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# ALABAMA LAWYER

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## P R E S I D E N T ' S P A G E

**J. Cole Portis**

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# Improve in Mind, Body and Spirit

In December 1993, I had only been a lawyer for a few years, but during that month, my mind was not focused on practicing law. Instead, I was looking forward to becoming a first-time dad. My life was the epitome of the American dream. I had a great wife, a great job, a great home and a soon-to-be precious baby daughter. My wife's pregnancy (from my perspective, of course) had been smooth and easy. Even the delivery of my daughter, Sarah Kathryn, was exhilarating, but medically it was uneventful. However, deep into the night tragedy struck. With no warning at all, my wife suffered a brain aneurysm and passed away later in the day. All of a sudden, my world was turned upside down.

Even while I cared for my newborn daughter, my perspective on life was challenged. My spirit, my mind and my body were stretched beyond what I thought was possible. Eventually, I was restored to a semblance of who I was before this tragic event occurred. As I slowly returned to work, I thought I was more prepared than I actually was. For instance, a few months after my wife's death, I was scheduled to try a lawsuit in front of one of my legal mentors, Judge Phelps, and against one of my friends, Frank Stakely. As the day of trial approached, I was unable to concentrate on the task at hand—working hard on behalf of my client. I was emotional and not as prepared as I should have been.



To be quite candid, I was a “basket case.” Fortunately, Frank and Judge Phelps observed my struggles and displayed compassion and support for me. Both of them aided in my emotional recovery.

By God’s grace, I think my spirit, body and mind fully recovered so that I could become a reliable father, a faithful friend and a competent lawyer (and eventually a loving husband to my sweet wife, Joy).

I know that I am not alone as a lawyer in dealing with tragedies. “Life” often hits us when we least expect it. Sometimes we handle these setbacks well and other times we don’t respond well at all. As lawyers, our lives have an added layer of stress. We have chosen an occupation that doesn’t rebuff stress, but invites it.

Data at the Center for Disease Control and Prevention reveals that the legal profession ranked fourth in suicide deaths by profession. According to the American Psychological Association, lawyers are almost four times more likely to suffer from depression than non-lawyers. Adversity for us is second nature to our profession. Being the advisors, the fixers and

the caretakers of others is what we do. We do it quite well, but we must do all that we can to reverse these statistics and begin to take care of ourselves.

The Alabama State Bar already has in place the **Alabama Lawyer Assistance Program (ALAP)**. **Robert Thornhill**, the director, and the multitude of lawyer volunteers stand ready to help lawyers who are currently battling mental health issues. This program offers intervention, monitoring and referral sources for lawyers who suffer from depression and stress. So, if you are struggling mentally or emotionally right now, I plead with you to call them at (334) 834-7576 or (334) 224-6920. All conversations are confidential.

While ALAP helps those currently struggling, I also am implementing a health and wellness initiative to help us be prepared on the front end before the tough times come. **Clay Hornsby, David Martin and Emily Baggett** are leading a task force to help all of us improve in mind, body and spirit. Over the next year and beyond, this task force will highlight areas of wellness that will help us enhance our mental well-being, our physical bodies and spiritual lives.

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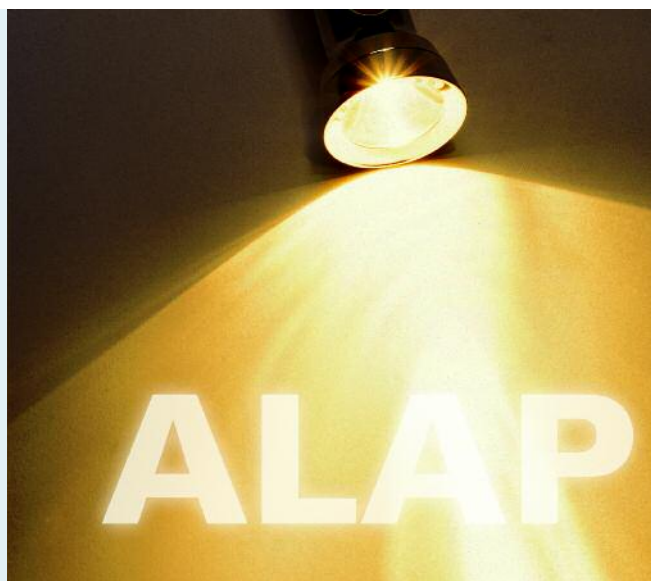
(Continued from page 93)

As a profession, we need to be an example to others, including our spouses, our children, our friends and even other professions to let them know that it is acceptable to seek help and to take a proactive stance to improve our lives and be prepared for the difficulties that life will surely bring.

We won't be advocating that all lawyers become fitness fanatics or diet gurus, but we may provide you with information and opportunities to become physically fit, including offering better food options to consider and healthy choices at our state bar events. Maybe there will be excellent information on leading a balanced life or how to handle anxiety or stress, including suggestions for counseling. The task force is working on all of these issues.

Please take stock of your own well-being. Are you sleeping enough so you can be mentally alert to face your daily challenges? Are you eating healthy enough to provide your body with the fuel it needs to persevere through your day? In terms of exercise, are you strengthened and built-up enough to endure what lies ahead? Or, instead of increasing your activities, maybe you need to slow down and stop trying to conquer a world that cannot be conquered.

I know that I fall short in all of these areas. However, I am committed to action—to improve in mind, body and spirit. Will you join me and the health and wellness task force in improving our profession and the lives that we touch? ▲



## ALAP Provides Lifeline And Light through the Darkness of Addiction, Mental Health Problems

Just ask **Robert Thornhill** about his life, and he will be the first to tell you that he has received a “miraculous gift.” It’s a gift that we all need at different points and to varying degrees in order to maintain overall health and wellness: a second chance.

Maybe your supervisor has allowed you to fix a mistake or you’ve made a bad first impression on a future friend. Regardless of the situation, we should all be able to relate to needing one more chance to get it right, and, for some, that opportunity is life-changing.

In Thornhill’s case, it’s what was needed to break the grips of addiction, leading him to his current position as the director of the Alabama Lawyer Assistance Program (ALAP), which aims to lend a helping hand to lawyers, judges and law students who suffer from substance use disorders and other types of mental health disorders.

The program, with oversight and support from the non-profit Alabama Lawyer Assistance Foundation, provides evaluation, assessment and referral services with peer and facilitated support programs to help address issues facing many Alabamians in the legal profession.

“Working in this field really keeps me very aware that addiction is out there, that it is a tremendous problem in our country. It’s a huge problem in this profession, and it gives me a lot of gratitude for the recovery I have,” said Thornhill, a licensed professional counselor and a certified addiction therapist. “On one end, this work can be exhilarating, as lives and careers are literally saved and families reunited, but on the other end, we see jails and institutions and death. Ultimately for those of us in recovery, being able to do service work and help those still suffering is one of the highlights of our lives.”

All substance use disorders are brain diseases, he said, and though progress has been made, preconceived notions of addiction, along with symptoms of the disease itself, often make it difficult for those affected to seek help.

Roughly one in five lawyers is addicted to alcohol, lawyer depression rates are double those of the general population and at least one lawyer a month dies from suicide, according to statistics from the program.

“When it comes to addiction, there’s really no gray area,” he said. “Life is just messy, and I’ve made peace with that. But when it comes to addiction and recovery, it really is black and white. If you’re an addict or an alcoholic, you’re either in the middle of a recovery program or you’re heading back toward a relapse.”

The program, run with help from the Lawyers Helping Lawyers Committee, currently has about 130 participants undergoing treatment and monitoring plans that normally last for three years.

Members of the committee, which offers mentoring and monitoring, often have personal experiences with substance use or other mental health disorders; many of the participants are referred by the Alabama State Bar Office of General Counsel, but most are via family, colleagues or friends.

The ultimate goal, Thornhill stressed, is to reach those who need help before “inevitable worsening consequences occur, like arrest, hospitalizations and loss of licenses.”

He believes the character traits often needed within the legal profession, including perfectionism, self-reliance and adversarial tendencies, and the demanding nature of the profession itself increase the toll on mental health. Help is available, though.

“I’m very thankful to know that I work for an organization that strongly supports this work and recognizes the need for it and understands the importance of this remaining a completely confidential program,” he said.

The voluntary program is indeed completely confidential, and unless a formal complaint is filed, participants can get their lives and careers back on track without anyone, including the Alabama State Bar, becoming aware of the issue.

In addition, financial assistance for treatment, which half of the lawyers referred to ALAP require, is available with repayment options fitted to individual recovery times.

“It’s a design for living that works,” Thornhill said. “I literally learned how to live within recovery.”

For more information about the ALAP, visit [www.alabar.org/programs-departments/alabama-lawyer-assistance-program](http://www.alabar.org/programs-departments/alabama-lawyer-assistance-program). For immediate confidential help for yourself or another lawyer, call (334) 834-7576 or the 24-hour hotline at (334) 224-6920. ▲

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Pursuant to the Alabama State Bar's Rules Governing the Election of President-elect, the following biographical sketches are provided of Sam W. Irby and R. Cooper Shattuck. Irby and Shattuck were the qualifying candidates for the position of president-elect of the Alabama State Bar for the 2017-2018 term and the winner will assume the presidency in 2018.



## Sam W. Irby

Sam W. Irby practices law with the firm of Irby & Heard PC in Fairhope. After graduating from the University of Alabama School of Law, he returned to his hometown to practice law. He has always practiced as a solo or small-firm practitioner.

Sam currently serves in his second three-year term as a member of the Alabama State Bar Commission representing Baldwin County, is chair of the Solo & Small Firm Section and serves or has served on many state bar committees. He is a recipient of the Alabama State Bar President's Award and a Fellow of the Alabama Law Foundation. For many years, he has held an AV rating from Martindale-Hubbell.

Sam is registered on the Alabama State Court Mediator Roster and Alabama Appellate Mediation Roster and has been appointed to mediate cases by both the Baldwin County Circuit Court and the Supreme Court of Alabama.

Sam serves as a member of a committee appointed by the Alabama Law Institute reviewing the Alabama Uniform Condominium Act of 1991 considering amendments to be proposed to the Alabama Legislature. He is the author of "Indestructible Survivorship or Destructible Survivorship: Which Form of Survivorship Is Best for Your Client?" which was published in the January 2017 issue of *The Alabama Lawyer*.

Sam is married to Virginia Marriott Irby and they have three children.



## R. Cooper Shattuck

Over the last 27 years, Cooper Shattuck has experienced virtually every facet of the practice of law and service to and through the state bar. Cooper spent 20 years in private practice in Tuscaloosa, representing both plaintiffs and defendants in state and federal courts, which included work not only throughout the state, but later throughout the nation and in Puerto Rico. His firm grew to be the largest in west Alabama with Cooper as one of its managing shareholders.

He later served as chief legal advisor to the governor, where he worked with and in all areas of state government. Working extensively on the aftermath of the *Deepwater Horizon*/BP Oil Spill, he led the state's efforts to assess damages done both economically and environmentally. He continued to serve as special counsel to the governor for all spill-related matters when he became general counsel of the University of Alabama System. He led the governor's team in settlement negotiations resulting in a \$1 billion economic settlement for the state and more than \$1 billion in Natural Resource Damage Assessment funds, Clean Water Act (RESTORE) funds and criminal fines and penalties.

As general counsel for the University of Alabama System, he also coordinated, managed and administered legal strategies and services for the entire University of Alabama System, including three campuses, its health system (including a hospital and insurer) and more than 50 affiliated entities, with an operating budget of \$5.5 billion, 38,000+ employees and a \$1.2 billion pooled investment endowment. Currently, Cooper operates his own law practice as a solo practitioner, experiencing firsthand the challenges of juggling a small business while practicing law.

During these varied and challenging professional endeavors, he has actively served the bar. He twice served as the state bar vice president and is serving his third term on the State Bar Executive Council. He recently co-chaired the Succession Planning Task Force which resulted in Phillip McCallum's being named the new state bar executive director. He has served as a Bar Commissioner for more than 12 years and on the Disciplinary Commission and Disciplinary panels. He was instrumental in starting the In-House Counsel & Government Lawyer Section which now boasts 500+ members. He has served on more than 18 different bar committees and task forces, most for multiple years, and chaired many of them. He served as president, vice president, secretary and treasurer of the Tuscaloosa County Bar and multiple terms on its Executive Committee.

Cooper is a member of the Alabama Law Institute, the Alabama Supreme Court Commission on Dispute Resolution, the Board of Trustees of the Alabama State Bar Foundation and a Fellow of the Alabama Law Foundation and the American Bar Foundation. He also served on the Board of Trustees of the Farrah Law Alumni Society and the University of Alabama Law School Foundation Executive Committee. Additionally, he has taught four different courses over 14 years at the University of Alabama School of Law.

Cooper has served his community as a member of many local non-profit boards, including FOCUS on Senior Citizens and the Black Warrior Council of Boy Scouts of America. He is a frequent speaker on a variety of topics for MCLE credit and on leadership and strengths, and currently serves as Leadership Tuscaloosa chair. As a licensed local pastor, Cooper served on the staff of First United Methodist Church Tuscaloosa and as pastor of Propst United Methodist Church in Millport.

Cooper graduated from Georgia Tech with a degree in economics and earned his juris doctorate from the University of Alabama School of Law. He is the proud father of three daughters, one employed in Birmingham, another studying architecture at Auburn University and the youngest a freshman at Northridge High School in Tuscaloosa. ▲

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## EXECUTIVE DIRECTOR'S REPORT

**Keith B. Norman**  
keith.norman@alabar.org

# Goodbye to a Friend and Colleague

For 28 years I had the good fortune to work with Tony McLain. Tony arrived at the state bar four or five months after I started here in 1988. Following Bob Norris's retirement, Tony was named as general counsel in 1996, becoming the bar's fourth general counsel.

Tony was the state bar's lawyer and, of course, the person who enforced our profession's code of ethics. He provided the state bar's officers and bar commissioners with legal advice on many occasions and represented the bar when litigation ensued as the result of the bar's carrying out its regulatory responsibilities. His counsel and wisdom were respected by the many state bar presidents and commissioners he served over the years.

As the bar's chief prosecutor, Tony expected all lawyers to conscientiously abide by the *Rules of Professional Conduct*. He was firm, but never mean-spirited or harsh when he was forced to prosecute a fellow lawyer. Tony was the consummate professional, which is how he expected all lawyers to behave. After his death, I had a number of lawyers call me to express their condolences. Two of the lawyers, in particular, extolled Tony's many wonderful qualities, including his compassion. They were lawyers Tony had prosecuted. They professed that the



*Leah and Tony McLain*

kind and caring manner in which Tony had handled their cases had actually made them better people and lawyers and both were appreciative for what Tony had done for them.

I know that Tony positively affected many lives and careers by the way he conducted himself and operated the Office of General Counsel for more than two decades. Perhaps his finest hour, though, was when he became ill nearly four years ago and was diagnosed with multiple myeloma. Tony, with the love and care of his wife, Leah, battled this disease with dignity, ferocity and a spirit

that would have pleased the Apostle Paul. His faith never wavered and his appreciation of the grace and salvation of the Lord was magnified. Over these last few years, the way that Tony lived each day was nothing short of amazing. He exhibited courage and a dogged determination that he was not about to let the disease gain control and it didn't until the very last. To say the least, Tony was an inspiration to me and I am sure to all who knew the odds he was fighting. His was an example of how to live one's life each day.

At the memorial service, Tony's younger brother, Scott, eulogized his brother and shared what Tony had meant to him and his sister, Danita. As Scott closed, he read the poignant words of Alfred Lord Tennyson's famous poem, *Crossing the Bar*. I conclude with them here as a tribute to my friend and longtime colleague, Tony:

*Sunset and evening star,  
And one clear call for me!  
And may there be no moaning of the bar,  
When I put to sea.*

*But such a tide as moving seems asleep,  
Too full for sound and foam,  
When that which drew from out the boundless deep  
Turns again home.*



*Twilight and evening bell,  
And after that the dark!  
And may there be no sadness of farewell,  
When I embark;*

*For tho' from out our bourne of Time and Place  
The flood may bear me far,  
I hope to see my Pilot face to face  
When I have crost the bar.* ▲

## Gale Skinner Retires after 34 Years of Service to the Bar



This past December, veteran staff member Gale Skinner retired. Gale had served the state bar loyally for more than 34 years and was the second-longest-serving staff member in the bar's 137-year history. For 30 of those years, Gale managed the financial operations of the state bar. Most of that time, she handled all of the funds that the agency received and timely paid all the bills to keep it operating without anyone helping her. It was not easy, though.

Although Gale did not possess an accounting degree or have a financial background, she was a quick study and learned the intricacies of governmental accounting procedures, which routinely changed. To pay a bill, for example, was not a cut-and-dry exercise. A voucher would have to be completed, signed in triplicate and submitted for payment. She handled these chores for 30 years as the state

accounting system became increasingly complicated with more and more government hoops to jump through. Only in the last few years did Gale have staff help to deal with the increased workload.

When Gale was moved to the bookkeeper's position by Reggie Hamner, the bar's budget was less than \$500,000. By the time she retired, the budget was more than \$6,000,000. During her time handling the bar's financial operations, Gale not only performed her responsibilities prudently, she was a conscientious steward of the bar's funds. Over the course of her career, the Examiners of Public Accounts performed numerous audits of the bar's operations and not a single report filed by the examiners ever hinted that any bar funds were not properly accounted for or missing. Not many state agencies audited by the examiners can make that boast.

Merinda Hall, who is a certified public accountant and has been on the staff for almost two years, has become the bar's financial director. Because of the recent overhaul of the state's financial and accounting system, we have had to make corresponding changes here. Kristi Neal, who had assisted Gale, and Ann Rittenour are both helping Merinda manage the bar's financial operations. They have, and will continue to do, a fine job for the bar.

The bar owes Gale a large debt (pun intended) of gratitude for her many years of supervising the bar's finances. She will be missed, but she has more than earned her retirement. ▲



## REMEMBERING TONY McLAIN



*Tony and Leah McLain with grandson "Jabo"*

# Alabama State Bar Announces Death of General Counsel J. Anthony "Tony" McLain

Long-time Alabama State Bar General Counsel J. Anthony "Tony" McLain passed away Sunday, January 1, 2017. He was a member of the bar's staff for more than 28 years and was named as general counsel in 1995.

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

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

"Although he served in a very tough position, enforcing the legal profession's ethical rules, he did so with fairness, professionalism and great compassion," said ASB Executive



Director Keith Norman. "Tony has left an indelible mark on the legal profession in Alabama and his state bar colleagues and fellow lawyers mourn his loss and will miss his wisdom and friendship."

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

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

In lieu of flowers, memorial contributions may be made to the Multiple Myeloma Research Foundation (383 Main Ave., 5th Floor, Norwalk, CT 06851).

## A Full-Glass Kind of Guy

**By R. Cooper Shattuck**

Your presence here is an honor and a tribute to Tony McLain. I'm not sure why Tony wanted me to speak here today. My very few years as a part-time local pastor in the United Methodist Church are hardly a distinction. Nevertheless, I am honored and hope that I can honor his wishes with a few thoughts. The truth is that there are so many friends of Tony's here who are much better storytellers than I, and many who have as much or more to share. The reality is that if everyone who loved Tony, everyone whose life was touched by him, tried to put into words what Tony meant to them, we would be here for years and years and years. Instead, I hope that you all will share with us those thoughts, those experiences and those stories for years to come. That way, Tony's life will continue to make a difference in the lives of others.

First, some disclaimers on my comments. I am not going to attempt to explain why bad things happen to good people. Why we must endure things like cancer. Why life is so short. While I have contributed to sermon series on such things, that is not Tony. And, of course, that is not what Tony wanted. And frankly, for all you good Methodists, I'm not technically licensed



*Leah and Tony McLain during a football weekend trip they took to Notre Dame in 2000 with past President Sam Rumore*  
(photo courtesy of Sam Rumore)

anymore anyway. Thank you, Patrick, for allowing me to respect Tony's wishes by speaking briefly here today.

So, you see, Tony wanted something upbeat. Thanks a lot, friend. An upbeat memorial service. That is a tall order for a day like today, but that is Tony. And, that is also why we have Mark White in the lineup.

Tony's desire for an upbeat memorial service certainly captures so many things about him. For Tony was not as simple as whether the glass is half empty or half full. No. He was a full-glass kind of guy. And I'm not just talking about wine glasses. Accord-

ing to Tony, if you are concerned about whether your glass is half empty or half full, you are worried about the wrong glass. Or perhaps you are looking at it wrong. Maybe you need a smaller glass. Or maybe you need to add some more to the glass that you have. And that kind of attitude, that kind of perspective comes from a man of faith. Not just a "man of faith" as opposed to one without, but someone whose faith is REAL. A man whose faith permeated his very being. A faith that was contagious, that was sure, that was infectious, that was admirable and that was Biblical. A faith that gives us the upbeat that he was talking about. And that was Tony McLain's faith.

There are many scriptures that deal with faith. It is the basis of our, well, faith. Hence the name, I suppose.

"Stand firm in your faith; be courageous; be strong," Paul told the Corinthians. (1 Corinthians 16:13). That was certainly Tony. Firm in his faith. Courageous. Strong. But, Tony was a curious person to have such faith, such a positive outlook.

Recently, with all this rain, I had to dig a quick trench to help relieve a home from the threat of rising water. I wound up with a blister on my hand from the grinding of the shovel in a hand which was no longer used to it. You see, when something rubs us the wrong way or when we struggle to use a tool that we don't often use, we get a blister. If you continue to work with that tool, you will continue to blister, but you will eventually develop a hard callous in its place. Callouses protect our otherwise sensitive skin. Those callouses protect us.

As general counsel of the Alabama State Bar, Tony dealt a great deal with lawyers who did not follow the rules of our profession, lawyers who challenged the right or proper way of doing things. For those who honor the profession, like Tony did, that rubs us the wrong way. And when people get themselves into such pickles, they often resort to lies and stories and excuses, which actually make things worse—fighting or hiding the truth also rubs us the wrong way, doesn't it? And Tony dealt with such tools for years. It is easy in such a position to become calloused. It protects you from disappointment and further pain, but not Tony. He did not

*(Continued from page 101)*

allow his experiences in the Office of General Counsel to color his view of his fellow man, not even fellow lawyers. He loved folks. He loved lawyers. And he wasn't afraid to say so.

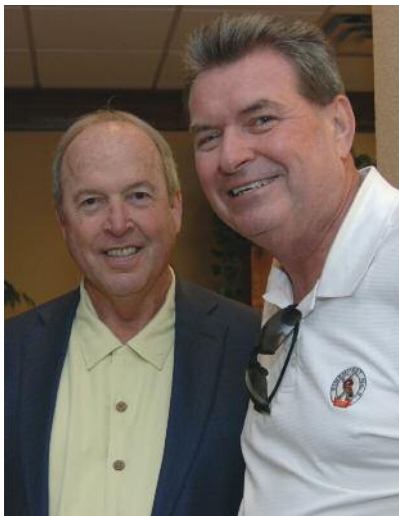
Tony's experience with cancer could also have caused him to become calloused. It could have given him an easy excuse to question his faith, to become bitter and frustrated, to give up. Again, not Tony. He continued un-calloused, always loving life, loving his job, loving his wife, loving his family, loving us and loving his God.

You see, that is the difference. That is the difference in Tony's faith and the faith the rest of us somehow manage to muster, usually only in times of crisis.

Tony's faith is REAL faith—a faith that is always there, each and every day. And that kind of faith gives you a profound and unwavering perspective on life. It makes you love and appreciate each and every minute of every day and everyone within them. "Faith is confidence in what we hope for and assurance about what we do not see." It is what the apostle told the Hebrews (Hebrews 11:1). It is looking for the best in everything and everyone, and not questioning why we don't always get it.

"But faith by itself, if it is not accompanied by action, is dead," said the apostle James (James 2:17). Tony's faith was not dead. His was a faith accompanied by action. While Tony's kind of faith allows you to love, it also allows you to tell someone, to tell everyone, that you love them—and mean it. Everyone lives their faith differently. Some put it into action differently than others. Tony's faith was acted out in love. Words of love. Acts of love. And that is the action that the apostle was talking about—action out of love, not obligation. Let me share a few of my experiences with Tony's faith in action while you remember your own.

Tony would often send me scriptures. Little devotionals. I'm sure many of you have received them. While the scriptures were always great, it was the fact that Tony would send them. To me. Tony, struggling with cancer and chemo and transfusions and procedures, would send healthy me scriptures. And that is an action that speaks volumes of his unselfish love and his unwavering faith. We would text or email back and forth about the scripture. And he always signed them in love. "Love you, brother." "Love you, man." He wasn't afraid to say that,



*Tony McLain with close friend Tony Williamson*

whether in text or in person. How many of us struggle with that? It isn't easy. What is more, he wasn't afraid to do it. To love me. To love you. What a testament to his faith.

He also gave me little gifts even when there was no special occasion. When I took to wearing bowties more frequently, he'd find some bowtie on sale somewhere and buy it. Next time I saw him, he would give it to me. We all know what college football team he favored. And some of you know that I served as the general counsel of the University of Alabama. Tony actually came to Tuscaloosa for a game one time. Not "the" game. It was a Mississippi State game. Because Leah wanted to come. Anyway, when my daughter decided to go to Auburn, he couldn't resist

giving the general counsel of the University of Alabama an orange and blue bowtie and matching pocket handkerchief. I'm sure he thought I would never wear it. I wouldn't have worn anything else today, my friend.

Jesus was asked what is the greatest commandment. First, He said, love the Lord your God with all your heart, with all your mind and with all your soul. Next, love your neighbor as yourself.

Tony was love. His love for Leah was unselfish, strong and true. And, of course, so was Leah's for Tony. Their love for each other was always evident, ever present. And, he rightly referred to their love as eternal.

If you are here today, regardless of your faith, you loved Tony. And it should come as no surprise to you that he loved you—each and every one of you. When asked about this service, how large he wanted it to be, he said I want everyone who loves me to come. And, what do you think that he would he say to us? To all those who love him? What would he want us to do? He would tell us to love each other. Not just say it, which we could all do more often, but live it. We are all here to honor Tony. So, how do you best honor him? Regardless of your faith, regardless of your beliefs, regardless of your philosophy on life or death or an afterlife, regardless of whether you choose to do as Tony did and love your God with all your heart, with all your mind and with all your soul, I'd submit that we attempt to love each other as much as Tony loved each of us. I cannot think of anything more upbeat than a life like Tony's—one with a full glass—full of love and service to others.

*—R. Cooper Shattuck practices in Tuscaloosa.*

# A Spirit to Live, Love and Share Life

**By Phillip W. McCallum**

Let me say this about Tony McLain. Anyone who can talk about ethics for an hour, without notes, more than 3,000 times, make people laugh and you can't wait to hear him speak again is a great man!

My name is Phillip McCallum and, simply put, I think Tony McLain represents all that is great about our legal profession. Three and a half years ago, Tony was diagnosed with cancer. Tony was given very little chance to survive when he first arrived at the hospital. Tony felt it was necessary to immediately resign his position as general counsel. The doctors told Tony that he would never walk again and he certainly wasn't going to be able to play golf (which he loved). Somehow, this prognosis didn't sit well with this stubborn, tough guy from Headland, Alabama. He had a spirit to live, love and share life like I've never seen before.

Tony did survive, his sweet and devoted wife, Leah, brought him home and, to everyone's delight, he unretired. Through great effort, not only did he walk, he played golf again like a champ, much to the detriment of my wallet.

I will visit with you for a moment about Tony's two gifts and the spirit to live that came out of his fierce battle with cancer. The first is the extraordinary gift that Tony received in being able to live an additional three and a half years. I have never seen anything like Tony's love for life and his tenacity and fight to overcome so much so he could live and love. Such courage and what a blessing! His gift was to be able to spend extra time with his love, Leah, and his grandson, John Ashton (Jabo), whom he adored, and return to the job and people he loved.

The second gift was to us (all of us)—we received the amazing blessing to continue to be a part of Tony's dynamic life. For three and a half years, Tony has been saying goodbye, thank you and I love you to us all. You may not have known that at the time, but that was exactly what he has been doing. All we needed was to be in his presence.

Tony wanted me to recognize his past presidents which would include our current leader, Cole Portis. These people had a very special place in Tony's heart and he wanted me to specifically thank them on his behalf for their friendship through the years.

I also want to talk a little bit about Tony's little man, Jabo. Jabo was certainly Tony's pride and joy. Tony was a frequent purchaser of Happy Meals so he could give Jabo the toy. He also would frequent the grocery stores the day after Halloween and Easter to get discounted candy to dole out to Jabo. Jabo is an accomplished football player and recently took up the sport of wrestling. For you Alabama fans—sorry,



*Tony McLain (center) and former Alabama Supreme Court Justice Gorman Houston (right) visit with another attorney during one of Tony's numerous MCLE presentations.*

Jabo's committed to Auburn. Tony made sure of that. (Can I get a War Eagle!) Jabo, I know you will miss your "T," but we thank you for sharing him with us.

With regard to Tony's spirit to live, I was blessed to have experienced, very closely, Tony's journey these past few years. I can sincerely tell you he showed me his playbook of life—you see, I saw as did many of you, how he dealt with people. I don't know why, but he gave me a front row seat and it has changed my life for the better—changed my perspective. Along this journey with Tony, I observed an amazing outpouring of love and concern from all of you, but three people really stand out to me. If I was on the front row, Jim Hampton (his longtime friend and law partner), Tony Williamson (best friend and confidant) and Diane Locke were on the field with Tony, step for step the whole way.

Tony's relationship with Jim, Tony and Diane was so special and important to him, I wish I could articulate that closeness for you—I can't. Thank you guys for what you did for our dear friend and I know that Leah thanks you from the bottom of her heart.

Today we celebrate Tony's life. We remember the playbook he left for us. We are not going to forget Tony McLain—quite the opposite. We will remember him always and he will continue to make us better lawyers and better people.

As lawyers, we all love the book and movie *To Kill A Mockingbird*. I will conclude my remarks by remembering the vivid image of Atticus Finch's lonely walk from the courtroom. As Atticus was leaving the courtroom, Reverend Sykes gently admonished Scout, "Miss Jean Louise, stand up, your father is passing." We, as Tony's family, his friends, his lawyers and those all across Alabama in the legal profession, we collectively stand up today to honor and respect the passing of one of the truly great men of our time—Tony McLain.

May God bless you.

*—Phillip W. McCallum served as the 2012-2013 president of the Alabama State Bar.*

(Continued from page 103)

## An Island in an Ocean of Egos

By J. Mark White

Thank you for the privilege of talking with you about Tony McLain. The pressure Tony put on us to be upbeat and to leave this place “uplifted” is real. He picked us and gave us time limits.

And, if that is not enough, the irreplaceable Diane Locke just gave me this note:

Please announce the ushers have just been advised by the fire marshal that the permitted limit for egos has now been exceeded for this structure—so no more judges will be seated.

That is a line Tony loved and made me repeat on occasion, including once when there were only the two of us in the room, which got my attention.

Tony was an island in an ocean of egos as he instead substituted, compassion, duty, loyalty, integrity, honesty and, as Cooper, Phillip and I all agree, love.

He always made a conversation focus on you and not him. “How are you doing?” “How’s the family?” “How’s it going?” These were not conversation fillers for Tony—he really wanted to know the answers.

Tony got what so many of us long for and so few will ever get—an extension of our lease on life. If only for what seems like an instant, we got that second lease on life with and through our brother Tony. And I’ll have to give it to him—he made the absolute most of it.

For Tony, life was a privilege and his greatest privilege was Leah. Tony loved Leah and Leah loved Tony—just that simple. Even in the toughest of times, that bond was there. They danced the dance of life and, depending on when and where it took them, one of them always led with grace. This was no act; their love was real.

Privilege is a word that many of us would associate with Tony because of his “day job”—leading the state bar’s Office of General Counsel, ensuring that we lawyers remain a self-regulating profession.

I once had a lawyer who had been disbarred say to me, “Tony McLain is the best thing that ever happened to me.” The Lawyer Assistance Program is just one example of the fact that Tony found redeeming value in anyone and everyone.

Tony did not like to be referred to as a “miracle” and, when asked why not, said, “I am here as simple evidence that other people guided by higher powers can make miracles happen.” He believed the process was the miracle and not the result.

And, so I suggest to you that our friend who wanted this to be “upbeat” and “positive” and “funny” did that not because of him, but because of us.



Leah and Tony McLain toured the Notre Dame campus in 2000 with past President Sam Rumore (far right) and other friends before enjoying a football game.

(photo courtesy of Sam Rumore)

As lawyers, we know that “privilege” means the obligation of an attorney to refuse to divulge a client’s confidential information without client permission or court direction, but other definitions of “privilege” speak to the true spectrum of Tony’s life. A “privilege” is also defined as “a special right, advantage, or immunity granted or available only to a particular person or group of people”—I see the lawyers in the room nodding their heads in agreement. It was a “special right,” a “privilege” we lawyers had to seek Tony’s wise counsel.

And without faulting, Tony gave many of us—

some more often than others—the benefit of his experience and insight. Knowing Tony was “only a phone call away” made us all better lawyers. Did any of you ever hear or say:

- “Did you call Tony?”
- “Go call Tony.”
- “What did Tony say?”
- “Why are you asking me? Tony’s up in his office so go ask him.”

Perhaps most appropriately of all, a “privilege” is defined as “something regarded as a rare opportunity and bringing particular pleasure.” Knowing Tony outside of his “day job” was a particular pleasure. Whether he was dancing at the annual meeting diversity party or showing up at a Halloween party dressed like a member of the band KISS—he sometimes thought he was Gene Simmons—Tony McLain gave it his all.

Cooper referenced in his remarks the passage in Luke where Christ tells a lawyer that the greatest Commandment is to love your God with all of your heart, soul, strength and mind, and to love your neighbor as yourself. But the lawyer had a follow-up question (some things never change)—“Who is my neighbor?” Christ then told the Parable of the Good Samaritan, which we know is about a person who reminds me of Tony, our neighbor.

- A guy is robbed and beaten—thrown in a ditch.
- Two guys with big egos pass him by.
- Along comes the guy who reminds us of Tony.
- He lifts up the poor guy—gets him patched up—puts him in rehab—probably makes him get current on his CLE. (That close enough Cooper?)

Sometimes, we forget that at the end of the parable, Christ said, “Go and do thou likewise.”

For Tony, I ask you to go and do likewise:

- Hug your friends and family.
- Celebrate the miracle of every day.
- Don’t just smell the roses—share them.
- Lift up someone and you will be uplifted.
- Help someone who is lost find their way.
- And, maybe sometimes, get out your Gene Simmons outfit.

Thanks be for Tony.

—J. Mark White served as the 2008-2009 president of the Alabama State Bar.

**Brewer, Gov. Albert Preston**

Homewood  
Admitted: 1952  
Died: January 2, 2017

**Brown, Earl Terry**

Montgomery  
Admitted: 1978  
Died: December 10, 2016

**Culpepper, Milton Irving, Jr.**

Chelsea  
Admitted: 1969  
Died: November 27, 2016

**Doyle, Thomas Patrick**

Daphne  
Admitted: 1969  
Died: December 7, 2016

**Dudley, Ronald Tyrone, Jr.**

Bessemer  
Admitted: 1987  
Died: November 16, 2016

**Farmer, James Davis**

Dothan  
Admitted: 1977  
Died: November 16, 2016

**Galligan, Jennifer Marie Jones**

Jasper, Georgia  
Admitted: 2001  
Died: March 4, 2016

**Guin, Junius Foy, Jr.**

Birmingham  
Admitted: 1948  
Died: November 8, 2016

**Isom, Jackie O'Neal**

Hamilton  
Admitted: 1966  
Died: November 1, 2016

**Joiner, Michael Clayton**

Montgomery  
Admitted: 1974  
Died: October 15, 2016

**Jones, William Grover, III**

Birmingham  
Admitted: 1980  
Died: November 15, 2016

**Robinson, Hon. Charles Edwards, Sr.**

Ashville  
Admitted: 1965  
Died: May 24, 2016

**Russell, Hon. Robert Jackson, Sr.**

Montgomery  
Admitted: 1966  
Died: November 13, 2016

**Stowe, Hon. Thomas Poindexter**

Wetumpka  
Admitted: 1968  
Died: November 21, 2016

**Tyson, John Malcolm**

Mobile  
Admitted: 1955  
Died: November 7, 2016

**Van Dall, Esther Faye Taylor**

Charleston, West Virginia  
Admitted: 1989  
Died: September 28, 2016

**Vogle, Jesse Stringer, Jr.**

Birmingham  
Admitted: 1958  
Died: December 12, 2016

**Wamsley, Michael Randolph**

Dunwoody, Georgia  
Admitted: 1983  
Died: May 9, 2016



## NOTE FROM THE EDITOR

**Gregory H. Hawley**  
ghawley@joneshawley.com

# Dealing with Difficulties

For nine months or more, the Editorial Board and a team of lawyer-authors have worked on this issue of *The Alabama Lawyer*, devoted to issues surrounding the stress of practicing law and, in particular, the resources that are available through the Alabama State Bar's Lawyer Assistance Program. As you know, **Robert Thornhill** is the director of this excellent program.



Thornhill

All of these articles were written by Alabama lawyers. Most of them chose to remain anonymous so that they could fully disclose their experiences without any hint of stigma. On the other hand, some decided that the best way to encourage open discussion about these diseases and syndromes—and perhaps chip away at stigma—was to publish their experiences openly and with attribution. *The Alabama Lawyer* finds both of these rationales understandable, and puts much value on the authors' willingness to share their experiences.

We hope that other Alabama lawyers will find lessons of encouragement in all these pieces. Of course, we thank

Robert Thornhill for spearheading this effort.

**Tony McLain's** untimely death on January 1 was a surprise to many. We honor and remember Tony by publishing in this issue three eulogies from Tony's funeral, as well as several photographs taken over his many years of service to our bar.



McLain

Tony counseled untold numbers of lawyers about ethics issues—through his entertaining and informative presentations, through his regular submissions to *The Alabama Lawyer* and through one-on-one telephone consultations. He was a straight arrow. More than most lawyers, he truly treated others as he would want to be treated—a true believer in (and practitioner of) the Golden Rule.

Tony was a straight shooter, too. He gave ethics advice without sugar-coating anything. And, he provided consistent advice, whether speaking to a long-time golfing buddy or a previously unknown lawyer over a long-distance telephone line. Tony was a rock. We miss him. ▲

ALABAMA STATE BAR



# ANNUAL MEETING

20



17

GRAND HOTEL

POINT CLEAR

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

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

Join us for the Alabama State Bar's 140th Annual Meeting

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- American Bar Foundation Dinner
- **KEYNOTE SPEAKERS:** Mike Ethridge, Paul Mellor, Ashby Pate, William Haltom, Artur Davis and more
- Socialize with ASB's new executive director, Phillip McCallum
- Activities for family members of all ages include: Golf, Tennis, Foot Golf, Rock & Roll Bingo, Fishing, Sailing
- Learn more about Lawyer University
- Grand Prize from ISI: A Week-Long Trip in Mazatlan, Mexico

Registration available mid-March



## IMPORTANT NOTICES

- ▲ **Notice of Election and Electronic Balloting**
- ▲ **Local Bar Award of Achievement**
- ▲ **J. Anthony “Tony” McLain Professionalism Award**
- ▲ **William D. “Bill” Scruggs, Jr. Service to the Bar Award**
- ▲ **Law Books for Sale**
- ▲ **Notice from the Clerk of the Supreme Court of Alabama**

# Notice of Election and Electronic Balloting

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

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

### Nomination and Election of Board of Bar Commissioners

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

8 <sup>th</sup> Judicial Circuit	21 <sup>st</sup> Judicial Circuit
10 <sup>th</sup> Judicial Circuit, Place 4	22 <sup>nd</sup> Judicial Circuit
10 <sup>th</sup> Judicial Circuit, Place 7	23 <sup>rd</sup> Judicial Circuit, Place 1
10 <sup>th</sup> Judicial Circuit, Bessemer Cutoff	28 <sup>th</sup> Judicial Circuit, Place 2
11 <sup>th</sup> Judicial Circuit	30 <sup>th</sup> Judicial Circuit
13 <sup>th</sup> Judicial Circuit, Place 1	31 <sup>st</sup> Judicial Circuit
13 <sup>th</sup> Judicial Circuit, Place 5	33 <sup>rd</sup> Judicial Circuit
15 <sup>th</sup> Judicial Circuit, Place 5	34 <sup>th</sup> Judicial Circuit
17 <sup>th</sup> Judicial Circuit	35 <sup>th</sup> Judicial Circuit
18 <sup>th</sup> Judicial Circuit, Place 1	36 <sup>th</sup> Judicial Circuit
18 <sup>th</sup> Judicial Circuit, Place 3	40 <sup>th</sup> Judicial Circuit
19 <sup>th</sup> Judicial Circuit	41 <sup>st</sup> Judicial Circuit

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



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

### Election of At-Large Commissioners

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

### Submission of Nominations

Nomination forms, declaration of candidacy forms and applications for at-large commissioner positions must be submitted by the appropriate deadline and sent to the secretary as follows:

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

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

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

Election rules and petitions for all positions are available at [www.alabar.org](http://www.alabar.org).

## Local Bar Award of Achievement

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

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

The following criteria are used to judge the applications:

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

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

## J. Anthony "Tony" McLain Professionalism Award

**The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the J. Anthony "Tony" McLain Professionalism Award through April 15, 2017.**

Nominations should be prepared on the appropriate nomination form available at [www.alabar.org](http://www.alabar.org) and mailed to:

Keith B. Norman  
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Alabama State Bar  
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(Continued from page 109)

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

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

## William D. “Bill” Scruggs, Jr. Service to The Bar Award

**The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the William D. “Bill” Scruggs, Jr. Service to the Bar Award through April 15, 2017.** Nominations should be prepared on the appropriate nomination form available at [www.alabar.org](http://www.alabar.org) and mailed to:

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

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

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

## Law Books for Sale

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

- 2013 *Alabama Pattern Jury Instructions—Civil* @ \$50
- 2016-2017 *Alabama Pattern Jury Instructions—Civil* @ \$175
- 2015 *Alabama Rules of Court—State* @ \$40

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

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

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Montgomery, AL 36104

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

—Courtney E. Britt, public service technician

## Notice from the Clerk Of the Supreme Court Of Alabama

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

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

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



## BAR BRIEFS

- The Alabama State Bar Women's Section awarded the inaugural Susan Bevill Livingston Leadership Award (SBLLA) to **Judge Tammy Montgomery**. The SBLLA



*Montgomery*

was created by the Women's Section in memory of Susan Bevill Livingston, who practiced at Balch & Bingham. A reception was held in Judge Montgomery's honor at Balch & Bingham's Birmingham office.

- Bradley Arant Boult Cummings LLP announces that Birmingham partner **Marc James Ayers** has been appointed by the Supreme Court of Alabama to the Alabama Pattern Jury Instructions Committee.



*Ayers*

- Bradley Arant Boult Cummings LLP announces that Huntsville partner **Jeremy A. Smith** has been appointed to a three-year term as chair of the American Bar Association Business Law Section's Intellectual Property Committee.



*Smith*

- Crew Gentle Law PC announces that **Wendy Brooks Crew** was appointed

to the Board of Managers and Secretary of the U.S. Chapter of the International Academy of Family Law.

- The Public Affairs Research Council of Alabama (PARCA) has selected Light-foot attorney **Clint Speegle** to participate in its 2017 PARCA Roundtable.



*Speegle*

- Retired Brigadier General and **Circuit Judge Tom King, Jr.** was recently honored by Athletics Director Bill Battle and the University of Alabama at the 50-yard line in Bryant-Denny Stadium for his 32 years of service to the country and state.



*King*

- **Jack B. Hood** is the president-elect of the Birmingham Inn of Court and will serve in that capacity for the next two years.

- **Sara M. Turner**, a shareholder in Baker Donelson's Birmingham office, has been appointed to a one-year term as vice chair of the Defense Research Institute Retail and Hospitality Committee. ▲



*Turner*



# Meet the Alabama Lawyer Assistance Program

*By Robert B. Thornhill*

## As the director of the Alabama Lawyer Assistance Program,

I see or hear about attorneys almost every day who are struggling with undiagnosed and/or untreated mental health issues such as alcoholism, drug addiction, depression or anxiety. These maladies always result in inevitably worsening negative consequences over time without treatment and recovery. The negative

consequences include the utter devastation of relationships, warped lives of blameless children, lost productivity at work, eventual loss of employment, formal complaints to the Alabama State Bar, malpractice claims, the decline of physical health, cognitive impairment, loss of personal integrity and eventually despair, hopelessness and death.

I also get to see miracles unfolding on a daily basis. I get to witness people who have emerged from a seemingly hopeless state of

existence to a genuine path of recovery and rebirth. We do live in an age of miracles! It is indescribably wonderful to watch this process unfold, to see families reunited, careers salvaged and often greatly improved, to watch mental, emotional, spiritual and physical health improve and to see joy in the faces of small children who look up to their parents for affirmation and a sense of value.

This edition of *The Alabama Lawyer* is dedicated to the attorneys, law students and judges who need our assistance, and to those who have found the path to recovery and wellness. It is also intended for colleagues, family members and loved ones who often see this process of self-destruction and do not know what to do. It contains numerous articles on the topics of addiction, depression, stress, mental health, treatment and recovery. I am so grateful for the many people who have taken the time and effort to contribute to this edition and to demonstrate their willingness to be of service.

My work with the Alabama Lawyer Assistance Program, and the experience of the dedicated and passionate attorneys who serve on our committee, is very rarely “normal” or “even-keeled.” We expect to be faced with scenarios and situations that often seem impossible to handle. Addicts and alcoholics are stricken with a malady that causes them to have little insight into the seriousness of their affliction, and the disease is constantly using their own minds to keep them convinced that they will “handle it better next time,” or that “it really wasn’t that bad” or “everyone is doing it,” and on and on. The addicted mind automatically rationalizes and justifies the continued use of the substance it has become addicted to, and minimizes the negative risks and consequences.

As a result, our work is frequently challenging and difficult. Because most attorneys tend to be very intelligent, their “delusional thought systems” can be complicated and convoluted. Trying to reason with someone who has not only learned to lie, but who has become delusional,



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can be frustrating and even heart-breaking. This is one of the reasons it is so important to continually work to reduce the stigma associated with substance use disorders and mental health issues such as depression, anxiety and bipolar disorder, and to encourage colleagues and loved ones to reach out and get involved.

The recent ground-breaking study that was published in February of this year in the *Journal of Addiction Medicine*, and that is alluded to in various articles in this edition of *The Alabama Lawyer*, shows that the incidence of substance use disorders and other mental health disorders among attorneys is far above that of the general population. These statistics reflect a real need in our profession for people to be willing to reach out and offer assistance, and to avoid the tendency to believe that it is “none of my business” or that “someone else will surely help” or that “they will get better on their own.” People who are suffering with these illnesses literally lack the ability to see the seriousness of their condition, and they desperately need people around them who have the genuine courage to reach out and assist. One of the best ways to do this is to talk with them and let them know that you are concerned, and describe the behaviors that cause the concern. Let them know that there are ways to get help, and encourage them to contact the Alabama Lawyer Assistance Program or to reach out to one of the dedicated members of our committee. If they remain unwilling to do this, and many will, then I urge you to contact us directly. You can provide the basic information that is needed to describe the behaviors of concern, and we will get in touch with the attorney in question. You may do this anonymously if you wish. Our program is strictly confidential!

The names and contact information for our committee members can be found on the Alabama State Bar website ([www.alabar.org](http://www.alabar.org)). Their tireless work and dedication to this cause is truly inspiring. Many of our committee members are also in recovery, and you will

This is one of the reasons it is so important to continually work to reduce the stigma associated with substance use disorders and mental health issues such as depression, anxiety and bipolar disorder, and to encourage colleagues and loved ones to reach out and get involved.

have the opportunity to read some of their anonymous stories in this edition. They are available to speak with you regarding your concerns, and are uniquely qualified to assist the attorney who is still suffering. Our committee members are the heart and soul of the Alabama Lawyer Assistance Program. They are willing to be involved in informal interventions, to serve as lawyer monitors for attorneys in early recovery, to facilitate “support groups” for attorneys and to provide genuine guidance and support during those early days when it is so desperately needed. One of the worst things that can happen to anyone with a substance use disorder or a mental health issue is to isolate and try to manage things on their own. Our committee members provide the assistance that is absolutely essential for genuine recovery.

I express my sincere gratitude for the opportunity to serve as the director of the Alabama Lawyer Assistance Program. I am deeply grateful to know that this program

has the full support of the Alabama State Bar. Finally, I (again) express my respect and admiration for the passionate and dedicated members of our committee who make this program work.

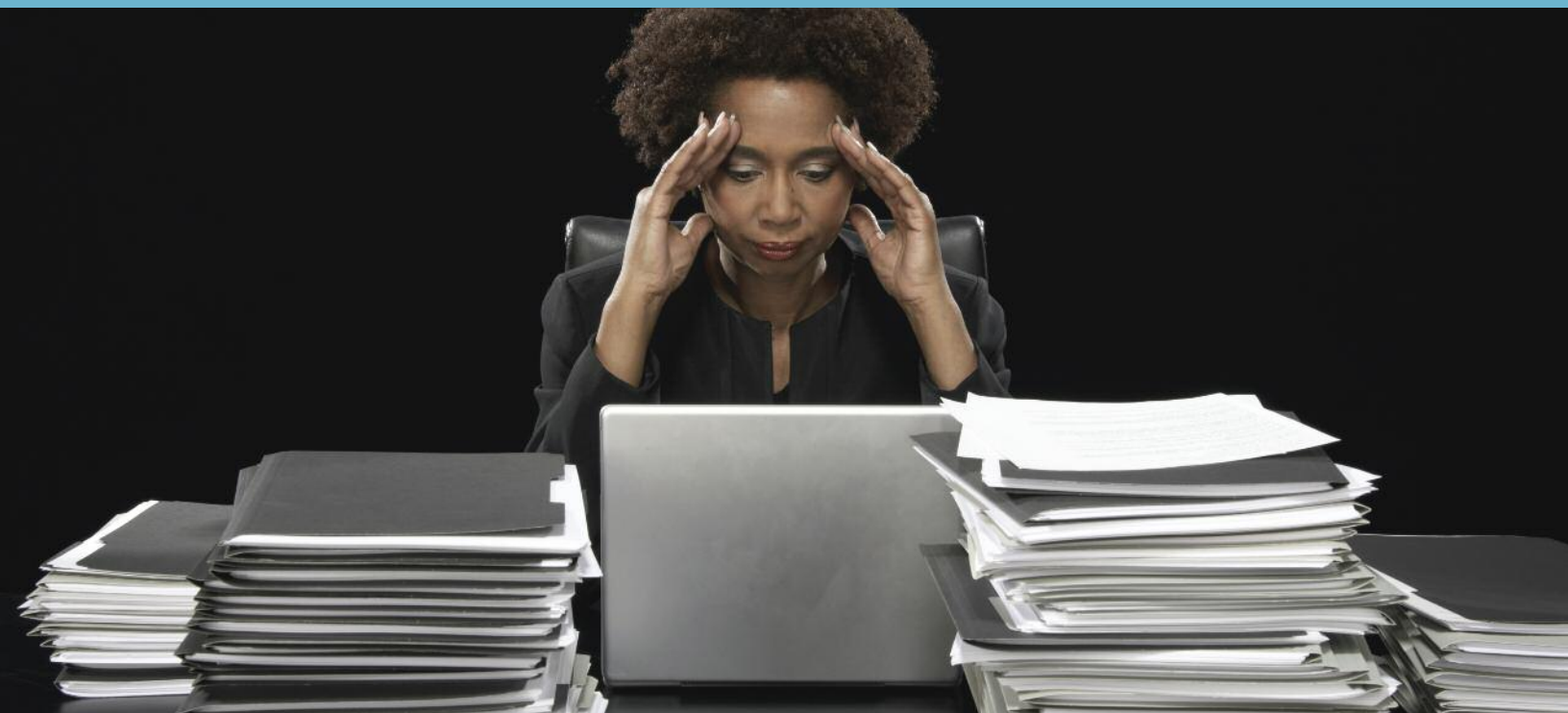
If this edition of *The Alabama Lawyer* has increased your awareness of the mental health issues that many of our attorneys are facing and the need for increased involvement from colleagues, family and friends, then I will consider this effort a success. Thank you to all who take the time to read these articles. And, thank you in advance to those who become willing to reach out as a result! ▲

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### Robert B. Thornhill



Robert B. Thornhill, MS, LPC, director, Alabama Lawyer Assistance Program, (334) 517-2238 or (334) 224-6920, [robert.thornhill@alabar.org](mailto:robert.thornhill@alabar.org)



# Lawyer Stress

By Robert B. Thornhill

**The practice of law is an essential and time-honored profession!**

Business, government and individuals depend on competent legal representation. Without the indispensable role that lawyers play, our social and governmental structures would crumble. Some of our most disciplined minds have dedicated themselves to upholding the rule of law, and to providing the very best care possible to their clients. However, this challenging work is frequently very stressful. If this inherent stress is not dealt with in a healthy way it can lead to devastating consequences.

The causes and manifestations of lawyer stress are numerous and often overwhelming. In this article I will describe many of the causes

of lawyer stress, the kinds of negative outcomes that can result if left unaddressed and effective ways to achieve and maintain improved mental, emotional and physical health.

The *Rules of Professional Conduct* make it clear that a lawyer must be fit. Most attorneys correctly understand that this means fitness of legal expertise. However, for those lawyers who truly desire to practice law at their optimum level, fitness also means acquiring and maintaining the physical, psychological and emotional health necessary to meet the demands and responsibilities to their clients and to the profession.

The daily work of lawyers provides a multitude of situations that can trigger anxiety and stress.

Among these are fear about appearing before a certain judge, worry about meeting a potential client, feeling insecure about negotiating a big deal, anxiety over delivering an important presentation or conducting a voir dire examination and on and on. It is true that stress/anxiety causes a physiological release of stress hormones in our brains that help our cognitive resources respond quickly to real or perceived threats. However, there is a cost. There is a body of research that shows that in this state people may become “mindful of their own needs such that they tend to be relatively unmindful of principles that guide ethical or moral reasoning, thus leading them to behave unethically.” According to Dan Defoe, in his article, “Lawyer Anxiety, Self-Protective Behavior, Ethical Sinkholes, and Professional Responsibility,” the connection between anxiety and work can result in significant negative consequences in the areas of personal well-being, health and ethics and professional responsibility. He went on to list the following important connections that are supported by scientific literature:

- Negative emotional experiences at work have an association with decreased performance, increased job-related tensions and lower commitment;
- In the presence of job-related tension and stress, employees are more likely to engage in negative coping skills;
- Anxiety has been shown to lead to worse outcomes in negotiations;
- Anxiety has been shown to negatively impact performing

tasks that require the use of creativity;

- Higher levels of the stress hormone cortisol are correlated with anxiety;
- Anxiety has been linked to diabetes and hypertension; and
- Anxiety triggers a feeling of threat, which in turn may increase unethical behavior.<sup>1</sup>

Chronic or unrelenting stress can be an underlying cause of numerous physical health risks. If the mind perceives a threat, the body will remain aroused. The adrenal glands secrete corticoids (adrenaline or epinephrine, and norepinephrine). Over time the continual release of these “fight or flight” chemicals can have devastating effects on some of the most important functions that keep the body healthy. These functions include responses of the immune and inflammatory systems, growth, tissue repair, digestion and reproduction. There is also a direct link to metabolism, blood pressure, muscle tension, heart rate and breathing rate. Almost every system in the body can be significantly altered by unrelenting stress.<sup>2</sup>

An excellent example of the results of unrelenting stress can be found in a series of courageous and enlightening posts on “The Faculty Lounge” by Charlotte School of Law Professor Brian Clark. Bravely acknowledging that he suffers from major depressive disorder and generalized anxiety disorder, he provided his own personal and compelling commentary regarding the difficulties and challenges of practicing law. He states in part, “Practicing law is hard. The law part is not hard (that was the fun part for me), but the business side

of law is a bear. Finding clients, billing time and collecting money are just a few aspects of the business of law of which I was not a big fan. Keeping tasks and deadlines in dozens (or hundreds) of cases straight and everything done well and on time is a constant challenge. The fear of letting one of these balls drop is terrifying, especially for the Type-A perfectionist who is always terrified of making a mistake or doing a less-than-perfect job. Forget work-life balance. Forget vacations. Every day out of the office is another day you are behind.” He continues, “Plus, as a lawyer (and especially as a litigator), no matter how good a job you do sometimes you lose. That inevitable loss is made worse by the emotion that the lawyer often takes on from his or her client. Clients only call, of course, when they have problems. Those problems can range from the mild (for example, a traffic ticket) to the profound (like a capital murder charge). Whatever the problem, the client is counting on the lawyer to fix it. Every lawyer I know takes that responsibility very seriously. As much as you try to not get emotionally invested in your client’s case or problem, you often do. When that happens, losing hurts. Letting your client down hurts. This pain leads to reliving the case and thinking about all the things you could have done better. This then leads to increased vigilance in the next case. While this is not necessarily a bad thing, for some lawyers this leads to a constant fear of making mistakes, then a constant spike of stress hormones that, eventually, wear the lawyer down. The impact of this constant bombardment of



stress hormones can be a trigger to a change in brain chemistry that, in time, leads to major depression.”<sup>3</sup>

In a landmark study published in the *Journal of Addiction Medicine* in February 2016 entitled, “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys,” researchers found “rates of hazardous, harmful, and potentially dependent drinking and high rates of depression and anxiety symptoms.”<sup>4</sup> Further review and discussion of this important study found that 15 bar associations (Alabama was one of these) participated, and almost 15,000 lawyers from 19 states completed an anonymous survey addressing alcohol use, drug use and symptoms of depression, anxiety, stress and other mental health concerns. Of these, approximately 11,300 completed a 10-question instrument known as the Alcohol Use Disorders Identification Test (AUDIT-10), which screens for levels of problematic alcohol use. Of these respondents, 21 to 36 percent revealed a score consistent with an alcohol use disorder. The study also revealed that 28 percent reported concerns with mild or high levels of depression with males at a higher rate than females, and 19 percent reported mild or high levels of anxiety, with females at a higher rate than males. Overall, 23 percent indicated mild or high levels of stress.<sup>5</sup>

In the words of Patrick Krill, lead author of the recent study, “The law has always been a magnet for hard-working, self-reliant and competitive people who often prioritize success and accomplishment far above personal health or wellbeing. On top of that, stress, unhappiness and imbalance

abound, while unhealthy coping skills such as excessive drinking are the cultural norm—malignant, learned behaviors passed down through the profession with the frequency of a dominant gene.” He adds, “If you value your reputation, hide any struggles you might have, or, better yet, pretend they don’t exist. These are the messages that many attorneys hear—both formally and informally—beginning on the first day of law school and continuing throughout their careers. It is a pure and indigenous dysfunction humming along through vast corridors of the profession, often unrestrained, and culturally enabled.”<sup>6</sup>

The character traits of perfectionism and pessimism are common among attorneys, and are arguably necessary and even inevitable traits that are acquired in law school and then honed and perfected in practice. However, these traits also make attorneys far more likely to suffer from unnecessary stress and anxiety. According to Gale Victor, who worked as a consumer debt attorney for 25 years before becoming a social worker, “Perfectionism helps lawyers succeed in practice because the profession is excessively detail-oriented. In the Johns Hopkins study, optimism outperformed pessimism—except in the legal profession, because lawyers are hired to always look out for what can go wrong.” Perfectionism often leads to a feeling that nothing is good enough. This can result in an overdeveloped sense of control. When things don’t go as planned, many lawyers will blame themselves. They become “paid worriers,” according to Tyger Latham, a

Washington, DC psychologist who treats many lawyers and law students, “expected to predict the future, to anticipate threats and guard against anything that could arise. So they learn to see problems everywhere, even when they don’t exist. And they start to perceive threats as if they are life-or-death matters. That’s the very definition of anxiety.”<sup>7</sup>

In an anonymous article in the *North Carolina State Bar Journal* from the summer of 2014, the author bravely describes his descent into the “hole” of depression. He states that at the root of it all was his “trying to do it all—perfectly. Trying to be all things to all people at all times. Superstar lawyer.

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Superstar citizen. Superstar husband. Superstar father.” He goes on to acknowledge that this is not possible, and that the feeling of guilt came to dominate his life.<sup>8</sup>

Solo practitioners and firm partners are challenged with finding an adequate way to balance the practice of law with the running of a business. Law firm “culture” often leads attorneys with addictive personalities to engage in behaviors that result in addiction. Perfectionism, that common trait found among attorneys, can lead to the need to appear invulnerable and invincible. Pessimism, another common trait, can result in a view of the world and the people in it from an extremely negative perspective.<sup>9</sup>

So, what is stress? Stress is a normal physical response to real or perceived events that make you feel threatened, or upset your balance in some way.

Stress response is your body’s way of protecting you. When working properly, it helps you stay focused, energetic and alert. It helps you rise to meet challenges.

In emergency situations stress can save your life, *but* beyond this useful point, stress stops being helpful and starts to cause major damage to your health, mood, productivity, relationships and quality of life.

It is important to note that some stress is inevitable in all of life, and particularly in the legal field, and the experience of anxiety is quite common. Feeling brief periods of stress or anxiety are not necessarily bad things. Much depends on how we view the situations or thoughts that are related to our experience of stress or anxiety, and the level of willingness we

have to address these uncomfortable feelings and utilize healthy coping skills. There is no “panacea” for dealing with stress and anxiety; there is not a “one-size-fits-all” cure. There are, however, a number of effective approaches and practices that can have a significant and positive impact if we are willing to educate ourselves and take action.

The first is therapy. A trained and experienced therapist can help lawyers take an objective and realistic look at the many distorted and negative perceptions and thoughts that often create and drive those feelings of anxiety and stress. Cognitive therapy is an easy-to-use approach for this. Many who utilize these simple techniques quickly realize a significant improvement in mood and outlook! A basic premise of cognitive therapy is that it is never people or events that upset us, but our thinking about those people or events. Dr. Aaron T. Beck, in the introduction of his book, *Cognitive Therapy and the Emotional Disorders*, states, “The philosophical underpinnings of this approach go back thousands of years, certainly to the time of the Stoics who considered man’s conceptions (or misconceptions) of events rather than the events themselves as the key to his emotional upsets.” This very practical approach provides for an understanding and treatment of stress and anxiety that is directly related to one’s thoughts and perceptions of everyday experiences.<sup>10</sup> Another excellent book that is chock-full of practical and easy to use cognitive therapy techniques is *Feeling Good, the New Mood Therapy* by

Dr. David Burns. There should be no shame or hesitation to seek counseling if an attorney feels ill-equipped to handle stressors in his or her life. Expressing our thoughts and feelings, especially feelings of anxiety and stress, to someone who is trained and knows how to listen and provide objective and positive feedback can be enormously therapeutic.

Another highly valuable therapeutic approach that it is being utilized around the country is mindfulness therapy. Proponents of mindfulness therapy note that research has repeatedly shown that the brain’s emotional circuits are connected to its thinking circuits.<sup>11</sup> Research has also been able to demonstrate that resilient people have strong connections between the left prefrontal cortex (PFC: the region of the brain that is responsible for logical thought and judgment) and the amygdalae (the ancient region of the brain where feelings of anxiety and fear are produced). Volitional activity in the cognitive regions (PFC) can send inhibitory signals to the amygdalae basically telling these negative emotions to quiet down. The negative emotions generated by the amygdalae dissipate and we are no longer “wallowing” in negativity. Therapeutic exercises that strengthen the left PFC so that it sends stronger and longer-lasting inhibitory signals to the amygdalae increase emotional resilience. Practicing mindfulness therapy is one of the best methods for increasing emotional resilience.<sup>12</sup>

We all have a tendency to think about other things, regardless of what we are doing, but this tendency is often counterproductive

(particularly when we are ruminating over negative thoughts and perceptions that are completely unrelated to our current circumstance), and actually inhibits our capacity to enjoy life. Mindfulness therapy helps us to be in the moment, increases productivity and opens up endless opportunities to enjoy life even in the midst of challenges.

Utilizing cognitive therapy techniques and practicing mindfulness can lead to an understanding and awareness of the powerful relationship between our thought life and our moods. Those who are willing to incorporate these simple (but not easy) tools into their daily lives will definitely increase their “emotional intelligence.” Being able to recognize when our thinking is distorted and negative, and having the means to challenge those cognitive distortions, can enable us to revolutionize our internal dialogue. We will no longer be the victims of self-induced and needless misery! It will also become much easier to recognize when others, especially those we love, are “down” or angry or upset, and to understand that they need some time instead of a futile attempt to “get to the bottom of it.” When they are at that more peaceful place, and we are truly willing to listen without judgment, relationships will improve at home and at work.

There are many practical methods of stress management that can be readily utilized. A good starting point would be to identify the sources of stress in your life by keeping a stress journal, and then track how you are currently coping with stress. This will be valuable in identifying those coping


strategies that have been effective, and those that you need to eliminate. Goal-setting and time management can be very powerful techniques to combat procrastination and increase efficiency. Other immediate techniques include deep breathing, progressive relaxation and meditation. There are a multitude of self-help books and guides to learn how to incorporate these very useful methods of stress management.

Lifestyle changes that can have a significant positive impact on physical and emotional health include regular exercise, eating a healthy diet, reducing caffeine and sugar, avoiding alcohol and drugs and getting enough sleep. Of equal, or perhaps greater, importance is ensuring that we have set aside adequate time for fun and relaxation.

Regular exercise has been shown to prolong life and to reduce the risk of diseases such as heart disease, hypertension, diabetes and cancer. It has also been proven to be very effective in reducing stress and improving our mood. In fact, exercise has a significant and positive impact on the brain’s neurotransmitters such as dopamine, serotonin and endorphins, the brain chemicals that are directly involved in the physiological creation of our moods.

Eating a healthy diet can have a profound impact on physical and emotional health. Learning to eat in moderation, instead of “binge” eating or using food as a way of dealing temporarily with stress, can yield very positive results. Most of us are familiar with the experience of over-indulging when we feel stressed. Sadly, what

almost always happens immediately afterward is that we are not only feeling “stuffed,” we are also filled with remorse for having eaten far more than we should have and for eating foods that we know are not healthy. For those who develop a habit of over-indulging when feeling stress, this can lead to obesity and an increased risk of a multitude of health problems including diabetes, gastrointestinal problems, cancer and many others. “Stress-eating” also paradoxically leads to increased negative moods and low self-esteem. Eating has a powerful effect on our physical health and our moods. A healthy diet, eaten in



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moderation and consisting of vegetables, lean (and non-fried) meats, fruits and whole grains will dramatically improve our physical and emotional health.

Finally, it is of paramount importance to ensure that we get enough sleep. During sleep, the brain rests busy neurons and forms new pathways so that we're ready to face the world in the morning. The immune system produces infection-fighting anti-bodies and cells. If the brain is unable to rest and renew we will have difficulty with concentration and attention, creativity and problem-solving skills will deteriorate and short-term and long-term memory will suffer. Additionally, we will be more prone to "moodiness," more emotional and quicker to anger. It is very important to point out that sleep deprivation has been strongly linked to an increased risk for anxiety and depression.

Getting regular exercise, eating a healthy diet, ensuring that we get enough rest and taking time for relaxation and recreation require a commitment. These are all simple propositions that will pay huge dividends, but we have to be intentional about it. Exercising our willpower along these lines is essential. The resulting gains in physical and emotional health will result in improved outcomes at work and at home, increased self-esteem and a far greater likelihood of handling stressful situations in an appropriate way.

I think it is important here to point out some of the dangers of relying on alcohol or other mood-altering substances as a way of dealing with stress and anxiety. There is nothing wrong with enjoying a drink or a

beer after a hard day's work. However, if you have come to rely on alcohol (or some other legal or illegal mood-altering substance) as a way of coping with your challenges, you have likely crossed a very unhealthy line. Once this pattern is in place we have literally learned to "depend" on alcohol, and this "dependence" becomes our one and only coping skill. This dependence will never solve any of the challenges we may be facing, but it will, in time, produce additional problems and difficulties such as alcoholism, addiction, broken relationships, decreased production and absenteeism at work and legal problems such as DUIs and domestic violence. One of the most tragic consequences of relying on a mood-altering substance to deal with stress is that this reliance effectively and completely blocks our ability to recognize and incorporate healthy coping skills. If this pattern has become operative in your life, or in the life of someone you care about, it is imperative that you contact the Alabama Lawyer Assistance Program so that we can provide assistance.

Finally, there is the matter of faith. For those who have a particular religious affiliation, or who may espouse a more "spiritual" way of life, practicing the tenets of your faith and reaching out to like-minded people can provide tremendous strength and guidance during times of stress. Living a life based on spiritual principles can bring about the genuine courage needed to face the inevitable challenges and difficulties that come our way.

Each one of us is unique and our definition of a "balanced" life will vary. I think it is essential that we

honestly ask ourselves if our work schedule interferes with these essential needs. Many may find that they enjoy working long hours and see little reason to change. However, if you have the courage to acknowledge that your workload is creating chronic stress in your life, I implore you to stop imagining or hoping that things will change or get better on their own and become willing to make some positive changes in your life!

## Some Final Thoughts

1. **Self-Esteem**—Does your sense of "self-value" or "self-worth" depend on accomplishment, success or acknowledgement from others? Or, do you understand and accept that even though you will inevitably make some mistakes you are a good person with a healthy, positive regard for yourself?
2. **Anger**—This is a normal human emotion. However, if your anger is chronic, or habitually expressed in a harmful way, it can be very damaging to you and those you interact with. Some tips to avoid harmful or inappropriate anger are: avoid provocative situations, learn to utilize a "timeout," reduce unrealistic expectations, do relaxation exercises and actively work to improve communication skills (assertiveness skills).
3. **Fear**—There are three basic kinds of fear: fears that you can't do anything about, fears that you *can* do something

about and fears that are irrational or overstated. If you are fearful of something, but you know there is something you can do, then feel the fear and do it anyway! If your fear is blocking you from engaging in activities that are important to you, then therapy is highly recommended.

4. **Values**—We must endeavor to live up to our own moral/spiritual/ethical code. No human being can do things on a regular basis that violate their own moral code and simultaneously feel good about who they are.

5. **Responsibility**—There is no “easy” way out of this difficult thing called life. When we seek to avoid the inevitable problems and challenges of life, as is our human tendency, we become sicker and increasingly stressed and anxious.

The noted psychiatrist and author M. Scott Peck stated, “The human tendency to avoid problems and the emotional suffering inherent in them is the primary basis of all mental illness.” The famous psychoanalyst Carl Jung said the same thing with these words, “Neurosis is always the substitute for legitimate suffering.”<sup>13</sup>

There is only one path to acquiring *courage* and *wisdom*. We must face our challenges head on and walk through them on faith. This is sometimes exceedingly difficult and painful, but it is paradoxically the easiest way to live.

Stress is a normal part of living. What is important is to acknowledge it and learn to cope with it in ways that will provide for genuine

growth and the acquisition of courage and wisdom, so that ultimately we can be of maximum service to God and the people he puts in our path.

If you or a colleague are struggling with pathological stress or anxiety or coping with it in ineffective or unhealthy ways, we urge you to contact the Alabama Lawyer Assistance Program. Our program is completely confidential. We have a dedicated committee of volunteer attorneys around the state who have had the courage to face their own challenges and who have found effective ways to deal with them. We are here to help! ▲

## Endnotes

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# Sharing Stories of Hope and Redemption

In the following pages you will have the opportunity to read several anonymous articles

written by Alabama Lawyer Assistance Program committee members or by attorneys who have been involved in our program. You will also get to read two articles written by Alabama lawyers who do not wish to remain anonymous. These two attorneys have made the decision to disclose their names in an effort to reduce the stigma that is still prevalent in our culture, and in legal circles. These courageous people have all experienced the devastation of active addiction and untreated mental health issues. More importantly, they have found a path to a “new freedom and a new happiness!” They have been moved to write these very personal stories because of the gratitude they

have for the gift of recovery that they have been given. The great news is that there is a way out of the seemingly impossible downward spiral of addiction.

Our hope is that law students, attorneys and judges will read these stories and become willing to reach out for help, either for themselves or for that colleague who is struggling. We also hope that family members, loved ones and associates will be moved to reach out for assistance. Addiction is a family disease, and will ultimately destroy any hope of healthy and loving relationships. It also negatively affects the workplace and inevitably results in poor outcomes for clients and for staff.

We pray that many of you will read these stories, identify with the message of hope and reach out to the Alabama Lawyer Assistance Program for assistance. Thank you for taking the time to read these personal stories of hope and redemption. ▲



# MY STORY: What I Was, What Happened and What I Am

*By Jim R.*

## My name is “J.J.,” and I am an alcoholic.

I am an Alabama lawyer. I am 50 years old. I was born into a “normal” two-parent home. My father was a college dropout who worked two or three jobs until sometime after I graduated high school. He had a “steady paycheck and benefits” job, and he started his own business on the side in the ’70s. That business eventually boomed and he did quite well until the market crashed around 2007.

My mother was a stay-at-home wife and mother despite her college degree. My school years were spent growing up in suburbia with my parents and younger brother. It was a nice neighborhood. We played with neighborhood kids. My parents socialized with neighbors.

It was a good childhood. I got the hand-me-down family cruiser for my first car at age 16. My parents paid for my college. There was no abuse in my home growing up that I saw or recall.

Drinking in my home was not hidden, though. My dad had a beer or two in the evening from time to time, or drinks while socializing. My mom would have a glass or

two of wine. I learned to like beer by occasionally stealing sips of my dad's when I was young. I only saw my father drunk one time in my entire life. As a kid, I saw my mother get "tipsy," but never sloppy drunk. She did later on in life, though, and it worsened over time. She has admitted to me she thinks she's an alcoholic, but she is untreated. Her father was an alcoholic, and a violent one.

I had my first drink when I was 13. My best friend and I got someone to buy us some beer and we drank a six-pack. I don't recall getting drunk that time, but I do recall a feeling of "fitting in." I remember that at every significant party, concert or weekend event in high school and college alcohol was involved, or we tried to involve it. There were a few times I got drunk before school, as well.

When I turned 16, I got my first job working in an ice cream parlor. One night the owner's nephew, who worked with me, brought a bottle of scotch to work. We all took turns holding our nose and taking swigs, and got pretty drunk at work. The hangover was horrible. The owner found out, and I got fired the next day. My very first real job ended due to alcohol involvement.

I played sports in high school, but was not really athletic. I was once at a tournament in Montgomery with some other teammates. We were all 15 to 18 years old. A group of us decided that the oldest guy, who had a fake ID, would get us some beer, and we'd have some fun the night before the tournament. I was one of the oldest, and participated in the purchase. We were all caught, and dismissed or forced to withdraw from the tournament. One of my cohorts was favored to win his bracket in this state tournament; the fact that the number one seed had to suddenly withdraw without reason even made the local papers.

When I was 19, I started working in a very popular bar in Birmingham. I was a pretty recognizable face among the night club and college crowd in those days. Though it was common to have a drink on the job while working in a bar, one night I got so drunk on the job that I had to be sent home.

I was in a popular college fraternity. Alcohol fueled the romance of my whole college era. Outwardly, I played it like I thought I was a pretty big deal. Inwardly, I felt more and more like I had in high school,

which was struggling to fit in. I always had a sense of feeling "less than." It was not uncommon to drink before or during classes.

Alcohol seemed to be a "normal" part of my high school and college existence. I saw no difference in the way I drank versus anyone else I was around. I had brushes with legal trouble, but was always able to get out of it some way. Over the years after college, I dialed it back, as most "normal" drinkers do. I could have a couple and put it down on most occasions. I had control over my drinking. I never got a DUI. If there was one saving grace to all that time, I was not one to get behind the wheel drunk. I'm not saying I never did. Some drunks seem compelled to get out and visit, bar hop or run the roads when they drink. I was not one, thank God. I was an isolation drinker after my social drinking turned to alcoholic drinking.

Post-college, I tried my hand at sales, and failed. I felt more like a failure than ever at that point. I got married and had a child. I got a job as a police officer. Things rocked along pretty well for a time, and my drinking was mostly social or "normal."

I went to law school during that time. I passed the bar on my first attempt in my mid-30s, and so the law career began.

I got divorced about the same time I hung out my shingle. Anger was a major issue in my life. I was single in my late 30s and early 40s and a lawyer. I enjoyed some fun times but I also still felt "less than." I was not prospering in law, just surviving. My drinking ramped up.

It was sometime during this time that the "switch was flipped." A bottle of wine became a nightly thing. I had a second marriage that went bad and ended quickly, and during that time I began to drink daily and/or nightly, and now like an alcoholic. This was also when I first met Jim S., a recovering alcoholic who told me about his story, sober living and AA. This meeting would probably save my life down the road.

Over the next couple of years, I floundered around in a law practice, making enough to pay my meager bills, but not much more. When I was able, I pretended to be more, but inside the feeling of being less than held on. During this time, on a nightly basis, I would drink until I passed out, get up, go to the office



and do it all over again. On weekends, I stayed drunk. I completely withdrew socially because I was obsessed with drinking and didn't want others to know how much I drank. Occasionally, at night, I'd wake up needing a drink, and have to calculate how long I had to sleep it off before court—would I be sober and not reek if I had a glass of wine at 3 a.m. to get back to sleep?

In 2006, an opportunity of sorts presented itself to take a lawyer job with a steady check. It came with a little prestige, or at least it did in my mind at the time. I also figured if I actually had a boss to answer to and a regular schedule to keep, I might better control my drinking. It helped for a little while. Then I got moved to a position where I had a lot of autonomy, and little supervision. Again, like in private practice, with the exception of court dates, I had lots of control over my schedule, and I used my spare time to drink. It was during this period that I resigned myself to being an alcoholic. I knew I was. I actually took some pride in the fact that I was and could still function, and at times function very well professionally.

After asking Jim S. about it from time to time, I tried AA in 2009. I was tired of hangovers. I was actually able to remain dry (as opposed to sober) for a year and a half, but I wasn't working the AA program, and not involved in ALAP. I went to meetings now and then, and I didn't drink, but little else changed in my life. I didn't enlarge my spiritual life, and I didn't avail myself of my sponsor's guidance. After a year and a half, I relapsed.

As we are told in the AA Big Book, I picked up right where I left off. It was like I had never quit. I planned that relapse. I've learned that, too, is common among our kind. And we alcoholics *are* different. We are bodily and mentally different. When we are in active alcoholism, our minds obsess over the first drink of the day until we get it, and once we take that first drink, our bodies have an allergy that causes us to have physical cravings for more and more. It's not

I would wake up surprised to be alive. I got scared! I was in a death spiral and sure I'd die in this binge. I was also certain I would eventually lose the one thing I really had left that I thought made me somebody, my job.

that 15<sup>th</sup> drink that gets us drunk, it's the first one. If we could only just not drink that first one! And many of us have sworn we would not.

I would wake with the best intentions of abstaining that day, and find myself drunk that night, again. I drank again for about 18 months and things got much worse this time. There finally came a time where I could no longer function. I couldn't go to work without getting the shakes during the day. I was skipping work for all but my court appearances. I once had to take a break from striking a jury due to getting the shakes so badly that I couldn't function. I played it off as low blood sugar. I don't know who

bought that, and who didn't.

This time I discovered the real meaning of a phrase I'd heard in AA: "Drinking against my will." I no longer had control at all. I had to drink to ward off the shakes, or worse. The final straw was a 10-day binge where I only left my apartment to buy more alcohol. I couldn't hold down food, and I couldn't function. I would wake up surprised to be alive. I got scared! I was in a death spiral and sure I'd die in this binge. I was also certain I would eventually lose the one thing I really had left that I thought made me somebody, my job. However, at this point, I became so scared for my life that I actually concluded my job wasn't as important. I was willing to get fired to get some help. My relationships with my family and friends were all but a little phone contact. In a moment of mortal fear for my life and half sober, I made a phone call or two, got connected with Michael S. in ALAP and checked myself in to Bradford two days later in December 2012. I should note here, because it was so important in my getting sober, that my boss was fully supportive of my rehab and I suffered no ill effects on the job from my time in rehab (despite the fact that I was five days into rehab before I told him where I was on my "vacation"). People do actually understand, and more so when you want to get help.

Life isn't all pink  
clouds, rainbows  
and unicorns, but  
I can work through  
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now a part of...  
I fit in.

I've always been told by my AA mentors and sponsor that when giving my story I should focus on the solution, not the problem. Don't make my story so much about my drinking, but make it about sobriety. At the same time, I feel that I need to connect to those out there like me. I want to relate to that lawyer out there who is feeling like I felt, and let them know help is out there and things can get better, much better!

The solution, for me, is a simple one. It's simple, like dead-lifting a 1,000 pound weight. It *is* simple, just not easy. I knew of AA, and I knew of ALAP. After a time in Bradford, I got reconnected with each. I got *involved* this time.

I worked the 12 steps. I got a sponsor and talked with him. I went to 90 meetings in 90 days, and I still go to two or three a week. I met my girlfriend in recovery. I mix in ALAP meetings, too. AA keeps me in the solution. ALAP keeps me connected with people who are dealing with the same life and professional stresses I am and who are living in the solution, too. AA and ALAP are not the only ways to recovery, but it's the way for me. I know lawyers staying clean and sober in ALAP who are not active in AA, and vice versa. At the core of AA is my spiritual growth. I'm not a religious person, and never have been, but my connection with a higher power—God to me—is how I not only stay sober, but prosper in life and this profession. I now have a life that involves daily prayer and meditation. My sobriety and my serenity are directly connected to my spiritual condition, which requires daily maintenance.

I have daily contact with alcoholics like me who are also living in the solution. I sponsor people in AA. Working with other alcoholics helps ensure my sobriety. My relationships with family and friends have improved beyond my dreams. I'm a social person again.

My professional situation has improved greatly, too. I am back in private practice, and I'm actually prosper-

ing. My new boss hired me knowing of my recovery, and of my prior drinking reputation. In my final interview, she said she'd done some research on me. She told me of some very good things people had said about me professionally, and then she said, "I also heard you used to drink, a lot, and had a bad temper." She asked if that bothered me. I said, "As long as people aren't lying about me, how can I be upset?" We talked about my recovery, and she hired me.

She did so not just as an associate, but as someone who will eventually take over the bulk of her practice as she slows down toward semi-retirement. She's put me in a position to instantly make money and grow professionally, and my sobriety has allowed me to take full advantage of the opportunity. All of

this is due to God's doing for me what I could not do for myself, and I found this in recovery through AA and ALAP.

I am grateful for what I have monetarily, for the renewed relationships with friends and family, for new relationships and for the professional opportunities. I give great thanks to my former boss who let me go to rehab without holding it against me, and to my current law partner for giving a recovering alcoholic a chance. I'm most grateful for the programs of AA and ALAP making my recovery possible. AA and ALAP help keep me in the solution and around people like me who live in the solution, and give me the tools to stay sober.

I socialize with other alcoholics/addicts, and we have fun without involving alcohol or drugs. I have real fun with no pressures to drink, and no desire to drink. I have been able to help a sick relative through a very tough time during sobriety. I can help people in recovery. I can assist my clients. Life isn't all pink clouds, rainbows and unicorns, but I can work through bad days or rough times with the tools I have. I am now a part of...I fit in. ▲

The more obvious of the two atypical aspects of my family life was that my brother was “the star.”



# Before and After

*By Larry N.*

## Before

My story is fairly typical. I am the second of two sons of a loving mother and father. Born and raised in a small town in east Alabama. I come from a family of lawyers. My grandfather, father and uncle were all attorneys. My dad never pressured me or even discussed with me about going to law school, but I could tell he was very pleased when I made that decision.

My childhood was, as they say in the medical profession, unremarkable. My family was, to all

appearances, the American prototype: middle class, married parents, two kids, dog, wood-paneled station wagon and everything else that attended the post-war American “dream.”

There were a couple of exceptions to the “typical” description. One was obvious to all who knew my family; the other, a quiet (at the time, anyway) family secret.

The more obvious of the two atypical aspects of my family life was that my brother was “the star.” A lot of families have this dynamic. One of the children will

be exceptional and garner all the attention in some facet or aspect of family life—the star quarterback, the beauty queen, the musical prodigy, even the “bad boy” delinquent. In my family it was my brother. He was an academic prodigy. This manifested itself early in his education and my parents knew from the start that the Ivy League was where his post-high school years would be spent. He did, in fact, end up at one of the most exclusive colleges in the northeast.

Don’t get me wrong. I love my brother dearly and we were and still are extremely close, but growing up and all through school it was always, “If you are as smart as Albert, you’ll be OK.” “Albert would have made an A on that test.” As a lot of younger brothers can attest, it can be incredibly frustrating and harmful to your self-esteem to be continually and mistakenly referred to by your brother’s name. I was called Albert so often I just started answering.

Though my parents loved me, during my early childhood I was just sort of “there.” My dad was busy working his way to success as a young attorney and my mom was going through all the small-town motions—bridge club, garden club, PTA, etc. I was certainly never abused or neglected; I was just in the shadows.

The family secret (even to me until I was much older) was that my mother was an alcoholic. In her later years, it became tragically obvious and she ended up dying from the disease, but as a youngster, I had no idea. My parents were social drinkers, but I never saw them intoxicated. Alcohol is a progressive disease and in

my younger years, the disease had not yet assumed full control of my mom.

As I grew up, always in the shadow of my older brother, I never found my identity. Only two years behind him in school I was always in his wake, always being compared. Because the quality of the schools in my hometown were subpar, my parents knew that a more rigorous academic environment would be required if my brother was going to get into Princeton or Yale. So off he went to a very prestigious boarding school. Again, he excelled. And, when the time came, I followed up the east coast to be a “preppie.” It was the same Play, Act II—always measured by the standards, academic and personality-wise, as my brother.

Quite honestly, although we are very emotionally close, my brother and I have very different personalities, but I was always “prejudged” as being like him. I look back on my high school experience and think how different it would have been if I had gone to another high school. Nonetheless, I had an enjoyable prep school experience and had a small group of close friends, but again, I was “middle of the pack.” Unremarkable. Not outstanding in any area, but not the “last one picked on the playground,” either.

Not having Ivy League stats myself, and being tired of being so far from my beloved South, I opted for a big, Southern, SEC “party school.” My high school was all-male (though not military) and I was ready to see some skirts and pretty faces. Any big SEC school will meet (and exceed) those ex-

pectations, and my alma mater was no exception. Pretty girls were *everywhere*, and in abundant profusion.

So was alcohol.

When I arrived on campus I was *lost*. My graduating class in high school had 60 people. My freshman class in college had 6,000. I had chosen a school with which I had no affiliation and knew no one. I suppose I wanted the adventure, but shortly after I arrived I was anxious and scared. As odd as it sounds to people who know me now, I was very quiet, shy and unsure of myself. Having gone to an all-boys high school I was even more nervous around the fairer sex. “Shy” is a vast understatement when it comes to describing my presence around the ladies.

Unknown to me, however, one of my mother’s old college friends had a son at my university and I was surprised by being “rushed” by one of the oldest and largest frats on campus. I had no idea about fraternity life and it was a fortunate coincidence that the fraternity I pledged was one of the old-line “status” frats. I was thrown in the deep end of the social pool.

It will come as no surprise to anyone reading this that an integral part of fraternity life is alcohol. Like any Southern male, I had had beer a few times in high school, but I was certainly no regular drinker, but in college, draft beer and kegs were everywhere! And it went down so easily. And there was no shortage—ever. And, of course, the football games; where blazers, ties and a fifth of Jim Beam were de rigeur. The best part of the alcohol-infused fraternity scene, though, was that I was



## Passing out on the fraternity house couch or falling down the stairs at a band party was not an aberration; it happened to everyone and the stories were just fodder for laughter at the breakfast table.

now uninhibited! I found to my surprise that I was funny and socially adept. No one at this huge school had ever heard of my brother or knew anything about me or my family and no one had any preconceived notions of what I was supposed to be like and I blossomed. Alcohol had solved all of the problems and inhibitions. No more shyness. No more restraint. I had found the answer and it was fun and oh so liberating.

I drank a lot in college, but, hey, so did everybody else. Passing out on the fraternity house couch or falling down the stairs at a band party was not an aberration; it happened to everyone and the stories were just fodder for laughter at the breakfast table. And at that age, the hangovers were just morning prob-

lems. My body was young and bounced back easily. By lunchtime, all was well and more plans were being made for the next escapade. I really didn't notice that I was drinking every night and that not everyone else was. Some of my buddies actually laid off during the week and reserved their partying for the weekends. Not yours truly; I had found the magic elixir. And in a college town, there is always someone to go drinking with you.

Later in my college years, though, I began to notice that alcohol was causing me problems. As we say now in AA, I didn't have a problem every time I drank, but every time I had a problem alcohol was involved. And I had my first "blackout" my senior year. I had a date to a fraternity party, got ham-

pered and just left her there, drove home and passed out. I remembered none of it. I tried to apologize and asked her out again to show her a good time, but she would have none of me. Who could blame her? This was the first of many "consequences." Remember that word, as it is important to my story and every other problem-drinker's story.

Somehow, I slid through my studies with relative ease. I had gone to an academically challenging high school and the big "State U" was a piece of cake most of the time. A high "B" average was pretty easily obtained, so my studies were not causing me serious worry.

And, somehow, a lovely, kind, and sweet girl came into my life and we would later marry. I certainly never deserved her. I presume she figured my drinking habits were still those of a young man and that I would "grow out of it" one day. I never did. We had a long and mostly happy marriage until she had had enough of my immaturity, philandering and continued drinking. After 20-something years of marriage it was over and I lost the love of my life.

After college, for a year before law school, I worked in Mobile. I found a new group of young people just out of college, so the partying continued. I had a job with little oversight, so hangovers were not a problem, but I remember distinctly reading a short article in the *Mobile Register* about early signs of alcoholism. My heart skipped a beat when I saw myself in many of the examples, but, hey, I had a job, I had a girlfriend. Others were partying, too. No consequences to stop me. On I went.

## During

After a year of actual “work” I knew I needed to get back to the less rigorous world of academia. I knew my father, being a lawyer, would be happy to defray the expenses, so I applied and got accepted to a good law school. After college, and with the false self-confidence of an alcoholic, I presumed law school would just be another version of college and that I’d breeze through. Boy, was I wrong! For the first time since high school, I actually had to study. I thought I could party like college and still get by. Wrong again. I almost flunked out after the first year, but somehow righted the ship and made it through, albeit at the bottom of my class. I used to like to say that law school students like me made *Law Review* possible. Without the bottom-dwellers, no one could be on top.

It was during my second year of law school that I married the wonderful girl I had met in college. She had been my long-time sweetheart and had put up with my crap, but I suppose she figured I would start being responsible one day. I didn’t. She stayed with me through all the partying and shenanigans. Again, after the first year of law school when it got a little easier, there was never a shortage of friends to go out and party on the weekends. I pretty much stayed on the same track.

I think it appropriate to mention here that I didn’t drink *all the time*. To all appearances, I was pretty average—going to class, studying hard during the week and on weekends, keeping up with the rest of the “average” law students. I was partying



I was partying on the weekends, but toeing the line otherwise. You don’t have to be an everyday drinker to have, or develop, a serious problem.

on the weekends, but toeing the line otherwise. You don’t have to be an everyday drinker to have, or develop, a serious problem.

An episode happened in law school which scared me, though—badly. This was before I got married and I had been out partying hard Saturday night. I usually studied on Sundays like all other law students, but I was too hungover this particular time to do much but moan and regret. I’m sure I had done something embarrassing the night before, I just didn’t know what.

By this time, I had discovered a secret that I now wish I had never learned, that a little “hair of the dog” would make you feel better. I was willing to do anything to get over this particular hangover and I had plenty of beer in the fridge, so I forced one down and, voila! I felt better. Like any good drunk, I figured if one beer made me feel this good, two would make me feel

even better. So I drank a second and a third and a fourth. You know the rest of the story. It was Sunday and I hadn’t quit.

Here is the worst part, though. I had a class at 8:00 a.m. every Monday. This was not a favorite professor and, actually, he wasn’t even very good, but attendance was his mandate. He demanded that you come to class or else your grade automatically was lowered. I could skip some classes, but not this one.

When I awoke Monday morning, I experienced something somewhat new. I was trembling, badly. I knew I had to get to this class and I knew I couldn’t do it in my present condition.

So, to feel better, I drank several beers—at 7:30 on a Monday morning—just to get through this one class. I made it, but a friend of mine seated next to me commented that I smelled like a brewery. I shrugged it off and just said I had

been out partying late the night before, but I don't think he bought it.

This episode didn't repeat itself until my drinking had progressed much later in life, but it scared the hell out of me. This should have been a real wake-up call. I'm pretty smart and I should have put on the brakes then and there. *I knew instinctively at that moment that I was an alcoholic.* By about Wednesday I felt better and conveniently put the episode behind me and the next weekend I was partying again.

That's one of the insidious things about alcoholism—selective recollection. We are very adept at “forgetting” the bad things and remembering the good times we have had while drinking.

And, again, there were no real consequences. As stated earlier, consequences are, in my opinion, the reason most alcoholics finally seek help. There is a bottom. I just wasn't there yet, at least in my opinion.

The years succeeding law school were fairly benign as far as my drinking was concerned. I was almost exclusively a weekend drinker. And, still being a young man, I was able to quickly rebound pretty. Sure there were Saturday and Sunday hangovers, but I was back at work on Monday and raring to go during the week.

Alcoholism is a progressive disease, though. And the realities of aging begin to come into play. Your intake does not diminish; it increases, in fact. At the same time, your body is unable to metabolize at the same rate. You seek the euphoria and enjoyment that once attended your social drinking, but those days are gone. Your mind can function with the greater consumption, but your body revolts.

For the alcoholic, the solution is to continue to drown the problem.

Forget it; numb the pain; make it go away. Your absurd line of reasoning is insane, but insanity is a component of problem drinking.

Gradually, the hangovers stretched from mornings to days, and then to several days. I began to be very shaky on Monday mornings when I was shaving. I didn't drink to stop it, but I would grab a beer the moment I got home from work.

My career went along pretty much as predicted. I did all the things a small-town lawyer is supposed to do: president of the Rotary Club, school board, local bar association president, Boy Scout Council, board of directors at the local country club, etc. I was asked to, and did, serve on numerous area charitable boards and associations. I had a beautiful wife and two wonderful sons—the paradigm of young professional success.

I was not truly involved and invested with my family, though. When not playing the role of the respectable, responsible young professional, I was off with my buddies on golf and fishing excursions. On one of these, I made the mistake so common to many—I had a one-night stand with some woman I met in a bar. Of course, we were both drunk and I skulked out of some anonymous condominium at 5:00 the next morning. The guilt was overwhelming. I even went and got tested for STDs. It was, of course, devastating to me. My wife never found out. And, as alcoholics will and can do, as time went by the memory fades, and the guilt subsides with it, but it was a harbinger of things to come.

It was also about 15 years into my young professional life that the first of several “binges” occurred. Experts define “binge drinking” as having more than five drinks at one sitting. They are rank amateurs. Any real alcoholic can tell what a binge or a bender is. In my case it was after a long weekend beach trip. When Sunday came I didn't stop. Nor did I stop on Monday. I called in sick, but my law partner let it slip and I had someone to look after my workload. I knew that if I missed work I had someone to cover for me. I pled illness to my lovely wife, too. Of course, she knew the real reason I was home from work. After a couple of days of suffering, I straggled back to work. You would think I would learn, but when I felt better, the episode receded in importance. By the next weekend, I was back on track. The weekend drinking track, that is.

Fast forward another 10 years. I had reached young-middle age. Same chapter, different verse. By this time, my wife had distanced herself from me and was into her own pursuits. I can't believe she hadn't already left me. I was, as I have heard a friend in AA say, “emotionally absent.” That is such an apt description of what happens to problem drinkers. Again, I was maintaining all the appearances. I still have friends say to this day that they had no idea I was drinking too much. How could they? I kept it well hidden. I think the term is “functioning alcoholic.”

The pattern continued. Heavy drinking on the weekends, followed by a couple of days of heavy-duty hangovers, gradual recovery until Friday and then back at it.

*Let me digress at this time and mention what it is like to withdraw from a hard-partying three day weekend. You lie in bed on Sunday night, shivering followed by sweating. Your eyes wide open. Heart racing. Depressed, knowing that when the light peeks through the curtains on Monday morning you will have gotten no sleep and will have to face the day with shaking hands and probably the residue of alcohol still on your breath. Mouthwash becomes your friend. If you see any of this in yourself, you're past heavy drinking and are into alcoholism. Get help.*

After 25 years of putting up with my BS, drinking every weekend, going out with the guys for party weekends three or four times a year, more women (some of whom my wife found out about and some she didn't), emotional absenteeism and a general disenchantment on my part (if that's not incredible irony), my wife and I split up. If you can believe this, it was *my* idea. I wanted more freedom, freedom to party, philander, forget responsibility and numb myself with alcohol. She was actually upset, if you can believe that. I would have loved to have gotten away from me. My ex-wife is a wonderful woman; it's hard for me to believe she actually married me, much less stayed with me. Alcohol and its related devastations cost me the best thing I had in my life. If I could only go back in time, I would, but, alas, I can't. She has moved on and I love her enough to want her to be happy. In a recent discussion with her, as I was making my amends, she commented that she only wonders why she put up with my crap for so long. No kidding.

I know this will come as no news flash, but after I was separated/divorced, the situation got infinitely worse. By this time my father had died and I was practicing solo. I had a paralegal and a legal assistant who were extremely capable, so I could still miss days at work with no real consequences. The three-day binges were happening once every couple of years, but I would struggle back to normalcy. I was living out of town by this time so I would walk to the convenience store for my beer. (I was a beer drinker, primarily). I would always get twice as much as I thought I might possibly drink so I wouldn't have to go out again to re-stock (another tell-tale sign if you're reading this and see yourself in it). Another newsflash: I would usually run out.

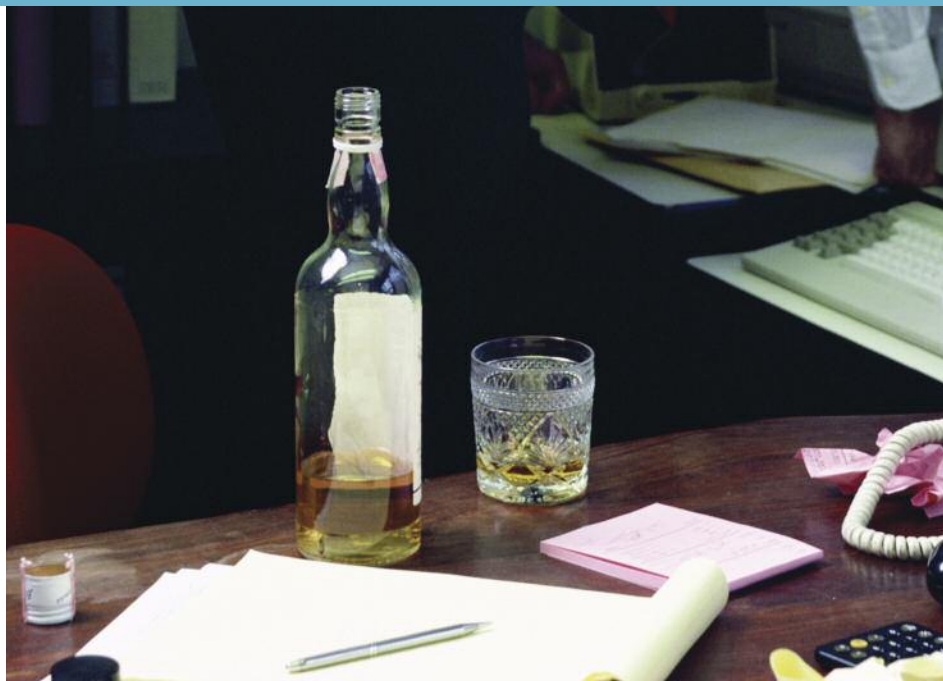
The nadir of one of these experiences was once during the winter-time late in the progression of my disease when I was on a bender. I drank myself to oblivion, woke up, started again, woke up, etc. I was passed out on the sofa in my apartment and awoke to check the time. It was 5:00, but I had absolutely no idea if that was a.m. or p.m. Damn, how far can one sink? Apparently lower, as you will see.

With the hard work of my legal staff, both of whom were near to quitting, I soldiered on. By late middle age, though, I took the final step in the progression of alcoholism . . . I started drinking at work. It was only a sip here and there, but the amount is not the issue. Before this, I had only *missed* work. Now, being a sole practitioner, I had to make it to the office. Many times, I could hardly

sign my name I was trembling so much. A quick shot of vodka followed by mouthwash would get me through to quitting time. Nobody could tell. Right.

The beginning of the end (or, as I prefer to look at it now that I am in recovery, the beginning) was on Good Friday of 2012. I had suffered through the day, nay, the week, but could now drink without restraint for a few days. To get home, though, I needed a bracer. So I stopped and got several vodka miniatures. I knocked back one of those and felt better. Then another, and another. Not being used to the strength of vodka, I was not prepared when the alcohol "kicked in." I was coherent enough to think to get off the main road and head for the back roads. They found me passed out in the parking lot of a convenience store. A friend had actually happened by and tried to get me out of my car and tried to talk the police out of arresting me. It did no good and I was taken to the county jail where I spent the mandatory 24 hours. It's a small county so everyone knew about my arrest, and you would think a sane person would think this madness had gone on long enough. Not me. After my 24-hour stint, I called a drinking buddy to get me at the jail and the first stop after I was released was at a convenience store for more beer to calm the nerves. You might think that this was the bottom, but I had a way to go. Being my first DUI (if you can believe that, after all the years of drinking and driving), I got deferred prosecution and went on about my business. My drinking now was progressing on a geometric curve. For years, I had been a steady, but functioning,





## I was drinking daily and at work. I was missing meetings and appointments.

drinker. Now, however, things began quickly to ratchet up. I was drinking daily and at work. I was missing meetings and appointments.

One day when I came in to work, I was backing into my parking space at my office and hit the truck parked next to me. I had no idea I had hit anything. I stumbled into my office totally unaware, but someone had been walking across the street, saw the whole episode, observed that I was obviously intoxicated and called the police. I was sitting in my office trying to work when the police came and arrested me—DUI No. 2. This was three months after the first. I had to sit in the city jail, the jail of the city where I was the city attorney. After sitting there for several hours, I was released on the solemn promise that I wouldn't drive. I kept that promise, but walked from the police department to the liquor store and back to my office, right through the middle of town, in broad daylight, carrying a case of Budweiser.

Surely, you must think, this is as low as one can go, but I wasn't there yet.

I spent that night in my office, drinking my beer and sleeping on the floor. Nothing to eat other than some odd snacks I had lying around. To the (deserved) disdain of my paralegal and assistant, I made it through most of the next day and then drove home. I hadn't showered and I reeked of stale beer. I was almost home when I made a turn too sharply and side-swiped a car stopped at my street. I got out, said I would return, drove to my house (only a couple of hundred yards from the scene) and was starting to walk back to the damaged car when the police pulled up and arrested me. DUI No. 3. I was carted off to a different county jail. I was not allowed to make bond this time. I sat for two days waiting to be seen by the judge.

By this time, my friends and fellow members of the bar realized I was in serious trouble. My issues

had become very public. The judge in my home county (who had given me deferred prosecution in my first DUI) sent the sheriff down to get me. I can only imagine what I looked like. I was in a filthy seer-sucker suit with no tie or belt since those had been taken away from me at jail, and marched into my home county courtroom by two sheriff's deputies. I was (and still am) gratified that most of my fellow attorneys had been summoned to court to offer support and direction. The judge (who probably saved my life) basically told me I had two choices: I could either go to rehab where he had already found me a bed, or I could go to jail. Period. Needless to say, even for someone in my pitiable condition, this was a no-brainer. He ordered me taken right then to the rehab facility. No time to shower, no time to pack, no time to do anything. "Do not pass Go; do not collect \$200." I rode three hours in the back of an ambulance to the rehab facility in north Alabama.

I had made it. I had hit absolute bottom. I could not believe that this nightmare was happening to me—a well-respected small-town lawyer with a stable of elite clients. How could this be me? It was hell on earth, but it was the consequence I needed to make a much-needed change. Either I was serious about addressing my disease, or I was going to die. End of story.

## Rehab

Rehab saved my life. I went in like most people afflicted with the disease of alcoholism and was first sent to detox. They had to get the abundance of toxins out of my sys-

tem. Once through that ordeal, I was on to a three-month program. Let me state here that I had self-reported my issues to the Alabama State Bar. I was assisted throughout my legal and personal issues with an attorney from my hometown who, though not an alcoholic, had had brushes with problems involving alcohol. His support and friendship cannot be overstated. Like a lot of folks in treatment, I started the program with resistance. Once sober, the tendency is to drop back and restate the ridiculous premise that you can do this yourself. Maybe some folks can. (I do know a couple of folks who realized they had a problem and just stopped.) I was not one of them. Since I was there for the duration (the bar would follow the recommendation of the facility and, naturally, the facility would recommend the maximum three-month stay), however, I grudgingly started on the course of treatment. I went to the group sessions, the afternoon speeches and the night time AA meetings. I can't say that I was the model patient for the first month I was there.

Then, my attitude shifted. I figured that since I *had* to be there, I might as well start trying to get something out of it. I mean, what the hell; if I can't leave, I might as well listen. ***If there was a single turning point in my recovery, this would be it. I stopped being resistant and started being receptive.***

These people (the counselors) were in the business and were all in recovery too, so just maybe they knew what they were talking about. For the third month of my stay I was actually anxious to learn the secrets/methods of recovery. Talk



**Each morning, I got up, put on a fresh suit and starched shirt and tie, shined my shoes and came on in.**

about a change! A tremendous metamorphosis occurred over the period of three months.

I was released from rehab with glowing recommendations and high hopes. It was Halloween, October 31, 2012.

I have not had a drink since.

## After

The year after rehab was the most challenging of my life. I had been provided guidance and a “set of tools” to deal with recovery. It was now up to me to use them. I had to have faith in what I had been taught. Somehow, my steadfast paralegal had kept my office open, but my legal assistant, with my blessing, had seen the need to

find another job. And, I certainly understood. I had no idea if my practice could recover. I wasn't sure I could either, but my unbelievable paralegal, with the help of caring members of the local bar (one in particular, for whom I will never be able to adequately express my gratitude), kept things going, eking by on a few previously-billed fees and some basic document preparation. The doors remained open, though.

I did what I had been told. I suited up and I showed up. Each morning, I got up, put on a fresh suit and starched shirt and tie, shined my shoes and came on in. It was so quiet in my office you could hear echoes. I remember those first days, basically sitting here at my desk waiting for the phone to ring. I cashed in my life insurance and lived off my meager savings. I had addressed issues pertaining to my ex-wife. I sold property and mortgaged my office to fulfill my obligations to her. That was my number one priority. She had been a good wife and it was my fault the marriage had failed. I knew I couldn't recover unless I felt okay about her being taken care of.

There were also the pending DUI cases and the fact that I had put my bar license on temporary disability status. I was surprised to learn that you don't simply ask for your license to be reinstated even if you asked for temporary disability status. You have to go through an entire proceeding in front of a panel of attorneys. It was like a trial—really—but I was reinstated. And, with a full acceptance of my consequences, I faced the DUIs that were

out there waiting for me. It took well over a year to get those addressed. Once again, compassionate colleagues who do DUI defense work were there to assist me. After all was said and done (and after further depleting my savings to pay all the fines), I emerged. The judges involved gave due consideration that I had spent three months in rehab and, at the end of the day, I had only one DUI on my record with a number of lesser charges. I was ready to accept the consequences. I made no excuses and asked for no leniency.

In addition to contending with my domestic and legal problems, I had to confront the fact that most of my enviable roster of clients had had to seek legal counsel elsewhere and I was basically starting over. I represented several private and public entities and after about a year sober, I asked for audience before each board. Talk about a humbling experience, or, should I say “experiences”—standing before a group of board members whom you had represented for years, asking for forgiveness and humbly requesting to be considered for reinstatement. I wrote each attorney who had filled in for me so that he/she wouldn’t think I was trying to make an end run on them. These were great clients with nice fees and I knew they would want to keep what I had lost. A couple of these clients hired me back; most did not, but I understood. For those that didn’t, I wrote a letter of thanks for the opportunity to be considered and for the years they had allowed me to serve. I burned no bridges. And, I am gratified at the number of board members

from various authorities/entities who have approached me over the last few years to tell me how much they respected that effort and to acknowledge how difficult it had to be. Humility pays off.

I had never solicited business and I refuse to advertise, but I needed work. I went to various banks and other entities and simply stated that I was back in business and would welcome the work. Anytime someone sent me a case or a transaction, I made sure to thank them. I wanted them to know how much I appreciated it.

The days slowly dragged by, but I kept “suited up and showing up.”

Gradually, almost imperceptibly, business started creeping back in. Ours is a small community and I made sure to be seen at civic club meetings, the post office, open houses, etc. I wanted folks to see me. Question me. Ask how I was doing. Everyone in town knew of my travails (it was, after all, on the front page of the paper), so I was willing to answer whatever questions were asked.

I noticed, almost as an afterthought, that I was coming in to my office on Saturdays to catch up. Folks would ask why I didn’t take the weekends off. I replied that I was so happy to have the work, I was glad to come in! I remembered vividly the days when I had nothing to do.

After a couple of years, the business flow increased. I was working more than I ever had. And doing the things I enjoyed. It was a snowball effect. I was astounded and happy. My legal assistant returned at my request (she didn’t like her other job anyway), and

stepped up amazingly to fill the shoes of my paralegal who has since passed away (ironically of liver cancer, and she wasn’t a drinker). I was working harder and with a greater work load than ever, and loving it. I never failed to thank folks for their business or to promptly return phone calls. Things were so wonderfully hectic that I hired *another* employee. I was, and am, incredibly content in my law practice these days. And, it’s all due to the benefits of a disciplined program of recovery.

I never forget the dark days and the times when I thought I would never be able to practice law again, though. Keeping those recollections in my box of recovery tools helps keep me clean, and happy.

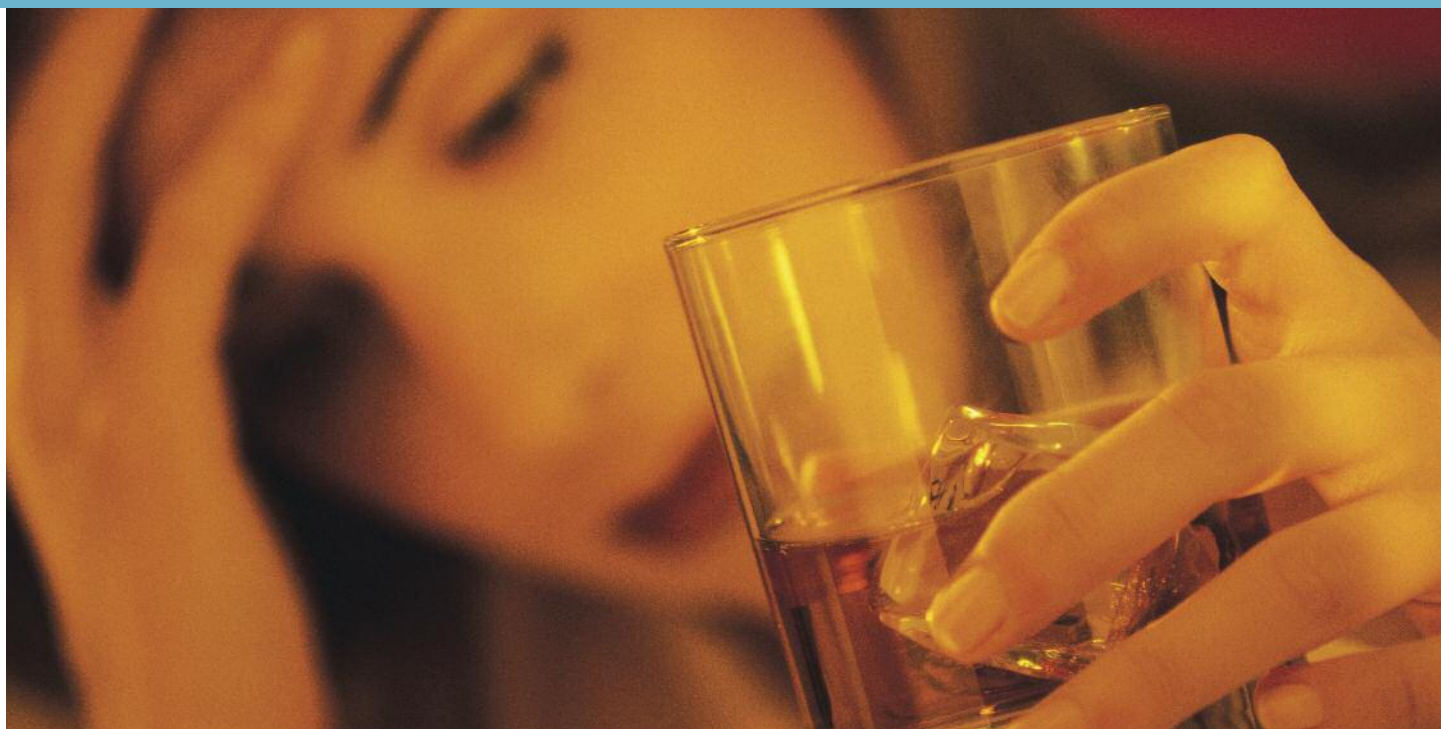
If you’re reading this and can relate to any of it, please note the following:

1. If you think you have a drinking problem, you do.
2. Don’t wait for consequences to force your hand to seek help. (Or if you do wait, be ready to man up/woman up, and face the consequences. I assure you they will be dire.)
3. Talk to someone who is in recovery. Anyone who has trod this path will be happy to help another from making the same mistakes and will assist you in getting help.

I haven’t had a drink in more than four years. I’m busy. I’m content. I’m sober.

*I’m a lawyer.*

It’s a wonderful life. (My apologies to Frank Capra) ▲



# Released from the Grip: A Young Person Finds Sobriety

*By Mary O.*

**In 1935, when Alcoholics Anonymous (“AA”) first began,**

a stereotype existed of alcoholics being skid-row drunks. For many people, that image still prevails—so much so that many are shocked to learn that the founding members of AA were professionals: a doctor and a stockbroker. The third member of AA was a lawyer. Those early members understood that despite their lengthy drinking careers “to be gravely affected, one does not necessarily have to drink a long time nor take the quantities some of us have. This is particularly true of women. Potential female alcoholics often turn into the real thing and are gone beyond recall in a few years.”<sup>1</sup> This was true with me.

I took my first drink at 13 and my last at 20, just before my junior year at college. Prior to getting sober, my days were spent making sure no one knew that I had a problem and planning how and when I could drink. If I went somewhere and alcohol was not being served, I made sure to drink beforehand, bring something with me and know where to go afterward.

My mother was an educator in the field of alcoholism and addiction; she constantly brought home information about the disease with grave warnings about my genetic predisposition to the disease (the Irish!). I read the information and thought I knew how to handle it. I juggled work, school, friends; I spent a lot of energy making sure I looked good. I maintained grades, always showed up on time (except I never

went to class) and presented a happy face. It took everything I had to do all that and make sure no one knew how much I was drinking.

When I started law school, I was three years sober in AA and I have remained sober for the 30 years I have practiced law. While traveling this professional and personal journey, people are surprised at the length of my sobriety, often asking, “How could you stop drinking in college?” I assure them that I did not *want* to stop drinking; instead, I simply could not continue drinking. That is a distinction with a difference. In AA, we call this the jumping-off place.

I could not imagine my life with or without alcohol.<sup>2</sup> I could not drink enough to get drunk. I had an endless supply of alcohol from my job at the local liquor store and a generous amount of recreational drugs because I chose my boyfriend for his access. I often drank enough to black out and occasionally pass out, but neither were my goal. Like most alcoholics, my great obsession was to control and enjoy my drinking.<sup>3</sup> Control and enjoyment consistently eluded me. For many people the last drink follows some external event: a car wreck, an arrest, a divorce, etc. For me, it was not that way. On August 5, 1980, beaten into a state of reasonableness, torn by my internal conflicts, I surrendered the quest for control and went to AA.

Once I stopped drinking, I found a life I had never imagined. I first found out that going to class actually made it easier. In law school I found I had a disciplined life, much less stressful than my classmates, simply because I had a priority that put everything in context—sobriety first, everything else after that. With that priority in place, I excelled, making the dean’s list and *Law Review* in a top-tier school.

Contrary to popular opinion, those of us in recovery agree that alcoholics tend to be above average in intelligence. That has been my experience among the alcoholics I have known. Sadly, that intelligence can also keep people away from recovery. Overthinking and analyzing the problem is not necessarily the solution.

Having the obsession to drink lifted from me was a gift that was given to me following my first meeting. What I do with that gift is freely give it away in an effort to be of maximum service to God and my fellows. One of the ways I give it away is to work with the Alabama Lawyer Assistance Program (ALAP). Being a member of ALAP allows me to share stories of hope and recovery at meetings with lawyers and judges who are struggling with this disease. I also act

as a mentor, meeting one on one with lawyers who are learning to live and work as sober members of society. Watching someone emerge from the grips of alcoholism into the freedom of recovery is the greatest gift I receive. I witness countless miracles on a regular basis.

The length of time I have been sober in AA makes me a statistical outlier. For the most part, people don’t achieve sobriety of any length the first time they come to AA, and those who do eventually get sober, don’t stick around as long as I have. For me, when I arrived in AA, I found the missing piece to my life puzzle. That piece was the 12 Steps as a program, not just for recovery from a seemingly hopeless state, but also as a program for living a full and joyful life. The principles I learned by going through the steps were nothing extraordinary—they are basic principles such as avoiding harming others, admitting faults and praying for God’s will. During my active disease, my need to drink was the priority and it kept me from living a principled life. The principles I learned in AA I have taken to all areas of my life, which is full of meaningful communities at work, church and with my children.

I learned I can continue to grow and change—this year alone, I participated for the first time in a triathlon and a state tennis tournament. Simply following the directions of those who came before me changed my life from one of internal chaos and crisis to peace of mind and serenity. Life can be difficult—I have experienced it, not always gracefully, but I have never had to drink or use a drug to walk through what it has dealt me and for that I am grateful. Surely, if you or someone you know has a problem, they too can find recovery. Hopefully, we will meet as “you trudge the Road to Happy Destiny. May God keep you and bless you—until then.”<sup>4</sup> ▲

## Endnotes

1. *Alcoholics Anonymous*, Fourth Edition, 1993, p. 33 (“The Big Book”).
2. *Id.*, p. 152: “Someday he will be unable to imagine life either with alcohol or without it. Then he will know loneliness such as few do. He will be at the jumping-off place. He will wish for the end.”
3. *Id.*, p. 30: “No person likes to think he is bodily and mentally different from his fellows. Therefore, it is not surprising that our drinking careers have been characterized by countless vain attempts to prove we could drink like other people. The idea that somehow, someday he will control and enjoy his drinking is the great obsession of every abnormal drinker. The persistence of this illusion is astonishing. Many pursue it into the gates of insanity or death.”
4. *The Big Book*, p. 164.



# Pulling Back the Curtain on Bipolar Disorder

By Amelia H. Griffith

**I remember it clearly, and I learned the lesson well.**

I was sitting with a group of lawyers at the first firm in which I ever practiced. Everyone was complaining of being sleep-deprived, having trouble sleeping and feeling like the walking dead. Finally, one brave (young) soul said that we had to stay at the office so late that by the time he got home, he could not get to sleep during the precious few hours he had left before he had to hit his mark again. He said that he was considering talking to a doctor for some help with the problem. A little too quickly, I think, the senior attorney in the group said, “Well, I’m not a doctor, but I can give you my prescription: three fingers of single malt right before bed.”

Maybe that’s what worked for him, and that’s all he meant by the

comment; however, I remember making a mental note not to bring up any personal problems, physical or mental, at the office. Such things would only be brushed aside with humor.

I was encouraged when I read Robert Thornhill’s article in the May 2016 issue of *The Alabama Lawyer* about addiction problems that many lawyers and their families deal with every day. The reason I was so encouraged by the article was that we, as a profession, used to never talk about alcohol and drug abuse by ourselves or with friends and colleagues, and are still only gradually doing so. We thought we were being loyal by not airing our colleagues’ “dirty laundry” when, in fact, we only let the problem get worse until there was no plan, no rehabilitation that could salvage his or her career and license to practice law. Let’s face it. The law is a competitive business, and lawyers

are competitive souls. Admitting anything that might indicate the slightest weakness goes against our instincts.

Robert's article, however, is a sign that we are making some steps in the right direction. This changing willingness to discuss addictions and mental illnesses within the profession can mean all the difference in the quality of legal services in the future. Let us educate ourselves about the illnesses that seem to gravitate more to lawyers because of the pressures of the work we do and the lives we live. Maybe we can hang on to more of the good lawyers, while avoiding the pitfalls ourselves.

In my opinion, bipolar disorder remains the most ignored and invisible of the mental illnesses. We've grown more comfortable talking about depression; perhaps it's because we all have at some point experienced "the blues." Also, we know schizophrenia, as a thought disorder, is really too complicated to understand from a layperson's level. However, between the two lies a mental illness known as bipolar disorder, of which it is imperative that lawyers today need to have some working knowledge. I have searched far and wide to give you a reliable estimate about how many lawyers have bipolar disorder, but I've found none. Instead, I think it will be easy for you to connect the dots with these four statistics:

- Bipolar disorder affects approximately 5.7 million adult Americans, or about 2.6 percent of the population of the United States. (National Institute of Mental Health)
- Bipolar disorder is the *sixth* leading cause of disability in the world. (World Health Organization)

- While most scientists agree the mood disorders such as bipolar are genetic or biochemical, there is increasing evidence that *stress* plays an important role in the development and progression of mood disorders. (*Huffington Post*)
- Finally, as many as one in five persons with bipolar disorder will complete suicide. (Depression and Bipolar Support Alliance)

So, we can conclude from these facts that it may be our mailman, our preacher, our child's teacher, our bank teller or any combination these people and probably more. Any number of these may have bipolar disorder and you will not know. If they are diligently working to control their illness, you will never know unless they choose to tell you. It is invisible.

I ask that you look hard at the third fact. We all know that practicing law can be very stressful at times, although we may not want to admit it. Combine this fact and the prevalence of bipolar disorder generally, and it is easy to conclude that many lawyers have this disorder or have a family member struggling with the illness as well.

I think the best thing we can do for ourselves, as a profession, is to pull back the curtain on bipolar disorder. If you don't have it, educate yourself, so that you can talk intelligently about it. If you know someone who has it, give them a signal that they can talk with you about it without finding themselves the center of gossip at the courthouse the next day. If you are a lawyer with bipolar disorder, you have to make a decision about with what you can live.

I'm a 48-year-old lawyer practicing in Decatur who was diagnosed

with bipolar disorder nine years ago. It took me seven years to get to the point at which I was comfortable talking about my own journey. I've given talks to clubs and associations about this disorder and my own journey with it, because I want it to be easier for my neighbor (no matter how old, what gender, what race or, finally, what profession) to ask for help. Having bipolar dipolar is not anything of which one should be ashamed, and it is a condition from which none should suffer in silence. I've never finished a program with a group without at least one, if not more, people coming to me to talk with me about their own experience or their family member's, and I get calls from around the state from people who want to talk with a layperson, a fellow journeyman. A few want referrals; most need a listener and we all can listen.

We lawyers can make a difference for each other, making it easier to talk about and seek help for bipolar. However, I think we are also in a perfect position to touch the lives of others who come to our offices. We won't have to just hurry through the bipolar part, because our lack of knowledge makes us uncomfortable; we can truly be the compassionate advocate they need.

If you want more information or you are a part of a group who could benefit from a program on this subject, you may contact me at [amyhgriffith@gmail.com](mailto:amyhgriffith@gmail.com). ▲

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### Amelia H. Griffith



Amelia H. Griffith is a graduate of the University of Alabama School of Law and practices in Decatur.



# The Journey

*By Billy O.*

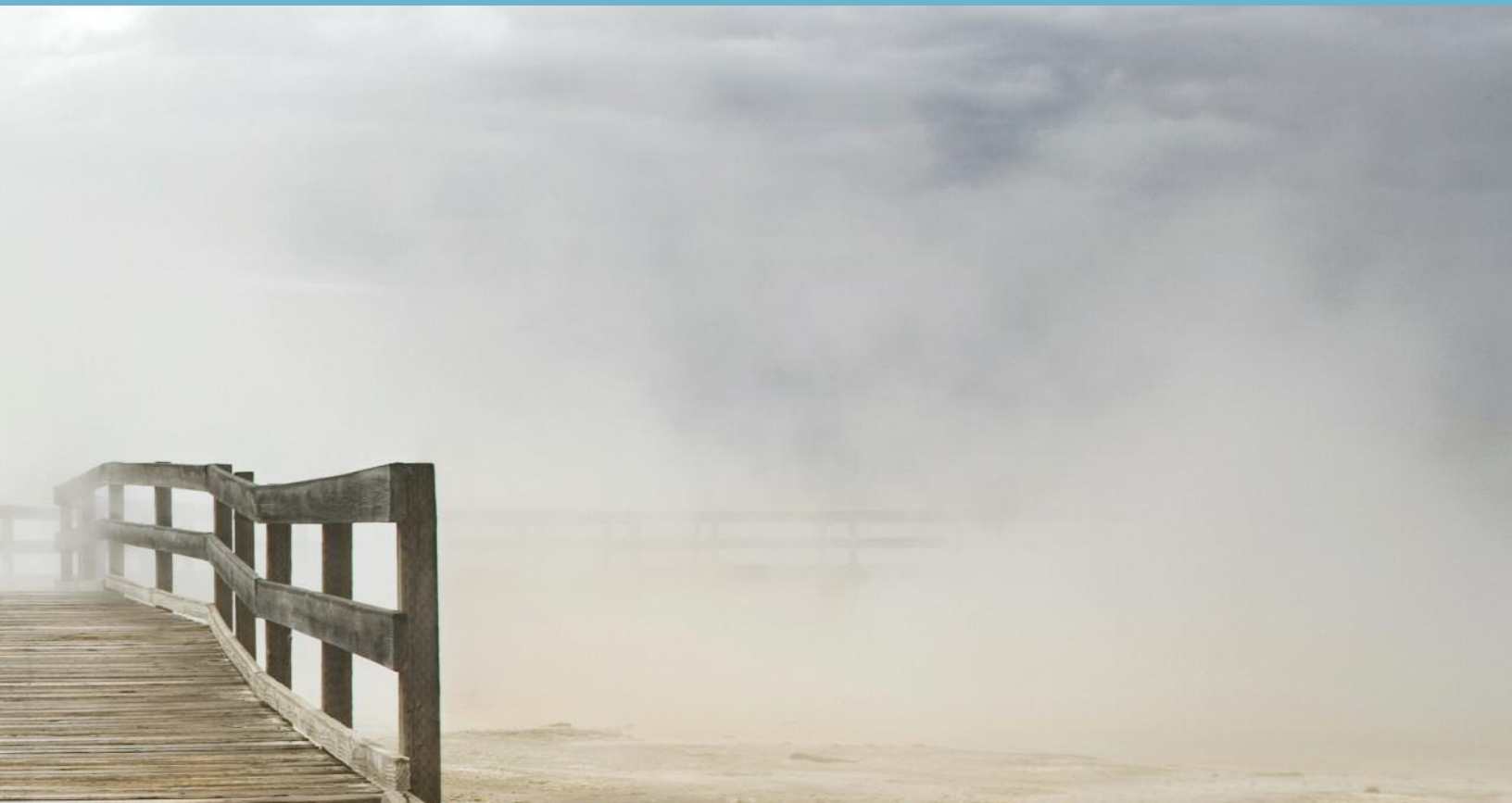
It was 4:30 in the morning,  
August 1, 2005.

The fear, loneliness and despair I was experiencing was indescribable. I had been struggling for five hellacious years to get clean and sober. I thought I hit bottom in 2000, but that was a walk in the park compared to the emotional depths I had now reached. It seemed the harder I tried the worse it got. Addiction stripped everything away that was important in my life. I became emotionally, financially and, more importantly, spiritually bankrupt.

In the year 2000 I went from living the American dream, a family with three beautiful children, a beautiful home, a law firm with three partners and numerous other staff members, to being divorced from my family and co-workers later that year. A wise man once told me, “Anything I put ahead of my recovery would cause me to not only lose my recovery, but to also lose whatever I placed in front of it.” I found these words to be true the hard way. I was devastated and overwhelmed with shame.

Even after all the destruction addiction brought my way, I was still blind to the truth. I was trying to do things my way. I knew I had a





problem, but I failed to face or accept the severity of the situation. My intentions were to recover and be the father and co-worker I knew I could be. Unfortunately, I would often put saving my marriage, saving my law career, saving whatever standing I thought I had in the community ahead of my recovery. This was a recipe for disaster. It was the fuel to the fire that allowed my addictions to escalate, causing my condition, both physically and emotionally, to become chronic. I was engulfed in the cycle of addiction and self-pity.

From April 2000 until August 1, 2005, I would go from treatment center, to halfway house, to living with my mother at the age of 41, back to treatment centers and halfway houses. The cycle of addiction was escalating. I was unwilling to surrender. I thought I could overcome this my way. Everything had always seemed to work out by working hard and putting my mind to it. I thought I had to “put up the good fight” to win the war with addiction, never understanding what it truly meant to “surrender to win.”

Ultimately this led me to that frightful summer morning in 2005 where I reached a place I thought I would never be. My addictions and everything that I thought I knew about recovery led me to finally being alone (emphasis added on “I”). After being on my addiction rollercoaster for five sad years, I was hoping that my

children, who were now 12, nine and seven, would be able to accept their dad for who he was, an addict who may never recover. I was hoping my children, mother, sisters, extended family and friends and others who had been praying for me during that time would still love me and accept me, despite never recovering.

I started driving that morning with everything I had to my name: 86 cents, a car that my mother had helped me purchase when I was having a good 90 days a year or so before, the clothes on my back, a full tank of gas and two large lawn trash bags with clothes. I was now 44. I was tired, lost, confused, baffled and broken and the will to live was low. The hideous four horsemen had finally appeared on that day, “terror, bewilderment, frustration and despair.”

The Alabama Lawyer Assistance Program (“ALAP”) had been trying to help me for about four years. I met an amazing woman, Jeanne Marie Leslie, the executive director of ALAP. She worked with me through the ups and downs and never gave up hope in me. She kept telling me I had so much to offer others, that I was a good person, that I was worthy of a good life. She would always help me to refocus my efforts and not give up. She placed me in groups, hoping I would hear something that would help me to see the truth, or that it would finally “click.” It took an addi-

tional four years, but everything Jeanne Marie did for me helped me to continue to pursue recovery and not give up; even during that darkest of times in August 2005, Jeanne Marie and ALAP were still there for me.

I called Jeanne Marie at 6:30 that morning after I had driven to an exit off I-65 near a treatment center here in Alabama. I told her my life was in ruins. I had nowhere to turn and I was more or less homeless. I was scared and tired of fighting. In her own “unique style” she told me to get to the treatment center *now*. Jeanne Marie was special. She walked the walk and always worked tirelessly to ensure lawyers in Alabama who struggled with addiction, depression or other forms of mental illness always had an opportunity to recover. I was one of the lucky ones; I had finally surrendered and had a chance to finally begin a life in recovery.

I entered my fourth treatment center in five years on August 1, 2005 and the journey of recovery has been nothing short of amazing. Prior to completing my stay at the treatment center, Jeanne Marie, once again in that “special way” that only she could do, told me I was going to a state-funded halfway house and I was going to stay there as long as I needed to build a foundation I could carry with me in the days and years to come. It was a 90-day program, but I remained there for a year and a half. ALAP led me to recovery, which led me to a new way of life.

At the age of 44, after all the education I had in my life, after all the sports accomplishments I had received, after being an accomplished lawyer from 1988 to 2000, the day I entered that halfway house was the day I started to learn how to truly live life in recovery. Through surrendering, others were placed in my life to help guide me along the way.

I met a mentor while I was at the halfway house who took me under his wing, another practicing lawyer who gives freely and unselfishly of his time to help other lawyers in recovery. His selflessness amazed me. He told me about his life and journey in recovery. I watched his walk and I wanted what he had.

He taught me how to laugh again. More importantly, he gave me the courage to face myself, to do the work necessary to recover, to learn to live a new way of life and to finally have freedom from the “bondage of self.” He helped give me the courage to face those I had wronged and ask them how I could make it right. He then shared with me the true gift of recovery, the gift of giving back to others who were

also lost in the depths of addiction. He gave me the opportunity to begin practicing law again. He helped me find me. I would tell you he saved my life, but he would humbly tell you that he just happened to be the teacher who was there at the time when the pupil was ready to listen. Not a day goes by I don’t thank God for placing him in my path. We remain close today and I am forever grateful for our friendship.

In 2007, I was blessed to return home when the time was right, working in a state position that not only allowed me to give back to my community, but to also help others who had lost hope. Thereafter, in 2010, I was appointed to another state position and was elected to that position in 2012. I was also married in 2011 to an amazing woman who loved me despite everything I had been through. She also brought three more children into my life when we married. I prayed for my three children to be back in my life and today I am married with six children and two grandchildren. I have been blessed more than I could ever imagine, dream or deserve.

In August 2005 I was homeless and lost, never thinking I would be able to ever recover, be a father, a husband, a son, a brother or worker among workers ever again, or for that matter, a part of life again. Through the help and guidance of a loving and merciful God, ALAP, mentors who are still a part of my life, the support and love of family and friends that never lost hope, a 12-step program that helps me to continue to keep the truth right in front of me and a job where I am blessed to give back to my community, I have remained free from the bondage of self and my addictions since August 1, 2005. As my mentor friend told me before I moved back home in 2007, “Whatever you do, don’t ever forget to enjoy the journey.” Today, thanks to those God has graciously placed in my life, I am enjoying the journey of life!

My aim in sharing my story is to inform other lawyers who may be suffering from addiction and/or other mental health issues that they don’t have to continue to live in despair, fear, shame and hopelessness. You are worthy of a good life. The Alabama Lawyer Assistance Program was there for me and they are also there for others who may be struggling. My prayer is that those who are also suffering like I was suffering will also reach out for help. When you do, be sure to hold on because the journey in recovery is an amazing ride! May God bless you all. ▲



# My Story of Struggle and Survival

*By Mary Turner Roberts*

## I walked in the door... late.

The third day that week I had been late for work. Everyone in the office knew why I was late. All of those standing in the common area looked at me with that look, that look of disappointment and shame. Then, they all looked away. Silence. I could feel the temperature drop from the cold shoulders. My co-workers did not want to speak to me. They did not want to look at me. They did not want to be around me.

All but one—because he was in recovery. He had been where I was. He knew the signs of alcoholism. The Alabama Lawyer Assistance Program had helped him a year before. He knew what to do. He came up to me and suggested I go speak with my older brother about my drinking. My brother was also a lawyer and his office was across the street. At my co-worker's insistence and with him by my side, I went to see my brother.

I had always looked up to my older brother and probably became a lawyer because of him. I timidly walked into his office and sat

down. I told him that my co-worker suggested I talk to him about my drinking, but, of course, I didn't know why. I didn't have a problem. And I desperately wanted my brother to agree. I needed him to tell me that I did not have a problem, I didn't need to go to treatment and that I wasn't an alcoholic.

As we talked, I began to share my struggles. At first it was hard for me to even admit that I was struggling, but as we continued to talk, it became easier. After all, my brother knew when my struggles began—when I was 16 years old.

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I was going to a movie with some of my high school friends. When they came to pick me up, my dad called me over to give me a kiss goodbye. I was 16. My friends were watching. I was embarrassed, but I walked over to my dad and he kissed me goodbye.

We got to the theater, found some good seats and sat down, waiting for the movie to begin. The manager walked into the theater and called out one of my friends by name and told her to come to the office. I walked with her so she wouldn't have to go alone.

When we got to the office, the manager said she had a phone call. As my friend talked on the phone, I could tell something was wrong. She hung up and told me we had to go to the hospital. They were taking my dad.

My dad had had open heart surgery about two years earlier. I thought he must have had a heart attack so we rushed from the theater to the hospital, but when we arrived, my dad wasn't there. So I called our house, but a policeman



## We must do a better job of recognizing the signs in our fellow lawyers and encouraging them to seek help.

answered the phone. As the officer was telling me to go to the hospital, out of the corner of my eye, I saw a stretcher. I recognized my dad's pants. My mom and younger brother were walking behind. I ran to mom and asked her if it was a heart attack. Her answer still rings in my ears. "No, he tried to kill himself."

My dad was still alive. I got to see him. Tell him I loved him. Tell him to keep fighting. In my mind, though, I knew he would not survive. I knew it was goodbye. So I kissed him, just like he had kissed me hours before.

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I didn't handle my father's death well. I began to drink and tried to numb the pain his death caused. Even though I had done well as an undergraduate, graduated law school and passed the bar, I was still struggling with my father's death, and by the time I sat down

in my older brother's office, my drinking was out of control.

Since my father's death, my older brother had assumed the father role in our family. He listened to me talk about my struggles and my drinking. When I finished, he told me that I needed help and that he was going to take me to treatment so I needed to go home and pack my bag. I was stunned, but it was just the jolt I needed.

That was 26 years ago. July 18, 1990. My AA birthday.

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Through recovery, I was able to learn to grieve and work through my anger. I was able to start living my life on life's terms. I worked hard to re-gain the trust and respect of my co-workers. I went to my meetings and I learned how to cope with the struggles that led me to be an alcoholic.

Eventually, I married and had two children. As our family grew, we needed to look for a new house, so one day, my husband and I drove around town looking at houses listed for sale and talking to our realtor on the phone.

That's when I got the second call. Something was wrong. I had to call my mom's house. Again, a policeman answered the phone. Twenty-five years after my father's death, my mother died in the same manner and in the same bedroom.

I remember saying to my husband, Jim, I cannot go through this again. My husband said "Mary, you can and you will."

I could not go back to drinking. I had to find another way to deal with the pain and anger. I found a group in Birmingham called Survivors of Suicide which I attended for a year until I started a

Tuscaloosa version of the same group.

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As any survivor of suicide will tell you the biggest struggle we face is trying to answer the question “why?” Why would our loved ones take their own lives? Why would my parents do this? I may never know the answer, but I’ve found one common truth. Mental illnesses such as depression are dangerous and life-threatening. And mental illness can affect anyone. Even lawyers.

In a 2014 report by CNN, lawyers were found to be 3.6 times more likely to suffer from depression than non-lawyers. The report also quoted data from The Centers for Disease Control and Prevention which ranked lawyers with the fourth-highest suicide rate by profession as compared to suicides in all other occupations and professions.

The very nature of our profession is extraordinarily stressful which often leads to depression and substance abuse. We have clients who bring us their problems expecting a quick fix or who look over our shoulder at everything we do. Partners and judges we have to please. A general public who constantly criticizes us. And a workload that seems to eat away at more and more of our free time every day. All of this wrapped in an adversarial process in which another lawyer is fighting against everything we do.

Really, it is no wonder that lawyers are more prone to depression. And because we are supposed to be problem-solvers, it’s no wonder we are less likely to get help, leading to more suicides.

I’m one of those lawyers who suffered from depression, but after

learning too late that my parents had suffered from depression and kept it hidden from the rest of us, I knew the danger of not seeking help. And, I was not going to let the stigma of depression and mental illness shame me into doing nothing. In addition to the Survivors of Suicide Group, I sought counseling for my depression and, soon, I was better.

I was also determined to use my experiences to help others. I became an advocate for the prevention of suicide. I began speaking at various mental health functions, lecturing at social work and psychology classes at the University of Alabama and even going on the radio to discuss the need to fight the stigma of mental illness and to encourage friends and loved ones to seek help.

I found even that was not enough when I discovered my older brother was also one of those lawyers who suffered from depression.

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It was July 18, 2011. My AA birthday. Seven years after my mother died and 32 years after my father died when I got the third call. My brother had texted his wife, telling her that he loved her and saying goodbye.

I was no stranger to the call. I knew what my brother’s text message meant. He had died by suicide just like my mother and father. What I didn’t know was that my brother was suffering from depression.

When I needed him to be there for me, to give me that jolt, to make me seek help, my brother was there. Every day I wish that my brother had walked into my office to talk to me about his struggles, his depression.

Fortunately, the signs of my alcoholism were clear and a friend told me to go talk to my brother. The signs of my brother’s depression were not clear and that’s one of the most frightening aspects of depression and mental illness—those suffering learn to cover it up to avoid the stigma.

Looking at the statistics I mentioned above, it’s clear that we, as lawyers, are more susceptible to depression, as well as alcoholism and substance abuse. We must do a better job of recognizing the signs in our fellow lawyers and encouraging them to seek help. And we must be on the forefront of erasing the stigma of mental illness.

Helen Keller said, “Although the world is full of suffering, it is full also of the overcoming of it.”

Our profession is an honorable, yet difficult one. There are many issues attorneys face which can lead to mental health crisis. Our profession is full of suffering, but it is also full of the overcoming of it. Awareness, encouragement and the type of assistance provided by the Alabama Lawyer Assistance program can help us overcome even more. ▲

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### Mary Turner Roberts



Mary Turner Roberts is a graduate of the University of Alabama School of Law and practices with the Turner Law Group in Tuscaloosa.



# Lawyer Resilience<sup>©</sup>

*By Prof. Pamela Bucy Pierson*

## About once a week, I travel in a time machine.

I see someone age 10, 15, 20 years. Since 1987, I have taught approximately 6,000 law students at the University of Alabama School of Law. Everywhere I go—law offices, bar meetings, gas stations—I see former students. Most of them I met in Criminal Law on their first day of law school. Many I have not seen since they graduated from law school. It is always wonderful to catch up. It is also interesting to see how differently they age. Some have not aged at all while others look much older than their years.

What makes the difference? At first I thought it must be how well (or poorly) they had taken care of themselves since I saw them last: do they exercise, have they put on a few pounds? This does not seem to be the key factor. A number of

my former students who appear to be in good shape physically have not aged well at all, and some who do not appear to have missed many meals or to have spent much time in a gym have aged quite well. In a similar vein, I assumed that genetics was at issue, but I know a number of the parents of my former students and familial history does not seem to be the key. For a while, I thought the difference must be whether someone had suffered personal tragedies, but again I saw that this did not appear to be the differentiating factor. Some of my former students who have experienced extremely difficult personal situations have aged the best. I also thought that the difference must lie in the kind of practice someone was in, but this does not seem to be the key factor. Some of my former students who are in what most of us would view as high-stress, unpleasant practices have aged the best, while others who are in prestigious or seemingly enjoyable jobs have aged the worst.

Finally, I realized what made the difference. It was how my former students told me about what they were doing. To a person, those who were excited when they told me about their job, the case they had just finished, the clients they were working with or the bar program they were working on had aged well. Those who were down, dejected and weary when they told me about their job, talked about how soon they could retire or how they are looking for another job had aged poorly.

That enjoyment of one's work would be the decisive factor in who ages well and who does not makes sense given who comes to law school and what their expectations are. With few exceptions, every student I meet on the first day of law school is eager and excited to be in law school, full of energy and, even if nervous, abundantly confident that he or she is embarking on a meaningful path in life. This is a realistic expectation. By virtue of what we do, lawyers make a difference in others' lives. It can drain the life out of any of us when this expectation is not met.

After seeing too many of my former students beat down, worn out and used up by their practice of law, I wondered if it would be possible to capture the wisdom of experienced lawyers about career decisions and pass it along to others. One way we have tried to do this at the law school is by developing a video library of interviews with lawyers who share their advice—honest, wise and often humorous, about how to practice law in a way that is personally and professionally fulfilling.<sup>1</sup> Over the past four years, I have also collected data through a research project on “stress hardiness” in the practice of law. With the help from the Alabama State Bar, I have gathered information from lawyers and law students in a brief, online, anonymous survey. This study, IRB # 16-OR-280: “Stress Hardiness in Law Students and Lawyers,” is one of the first to examine the topic of stress hardiness in lawyers. With 530 respondents, it is also one of the largest. In this article, I share some of the findings from this survey and advice from our video interview library.<sup>2</sup> Resilience is the ability to bounce back from disappointments and setbacks. More than intelligence, wealth or health, resilience tracks success and happiness in life. One aspect of resilience is managing stress. Lawyers cannot be resilient without good stress management skills because there is stress in the practice of law. As one lawyer said:

“Being a lawyer is very stressful. This is true for any profession where you care about what you are doing, when other people rely on your being right and excellent in everything you do. It is a lot of pressure to want to perform well.”

## Opportunity to Pick Your Poison

The type of stress one will encounter in the practice of law varies, at least somewhat, depending on the type of practice. Since knowledge is power, knowing that the kind of practice one chooses will bring predictable types of stress is a helpful first step in managing stress. Lawyers who like structure and predictability should probably choose a different type of practice than lawyers who thrive in loose, quickly-evolving and unpredictable situations. The lawyers we surveyed described different kinds of stress they encounter. Lawyers in elected positions, for example, reported that dealing with the press was one of the most stressful parts of their job: “Everything you do or say is reported in the media.” Lawyers in management positions said that dealing with personnel issues was one of the most stressful parts of their job:

“The worst part of my job is having to dismiss someone, explain to a partner why the firm has to reduce their compensation or tell a new lawyer, a nice, nice person, that it is not working out.”

Civil defense lawyers almost uniformly identified “selling time for a living” as the most stressful part of their job. As one lawyer described:

“I’m required and most lawyers in most defense firms are required to keep up with each 1/10<sup>th</sup> of each hour. Every six minutes of every one hour of every day I work I have to report it and describe what I do for that 1/10<sup>th</sup> hour. It is the worst part of my job.”

Lawyers who deal directly with clients in difficult situations, such as plaintiff’s lawyers, criminal defense or domestic lawyers, identified the “human factor” as the most stressful part of their job:

“The worst part of what I do is seeing the very difficult personal situations our clients often have, whether it is in a criminal case or a domestic case or some other type of case. People often have very difficult situations and it is trying to deal with those situations, but that is part of what I do.”



## Stress-hardiness

Considerable research exists on “stress-hardy” individuals. These are individuals who are under the same stress as everyone else, but do not suffer the same physical and psychological manifestations of stress. Psychologists identify five characteristics of stress-hardy individuals: (1) a sense of control, (2) positive coping habits, (3) a sense of purpose, (4) “commitment to oneself” and (5) cognitive flexibility. Our IRB research has focused on how stress-hardy lawyers implement these characteristics in their day-to-day professional lives. What we found is briefly discussed below.

## A Sense of Control

Stress-hardy individuals maintain a sense of control. Control may be “situational,” where we maintain control over our situation, or “cognitive” control, where we maintain control over how we feel about our situation. Say, for example, I do not have control over the statutory deadline for the brief I have to file, but I do have control over how I schedule my work load so I can prepare the brief. If my work plan blows up with unexpected events, I still have control over how I feel about that blowup. If I am resilient and stress-hardy, I remain calm and figure out a new plan. If I am not stress-hardy, I panic and write a poor brief, or miss the deadline, or both. Situational control is rare in life; cognitive control is always possible. A number of lawyers differentiated between situational control and cognitive control and spoke of the importance of maintaining cognitive control. As one lawyer said:

“I never want to be the person at the airport who gets mad at the person behind the counter because the plane is not on time. I try to never get upset about anything over which I have no control.”

Several lawyers talked about how a law career can provide opportunities to maintain control over one’s professional life:

“To me the best part of the practice is that you are in control of your own destiny. Sure, there are market forces and client forces that are beyond your control, but you get to decide what you want to do. If there is a particular type of case you want to do, learn about it, go market yourself, find the clients where that work is generated. You can adapt to become good at things you enjoy.”

A number of lawyers described habits they use to maintain control, such as preparation:

“Preparation is a great tool to minimize stress. I have no control over the outcome in a case. The only control I have is over my preparation.”

Taking charge of their careers:

“You need to be in control of your career. It took me longer than it should have to begin that process. I was just a boat floating on the water. Then I took the oars and rowed where I wanted. I figured out what kind of law I liked, I learned about it and I actively pursued clients in that area.”

Figuring out how to generate clients:

“Assume you will always have to be bringing business in. Assume that everyone you run into could be a client. Always be marketing yourself. When I moved to town, I sent letters to 25 community groups offering to be a speaker on wills and estates. At one event, at the public library, 150 people showed up. Those talks jump-started my practice.”

## Positive Coping Strategies

Positive coping skills, not maladaptive coping skills, are essential to managing stress well. Lawyers we surveyed identified a number of tried-and-true coping strategies that help them manage stress, including exercise, social connectedness, faith/religion and maintaining perspective. Psychologists routinely note that the habit of gratitude is one of the best strategies for managing stress. A number of respondents in our survey listed habits of gratitude as the way they keep perspective:

“I think about how many great opportunities I have been given, that I don’t need to worry about having everything go perfectly. I just need to work hard, do my best and let things go as they will.”

“I remind myself how lucky I am to have a really great family.”

There were generational differences in the coping strategies reported in our survey. The older lawyers (average age 44), while listing exercise as one of their stress-coping mechanisms, also noted of the difficulty of finding time to exercise. As one lawyer said, “At one time I went to the gym. I hope to get back to that point soon.” Additionally, the social structure of lawyers’ support system changed with age. Whereas

only nine percent and 15 percent, respectively, of first-year and upper-level law students were married, 75 percent and 72 percent, respectively, of lawyers average age 34 and 44 were married. Whereas no law students were divorced, 10 percent of the lawyers were divorced. The older our survey respondents were, the greater reliance they reported on alcohol and drugs to manage stress. Only 1.3 percent of first-year law students and three percent of upper-level law students reported relying on alcohol or drugs as a stress-coping strategy, compared to 19 percent of lawyers.

## Sense of Purpose

A sense of purpose is one of the characteristics of stress-hardy individuals. This is not surprising. It is easier to tolerate burdens, hurdles and difficulties if we experience them when striving for something that is important and meaningful to us. Lawyers in our survey reported many ways they derive meaning and purpose from their practice: working with colleagues, helping the justice system work better, intellectual challenge. By far, the most commonly reported sense of purpose was “helping someone.” As one lawyer said:

“I have always found meaning in the fact that most people come to my office on their darkest day, and I am usually in a position to make things better for them.”

“Helping clients” was the most commonly-listed source of purpose in practice regardless of whether lawyers represented individuals or companies. For example:

“I am a compliance officer and in-house counsel. I help unravel problems. I help people avoid making the same or new mistakes.”

“I educate employees. I protect the company.”

A number of lawyers spoke of finding meaning in their pro bono work:

“Doing pro bono work always ends up being meaningful to me.”

“Of all the work I do, some of the most meaningful is my work with the Volunteer Lawyers Program.”

“I handled a pro bono matter for a friend who really needed an assist. He said it was the first time he had smiled in months.”

Sadly, some individuals in our survey reported having no meaning in their work:

“There aren’t many. If you deal with the general public, you deal with ignorant people on a daily basis. Most of my clients don’t care as much about their cases as I have at one point in time. There is nothing meaningful about coaching adults to do what they were supposed to do in the first place.”

“I don’t have one yet.”

“I can’t think of anything.”

Notably, in our survey each individual who reported finding no purpose in their practice of law also reported greater stress.

## Commitment to Oneself

Stress-hardy individuals demonstrate a “commitment to oneself” which includes two things: self-awareness of what causes us to feel stress, and the ability to “soothe” ourselves. Assessing what is causing us stress is essential in handling stress well. As one lawyer said:

“What is really helpful to me and I think to most people when they’re dealing with stress is to figure out what is causing the stress and then address the root cause. In law practice you see a lot of people trying to balance a lot of things. There are only 24 hours in a day so if you routinely bite off more than you can handle that will be stressful. Or, if you are in a practice where you don’t know what you’re doing, that will be stressful. Go find someone who can help you. If you can identify the cause of the stress, you can come up with a plan to work through it as opposed to just floundering.”

Self-awareness may not come naturally to some lawyers since we tend not to be introspective or to get training in self-awareness as part of our professional education. There is a silver lining, however: our training as lawyers. We are trained to deal in objective facts. This can be an asset if we treat ourselves as objectively and analytically as we would a client. As one lawyer said:

“A lawyer must be able to see when the client is acting emotionally and against her own best interests. A lawyer must be the rational thinking in the room—always asking what is in the client’s best interest. This technique can be used by the lawyer on herself when making important decisions.”

The second component of “commitment to oneself” is knowing how to soothe ourselves and doing so when we are under stress. While most of us, by the

time we are adults, know what do to take care of ourselves (get together with friends, exercise, get away from work for a while), doing so can be difficult. We are busy. It is hard to walk out of the office when there is work to be done, to turn off our cell phones in the evening, to resist checking email. No one can implement positive coping strategies when tied to work 24/7, though. Again, our training and “Type A” personalities can be assets if we use the same discipline to take care of ourselves as we do when handling the tough case, the difficult client, the long transaction. As one lawyer said:

“Practicing law is not a sprint. It’s not who gets there the fastest. I have law school classmates who burned themselves out by working 24/7, too hard, too fast at beginning. The practice of law is more long-term than that. It’s serving your clients, developing relationships, building your cases.”

## Cognitive Flexibility

Stress-hardy individuals are “cognitively flexible,” meaning they are able to “integrate and effectively appraise the threat of new situations.” The ability to pivot when encountering roadblocks may involve a “big” pivot: reassessing our long-term or short-term personal or professional goals, or a “little” pivot: finding a new route to a goal. While adaptability is helpful for anyone in any career path, adaptability is increasingly important today for lawyers because of the dramatic changes taking place in the legal profession. Everything is changing: how legal services are delivered, what constitutes “legal services,” what clients expect, how law firms are structured, how government offices are run. The constant refrain among the lawyers we interviewed was the pace of change: “The practice of law has changed more in the past five years than in the past 30.” As the managing partner of one law firm said:

“The profession is going to continue to change with more lawyers going in-house, more legal services being out-sourced, technology continues to become more sophisticated. The profession is changing very fast and it is going to continue to change faster and faster, which is why I tell my partners we have to stay abreast all of the time of trends because if we don’t stay ahead, then we’re actually falling behind and we will fail ourselves. It is the speed of the change coming that is staggering.”

Lawyers in our surveys offered advice on how to maintain adaptability and flexibility in the evolving legal marketplace. Consistent themes we heard were: “Learn to remake yourself to fill the needs in the market.”

“Learn what you can offer to the market.”

“Your day, your year, your life as a lawyer can change with one phone call so be adaptive and flexible enough to recognize that and jump on those opportunities when they present themselves.”

“Keep yourself financially nimble so you can make career changes.”

## So, how do we become resilient?

Control what you can and turn loose of what you can’t. Exercise and spend time with family and friends. If you aren’t enjoying what you do, find something else to do. Practice self-awareness and know how to “soothe” yourself. Be prepared for change. As one lawyer said:

“Absolutely nothing may turn out like you want or expect it to and that is okay.” ▲

### Endnotes

1. <http://www.law.ua.edu/resources/BBLcourse>.
2. The data we have gathered from the 105 interviews in the BBL Video Library and from IRB # 16-OR-280 are discussed more fully in *Hamilton, Pepper, Pierson, Root, Stress Hardiness in Law Students and Lawyers*, to be published 2017.

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### Pamela Bucy Pierson



Pamela Bucy Pierson is the Bainbridge Mims Professor of Law at the University of Alabama School of Law.



## DISCIPLINARY NOTICES

### ▲ Transfers to Disability Inactive Status

### ▲ Suspensions

## Transfers to Disability Inactive Status

- Florence attorney **Barry Neal Brannon** was transferred to disability inactive status pursuant to Rule 27(c), *Alabama Rules of Disciplinary Procedure*, effective November 22, 2016. Florence attorney Elizabeth Messer was appointed trustee for Brannon's practice. [Rule 27(c), Pet. No. 16-1472].
- Anniston attorney **Richard Joel Laird, Jr.** was transferred to disability inactive status pursuant to Rule 27(c), *Alabama Rules of Disciplinary Procedure*, effective October 25, 2016, by order of the Supreme Court of Alabama. The supreme court entered its order based upon the October 25, 2016 order of Panel I of the Disciplinary Board of the Alabama State Bar in response to Laird's petition submitted to the Office of General Counsel requesting he be transferred to disability inactive status. [Rule 27(c), Pet. No. 2016-1416]
- Pell City attorney **James Calvin McInturff** was transferred to disability inactive status pursuant to Rule 27(c), *Alabama Rules of Disciplinary Procedure*, effective December 21, 2016. [Rule 27(c), Pet. No. 16-1544].

## Suspensions

- Former Birmingham attorney **William Alexander Ellis, III** was summarily suspended from the practice of law in Alabama pursuant to Rules 8(c) and 20(a), *Ala. R. Disc. P.*, by order of the Disciplinary Commission of the Alabama State Bar, effective December 21, 2016. The Disciplinary Commission's order was based on a petition filed by the Office of General Counsel evidencing Ellis's refusal to respond to request for information concerning two disciplinary matters. After receiving a copy of the suspension order, Ellis submitted his responses on January 20, 2017 and filed a

petition to dissolve the summary suspension. Thereafter, on January 25, 2017, the Disciplinary Commission entered an order dissolving the summary suspension. [Rule 20(a), Pet. No. 2016-889]

- Elba attorney **Mart Wayne Marler** was suspended from the practice of law in Alabama for 42 months by order of the Supreme Court of Alabama, effective January 1, 2017. The supreme court entered its order based upon the Disciplinary Commission's acceptance of Marler's conditional guilty plea, wherein Marler pled guilty to violating Rules 1.15(a) and 8.4(g), *Ala. R. Prof. C.* Marler was appointed as conservator for two minor children wherein he subsequently misappropriated funds belonging to them. [ASB No. 2016-795]

- Montgomery attorney **Alfred Dudlow Norris, III** was suspended from the practice of law in Alabama for 60 days by order of the Supreme Court of Alabama, effective November 17, 2016. The supreme court entered its order based upon the Disciplinary Commission's acceptance of Norris's conditional guilty plea, wherein Norris pled guilty to violating Rule 5.5(a), *Ala. R. Prof. C.* [ASB No. 2016-402]
- Pine Apple attorney **Edward Feagin Tracy** was suspended from the practice of law in Alabama for one year by order of the Supreme Court of Alabama, effective November 3, 2016. The supreme court entered its order based upon the Disciplinary Commission's acceptance of Tracy's conditional guilty plea, wherein Tracy pled guilty to violating Rules 1.4(a) and (b), 3.1(a), 5.5(a)(1), 7.1, 7.5(a), 8.1(a) and 8.4(g), *Ala. R. Prof. C.* [ASB Nos. 2015-1557 and 2015-1675] ▲



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**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.



**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.

## RECENT CIVIL DECISIONS

# From the Alabama Supreme Court

### Rule 59.1

#### **Ex parte Pittman, No. 1150947 (Ala. Dec. 2, 2016)**

Because of the 90-day limitation under ARCP 59.1, trial court had no jurisdiction to grant motion to vacate summary judgment under Rule 59(e) where motion was granted 110 days after motion was filed.

### Service of Process

#### **Ex parte LERETA, LLC, No. 1151054 (Ala. Dec. 2, 2016)**

Service was not proper on LLC under ARCP 4(c)(6) when sent by certified mail, but not in care of any particular person, where signing party was not party authorized by rule to receive service of process, and did not check the "agent" box on the certified mail receipt.

### Forum Non Conveniens

#### **Ex parte Benton, No. 1151181 (Ala. Dec. 2, 2016)**

Shelby County plaintiff sued Bibb County defendant in Bibb County Circuit Court for injuries arising from MVA occurring in Shelby County. After denial of transfer motion, the supreme court granted mandamus relief: interests of justice mandated transfer because Bibb County had a weak connection to the controversy, despite the plaintiff's choice of a permissible forum.

### Estates; Attorneys' Fees

#### **Ex parte Hill, No. 1150162 (Ala. Dec. 9, 2016)**

Circuit court's administrative-expense status determination on attorneys' fees was not subject to challenge under the invited error doctrine, given appellant's request in the circuit court to make the challenged determination; however, ordering payment of the fees in cash and in lump sum was against the plain language of the fee agreement, which did not specify payment as lump sum in cash.

## Insurance; Beneficiary Designation

### ***Aderholt v. McDonald*, No. 1150878 (Ala. Dec. 16, 2016)**

Beneficiary designation of an ex-spouse remains effective after divorce; only exceptions are (1) where enforcement of a designation would violate terms of court order requiring that ex-spouse be designated, and (2) where decedent attempted to change designation, but insurer failed to process it. Neither party cited or relied upon *Ala. Code* § 30-4-17, a 2015 act which provides for revocation of certain transferable interests in property in the event of divorce or annulment.

## Insurance; Declaratory Judgment

### ***Privilege Underwriters Reciprocal Exchange v. Grayson*, No. 1150927 (Ala. Dec. 16, 2016)**

Despite lack of determination as to triggering of UM coverage on core liability question, UM carrier and potential insured had justiciable controversy concerning UM coverage based on putative insured's residency/ household status, which was essential to the issue of coverage.

## Wrongful Death; Pre-viable Fetus

### ***Stinnett v. Kennedy*, No. 1150889 (Ala. Dec. 30, 2016)**

*Mack v. Carmack*, 79 So. 3d 597 (Ala. 2011), recognized that the Wrongful Death Act permits an action for the death of a pre-viable fetus, and an alleged mistake or error by licensed physician is potentially actionable.

## Relation Back; Fictitious Parties

### ***Ex parte VEL, LLC*, No. 1150542 (Ala. Dec. 30, 2016)**

(1) Amendment substituting MDCl for fictitious defendant after expiration of statute did not relate back; plaintiff was aware of MDCl's involvement well before lawsuit was filed; (2) two-month delay from filing to issuing discovery to ascertain identities of individual pharmacists did not amount to a failure to exercise due diligence so as to destroy relation-back effect of amendment substituting individual pharmacists; (3) one-month delay from obtaining answers to discovery to time of amendment adding individual defendants did not constitute a failure of due diligence; and (4) plaintiff was not entitled to equitable tolling as to statute on claims against MDCl, because MDCl had been identified as the responsible party.

## Default Judgments

### ***Hilyer v. Fortier*, No. 1140991 (Ala. Jan. 6, 2017)**

In MVA case, defendant met all three *Kirtland* factors for setting aside default judgment: (1) a meritorious defense (established through multiple affidavits); (2) lack of undue prejudice,

given no loss of evidence from the time default was imposed to the time for set-aside; and (3) the default was not the result of "culpable conduct" where defendant was relying on his third-party liability carrier to defend him, and where adjustor negligently failed to assign claim to counsel.

## Arbitration

### ***FMR Corp. v. Howard*, No. 1151149 (Ala. Jan. 13, 2017)**

(1) Any issue of ripeness of the claims on their merits was for arbitrator; and (2) Howard failed to point to litigation conduct by Fidelity, rather than conduct outside of litigation concerning the dispute generally, to support claim of waiver of right to compel arbitration.

## Automobile Insurance

### ***Grimes v. Alfa Mutual Insurance Company*, No. 1150041**

**(Ala. Jan. 27, 2017)**

Despite *Ala. Code* § 32-7-22, auto policy need not provide coverage for individuals operating the vehicle with either the express **or implied** permission of the insured, where policy specifically included coverage for those with express consent.

## Appellate Jurisdiction

### ***Alabama Dept. of Conservation & Nat. Resources v. Kellar*, No. 1150654 (Ala. Jan. 27, 2017)**

Suit to declare a statute unconstitutional was void because it was brought against a state agency; Section 14 immunity applied.

## Legal Malpractice

### ***Yarbrough v. Eversole*, No. 1150400 (Ala. Jan. 27, 2017)**

Typical "but for" causation required in legal malpractice not required where the allegation was that plaintiff's Rule 32 petition should have never been filed in the first place because it had no merit, thus causing plaintiff to incur unnecessary legal fees.

## Workers' Comp Exclusivity; Special Employer Doctrine

### ***Ex parte Tenax Corporation*, No. 1151122 (Ala. Jan. 27, 2017)**

Dees, the employee of temp agency Onin, brought tort action against Tenax (where he was assigned) based on on-the-job injury; Tenax moved to dismiss based on workers' comp exclusivity, contending that Tenax was Dees's "special employer" under comp law. The trial court denied dismissal and Tenax sought mandamus relief. The supreme court granted the writ, reasoning that "Dees intended to enter into a contract of hire with Tenax. After asking Tenax's plant manager

(Continued from page 155)

for a job, Dees applied to Onin for the job at Tenax at the direction of Tenax's plant manager for the specific purpose of placement with Tenax; thus, Dees necessarily agreed to a contract of hire with Tenax. Also, Dees clearly submitted to Tenax's control and supervision, and he testified that it was his understanding that he was employed by Tenax."

### Arbitration

**University Toyota v. Hardeman, No. 1151204 (Ala. Jan. 27, 2017)**

Arbitration clause in dealer-customer contract provided for arbitration before BBB; trial court's ordering arbitration before AAA failed to compel arbitration in the manner set out in the parties' agreement.

## From the Court of Civil Appeals

### Amendments to Pleadings

**Ex parte Cato, No. 2150950 (Ala. Civ. App. Dec. 2, 2016)**

Trial court abused its discretion in denying wife leave to amend answer to assert counterclaim for equitable property division in divorce action. Husband failed to demonstrate any prejudice resulting from granting the amendment; since his divorce complaint sought property division, no additional discovery would be needed in connection with wife's potential counterclaim.

### Foreclosure and Ejectment

**Pittman v. Regions Bank, No. 2150455 (Ala. Civ. App. Dec. 2, 2016)**

"Not all irregularities in the foreclosure process, but only those irregularities that would render the foreclosure sale void, may be raised as affirmative defenses to an ejectment action." The reason for this rule is that the ejectment plaintiff must establish the validity of its title, and avoid foreclosure would impair the title claim of the foreclosing entity.

### Administrative Law

**ABC Coke, a division of Drummond Company, Inc. v. GASP, Inc., No. 2150489 (Ala. Civ. App. Dec. 16, 2016)**

Administrative agency rules did not incorporate traditional judicial standing principles, and thus the rules themselves determined whether party has right to take the appeal.

### Venue; Workers' Compensation

**Ex parte AGC Workers' Compensation Self-Insurers Fund, No. 2160120 (Ala. Civ. App. Jan. 6, 2017)**

Under *Ala. Code* § 25-5-81(a), venue in comp actions is determined by reference to venue of a hypothetical tort action. Under *Ala. Code* § 6-3-7, venue would be proper against employer in Cullman County (where its principal office was located). Cullman County Circuit Court thus exceeded its discretion in transferring case.

### Fraudulent Transfers; Divorce Property Settlements

**RES-GA Lake Shadow, LLC v. Kennedy, No. 2160110 (Ala. Civ. App. Jan. 6, 2017)**

Conveyance of property under a divorce property settlement is not categorically shielded from constituting a "transfer" under the Alabama Fraudulent Transfer Act.

### Students First Act

**J.F. Ingram State Technical College v. Carter, No. 2150839 (Ala. Civ. App. Jan. 6, 2017)**

Hearing officer incorrectly determined that the *Alabama Rules of Evidence* prohibited consideration of alleged hearsay, because the *Rules* are not applicable in administrative actions.

### UIM Coverage; Electronic Signatures; Evidence

**Johnson v. First Acceptance Insurance Company, Inc., No. 2150629 (Ala. Civ. App. Jan. 6, 2017)**

UIM (like UM) coverage must be declined in writing and signed by the insured. In this case, Johnson's testimony that he did not electronically sign that part of the insurance application that waived UIM coverage created a factual dispute on whether Johnson signed that part of the application that



waived UIM coverage. The court declined to address, for the insured's lack of a properly-presented argument on an issue of first impression, whether the writing requirement (under the court's interpretation of *Ala. Code* § 32-7-23(a)) could as a matter of law not be satisfied with an electronic signature under Alabama's Uniform Electronic Transactions Act ("the UETA"), *Ala. Code* § 8-1A-1.

## Workers' Compensation

***Hand Construction LLC v. Stringer*, No. 2150730 (Ala. Civ. App. Jan. 13, 2017)**

Employee not entitled to recover benefits pursuant to *Ala. Code* § 25-5-35(d)(2), because the evidence was insufficient that at the time of the accident, his employment activities were not principally localized in any state.

## Default Judgments

***Wilson v. Avant*, No. 2150847 (Ala. Civ. App. Jan. 13, 2017)**

Filing of answer before entry of default judgment cured default and thus mandated reversal of trial court's entry of default judgment.

## Abatement; Workers' Compensation

***Ex parte Thompson Tractor Company, Inc.*, No. 2160086 (Ala. Civ. App. Jan. 13, 2017)**

Action for workers' compensation benefits abated and was extinguished upon death of employee.

## Administrative Law

***Alabama Medicaid Agency v. Marshall*, No. 2150903 (Ala. Civ. App. Jan. 20, 2017)**

Under *Ala. Code* § 41-22-20(l), "an explanatory writing must become a part of the record whenever any appropriate relief is granted, not just a reversal or modification of the agency decision."

## Redemption Rights

***Asset Preservation, LLC v. Oak Road West, LLC*, No. 2150539 (Ala. Civ. App. Jan. 20, 2017)**

Under *Ala. Code* § 6-5-248(a)(5), notwithstanding that right of redemption is a personal privilege, the right can be assigned.



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(Continued from page 157)

### Tax Sale Redemptions

**Ward v. All South Rental Homes, Inc., No. 2150921 (Ala. Civ. App. Jan. 27, 2017)**

Redemptioner who redeemed within three years of tax sale purchaser's receipt of tax certificate was entitled to redeem.

### Workers' Compensation; Venue

**Ex parte Hibbett Sporting Goods, Inc., No. 2160069 (Ala. Civ. App. Jan. 27, 2017)**

Cantrell sued Hibbett in Lamar County on a workers' comp claim, but claimed he was injured while working in Indiana. The trial court denied transfer to Jefferson County, which Hibbett sought under *Ala. Code* § 6-3-7(a)(2) (defendant's principal office in the state), concluding that Hibbett was doing business in Lamar County (the county of plaintiff's residence, making venue proper under 6-3-7(a)(3)) through the actions of an affiliate corporation, Hibbett Team Sales, Inc. The CCA granted mandamus relief, holding that "[f]or the purposes of venue, an agent must be the 'means' by which the principal is able to do business in a particular county." Team Sales was not the method by which Sporting Goods was doing business in Lamar County, and thus venue was improper.

## From the United States Supreme Court

### Insider Trading; Tippee Liability for "Gift" Information

**Salman v. U.S., No. 15-628 (U.S. Dec. 6, 2016)**

Tippee can be convicted of insider trading when the tipper confers purely a gift on the tippee by conveying the information, under circumstances where the tippee and tipper are in a relationship which would suggest a familial or platonic relationship.

### False Claims Act; Breach of Seal Requirement

**State Farm Fire & Cas. Co. v. Rigsby, No. 15-513 (U.S. Dec. 6, 2016)**

Violation of seal in False Claims Act complaints does not mandate dismissal of complaint.

### Patent

**Samsung Electronics Co. Ltd. v. Apple, Inc., No. 15-777 (U.S. Dec. 6, 2016)**

Section 289 of the Patent Act makes it unlawful to manufacture or sell an "article of manufacture" to which a patented design or a colorable imitation thereof has been applied and makes an infringer liable to the patent holder "to the extent of his total profit." 35 U.S.C. §289. Held: In the case of a multi-component product, the relevant "article of manufacture" for arriving at a §289 damages award need not be the end product sold to the consumer, but may be only a component of that product.

### Qualified Immunity

**White v. Pauly, No. 16-67 (U.S. Jan. 9, 2017)**

In excessive force case, officer who, having arrived late at an ongoing police action and having witnessed shots being fired by one of several individuals in a house surrounded by other officers, shot and killed an armed occupant of the house without first giving a warning, was entitled to qualified immunity for the actions. Ninth Circuit "failed to identify a case where an officer acting under similar circumstances as Officer White was held to have violated the Fourth Amendment."

### Federal Jurisdiction

**Lightfoot v. Cendant Mortgage Corp., No. 14-1055 (U.S. Jan. 18, 2017)**

FNMA's statutory power "to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal," 12 U. S. C. §1723a(a), does not confer an independent basis of federal jurisdiction (and thus allow FNMA to remove a case asserting solely state-law claims).

# From the Eleventh Circuit Court of Appeals

## Qualified Immunity

### ***Bailey v. Wheeler*, No. 15-11627 (11th Cir. Nov. 28, 2016)**

District court properly denied sheriff's motion to dismiss on qualified immunity, in action by deputy arising from sheriff's dissemination of a BOLO warning to all officers due to deputy's being a "loose cannon," where deputy had filed written report to his chief regarding racial profiling by deputies in the department. The First Amendment violation was so apparent that on-point case law was not needed to notify the defendant that his conduct would infringe plaintiff's free speech rights.

## Equal Access

### ***Carver Middle School Gay-Straight Alliance v. School Bd. of Lake County, FL*, No. 15-14183 (11th Cir. Dec. 6, 2016)**

The Equal Access Act provides that if a public school "provides secondary education as determined by State law," the school must give extracurricular clubs equal access to school resources. 20 U.S.C. §§ 4071-72. In this case, the alliance sought access to school facilities at Carver Middle School; when their application was denied, they sued. The district court held that their dispute was moot. The Eleventh Circuit reversed, holding: (1) the board made a final decision when it rejected the application of the alliance to form a club, and the district court can fashion remedial relief; and (2) the Act applies to Carver Middle School because it provides courses for high school credit and, under Florida law, these courses constitute "secondary education."

## Summary Judgment Procedure

### ***Furcron v. Mail Centers Plus, Inc.*, No. 15-14595 (11th Cir. Dec. 16, 2016)**

District court was within its discretion in striking portions of declaration under "sham affidavit" principles, though the alleged inconsistencies were such that the district court stretched the outer bounds of the sham affidavit rule.

## Securities

### ***In Re: Galectin Therapeutics, Inc. Secs. Lit.*, No. 16-10324 (11th Cir. Dec. 15, 2016)**

Securities issuer's omission of alleged material fact (that Galectin paid promotional firms to tout Galectin stock) was not actionable and Rule 12 motion was properly granted;

"the omission of facts is actionable only to the extent that the absence of those facts would, under the circumstances, render another reported statement misleading to the "reasonable investor, in the exercise of due care."

## Forum Selection

### ***Feggestad v. Kerzner Int'l Bahamas Ltd.*, No. 15-11773 (11th Cir. Dec. 13, 2016)**

District court properly dismissed complaint filed in violation of forum selection clause regarding Feggestads' stay in the Bahamas at the Atlantis. Feggestads were not prevented from meaningfully reviewing and understanding agreement they signed at check-in under the "reasonable communicativeness" test applicable to such clauses.

## Employment

### ***EEOC v. Catastrophe Management Solutions, Inc.*, No. 14-13482 (11th Cir. Dec. 13, 2016)**

EEOC sued on behalf of Chastity Jones, a black job applicant whose offer of employment was rescinded by Catastrophe Management Solutions pursuant to its race-neutral grooming policy when she refused to cut off her dreadlocks. The district court dismissed under Rule 12 and denied leave to amend. The Eleventh Circuit affirmed, holding (1) proposed amendment improperly conflated distinct Title VII theories of disparate treatment (the sole theory on which it is proceeding) and disparate impact (the theory it has expressly disclaimed), and (2) Title VII prohibits discrimination based on immutable traits, and dreadlocks, though culturally associated with race, are not an immutable characteristic of black persons.

## Bankruptcy; Appellate Jurisdiction

### ***Wortley v. Bakst*, No. 15-11923 (11th Cir. Jan. 5, 2017)**

State-court action was removed to federal bankruptcy court on "related to" jurisdiction grounds; the bankruptcy court ultimately entered a dismissal order on the merits and certified the order for direct appeal under 28 U.S.C. § 158(d)(2)(A). The Eleventh Circuit dismissed the appeal for lack of appellate jurisdiction, holding that because the bankruptcy court had only "related to" jurisdiction, it had no power to enter a final order on the merits, which in turn destroyed appellate jurisdiction under section 158(d)(2)(A) because that section allows appeals only from a "judgment, order, or decree" of the bankruptcy court.

## Statutes of Limitation; Equitable Tolling

### ***Foudy v. Indian River County Sheriff's Office*, No. 15-14646 (11th Cir. Jan. 9, 2017)**

(1) Section 1983 claim premised upon a violation of the Driv-

(Continued from page 159)

ers Privacy Protection Act (DPPA) (which, if prosecuted under the DPPA itself, is subject to a four-year occurrence and non-discovery based statute of limitations under the general federal limitations period of 28 U.S.C. § 1658) is subject to an occurrence-based accrual rule rather than the usual section 1983 discovery-based model; (2) illegal and unauthorized database access was not a self-concealing wrong entitling plaintiffs to equitable tolling of statutes of limitation.

### Federal Officer Removal; Electric Cooperatives

**Caver v. Central Alabama Elec. Coop., No. 15-15207 (11th Cir. Jan. 12, 2017)**

Given both the extensive regulatory control over the field of rural electrification for those cooperatives which obtain loans from the Rural Utilities Service (a part of the U.S. Department of Agriculture) and Congress's desire to promote rural electrification through RUS activity, electric cooperative which obtained such a loan was a "federal officer" for purposes of removal jurisdiction (under 28 U.S.C. § 1442) once it asserted a "colorable federal defense" to state-law claims. On the merits, the district court properly dismissed putative class-action against cooperative brought under *Ala. Code* § 37-6-20 for failure to distribute "excess revenues," because the statute did not prohibit distributions via the use of capital credits booked as long-term liabilities owed to members, which was the method of distributions purportedly authorized by by-laws of cooperative.

### Arbitration; Non-Signatory Enforcement

**Kroma Makeup EU, LLC v. Kardashian, No. 15-15060 (11th Cir. Jan. 18, 2017)**

Under Florida law (the applicable law for contract formation), non-signatory cannot invoke the doctrine to compel arbitration of claims that are not within the scope of the arbitration clause. Equitable estoppel does not allow a non-signatory to an agreement to alter and expand an arbitration clause that would not otherwise cover the claims asserted. (Ed.—This is consistent with Alabama's law concerning non-signatory enforcement under equitable estoppel principles).

### Qualified Immunity

**May v. City of Nahunta, No. 15-11749 (11th Cir. Nov. 15, 2016, on rehearing Jan. 19, 2017)**

Police officer was entitled to qualified immunity for initial decision to seize plaintiff for purpose of detaining her for mental health evaluation at hospital, given EMT's reports of her self-injury and behavior. However, officer was not entitled to qualified immunity for manner of seizure, where plaintiff offered substantial evidence that officer detained her in a closet for 20 minutes and forced her to disrobe in front of him—the Court noted that officer's alleged use of forcible language coupled with the threat of deadly force, the prolonged duration of the seizure and the inappropriateness inherent in forcing a disrobing, took the case well beyond the "hazy border" often separating legal and illegal conduct.

### Attorneys' Fees (Fee Shifting)

**Yellow Pages Photos, Inc. v. Ziplocal, LP, No. 16-11868 (11th Cir. Jan. 24, 2017)**

Although the district court has discretion to adjust lodestar fee in light of nature and extent of the recovery in the case (for example, by considering potentially needless work or work associated with claims which did not yield any recovery), it was an abuse of discretion to apply wooden percentage-based model for calculating a reduction (reducing the requested fee by percentage of requested recovery which was actually obtained).

### Qualified Immunity

**Dukes v. Deaton, No. 15-14373 (11th Cir. Jan. 26, 2017)**

Issue: whether police officer (Deaton) who threw diversionary device, called a "flashbang," into a dark room occupied by two sleeping individuals, without first visually inspecting the room, is entitled to qualified immunity on complaint of excessive force. Held: Deaton used excessive force, but Deaton is entitled to qualified immunity because the violation was not clearly established.

## RECENT CRIMINAL DECISIONS

# From the Alabama Supreme Court

### Reopening of Evidence

***Ex parte State (v. Harris)*, No. 1151182 (Ala. Dec. 16, 2016)**

Where defense counsel requested the jury to observe defendant's appearance during presentation of evidence, trial court did not err in granting jury's request to review defendant's appearance during its deliberations.

### Evidence

***Woods v. State*, No. 1151152 (Ala. Dec. 23, 2016)**

Following defendant's guilty plea in district court, the state in de novo appeal introduced evidence of the plea. Held: guilty plea is admissible in circuit court as a voluntary admission, though district court's judgment remains inadmissible.

# From the Court of Criminal Appeals

### Variation between Indictment and Proof

***Cubitt v. State*, CR-14-1500 (Ala. Crim. App. Dec. 16, 2016)**

The court reversed the defendant's theft conviction due to a material variance between his indictment and the state's proof.

### Jurisdiction

***Woods v. State*, CR-14-1147 (Ala. Crim. App. Dec. 16, 2016)**

Regardless whether a misdemeanor DUI charge arises from an indictment, a circuit court may exercise jurisdiction over the charge only if it is either a lesser-included offense of a charged felony or if it arose from the same incident as the charged felony.

### Capital Punishment

***Kirksey v. State*, CR-09-1091 (Ala. Crim. App. Dec. 16, 2016); *Russell v. State*, CR-10-1910 (Ala. Crim. App. Dec. 16, 2016); *Wimbley v. State*, CR-11-0076 (Ala. Crim. App. Dec. 16, 2016)**

The court upheld Alabama's capital punishment procedure in light of *Hurst v. Florida*, 136 S. Ct. 616 (2016) (striking down Florida's procedure that permitted the trial judge alone to determine whether an aggravating factor existed to render the offense eligible for death). In Alabama, the jury, not the judge, determines the existence of an aggravating factor to establish the range of punishment to include death.

***Phillips v. State*, CR-12-0197 (Ala. Crim. App. Oct. 21, 2016)**

Among other holdings, the court affirmed the defendant's death sentence under *Hurst* because the jury, not the judge, found the existence of an aggravating factor.

### Habitual Offender Reconsideration

***Spencer v. State*, No. CR-14-1004 (Ala. Crim. App. Dec. 16, 2016)**

Because the repeal of *Ala. Code* § 13A-5-9.1, the habitual felony offender sentence reconsideration statute, created a deadline for the submission of motions for sentence reconsideration, motion filed by incarcerated defendant was entitled to treatment under the "mailbox rule."

### Rule 32; Equitable Tolling

***State v. Hurst*, CR-14-0726 (Ala. Crim. App. Dec. 16, 2016)**

Defendant's Rule 32 petition was untimely and not subject to equitable tolling; though the defendant claimed that he had hired an attorney to file the petition, he presented no evidence regarding whether he hired the attorney before the expiration of Rule 32.2's limitation period.

### Ineffective Assistance

***Saunders v. State*, CR-13-1064 (Ala. Crim. App. Dec. 16, 2016)**

There was no ineffectiveness in defense counsel's concession that defendant had killed victim; defendant gave detailed confession and counsel did not concede that he possessed an intent to kill.

### Mandamus

***State v. L.D.B.*, CR-15-1128 (Ala. Crim. App. Nov. 10, 2016)**

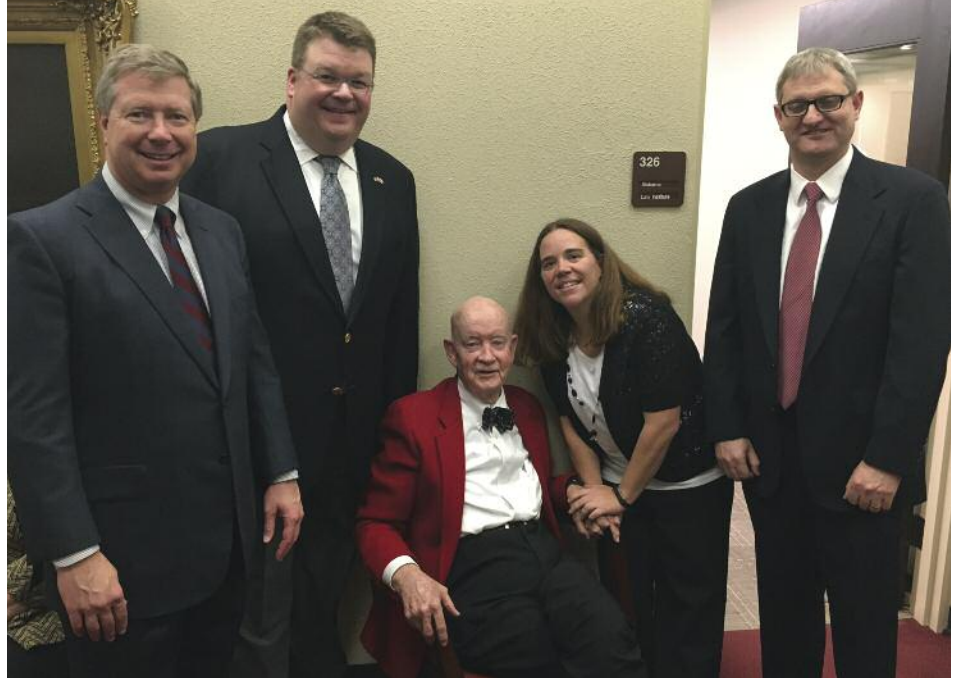
The presumptively reasonable time within which the state may file a petition for a writ of mandamus is seven days from date of the reviewable order. A petition filed outside of the presumptively reasonable time must include a statement asserting good cause for review notwithstanding its untimeliness. The filing of a motion to reconsider the order does not toll the time for seeking mandamus relief. ▲



## LEGISLATIVE WRAP-UP

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

For more information about the institute, visit [www.ali.state.al.us](http://www.ali.state.al.us).



Pictured above with Dean Tom Jones (center) are, from left to right, Clay Hornsby, Othni Lathram, Jill Colburn and Mike Hill.

## Honoring Dean Thomas L. Jones

On January 18, we paused our preparation for the upcoming legislative session to celebrate the life of **Thomas L. Jones** and his contribution to the state of Alabama. The celebration included the dedication of the newly-renovated Alabama Law Institute office suite at the University of Alabama School of Law and the naming of the Thomas L. Jones Reception Area. The partnership between the law school and the institute has been strong since the institute's inception and so the honoring of Jones in this manner was particularly significant.

Tom Jones has been a fixture in the Alabama legal community since 1962, when he came to the Alabama School of Law as a young professor. Since that time he has served in nearly every capacity at the law school from professor to dean. Dean Mark Brandon presided over the ceremony. "As a teacher and as an administrator, he has had an enormous impact on more than three generations of students," he said. "I know. I was in his classroom, and I was his student."

Tom Jones also served at the Alabama Law Institute as its third director from 1972 through 1974 and it was under his leadership that Bob McCurley was hired as ALI director in a position he held for nearly four decades. Jones also actively served the Law Institute over the years since, as a member of its council and on numerous drafting committees.

Like Dean Brandon, I also had the privilege of having Professor Jones as teacher. In that capacity and in the years since I have been able to witness firsthand that he exemplifies the civility that I would like to think we are called upon to model as a profession. He demonstrates to all watching that a lawyer is prepared, knowledgeable, thorough, persuasive and firm—but all while being gentle, calm and compassionate. He is truly a gentleman of the first order.

In addition to his work at the law school and with the institute, Jones has been a lifelong commissioner with the National Conference of Commissioners on Uniform State Laws and is an elected member of the American Law Institute.

This small pause in our daily mission was particularly welcome as we celebrate the 50<sup>th</sup> anniversary of the authorization of the Alabama Law Institute and our 48<sup>th</sup> year of operation. ▲

## A Lawyer's Lawyer



Tony McLain was a lawyer's lawyer. I have always thought that was one of the highest compliments that can be paid to a person in our profession. It indicates a level of wisdom and knowledge that your peers want shared with them. Obviously, as general counsel for the state bar, he was in a position where lawyers had to seek his advice, but what was so remarkable is that we wanted to and would have no matter what title or position he held. His counsel was wise, practical and thoughtful. He understood that the view from the front lines was different and he had a perspective that let you know he was usually there to support as much as regulate. I will greatly miss the ability to call him, day or night, and know that he would share his thoughts any issue that was troubling me, but even more I will miss the smile, the laugh and the encouragement with which he was always so generous. ▲

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## ABOUT MEMBERS, AMONG FIRMS

Please email announcements to  
[margaret.murphy@alabar.org](mailto:margaret.murphy@alabar.org).

### Among Members

**Heather Travar** announces the opening of her office at 8601 Six Forks Rd., Ste. 400, Raleigh, NC. Phone (919) 882-2144.

**Jared D. Vaughn** announces the opening of his office at 255 S. 8th St., Gadsden 35901. Phone (256) 547-4444.

### Among Firms

**Adams & Reese** announces that **Andrew Freeman** is partner in charge of the Mobile office.

The **Attorney General's Office** announces that **R. Wesley Shaw** joined as an assistant attorney general in the Criminal Trials Division; **Christopher P. Moore**, **Kenneth E. Gibbs** and **Brittney Bucak** joined as assistant attorneys general in the criminal trials division; and **Azzie Taylor** joined as the chief of the criminal trials division. **J. Clayton Crenshaw** is now the chief of the appellate division, **Thomas R. Govan, Jr.** is the chief of the capital litigation section and **James R. Houts** is the chief of the criminal appeals section.

**Balch & Bingham LLP** announces that **Marcus Chatterton**, **Adam Israel** and **Lee Johnsey** are partners, and **Tara Bush**, **Mateo Forero**, **Christina Rossi** and **Nick Theodore** are associates, all in the Birmingham office.

The **Law Office of George M. Barnett** in Guntersville announces that former **Circuit Judge Timothy Jolley** joined the firm and the firm will be known as **Barnett & Jolley**.

**Beasley, Allen, Crow, Methvin, Portis & Miles PC** in Montgomery announces that **Andrew E. Brashier** is a principal.

**Bradley Arant Boult Cummings LLP** announces that **Harold D. Mooty, III** is a partner in the Huntsville office and that **Kane Burnette**, **Maggie Johnson Cornelius**, **Nicholas A. Danella**, **T. Parker Griffin, Jr.**, **C. Meade Hartfield**, **Stephen Hinton**, **B. Radcliff Menge**, **James W. Porter, III** and **Charles A. Roberts, Jr.** are partners in the Birmingham office.

**Greg Brockwell** and **Jay Smith** announce the opening of **Brockwell Smith LLC** at 420 20<sup>th</sup> St. N, Ste. 2000, Birmingham 35203. Phone (205) 800-8500.

**Burr & Forman LLP** announces that **Jennifer Ziemann** of Atlanta; **Ryan Hebson**, **Ingu Hwang**, **Anthony Romano**, **Trent Scofield**, **Matthew Scully** and **Megan Stephens** of Birmingham; and **Robert Matthews** of Mobile are partners.

**Campbell Guin LLC** of Tuscaloosa announces that **Jonathan D. Guin** is a member.

**Carr Allison** announces that **Bain Hanning** joined the Birmingham office as an associate. The firm also announces that **Katy Beth Carr** of Florence, **Sarah J.**



**Cross** and **E. Glenn Smith, Jr.** of Mobile and **Angel A. Darmer** and **Sara Beth DeLisle** of Birmingham are shareholders, and **Carrie H. Bates** of Birmingham and **Pamela Springrose Hallford** of Dothan are counsel.

**Christian & Small LLP** of Birmingham announces that **Jonathan Hooks** and **Jordan Wood** are partners with the firm.

**Copeland, Franco, Screws & Gill** announces that **Ashley N. Penhale** is a partner and **Frank M. Wilson, Jr.** joined as a partner.

**The Law Offices of David M. Cowan LLC** announces that **Wyatt P. Montgomery** joined as an associate.

**Crew Gentle Law PC** announces that **Christina Vice Vineyard** joined as an associate.

**C. Taylor Crockett PC** announces that **Lauren Fay Weber** joined as an associate.

**Cunningham Bounds LLC** announces that **Joseph D. Steadman** joined the firm.

**Dominick Feld Hyde PC** announces that **J. Daniel Leverton** and **Madison A. Morrow** joined as associates and **Lauren G. Baker** joined as of counsel.

**Steven P. Floyd, Jeffrey G. Hunter, Darren W. Kies** and **Michael L. White** announce the opening of **Floyd, Hunter, Kies & White PC** at 4761 Main St., Millbrook 36054.

**Harris, Caddell & Shanks PC** announces that **Zachary H. Starnes** is a shareholder.

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**Hughes & Scalise PC** announces that **Bradley S. Foster** joined as an associate in the Birmingham office.

**Huie** announces that **Stewart McCloud, Bart Cannon** and **Margaret Jones** are partners and that **Lauren Davis Tice** joined the firm.

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**King Simmons PC** of Birmingham announces that **Colin Clark** joined as an associate.



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*(Continued from page 165)*

**Lanier Ford Shaver & Payne PC** announces that **Ty Stafford** and **Christopher Pape** are shareholders.

**Lightfoot, Franklin & White LLC** announces that **Brooke Malcom** is a partner and **Suzanne Fleming** is of counsel.

**Maynard Cooper & Gale** announces that **Brian Robbins** joined as an associate.

**Miller, Christie & Kinney PC** announces that **Patrick W. Franklin** is a partner.

**New Beginnings Family Law PC** announces that **David R. Pace** and **Ruby Panter** joined the firm.

**Phelps Dunbar LLP** announces that **Day Peake** is counsel in the Mobile office.

**Rosen Harwood PA** announces that **Emilee H. Scheeff** joined as an associate.

**Sirote & Permutt** announces that **Robert L. Loftin, III** and **Bradley G. Siegal** joined the Birmingham office. The firm also announces that **Edward J. Gillespie**, **Alyse N. Gillman**, **Kyle M. Heslop**, **Sara Vance** (all of Birmingham) and **Billy J. Woods, Jr.** of Huntsville joined as associates.

**Starnes Davis Florie LLP** announces that **Ben Presley**, **Will Starnes**, **Alex Wood** and **Breanna Young** are partners.

**Sudderth & Somerset** of Birmingham announces that **Daniel A. Bammerlin** joined as an associate.

**Webster, Henry, Lyons, Bradwell, Cohan & Speagle PC** announces that **Brannan W. Reaves** of Montgomery and **S. Scott Sasser** of Auburn are shareholders and that **Tamera K. Erskine** joined the Birmingham office.

**Wettermark & Keith LLC** announces that **Laura Hume** and **Henry A. Lawrence, III** joined the firm. ▲

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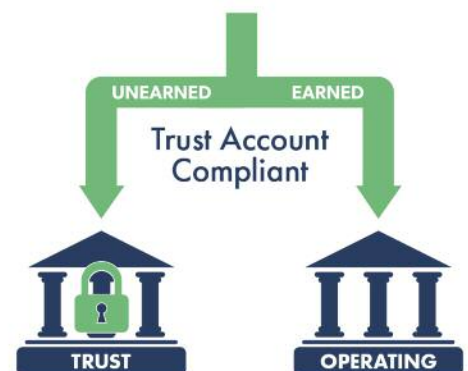
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## Lawyers' Trust Account Obligations with Regard to Retainers and Set Fees

### QUESTION:

Should a flat fee that is received prior to the conclusion of representation be deposited into an attorney's IOLTA account or is it earned at the time of receipt?

### ANSWER:

In Alabama, a flat fee that is received prior to the conclusion of the representation or prior to the performance of services must be deposited in the attorney's IOLTA account until the fee is actually earned.

### DISCUSSION:

In RO 1992-17, the Disciplinary Commission previously stated that:

[T]he client has the absolute right to terminate the services of his or her lawyer, with or without cause, and to retain another lawyer of their choice. This right would be substantially limited if the client was required to pay the full amount of the agreed-on fee without the services being performed. In *Gaines, Gaines and Gaines v. Hare, Wynn*, 554 So.2d 445 (Ala. Civ. App. 1989), the Alabama Court of Civil Appeals stated:

"The rule in Alabama is that an attorney discharged without cause or otherwise prevented from full performance is entitled to be reasonably compensated only for services rendered before such discharge. *Mall v. Gunter*, 157 Ala. 375, 47 So.2d 144 (1908)."

Likewise, in RO 1993-21, the Disciplinary Commission held that an attorney “may not characterize a fee as non-refundable or use other language in a fee agreement that suggests that any fee paid before services are rendered is not subject to refund or adjustment.”

As in RO 1993-21, the commission noted that “non-refundable fee language is objectionable because it may chill a client from exercising his or her right to discharge his or her lawyer and, thus, force the client to proceed with a lawyer that the client no longer has confidence in.” As such, the overriding principle of RO 1992-17 and RO 1993-21 is that a non-refundable fee would impinge on the right of the client to change lawyers at any time. Allowing an attorney to keep a fee, regardless of whether any service has been performed for the client, would certainly restrict the ability of a client to terminate the attorney and seek new counsel. In reaching this conclusion, the commission also made clear that the rule applied to all arrangements where fees are paid in advance of legal services being rendered. As such, all retainers and fees are refundable to the extent that they have not yet been earned. To conclude that a flat fee is earned at the time of receipt, where the contemplated services have yet to be performed or completed, would be in direct contradiction of this long-standing principle.

The only exception to the rule that all fees are refundable would be a true availability-only retainer. An availability-only retainer is a payment that is made by a client solely to secure an attorney’s future availability and would necessarily restrict the ability of the attorney to represent other clients. A true availability-only retainer is earned at the time of receipt, must be in writing and must be approved by the client in advance of the payment. To be clear, an attorney may not characterize a flat fee or other type fee that is being paid for future services as an availability-only retainer fee. Any attempt by an attorney to circumvent the rule that all retainers and fees are refundable by mischaracterizing a fee as an availability-only retainer would be an ethics violation.

Because a flat fee paid in advance of services is subject to being refunded, Rule 1.15(a), *Ala. R. Prof. C.*, requires that the flat fee be deposited into an attorney’s IOLTA account. Rule 1.15, *Ala. R. Prof. C.*, provides in pertinent part, as follows:

#### **RULE 1.15 SAFEKEEPING PROPERTY**

(a) A lawyer shall hold the property of clients or third persons that is in the lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall be kept in a separate account maintained in the state where the

lawyer’s office is situated, or elsewhere with the consent of the client or third person. No personal funds of a lawyer shall ever be deposited in such a trust account, except **(1) unearned attorney fees that are being held until earned**, and (2) funds sufficient to cover maintenance fees, such as service charges, on the account. Interest, if any, on funds, less fees charged to the account, other than overdraft and returned item charges, shall belong to the client or third person, except as provided in Rule 1.15(g), and the lawyer shall have no right or claim to the interest. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for six (6) years after termination of the representation.

(emphasis added) Because flat fees are not earned at the time of receipt, they are unearned attorney fees that must be held in the attorney’s IOLTA account until earned in accordance with Rule 1.15.

However, the entire flat fee is not required to be held in trust until the conclusion of the representation. Rather, an attorney may withdraw portions of the fee from the trust account as the fee is earned. Exactly when and what amount of the fee is earned during the representation is a question of reasonableness. It is generally recognized that the first yardstick used in assessing the reasonableness of an attorney fee is the time consumed. *Peebles v. Miley*, 439 So.2d 137 (Ala. 1983). For example, an attorney may withdraw portions of the flat fee that have been earned based on the time the attorney has spent on the matter and his normal hourly rate. In doing so, the attorney should notify the client when portions of the fee are withdrawn from the trust account by sending a statement or invoice to the client stating the date and the amount of the withdrawal.

An attorney may also enter into a written agreement with the client setting forth milestones in the representation that entitle the attorney to receive a specified portion of the fee. The fee agreement may explicitly state that an attorney is entitled to specific portions of the fee after certain stages in the representation have been completed. For example, assume an attorney is representing a client in a criminal matter for a flat fee of \$5,000. The fee agreement may provide that the attorney is entitled to \$2,500 of the fee after arraignment or after the preliminary hearing has been held. Any such agreement between the attorney and the client should be set out, preferably in writing, at the outset of the representation. [RO 2008-03]



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\*Council for Disability Awareness, Long Term Disability Claims Review, 2012.

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