fall, Even as Minority Associates Make Gains*, December 2012); see also National Association of Women Lawyers and the NAWL Foundation, *Report of the Seventh Annual National Survey on Retention and Promotion of Women in Law Firms*, October 2012.
2. American Bar Association Commission on Women in the Profession, *supra* note 1.
3. *Id.*
4. *Id.*
5. Phyllis Horn Epstein, *Attrition of Senior Women Lawyers: The Leaky Pipeline*, 15 THE YOUNG LAWYER 2.
6. National Association of Women Lawyers and the NAWL Foundation, *Report of the Seventh Annual National Survey on Retention and Promotion of Women in Law Firms*, October 2012.
7. Anne-Marie Slaughter, *Why Women Still Can't Have It All*, THE ATLANTIC, July 1, 2012, <http://m.theatlantic.com/magazine/archive/2012/07/why-women-still-can-8217-t-have-it-all/9020/>.
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. Slaughter believes this is also true of men. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. The lack of effective mentoring and female role models are consistent themes throughout Slaughter's article. *Id.* This desire for effective mentoring has also been a regular theme in articles written on the subject of attrition of female attorneys, with all agreeing mentoring is a major tool for retaining female attorneys. See Epstein, *supra* note 5; NAWL, *supra* note 1.

The Women's Section of the Alabama State Bar Presents... Conference at the Coast

October 4 -5, 2013

at the Caribe Resort in Orange Beach, Alabama



Marianne M. Trost - Keynote Speaker

The Women Lawyers Coach

Ms. Trost is a nationally recognized coach, trainer and speaker, and former co-chair of the National Association of Women Lawyers Survey Committee on the Retention and Promotion of Women in Law Firms

Featuring Commissioner Constance Smith Barker

U.S. Equal Employment Opportunity Commission

Commissioner Barker is currently serving her second term. She is leading an EEOC internal Small Business Task Force and is also focused on the occurrence of worksite sexual assault against young women and girls. She is formerly a shareholder at Capell & Howard, Assistant District Attorney and General Counsel for the Mobile County schools.



Please mark your calendar and make plans to join us...





In Alabama We've Done Well, But the Challenge Has Only Begun

PRO BONO WEEK 2013: OCTOBER 21-25

By J. Flynn Mazingo

A pro bono study conducted in 2008 by the American Bar Association

revealed very encouraging news about lawyers. According to the study: 1) three-fourths of lawyers voluntarily provide free legal services to a deserving cause or person; 2) lawyers are increasingly devoting more hours to pro bono legal services; and 3) lawyers provide pro bono services at nearly three times the rate of volunteer work by the general population.

National leaders

For the members of the Alabama State Bar, the results of the study are not surprising. Alabama lawyers and the Alabama State Bar are national leaders in providing and advocating pro bono services. Alabama's Pro Bono Week celebration is recognized by the American Bar Association as one of the best in the country—in fact, the American Bar Association has an online video library of Alabama attorneys extolling the personal and professional benefits from their commitment to pro bono work. Recently, our own **Henry Callaway** was awarded the American Bar Associations' Pro Bono Publico award, and the firm of **Bradley Arant Boult Cummings** is the recipient

of the American Bar Association Death Penalty Representation Project's Exceptional Service Award. In the past few years, more than 4,000 Alabama lawyers have completed 2,300 pro bono cases, donating more than 23,000 hours of volunteer work. Last year the state bar, under the leadership of **Jeanne Dowdle Rasco**, conducted a first-of-its-kind Justice Bus Tour in the Birmingham, Huntsville, Mobile and Montgomery areas. Yes, Alabama is a national leader in a very admirable and worthy cause!

Need is still great

Our commitment to pro bono services has only just begun, though. In statistics compiled by Alabama Possible, a statewide nonprofit campaign of the Alabama Poverty Project, more than one in six Alabamians, including one in four children, live below the poverty level, i.e., an annual income of below \$17,000 for a family of three. More than 41 percent of Alabama high school students will drop out of school. In addition, Alabama ranks 42nd in per capita income and has one of the largest income gaps in the nation. Thus, the need is great and will remain great for many years to come.

We must remain dedicated and focused on pursuing justice for all the members of our communities, and using our time, talents and treasure to help the least among us. This year, we expect almost half of our low-income households to need professional legal help. In years past, however, more than 80 percent of these households went without help, or received only minimal assistance.

How to get involved

This is the fifth year that Alabama has celebrated Pro Bono Week. Alabama lawyers, local bar associations, law firms and law schools will again be hosting free legal clinics, fund-raisers and other activities to help the least among us, to foster community awareness of their plight and to encourage fellow attorneys to go beyond themselves and give the benefits of their skills and talents to the most needy in our state.

There are many ways to get involved. Local bars, along with or in addition to Cumberland School of Law, Jones School

of Law and the University of Alabama School of Law, will be hosting free legal clinics for general advice and for a plethora of legal issues, including elder law, family law and Wills for Heroes. They need and want your help. The state bar, bar commissioners and local bar presidents will request proclamations from Governor Bentley and from local governing bodies to raise awareness. In addition, Alabama lawyers will take to the airwaves in radio and television interviews, broadcast messages and announcements, and will speak at Rotary, Optimist and other clubs to spread the word.

Gain greater insight

In addition, the Alabama State Bar's **Pro Bono Week Task Force** is organizing a poverty simulation to give pro bono lawyers the opportunity to experience the life and legal hurdles faced by their clients, from their clients' perspective. In turn, pro bono lawyers will see first-hand the importance and value of their services to the client, and gain greater insight into

their clients' needs. The poverty simulation will be held at Cumberland School of Law in October.

It is great to be an Alabama lawyer, and it is especially great to be in a position to help where there is much need. If you have provided pro bono services in the past, we congratulate and thank you, but we still need your help and commitment, and more of it, if possible.

If you have not volunteered, there are numerous ways you can get involved. Contact your local bar association or your bar commissioner; **Cumberland, Alabama, Jones, Miles Law School, or Birmingham School of Law**; or the **ASB Volunteer Lawyers Program**, the **Birmingham Bar Association Volunteer Lawyers Program**, the **Madison County Volunteer Lawyers Program** or the **South Alabama Volunteer Lawyers Program**. Attend and support the pro bono celebrations in your community.

There is a tremendous need for your help, to ensure that justice is available for everyone. Thank you for your support and have a great Pro Bono Week 2013! | [AL](#)



Alabama Center for Dispute Resolution

P.O. Box 671
Montgomery, AL 36101
(334) 269-0409



Looking for a Mediator? An Arbitrator?

The most up-to-date Alabama listing for trained neutrals is located at www.alabamaadr.org. Click on "Find a Mediator" or "Find an Arbitrator."

New Eleventh Circuit Pattern Jury Instructions

by Will Hill Tankersley

The life of the law may be experience, but putting the law into clear, accurate jury instructions is all about precision and time. Drafting solid and understandable pattern jury instructions takes a commitment from lawyers who have plenty of other (paying) things to do. The Eleventh Circuit is fortunate to have lawyers willing to give of their time in service of trial by jury.

In May 2013, the Eleventh Circuit Pattern Jury Instructions Committee approved the 2013 Eleventh Circuit Pattern Jury Instructions. This is the latest in a series of Eleventh Circuit jury instruction updates. The first version of the Eleventh Circuit Pattern Jury Instructions was published in 1980 (by a predecessor committee in the former Fifth Circuit). The most recent version was in 2005.

Until the 2013 version was approved, the Eleventh Circuit had no comprehensive copyright and trademark pattern jury instructions. With the 2013 version, the Eleventh Circuit joins the Seventh and Ninth circuits in offering pattern jury instructions that specifically address copyright and trademark issues.

The 2013 Eleventh Circuit Pattern Jury Instructions also include the following substantive areas of the law:¹

- Adverse Employment Action Claims;
- Civil Rights Constitutional Claims;
- Securities Act; and
- Jones Act—unseaworthiness

The Eleventh Circuit Pattern Jury Instruction Committee (“Committee”) was comprised of:

Hon. Donald M. Middlebrooks, district judge (S.D. Fla.);
Hon. Inge Johnson, district judge (N.D. Ala.);
Hon. W. Keith Watkins, chief district judge (M.D. Ala.);
Hon. William S. Duffey, Jr., district judge (N.D. Ga.); and
Hon. Clay Land, district judge (M.D. Ga.)

The copyright jury charge drafting oversight responsibilities were originally held by Judge Mark Fuller, who was at that time the chief judge of the United States District Court for the Middle District of Alabama. When Judge Watkins became chief judge for that court, he assumed the oversight responsibilities. For the trademark jury charges, Judge Duffey of the United States District Court for the Northern District of Georgia had the oversight responsibilities.

To form the working groups, the judges selected a retired Eleventh Circuit Court of Appeals judge and practitioners, all of whom have background and experience in their respective areas of practice.

Copyright Working Group

Joseph M. (“Joe”) Beck (Kilpatrick Townsend & Stockton LLP, Atlanta)
Hon. Stanley F. Birch, Jr. (United States Circuit Judge for the Eleventh Circuit Court of Appeals, ret., JAMS ADR, Atlanta)
Jeffrey S. Boyles (Allen, Dyer, Doppelt, Milbrath & Gilchrist PA, Orlando)
Patricia Clotfelter (Baker, Donelson, Bearman, Caldwell & Berkowitz PC, Birmingham)
Summer Austin Davis (Bradley Arant Boult Cummings LLP, Birmingham)
Jeffrey D. Dyess (Bradley Arant Boult Cummings LLP, Birmingham)
Michael L. (“Mike”) Edwards, (Balch & Bingham, LLP, Birmingham)
Linda A. Friedman (Bradley Arant Boult Cummings LLP, Birmingham)
Harriet Thomas Ivy (Baker, Donelson, Bearman, Caldwell & Berkowitz PC, Birmingham)
W. Andrew Pequignot (Kilpatrick Townsend & Stockton LLP, Atlanta)
Kimberly T. Powell (Balch & Bingham LLP, Birmingham)
Paul M. Sykes (Bradley Arant Boult Cummings LLP, Birmingham)
Will Hill Tankersley (Balch & Bingham LLP, Birmingham)
J. Dorman Walker (Balch & Bingham LLP, Montgomery)

Trademark Working Group

Theodore H. (“Ted”) Davis (Kilpatrick Townsend & Stockton LLP, Atlanta)
Michael D. Hobbs (Troutman Sanders LLP, Atlanta)
Leslie J. Lott (Lott & Fischer, Coral Gables)
Richard W. (“Rich”) Miller (Ballard Spahr LLP, Atlanta)
William H. (“Bill”) Needle (Ballard Spahr LLP, Atlanta)
Jaclyn T. Shanks (Kilpatrick Townsend & Stockton LLP, Atlanta)
Will Hill Tankersley (Balch & Bingham LLP, Birmingham)

Securities Working Group

Eric I. Bustillo (Securities & Exchange Commission, Atlanta)
Krissi T. Gore (Chitwood Harley Harnes LLP, Atlanta)
Elizabeth Gringold Greenman (Alston & Bird LLP, Atlanta)
Corey D. Holzer (Holzer Holzer & Fistel LLC, Atlanta)
Gregory E. Keller (Chitwood Harley Harnes LLP, Atlanta)
John L. Latham (Alston & Bird LLP, Atlanta)
M. Graham Loomis (Securities & Exchange Commission, Atlanta)
M. Robert Thornton (King & Spalding LLP, Atlanta)
Kristin B. Wilhelm (Securities & Exchange Commission, Atlanta)

Employment Working Group

Edward D. Buckley, III (Buckley Klein LLP, Atlanta)
Professor Thomas A. Eaton (University of Georgia School of Law, Athens)
Nancy E. Rafuse (Rafuse Hill & Hodges LLP, Atlanta)
Dean Rebecca H. White (University of Georgia School of Law, Athens)

RICO Working Group

John E. Floyd (Bondurant, Mixson & Elmore LLP, Atlanta)
Phyllis B. Sumner (King & Spalding LLP, Atlanta)

Jones Act Working Group

Colin A. McRae (Hunter Maclean, Savannah)
Eleventh Circuit pattern jury instructions come in three parts: a.) jury charge, b.) special interrogatories and c.) annotations and comments. Members of the two working groups in which I served (copyright and trademark) cast a broad net to create comprehensive jury instructions based on Eleventh Circuit case authority, United States Supreme Court case authority and the relevant federal statutes. The annotations and comments are a primer on Eleventh Circuit jurisprudence as to copyrights and trademarks.

The committee directed that jury instructions be in plain English. To improve clarity, Professor Bryan A. Garner, who has published extensively on the craft of legal writing, assisted in the editing of the 2013 Eleventh Circuit Pattern Jury Instructions. (After Prof. Garner made his edits, the draft was sent back to the working groups to confirm that the edits were a correct statement of the law.)

Each of these working groups devoted hundreds of hours of un-compensated, and, until now, unsung efforts to perform a valuable service for the bench, bar, litigants and jurors. The 2013 Eleventh Circuit Pattern Jury Instructions can be found at <http://www.ca11.uscourts.gov/documents/pdfs/civjury.pdf>. | AL

Endnote

1. The 2013 *Eleventh Circuit Pattern Jury Instructions* also include preliminary, trial, basic and basic instructions involving certain claims.



ASB President Anthony "AJ" Joseph and Fred Ury, chair of the ABA Standing Committee on Professionalism

STATE BAR LEADERSHIP FORUM Receives National Award from American Bar Association

An elite committee of the American Bar Association



Representing the Leadership Forum at the ABA Annual Meeting were Ed Patterson, Rebecca DePalma and Andrew Nix.

(ABA), the Standing Committee on Professionalism, selected the Alabama State Bar's Leadership Forum as one of three recipients to receive the **2013 E. Smythe Gambrell Professionalism Award**. The Gambrell Award is the nation's leading program honoring the best professionalism programs and practices of law schools, bar associations, professionalism commissions and other law-related organizations.

ASB President Anthony A. Joseph said, "This award validates the Leadership Forum as a national example of innovative professionalism programs. Participants are required to complete a rigorous education and training process focusing on leadership, ethics and career development. Noting a wide variety of teaching methods in more than 60 sessions with 200 faculty members, the ABA Professionalism Committee was particularly impressed with the program's ground-breaking and exceptional

advancement of servant-minded leadership training within the bar and the larger community. They commended the Alabama State Bar Leadership Forum for its innovative, thoughtful and exceptional content, for its powerful and positive continuing impact on emerging leaders in the bar community and for the extraordinary example it has established that others may emulate."

In announcing the award, the ABA Committee on Professionalism said, "The judges found the Alabama program to be a beacon of excellence for bars across the nation in this critically important developmental area." The Alabama State Bar Leadership Forum began in 2005. The Leadership Forum is highly competitive, accepting up to 30 attorneys each year. Only 40 percent of those who apply are chosen in any one year.

The forum has an alumni base of 262 lawyers. In January 2014, the Leadership Forum will celebrate its tenth year as it focuses on relevant and strategic training for an emerging generation of young lawyers. | [AL](#)



2013 LEADERSHIP FORUM Participants

Gray M. Borden, U.S. Attorney's Office, Middle District of Alabama, Montgomery
 John A. Brinkley, Jr., Brinkley & Chesnut, Huntsville
 Ryan K. Buchanan, U.S. Attorney's Office, Northern District of Alabama, Birmingham
 Pamela L. Casey, 41st Judicial Circuit, District Attorney's Office, Oneonta
 John W. Clark, IV, Bainbridge, Mims, Rogers & Smith LLP, Birmingham
 Diandra S. Debrosse, Gentle, Turner, Sexton, Debrosse & Harbison, Hoover
 Mary Margaret W. Fiedler, Supreme Court of Alabama, Montgomery
 W. M. Bains Fleming, III, Norman, Wood, Kendrick & Turner, Birmingham
 Benjamin Y. Ford, Armbrrecht Jackson LLP, Mobile
 Scott M. Speagle, Webster, Henry, Lyons, White, Bradwell & Black PC, Montgomery
 Jeremiah M. Hodges, Hodges Trial Lawyers PC, Huntsville
 Brett A. Ialacci, Badham & Buck LLC, Birmingham
 Andrew B. Johnson, Bradley Arant Boulton Cummings LLP, Birmingham
 F. Leslie Lambert, The Lambert Law Office, Camden
 Jonathan W. Macklem, Christian & Small LLP, Birmingham
 J. Brannon Maner, Gordon, Dana, Knight & Gilmore LLC, Birmingham
 R. Clifford Mendheim, Prim & Mendheim LLC, Dothan
 Mark B. Moody, Alabama State Bar, Montgomery
 Abigail L. Morrow, Cadence Bank NA, Birmingham
 Christopher J. Nicholson, Jones & Hawley PC, Birmingham
 Roben H. Nutter, East Alabama Medical Center, Opelika
 Jaffe S. Pickett, Legal Services Alabama, Montgomery
 Holly L. Sawyer, Lewis, Brackin, Flowers & Johnson, Dothan
 Patrick H. Strong, Balch & Bingham LLP, Birmingham
 Michael F. Walker, Bradley Arant Boulton Cummings LLP, Birmingham
 Hon. Stephen C. Wallace, 10th Judicial Circuit, Criminal Division, Birmingham
 Joshua B. White, Stephens Millirons PC, Huntsville
 M. Maran White, Auburn University, General Counsel's Office, Auburn
 Justin G. Williams, Tanner, Guin & Crowell LLC, Tuscaloosa
 Nathan P. Wilson, Alabama Court of Civil Appeals, Montgomery

CONSTRUCTION & ENGINEERING EXPERTS

Forensic engineering and investigative inspection work for Commercial buildings, Residential, & Industrial facilities.

- Construction delay damages
- Construction defects
- Structural issues
- Foundations, settlement
- Sinkhole Evaluations
- Stucco & EIFS
- Toxic Sheetrock & Drywall
- Electrical issues
- Plumbing & Piping Problems
- Air Conditioning Systems
- Fire & Explosion Assessments
- Roofing problems
- Flooding & Retention Ponds
- Engineering Standard of Care issues
- Radio & Television Towers

CONTACT: HAL K. CAIN, PRINCIPAL ENGINEER
 CAIN AND ASSOCIATES ENGINEERS & CONSTRUCTORS, INC.
 HALKCAIN@AOL.COM • WWW.HKCAIN.COM
 251.473.7781 • 251.689.8975



J. FORRESTER DeBUYS, III
(de-bweez)

Agent, New York Life Insurance Company
 CLU®, ChFC®, AEP®

INDIVIDUAL AND BUSINESS INSURANCE PRODUCTS AND CONCEPTS

FOR INDIVIDUALS

- Life Insurance
- Fixed Annuities *
- Disability Insurance **
- Long Term Care Insurance

FOR BUSINESSES

- Key Person Coverage
- Buy-Sell Agreement Funding
- Deferred Compensation
- Group Life and Disability Insurance **

* Issued by New York Life Insurance and Annuity Corporation
 (A Delaware Corporation)

** Products available through one or more carriers not affiliated with New York Life, dependent on carrier authorization and product availability in your state or locality.

2311 Highland Avenue South, Suite 100
 Birmingham, Alabama 35205
 (205) 918-1515



Addiction and Mental Illness, and the Benefits of Recovery

By Robert B. Thornhill

Our country faces many challenges today:

our mounting national debt, the sluggish economy, terrorism, crime, and education, to mention only a few. However, the number one public health problem we face is addiction. According to a new and comprehensive survey released recently by *Faces and Voices of Recovery* entitled “Life in Recovery,” the costs of addiction to the individual and to our country are devastating. The study found that during their active addiction, 50 percent of respondents had been fired or suspended from their jobs one or more times, 50 percent had been arrested at least once and a third incarcerated at least once, contributing to a total societal cost of \$343 billion annually.¹

Numerous studies have shown that the rate of addiction among those in the legal profession is roughly twice that of the general population! The same is true regarding depression. It is important to remember that lawyers and judges are not immune to these problems. Lawyers routinely provide counsel and guidance to clients struggling with addiction or mental illness, yet often fail to recognize or assist when they or a colleague are exhibiting symptoms of impairment. The **Alabama Lawyer Assistance Program** is committed to providing confidential assistance to members of the legal profession. Part of this assistance involves education regarding addiction and mental illness. This article will focus primarily on this information.

Addiction is a chronic, progressive and fatal illness. The disease begins at an early stage when the compulsive use of substances appears to be helpful, and will continue without treatment and recovery to the final stages, at which time the addict will be forced to use around the clock to avoid the ravaging effects of physical withdrawal. Most addicts do not survive until the final stages of addiction; they die in a number of ways including automobile and other vehicle accidents, organ failure due to chronic ingestion of drugs or alcohol, homicide or suicide, accidental drowning or burning, overdose, and so on. The disease of addiction is characterized by inevitably worsening consequences in every area of the addict's life: physical, emotional, mental and spiritual.

Addicts and alcoholics experience a variety of physical pathologies due to a significantly increased risk for cancer, heart

disease, liver disease (cirrhosis), pancreatitis, fractures and injuries, HIV/AIDS, STDs, and a host of other maladies. Over time, the addict will experience health problems directly attributable to their compulsive use of alcohol or drugs. The healthcare costs to individuals, families, businesses and our country are incalculable.

Additionally, as this dependency progresses, the addict stops maturing emotionally and often regresses in his or her ability to react to life's problems and challenges in a healthy and productive way. I have often asked the question, "Have you ever known an addict who handles his anger well?" In all my years as a therapist, I have never received a "yes" response. There are many reasons for this, but a primary cause of the addict's emotional immaturity and difficulty with anger arises from the fact that all addicts are compelled to engage in activities that they

know in their hearts to be wrong. It is self-evident that no human being can, over time, engage in behaviors that violate their own moral code, and simultaneously feel good about who they are! The fact is that most addicts, largely unconsciously, come to hate themselves. In this condition addicts remain restless, irritable, discontented and quick to anger. Most also become consumed with self-centered fear, self-pity and self-loathing.

Mental health is also negatively affected by the disease of addiction. Most alcoholics and addicts possess traits for depression, anxiety, bipolar disorder and even personality disorders. Many easily meet the diagnostic criteria for one or more of these mental illnesses. I remember well a conference I attended in Nashville during which researchers revealed that the brain scans of cocaine and amphetamine addicts coming off a drug binge were identical to



The Alabama Lawyer Assistance Program

Addiction has become our nation's number one public health problem. Tragically, studies show that the rate of addiction among attorneys is roughly double that of the general population. The same is true of depression. The Alabama Lawyer Assistance Program is designed to provide confidential assistance to attorneys and judges who may be struggling with a substance use disorder or another mental health disorder such as depression, anxiety, or bipolar disorder. If you or someone you know is in need of assistance, please contact the director, Robert Thornhill at 334-517-2238. Calls can be made anonymously and you can rest assured that we will approach the individual with compassion, respect, and an honest desire to help.

415 Dexter Avenue • Montgomery, Alabama 36104

the scans of those diagnosed with paranoid schizophrenia.

Because addiction is so often accompanied by one or more additional mental health disorders such as depression, anxiety or bipolar disorder, there have been increasing efforts to effectively treat these “co-occurring disorders.” For many addicts, symptoms of depression or anxiety lessen over time and become manageable simply by working the 12-step program offered by Alcoholics Anonymous (AA) and utilizing coping skills acquired while in treatment. For others, these co-occurring disorders will persist and require ongoing psychiatric treatment, medication management and therapy.

In an article in *Counselor* magazine, John Seery wrote about the experiences of a number of his patients diagnosed with addiction and with at least one other mental health disorder that required psychiatric medication management.

Without exception, these individuals described how essential their genuine participation in recovery and AA had been to their overall mental health. One elaborated on how her AA participation and abstinence from alcohol had significantly increased the effectiveness of the medication prescribed for her bipolar disorder. In fact, AA and abstinence had so effectively held her symptoms under control that she came to mistakenly believe that her bipolar illness was cured and she discontinued her medication regimen. Of course, the symptoms of her bipolar disorder soon returned. It has been well known for many years that emotional instability greatly increases the likelihood of relapse into active addiction. Shortly after the return of her hypomania and depression symptoms, she was using alcohol daily. She was subsequently committed by her family to a local hospital, where she underwent detoxification to avoid the life-threatening symptoms of delirium tremors (DTs). With resumption of her medication regimen, AA and abstinence, her mental health symptoms stabilized.²

Those of us who have worked in the field of addiction agree that the area of human life that is most affected by the disease of addiction is the spiritual dimension, and that in order to truly recover one must focus first on matters of the spirit. The founders of the fellowship of Alcoholics Anonymous discovered that alcoholics are, most importantly, spiritually sick. Through trial and error and, I believe, divine intervention, they came upon a spiritual solution to the disease of alcoholism that has since become the blueprint for countless other 12-step programs that have proven to be life-changing and effective. Many experts agree that AA is a valuable and effective part of recovery. For example, Gorski and Miller stated, “Alcoholics Anonymous is the single most effective treatment for alcoholism. More people have recovered from alcoholism using the program of AA than any other treatment. It is for this reason that AA needs to be a vital part of any alcoholic’s sobriety plan.”³ Additionally, Harry M. Tiebout, MD, who served on the board of trustees for AA from 1957 to 1966, stated, “I developed a conviction

that AA had hit upon a method that solved the problem of excessive drinking. In retrospect, my first two or three years of contact with AA were the most exciting in my whole professional life. Hopeless drunks were being lifted out of the gutter. Individuals who sought every known means of help without success were responding to this new approach. To be close to any such group, even by proxy, was electrifying. In addition, professionally, a whole new avenue of problems of alcohol had opened up; somewhere in the AA experience was the key to sobriety.”⁴

To the delight and amazement of anyone who has truly participated in the AA program, we have found that when an alcoholic begins to straighten out and grow spiritually, he also begins to grow and heal physically, emotionally and mentally.

Lawyers spend their entire professional lives helping others with their problems—problems that often involve addiction. They provide assistance and services to improve the lives of their clients. Yet, their own problems often go unacknowledged and untreated. The Alabama Lawyer Assistance Program and our committee of volunteer attorneys stand ready to assist at any time. We encourage those of you who are aware of a member of the legal community struggling with addiction or another mental health disorder to contact our office. You can provide information anonymously, and you can rest assured that we will approach this individual with compassion, respect and an honest effort to provide confidential assistance.

There is a solution to the problem of addiction and for those with co-occurring disorders. Evaluation, treatment, medication management and therapy, when needed, and genuine participation in the 12-Step recovery has proven to be an effective and life-changing process for literally millions of addicts, their families, co-workers and friends. But, the problem must first be acknowledged! Those with the courage to reach out and call our office may well make the difference between life and death for a friend or colleague.

I conclude with additional data from the comprehensive survey completed by

CHILD SUPPORT CALCULATION SOFTWARE

For Alabama

Alabama Support Master™

Uses 2009 Guidelines
Prepares and prints forms
CS-41, CS-42, CS-43, and CS-47

Includes Interest and Arrearage
Calculator

Since 1989
Professional Software
Corporation

POB 716 Mount Vernon, IN 47620
812-781-1422

marc.edwin.hawley@gmail.com

www.SupportMasterSoftware.com

FREE DEMO

Faces and Voices of Recovery (see the survey at facesandvoicesofrecovery.org). A total of 3,228 surveys were completed. On average, these respondents had been in active addiction for 18 years and entered recovery at age 36. Over half had been in recovery for 10 years or longer at the time of the survey. The following is a partial list of benefits derived from their participation in recovery:

- Paying bills on time and paying back personal debt doubled;
- Fifty percent more people pay taxes in recovery than when they are in active addiction;
- Planning for the future (e.g., saving for retirement) increases nearly threefold;
- Involvement in domestic violence (as perpetrator or victim) decreases dramatically;
- Participation in family activities increases by 50 percent;
- Volunteering in the community increases nearly threefold;
- Frequent utilization of costly emergency room departments decreases tenfold;
- Involvement in illegal acts and involvement with the criminal justice system (e.g., arrests, incarceration, DUIs) decreases tenfold;
- Steady employment increases by over 50 percent;
- Twice as many people further their education or training; and
- Twice as many people start their own business.⁵

The negative consequences of active addiction inevitably and progressively worsen the quality of life over time. Without intervention, treatment and recovery, the results can be fatal: jail, institutions and even death. The wonderful news is that with recovery, life keeps getting better as this process progresses! For those of us in recovery, it is one of the highlights of our lives to have the opportunity to assist those who are struggling against the throes of active addiction and to witness the miraculous and life-changing power of recovery. Please help us in

this process, and experience for yourself the satisfaction of playing a part in leading a lost soul to health and sobriety. | [AL](#)

Endnotes

1. Alexandre Landet, Ph.D., Report on Survey Findings "Life In Recovery" Faces and Voices of Recovery (facesandvoicesofrecovery.org), April 2013
2. John F. Seery, MSCRC, CCDP Diplomat, Counselor, "12-Step Support Groups and the Dual-Diagnosed: A Perspective," June 2012, Vol. 13, No.3, pp. 66 and 67
3. T. Gorski and M. Miller (1986), *Staying Sober: A Guide for Relapse Prevention*, Independence, MO: Herald House
4. H. Tiebout (1999), *Harry Tiebout: The Collected Writings*, Center City, MO, Hazelden Publishing
5. Ibid

Do you represent a client who has filed a claim for medical benefits, lost wages, loss of support, counseling, or funeral and burial assistance with the Alabama Crime Victims' Compensation Commission?



When your client applied for benefits, a subrogation agreement was signed pursuant to §15-23-14, Code of Alabama (1975). You must provide written notification to the Alabama Crime Victims' Compensation Commission upon filing a lawsuit or negotiating a settlement arising from your client's victimization.

For more information, contact Colette Gray, Restitution/Recovery Specialist for the Alabama Crime Victims' Compensation Commission at (334) 290-4420.



**Alabama Crime Victims'
Compensation Commission**

PO BOX 231267
Montgomery, Alabama 36123-1267
www.acvcc.alabama.gov
(334) 290-4420



**Judge John Brantley
Crawley**

Judge John Brantley Crawley

Johnny, as the members of our family called him, was my first cousin on my Daddy's side. He was much more than a cousin to me, and particularly as I entered into the legal profession, he became a mentor and a friend. He was a great influence and help to me and I will forever be indebted to him for his guidance and interest in my life.

One cannot eulogize Judge John Crawley (who died June 4, 2013) without making reference to his first race for the Alabama Court of Civil Appeals. Johnny had been appointed by Gov. Hunt as a circuit judge in Pike County and, like a lot of political appointees, did not survive the first election. Nonetheless, a few years later, some power brokers in the state convinced Johnny to qualify and run for an open position on the court of civil appeals. My daddy told me the story again last night and here it is from his memory:



Johnny was called to a meeting by informal GOP leaders to discuss the upcoming 1994 general election. He was still associated with the Republican Party due to his appointment as a circuit judge. I am not aware of who was at the meeting, but, apparently, they convinced him to run for the Alabama Court of Civil Appeals. He stopped by to visit with my daddy to solicit his aid in the campaign. My father, who was still working with state EMA, agreed to help as much as he could.

Weeks went by and finally my father called Johnny. "It's getting close to the election. Shouldn't we get together with your people and get some things going?" Johnny told him he wanted to wait a bit longer.

A couple more weeks went by and my daddy called Johnny again. This time Johnny told him he had decided not to campaign. My father, the great predictor of political races that he is, told him he couldn't win without doing something. Johnny said he understood but he had made up his mind.

He won that race 525,000 to 514,000 votes.

He got one campaign contribution and gave it to another candidate who needed it worse than he did. He gave one political speech to the Pike County Republican Party only because he grew up there. Yet, he prevailed in what will go down in Alabama history as the only truly flawless campaign ever executed.

Regardless of the circumstances that got him the job, Johnny went to work very quickly and I think proved himself with his work ethic and strong legal background. He won a second term, this time by campaigning, and was soon elevated to the position of presiding judge of the court of civil appeals. A quick search this morning revealed that Johnny's name is mentioned in over 2,000 reported decisions. He is often quoted on many issues by the Alabama Supreme Court, in particular on grandparent visitations and common law marriages.

I was looking over some of Johnny's cases this morning and came across one of his dissents. I want to quickly explain for the non-lawyers about a dissent. On an appellate court such as Johnny sat, the court had to decide cases appealed to them and issue a written decision about the case. The workings of every appellate

court are slightly different, but basically they would vote on how the case should turn out. If you didn't agree with the majority vote, you could write your own dissent. The written dissent I read of Judge Crawley's disagreed with the majority because they overruled the trial judge's decision. He believed that the trial judge—the judge who actually oversaw the case—was in a better position to make a decision than a bunch of judges in Montgomery.

One of his clerks or judicial assistants would do a better job on this, but I recall Johnny telling me one time that he had more of his dissents adopted by the supreme court than anybody else on his court.

Of course, this is the ultimate "I told you so," but Johnny was not that kind of person. I remember visiting with him at his office in the Judicial Building in Montgomery. He was always so relaxed and easy-going. Here was this guy from Banks, Alabama—can't even really claim to be from the City of Brundidge—on one of the highest courts of our state. Yet, he was always still very humble and hardworking.

One of the most remarkable things about Johnny that most people might not know is that he had very poor eyesight. My sister, Beth, used to work for him when he was a lawyer in Troy. She said that Johnny's mother, my Aunt Wonnie Mae—what a great southern name—had measles when she was pregnant with Johnny and his twin brother,

Larry. It presumably affected their vision. It forced Johnny to hold a book at an angle to be able to read. This is such a phenomenal accomplishment when you consider that the primary task of a law student or lawyer or judge is to pour over law books and briefs.

Johnny's quality of life over the last few years was not good. He came to my daddy's birthday this year and it was a real undertaking for Sherry and Johnny. Yet, I never heard him complain about anything. He still had his sense of humor and was still interested in what was happening in my life. For those who love and know Johnny, we hated seeing him like that. And still, because we are selfish by nature, we wish he was still here with us now—even in his current condition, he was a delight to be around. I remember very little of my Uncle Douglas, Johnny's father. I do remember he had a kind and gentle way and was fun to be around. Johnny had the same way about him. As soon as I heard Johnny died, I was struck by the thought that I wish I had spent more time with him.

As Christians, we believe that we have a purpose here on Earth. Johnny, I am sure, believed that and wanted to make a difference. He affected thousands of lives in his rulings and by his relationship with others. He made excellent use of the time God gave him here. We miss him, but he did what we all want to do—he left the world a better place. God bless Judge John Crawley. We are so grateful for the time we had with him.

—Benjamin M. Bowden, probate judge, Covington County

Brent, Bertram Leon

Ashville
Admitted: 1977
Died: April 14, 2013

Blackwell, Rev. James Warren

Saginaw
Admitted: 1957
Died: May 2, 2013

Brown, Roger Alan

Birmingham
Admitted: 1970
Died: June 5, 2013

Jones, Donald Rush, Jr.

Montgomery
Admitted: 1990
Died: June 25, 2013

Lamar, Mary Ellen

Decatur
Admitted: 1986
Died: April 27, 2013

Longshore, William Levi, Jr.

Birmingham
Admitted: 1950
Died: May 24, 2013

Ludlum, Georgia Ann Hidle

Dothan
Admitted: 1995
Died: April 26, 2013

Mitchell, Thomas Elbert

Huntsville
Admitted: 1982
Died: May 8, 2013

Mitchell, William Eason

Tuscaloosa
Admitted: 1975
Died: May 20, 2013

Rinehart, Edmon Loftin

Montgomery
Admitted: 1955
Died: June 11, 2013

Swift, Anne Hollis Geer

Birmingham
Admitted: 1978
Died: April 10, 2013

Waller, Hon. Bogue Maultsby

Montgomery
Admitted: 1952
Died: June 24, 2013

West, Carl Jackson, Jr.

Birmingham
Admitted: 1980
Died: April 27, 2013



Wilson F. Green

By Wilson F. Green

Wilson F. Green is a partner in Fleenor & Green LLP in Tuscaloosa. He is a summa cum laude graduate of the University of Alabama School of Law and a former law clerk to the Hon. Robert B. Propst, United States District Court for the Northern District of Alabama. From 2000-09, Green served as adjunct professor at the law school, where he taught courses in class actions and complex litigation. He represents consumers and businesses in consumer and commercial litigation.

By Marc A. Starrett

Marc A. Starrett is an assistant attorney general for the State of Alabama and represents the state in criminal appeals and habeas corpus in all state and federal courts. He is a graduate of the University of Alabama School of Law. Starrett served as staff attorney to Justice Kenneth Ingram and Justice Mark Kennedy on the Alabama Supreme Court, and was engaged in civil and criminal practice in Montgomery before appointment to the Office of the Attorney General. Among other cases for the office, Starrett successfully prosecuted Bobby Frank Cherry on appeal from his murder convictions for the 1963 bombing of Birmingham's Sixteenth Street Baptist Church.



Marc A. Starrett

This is our annual “crunch” issue—where we try to cram into one issue (a) upcoming cases on the U.S. Supreme Court’s docket for this coming October term, (b) significant decisions from the end of the U.S. Supreme Court’s past October term and (c) the usual May uptick in the haul of decisions from the state courts. Since space is scarce, brevity is boss—and thoroughness (though not Paradise) lost.

Selected Upcoming Cases in the October 2013 United States Supreme Court Term

Madigan v. Levin, No. 12-872: Whether state and local government employees may avoid the federal Age Discrimination in Employment Act’s comprehensive remedial regime by bringing age discrimination claims on Equal Protection grounds

Atlantic Marine Constr. Co. v. USDC, No. 12-929: (1) Whether review of forum-selection clauses is limited to a discretionary, balancing-of-conveniences analysis under 28 U.S.C. § 1404(a); and (2) whether district courts should allocate the burdens of proof among parties seeking to enforce or to avoid a forum-selection clause

Schuetz v. Coalition to Defend Affirmative Action, No. 12-682: Whether a state violates the Equal Protection Clause by amending its constitution to prohibit race- and sex-based discrimination or preferential treatment in public-university admissions decisions

Heimeshoff v. Hartford Life & Acc. Ins. Co., No. 12-729: When should a statute of limitations accrue for judicial review of a disability adverse benefit determination under ERISA?

DaimlerChrysler AG v. Bauman, No. 11-965: Can a court exercise general personal jurisdiction over a foreign corporation based solely on the fact that an indirect corporate subsidiary performs services on behalf of the defendant in the forum state?

Walden v. Fiore, No. 12-574: (1) Whether due process permits a court to exercise personal jurisdiction over a defendant whose sole “contact” with the forum state is his knowledge that the plaintiff has connections to that state; and (2) whether the judicial district where the plaintiff suffered injury is a district “in which a substantial part of the events or omissions giving rise to the claim occurred” for purposes of establishing venue under 28 U.S.C. § 1391(b)(2) even if the defendant’s alleged acts and omissions all occurred in another district

Kansas v. Cheever, No. 12-609: Whether, when a criminal defendant affirmatively introduces expert testimony that he lacked the requisite mental state to commit capital murder of a law enforcement officer due to the alleged temporary and long-term effects of the defendant’s methamphetamine use, the state violates the defendant’s Fifth Amendment privilege against self-incrimination by rebutting the defendant’s mental state defense with evidence from a court-ordered mental evaluation of the defendant

Fernandez v. California, No. 12-7822: Whether a defendant must be personally present and objecting when police officers ask a co-tenant for consent to conduct a warrantless search or whether a defendant’s previously stated objection, while physically present, to a warrantless search is a continuing assertion of Fourth Amendment rights which cannot be overridden by a co-tenant

Mt. Holly v. Mt. Holly Gardens Citizens in Action, No. 11-1507: Whether disparate impact claims are cognizable under the Fair Housing Act

Lexmark Int’l., Inc. v. Static Control Components, No. 12-873: Whether standing to assert a Lanham Act false advertising claims is determined by: (1) the multi-factor test as adopted by the Third, Fifth, Eighth and Eleventh circuits; (2) the categorical test, permitting suits only by an actual competitor, employed by the Seventh, Ninth and Tenth circuits; or (3) a version of the more expansive “reasonable interest” test, either as applied by the Sixth Circuit in this case or as applied by the Second Circuit in prior cases

Sandifer v. U.S. Steel Corp., No. 12-417: What constitutes “changing clothes” within the meaning of Section 203(o) of the Fair Labor Standards Act?

Kaley v. U.S., No. 12-464: Whether, when a post-indictment, ex parte restraining order freezes assets needed by a

criminal defendant to retain counsel of choice, the Fifth and Sixth amendments require a pre-trial, adversarial hearing at which the defendant may challenge the evidentiary support and legal theory of the underlying charges

RECENT CIVIL DECISIONS

From the Alabama Supreme Court

Wrongful Death

***Ex parte Tyson Foods, Inc.*, No. 1110931 (Ala. May 24, 2013)**

Amendment to change and add parties to wrongful death workers’ compensation action presented issue of capacity and not standing, and therefore was curable by amendment and did not require dismissal of case

Arbitration; Post-Award Review; **ARCP 71b**

***Guardian Builders, LLC v. Uselton*, No. 1111375 (Ala. May 31, 2013)**

Held: (1) arbitration loser’s initial motion to vacate in circuit court was not in compliance with *ARCP 71B*, which requires a “Notice of Appeal” of the award, but (2) under *ARCP 71B*, the circuit court must first enter judgment on the award, and then the loser is to proceed to file a Rule 59 motion, neither of which was done in this case

Class Certification Grant Affirmed without Opinion

***Tri State Knife Grinding Corporation v. Paperyard*, No. 1111351 (Ala. June 7, 2013)**

Without opinion, the court affirmed the Barbour County Circuit Court’s order certifying a class asserting claims under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

Venue

***Ex parte Guarantee Ins. Co.*, No. 1120337 (Ala. June 14, 2013)**

A complex fact pattern triggered a plurality decision reflecting the continuing disagreement among court members concerning the “events or omissions” test for individual venue.

Statute of Limitations; Discovery Rule

Utilities Board of the City of Opp v. Shuler Brothers, Inc., No. 1111558 (Ala. June 21, 2013)

Two-year statute of limitations applicable to negligence claims (*Ala. Code* 6-2-38(l)) is not subject to a discovery rule, which applies only to fraud actions and to cases involving the fraudulent concealment of the existence of a cause of action.

Work Product

Ex parte USA Water Ski, Inc., No. 1120744 (Ala. June 21, 2013)

Post-accident report specifically requested by defendant to be made by the chair of a driver's committee regarding a ski accident is protected work product, where defendant's president testified that he anticipated that litigation would be brought regarding the accident and asked for the report in aid of defending the case.

Workers' Compensation; Retaliatory Discharge

Ex parte Isbell, No. 1091163 (Ala. June 28, 2013)

On certiorari review in workers' comp retaliation case, the supreme court held that employee's evidence of pretext created a fact issue for trial, given length of time from alleged anti-gun policy violation to discharge, employee's intervening comp claim, the lack of employee knowledge of an anti-gun policy and the repeated instances of other employees having guns in the workplace.

Road Contractor Liability

Weaver v. Balch, No. 1100637 (Ala. June 28, 2013)

The court adopted the "accepted work doctrine," under which "an independent contractor is not liable for injuries occurring to a third person after the contractor has completed the work and turned it over to the owner, and it has been accepted by him, even though the injury results from the contractor's negligent performance of the contract or his failure to perform it properly, at least if the defect in the work is not hidden, but is readily observable on reasonable inspection."

Insurance

Certain Underwriters at Lloyd's of London v. SONAT, No. 1110698 (Ala. June 28, 2013)

Under *Alabama Plating Co. v. USF&G*, 690 So. 2d 331 (Ala. 1996), Alabama cases have allowed coverage under CGL policies for soil and groundwater contamination to an insured's own property.

Federal Lands

Ex parte U.S. Innovations Group, Inc., No. 1120296 (Ala. June 28, 2013)

Accident occurring on Redstone Arsenal was not subject to exclusive federal court jurisdiction.

From the Alabama Court Of Civil Appeals

Adverse Possession

Edgil v. Spann, No. 2111232 (Ala. Civ. App. May 24, 2013)

Adverse-possession period for a claimant ceases to run when an action is filed challenging the ownership interest of the possessor.

From the United States Supreme Court

Agencies; Statutory Interpretation and Chevron Deference

City of Arlington v. FCC, No. 11-1545 (U.S. May 20, 2013)

Courts must apply the *Chevron* framework to an agency's interpretation of a statutory ambiguity that concerns the scope of the agency's statutory authority or jurisdiction.

Arbitration; Class Actions

Oxford Health Plans LLC v. Sutter, No. No. 12-135 (U.S. June 10, 2013)

Arbitrator's decision construing arbitration clause silent on class treatment as allowing class arbitration survived *vacatur* review under section 10, because the parties had specifically placed the issue before the arbitrator and because the arbitration clause gave the arbitrator power to decide arbitrability issues.

Arbitration; Class Actions

American Express Co. v. Italian Colors Restaurant, Inc., No. 12-133 (U.S. June 20, 2013)

Under the FAA, courts may not invalidate contractual waivers of class actions contained within arbitration agreements on the ground that the plaintiffs' cost of individually arbitrating a federal statutory claim exceeds the potential recovery, thus resulting in an inability for plaintiffs to "effectively vindicate" their federal statutory rights.

Pharmaceuticals; Preemption

***Mutual Pharmaceutical Co., Inc. v. Bartlett*, No. 12-142 (U.S. June 24, 2013)**

State law design-defect claims that turn on the adequacy of a drug's warnings are pre-empted by federal law.

Affirmative Action

***Fisher v. University of Texas at Austin*, No. 11-345 (U.S. June 24, 2013)**

Under *Grutter v. Bollinger*, 539 U.S. 306 (2003) courts must apply "strict scrutiny" to race-involved college admissions criteria. Though the university can receive deference in labeling diversity as a compelling interest, the university receives no deference in being required to show that its methods are narrowly tailored to its goal.

Labor and Employment; Vicarious Liability

***Vance v. Ball State University*, No. 11-556 (U.S. June 24, 2013)**

An employee is a "supervisor" for purposes of vicarious liability under Title VII, thus exposing the employer to liability under *Faragher*, only if he or she is empowered by the employer to take tangible employment actions against the victim.

Labor and Employment

***University of Texas Southwestern Medical Center v. Nassar*, No. 12-484 (U.S. June 24, 2013)**

Title VII retaliation claims must be proved according to traditional principles of but-for causation, not the lessened "motivating factor" causation test.

Voting Rights Act

***Shelby County v. Holder*, No. 12-96 (U.S. June 25, 2013)**

Section 4 of the Voting Rights Act, which provides the "coverage formula," defining the "covered jurisdictions" as states or political subdivisions that maintained tests or devices as prerequisites to voting, and had low voter registration or turnout, in the 1960s and early 1970s, is unconstitutional, and its formula can no longer be used as a basis for subjecting jurisdictions to the pre-clearance requirement of Section 5 of the Voting Rights Act.

Standing

***Hollingsworth v. Perry*, No. 12-144 (U.S. June 26, 2013)**

In challenge to the district court's ruling that California's Proposition 8, which amended the state constitution to

define marriage as a union between a man and a woman, was unconstitutional, Proposition 8's official proponents did not have standing to appeal the district court's order because the state officials charged with enforcing Proposition 8 refused to defend its validity on appeal

DOMA

***U.S. v. Windsor*, No. 12-307 (U.S. June 26, 2013)**

In a tax refund suit, in which plaintiff challenged the determination that the Defense of Marriage Act (DOMA) barred her from claiming the federal estate tax exemption for surviving spouses, which defines marriage and spouse as excluding same-sex partners, the Second Circuit's ruling that section 3 of DOMA was unconstitutional and order that the U.S. Treasury refund plaintiff's tax with interest is affirmed, on the following bases: 1) the Court has jurisdiction to consider the merits of the case, even though the Obama administration refused to defend the validity of DOMA, because the administration continued to enforce the statute; and 2) DOMA is unconstitutional as a deprivation of the equal liberty of persons that is protected by the Fifth Amendment

From the Eleventh Circuit Court of Appeals

Black Lung

***U.S. Steel Mining Corp. v. Starks*, No. 11-14468 (11th Cir. June 27, 2013)**

Until 2010, a black lung decedent's survivor claiming benefits was required to show that the miner died due to pneumoconiosis. Since the Patient Protection and Affordable Care Act amended 30 U.S.C. § 932(I), a provision of the black lung benefits program, circuits have debated whether survivors are still required to establish what caused the miner's death. The Eleventh Circuit affirmed the board's determination of eligibility in this case, holding that cause of death was not required to be shown after the PPACA's passage.

Pharmaceuticals; Preemption (Florida Law)

***Guarino v. Wyeth LLC*, No. 12-13263 (11th Cir. June 25, 2013)**

Florida law recognizes no cause of action against the brand manufacturer of a drug when a plaintiff admits to having only taken the generic form of that drug. (The same issue under Alabama law is currently pending in the Alabama Supreme Court.)

CAFA; Mass Actions

Scimone v. Carnival Corp., No. 13-12291 (11th Cir. July 1, 2013)

CAFA does not allow removal of multiple and separate lawsuits to federal court as mass actions if the lawsuits in the aggregate contain 100 or more plaintiffs whose claims revolve around common questions of law or fact, where neither the plaintiffs nor the state court have proposed that 100 or more persons' claims be tried jointly.

Arbitration; Class Actions

Southern Communications Services, Inc. v. Thomas, No. 11-15587 (11th Cir. July 12, 2013)

Under *Oxford Health Plans LLC v. Sutter* (U.S. June 28, 2013), arbitrator acted within his powers in construing arbitration agreement to allow for class actions, and, thus, there was no basis for *vacatur*.

Antitrust; Relevant Market

Gulf States Reorganization Group, Inc. v. Nucor Corp., No. 11-14983 (11th Cir. July 19, 2013)

Relevant market determination requires assessment of "cross elasticity of supply," which measures whether manufacturers of a related product could switch production to the product in issue without much difficulty or cost.

FLSA

Scantland v. Jeffrey Knight, Inc., No. 12-12614 (11th Cir. July 16, 2013)

In FLSA case, the Court reversed the district court's grant of summary judgment to employer, reasoning that four of the six factors used in assessing "independent contractor" vs. "employee" weighed in plaintiffs' favor, thus creating fact issue on overtime entitlement.

RECENT CRIMINAL DECISIONS

From the United States Supreme Court

Sentence Enhancement

Alleyne v. United States, 133 S. Ct. 2151 (2013)

Under *Apprendi*, the element of "brandishing" a firearm must be determined by the jury, because this element increased the mandatory minimum sentence for the federal firearm offense.

Self-Incrimination

Salinas v. Texas, 133 S. Ct. 2174 (2013)

There was no error in admitting evidence that the defendant, following his voluntary, non-*Mirandized* statements to a police officer, balked at answering a question regarding whether shells found at the crime scene would match his shotgun. He failed to expressly invoke his Fifth Amendment privilege against self-incrimination, and was required to assert that privilege in order to benefit from it.

Complete Defense

Nevada v. Jackson, 133 S. Ct. 1990 (2013)

The state court's exclusion of extrinsic evidence that a sexual assault victim had previously made unsubstantiated allegations against defendant did not violate the defendant's constitutional right to present a complete defense.

DNA Swab

Maryland v. King, 133 S. Ct. 1958 (2013)

Like fingerprinting or photographing, swabbing of arrestee to obtain a DNA sample is a "legitimate police booking procedure" reasonable under the Fourth Amendment.

Habeas; "Actual Innocence"

McQuiggin v. Perkins, 133 S. Ct. 1924 (2013)

A legitimate claim of "actual innocence" is a gateway through which the federal court may consider a habeas petition that would be otherwise barred by the AEDPA one-year limitation period.

Ineffective Assistance

Trevino v. Thaler, 133 S. Ct. 1911 (2013)

Martinez v. Ryan, 566 U.S. 1 (2012), under which procedural default will not bar the habeas court from reviewing a "substantial claim of ineffective assistance at trial" where there was either no counsel in post-conviction proceedings or post-conviction counsel was ineffective, applies to states whose procedure allows the ineffective assistance of trial counsel claim to be raised either on direct appeal or in post-conviction proceedings.

From the Alabama Appellate Courts

Rule 32 Pleading

Ex parte Beckworth, No. 1091780, 2013 WL 3336983 (Ala. Jul. 3, 2013)

Rule 32 petitioner has no burden of initially pleading facts to negate the preclusion provisions of Rule 32.2; rather, he holds the burden of disproving preclusion if those provisions are pleaded by the state.

Menacing; “Physical Action”

Ex parte Pate, No. 1111448, 2013 WL 3336985 (Ala. Jul. 3, 2013)

Property owner’s act of “getting [a] gun” during an altercation with lessee did not satisfy the element of “physical action” required for proof of menacing

Competency

Ex parte Cate, No. 1111240, 2013 WL 3154013 (Ala. Jun. 21, 2013)

Because she had not entered a plea of not guilty by reason of mental disease or defect, the trial court was not authorized to order a mental evaluation to determine competency at the time of the offense.

Correction in Verdict Form

G.V.C. v. State, CR-11-0476 (Ala. Crim. App. Jun. 7, 2013)

Trial court’s post-verdict correction of a clerical error in the jury’s verdict form—from “sexual assault” to “sexual abuse”—was not erroneous, as the jury had been instructed on the offense of sexual abuse

Search; Standing

T.L.S. v. State, CR-12-0075 (Ala. Crim. App. Jun. 7, 2013)

Juvenile had no standing to challenge the inventory search of the vehicle in which he was a passenger, because he had no expectation of privacy in the vehicle | [AL](#)


MASTERS OF OUR DOMAIN


QUALIFIED BY

G7

MASTER

IDEAllIANCE

 d a v i s d i r e c t

 FSC

You don't have to take our word for it. We have the certification to prove it. IDEAlliance® recently certified Davis Direct as the only G7 Master printer in Alabama. This means your print job is produced according to the highest color standards in the industry, with the same crisp, clear, consistent quality from proof to finished piece when you print with Davis Direct.

Call us at 334.277.0878 or visit us online at davisdirect.com.

Notices

Disbarments

Suspensions

Public Reprimand

Notices

- Notice is hereby given to **Sarah Anna Rutland Cook**, who practiced in Montgomery, and whose whereabouts are unknown, that, pursuant to the Disciplinary Commission's order to show cause dated April 26, 2013, she has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2012. Noncompliance with the MCLE requirements shall result in a suspension of her license. [CLE No. 13-659]
- Notice is hereby given to **Markus Alexander Jander**, who practiced in Gainesville, Georgia and whose whereabouts are unknown, that, pursuant to the Disciplinary Commission's order to show cause dated April 26, 2013, he has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2012. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 13-661]
- **William Michael Keever**, whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of September 15, 2013 or, thereafter, the allegations contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB nos. 2008-143(A) and 2009-1556(A) by the Disciplinary Board of the Alabama State Bar.
- Notice is hereby given to **Adam Grant Pinkard**, who practiced in Tupelo, Mississippi and whose whereabouts are unknown, that, pursuant to the Disciplinary Commission's order to show cause dated April 26, 2013, he has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2012. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 13-666]
- Notice is hereby given to **James Clinton Pittman**, who practiced in Birmingham and whose whereabouts are unknown, that, pursuant to the Disciplinary Commission's order to show cause dated April 26, 2013, he has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2012. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 13-668]
- Notice is hereby given to **Stephen Scott Weldon**, who practiced in Tallassee and whose whereabouts are unknown, that, pursuant to the Disciplinary Commission's order to show cause dated April 26, 2013, he has 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2012. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 13-672]

Disbarments

- Birmingham attorney **Janine Marie Burrell** was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, with an effective date of March 13, 2013. The supreme court entered its order based upon the March 13, 2013 report and order of Panel II of the Disciplinary Board of the Alabama State Bar. Burrell was found guilty of filing false MCLE reports with the bar. [ASB No. 2012-341]
- Phenix City attorney **Dana Posey Gentry** was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, effective May 30, 2013. The supreme court entered its order based upon the April 18, 2013 order entered by Panel I of the Disciplinary Board imposing reciprocal discipline by disbarment. On October 15, 2012, the Supreme Court of Georgia disbarred Gentry due to his representation of clients in three divorce cases, wherein he failed to file appropriate documents, failed to communicate, failed to appear in court and withdrew from the case without notifying his client. Finally, Gentry filed a petition on behalf of his client containing numerous false statements. [Rule 23, Pet. No. 2012-1932]
- Birmingham attorney **Chuck Hunter** was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, effective May 30, 2013. The supreme court entered its order based upon the May 8, 2013 order of consent to disbarment entered by Panel I of the Disciplinary Board of the Alabama State Bar. Hunter consented to disbarment after being convicted in the United States District Court for the Northern District of Alabama, Southern Division, of coercion or enticement of a minor utilizing interstate commerce, a violation of 18 U.S.C. § 2422(b), and two counts of utilizing interstate commerce to possess child pornography, violations of 18 U.S.C. § 2252A(a)(2). On March 27, 2013, Hunter was found guilty on all three counts. [Rule 23, Pet. No. 2013-586; ASB No. 2012-1223]
- Montgomery attorney **Darryl Avon Parker** was disbarred from the practice of law in Alabama, effective May 20, 2013, by order of the Supreme Court of Alabama. The supreme court entered its order based upon the decision of the Disciplinary Board of the Alabama State Bar accepting Parker's consent to disbarment. Parker consented to disbarment based on pending investigations into his ethical conduct as a lawyer that concerned allegations that he knowingly made false statements to the Bankruptcy Court, misappropriated client filing fees, failed to attend hearings and engaged in practice in an area in which he lacked competence. [Rule 23, Pet. No. 13-813 *et al*]
- On February 22, 2013, the Supreme Court of Alabama affirmed the disbarment of Montgomery attorney **Gatewood Andrew Walden**, initially entered June 14, 2012. Walden appealed the decision of the Disciplinary Board's finding that he violated rules 3.1(a), 8.4(a), 8.4(d) and 8.4(g), *Ala. R. Prof. C.* Walden took actions merely to harass or maliciously injure another party. Walden also assisted or induced another individual to violate the *Rules of Professional Conduct* and engaged in conduct that adversely reflects on his fitness to practice law. On February 22, 2013, the Supreme Court of Alabama issued a certificate of judgment affirming the June 14, 2012 order of Panel III of the Disciplinary Board. [ASB No. 2009-1040(A)]
- Birmingham attorney **Keely Luann Wright** was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, with an effective date retroactive to October 17, 2011, the date of Wright's previously ordered interim suspension. The supreme court entered its order based upon the May 8, 2013 order on consent to disbarment of Panel I of the Disciplinary Board of the Alabama State Bar. Wright's consent to disbarment was based upon her recent conviction for theft of property, 1st Degree. [Rule 23(a), Pet. No. 2013-774; Rule 20(a), Pet. No. 2011-1671; ASB No. 2011-1366]

Suspensions

- Montgomery attorney **Randy Barnett Blake** was suspended from the practice of law in Alabama for 91 days by order of the Supreme Court of Alabama, effective June 19, 2013. The supreme court entered its order based upon the Disciplinary Commission's acceptance of Blake's conditional guilty plea, wherein Blake pled guilty to violating rules 1.4(a), 1.5(a), 1.15(a) and 8.4(g), *Ala. R. Prof. C.* In January 2010, Blake was retained to represent a client in a post-divorce matter involving the sale of the marital home and the distribution of the sale proceeds. The sale of the marital home closed in January 2011, and the sale proceeds were deposited into Blake's trust account on February 7, 2011. From January 2011 through April 2012, Blake withdrew approximately \$66,700 from the sale proceeds as his fee in the matter. Such a fee was clearly excessive. In addition to his 91-day suspension, Blake must also make full restitution to the client. [ASB No. 2013-1315]
- Bessemer attorney **Elizabeth Davis Harris** was suspended from the practice of law in Alabama for six months, by order of the Supreme Court of Alabama, effective October 15, 2012. The supreme court entered its order based upon the Disciplinary Commission's acceptance of Harris's conditional guilty plea, wherein Harris pled guilty to violating rules 5.5(a)(1), 8.4(a), 8.4(d) and 8.4(g), *Ala. R. Prof. C.* Harris was previously interimly suspended from the practice of law in Alabama on October 15, 2012 for failure to certify her IOLTA account, and had not been reinstated. Prior to her suspension, Harris failed to purchase an occupational license for the year 2013. Following her suspension, Harris continued to engage in the practice of law, including appearing on behalf of clients in the family court of Jefferson County, Bessemer Division. [ASB No. 2013-430]
- On May 16, 2013, the Supreme Court of Alabama affirmed the suspension of Prattville attorney **Richard Dale Lively** for 90 days, retroactive to November 17, 2012, the date Lively completed his previously ordered six-month suspension. On April 15, 2013, the Disciplinary Commission of the Alabama State Bar accepted Lively's conditional guilty plea to the following: in ASB No. 2008-208(A), Lively violated rules 1.3, 1.4(a), 1.4(b), 3.2, 8.4(a), 8.4(c), 8.4(d), and 8.4(g), *Ala. R. Prof. C.*, by failing or refusing to diligently protect his clients' interests in their bankruptcy matter and by failing to adequately explain the bankruptcy procedures to his clients; in ASB No. 2009-2050(A), Lively violated rules 1.3 and 1.4(a), *Ala. R. Prof. C.*, by failing to diligently pursue his client's uncontested divorce case and by failing to adequately communicate with his client; in ASB No. 2009-2158(A), Lively violated rules 1.3 and 1.4(b), *Ala. R. Prof. C.*, by failing to diligently protect his client's interests in her bankruptcy matter and by failing to adequately explain the bankruptcy procedures to his client; in ASB No. 2010-1839, Lively violated rules 1.3 and 1.4(a), *Ala. R. Prof. C.*, by failing to adequately pursue his client's bankruptcy case and by failing to adequately communicate with his client; in ASB No. 2010-1907, Lively violated rules 1.3 and 1.4(b), *Ala. R. Prof. C.*, by failing to follow the court's instructions to file a satisfaction of judgment and by failing to adequately communicate with his client; in ASB No. 2012-1447, Lively violated Rule 1.15(d), *Ala. R. Prof. C.*, because his trust account was overdrawn; and, in UPL No. 2013-403, Lively violated rules 5.5(a) and 5.5(d), *Ala. R. Prof. C.*, by filing a complaint, signing pleadings and identifying himself as counsel while his law license was suspended. [ASB nos. 2008-208(A), 2009-2050(A), 2009-2158(A), 2010-1839, 2010-1907, and 2012-1447; UPL No. 2013-403]
- Montgomery attorney **Mark Andrew Overall** was suspended from the practice of law in Alabama for 91 days by order of the Disciplinary Commission of the Alabama State Bar. The suspension was ordered held in abeyance and Overall was placed on probation for two years. In addition, the Disciplinary Commission ordered that Overall complete a course of study to be determined by and offered through the Practice Management Assistance Program within three months of the commission's order. The order of the Disciplinary Commission was based upon Overall's conditional guilty plea to multiple violations of rules 1.3, 1.4(a) and 8.4(g), *Ala. R. Prof. C.*

In ASB No. 2012-2030, the Office of General Counsel was advised of misconduct by Overall by a presiding circuit court judge in Houston County. Overall was found to be in contempt of court, despite prior warnings given to him regarding his conduct. In addition, Overall failed to appear for an arraignment and failed to appear for court before other judges in the circuit. In ASB No. 2013-377, Overall failed to inform his client of a court hearing and failed to file a written response to a motion for summary judgment. In ASB No. 2013-386, Overall failed to appear on behalf

of his client at a status conference in the Circuit Court of Montgomery County. In 2013-415, the Office of General Counsel was advised by a circuit court judge of misconduct by Overall for failure to appear for court in a timely manner and lack of knowledge concerning pending charges in the matter before the court. In ASB No. 2013-788, Overall pled guilty to misconduct for improperly subpoenaing witnesses. Rather than having subpoenas issued through the clerk's office, Overall altered the forms, issued subpoenas directly from his office and signed the forms in place of the clerk's signature. Overall also filed complaints requesting a demand for jury trial in the body of the complaint, but indicated on the civil cover sheet that no jury demand is being made. By doing this, Overall tried to avoid extra fees associated with filing a civil complaint in which a jury trial is demanded. [ASB nos. 2012-2030, 2013-377, 2013-386, 2013-415, and 2013-788]

- Hoover attorney **Carey Wayne Spencer, Jr.** was suspended from the practice of law in Alabama, effective April

18, 2013, for noncompliance with the 2010 Mandatory Continuing Legal Education requirements of the Alabama State Bar. [CLE No. 11-730]

Public Reprimand

- On May 3, 2013, Alabama attorney **William Harold Thomas, Jr.**, who is also licensed to practice in Tennessee, received reciprocal discipline in the form of a public reprimand with general publication, pursuant to Rule 25(d), *Ala. R. Disc. P.* The Board of Professional Responsibility of the Supreme Court of Tennessee imposed discipline upon Thomas in the form of a public censure, pursuant to Tenn. Sup. Ct. R. 9, § 4.4, for failure to abide by an order of the court requiring Thomas to comply with discovery requests in a civil proceeding in which Thomas was a party, a violation of rules 8.4(d) and 8.4(g), *Tenn. R. Prof. C.* [Rule 25(a), Pet. No. 2012-1861] | [AL](#)

“A man who stops advertising to save money, is like a man who stops a clock to save time.”

– Henry Ford.



THE FINKLE GROUP
INC

Creative solutions for your marketing strategies

Design and Marketing Services

Logos	Trade Show Exhibits
Websites	Publication Design
Brochures	Media Kits
Product Catalogs	Billboards
Print Ads	P.O.P. Displays
Product Packaging	Professional Portfolios
Sales Support Material	

P.O. Box 231596 | Montgomery, AL 36123 | 334.273.9926

www.taplink.com



J. Anthony McLain



The Nuts and Bolts of The Disciplinary Process

Who enjoys responding to bar complaints? No one does. Yet, in 2012, 1,601 bar complaints were filed against Alabama lawyers. Naturally, many lawyers have an understandable aversion to bar complaints and the disciplinary process. However, the fact remains that at some point in the career of a lawyer, he or she will be faced with the task of responding to a bar complaint. This is especially true for lawyers who practice criminal defense or domestic relations law where the client is seldom happy at the conclusion of the case, often for reasons outside the lawyer's control. The purpose of this article is to give lawyers a basic understanding of the disciplinary process and offer some advice as to how to respond to a bar complaint.

First among those questions is what rules apply to lawyer discipline? As a preliminary matter, Alabama's disciplinary process is guided by the *Alabama Rules of Disciplinary Procedure*. Pursuant to Rule 1, *Ala. R. Disc. P.*, all lawyers admitted to practice in Alabama are subject to the exclusive disciplinary jurisdiction of the Disciplinary Commission and the Disciplinary Board, with review by the Supreme Court of Alabama. Further, pursuant to Rule 2, *Ala. R. Disc. P.*, the grounds for imposing discipline may include any violation of the *Alabama Rules of Professional Conduct*, conviction of a serious crime, discipline imposed in another jurisdiction or any other misconduct that adversely reflects on that lawyer's fitness to practice law, regardless of whether such violation occurred during the course of the lawyer-client relationship. While the *Alabama Rules of Civil Procedure* generally govern the proceedings of the Disciplinary Board, the nature of disciplinary proceedings is neither civil nor criminal but rather *sui generis*. That is to say the disciplinary process is governed by its own, unique set of rules. (The *Alabama Rules of Disciplinary Procedure* can be found toward the back of your copy of the 2013 Alabama Rules of Court.)

Attorneys also often ask who has standing to file a bar complaint. While the disciplinary process is generally initiated by a client's filing of a bar complaint, it may

also be initiated by the Office of General Counsel, a local grievance committee or other sources, including attorneys, judges, adverse parties or concerned citizens. When a complaint is received or opened by the Office of General Counsel, the complaint is assigned to one of three assistant general counsels. As a general practice, an assistant general counsel does not review the bar complaint until after the complaint has been sent to the respondent attorney and the respondent attorney has submitted a written, signed response to the complaint. This is true regardless of how frivolous the complaint may seem on its face.

So, what is the right way to respond to the initial bar complaint? The attorney should respond concisely and directly to the allegations of the complainant, in writing, and attach any relevant documents that may disprove the allegations of the complainant. If the allegations involve complex areas of the law, it may be useful to provide some basic information about the law applicable to the issues.

While the “right” way to respond to the initial bar complaint is very simple, there are a myriad of “wrong” ways to respond. First among these “wrong” responses is the failure to respond at all. Every year, multiple lawyers are summarily suspended pursuant to Rule 8(e) and Rule 20, *Ala. R. Disc. P.*, for failing to submit a written response to a bar complaint. Even if the underlying bar complaint may be without merit, a lawyer’s failure to respond is grounds for summary suspension from the practice of law. Further, a response that merely denies the allegations of the complaint without any substantive response to the allegations is insufficient. While such a response may be sufficient to avoid summary suspension, it leaves our office with no choice but to open a formal investigative file in the matter.

Another “wrong” way to respond is via the submission of false statements or forged records. Rule 8.1, *Ala. R. Prof. C.*, expressly prohibits false statements to the bar in connection with a disciplinary matter. Lawyers who lie to the bar in their responses and other stages of the disciplinary process often turn minor violations, which would otherwise result in little or no discipline, into matters resulting in suspension or disbarment.

Finally, it is unwise to respond with anger toward the bar regarding having to respond to a bar complaint. It is not in the best interest of the responding lawyer to phone one of the assistant general counsels and yell at them for being tasked with providing a written response. This type of response will not win the lawyer any points with the bar.

Lawyers should understand that responding to a bar complaint, while time consuming, is part of the practice of law. Attorneys have also attempted to bill the complaining party or our office for the time taken to submit a written response. To state the obvious, a lawyer cannot charge the client or the bar for the time it took the lawyer to respond to a bar complaint.

So what happens after the lawyer responds? Once the lawyer’s response is received by the Office of General Counsel, the complaint and response are reviewed by at least two of the three assistant general counsels, who must reach agreement how to proceed. There are three options at this stage in the proceedings. The complaint can be screened out as non-meritorious, a formal investigative file can be opened or further information can be requested from either the complainant or the respondent attorney. In 2012, of the 1,601 complaints filed, 1,267 were screened out at this stage.

If a formal investigative file is opened, the file is assigned to either an assistant general counsel or a local grievance committee for investigation. Simply opening a formal investigative file does not indicate that a decision or finding has already been made that the respondent attorney violated a rule of professional conduct. Rather, it generally means that conduct has been alleged that would be a violation of the *Rules of Professional Conduct* and there is a dispute in facts between the complainant’s version of events and the respondent attorney’s version requiring further investigation. However, the opening of a formal investigative file is significant in that it triggers a lawyer’s duty to notify the managing partner, senior partner, executive committee or management committee of his or her firm of the existence and nature of the allegations. Furthermore, once a formal investigative file is opened, the complaint can only be dismissed by the Disciplinary Commission.

A formal investigation of a complaint may include the subpoenaing of documents, the taking of depositions, the interviewing of the parties and witnesses, or any other action the Assistant General Counsel or local grievance committee deems necessary. Pursuant to Rule 8.1(b), *Ala. R. Prof. C.*, a respondent lawyer has an ethical obligation to cooperate with the investigation. Failure to do so can again result in that lawyer’s summary suspension from the practice of law. Once the investigation is completed, the assistant general counsel or local grievance committee will prepare an investigative report for review by the Disciplinary Commission of the Alabama State Bar.

What is the Disciplinary Commission? The Disciplinary Commission of the Alabama State Bar is comprised of four attorneys, three members and a chair, appointed by the Board of Bar Commissioners. For lack of a better analogy, the Disciplinary Commission acts as a grand jury by reviewing the investigative reports and determining whether the respondent lawyer engaged in misconduct. If the Disciplinary Commission determines that no misconduct occurred then it has the authority to dismiss the matter. It should also be noted that the Disciplinary Commission also reviews and presides over all interim and summary suspensions.

If the Disciplinary Commission determines the respondent attorney violated the *Alabama Rules of Professional Conduct*, the commission may issue a private reprimand, public reprimand without general publication or public reprimand with general publication. If the Disciplinary Commission believes that the appropriate discipline would be suspension or disbarment, then the recommendation would be for the Office of General Counsel to file formal charges. Once the Disciplinary Commission has determined the proper disposition of the complaint, the respondent attorney is notified of the commission's decision by letter. If the Disciplinary Commission has determined that the respondent attorney should receive a private or public reprimand with or without general publication, the respondent attorney may accept the reprimand, request reconsideration by the Disciplinary Commission or demand, in writing, that formal charges be filed by the Office of General Counsel. If the attorney fails to respond to the notification letter, the discipline of the Disciplinary Commission will be imposed.

If the Disciplinary Commission recommends formal charges or the respondent attorney demands formal charges, then the Office of General Counsel will file formal charges against the respondent attorney with the Disciplinary Board and prosecute the matter. Once the formal charges are filed and the respondent attorney is served, the respondent attorney has 28 days to file an answer. If the respondent attorney fails to file an answer within this time frame and/or fails to file for an extension for time in which to answer, the charges can be deemed admitted as a matter of law pursuant to Rule 12(e)(1), *Ala. R. Disc. P.* If the charges are deemed admitted as a matter of law, then the matter is set for a hearing to determine discipline before the Disciplinary Board of the state bar. If the respondent attorney files an answer denying the charges, then the matter is set for a hearing on the merits before the Disciplinary Board.

What is the Disciplinary Board? The Disciplinary Board is separate and distinct from the Disciplinary Commission and is comprised of a hearing officer, three attorneys from the Board of Bar Commissioners and one lay member. In effect, the five-member panel serves as the jury and will determine whether the respondent attorney is guilty of professional misconduct as alleged in the formal charges. The burden is on the bar to demonstrate by clear and convincing evidence that the respondent attorney is guilty of having violated the *Alabama Rules of Professional Conduct*. The *Rules of Evidence* and *Rules of Civil Procedure* apply during this stage of the proceedings, except as otherwise provided by the *Rules of Disciplinary Procedure*. At the hearing, the respondent attorney is entitled to be represented by counsel and to present evidence on his own behalf. Also of note is the fact that each member of the panel may question witnesses.

If the respondent attorney is found not guilty by the Disciplinary Board, the proceedings are over unless the bar chooses to appeal to the Supreme Court of Alabama. If the respondent attorney is found guilty of a rules violation, the hearing then proceeds to the penalty phase, during which both the bar and the respondent attorney are allowed to present evidence and arguments as to the appropriate discipline. The Disciplinary Board then determines the appropriate discipline to be imposed against the respondent attorney. If the respondent attorney is found guilty by the Disciplinary Board, the respondent attorney has the right to appeal the board's finding or imposition of discipline to the Supreme Court of Alabama within 14 days of the board's written findings. Likewise, the bar may also appeal any findings of the Disciplinary Board.

Other notable aspects of the disciplinary process include the fact that: (1) any conditional guilty plea must be submitted and approved by the Disciplinary Commission and, if such involves a suspension or disbarment, the Supreme Court of Alabama; (2) the refusal of a complainant to proceed or to cooperate with an investigation or prosecution does not abate the disciplinary proceedings; and (3) disciplinary proceedings are not deferred simply because there may be a pending civil or criminal proceeding related to the bar complaint. Additional guidance on the disciplinary process, including interim and summary suspensions, disability inactive status and reinstatements, may be found by reviewing the *Alabama Rules of Disciplinary Procedure* or contacting the Office of General Counsel. | AL



Adam Bourne has been elected chair of the Alabama League of Municipalities' Committee on Finance, Administration and Intergovernmental Relations. Bourne is a Chickasaw city councilman.

Lisa Darnley Cooper, in the Mobile office of Hand Arendall LLC, was recognized for her work with several area organizations with the William Kaufman award, named for the founder of the Community Foundation of South Alabama.



Cooper

Richard E. Glaze, Jr., with Balch & Bingham LLP, has co-authored the recently released *Practising Law Institute EPA Compliance and Enforcement Answer Book 2013*.

Ed Hardin, in the Birmingham office of Burr & Forman LLP, has been elected vice president of the Southeastern Chapter of the American Board of Trial Advocates (SEABOTA). He will serve as president of the organization in 2015, which encompasses 11 state chapters. Hardin's two-year term as vice president began in May.



Hardin

John W. Hargrove, with Bradley Arant Boult Cummings LLP in Birmingham, has been elected a Fellow in the College of Labor and Employment Lawyers. He will be formally installed in November in New Orleans, at an induction dinner during the American Bar Association (ABA) Labor and Employment Law Section Conference.

The International Association of Defense Counsel (IADC) elected **Tripp Haston**, with Bradley Arant Boult Cummings LLP, president-elect for 2013-2014. The IADC has served a distinguished membership of corporate and insurance defense attorneys since 1920.



Haston

Neil C. Johnston, with the Mobile office of Hand Arendall LLC, was elected a Fellow of the American College of Real Estate Lawyers (ACREL).

William V. Linne of Pensacola is one of three board-certified tax lawyers in northwest Florida who have achieved 30-year status, according to the Florida Bar Board Certification Program. Linne has been a member of the Alabama State Bar since 1972.

Bradley J. Sklar, of Sirote & Permutt, has been elected co-chair of the American Institute on Federal Taxation (AIFT). In addition to his co-chair position, Sklar also sits on the Board of Trustees for the AIFT and is a long-time supporter of the organization and its mission to advance the knowledge of federal taxation through programs of study for tax professionals.



Sklar

Larry D. Smith, with Southern Trial Counsel I PLC, is the recipient of the Florida Bar 2013 Henry Latimer Diversity Award.

G. Thomas Sullivan, with Cabaniss, Johnston, Gardner, Dumas & O'Neal LLP, has been appointed by the AHLA Board of Directors as chair of the American Health Lawyers Association Dispute Resolution Service Council.

Donald M. Wright, of Sirote & Permutt PC in Birmingham, was elected to the board of directors of the Mid-South Commercial Law Institute. | AL



Othni J. Lathram
olathram@ali.state.al.us

For more information about the institute, visit www.ali.state.al.us.

During the 2013 Regular Session, the Alabama Legislature passed four bills that were prepared and presented by the Alabama Law Institute: The Alabama Uniform Collaborative Law Act, the Alabama Unitrust Act, amendments to Title 10A regarding name reservations and amendments to Article 4A of the Uniform Commercial Code. These acts were the result of extensive work by committees of lawyers who volunteer their time to serve on Law Institute drafting committees. These committees spend a great deal of time working to ensure that these laws are well vetted, tailored to Alabama law and practice and will improve the state of the law for Alabama citizens.

Alabama Uniform Collaborative Law Act

Act 2013-355

The Uniform Collaborative Law Act represents a new addition to the alternative dispute resolution toolbox. It allows parties to engage in a very inclusive form of negotiation that goes beyond the realm of purely legal theory to include non-legal tools to help facilitate agreement. The application of the act is limited to family law matters, including family law matters in probate court, such as guardianships.

Collaborative law is a voluntary, contractually-based alternative dispute resolution process for parties who seek to negotiate a resolution of their issues rather than having their issues decided by a court. Under the provisions of the act, the lawyers and clients agree that the lawyers will represent the clients solely for purposes of settlement, and that the clients will hire new counsel if the case does not settle. No one is required to participate, and parties are free to terminate the process at any time.

The basic ground rules for collaborative law are set forth in a written agreement in which the parties agree not to seek a judicial resolution of a dispute during the collaborative law process.

The act mandates full disclosure of the process to enable the parties to make informed consents. Furthermore, the act requires collaborative lawyers to make reasonable inquiries and take steps to protect parties from the trauma of domestic violence.

The act envisions that collaborative process could include experts in areas beyond the law such as financial experts and even, in some cases, counselors.

The act was drafted by a committee chaired by Senator Cam Ward, who also served on the national committee that drafted the act for the Uniform Law Commission. Sen. Ward and Rep. Marcel Black sponsored the act in the legislature. Members of the drafting committee were: Melanie Atha, Hon. William Bell, Shelley Bilbrey, Justice Mike Bolin, Martha Cook, Amy Creech, Annesley DeGaris, Christie Dowling, Hon. Jim Fuhrmeister, Dean Noah Funderburg, Steven Hobbs, Mariam Irwin, Rep. Mike Jones, Robbie Lusk, Glory McLaughlin, Randy Nichols, Frances Nolan, Brian Overstreet, Hon. John Paluzzi, Candi Peeples, Hon. Jimmy Sandlin, Hon. Brenda Stedham, and Harold Woodman. Penny Davis served as reporter.

Alabama Unitrust Act

Act 2013-336

This act amends the *Alabama Code* to expressly provide for the use and implementation of unitrusts. A unitrust is one in which an allocation is made annually so that a certain percentage of the corpus of a trust shall be considered as income.

Under federal law, a state may allow a trust to provide for an alternative for reasonable apportionment between the income and remainder beneficiaries of the total return of the trust. An example given under the federal regulation is “a state statute providing that income is a unitrust amount of no less than 3% and no more than 5% of the fair market value of the trust assets, whether determined annually or averaged on a multiple year basis. . . .” This act is consistent with the federal regulations.

Furthermore, this act updates the Alabama Principal and Income Act to provide for the creation of express unitrusts and to also permit existing trusts to be converted into unitrusts.

An additional provision of the act also makes clear that the Alabama Trust Code applies to the Alabama Principal and Income Act.

A committee chaired by Leonard Wertheimer drafted the act. Sen. Tammy Irons and Rep. Christopher England sponsored the act in the legislature. Members of the drafting committee were: Scott Adams; LaVeeda Battle; Douglas Bell; Anna Funderburk Buckner; Sen. Linda Coleman; Sydney Cook, III; Kay Donnellan; Richard S. Frankowski; Robert T. Gardner; William Hairston, III; Lyman F. Holland, Jr.; Ted Jackson; Prof. Tom Jones; Cynthia G. Lamar-Hart; Robert L. Loftin, III; J. Reese Murray, III; Bruce A. Rawls; Robert J. Riccio; Myra Roberts; Alan Rothfeder; Brian Williams; and Ralph Yeilding, who served as co-chair. Fred Daniels served as reporter.

Amendments to Title 10A

Act 2013-338

This act was the first product of the Law Institute’s standing committee on business entities. This committee was created to update and address issues relating to the Business and Nonprofit Entities Code on a continual basis.

This act amends the Business Entities Code (Title 10A) as it relates to name reservations. The act consolidates the

process for foreign and domestic entities and allows that a name reservation will be valid for up to one year. The reservation would also be renewable for subsequent one-year periods. This is already the law for foreign entities. The bill also provides a mechanism to transfer a name that is reserved between entities.

The act further clarifies that the grandfathering of corporate names, ones that do not include Inc., Co., Incorporated or other allowable designations, allowed with the adoption of the Alabama Business Corporation Act in 1981, continues to exist for entities that were formed before that time.

A committee chaired by Jim Wilson drafted the act. Sen. Jerry Fielding and Rep. Bill Poole sponsored the act in the legislature. Members of the drafting committee were: Professor Jim Bryce; Rick Clifton; L.B. Feld; Clark Goodwin; Colin House; Jay Guin, III; Jason Isbell; Curtis Liles; Bo Lineberry; Scott Ludwig; Johnny Lyle; Jim McLaughlin; Rebecca Morris; Virginia Patterson; Jack Stephenson; Emily Thompson; Prof. Howard Walthall; and Clark Watson.

UCC Article 4A Amendment

Act 2013-337

This act amends Section 7-4A-108 of the Uniform Commercial Code to provide that Alabama law will still apply to any funds transfers that are not preempted by federal law.

Article 4A governs “Funds Transfers” which are a specialized method of payment, also referred to as a wholesale wire transfer, which is usually between two commercial parties.

The Dodd-Frank Wall Street Reform and Commercial Protection Act is an amendment to the Federal Electronic Fund Transfer Act and it preempts state laws concerning electronic fund transfers and casts uncertainty on state laws governing commercial fund transfers.

Because of the relatively simple and straightforward nature of this amendment, a drafting committee was not formed to address it. Rather, the act was circulated to the Law Institute Council as a whole for comment prior to the council’s consideration of the act. Sen. Jerry Fielding and Rep. Demetrius Newton sponsored the act in the legislature.

I express my sincere gratitude to all of the persons involved in the preparation of these acts. Without the generous spirit of the members of the Alabama State Bar who donate so freely of their time, the role of the institute would be far more limited. | [AL](#)



Please email announcements to Margaret Murphy, margaret.murphy@alabar.org.

About Members

Megan Elder announces the opening of the **Law Office of Megan R. Elder LLC** at 2015 First Ave., N., Birmingham 35203. Phone (205) 202-5757.

L. Kenneth Elmer announces the opening of **The Elmer Law Firm LLC** at 1927 7th St., Tuscaloosa 35401.

John K. Euler announces the opening of **Euler Law Firm LLC** at 205 20th St. N., Ste. 208, Birmingham 35203. Phone (205) 994-1883.

Les Pittman announces the opening of **Pittman Law Firm** at 7030 Fain Park Dr., Ste. 8, Montgomery 36117. Phone (334) 819-4730.

David A. Bright, Warren H. Burke, Jr. and **DeAnna G. Hay** have become partners in **Klasing & Williamson PC** and **Jonathan G. Wells** has joined as an associate.

Thomas G. Mancuso announces the formation of **Thomas G. Mancuso PC** at 401 Madison Ave., Montgomery. Phone (334) 263-2533. **Raley L. Wiggins** has joined the firm as special counsel.

W. McCollum Halcomb has joined the staff of the **Chapter 13 Standing Trustee for the Northern District of Alabama**, Western Division, as senior staff attorney.

Ashley Hugunine has joined **Baker Donelson** in the Birmingham office.

Catherine O'Quinn has joined **Wilson & Guthrie LLC** as an associate.

Seth D. Reeg has joined the Shreveport office of the **United States Attorney for the Western District of Louisiana** as an assistant United States Attorney in the criminal division.

Kyle Shirley has joined **McDowell, Faulk & McDowell LLC** as an associate.

Allen R. Trippeer, Jr. has joined **Porterfield, Harper, Mills, Motlow & Ireland PA**.

Joe K. Whitt, III has joined **Thompson, Garrett & Hines LLP** of Brewton as an associate. | [AL](#)

Among Firms

Joe E. Basenberg announces that he has been appointed by Governor Robert Bentley to the **District Judgeship for Mobile County** to fill the vacancy created by the retirement of Judge Charles McKnight.

Michael E. Brodowski and **S. David McCurry** announce the formation of **Brodowski & McCurry LLC** at 415 Church St., Ste. 200, Huntsville 35801. Phone (256) 534-4571.

Due to space constraints, *The Alabama Lawyer* no longer publishes address changes, additional addresses for firms or positions for attorneys that do not affect their employment, such as committee or board affiliations. We do **not** print information on attorneys who are not members of the Alabama State Bar.

About Members

This section announces the opening of new solo firms.

Among Firms

This section announces the opening of a new firm, a firm's name change, the new employment of an attorney or the promotion of an attorney within that firm.

Expedited Process Serving, LLC

"We Serve You by Serving Others"

205-995-9633

www.ExpeditedProcessServing.com

NO MILEAGE FEE!!!

- >Status Available via Website<
- >Service Throughout Alabama and Beyond<
- >Automated Email Updates for Each Action on Your Case<
- >Member of National Association of Professional Process Servers<

free•dom:

noun

**the power to determine
action without restraint.**

free•dom court re•porting:

proper noun

**a company that gives you
more freedom by handling
your legal support needs.**



FREEDOM

FREEDOMREPORTING.COM

Feel the Freedom Difference

www.freedomreporting.com

Toll Free: 1-877-373-3660

Local: 205-397-2397

Fax: 205-397-2398

Periodical Postage
Paid
Montgomery, AL



Stronger. Faster. Competitive.

With over 50 years of experience, GilsbarPRO is the exclusive administrator for the CNA Lawyers Professional Liability Program in the State of Alabama. CNA is the largest underwriter of lawyers malpractice insurance in the United States and is A-rated by A.M. Best. This combination is your best alternative for peace of mind in today's challenging environment.

Expect Nothing Less. Call The PROs Today.
800.906.9654 • gilsbarpro.com

CNA  **GILSBARPRO**

One or more of the CNA insurance companies provide the products and/or services described. The information is intended to present a general overview for illustrative purposes only. It is not intended to constitute a binding contract. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services are subject to change without notice. CNA is a registered trademark of CNA Financial Corporation. Copyright (c) 2013 CNA. All rights reserved.

