

# MONTHLY BULLETIN

Mobile Bar Association 153 Government Street Mobile, Alabama 36602 (251) 433-9790

## President's Comments



**MICHAEL E. UPCHURCH, PRESIDENT**  
MOBILE BAR ASSOCIATION



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### 2013 OFFICERS

- President – Michael E. Upchurch
- President Elect – J. Michael Druhan
- Vice President – Brian P. McCarthy
- Secretary – S. Joshua Briskman
- Treasurer – Meegan B. Nelson
- Assistant Treasurer – Ginger P. Gaddy
- Pres Young Lawyers – Josh D. Friedman
- Executive Director – Barbara C. Rhodes
- Editor – Ferrell S. Anders

Congratulations! You have been selected as a **SUPER LAWYER, BEST LAWYER AND ULTRA-WONDERFUL MEGA-TERRIFIC LAWYER**. Not really. There are no Super Lawyers. It's a myth.

A **SUPER LAWYER** would never make a mistake. Her strategies would always work, her judgment would always be validated, and her judges and juries would see the virtue of every one of her arguments and positions. She would never face the agony and self-doubt that failure brings.

A **SUPER LAWYER** would fully satisfy his responsibilities both to his family and his clients. He would devote himself tirelessly to his work but never miss a ball game, forget an anniversary or be too tired to help with homework.

A **SUPER LAWYER** would represent only clients who were upstanding and in the right. They would not hold back critical information and would have nothing to hide.

A **SUPER LAWYER's** clients all would be reasonable, understand the risks of litigation and commerce, and have expectations that were entirely realistic. They would appreciate their lawyer's effort even when things didn't work out.

Clients would come to a **SUPER LAWYER** based solely on his skills and ability. They would never be lured away to the conference rooms of competitors by clever marketing or the good ole boy network.

A **SUPER LAWYER** would have the ideal amount of work – not too much and most definitely not too little. She would be immune to stress and pressure, and would sleep like a rock. She would love coming to work, every single day, even when it was cold, dark and raining.

A **SUPER LAWYER's** colleagues would all treat him with patience, respect and affection. They would never question his integrity or impugn his motives.

The vacation plans of a **SUPER LAWYER** would go off without a hitch. Work

*President's Comments continued on Page 3*



## PROGRAM

**DUE TO MARDI GRAS THERE WILL NOT BE A LUNCHEON IN FEBRUARY**

THE NEXT MEETING WILL BE  
**FRIDAY, MARCH 15, 2013, 11:45 AM**  
**BATTLE HOUSE HOTEL MOONLIGHT BALLROOM**  
THE SPEAKER WILL BE **CARTOONIST J. D. CROWE**



## *Browsing the Bar - With Barbara*

All of the DUES notices have gone out. Please be on the alert and let us know if you have not received yours. The dues income makes up the major portion of the MBA's income so your "participation" is essential to the efficient function of your Bar. Thank you for remembering to pay your dues.

Within the next few days you will receive an email blast with **COMMITTEE AND SECTION** appointments. It truly is a privilege to serve your Bar and I hope you will take full advantage of this opportunity to get involved. To the Chairs of each Committee and Section, you should receive a letter in the mail thanking you for serving and sending you the names of your Committee/Section members. Please let us know if we can help in any way by helping you arrange a meeting or should you need a list of phone numbers, emails, etc. We are here to serve!

On a personal note, I have been overwhelmed with the outpouring of condolences from so many of you concerning the death of my mother. The consideration and comfort you have expressed has certainly helped make what is a difficult time a great deal more bearable. Thank you, Bobbe



### **PUBLIC NOTICE**

#### **REAPPOINTMENT OF DWIGHT H. WILLIAMS, JR. CHIEF UNITED STATES BANKRUPTCY JUDGE, MIDDLE DISTRICT OF ALABAMA**

The current 14-year term of office of **THE HONORABLE DWIGHT H. WILLIAMS, JR.**, Chief United States Bankruptcy Judge for the Middle District of Alabama at Montgomery, is due to expire on 17 October 2013. The United States Court of Appeals for the Eleventh Circuit presently is considering whether to reappoint Judge Williams to a new 14-year term of office. Under reappointment, Judge Williams would continue to perform the statutory responsibilities of a bankruptcy judge.

Members of the bar and the public are invited to submit written comments for consideration by the Court of Appeals concerning the reappointment of Bankruptcy Judge Williams to a new term of office. All comments should be submitted to **MR. JAMES P. GERSTENLAUER**, Circuit Executive, Eleventh Circuit Court of Appeals, 56 Forsyth Street, NW, Atlanta, Georgia 30303. Comments must be received in the Circuit Executive's Office no later than 4 March 2013.



## President's Comments *continued from page 1*



would never interfere. His opponents, his clients and the judges would leave him alone while he was gone so that he could truly relax and enjoy himself.

The office of a **SUPER LAWYER** would run like a

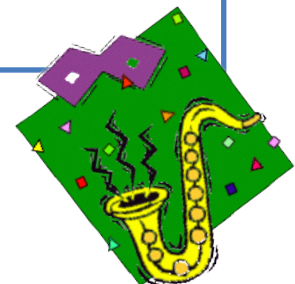
Swiss watch. Her staff would all be dedicated, punctual and love each other unconditionally. No one would quit right before a big trial or closing. Letters and e-mails would go only where they were intended. All typos would be caught.

A **SUPER LAWYER** would never wear trousers that did not match his coat, or spill coffee on her blouse right before court or a client meeting. She would remember everyone's name, especially during voir dire. Her children would never get sick at inconvenient times and her spouse would never complain about the toll her job was taking on the family.

A **SUPER LAWYER** would always be current in time sheets and client reports. He would always be ahead of his production expectations. He would never worry about revenue, because there would always be enough. He would never forget about an appointment or accidentally schedule a deposition and client meeting for the same time.

A **Super Lawyer** would never get frustrated, aggravated or disillusioned. She would keep her perspective and sense of humor because, in the end, everything would always work out. She would love the law without reservation, and the law would love her back, without fail.

No, there are no Super Lawyers. There's just us, with all our imperfections, trying to be good lawyers.





# SAVLP

## SOUTH ALABAMA VOLUNTEER LAWYERS

**SCOTT HETRICK, PARTNER**  
**ADAMS AND REESE LLP**

*If I have seen further, it is by standing on the shoulders of giants.*  
- Isaac Newton

I'm honored and excited to begin my first year as President of the **SOUTH ALABAMA VOLUNTEER LAWYERS PROGRAM**. I owe a great deal to my immediate predecessor, **LISA DARNLEY COOPER**, who oversaw the beginnings of our regional expansion into Baldwin, Clarke, and Washington Counties. I also appreciate the long service and mentoring of **DAVID PEELER** who retired from the Board at the end of 2012. If I accomplish anything this year, it will be largely due to the efforts and example of previous VLP leaders and board members in building a strong and vibrant organization.

During 2013, with the assistance of many new Board members and several "old hands," I look forward to deepening our relationships with members of the Mobile Bar as well as with the attorneys of Baldwin, Clarke, and Washington Counties as part of our ongoing efforts to serve our pro bono clients. Other activities in the works for this year include reorganizing and hopefully re-energizing our Board committees structure.

Remember to save the date of **SATURDAY APRIL 27** for the second annual **BATTLE OF THE BAY** canoe and kayak race between the Mobile Bar and the Baldwin Bar!

Using your skills and training to providing legal services to those without the means to pay is one of the noble charms of your profession. If you are not already a volunteer attorney on the SAVLP panel, please sign up today! Contact the SAVLP office at (251) 433-6693 (attorney line) or online at [www.savlp.org](http://www.savlp.org).

Special thanks to the following attorneys who opened or closed cases in December 2012: **JOSEPH ALTADONNA, BRIGG H AUSTIN, RUSSELL E BERGSTROM, JAIME W BETBEZE, BAYLESS E BILES JR., R. PRESTON BOLT, JR., DOUGLAS L BROWN, DANIEL L BURKARD, CRAIG CAMPBELL, HARWELL E COALE JR., F. LUKE COLEY JR., BENJAMIN E CROOKER, SAMUEL N CROSBY, GLENN L DAVIDSON, RONALD P DAVIS, DOUGLAS K DUNNING, PAGE S ELLIS, JENNIFER L EVANS, MAURY FRIEDLANDER, P. VINCENT GADDY, GEORGE C GASTON, IAN F GASTON, WILLIAM CRAIG HAMILTON, MICHAEL J HARBIN, THOMAS E HARRISON, MICHAEL A HART, FREDERICK G HELMSING JR., R. SCOTT HETRICK, FRANCES H HOLLINGER, SCOTT W HUNTER, MATTHEW R JACKSON, ANDREW M JONES, GREGORY R JONES, KYLA KELIM, WILLIAM A KIMBROUGH JR., PETER S MACKEY, SAMUEL P MANESS, MATTHEW C MCDONALD, AUGUSTINE MEAHER III, S. C. MIDDLEBROOKS, THOMAS B NORTON JR., FRANK L PARKER JR., JEANNE D RASCO, LATISHA RHODES DAVIS, IAN ROSENTHAL, WILLIAM H SALIBA, SHEILA V SCHOEN, CLIFFORD C SHARPE, JACK SMALLEY III, HENDRIK SNOW, MARY ELIZABETH SNOW, D. TRICE STABLER, T. JEFF STEIN, SCOTT D STEVENS, ROBERT W WALLER JR., JARROD J WHITE, AND MICHAEL A WING.**





# SIGNIFICANT DECISIONS

BY DUANE GRAHAM

In *Ex parte Floyd*, No. 1111241 (Ala., September 21, 2012), the Supreme Court held that a letter written by a would-be will contestant prior to the submission of a will for probate and addressed to various judges in the county expressing concern over the decedent's estate and expressing some interest in potentially contesting a decedent's will, should one be presented for probate, was insufficient to constitute the filing of "allegations in writing" with the probate court as required by Ala. Code § 43-8-190 in order to contest a will before probate.

In a case of first impression, the Supreme Court ruled in *Ex parte State Farm Mutual Automobile Insurance Co.*, No. 1110088 (Ala., September 21, 2012), that the common fund doctrine was applicable in requiring an insurance company entitled to subrogation for payment of the insured medical expenses to bear a pro rata portion of the legal fees incurred by the insured in procuring the recovery and that the insurance company's limited involvement in the case to preserve its lien or subrogation claim did not constitute the type of active participation that would have created an exception to the common fund doctrine.

In a somewhat similar case, however, the Supreme Court ruled in *Ex parte State Farm Mutual Automobile Insurance Co.*, No. 1100578 (Ala., September 21, 2012), that the common fund doctrine was not applicable where the insurer made an erroneously large payment to the insured and was entitled to reimbursement. As the Court noted, if the common fund doctrine applied, it would be applicable with respect to the whole recovery by the insured against the tortfeasor, not just against the amount of the erroneous payment by the insurer.

In *Jett v. Wooten*, No. 1110731 (Ala., September 14, 2012), the Supreme Court confirmed that the two-year fraudulent discovery rule of Ala. Code § 6-2-3, under which a plaintiff has two years after discovery in which to file an action, applied to legal malpractice claims under Ala. Code § 6-5-574 where the plaintiff asserted that the existence of the claim was concealed by the defendant's action for some period of time, even though the plaintiff still had one year of time left under the original, unmodified statute of limitations in which to file the claim when she discovered the existence of the claim.

While not a product of the Supreme Court of Alabama, if you wish to study an amusing tale of what happens when you flip off a local police officer, look at *Schwartz v. Insogna*, Docket No. 11-2846-CV (2d. Cir. 2013). In reviewing this opinion, you should especially put yourself in the position of the police officer's attorney, whose task was to convince the Second Circuit Court of Appeals that an extended middle finger projected out of an automobile window in such a fashion that it was seemingly intended to be viewed by the officer was appropriately interpreted as either a cry of distress or an alert that the owner of the finger was about to do serious bodily harm to the other occupant of the vehicle. The attorney's effort was unsuccessful, to say the least.



# NEW MEMBERS

**MELODY MARIE ZEIDAN,**  
VANDERBILT UNIVERSITY LAW SCHOOL 2007;  
ALABAMA STATE BAR 2007, WITH JOHNSTONE  
ADAMS.

**FARAHBIN A. MAJID,**  
UNIVERSITY OF ALABAMA SCHOOL OF LAW 2011;  
ALABAMA STATE BAR 2011;  
WITH LEGAL SERVICES OF ALABAMA.

**THOMAS MATTHEW LOPER,**  
UNIVERSITY OF ALABAMA SCHOOL OF LAW 2005;  
ALABAMA STATE BAR 2005; DC STATE BAR  
2006;  
WITH THE GARDNER FIRM, PC

**DAVID "TYLER" PRITCHETT,**  
JONES LAW SCHOOL 2012;  
ALABAMA STATE BAR 2012;  
LAW CLERK FOR JUDGE JOHN R. LOCKETT

**JAMES CRAWFORD "J.C." MILLER,**  
CUMBERLAND SCHOOL OF LAW 2012;  
ALABAMA STATE BAR 2012;  
WITH CARR, ALLISON, PUGH, HOWARD, OLIVER &  
SISSON, P.C.

**JOHN ANDREW WENZEL,**  
UNIVERSITY OF WESTERN ONTARIO 2011;  
ALABAMA STATE BAR 2012;  
WITH CALDWELL WENZEL, P.C.

**PATRICK MATTOX HYNDMAN,**  
CUMBERLAND SCHOOL OF LAW 2012;  
ALABAMA STATE BAR 2012;  
SOLE PRACTITIONER

**HERMAN FINHOLD "FINN" COX,**  
CUMBERLAND SCHOOL OF LAW 2010;  
ALABAMA STATE BAR 2010;  
WITH VICKERS, RIIS, MURRAY & CURRAN, LLC

## YOUNG LAWYERS

*JOSHUA D. FRIEDMAN, PRESIDENT*

I would first like to thank **MICHAEL CANNON** and **PRO-LEGAL COPIES** for a great January meeting at **CALLAGHAN'S**. Michael and Pro-Legal always do a fantastic job, and we certainly appreciate their continued support of the Young Lawyers.

February's meeting will be hosted by **MCDOWELL, KNIGHT, ROEDDER & SLEDGE** on Thursday, February 21st at **MOE'S ORIGINAL BAR-B-QUE** beginning at 5:30. Moe's Bar-B-Que is located at 701 Springhill Avenue.

I also want to let everyone know that the **YOUNG LAWYERS** will again be sponsoring **FUN FEST** at **SAINT MARY'S ORPHANAGE** on April 27th, and we are in need of volunteers and sponsors. **FUN FEST** is always a huge success, and I am not sure who has a better time – the children or the volunteers.

Also, for everyone who likes to set their budgets and calendars early, the **YOUNG LAWYER'S KICKBALL TOURNAMENT** is going to be pushed back and tentatively scheduled for Friday, September 6th, and we will confirm that with you as soon as possible. Finally, the **YOUNG LAWYERS GOLF TOURNAMENT** has been scheduled and confirmed for Friday, June 7th at **TIMBER CREEK** with a 1:00 shotgun start.

Please let us know if you would like to get involved with Fun Fest, kickball, the golf tournament, or are interested in sponsoring an upcoming meeting. As always, if you have any questions, concerns, or comments please e-mail me ([josh@bafmobile.com](mailto:josh@bafmobile.com)), **KASEE HEISTERHAGEN** ([kasee.heisterhagen@burr.com](mailto:kasee.heisterhagen@burr.com)), or **JONATHAN MAPLES** ([jmaples@carrallison.com](mailto:jmaples@carrallison.com)).



# LAWYERS IN THE NEWS

BY SANDY G. ROBINSON

## LEGAL MILESTONES:

**MARRIED: ROBIN CAROLINE OXFORD** AND **JOHN MEIGHAN LITTLE**, SON OF MBA MEMBER **JOE LITTLE** WERE MARRIED ON DECEMBER 1, 2012 AT CANEEL BAY, ST. JOHN, IN THE U.S. VIRGIN ISLANDS. JOE SERVED AS BEST MAN FOR HIS SON. FOLLOWING A HONEYMOON IN THE BRITISH VIRGIN ISLANDS, THE COUPLE WILL LIVE IN ALEXANDRIA, VIRGINIA.

**DIED: MBA** member **BILL LAUTEN**, FORMER CONTRIBUTOR TO THE MOBILE BAR BULLETIN FOR MANY, MANY YEARS, DIED ON JANUARY 13, 2013 AFTER A BRIEF ILLNESS. HE WAS A NATIVE OF MOBILE, AND A GRADUATE OF MURPHY HIGH SCHOOL, SPRING HILL COLLEGE, AND THE UNIVERSITY OF ALABAMA SCHOOL OF LAW. DURING WORLD WAR II, BILL SERVED AS U. S. NAVAL COMMANDING OFFICER ABOARD A SUBCHASER IN THE PACIFIC THEATRE. HE WAS AN ACTIVE ATTORNEY FOR OVER FIFTY YEARS, AND HIS POSITIONS INCLUDED CIRCUIT SOLICITOR (DISTRICT ATTORNEY) OF BALDWIN COUNTY, AND CITY ATTORNEY OF MOBILE. HIS INTERESTS WERE MANY AND VARIED; HE WAS A COMMUNITY THEATER ACTOR FOR OVER FORTY YEARS, SERVED AS AN OFFICER OF SEVERAL LOCAL THEATER GROUPS, AND WAS ACTIVE IN MANY CIVIC ORGANIZATIONS. HE IS SURVIVED BY TWO DAUGHTERS, EIGHT GRANDCHILDREN, AND EIGHT GREAT-GRANDCHILDREN. BILL WAS A TRUE SOUTHERN GENTLEMAN WHO WILL BE MISSED BY MANY.

**DIED: MARGARET THORINGTON KOHN “NOOTSIE” MCCALL**, MOTHER OF MBA MEMBER **JOHN MCCALL** DIED ON DECEMBER 18, 2012. SHE WAS A SIXTH-GENERATION MONTGOMERY RESIDENT AND A DIRECT DESCENDANT OF **GENERAL JOHN SCOTT**, ONE OF THE CITY’S CO-FOUNDERS. SHE WAS ACTIVE IN MANY CHARITABLE AND HISTORICAL ORGANIZATIONS AND WAS A FORMER PRESIDENT OF THE NATIONAL SOCIETY OF THE COLONIAL DAMES OF AMERICA IN ALABAMA. SHE IS SURVIVED BY THREE CHILDREN AND FIVE GRANDCHILDREN.

**DIED: REVANELLE THOMAS SMITH**, MOTHER OF MBA EXECUTIVE DIRECTOR **BARBARA RHODES**, DIED PEACEFULLY ON DECEMBER 21, 2012. SHE WAS BORN IN PANAMA CITY, FLORIDA IN 1919, AND WAS THE SOLE SURVIVOR OF EIGHT SIBLINGS, ONE HALF-SISTER AND TWO HALF-BROTHERS. SHE WAS PREDECEASED BY HER HUSBAND OF 66 YEARS, **MAXWELL SMITH**, WHO HAD BEEN HER CHILDHOOD SWEETHEART. SHE WAS A CHARTER MEMBER OF THE PANAMA CITY SEVENTH-DAY ADVENTIST CHURCH AND A FAITHFUL MEMBER OF THE CODY ROAD SEVENTH-DAY ADVENTIST CHURCH SINCE MOVING TO MOBILE IN 1956. SHE WAS A BEAUTIFUL LADY INSIDE AND OUT, KNOWN FOR HER LOVE OF GOD AND FAMILY. SHE IS SURVIVED BY THREE CHILDREN, SIX GRANDCHILDREN, AND EIGHT GREAT GRANDCHILDREN.

**MILITARY NEWS: MBA** MEMBER **1LT. STAPLES WOOD, JA**, HAS BEEN DEPLOYED TO KUWAIT FOR 11 MONTHS.

MBA MEMBER **MAJ. MIKE ANDERSON, JA**, WILL BE DEPLOYED IN APRIL TO AFGHANISTAN FOR ONE YEAR WITH THE 226TH MANEUVER ENHANCEMENT BRIGADE.

**SEND US YOUR MILITARY NEWS!**





# ANNOUNCEMENTS

**ADAMS AND REESE** is pleased to announce that Mobile attorney **BRITTON BONNER** has been elected Partner, effective January 1, 2013. Britton first joined Adams and Reese as a law clerk in 1999 and now serves as Partner in Charge in the Mobile Office. His practice focuses on business growth and economic development, encompassing a wide range of practice matters, including governmental relations, public finance and incentives, construction disputes, real estate transactions, contractual disputes, commercial condominium and residential development issues, municipal and regulatory compliance, and other general business matters.

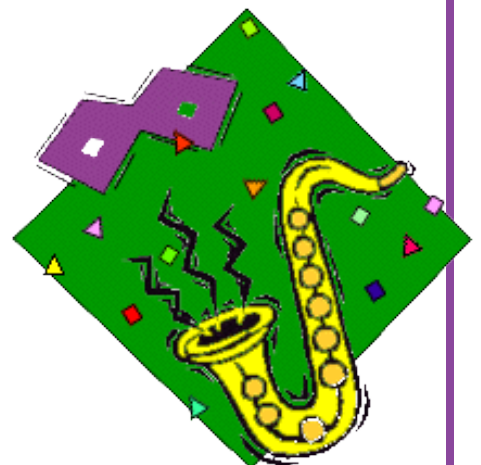
The attorneys at **CUNNINGHAM BOUNDS** are pleased to announce that **WILLIAM E. BONNER** and **ROBERT L. MITCHELL** are now partners with the firm.

**STARNES DAVIS FLORIE LLP** is pleased to announce that **SCOTT D. STEVENS** has been named a partner with the firm. Scott works in the firm's Mobile office.

**ANYONE WITH INFORMATION REGARDING THE LAST WILL AND TESTAMENT for ERNEST MITCHELL**-- executed between 2011 and 2012 in South Baldwin County, Fairhope or Daphne -- who resided at 1310 B County Road 64, Daphne, AL 36526, please contact **PEARL GREEN** at 251.391.4840 or Trisha Williams at 251.605.23540 or 251.626.6200 email [twlms3@bellsouth.net](mailto:twlms3@bellsouth.net)

**OFFICE SPACE IN HISTORIC BUILDING** one block from courthouse. Free onsite parking and access to conference room and kitchen. \$1,000 per month. Call 251.433.1866 and ask for Vicki.

**DOWNTOWN OFFICE SPACE AVAILABLE,** 209 N. Joachim Street in historic deTonti Squaret. Within walking distance of federal courts. Amenities: onsite parking, receptionist, lobby, conference room, kitchen, VOIP telephone, internet, WIFI, email, fax machine and large color copier/scanner. Contact **EVANS CROWE** at 251.431.6011.







**PLEASE GIVE**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

I want to make a donation to the Mobile Bar Foundation.

In honor/memory of: \_\_\_\_\_

Acknowledgement to: Name \_\_\_\_\_

Address \_\_\_\_\_

I want to become a member of the Mobile Bar Foundation.

Check enclosed

Bill my credit card \$\_\_\_\_\_ Visa/Master Card/Amex #\_\_\_\_\_

Life Member (\$5000, paid in up to 5 annual installments)

Partner (\$500 or more)

Associate (\$100 or more)

Regular Member (\$50 - \$99 annually,  
or if member of MBA practicing 5 years or less \$25 - \$99)

I would like information on including the Foundation in my estate planning.

Signature \_\_\_\_\_ Exp. \_\_\_\_\_

Mail to: Mobile Bar Foundation, P.O. Drawer 2005, Mobile, AL 36652



JOIN THE ESI ROUNDTABLE ON FRIDAY, FEBRUARY 7, 2013:

**“FRCP/ARCP E-DISCOVERY AMENDMENTS & PANEL DISCUSSION”**

**SPEAKER: CLAY RANKIN, ESQ. (HAND ARENDALL)**

**PANEL: HON. SONJA BIVINS (U.S.S.D.), HON. MICHAEL YOUNGPETER (MOBILE COUNTY), WILLIAM E. BONNER, ESQ. (CUNNINGHAM BOUNDS), RUSSEL MYLES, ESQ. (MCDOWELL KNIGHT)**

**MODERATOR: ALLISON SKINNER, ESQ. (AMERICAN COLLEGE OF E-NEUTRALS)**

2 hours CLE, including 1 hour of ethics.

February 7, 2013 • 12:00 pm – 2:00 pm

Riverview Plaza, 63 S. Water Street, Mobile, AL

Attorneys - \$50 • Law Firm Staff - \$35 • Judges – No Charge

*A portion of the proceeds from this event will be donated to Mobile Tornado Relief efforts*

# FEBRUARY 2013

**FEBRUARY 7 - THURSDAY  
MBA EXECUTIVE COMMITTEE MEETING,  
12:00 O'CLOCK NOON,  
LEHAVRE ROOM, BIENVILLE CLUB**

**FEBRUARY 11-12  
MONDAY & TUESDAY  
MARDI GRAS HOLIDAYS**

**FEBRUARY 28 - THURSDAY  
MBA GRIEVANCE COMMITTEE MEETING,  
12:00 O'CLOCK NOON,  
LEHAVRE ROOM, BIENVILLE CLUB**



## CONTINUING LEGAL EDUCATION

**MARCH 15 - FRIDAY**  
THE MODERN LAW OFFICE,  
3.0 HRS . MCLE CREDITS