



MONTHLY NEWSLETTER

VOLUME XLV,
ISSUE 2 • FEBRUARY 2016

President's Comments



**PETE MACKEY, PRESIDENT
MOBILE BAR ASSOCIATION**



IN THIS ISSUE

- Browsing the Bar* page 2
- SALVP*..... page 4
- Calendar* page 10
- Continuing Legal Education* page 10

2016 OFFICERS

- PRESIDENT – PETER S. MACKEY
- PRESIDENT ELECT – J. GREGORY CARWIE
- VICE PRESIDENT – JEAN M. POWERS
- SECRETARY – MOSHAE E. MOORE
- TREASURER – ANNA L. SCULLY
- ASSISTANT TREASURER – ROBERT J. RICCIO
- PRESIDENT Y. L. – RUSSELL D. JOHNSON
- EXECUTIVE DIRECTOR – BARBARA C. RHODES
- EDITOR – FERRELL S. ANDERS

There is a composite photograph hanging in the MBA headquarters from 1950. By my quick count, there were about 170 lawyers in Mobile at that time. All were white and only two were women. Times have changed. Today, our membership has increased almost nine fold and has diversified considerably. That composite brought two things to mind.

First – the importance of mentoring in today’s law practice. In 1950, lawyers were learning on the job, but mostly from other lawyers. What a closely knit group that must have been. No faxes, email, conference calls or electronic filing. Interaction at bar luncheons, the courthouse or conference rooms was by far the most common way that lawyers communicated. Sure, they spoke by phone and wrote letters. Things got done, however, and young lawyers learned, at the conference room table or in the courtroom. Experienced lawyers had time to teach and new lawyers had time to learn.

Today email and conference calls are the norm. Actually sitting down with another lawyer to conduct business gets rarer and rarer, as do jury trials. More and more, young lawyers are starting solo - hanging up their own shingles. A lawyer’s week has become busier and more stressful as marketing is now a big part of the equation and profit margins have been squeezed by a variety of factors. There are not enough hours in the week to get things done, let alone to learn how to do them right. The result - many young lawyers are lacking the guidance they need – and Google is not the answer.

The MBA mentoring program is dealing with that problem. Greg Vaughan, this year’s chairperson, has some exciting ideas. If you have five years experience or less, please consider joining the program. We have outstanding mentors who stand ready to help you. If you have some gray hair (or did before you got in the shower this morning), please consider volunteering as a mentor. It is a satisfying way to give back to the profession and to our bar. Your mentee, in turn, can teach you things about social media that you have never even considered.

Second - that photo reminds us that we still have lawyers in our midst who started practicing before most of us were even born. Though few are still with us, their collective knowledge, both legal and historical, is more than impressive. We need to bottle that knowledge and remember the history they lived through – good or bad. One of the younger faces on that composite – Robert Denniston – is still practicing at 95! The latest issue of Mobile Bay Monthly magazine has a great article about another face on that same composite – recently retired Tom Galloway, Sr. Do yourself a favor and read it.

Their stories and experiences will not be forgotten, thanks to Mitch Lattof, Sr. and the Archives and History committee. They have begun videoing oral histories which are available for viewing on the MBA website. Presently, you can watch Tom Galloway, Sr., Don Brutkiewicz, Sr., and Big John Tyson – what a lineup. Videos of Mr. Denniston and Tom Haas should be available soon. To view them, go the bottom right corner of the MBA home page (www.mobilebar.com) and click on the Youtube icon. Click on “Playlists.” Enjoy.

PROGRAM

THERE WILL BE NO MONTHLY LUNCHEON IN FEBRUARY DUE TO MARDI GRAS MADNESS
 THE NEXT LUNCHEON WILL BE
FRIDAY, MARCH 18, 2016, 11:45 AM • THE ADMIRAL HOTEL
 THE SPEAKER WILL BE
Ms. AMY RICE • PROJECT MANAGER U.S. COURTHOUSE
 WHO WILL TELL US ALL THERE IS TO KNOW ABOUT
 THE NEW UNITED STATES COURT HOUSE
 WE WILL ALSO HONOR OUR 50 YEAR ATTORNEYS

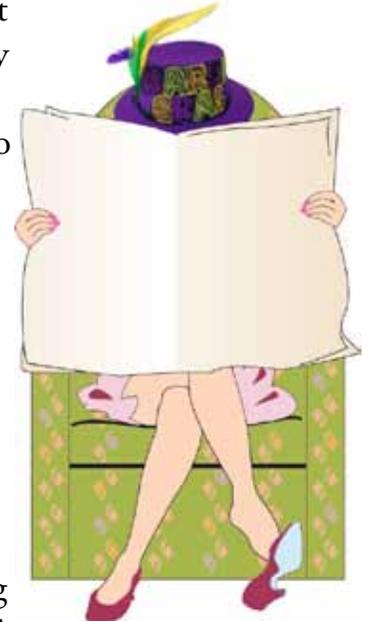


Browsing the Bar – With Barbara

We are well into the New Year, and in the middle of yet another Mardi Gras season and Valentine Day is fast approaching – husbands, have you thought of what to get your wives? I happened to be in a drug store last year on February 13 and could not believe the number of men in the card section, clutching a box of chocolates frantically searching for that perfect card to convey that perfect message! Don't be that guy! Let me tell you about another guy who, when his wife was hinting about what she wanted for the upcoming Valentine Day by saying, "I want something shiny that goes from 0 to 150 in about 3 seconds", he surprised her with a bathroom scale. Needless to say, that is when the fight started.....and is probably still going on to this day.



My point being, time is passing quickly and much is going on in your Bar. Committees and Sections are formed and already meeting, and among many other activities being planned, there is a triathlon in the works so start training now so you will be fit and ready by October. Take note, the **ALABAMA STATE BAR ANNUAL MEETING** will be in June this year, not the usual July, the MBA will have its June meeting at MOE's again this year and the **ALABAMA SUPREME COURT** may come to Mobile for Oral Arguments. In the midst of all that is the **BATTLE OF THE BAY**, the **ANNUAL FALL PARTY** and who knows what else. Stay tuned and we will keep you posted.



YOUNG LAWYERS

RUSSELL JOHNSON, PRESIDENT

The **YOUNG LAWYERS** wish to thank **PRO-LEGAL** and **MICHAEL CANNON** for a great January meeting at **CALLAGHAN'S**. Michael and Pro-Legal always do a fantastic job and we appreciate their continued support.

The February meeting will be hosted by **McDowell Knight Roedder & Sledge, LLC**, location TBA, so watch for an e-mail update. The meeting will be held on February 21, 2016. We had an amazing turnout for the first meeting and look forward to seeing this continue throughout the year.

We look forward to seeing everyone on February 21st. 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 (rjohnson@asilpc.com), Vice-President **TIM HEISTERHAGEN** (tah@ajlaw.com), or Treasurer **KATE BROWNING** (kmb@rebpc.net).



ANNOUNCEMENTS

DOUGLAS K. DUNNING has relocated his practice to 328 South Sage Avenue, Suite 214, Mobile 36606. There has been no change in telephone or email.

The law firm of **LATTOF & LATTOF, P.C.**, Attorneys, has moved offices to 156 Saint Anthony Street, Mobile 36603.

BURR & FORMAN is pleased to announce that **SEAN P. DUDLEY** has been elected to partner. He is a member of the firm's Corporate and Tax practice group.

MAYNARD COOPER & GALE is pleased to announce that **ALVIN HOPE** has been named shareholder of the firm. He is a member of the Public Finance practice in the firm's Mobile Office.

JORDAN GERHEIM is a new partner of the firm of **STARNES DAVIS FLORIE LLP**. Jordan is a 2015 graduate of Leadership Mobile and this past year was chosen by the Defense Research Institute to be one of twelve young lawyers from across the country to be sworn in, in person, to the U.S. Supreme Court in Washington, D.C. before all nine Justices.

WILLIAM B. GIVHAN, formerly a member of **HAND ARENDALL** since 1992, has left the firm to become **GENERAL COUNSEL AND CHIEF OPERATING OFFICER OF COLLEGIATE HOUSING FOUNDATION**. Collegiate Housing Foundation is a nonprofit organization based in Fairhope, Alabama that assists colleges and universities to provide modern on-campus student housing and other facilities. He may be contacted at willgivhan@collegiatehousing.org or 251.928.9340.

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

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

ANYONE WITH INFORMATION REGARDING LAST WILL AND TESTAMENT OF JAMES (dob 11/08/1945/dod 01/19/2016)**AND/OR YVONNE** (dob 06/30/1949)**BAILEY**, 63 Lemoyne Place, Mobile 36604, please contact their son, **SEAN HAWTHORNE**, 251.643.5694.

Announcing the new office location for **MICHAEL M. SHIPPER, P.C.**; The SunTrust Bank Building, 201 South Court Street, Suite 701, Florence, Alabama 35630; Telephone: (256) 712-5047; Facsimile: (256) 712-5174.



SAVLP

SOUTH ALABAMA VOLUNTEER LAWYERS



Please join us on April 30th at the **BLUEGILL** for SAVLP's family friendly fundraiser! We will have relay and individual races, great food, entertainment, and prizes. See the **BATTLE OF THE BAY CANOE AND KAYAK RACE** Facebook page for more details, registration and sponsorship information. Thanks for supporting your VLP. We appreciate all that you do and look forward to seeing you **APRIL 30TH**.



In 2015, SAVLP opened 848 cases and closed 905. Attorney volunteers served at **PROJECT HOMELESS CONNECT**, **WILLS FOR HEROES**, courthouse and other advice clinics, at the SAVLP office and by accepting referrals. Thanks to all of you who volunteered in 2015. Many thanks, too, to the following attorneys who accepted or closed cases in November and December of 2015: **J. DANIEL BARLAR JR., JOHN T BENDER, RUSSELL E BERGSTROM, WESLEY H BLACKSHER, EDWARD C BLOUNT JR., BRINA I BOLDEN, W. DONALD BOLTON, JR., EDWARD G BOWRON, HENRY H BREWSTER, S. JOSHUA BRISKMAN, ELLA L BYRD, HENRY H CADDELL, KENNETH PAUL CARBO, JR., JAMES PAUL CLINTON, MEEGAN B COLCLOUGH, JAMES P COLEMAN III, ROBERT J CRANE, BESS M CRESWELL, JUDSON E CRUMP, EDWARD A DEAN, REBECCA DING LEE, DONALD D DOERR, JR., BRYAN G DUHE', GILLIAN G EGAN, PAGE S ELLIS, CHERYL D EUBANKS, CHARLES J FLEMING, BEN FORD, MARY K FRANK, JOSH D FRIEDMAN, WILLIAM J GAMBLE, JR., CHRISTOPHER M GILL, THOMAS J GLIDEWELL, JOSHUA M GRANTHAM, MARY A HAMPTON, CHRISTINE HARDING HART, SCOTT R HAWK, BRENDA D HETRICK, R. SCOTT HETRICK, JENNIFER HOLIFIELD, SIDNEY W JACKSON, III, ANDREW M JONES, KATHLEEN COBB KAUFMAN, H. JAMES KOCH, BANKS C LADD, GILBERT B LADEN, CAROL M LOWELL, FARAH MAJID, E. RUSSELL MARCH, III, GREGORY B McATEE, RONALD W McBay, JESSICA M McDILL, JAMES H McDONALD JR., MATTHEW C McDONALD, S. C. MIDDLEBROOKS, EDWARD A MILLER, M. KATHLEEN MILLER, JESSICA A MILLING, JOHN R NIX, JAMES D PATTERSON, JAMES T PATTERSON, MARY E PILCHER, VIRGINIA B POYNTER, J. BURRUSS RIIS, JAMES E ROBERTSON, SAMUEL C ROSTEN, TROY T SCHWANT, ATOYIA A SCOTT, WILLIAM E SCULLY, III, L. ROBERT SHREVE, FRANKLIN L SHUFORD JR., PENNELOPE A SLAWKOWSKI, HENDRIK SNOW, T. JEFF STEIN, BRITTEN STEINER, SCOTT D STEVENS, JOSEPH D THETFORD JR., LANICE L TURRENS, WILLIAM W WATTS III, JARROD J WHITE, RICHARD R WILLIAMS, RONNIE L WILLIAMS, MARION E WYNNE JR., AND THOMAS T ZIEMAN JR.**



MENTOR PROGRAM

GREG VAUGHAN, CHAIR

I am chairing the Mentoring Program this year and am excited to do so. Today, young lawyers face great challenges in the job market and many are practicing by themselves. For their benefit and the benefit of our profession, it is imperative that we offer these new lawyers the same opportunities to learn from a mentor that we had. If you would be willing to mentor a young lawyer—or conduct a basic skills CLE in your field of expertise, please sign up on the bar web site - www.mobilebar.com - or email me: gev@holstonvaughan.com We greatly appreciate the help! And, most importantly, if you are a lawyer with five years of experience or less, please take advantage of this opportunity and to help develop your practice and meet other members of the bar signing up on the bar website or emailing me. We are proud to have you as fellow members of the Mobile Bar Association.

MBA WOMEN LAWYERS

By: Alexandra K. Garrett

The MBA Women Lawyers held their monthly luncheon on January 12. MBA President Pete Mackey encouraged members to join him in fostering a positive public image for lawyers. Big Brothers Big Sisters of South Alabama CEO Aimee Risser thanked MBAWL for its December donation and shared stories of the joy that the donated toys brought to BBBS Littles. Finally, author and productivity consultant Paris Love presented a CLE on “Time Management for Professional Women.”

MBAWL's February luncheon will be held on February 16th at noon at Crockmiers. Mobile County Judicial Commission Secretary Judson Wells will speak about the commission and the judicial appointment process.



BAR BULLETIN DECISIONS

BY DUANE GRAHAM

In *J.P. v. R.L.P., No. 2140168* (Ala. Civ. App., August 14, 2015), the Court of Civil Appeals held that it was not required to consider for the first time on appeal a father's constitutional arguments against the allowance of grandparents' visitation rights.

In a case of apparent first impression, the Supreme Court in *Rogers v. Hansen*, No.1140257 (Ala., August 14, 2015), held that an appeal from a probate court order removing a personal representative that was not accompanied by the bond required in Ala. Code § 12-22-24 was due to be dismissed for lack of appellate jurisdiction.

In *Butler v. Butler*, No. 1140683 (Ala., September 18, 2015), the Supreme Court held that under the facts of the case, a joint revocable trust agreement, which did not contain specific language prohibiting the settlors from revoking their wills, did not constitute a contract prohibiting revocation of a will under the requirements of Ala. Code § 43-8-250, and, thus, the surviving wife was free to change her will to something inconsistent with the original joint estate plan.

In *Ameriprise Financial Services, Inc. v. Jones*, No. 1140893 (Ala., Oct. 30, 2015), the Supreme Court held that an arbitration agreement encompassing "any controversy that may arise" from the brokerage agreement was broad enough to include within its ambit a claim for tort of outrage.

In a case demonstrating the application of Rule 1003 of the Alabama Rules of Evidence, the Court of Civil Appeals in *Pepin Manufacturing, Inc. v. Eswallow USA, LLC*, No. 2140406 (Ala. Civ. App., Oct. 2, 2015), held that a copy of a promissory note, rather than the original, was admissible over the general objection of the other party that it was a copy, when the other party failed to make any showing challenging the genuineness of the copy or that the introduction of the copy into evidence would be unfair to that party.

In a procedural case of first impression concerning the new Alabama tax tribunal, successor to the Administrative Law Division of the Alabama Department of Revenue, the Court of Civil Appeals in *Ex parte State*, No. 21409267 (Ala. Civ. App., Oct. 2, 2015), held that the requirement of Ala. Code § 40-2B-2 that a copy of the notice of appeal from a decision of the tax tribunal, which notice must initially be filed with the circuit court, also be filed with the tax tribunal was a procedural requirement and not a jurisdictional one, so that when the appeal failed to be accompanied by a copy of the notice of appeal to the tax tribunal within 30 days, the appeal was not subject to dismissal.

In *Weldon v. Ballow*, No. 2140471 (Ala. Civ. App., Oct. 30, 2015), the Court of Civil Appeals held that Ala. Code § 30-3-4.1(d) concerning the visitation rights of grandparents for a minor child was facially unconstitutional and that it could not be severed from the act of which it was a part, thus meaning that the entire act was constitutionally invalid.



BAR BULLETIN DECISIONS

BY DUANE GRAHAM

In *Ross v. Marion*, No. 1140604 (Ala., November 6, 2015), the Supreme Court reversed a trial court's failure to grant a new trial after the judge acknowledged that he had given further instruction to the jury outside the presence of counsel. The Court held that it made no difference whether any actual prejudice had occurred, as the primary concern was the appearance of impartiality. The only exceptions to this requirement would be if the judge had attempted to notify the attorneys or if circumstances were such that presented an "overruling necessity" for communicating outside the presence of counsel.

In *Ex parte Kelley*, No. 1131451 (Ala., November 6, 2015), the Supreme Court held that a judgment of conviction on a count for sexual torture had never been entered because the trial judge had never pronounced sentence for that particular crime. Accordingly, the count was not ripe for appeal and the Court of Criminal Appeals did not have jurisdiction to affirm it.

In a case demonstrating the application of the presumption of paternity under the Uniform Parentage Act, Ala. Code §§ 26-17-101, et seq., the *Court of Civil Appeals in J.O.J. v. R.M.*, No. 2140664 (Ala. Civ. App., November 6, 2015), held that the juvenile court correctly ruled that a man did not have standing to assert a claim of paternity of a child when the child's mother was married to another man at the time of the child's birth and the other man expressed a desire to continue his presumption of paternity.

Sharing a similar procedural analysis with other recent cases, the Court of Civil Appeals in *Shoen v. Jurenka*, No. 21400239 (Ala. Civ. App., November 20, 2015), held that the a post-judgment motion was denied by operation of law after 90 days, even though the hearing was set for weeks later, because the parties had not consented to the delay nor had the appellate court allowed it. The Court further held that a post-judgment motion could be amended in the discretion of the trial judge if it had been timely filed and not already denied by operation of law. Finally, the Court held that an appeal was untimely when the notice of appeal was filed more than 42 days after the denial of the original post-judgment motion by operation of law.

In another case denying appellate jurisdiction, the Court of Civil Appeals held in *Target Corp. v. Jefferson County Board of Equalization*, No. 2140297 (Ala. Civ. App., November 13, 2015), held that an appeal to circuit court under Ala. Code § 40-3-25 requires a physical filing of the notice of appeal with both the circuit court and the secretary of the Board of Equalization within 30 days and that mailing a copy of the notice to the Board's secretary by certified mail, even though such method seems to be permitted under the Alabama Administrative Procedures Act, Ala. Code §§ 41-22-1, et seq., is inadequate.

In *Brookwood Health Services, Inc. v. Borden*, No. 1131284 (Ala., November 13, 2015), the Supreme Court reversed a \$7.5 million medical malpractice verdict because no expert testimony was presented establishing that the nurses had violated the standard of care and because the acts or omission were not found to be such that an ordinary layman could conclude that a deviation from the standard had occurred without such expert testimony.



LAWYERS IN THE NEWS

By SANDY G. ROBINSON

LEGAL MILESTONES:

BORN: MBA MEMBER MIGNON LUNSFORD AND HUSBAND **THOMAS** WELCOMED SON **THOMAS GRAVES “GRAY” LUNSFORD** ON DECEMBER 15, 2015. CONGRATULATIONS ON THIS ADDITION TO YOUR FAMILY!

DIED: MBA MEMBER RICK YELVERTON DIED ON DECEMBER 31, 2015 AFTER A BRIEF ILLNESS. HE WAS A GRADUATE OF THE UNIVERSITY OF ALABAMA AND THE UNIVERSITY OF ALABAMA SCHOOL OF LAW. HE WAS A VETERAN OF THE U.S. ARMY AND PRACTICED LAW IN MOBILE FOR OVER 30 YEARS. HE IS SURVIVED BY HIS MOTHER, TWO SISTERS AND A BROTHER, AND OTHER FAMILY MEMBERS AND FRIENDS.

DIED: JOSH JUSTICE, SON OF MBA MEMBER **SHIRLEY JUSTICE** AND HUSBAND **WILEY** DIED ON DECEMBER 23, 2015. IN ADDITION TO HIS PARENTS, HE IS SURVIVED BY HIS FIANCÉE, **DR. SARA GONZALES**, A BROTHER, A SISTER, TWO NIECES AND ONE NEPHEW, AND MANY OTHER LOVING RELATIVES. JOSH WAS A GRADUATE OF ST. PAUL’S EPISCOPAL SCHOOL AND THE UNIVERSITY OF SOUTH ALABAMA.

DIED: KAY NICHOLS (CLARK) LUCKIE, MOTHER OF **MBA MEMBER STUART LUCKIE**, DIED ON JANUARY 7, 2016. SHE IS SURVIVED BY THREE SONS AND ELEVEN GRANDCHILDREN. SHE WAS A PROUD GRADUATE OF BISHOP TOOLEN HIGH SCHOOL AND MAINTAINED FRIENDSHIPS WITH HER CLASSMATES THROUGHOUT HER LIFE.

ALABAMA STATE BAR LEADERSHIP FORUM, CLASS 12

We want to extend congratulations to our two local attorneys that have been selected to participate in the Alabama State Bar Leadership forum, Class 12. This year, 30 attorneys were selected statewide to participate. According to the state bar, this year was the most competitive giving the largest number of applications received in its history. So, we are proud to have two of our very own represented. Congratulations to: Latisha Colvin, Federal Defenders Office, Southern District of Alabama and Sontrease Williams-Maynard, United States Attorney’s Office, Southern District of Alabama




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

MOBILE BAR FOUNDATION

GIFTS WERE GIVEN TO THE MOBILE BAR FOUNDATION IN MEMORY OF

W. RAMSEY MCKINNEY

by Caine O’Rear, III

GREGORY C. BUFFALOW

by Samuel N. Crosby

LEON F. STAMP, JR., DAVID A.

NIHART, DESMOND B. TOLER,

RICHARD D. YELVERTON &

WILLIAM K. THOMAS

by David P. Broome

GREGORY C. BUFFALOW, DAVID A.

NIHART, JOSEPH MICHAEL ALLEN,

JR. & J. WILLIAM GOODLOE, JR.

by Charlie Fleming & Kathy Miller

LEON F. STAMP, JR. AND RICHARD

D. YELVERTON

by James J. Dailey

EDWARD C. GREENE, GREGORY

C. BUFFALOW & RICHARD D.

YELVERTON by Edward B. McDonough, Jr.

DORIS S. ANDERS HERRING,

MOTHER OF FERRELL S. ANDERS,

by David and Teresa Boyett

BOYD W. REEVES

by Ferrell S. Anders

FEBRUARY 2016

**FEBRUARY 8 & 9 - MONDAY & TUESDAY
MARDI GRAS HOLIDAYS**

**FEBRUARY 18 - THURSDAY
MBA EXECUTIVE COMMITTEE MEETING,
12 O'CLOCK NOON,
ATHELSTAN CLUB**

**FEBRUARY 19 - FRIDAY
SEMINAR: OPINIONS FROM THE BENCH,
1:30-4:45 PM,
THE ADMIRAL HOTEL**

**FEBRUARY 24 - WEDNESDAY
PROBATE SECTION MEETING,
12 O'CLOCK NOON,
ATHELSTAN CLUB**

**FEBRUARY 25 - THURSDAY
MBA GRIEVANCE COMMITTEE MEETING,
12 O'CLOCK NOON,
ATHELSTAN CLUB**

CONTINUING EDUCATION 2016

**FRIDAY - MARCH 18
EMPLOYMENT LAW,
3.0 HRS.**

**FRIDAY - APRIL 18
APPELLATE SEMINAR –
INCLUDING CRIMINAL & CIVIL ISSUES,
3.0 HRS.**