



MONTHLY NEWSLETTER

Volume XLV,
Issue 6 • June 2016

President's Comments



"Winning isn't everything; it's the only thing."

UCLA coach RED SANDERS

VINCE LOMBARDI did not coin the phrase, but he said it with a gusto we could all buy into. We all want to win. Conventional wisdom teaches that a lawyer winning is being on the high side of the trial, the negotiation, whatever. Winning is number one. But is there only one definition for "winning"? And if there is more than one, who decides what it is?

As I write this column, I feel like I am sitting in the back seat of a roller coaster. I started out early this morning at the **BATTLE OF THE BAY** – the canoe race fundraiser for the **VOLUNTEER LAWYERS PROGRAM**. Though I was the weakest oar on my four person relay team (old age exacts its price), it was fun, invigorating and for a great cause.

My next stop was a wake for a friend and neighbor taken from this world well before her time. Our whole street has been in mourning since she died last weekend, as have all who were in her circle of influence. When I got home, I spoke by phone with a client whose case was set for trial Monday until we settled it Thursday afternoon. More on that in a minute.

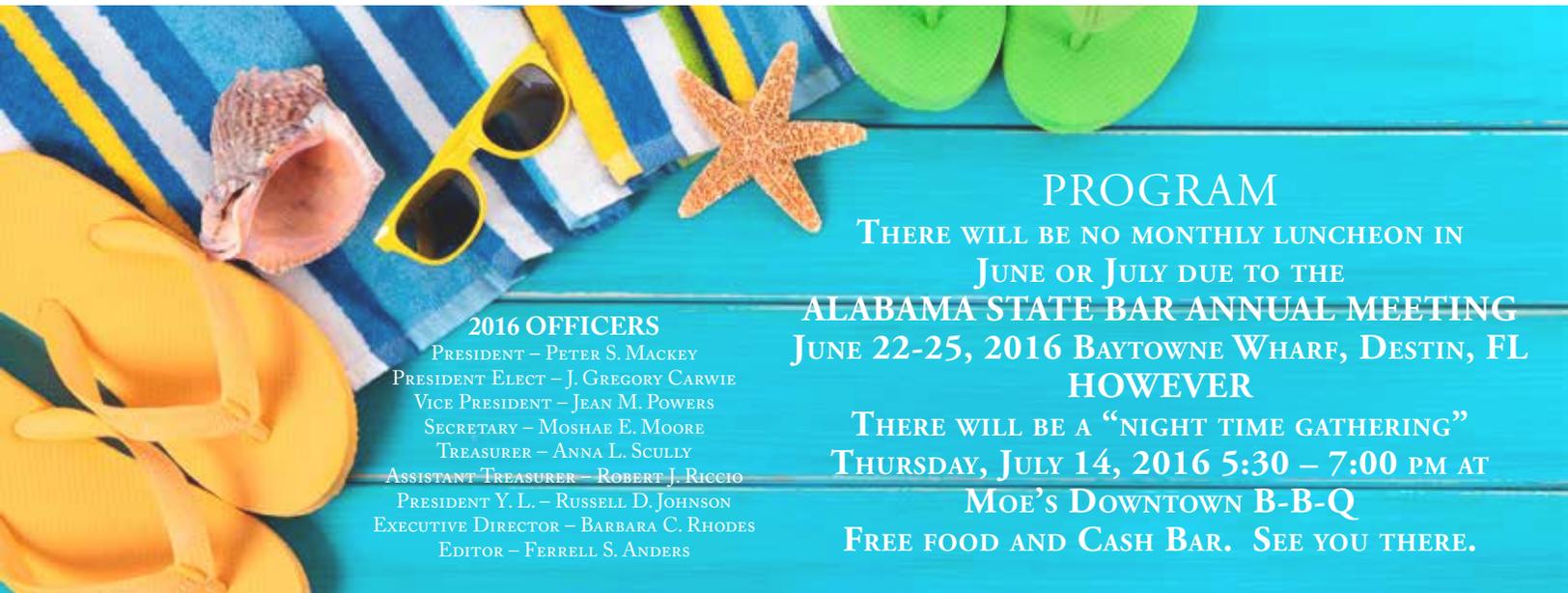
Later today, we will head downtown for the wedding of another neighbor. The departed, the betrothed, and I live only seven houses apart. Circle. Of. Life. This day, as well as the week leading up to it, has conjured up a flood of conflicting emotions. Back to my client.

When my co-counsel and I sat down to discuss our settlement posture and form our battle plan, they suggested a settlement figure.* I thought they were being conservative

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PROGRAM

THERE WILL BE NO MONTHLY LUNCHEON IN JUNE OR JULY DUE TO THE ALABAMA STATE BAR ANNUAL MEETING JUNE 22-25, 2016 BAYTOWNE WHARF, DESTIN, FL HOWEVER

THERE WILL BE A "NIGHT TIME GATHERING" THURSDAY, JULY 14, 2016 5:30 – 7:00 PM AT MOE'S DOWNTOWN B-B-Q FREE FOOD AND CASH BAR. SEE YOU THERE.

2016 OFFICERS

- PRESIDENT – PETER S. MACKAY
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- EXECUTIVE DIRECTOR – BARBARA C. RHODES
- EDITOR – FERRELL S. ANDERS

Browsing the Bar With Barbara

I want to remind you all that there will not be a MBA Monthly Luncheon in June or July! We are, however, having an evening meeting at **MOE'S DOWNTOWN B-B-Q, THURSDAY, JULY 14, 5:30 – 7:00 PM.** The food will be free and there will be a cash bar. Last year's evening at Moe's was well attended and, from all reports, a good time was had by all. Please mark your calendars now.

.....PUNS FOR EDUCATED MINDS:

- The fattest knight at King Arthur's round table was Sir cumference. He acquired his size from too much pi.
- She was only a whiskey-maker, but he loved her still. A rubber-band pistol was confiscated from an algebra class, because it was a weapon of math disruption.
- A grenade thrown into a kitchen in France would result in Linoleum Blownapart.
- A hole has been found in the nudist-camp wall. The police are looking into it.



President's Comments *continued from Page 1*

and started looking at the case as one to try. The facts, in my view, were solidly on our side. The case had been ably defended by a long time friend and adversary, but there was only so much he had to work with. I recognize that claiming to predict with accuracy what a jury will do is a fool's game. But ... we were feeling much more windshield than bug. We were going to win!

As the days toward trial came and went, and counter-offers followed offers, I became bolder. I was more and more convinced that we needed to let the defendants pay the price by facing a jury. Two days before we settled, the light bulb finally came on ... I had not considered that maybe my way was not the best way. Perhaps the lawyers I was working with were right. They had listened to our client – I had not.

Had I done so, I would have seen where we were through their eyes and those of our client. This would be the fourth trial, and ninth lawsuit (starting in 2007) – including a bankruptcy. I would have had to agree that yes, this litigation had gone on a long time. I probably would have even offered myself that the defendants' bankruptcy filing, though failed, was a real blow to our client's momentum. Even with my trial hat on, I realized that had we prevailed at this trial, we were still looking at another bankruptcy or other litigation and, if not, a collection effort four states away.

Our client owned a family business started by his dad and he is the type of person any lawyer wants to represent. Nine years of litigation, however, had taken their toll on him, his opponents and the lawyers. Everyone except me – I had only been involved for two years. I wanted a win! That is what a lawyer is supposed to deliver, right? It is if the case is tried, but not every case should be tried. My last few conversations with our client confirmed that.

Finally, we got an offer within in an inch of our goal. I conveyed it to my client as one more step. His response was cold water in my face. "Settle it however you think is best," he responded. He was at the hospital. His father had been in a bad accident and they were taking him to surgery. An hour later he let me know that his dad did not make it. He did not even ask about the settlement ... it didn't matter ... I finally, really, heard him. Circle. Of. Life.

Letting a jury decide the outcome is not the number one choice of every client. In fact, I would bet that most clients feel that way. Most are simply too risk averse. Some want to know for sure what they are getting. Some simply want closure. It is our job to respect their choice and to counsel them such that they can make an informed decision. Counseling is hard. It requires checking one's ego at the door. It means understanding that the right answer is what the informed client really wants, not the lawyer. Winning is relative. If a year down the road a client comes back to you to handle something else, you have two winners.

** Our client reviewed this column gave me permission to publish it.*



United States District Court for the
Southern District of Alabama
Mobile, Alabama

**PUBLIC NOTICE FOR APPOINTMENT OF
NEW MAGISTRATE JUDGE**

The Judicial Conference of the United States has authorized the appointment of a full-time United States Magistrate Judge for the United States District Court, Southern District of Alabama, Mobile, Alabama. The essential function of courts is to dispense justice. An important component of this function is the creation and maintenance of diversity in the court system. A community's belief that a court dispenses justice is heightened when the court reflects the community's diversity.

The duties of the position are demanding and wide-ranging and include the following:

- (1) Conduct of most preliminary proceedings in criminal cases;
- (2) Trial and disposition of misdemeanor cases;
- (3) Conduct of various pretrial matters in civil cases and evidentiary proceedings on delegation from the District Judges of the District Court;
- (4) Trial and disposition of civil cases upon consent of the litigants; and
- (5) Jury selection in most civil and criminal cases.

The basic authority of a United States Magistrate Judge is specified in 28 U.S.C. § 636.

To be qualified for appointment, an applicant must:

- (1) Be, and have been for at least five (5) years, a member in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, and have been engaged in the active practice of law for a period of at least five (5) years (with some substitutes authorized);
- (2) Be competent to perform all the duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;
- (3) Be less than seventy (70) years old; and
- (4) Not be related to a Judge of the District Court.

A Merit Selection Panel composed of attorneys and other member of the community will review all applicants and recommend to the District Judges in confidence the five (5) persons it considers best qualified. The court will make the appointment following an FBI full-field investigation and an IRS tax check of the applicant selected by the court for appointment. The individual selected must comply with the financial disclosure requirements pursuant to the Ethics in Government Act of 1978, Pub. L. No. 95-521, 90 Stat. 1824 (1978) (codified at 5 U.S.C. app. 4 §§ 101-111) as implemented by the Judicial Conference of the United States. An affirmative effort will be made to give due consideration to all qualified applicants without regard to race, color, age (40 and over), gender, religion, national origin, or disability. The current annual salary of the position is \$186,852. The term of office is eight (8) years.

Application forms and more information on the Magistrate Judge position in this court may be obtained from the Clerk of the District Court.

Charles R. Diard, Jr., Clerk
U. S. District Court
Southern District of Alabama
113 St. Joseph Street
Mobile, AL 36602

The form is also available on the court's website at <http://www.alsd.uscourts.gov>. Please submit original and eight (8) copies. Applications should be marked "Confidential" and submitted and directed to the Clerk of Court at the above address. Applications **must be received by close of business June 17, 2016**.

YOUNG LAWYERS

RUSSELL JOHNSON, PRESIDENT

The **YOUNG LAWYERS** is pleased to thank **ALEXANDER SHUNNARAH & ASSOCIATES** for a great May meeting. We had another amazing turnout and everyone enjoyed a great evening at **THE MERRY WIDOW**.

The June meeting will be hosted by **ARMBRECHT, JACKSON** on **JUNE 23rd** beginning at 5:30. The location will be announced soon, so be sure to keep a look out for the announcement. You will not want to miss it. All are welcome, and we look forward to seeing you there.

REMINDER - the **2016 YOUNG LAWYERS GOLF TOURNAMENT** will take place on **FRIDAY, JUNE 10th** at **TIMBER CREEK**, to benefit **THE JUSTIN PARSONS SCHOLARSHIP FUND**. We are overwhelmed with the response to date, and it is shaping up to look like a great tournament this year. However, we are still looking for teams and will continue to accept sponsorships up until the week of the Tournament. To enter a team and/or sponsor a hole, please contact me (RJohnson@alexandershunnarahlaw.com), Vice-President Tim Heisterhagen (tah@ajlaw.com), Treasurer Kate Browning (kmb@rebpc.net) or our "invaluable" Golf Tournament Chair, Weathers Bolt (wbolt@starneslaw.com). Checks can be made payable to "Mobile Young Lawyers" and delivered or mailed to Kate Browning at The Browning Firm, 258 State Street, Mobile, AL 36603.



LAWYERS IN THE NEWS

By SANDY G. ROBINSON

LEGAL MILESTONES:

DIED: DR. JOE BARLAR, father of MBA member **DANNY BARLAR**, passed away at the age of 90 on May 5, 2016 in Foley. He was a dedicated and compassionate Optometrist who practiced in Mobile for 65 years. He served in the U. S. Navy, and graduated from Northern Illinois College of Optometry. He was a lifelong sports enthusiast, outdoorsman and naturalist. He was an Elder and Deacon at Westminster Presbyterian Church and was a member of Gulf Shores Presbyterian Church at the time of his death. He is survived by his wife of 67 years, two children, six grandchildren, and one great-granddaughter, and many other relatives and friends.

DIED: ANNE BOYKIN HOWARD, widow of the late **JUDGE ALEX T. HOWARD, JR.**, died on May 7, 2016 at the age of 85. She was a native and lifelong resident of Mobile and was a lifelong member of Dauphin Way United Methodist Church. She was also a member of the Junior League of Mobile and several mystic organizations. She is survived by two children, five grandchildren, and two great-grandchildren.

DIED: DR. ALLAN TUCKER, husband of MBA member **JEAN TUCKER**, died on March 23, 2016 in Mobile following a long battle with brain cancer. He had worked as a professor in the pathology department of the University of South Alabama College of Medicine since 1991, and prior to stepping down because of illness in 2015 was the Chair of Pathology at the medical school. He was dedicated to teaching and to his students and received many honors and recognitions in his teaching and medical career. In addition to his wife, he is survived by three children and many other relatives and friends.

BORN: KATHRYN ELIZABETH COMER was born to MBA members **MEGAN BROOKS COMER** and **BRYAN E. COMER** on May 9, 2016. At birth she was 20 inches long and weighed 7 pounds, 14 ounces. She is very smart and very beautiful – just ask her grandfather, MBA member **CIRCUIT JUDGE BEN BROOKS!**

CONGRATULATIONS: MBA member **REGGIE COPELAND** has been hired as the men's basketball coach at the new St. Michael Catholic High School in Baldwin County, which is set to open in August.



ANNOUNCEMENTS

DOWNTOWN OFFICE SPACE AVAILABLE: 209 N. Joachim Street in historic DeTonti Square. Within walking distance of Federal Courts. Amenities: VOIP telephone, internet, WIFI, email, fax machine, large color copier/scanner, onsite parking, lobby, conference room and kitchen. Contact **EVANS CROWE** at 251.431.6011 or crowe@evanscrowe.com

OFFICE SPACE AVAILABLE: Two large offices within easy walk to the County Court House, on an expense sharing arrangement. Receptionist, telephone, internet, conference room with large screen. Space available for your own secretary. Call **DAN MCCLEAVE** or **RICHARD SHIELDS** 251.433.2001

DOWNTOWN OFFICE SPACE FOR LEASE: 205 N. Conception Street, in an historic home in the beautiful DeTonti Square neighborhood. Private parking, available conference room waiting area, optional space for staff. Internet provided. A block from the Federal and Bankruptcy Courthouses. Perfect for a new Solo on a budget or an experienced practitioner desiring high-end digs. Contact **HENRY BREWSTER** at 251.338.0630 or hbrewster@brewsterlaw.net.



SIGNIFICANT DECISIONS BY DUANE GRAHAM

In *Ex Parte Engineering Design Group, LLC, No. 1141219* (Ala., February 5, 2016), the Supreme Court held that the trial court abused its discretion in not transferring venue for a lawsuit involving the failure of a dam located in Shelby County to the Circuit Court of Shelby County, even though two of the defendants were located in St. Clair County, where the lawsuit was filed, and even though the plaintiffs claimed that Mobile County had a bigger connection to the lawsuit than Shelby County inasmuch as their alleged damages occurred there.

In *Hoover General Contractors - Homewood, Inc. v. Key, No. 1141208* (Ala., February 19, 2015), the Supreme Court held that a defendant did not waive its arbitration clause or substantially invoke the litigation process by failing to assert arbitration in its answer to the complaint and its answer to an amended complaint.

In *Vardaman v. Vardaman, No. 2150109* (Ala. Civ. App., February 12, 2016), the Court of Civil Appeals held that it had no appellate jurisdiction to consider appeals from Rule 60 motions that had been filed after the initial Rule 60 motion, which was denied and not appealed. According to the Court, once the trial court denied a Rule 60 motion, it lacked jurisdiction to consider another Rule 60 motion based on the same grounds.

MOBILE BAR ASSOCIATION WOMEN LAWYERS

By: ALEXANDER K. GARRETT

On May 24, 2016, **MBAWL** honored **CELIA COLLINS** of **JOHNSTONE ADAMS, LLC** at its **5TH ANNUAL TRAILBLAZER TEA**. Approximately 80 attorneys, judges, public servants, and community business leaders attended the event, which was held in the **CRYSTAL BALLROOM AT THE BATTLE HOUSE RENAISSANCE HOTEL**. **MARY MARGARET BAILEY** of **FRAZER GREENE UPCHURCH & BAKER, LLC** introduced Celia, recounting the trail-blazing trajectory of her career in a time when there were few women in the bar, her many accomplishments, her service to the bar and local community, and her dedication to the advancement of women in the law. **MBAWL PRESIDENT AND ASSISTANT U.S. ATTORNEY SUNTREASE WILLIAMS-MAYNARD** and **MBAWL SECRETARY ALEXANDRA GARRETT OF SILVER, VOIT & THOMPSON, P.C.** presented Celia with a plaque commemorating her years of mentorship and sponsorship of women lawyers. To further honor its **2016 TRAILBLAZER**, **MBAWL** will make a \$1,000 donation in Celia's name to her chosen non-profit organization, the **WOMEN'S BUSINESS CENTER**.

The tea was sponsored by **BURR & FORMAN, LLP**, **CUNNINGHAM BOUNDS, LLC**, **JOHNSTONE ADAMS, LLC**, **IRVING AND FRANCES**

SILVER, **FRAZER GREENE UPCHURCH & BAKER, LLC**, **CONRAD BARLAR & MCCULLOCH**, **DAVIS & FIELDS, P.C.**, **RICHARDSON LAW FIRM**, **ADAMS AND REESE, LLP**, AND **BARTON LAW**.

Also in May, **MBAWL** participated in the **ALABAMA LEGAL FOOD FRENZY**, which aims to supplement the food supply of regional food banks during the summer months to assist families who face food hardships when school is closed. **MBAWL's** donations provided 315 meals!



SAVLP

SOUTH ALABAMA VOLUNTEER LAWYERS

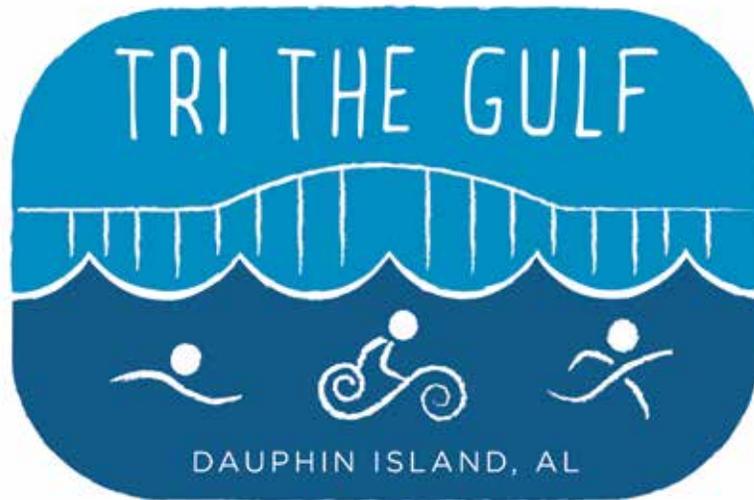
BY ARIANA H. MOORE

As you may know, SAVLP's long-time Office Manager, **SUSAN LINDSAY**, retired at the end of May. While we cannot replace Susan, we have added a new staff member- **MIKE DEGEN**- to the SAVLP team. Mike's past experience includes work as a data associate and special projects manager at a Phoenix, Arizona non-profit and as a research specialist at the University of South Alabama's Center for Healthy Communities. Please stop by the office or the next courthouse clinic and welcome Mike to SAVLP.

The **BALDWIN COUNTY BAR ASSOCIATION** swept the canoe relay division at **BATTLE OF THE BAY**. **STEVEN SAVARESE, BALDWIN COUNTY BAR ASSOCIATION PRESIDENT**, was on hand to accept the oar. That makes three wins for Baldwin County and two for Mobile. Thanks to all who attended!



MOBILE BAR FOUNDATION TO SPONSOR FIRST ANNUAL “TRI THE GULF”



The **MOBILE BAR FOUNDATION** has decided to sponsor a triathlon that will be held on Dauphin Island on October 15, 2016, as a fundraising event. The Foundation needs **EVERY** member of the Association to assist in this effort. There are needs associated with the triathlon, including: financial sponsors, participants in the triathlon (either as individuals or as part of a relay team), assist in the pre-event administrative activities, assist in the set-up of equipment immediately prior to the commencement of the triathlon, help promote safety on the bike and run courses during the triathlon, assist in the triathlete check-in process, and assist with post-event party. The triathlon has a web site and a Facebook page. The web site address is www.trithegulf.com. The FaceBook page is <https://www.facebook.com/trithegulf>. Registration for the triathlon has commenced. If you have any questions or desire to be a volunteer, please contact **BRANDY HAMBRIGHT**, volunteer coordinator, at 251.438.2700 or brandy@hmhlawyers.com. If you are interested in providing financial support, please contact Jean Powers, sponsor coordinator, at 251.432.0043 or jean@jeanpowerslaw.net.

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, can be paid in up to 5 annual installments)

Sustaining Member (\$100 or more annually)

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



LAWYERS ASSISTANCE PROGRAM

LAWYERS AND ALCOHOL

A recent study of 12,000 American lawyers confirmed the obvious – lawyers and alcohol are often a bad combination. The study, funded by the **AMERICAN BAR ASSOCIATION** and **THE BETTY FORD FOUNDATION**, found that 1 of 5 licensed attorneys' use of alcohol is "hazardous, harmful, and potentially alcohol-dependent." This is three times higher than the rate of problem drinkers among the general public and double that of doctors. Being male and under 30 increases significantly the likelihood of problem drinking by lawyers.

Lawyering is stressful and hard work but practicing medicine is as well. So is something else going on with lawyers? Yes, according to the counselors at the **HAZELDEN BETTY FORD CENTER**, which has a specialized center just for lawyers. We lawyers like to succeed and we are all too willing to sacrifice things like "balance" "self-care" and "well-being" to do so. This is taught early on in high-pressured law schools and modeled throughout the profession. Plus, lawyers tend toward pessimism by nature and training and also fear the perceived reputational hit if they seek treatment.

As a profession its clear we have a long way to go. Acknowledging and recognizing the problem is the first step in the right direction. If you or a lawyer you know needs help because of alcohol dependency contact the **ALABAMA LAWYER ASSISTANCE PROGRAM** at 334-834-7576 or contact any member of the **MBA LAWYER ASSISTANCE COMMITTEE**, below. All inquiries will be kept in confidence. Names and numbers below:

JOSH BRISKMAN (251) 433-7600

HANK CADDELL (251) 478-8880

JAY MCDONALD (251) 415-9236

MATT MCDONALD (251) 432-1414

BEN HEINZ (251) 327-5672

LAW DAY CONTRIBUTIONS

Thank you from the Law Day Committee to the following named attorneys/firms who contributed to the **LAW DAY ACTIVITIES**:

CHRISTOPHER G. HUME, III

GREGORY B. MCATEE

ADAMS & REESE LLP

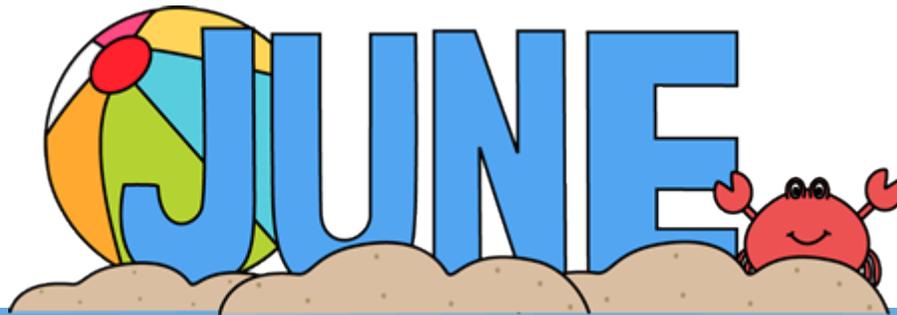
GABY REEVES

PIPES, HUDSON & WATTS, L.L.P.

PATTIE DAVIS

THE ATCHISON FIRM

PIERCE LEDYARD, P.C.



2016

**JUNE 2- WEDNESDAY
FEDERAL COURT SECTION MEETING,
3:30 PM,
U.S. COURTHOUSE**

**JUNE 7 - TUESDAY
MENTORING COMMITTEE MEETING,
12 O'CLOCK NOON,
QUEEN'S ROOM,
ATHELSTAN CLUB**

**JUNE 9 - THURSDAY – EXECUTIVE COMMITTEE MEETING,
12 O'CLOCK NOON,
QUEEN'S ROOM,
ATHELSTAN CLUB**

**JUNE 10- FRIDAY
YOUNG LAWYERS
ANNUAL GOLF TOURNAMENT**

**JUNE 23 - THURSDAY
GRIEVANCE COMMITTEE MEETING,
12 O'CLOCK NOON,
QUEEN'S ROOM,
ATHELSTAN CLUB**

**JUNE 22-25 WEDNESDAY – SATURDAY
ALABAMA STATE BAR
ANNUAL MEETING**