



**MONTHLY NEWSLETTER**  
**VOLUME XLIV,**  
**ISSUE 3 • MARCH 2015**

# President's Comments



**BRIAN MCCARTHY, PRESIDENT**  
**MOBILE BAR ASSOCIATION**

## TIME TO REBOOT

Four and one half years ago, my father unexpectedly passed away. The pain I experienced from his death was devastating – something I had never experienced before. The guilt I felt after his death made the pain even worse. You see, six weeks before his death, my father had heart valve replacement surgery. By all accounts, he was progressing well after surgery and was expected to continue to do well. I drove my father home from the hospital after his surgery and left Birmingham very early the next morning to return to work. I had business in Birmingham the week following what turned out to be the date of his death, and I fully intended to visit him on my return trip. Sadly, he died before then. To this day, I regret that I did not remain with him for a few days after we brought him home from the hospital and also regret that I did not take the time to return to Birmingham to see him. I promised myself after his death that I would readjust my priorities. No longer would my priorities be WORK, WORK and more WORK; instead, my priorities would be FAITH, FAMILY and WORK. It was time to reboot.

As the days, months and now years have gone by since my father died, I have found myself slipping back into my old ways: WORK, WORK, and more WORK, rather than FAITH, FAMILY, and WORK. It is time to reboot again.

In an effort to keep my priorities in balance, I have read several articles on the subject and have concluded the following makes for a balanced life:

1. Make God your first priority and reinforce that relationship by the way you use your time to remain in dialogue, prayer and devotion with Him, even in the routine of life.
2. Make your family your priority and guard that priority by setting clear boundaries to protect those relationships. Be prepared to stick to your boundaries.
3. Be a great lawyer and work hard for your clients. But, remember your first priorities and honor God and your family in the way you practice law.

This past Saturday, I was at home working, preparing for two upcoming trials. My wife asked me to take a break and enjoy the beautiful day with her. After a little bit of reflection, I closed my trial binder and spent the day outdoors with my wife. I will never regret spending that day with my wife, and I am certain my trial preparation did not suffer because of it.

Until next time,  
*Brian*



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## 2015 OFFICERS

- PRESIDENT – BRIAN P. MCCARTHY**
- PRESIDENT ELECT – PETER S. MACKAY**
- VICE PRESIDENT – J. GREGORY CARWIE**
- SECRETARY – KRISTINE K. MCCULLOCH**
- TREASURER – BESS P. CRESWELL**
- ASSISTANT TREASURER – ANNA L. SCULLY**
- PRESIDENT Y. L. – JONATHAN R. MAPLES**
- EXECUTIVE DIRECTOR – BARBARA C. RHODES**
- EDITOR – FERRELL S. ANDERS**

## PROGRAM

THE MARCH MONTHLY LUNCHEON WILL  
 BE  
**FRIDAY, MARCH 20, 2015,**  
**11:45 AM**  
**BATTLE HOUSE HOTEL, MOONLIGHT**  
**BALLROOM**  
 THE SPEAKER WILL BE  
**RICHARD J. R. RALEIGH, JR.**  
 PRESIDENT, ALABAMA STATE BAR

## HONOR 50 YEAR LAWYERS

- DAVID CHERNIAK**
- RALPH G. HOLBERG, III**
- JOHN L. LAWLER**
- JUSTICE CHAMP LYONS, JR.**
- JUDGE DOMINICK J. MATRANGA**
- IRVING SILVER**
- LARRY U. SIMS**
- E. WATSON SMITH**
- HARWELL E. COALE, JR.**

**MEMORIAL RESOLUTION**  
**JAMES J. DUFFY, JR.**



# BROWSING THE BAR

## WITHOUT BARBARA



*I'm still browsing but in  
the comfort of my home.  
Be back on the job soon!*



## ANNOUNCEMENT FROM PROBATE COURT

The **Mobile County Probate Court** has changed its policy as to which publications located in Mobile County can be utilized in estate administration cases for notices to creditors. All lawyers who have a pending estate administration case or regularly handle estate administration cases are encouraged to check out the Court's new policy that is stated on the Court's "Attorney's Page" on the Court's web site [\[http://probate.mobilecountyal.gov/attorneys.asp\]](http://probate.mobilecountyal.gov/attorneys.asp).



# YOUNG LAWYERS

*JONATHAN MAPLES, PRESIDENT*

The **YOUNG LAWYERS** are pleased to thank **MCDOWELL KNIGHT ROEDDER & SLEDGE, LLC** for a great February meeting at **T.P. CROCKMIERS**. **MCDOWELL KNIGHT** always hosts a great event, and February's meeting was no different.

The March meeting will be hosted by **TAYLOR MARTINO P.C.** at the Taylor Martino office downtown (51 Saint Joseph Street) on Thursday, March 26th beginning at 5:30. Our March meeting will also function as a Ribs-for-Hearts event for the Heart for Athletes organization (<http://heartforathletes.org/ribs-for-hearts-fundraiser>), so come out and enjoy some freshly smoked ribs, compliments of Taylor Martino. Food during the meeting will be provided at no charge. Should you wish to order a slab of ribs to take home after the meeting, you can do so by contacting Amy Cockrell, executive director for Heart for Athletes, at [amy@heartforathletes.org](mailto:amy@heartforathletes.org) or 251-510-7263.

We look forward to seeing everyone at **TAYLOR MARTINO** on March 26th. If you are not on the Young Lawyers e-mail list and would like to be, or if you have any 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)).



# SAVLP

## SOUTH ALABAMA VOLUNTEER LAWYERS



PLEASE NOTE: **BATTLE OF THE BAY** has been postponed from May 2nd. The new date will be announced soon. The 2015 race will be bigger and better than last year's and will include a team relay, great brunch and lots of fun activities for the family. Please check the [Battle of the Bay Facebook](#) page for event details, registration information and sponsorship opportunities.

Special thanks to the following attorneys who accepted or closed a case in January: **DOUGLAS L ANDERSON, GORDON G ARMSTRONG III, JOHN G BAYLOR JR., PAUL T BECKMANN, HENRY H BREWSTER, S. JOSHUA BRISKMAN, A. WINSLOW W BUTTS, ELLA L BYRD, HENRY H CADDELL, HENRY A CALLAWAY III, CRAIG CAMPBELL, ROBYN R CANNON, F. LUKE COLEY JR., ALGERNON J COOPER JR., ROBERT J CRANE, JAMES G CURENTON JR., BRENT T DAY, JOSEPH S DENNIS, JONATHAN G FESTA, CHARLES J FLEMING, JOSH D FRIEDMAN, JASON C GERTH, JOSHUA M GRANTHAM, JON A GREEN, CHRISTINE HARDING HART, ASHLEY S HARRIS, JESSICA HATCHER, CHRISTINE C HERNANDEZ, BRENDA D HETRICK, R. SCOTT HETRICK, JENNIFER HOLIFIELD, LINDSAY S HURT, MATTHEW R JACKSON, FARAH MAJID, E. RUSSELL MARCH III, RONALD W MCBAY, JAMES H McDONALD JR., MATTHEW C McDONALD, S. C. MIDDLEBROOKS, ROBERT H MUDD JR., NARISSA NELSON, VIRGINIA B POYNTER, KENNETH R RAINES, JAMES REBARCHAK, MATHEW B RICHARDSON, J. BURRUSS RIIS, PENNELOPE A SLAWKOWSKI, LACEY SMITH, LEWIS J STEIN, T. JEFF STEIN, SCOTT D STEVENS, RICHARD L THIRY, A. BROOKE THOMAS, SHERRI A THOMAS, CHARLOTTE Y TIPTON, NEAL C TOWNSEND, WILLIAM W WATTS III, ZACHARY WEAVER, RICHARD R WILLIAMS, MICHAEL A WING, AND PATRICIA K WOOD.**



# SIGNIFICANT DECISIONS

BY DUANE GRAHAM

In *Tender Care Veterinary Hospital, Inc. v. First Tuskegee Bank, No. 1131078* (Ala., November 26, 2014), the Supreme Court held that a claim of breach of fiduciary duty by a borrower against its lender for insisting that a non-licensed general contractor be used for construction work accrued when damage was incurred, not when the alleged fiduciary relationship ended. Thus, the two-year statute of limitations had run when the borrower filed a lawsuit 4 years after discovering the lack of the license and faulty work.

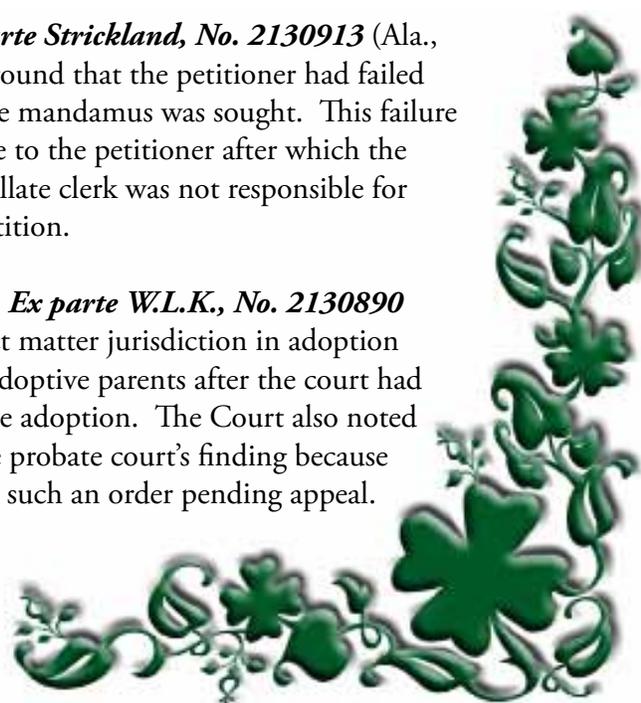
In *Paint Rock Turf, LLC v. First Jackson Bank, No. 1130480* (Ala., November 26, 2014), the Supreme Court held that mortgagor who remained in possession of property over the objections and demand for possession by the mortgagee after foreclosure was a tenant by sufferance only, and not a tenant at will, and thus was not entitled to its emblements, or crops, from the property under Ala. Code § 35-9-2. The Court also noted that the fact that the mortgagor had remained in possession through the multiple use of bankruptcy filings and the automatic stay thereunder did not mean that such possession was by permission.

In *Century Automotive Group v. Structure Designs, LLC, No. 21303rr* (Ala., November 21, 2014), the Court of Civil Appeals held that it was improper for a trial court to order specific performance of a contract to construct and deliver a certain display on the ground that there was an adequate remedy at law.

Holding that a person holding a power of attorney from an individual was not entitled to represent that individual in a court of law unless the person was a licensed attorney, the Court of Civil Appeals in *Franklin v. Max Federal Credit Union, No. 2130617* (Ala., November 21, 2014), held that the notice of appeal filed by the attorney-in-fact was a nullity and, thus, the appeal should be dismissed.

In a case of first impression, the Court of Civil Appeals in *Ex parte Strickland, No. 2130913* (Ala., November 21, 2014), denied a petition for mandamus on the ground that the petitioner had failed to attach to the petition a copy of the court order as to which the mandamus was sought. This failure occurred notwithstanding that the Court sent a deficiency notice to the petitioner after which the petitioner persisted in this failure. The Court held that the appellate clerk was not responsible for specifically telling the petitioner what was deficient about his petition.

In another case of first impression, the Court of Civil Appeals in *Ex parte W.L.K., No. 2130890* (Ala., November 7, 2014), held that a probate court lacks subject matter jurisdiction in adoption proceeding to award temporary custody of a minor to putative adoptive parents after the court had determined that the father of the minor had not consented to the adoption. The Court also noted that it did not matter that the adoptive parents had appealed the probate court's finding because there was no statutory provision applicable that would authorize such an order pending appeal.





# ANNOUNCEMENTS

**KATHY P. SHERMAN**, is now with **BURTON PROPERTY GROUP**, 41 W. I-65 Service Rd. N. Ste. 450, Mobile, AL 36608, [Kathy@burtonprop.com](mailto:Kathy@burtonprop.com) 251-341-5777.

**LAW OFFICE SPACE** for rent, great location, on Government, high visibility, all amenities included, practice with fellow attorneys. Please contact Douglas Dunning at 251-478-6031 or [dkdunning\\_99@yahoo.com](mailto:dkdunning_99@yahoo.com). All inquiries strictly confidential.

**FRAZER, GREENE, UPCHURCH & BAKER, LLC** is pleased to announce that Dorothy "Dottie" Barker Perry has become an associate of the firm.

**MIDTOWN LAW OFFICE SPACE.** Visibility to the street. One or two law offices and secretarial space, conference room and kitchen. Furnished, internet, high speed fax/copier available. [gmpcl@gmail.com](mailto:gmpcl@gmail.com)

**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](mailto:crowe@evanscrowe.com).

**MIDTOWN LAW OFFICE FOR SALE \$297,000:** 21 North Florida Street law office for sale. 2,575 square feet, 5 private offices, reception desk, secretarial areas, copy room, break room, lobby, conference room, 3 bath rooms, built in file storage, bookcases w/ law books, 9 parking spaces. Perfect opportunity for a small firm tired of leasing or someone ready to step out on their own. SBA loan eligible. Available fully furnished with copier, fax, phone system, computer network, desks, conference table & chairs, satellite TV, the works, all available for a small additional cost. All you have to do is bring your computer, hang up your shingle, and go to work. Contact Jim Johnson 251-554-7080 or visit <http://www.crelisting.net/Y0n0Uq62A> for more information and photos.

**MIDTOWN OFFICE SPACE AVAILABLE:** 2151 Government Street (on the corner of Glenwood and Government at the Loop) Nice offices, kitchenette, bathroom, nice waiting room and use of conference room. Space has separate private entrance. Contact: Michael S. McNair at 251-450-0111 or [msm@mcnair.com](mailto:msm@mcnair.com)



## LAWYERS IN THE NEWS

By SANDY G. ROBINSON

### LEGAL MILESTONES:

**NEW GRANDBABY FOR OUR EDITOR: “LIDDY” CHARLOTTE ANDERS** WAS BORN JANUARY 30<sup>TH</sup> IN GREENSBORO, NORTH CAROLINA. SHE JOINS 3 GRANDBOYS. ALL ARE DOING WELL!

**DIED: MBA MEMBER DON PIERCE** DIED IN MOBILE ON FEBRUARY 5, 2015. HE WAS A GRADUATE OF MURPHY HIGH SCHOOL AND THE UNIVERSITY OF ALABAMA, AND OBTAINED HIS LAW DEGREE IN DECEMBER OF 1957 AFTER SERVING IN THE KOREAN CONFLICT. HE PRACTICED LAW FOR 56 YEARS AND WAS ACTIVE IN MANY PROFESSIONAL ORGANIZATIONS, INCLUDING SERVING AS PRESIDENT OF THE ALABAMA DEFENSE LAWYERS ASSOCIATION. HE WAS A LONGTIME MEMBER OF SPRING HILL BAPTIST CHURCH WHERE HE WAS A DEACON AND SUNDAY SCHOOL TEACHER. HE IS SURVIVED BY HIS WIFE OF 60 YEARS, A DAUGHTER AND 3 SONS (INCLUDING MBA MEMBER **JOHN C. S. PIERCE**), 10 GRANDCHILDREN AND ONE GREAT-GRANDCHILD.

**DIED: TOM OLLINGER**, FATHER OF MBA MEMBER **CORKY OLLINGER**, DIED ON FEBRUARY 5, 2015 AT THE AGE OF 92. HE WAS A GRADUATE OF MURPHY HIGH SCHOOL AND AUBURN UNIVERSITY AND A DECORATED ARMY VETERAN. HE LATER RAN A SUCCESSFUL CONTRACTING COMPANY FOR OVER 50 YEARS. HE IS SURVIVED BY HIS WIFE, THREE CHILDREN, THREE GRANDCHILDREN AND MANY OTHER RELATIVES AND FRIENDS.

**DIED: HELEN MUSCAT ROBINSON**, MOTHER OF MBA MEMBER **LUCKETT ROBINSON**, DIED ON FEBRUARY 9, 2015. SHE WAS A GRADUATE OF SPRING HILL COLLEGE, 1956, WHERE SHE WAS IN THE FIRST CO-ED CLASS AND THE FIRST LADY EVER ELECTED TO THE STUDENT COUNCIL. SHE WAS ACTIVE IN MANY CIVIC AND RELIGIOUS ORGANIZATIONS. SHE IS SURVIVED BY HER HUSBAND, EIGHT CHILDREN AND FIFTEEN GRANDCHILDREN, AND MANY OTHER RELATIVES AND FRIENDS.

**BILL WATTS** IS DIRECTING **WILLIAM SHAKESPEARE’S TWELFTH NIGHT** AT CHICKASAW CIVIC THEATER WITH PERFORMANCE DATES OF FEBRUARY, 27,28, MARCH 1 AND MARCH 6,7, AND 8. OTHER LAWYERS IN THE PRODUCTION ARE **DAVID PEELER** AND **JOHN CAMPBELL**.



  
**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

## MEMORIALS

### MEMORIAL GIFTS WERE GIVEN TO THE MOBILE BAR FOUNDATION

IN MEMORY OF

**JUDGE HERNDON INGE, JR.**

By

**JOHN AND SUSAN LEACH**

**J. MICHAEL DRUHAN, ESQUIRE**

**MAURY FRIEDLANDER**

By

**J. MICHAEL DRUHAN, ESQUIRE**

**RICHARD HORNE**

By

**JAMES J. DAILEY, ESQUIRE**

**CHARLES HICKS**

By

**JAMES J. DAILEY, ESQUIRE**



# MARCH 2015

MARCH 4 - WEDNESDAY  
**COURTHOUSE COMMITTEE MEETING,**  
12 O'CLOCK NOON, MBA HEADQUARTERS

MARCH 9 - MONDAY  
**DIVERSITY TASK FORCE COMMITTEE MEETING,**  
2 P.M., MBA HEADQUARTERS

MARCH - 12 - THURSDAY  
**EXECUTIVE COMMITTEE MEETING,**  
12 O'CLOCK NOON, ATHELSTAN CLUB

MARCH 20 - FRIDAY  
**MONTHLY LUNCHEON MEETING,**  
11:45 A.M. BATTLEHOUSE HOTEL

MARCH 20 - FRIDAY  
**MBA SEMINAR – EMPLOYMENT LAW**  
1:30 P.M. BATTLEHOUSE HOTEL

MARCH 26 - THURSDAY  
**GRIEVANCE COMMITTEE MEETING,**  
12 O'CLOCK NOON,  
MBA HEADQUARTERS



## CONTINUING LEGAL EDUCATION

MONDAY - MARCH 9  
THOMAS MORE,  
CHURCH & STATE, AND INDIVIDUAL RIGHTS, 1.0 HRS.

FRIDAY - MARCH 20  
EMPLOYMENT LAW, 3.0 HRS.

FRIDAY - APRIL 17  
APPELLATE SEMINAR –  
INCLUDING CRIMINAL & CIVIL ISSUES, 3.0 HRS.