



# MONTHLY NEWSLETTER

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## President's Comments

Over the years, the **MOBILE BAR ASSOCIATION** has continued to grow through the addition of local lawyers, as well as lawyers from other areas of the state and country. An increase in the number of lawyers often brings with it a decrease in familiarity among those lawyers. And with a decrease in familiarity among lawyers often comes a decrease in the level of cooperation and civility among those lawyers when they find themselves on opposing sides of a case.

A lawyer's civility and ability to respectfully work with opposing counsel is an invaluable tool. In researching this issue, I came across an insightful list of **"DOs and DON'Ts"** issued by the **SUPREME COURT OF OHIO COMMISSION ON PROFESSIONALISM**. Entitled **"Working with Opposing Counsel and Other Lawyers"**, the following list illustrates ways that lawyers can elevate their level of professionalism and civility in their day-to-day interactions with other lawyers:

### DO:

- Maintain a courteous and cooperative working relationship with opposing counsel and other lawyers.
- Avoid motions about minor issues that should be worked out informally.
- Wait 24 hours before deciding to respond to an intemperate, untrue, or exasperating communication from another attorney.

- Discuss discovery disputes with opposing counsel in person, by phone, or by e-mail before sending a formal letter that stakes out your position.
- Consult in advance with other attorneys to avoid scheduling conflicts.
- Cooperate with other attorneys when you have obtained permission of the court to extend deadlines imposed by a court order.
- Extend professional courtesies regarding procedural formalities and scheduling when your client will not suffer prejudice, DO be fair-minded with respect to requests for stipulations, and DO agree to stipulate to facts that are not in dispute if they will not adversely affect your client.
- Keep your word.
- Respond in a timely fashion to communications from opposing counsel and other attorneys.
- Identify the changes you made from previous drafts when exchanging document drafts.
- Promptly notify other counsel (and, where appropriate, the court or other persons who are affected) when hearings, depositions, meetings, or conferences must be cancelled or postponed.
- Conclude a matter with a handshake or an exchange of courteous messages.
- Require that persons under your supervision conduct themselves with courtesy and civility and that they adhere to these precepts when dealing with other attorneys and their staffs.

### DON'T:

- Respond in kind when confronted with unprofessional behavior by another attorney.
- Serve papers at a time or in a manner intended to inconvenience or take advantage of opposing counsel, such as late on a Friday afternoon, on the day preceding a holiday, or when you know counsel is absent or ill.
- Be belligerent, insulting, or demeaning in your communications with other attorneys or their staff.
- Use discovery as a means of harassment.
- Publicly disparage another attorney, either during or after a case concludes.

Many of our lawyers already exercise and exhibit the utmost respect for one another, while at the same time zealously advocating for their clients. I hope this list serves as a helpful reminder of how we, as lawyers and professionals in our community, should strive to treat one another.

Until next time,

*Brian*



## PROGRAM

There will be no monthly luncheon in July due to the **ALABAMA STATE BAR ANNUAL MEETING** July 16-18, 2015

Marriott's Grand Hotel, Point Clear, AL

The next scheduled luncheon will be:

Friday, August 21, 2015, 11:45 am

The Battle House Hotel, Moonlight Ballroom

**SPEAKER: DANNY SHERIDAN**

Noted Sports Prognosticator and Journalist

## 2015 OFFICERS

PRESIDENT – BRIAN P. MCCARTHY

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PRESIDENT Y. L. – JONATHAN R. MAPLES

EXECUTIVE DIRECTOR – BARBARA C. RHODES

EDITOR – FERRELL S. ANDERS

## In This Issue...

Browsing With Barbara	
.....page 2	
Young Lawyers	
.....page 3	
Lawyers in the News	
.....page 5	
Calendar of Events	
.....page 10	



## *Browsing the Bar – With Barbara*

**WYNETTE SULLIVAN** has been a part of the MBA Staff for over four years and just as we get her well-trained, she is taking all of her talents to a full-time position elsewhere. We thank her for her service and we will certainly miss her.

Just a reminder that the **ASB ANNUAL MEETING** is at the Grand Hotel in Point Clear, AL. We are certain that Mobile will be well represented.

Elsewhere in this publication is the **MBA CONTINUING LEGAL EDUCATION** lineup for 2015-16. Check it out and mark your calendars. There is no excuse to come up short at the end of the year when 47 hours are being offered by your **BAR ASSOCIATION** at a very nominal fee. These programs are also listed on the Mobile Bar website.

In an attempt to preserve the Mobile Bar Association heritage, the **ARCHIVES AND HISTORY COMMITTEE, MITCH LATTOE, SR.**, Chairman, has interviewed three of our senior lawyers – **ROBERT P. DENNISTON, THOMAS HAAS** and **DONALD BRUTKIEWICZ, SR.** Those interviews are on the MBA website – [MobileBarAssociation.com](http://MobileBarAssociation.com). Please take a moment and check them out, you will not be sorry.

We adjusted the dues for 2015 but there are still a number of you who have overlooked or forgotten to pay your dues. Please check and make sure you are not one of those!

**ON A HIGH NOTE**, please mark your calendars for the **ANNUAL FALL PARTY**, Thursday October 1, 2015, 6:00 – 8:00 pm at the Battleship (if the weather does not cooperate we will move into the Hanger). This has proven to be the highlight of the year and I am sure this year will be no exception. Food, drink, music, door prizes, etc.

*See you there.*

ALSO, our very special thanks to the following sponsors of our June evening at Moe's:

**ARMBRECHT JACKSON LLP**  
**FRAZER, GREENE, UPCHURCH & BAKER, L.L.C.**  
**HELMSING, LEACH, HERLONG, NEWMAN & ROUSE**  
**MCDOWELL KNIGHT ROEDDER & SLEDGE, L.L.C.**  
**MOBILE BAY REPORTING**  
**SOURCE ONE LEGAL COPY**





# YOUNG LAWYERS

**JONATHAN MAPLES, PRESIDENT**

The **YOUNG LAWYERS** are pleased to thank **ARMBRECHT JACKSON** for an awesome June meeting at **The Bull**. The June meeting is always a great time, and this year was no different.

The July meeting will be hosted by your **MOBILE YOUNG LAWYERS**, on **JULY 16th**, location TBA. The July meeting will be our most laid back meeting of the year, and we hope to see you then.

The **YOUNG LAWYERS' ANNUAL GOLF TOURNAMENT**, benefitting **RONALD McDONALD HOUSE CHARITIES OF MOBILE**, was a success again this year, and we would like to thank all who participated for making it possible. We would also like to thank this year's major sponsors, who provided food, drinks, prizes, and logistical support: **DONNA HENDERSON AND HENDERSON & ASSOCIATES, MICHAEL CANNON AND PRO-LEGAL, TAMI S. GUTHANS COURT REPORTING, TOBIAS MCCORMICK & COMER, CUNNINGHAM BOUNDS, and CARR ALLISON.**

We would also like to recognize **GOLF TOURNAMENT CHAIRMAN WEATHERS BOLT**, without whose tireless work the tournament would not have been a success. In addition, we'd like to thank this year's golf tournament committee, **ROBYN CANNON, SAM ROSTEN, CLEVELAND PATTERSON, BLAKE RICHARDSON, J.C. MILLER, and ROBERT SHREVE**, for their hard work.

We look forward to seeing everyone on July 16th. If you are not on the Young Lawyers e-mail list and would like to be, or if you have any suggestions, questions, concerns, or comments, please e-mail me ([jmaples@carrallison.com](mailto:jmaples@carrallison.com)), Vice-President Russ Johnson ([RJohnson@asilpc.com](mailto:RJohnson@asilpc.com)), or Treasurer Tim Heisterhagen ([tah@ajlaw.com](mailto:tah@ajlaw.com)).

## **MOBILE ATTORNEY BILLY C. BEDSOLE IS CHAIRPERSON OF ALABAMA JUDICIAL INQUIRY COMMISSION**

The **ALABAMA JUDICIAL INQUIRY COMMISSION** has selected **MR. BILLY C. BEDSOLE**, a partner in the Mobile law firm **STOCKMAN AND BEDSOLE**, as its chairperson. He is only the second attorney to serve as chairperson in the past 25 years.

Created by the Alabama Constitution, the **JUDICIAL INQUIRY COMMISSION** enforces the **ALABAMA CANONS OF JUDICIAL ETHICS**, the ethical rules that govern Alabama state judges. Its jurisdiction includes consideration of sworn complaints concerning any state judge's alleged violation of the Canons, misconduct in office, failure to perform judicial duties, or inability to perform judicial duties because of a physical or mental disability. The Commission also prosecutes any formal charges it has filed in the Alabama Court of the Judiciary. In addition, the Alabama Supreme Court has authorized the Commission to render advice to judges regarding their duties under the Canons.

Mr. Bedsole, a member of the Alabama State Bar for 52 years, was one of two appointments by the State Bar to the Commission in 2011. He has also served the State Bar and the Mobile County Bar in numerous positions, including serving as a State Bar Commissioner for 20 years, a State Bar Disciplinary Hearing Officer for 12 years, State Bar Disciplinary Hearing Officer for 12 years, State Bar Vice-President in 2010, and a county Bar Executive Committee for 20 years.



# Significant Legal Decisions

by Duane Graham

In *Ex parte Vest, No. 113150* (Ala., February 27, 2015), the Supreme Court cited prior case law to find that the law-of-the-case doctrine is not an inflexible rule of law but rather one of general policy. In this case, where a prior determination was shown to be clearly wrong, the Supreme Court held itself not bound by a prior decision in the case by the court of civil appeals even though the Supreme Court had denied a petition for writ of certiorari and thus allowed that prior decision to stand.

In a case of first impression, the Supreme Court in *Walter Energy, Inc. v. Audley Capital Advisors LLP, No. 1131104* (Ala., February 20, 2015), held that where a complaint failed to allege either that stock was offered to be sold or purchased inside the State of Alabama, it failed to state a claim under the Alabama Securities Act.

In *Baldwin Mutual Insurance Co. v. McCain, No. 1131058* (Ala., February 20, 2015), the Supreme Court reversed a trial court's class certification order because the class definition as certified was only submitted in the plaintiff's brief after the evidentiary hearing on certification and differed from that requested in the complaint and, thus, the defendant had not been afforded a hearing in response to the specific certification request as required by Ala. Code § 6-5-641.

In what may be a case of first impression, the *Court of Civil Appeals in Alsaikhan v. Alakel, No. 2130870* (Ala. Civ. App., February 13, 2015), held that the circuit court lacked jurisdiction over the parties' divorce proceeding because the defendant wife was not a resident of Alabama within the meaning of Ala. Code § 30-2-5, since she was in the United States solely on a temporary visa and maintained her desire to return to Saudi Arabia, and that the husband plaintiff could likewise not demonstrate six-months of Alabama residency because his student visa required him to return to Saudi Arabia after his studies at the University of South Alabama were concluded.

Following along the lines of several recent cases, the Supreme Court in *Ex parte Baker, No. 1130810* (Ala., February 13, 2015), held that even though the probate court had appointed an administrator ad colligendum for the estate, because no formal administration of the estate had begun by the court's issuing either letters testamentary or letters of administration, the estate was not procedurally in a posture to be removed to circuit court. Thus, even though the estate was purportedly removed to circuit court, the circuit court lacked jurisdiction and all orders entered by it were void.

In *Ex parte Whited, No. 1130686* (Ala., February 6, 2015), the Supreme Court reversed a criminal conviction for sodomy on the ground of ineffective counsel based on defense counsel's inexplicable decision to waive the right to offer closing argument.



# LAWYER ASSISTANCE COMMITTEE

## “I’M DOWN AND I CAN’T GET UP”



*“I’m down and I can’t get up!”* That can be a terrible feeling. Remember the medical alert company that ran the ad where an elderly person had fallen, couldn’t get up and needed help? The solution there was a handy device with a button to summon assistance.

No such easy remedy is available to lawyers in trouble. The practice of law can be one of the most stressful of all professions, sometimes *“dog eat dog”*. We are particularly susceptible to severe depression, addiction to alcohol, drugs, gambling, etc., and yes, even suicide. We’ve seen it.

Our **BAR PRESIDENT, BRIAN MCCARTHY**, has created a local **LAWYER ASSISTANCE COMMITTEE** with the mandate that we all must do better to address the needs of our fellow attorneys in these areas! One excellent source of help is from the **Alabama Lawyer Assistance Program** which provides free and confidential services. **334-834-7576**.

We lawyers are proud folk - it’s painful and humbling to ever admit that we need help. But please put this on your agenda - call us with your needs or the needs of colleagues, so that confidential assistance may be offered!

**Jay McDonald – (251) 415-9236 · Hank Caddell – (251) 478-8880**  
**Matthew McDonald – (251) 439-7576 · Josh Briskman [251] 433-7600**  
**David Wible – (251) 208-7416**

### SALARY SURVEY ASSOCIATION OF LEGAL ADMINISTRATORS

SUBMITTED BY SANDY ANDERSON, MCDOWELL KNIGHT FIRM AND GEOFFREY WILLIAMS, CUNNINGHAM BOUNDS FIRM

“What are other firms doing about retirement benefits?”

“Should we pay for health insurance?”

“I want to keep my paralegal. Am I paying enough?”

“What benefits are offered in Mobile law firms?”

“Do other firms provide cell phones?”

“How much should I pay my Receptionist?”

“My Secretary just asked for a raise. What are firms in Mobile paying their secretaries these days?”

“Should we offer life insurance?”

“We need an IT guru. What are law firms paying their IT staff in Mobile, AL?”

**You have questions. We have answers.**

The Mobile, AL chapter of the Association of Legal Administrators announces the **2015 Legal Industry Compensation and Benefits Survey for Mobile and Baldwin Counties**. Participating Firms can obtain a copy of the confidential statistical results\* for \$100 at the time of submission, or for \$125 at a later date. Non-participating Firms can obtain a copy for \$200.

Participate by **JULY 15, 2015**.

\*All data is submitted directly to Wilkins Miller CPA’s by participants. In accordance with anti-trust laws and ALA bylaws, all data is destroyed upon use. Only aggregate statistical results are available. Individual firm survey data is not retained or viewed by anyone affiliated with any law firm.

**Are you ready to participate?**

Request your survey form today! The deadline to participate is July 15, 2015.

Send your request to:

sanderson@mcdowellknight.com or  
 gmw@cunninghambounds.com



# ANNOUNCEMENTS

**MIDTOWN OFFICE SPACE FOR LEASE:** Midtown Office suite suitable for one to two lawyers with up to three staff available for lease. Convenient and highly visible location at 2053 Dauphin St. with private parking lot and signage available. Building has CAT5 wiring, internet and phone system in place. Includes private meeting area attached to corner office, conference room, waiting area, kitchen and file storage area. Contact **JIM JEFFRIES** at 251.445.5522 or [jim@jeffriesfamilylaw.com](mailto:jim@jeffriesfamilylaw.com)

**HUNTINGDON COLLEGE** now offers an evening bachelor's program in Daphne: Business management to enhance paralegal studies, office and financial management. [manderson@hawks.huntingdon.edu](mailto:manderson@hawks.huntingdon.edu)

**OFFICE SPACE AVAILABLE:** Large corner office at 407 Conti St., \$500/month, meeting rooms available on first floor. Call 251.432.4174 to view space.

**NEED FLORIDA CLE HOURS?** For info, call or email Tammy at 251.433.9790 or [tanderson@mobilebarassociation.com](mailto:tanderson@mobilebarassociation.com).

**Immediate opening** for Attorney with good law school record and at least 3 years of experience in law practice. This person will handle business litigation, transactions work and real estate matters at small established AV law firm in Mobile. Competitive pay, excellent benefits and opportunity and great working environment. Please send resumes to: **Hiring Partner – Attorney Position, P.O. Box 161389, Mobile, AL 36616.**

**JONES WALKER** is pleased to announce that **HENRY F. O'CONNOR, III**, has been elected to partnership effective May 27, 2015. Mr. O'Connor has more than two decades of leadership experience in the legal, real estate, and financial services industries. Prior to joining **JONES WALKER**, Mr. O'Connor served as President of the Mobile, Alabama, market for **TRUSTMARK NATIONAL BANK** following its merger with **BANC TRUST FINANCIAL GROUP, INC.** Prior to this, he was a **MANAGING DIRECTOR OF IPC CAPITAL PARTNERS**, a private investment firm focused on real estate and other alternative asset investments. He earned his juris doctor degree from the University of Virginia School of Law and his bachelor of arts, cum laude, from Dartmouth College.



# LAWYERS IN THE NEWS

**DIED:** MBA member **JOSEPH MICHAEL ALLEN, JR.** died May 23rd, 2015. He graduated McGill high school in 1959 and Spring Hill College in 1963. He received his law degree from the University of Alabama in 1966. He subsequently served in the US Army until 1969, after which he practiced law in Mobile. He is survived by his wife, **ANN MARIE LEATHERBURY ALLEN**, his children, **JOSEPH MICHAEL ALLEN, III (DIANA)** and **JOHN LEATHERBURY ALLEN (JESSICA)**, and grandchildren, **JOSEPH MICHAEL ALLEN, IV**, **HENRY DAVIS ALLEN**, **WILLIAM TABB ALLEN**, and **MADELEINE MARIE ALLEN**.



**DIED:** **MAURICE D. BELL JR.**, father of MBA member **JOHN BELL**, died in Mobile on May 27, 2015. He was born in Covington County, Alabama and moved to Mobile as a child. He graduated from Murphy High School, and attended the University of Alabama. He served in the U. S. Navy, and returned to the University to complete his business degree. He then returned to Mobile to join his father in the real estate appraisal business, in which he worked for many years. He is survived by his wife, two sons, and seven grandchildren.

**DIED:** **FRANK KLIMJACK**, father of MBA member **STEPHEN KLIMJACK**, died in Daphne on June 4, 2015. He is survived by his wife, 3 sons, 6 grandchildren, and many other relatives and friends.





# SAVLP

## SOUTH ALABAMA VOLUNTEER LAWYERS

ARIANA H. MOORE, ASSOCIATE DIRECTOR



Don't forget to register for the **2015 BATTLE OF THE BAY CANOE AND KAYAK** race at the **BLUEGILL** on July 25th. Choose between a one-mile fun paddle for canoes, kayaks and standup paddleboards or a four person canoe relay. Bruch tickets available for those who don't want to race. We'll have a DJ, a band and fun for the kids. Call the office at 433-6693 for more details or register online at [www.savlp.org](http://www.savlp.org).

Are you an expert in landlord/tenant law? **SAVLP** will sponsor an event for **UNIVERSITY OF SOUTH ALABAMA** students on September 16th from 4:00 pm-6:00 pm. **FARAH MAJID** of **LEGAL SERVICES ALABAMA** will speak to the students about their rights and responsibilities as tenants. We will

hold a limited legal advice clinic for the students following the presentation. Please e-mail **ARIANA MOORE** at [ariana@savlp.org](mailto:ariana@savlp.org) if you would like to volunteer.

**SAVLP** offers limited legal advice clinics at the Mobile County Courthouse from 1:00 pm- 3:00 pm on the second Thursday of every month. If you are interested in helping with this program, please contact the office at 433-6693. We particularly need family law attorneys at these clinics.

Many thanks to the following attorneys who accepted or closed cases in May: **DONNA S AMES, JOHN G BAYLOR JR., JAIME W BETBEZE, WESLEY H BLACKSHER, MARY ALLIE E BOLLER, HENRY H BREWSTER, S. JOSHUA BRISKMAN, CARIN D BROCK, PAUL D BROWN, A. WINSLOW W BUTTS, CRAIG CAMPBELL, C. S. CHIEPALICH, F. LUKE COLEY JR., ROBERT J CRANE, JUDSON E CRUMP, CAROLYN M DOHN, GILLIAN G EGAN, JACQUELINE FLEMING BROWN, BEN FORD, JONATHAN B FRIEDLANDER, WILLIAM J GAMBLE, JR., JOSHUA M GRANTHAM, JOHN A GREEN JR., WESLEY HARBUCK, GINGER L HARRELSON, SCOTT R HAWK, R. SCOTT HETRICK, JENNIFER HOLIFIELD, W. GREGORY HUGHES, HERNDON INGE III, CANDACE D JOHNSON, WILLIAM D JOHNSON JR., ANDREW M JONES, H. JAMES KOCH, R. EDWIN LAMBERTH, CAROL M LOWELL, FARAH MAJID, PHILLIP E MASON, S. C. MIDDLEBROOKS, GUY C OSWALT III, LATISHA RHODES DAVIS, JAMES E ROBERTSON, IAN D ROSENTHAL, ATOYIA A SCOTT, CLIFFORD C SHARPE, HENDRIK SNOW, JOHN M TEAGUE, RICHARD W VOLLMER, III, ANGELA L WALKER, ZACHARY WEAVER, JARROD J WHITE, AARON M WILEY, CHRISTOPHER S WILLIAMS, THERESA N WILLIAMSON, and THOMAS T ZIEMAN JR.**



  
**MOBILE BAR FOUNDATION**

**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



# JULY 2015

## **JULY 9 - THURSDAY**

**MBA EXECUTIVE COMMITTEE MEETING,**  
12 O'CLOCK NOON,  
THE ATHELSTAN CLUB

## **JULY 9 - THURSDAY**

**MOBILE LEGAL PROFESSIONALS  
ASSOCIATION,**  
12 O'CLOCK NOON,  
T. P. CROCKMIER'S

**JULY 16 - 18 THURSDAY - SUNDAY,  
ASB ANNUAL MEETING,**  
MARRIOTT'S GRAND HOTEL, POINT CLEAR, AL

## **JULY 23 - THURSDAY**

**MBA GRIEVANCE COMMITTEE MEETING,**  
12 O'CLOCK NOON,  
MBA HEADQUARTERS

## **JULY 25 - SATURDAY**

**SAVLP ANNUAL  
"BATTLE OF THE BAY"**  
AT THE BLUEGILL ON THE CAUSEWAY



## CONTINUING LEGAL EDUCATION

### **AUGUST 28**

**FAMILY LAW "STARS ACROSS THE BAY",**  
8.0 HR. MCLE CREDITS INCLUDING 1.0 HR. ETHICS

### **SEPTEMBER 25**

**INTRODUCTION TO  
CRIMINAL APPOINTMENT PROCESS**  
3.0 HRS. MCLE CREDITS

### **OCTOBER 2**

**ASB ROAD SHOW,**  
3.0 HRS. MCLE CREDITS INCLUDING 1.0 HR. ETHICS

### **OCTOBER 16**

**ANNUAL SAVLP SEMINAR,**  
3.0 HRS. MCLE CREDITS INCLUDING 1.0 HR. ETHICS

### **OCTOBER**

**ANNUAL NEW LAWYER ORIENTATION,**  
5.0 HRS. MCLE CREDITS,

### **NOVEMBER 6**

**ANNUAL CLE BY-THE-HOUR,**  
8.0 HRS. MCLE CREDITS  
INCLUDING 1.0 HR. ETHICS

### **NOVEMBER 13**

**HOW TO AVOID PUTTING  
OUR CARRIER ON NOTICE,**  
3.0 HRS. MCLE CREDITS

### **DECEMBER 4-6**

**ANNUAL BENCH & BAR CONFERENCE,**  
MARRIOTT'S GRAND HOTEL, POINT CLEAR, AL

### **DECEMBER 18**

**ALABAMA CIVIL LAW UPDATE,**  
3.0 HRS. MCLE CREDITS INCLUDING 1.0 HR. ETHICS

## **2016**

### **JANUARY 15**

**OPINIONS FROM THE BENCH,**  
3.0 HRS. MCLE CREDITS INCLUDING 1.0 HR. ETHICS

### **MARCH 18**

**CRIMINAL LAW UPDATE,**  
3.0 HRS. MCLE CREDITS.