

# 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

There was a female lawyer in our Bar who loved to dance. She was not in the mainstream. She was navigating the turbulent seas of law practice mostly by herself. Her appearance was striking and a little provocative. Her behavior at times was strange. She had run-ins with judges and other lawyers. Eventually, she got in trouble with the State Bar. She faced this on her own, and by some accounts handled it poorly. We circulated e-mails to each other with depositions and hearings where she said and did bizarre things. We gossiped about her troubles and embarrassments. We felt superior to her. What we didn't do was help her. Not long after a tense disciplinary hearing in Montgomery, she took her own life. We shook our heads some more, said how unfortunate it all was, and went back to our own concerns.

We all know lawyers who have needed support, advice, a lecture or maybe an intervention, and have received it from other lawyers. Why, then, didn't we do more to help this lawyer? Maybe because she was not in our chain of professional friends or acquaintances. She did not have many close friends in the Bar. She was not a member of a big firm. She was not generally well-known or held in high esteem. Maybe we were intimidated by her appearance or eccentricities.

Life is hard, and law practice is hard. There is no script or director. There is not always a happy ending. We are all busy and distracted. We have our jobs and our families. We have our circle of professional friends, whom we are willing to assist when they are in need. Maybe it is not reasonable to expect us to have the time and energy to keep ourselves in the channel and also pull others we do not even know off the shoals. Still, when one of our members who is not well-known to us is alone and foundering, maybe we should make contact and extend a hand.

What if we had chosen to seek out the lawyer who loved to dance and introduce ourselves and strike up a conversation? Perhaps we would have discovered how

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### PROGRAM

THE APRIL MONTHLY LUNCHEON WILL BE

FRIDAY, APRIL 19, 2013

11:45 AM IN THE CRYSTAL BALLROOM ON THE MAIN FLOOR

OF THE BATTLE HOUSE HOTEL

**GUEST SPEAKER**

**PHILLIP C. SAVAGE, JR.**

SENIOR BOWL EXECUTIVE DIRECTOR

CRIMSON TIDE SPORTS NETWORK COLOR ANALYST

**25 YEAR SECRETARIES HONORED**

# *Browsing the Bar - With Barbara*

Thanks to those of you who responded to the call for a mentor “Bar Buddy”. We are still in need of a few so if you just forgot to call, you have a second chance! Call Barbara or Tammy at 251.433.9790. These “Baby Lawyers” need someone to introduce them to the Mobile legal community.

**LAW DAY** is fast approaching and we are going to need volunteers for the Law Help Line scheduled for Tuesday, May 7, 2013 – the shifts are two hours with the first beginning at 6 am and the last at 4 pm. Please call if you will be available to fill one of those time slots – 251.433.9790.

The March luncheon was the occasion to honor those Mobile Bar Association lawyers who have been members since 1963 – 50 years! In **PRESIDENT UPCHURCH**’s absence, **PRESIDENT ELECT MIKE DRUHAN** gave a brief history on each distinguished guest and the MBA presented them with a plaque commemorating the occasion. Those honored were **BILLY C. BEDSOLE**, **G. PORTER BROCK, JR.**, **JERRY A. McDOWELL**, **AUGUSTINE “GUS” MEAHER, III** and **HAROLD D. PARKMAN**. **JUDGE ROBERT KENDALL** and **JUDGE JAMES LACKEY**, both deceased, were also in that class. The honorees were accompanied by family members and friends who helped make the day more memorable. What more can we say than thank you for your service and example. (see photograph elsewhere in this publication)



## **President’s Comments**

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troubled a soul she was. Maybe, once burdened with that knowledge, we would have done something, even something small, that would have altered her sad trajectory.

There are lawyers among us right now who are strangers to us but who need a colleague to show an interest, give advice, or just make an effort. We have more lawyers practicing by themselves, without mentoring or guidance, than we have ever had. The economic pressures of law practice have never been greater. Alcohol and drug abuse continue to be a self-destructive Siren’s song for lawyers, particularly young, isolated ones. Depression and mental illness drag down even high achieving professionals.

As lawyers, we do a pretty good job of taking care of our friends. The lawyers on the periphery or the fringe of our professional and social legal community, however, tend not to be the beneficiaries of this support system. As we grow as a Bar Association, there will be more and more lawyers we do not know – particularly young, solo practitioners. We need to seek out these lawyers when we hear that they are acting inappropriately or are headed down the wrong road. We can pick up the phone and call that lawyer or walk up to him or her in the hall at the courthouse and strike up a conversation. Sometimes just being available is what’s important.

Maybe the next time we hear about a lawyer acting strangely, or stumbling professionally or personally, rather than chuckle with our buddies about it, we will remember that other lawyer who loved to dance. If we have another chance, and surely we will, maybe we will see fit to do things differently next time.





## SIGNIFICANT DECISIONS

Attorneys involved in entering and enforcing arbitration awards are encouraged to review *Southeast Construction, L.L.C. v. WAR Construction, Inc., No. 1101050* (Ala., November 9, 2012), a rather complicated and convoluted case in which the Supreme Court discussed the application of relatively new Rules 71B and 7C of the Alabama Rules of Civil Procedure.

In *Ex parte Green, No. 1110779* (Ala., October 19, 2012), the Supreme Court concluded that venue against a non-resident defendant is proper in any county in the state and, thus, transfer of venue to from Monroe County to Conecuh County in which the second defendant (a resident of Alabama) lived was error.

For readers interested in learning the details of where wharves can be built in front of Mobile Bay residences, see *Schramm v. Spottswood, No. 1110794* (Ala., October 19, 2012).

In *Boys and Girls Clubs of South Alabama, Inc. V. Fairhope-Point Clear Rotary Youth Programs, Inc., No. 1110843* (Ala., October 19, 2012), the Supreme Court held that the alleged beneficiaries of a charitable body organized as an Alabama non-profit corporation lacked standing to sue the corporation because they were not members of directors of the corporation under Ala. Code § 10A-3-2.44, and this statute was held to override the general rule that a beneficiary who had more than a mere potential interest could sue.

In *Braden Furniture Co. v. Union State Bank, No. 1110943* (Ala., October 19, 2012), the Supreme Court held that a bank account owner's claim for negligence against a depository bank with whom the owner had no relationship for depositing funds on forged checks that were deposited into the forger's account at the Bank could not proceed because such claim was contrary to the allocation-of-loss provisions of the Uniform Commercial Code. The Court noted that under the UCC, the account owner's remedy was directed at its own bank, not the depository bank, and this UCC provision overrode any common-law claim that might otherwise be asserted.

In *Ex parte BancorpSouth Bank, No. 1111209* (Ala., October 19, 2013), the Supreme Court first held that a provision waiving the right to trial by jury contained with a guaranty agreement was valid under the three-part test discussed in *Gaylord Department Stores of Alabama v. Stephens*, 404 So. 2d 586 (Ala. 1981). The Court then concluded that this waiver applied as well to tort claims arising in connection with the guaranty agreement.



# SAVLP

## SOUTH ALABAMA VOLUNTEER LAWYERS

ARIANA H. MOORE, ASSOCIATE DIRECTOR



In 2012 the **BALDWIN COUNTY BAR** took home first prize in **BATTLE OF THE BAY CANOE AND KAYAK RACE LEGAL DIVISION**. The winning oar now hangs in a place of honor in the Baldwin County Courthouse. The Mobile Bar Association can win it back, but only with your help! Sign up to race by calling SAVLP at 433-6693 or going to our website at [www.savlp.org](http://www.savlp.org) and clicking on the Race Logo. The race will

be held April 27th at 9:00 at the **BLUE GILL**. Even if you don't want to paddle, buy a ticket for brunch at the Bluegill and watch the race. There will be **FREE** airboat rides for attendees and a costume contest for participants. Thanks to **REGGIE COPELAND, JR.**, of **THE GARDNER FIRM**, **MICHAEL UPCHURCH** of **FRAZER GREENE UPCHURCH & BAKER** and **RICK HOLSTON** of **HOLSTON VAUGHAN** for sponsoring the airboat rides!

### A JOINT REQUEST FROM DOMESTIC RELATIONS COURT AND SAVLP

Are you a certified **GAL** who practices in **MOBILE COUNTY'S DOMESTIC RELATIONS COURT**? **SAVLP** would like to provide the **DOMESTIC RELATIONS COURT** with an updated list of panel attorneys willing to serve pro bono in cases involving **SAVLP** clients. Clients receiving services from **SAVLP** have been screened for income eligibility. Panel attorneys who represent these clients waive their legal fees, but clients are responsible for any court costs or fees associated with their cases. **SAVLP** does not have a fund to help with these expenses. If you would be willing to accept a pro bono appointment in **DOMESTIC RELATIONS COURT**, please contact Ariana at 433-6693 or [ariana@savlp.org](mailto:ariana@savlp.org).

Special thanks to the following attorneys who opened or closed a case in February: **GARY P ALIDOR, JOSEPH ALTADONNA, EATON G BARNARD, JOHN G BAYLOR JR., PAUL T BECKMANN, JOHN T BENDER, RUSSELL E BERGSTROM, JAIME W BETBEZE, CHRISTINA M BOLIN, CARIN D BROCK, CHAD R BROWN, CHRISTOPHER A CALLAGHAN, HENRY A CALLAWAY III, CRAIG CAMPBELL, WALTER G CHAVERS, FRANCES R CLEMENT, F. LUKE COLEY JR., ALAN M COLVIN, STEPHEN G CRAWFORD, SAMUEL N CROSBY, MICHAEL DASINGER III, RONALD P DAVIS, SPENCER E DAVIS JR., T. JEFFERSON DEEN III, SONDR A DEMPSEY, SARAH B DORGER, PAGE S ELLIS, JENNIFER L EVANS, JOSH D FRIEDMAN, DUANE A GRAHAM, JOSHUA M GRANTHAM, JON A GREEN, THOMAS E HARRISON, CHRISTINE C HERNANDEZ, R. SCOTT HETRICK, MICHAEL R HOLBERG, W. GREGORY HUGHES, SCOTT W HUNTER, WESLEY J HUNTER, HERNDON INGE III, SAMUEL IRBY, BRIAN C ISPHORDING, JACK F JANECKY, NEIL C JOHNSTON, KATHLEEN COBB KAUFMAN, KYLA KELIM, GILBERT B LADEN, R. EDWIN LAMBERTH, SAMUEL P MANESS, E. RUSSELL MARCH III, SHANNON R McCLURE, KRISTINE McCULLOCH, S. C. MIDDLEBROOKS, JENNIFER S MORGAN, S. WESLEY PIPES V, JEAN M POWERS, ROBERT RICCIO, MATHEW B RICHARDSON, IAN ROSENTHAL, ANNA L SCULLY, CLIFFORD C SHARPE, PATRICK H SIMS, JACK SMALLEY III, HENDRIK SNOW, JEFFREY R SPORT, SCOTT D STEVENS, WILLIAM D STOKES, RENEE E THIRY, RICHARD L THIRY, JAMES VANCLEAVE, GREGORY VAUGHAN, JARROD J WHITE, ANNA M WILLIAMS, CHRISTOPHER S WILLIAMS, RICHARD R WILLIAMS, MICHAEL A WING, PATRICIA K WOOD, RICARDO WOODS, AND MELODY M ZEIDAN.**



# NEW MEMBERS

**SHERRI ANGEL THOMAS,**  
**UNIVERSITY OF ALABAMA SCHOOL OF LAW 2011;**  
**ALABAMA STATE BAR 2011; WITH LEGAL SERVICES OF ALABAMA**



## 50 Year Lawyers



These 50 year members of the MBA were honored at a recent meeting. They are from left to right: **JERRY McDOWELL, BILLY BEDSOLE, PORTER BROCK, GUS MEAHER, HAROLD PARKMAN** and **MIKE DRUHAN.**





## LAWYERS IN THE NEWS

BY SANDY G. ROBINSON

### LEGAL MILESTONES:

**BORN:** MBA MEMBER **JOHN PIERCE** AND WIFE **AMBER** ARE DELIGHTED TO ANNOUNCE THE BIRTH OF THEIR SON, **JOHN CHARLES SPENCER PIERCE**, ON MARCH 12TH, 2013. SPENCE WAS 6 POUNDS 15 OUNCES, AND ALL ARE DOING WELL. CONGRATULATIONS TO ALL THE FAMILY, INCLUDING GRANDFATHER MBA MEMBER **DON PIERCE**.

**DIED:** **LAURA LEIGH HAMBY-PLEDGER**, DAUGHTER OF MBA MEMBER **DAVID HAMBY**, PASSED AWAY ON MARCH 4, 2013. SHE WAS A NATIVE AND RESIDENT OF FAIRHOPE AND IN ADDITION TO HER FATHER IS SURVIVED BY HER HUSBAND, **DANIEL J. PLEDGER**, HER MOTHER **LEONE JONES**, THREE SISTERS, ONE BROTHER, AND LOVING GRANDPARENTS.

## YOUNG LAWYERS

*JOSHUA D. FRIEDMAN, PRESIDENT*

I would like to start by reminding everyone that the **YOUNG LAWYERS** will again be sponsoring **FUN FEST** at **SAINT MARY'S ORPHANAGE**. The new date is May 18th and we are in need of volunteers and sponsors. **FUN FEST** is always a great fundraising success as well as a great time for the children and volunteers. We encourage everyone that would like to participate to let us know as soon as you can. If **FUN FEST** interests you, please contact the committee chairmen **CHRIS CONTE** (ctc@helmsinglaw.com), or **SCOTT STEVENS** (sstevens@starneslaw.com). All profits from **FUN FEST** will be donated to St. Mary's.

I also want to extend our thanks to **BURR & FORMAN** for a great March meeting at **T.P. CROCKMIERS**. I hope that everyone who was able to attend the meeting had an excellent time. The April Meeting is being co-sponsored by both **MOBILE BAY REPORTING** and **SOURCE ONE LEGAL COPY**. The meeting begins at 5:30, and will be held on April 18, 2013 at **HABERDASHER**, which is located at 451 Dauphin Street. I look forward to seeing everyone there in April. If you would like to get involved with **FUN FEST** or any of our other charity events, are interested in sponsoring an upcoming meeting, or have any questions, please e-mail me (josh@bafmobile.com), **KASEE HEISTERHAGEN** (kasee.heisterhagen@burr.com), or **JONATHAN MAPLES** (jmaples@carrallison.com).





# ANNOUNCEMENTS

**CITRIN LAW FIRM, P.C.** announces the opening of a Mobile Office located Downtown in the Landmark Square Building, 169 Dauphin Street, Suite 202, Phone: 251.432.8844; toll free: 855.248.7465. Offices also located at 1703 Main Street in Daphne next to City Hall.

**FOR LEASE:** Beautiful second floor office space in historic home in Downtown Mobile. Space features two offices with reception area and access to three conference rooms. Private parking lot and full security alarm system. Contact Mike Turner or Christina Steward at 205.397.2397 for more information.

**LARGE CLASS A “Boutique” Office** space available in Mobile. Very convenient to downtown and courthouses. 12 x 12 office and over 2000 square feet of common space, including full kitchen, full restroom, area for conference room, etc. Secure magnetic entry. \$1100 per month, includes all utilities, wifi and tenant parking. Balcony on Dauphin Street. 251.219.3847

**RESOURCE FOR THE BAR and HELP FOR THE CLERK’S OFFICES. BRISKMAN & BINION** is excited to announce the creation of three new websites to assist the bar and to help relieve the number of calls to the clerks’ offices about court settings: [mobilecriminaldocket.com](http://mobilecriminaldocket.com), [mobiletrialdocket.com](http://mobiletrialdocket.com) and [mobiledomesticdocket.com](http://mobiledomesticdocket.com).

**JUDSON W. WELLS** has been named to the **JUDICIAL NOMINATING COMMISSION**, replacing **BILLY C. BEDSOLE**.





**SPECIAL ANNOUNCEMENT:**  
**EXCERPTS FROM ADMINISTRATIVE ORDER OF**  
**ALABAMA SUPREME COURT**

**IT IS THEREFORE ORDERED AND DIRECTED, THAT:**

Effective March 20, 2013, the Circuit and District Clerks' Office in each judicial circuit of the state shall be closed to the general public on Wednesday of each week, absent objection and request to this Office for exemption by the Presiding Judge of the Circuit.

The Circuit and District Clerks shall also give notice of office closing to the general public and the members of the bar that regularly practice in the county, counties, or circuit, in such manner as will reach the greatest number of persons affected. Notice shall include prominent postings inside and outside the Court Clerk's office, as well as the effective date closing will commence.

Notwithstanding the closing of a Clerk's office to the general public, the work hours for that office's staff shall not be altered, but all staff-members shall continue to begin and end their work days at the usual times, and shall perform those duties and tasks that are required.

When Clerks' offices are closed pursuant to this Administrative Order, Rule 5(D) of the Alabama Rules of Judicial Administration shall apply.





**NOTICE FROM PROBATE COURT**  
**SMALL ESTATE SUMMARY DISTRIBUTIONS AMOUNT**  
**DON DAVIS, JUDGE OF PROBATE**

Please be advised that the **STATE DEPARTMENT OF FINANCE** has increased the maximum amount/value for small estate administration (summary distributions) to \$27,175 effective March 1, 2013. If you have any questions regarding summary distributions, please contact the Probate Court's Judicial Division at 574-6009.



**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



# April



APRIL 1 - MONDAY  
BENCH & BAR COMMITTEE MEETING,  
12 O'CLOCK NOON, FELIX'S RESTAURANT

APRIL 11 - THURSDAY  
MBA EXECUTIVE COMMITTEE MEETING,  
12 O'CLOCK NOON, BIENVILLE BUSINESS CLUB

APRIL 19 - FRIDAY  
APRIL MONTHLY LUNCHEON, 11:45 AM,  
CRYSTAL BALLROOM OF THE BATTLE HOUSE HOTEL

APRIL 19 - FRIDAY  
SEMINAR: JUDGE'S PANEL DISCUSSION,  
1:30 – 4:45 PM, CRYSTAL BALLROOM OF THE BATTLE HOUSE HOTEL

APRIL 25 - THURSDAY,  
MBA GRIEVANCE COMMITTEE MEETING,  
12 O'CLOCK NOON,  
MBA HEADQUARTERS

APRIL 27 - SATURDAY,  
2ND ANNUAL BATTLE OF THE BAY

## CONTINUING LEGAL EDUCATION

**APRIL 19 - FRIDAY**  
JUDGE'S PANEL DISCUSSION  
3.0 HRS . MCLE CREDITS

