



# MONTHLY BULLETIN

Mobile Bar Association 153 Government Street Mobile, Alabama 36602 (251) 433-9790

## President's Comments



**MICHAEL E. UPCHURCH, PRESIDENT**  
**MOBILE BAR ASSOCIATION**



What you don't hear much is a lawyer in Mobile saying "Sure, I enjoy the long hours and incredible stress of practicing law, but I just wish my colleagues would treat me worse."

Of all the things in our professional lives that drive up our blood pressure and keep us awake at night fuming, the aggravations and frustrations of dealing with each other top the list.

The Mobile Bar has grown, but we are still a fairly small, close group. Whether we practice trial work, bankruptcy, criminal law, domestic law, corporate law or something else, we generally deal with the same local lawyers repeatedly and regularly. We know each other, send our kids to the same schools, live in the same neighborhoods and go to the same churches. We are around each other constantly in conference rooms, courtrooms, meetings, recitals, ball games and grocery stores.

Even so, often we treat each other like dirt. We are too easily offended, too quick to accuse each other of deceit and misconduct, and too eager to assume the worst motives behind our opponent's actions.

There might be a few saints among us, but not many. I personally have a lot of room for improvement. Here's what I am going to do about it.

1. Return phone calls from other lawyers promptly, especially the ones I do not want to return. It takes two to communicate.

**President's Comments continued on page 3**

## IN THIS ISSUE



Browsing the Bar	.....page 2
New Members	.....page 4
Calendar	.....page 10
Continuing Legal Education	.....page 10

### 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

## PROGRAM

### MBA JANUARY 2013 LUNCHEON

FRIDAY, JANUARY 18, 2013,

**THE BATTLE HOUSE HOTEL MOONLIGHT BALLROOM, AT 11:45 AM**

SPEAKERS WILL BE:

**JUDGE WILLIAM H. STEELE**

U. S. FEDERAL COURT, SOUTHERN DISTRICT OF ALABAMA

**JUDGE MARGARET MAHONEY**

U. S. BANKRUPTCY COURT

**PRESIDING JUDGE CHARLES GRADDICK**

CIRCUIT COURT, 13TH JUDICIAL CIRCUIT

**PRESIDING JUDGE GEORGE HARDESTY**

DISTRICT COURT, 13TH JUDICIAL CIRCUIT

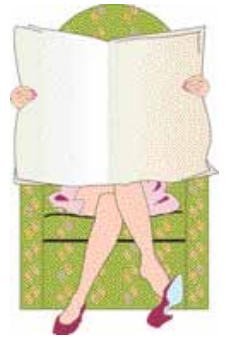
**JAMES B. NEWMAN, ESQUIRE**

CHAIR, MBA GRIEVANCE COMMITTEE





# *Browsing the Bar - With Barbara*



The holidays have once again come and gone, the Mayan Calendar has expired and we are still here. Time to get back down to business for a while before the summer madness begins.

We should have all Committee and Section appointments posted on the MBA website by February . If you have not made your wishes known regarding serving your Bar, it is not too late. Let either Michael Upchurch or me know and we will try to accommodate. To those 2012 Committee or Section Chairs, if you have not already done so, please submit your year-end report so we it can be passed along to the incoming Chairs.

Just a little “TERRIFIC TRIVIA”

1. In what city is Grant’s Tomb located?
2. What is Popeye the sailor’s perpetual age?
3. “Home on the Range” is the state song for what Midwest state?
4. What is the most abundant mineral in the human body?



## **JUDGE WOOD RETIREMENT RECEPTION**

**THE SOUTH ALABAMA TRIAL LAWYERS ASSOCIATION  
CORDIALLY INVITE**

**THE MEMBERS OF THE MOBILE BAR ASSOCIATION  
TO A RETIREMENT RECEPTION HONORING**

**THE PUBLIC SERVICE OF  
THE HONORABLE JAMES WOOD  
AT CAFÉ 615 ON WEDNESDAY, JANUARY 16TH  
FROM 5:00 PM TO 7:00 PM.**

**FOR MORE INFORMATION  
CONTACT STEVE MOORE - 445-7602.**



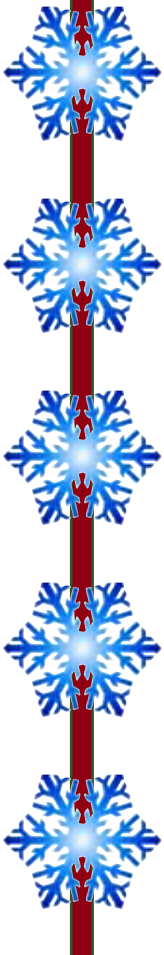
# ANNOUNCEMENTS

**DOWNTOWN OFFICE SPACE AVAILABLE:** 209 N. Joachim Street in historic De Tonte Square. Within walking distance of federal courts. Amenities: On-site parking, receptionist, lobby, conference room, kitchen, VOIP telephones, internet, WIFI, email, fax machine and large color copier/scanner. Contact EVANS CROWE at 251.431.6011.

**RETIREMENT CEREMONY FOR JUDGE JAMES WOOD,**  
Thursday, January 10, 2013, 11:00 am in the Ceremonial Courtroom

**SWEARING IN CEREMONY FOR BENJAMIN H. BROOKS,  
III,** Friday, January 11, 2013, 10:30 am in the Ceremonial Courtroom

## **President's Comments** *continued from page 1*



2. Avoid using e-mails and letters to address disagreements. They only make them worse. It is too easy to misunderstand or be misunderstood in e-mails and letters. It is too easy to make snarkier comments than I ever would say in person. It is too easy to push the send button before I have gathered my wits, my thoughts and my composure.

3. Try to give the benefit of the doubt when there is more than one way to interpret what my opponent is doing. Lawyers are trained to be wary, and need to be. That is not the same thing as being suspicious. Our Bar Association is filled with honest, hard-working, conscientious people. I need to remember that.

4. Go the extra mile to work things out, rather than going to DEFCON ONE as soon as there is a hint of conflict. The pin can always be put back in the grenade if you don't let go of the handle.

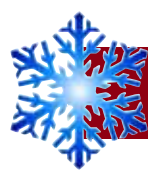
5. Spend a little time getting to know my opponents socially, apart from our case or matter. Ask questions about family, interests and background. I have a lot in common with most lawyers on the other side.

6. Resist my worst impulses in court or in depositions to interrupt, accuse, insult, goad, ridicule or embarrass my opponent. I am supposed to be a professional, and I need to act like one.

7. Never, ever threaten the other lawyer with sanctions, a grievance, a whipping or anything else. Don't tolerate threats against others. That too is part of being a member of this profession.

8. Respect my opponent's efforts to represent his or her client zealously as the same responsibility that I have, rather than demonizing him or her for being in my way. We are both advocates, and neither is morally superior to the other.

I can do better as a fellow lawyer and a member of this Bar Association, and I am going to try. I could use your help.



# NEW MEMBERS

## **NEAL CODY TOWNSEND,**

CUMBERLAND SCHOOL OF LAW 2012; ALABAMA STATE BAR 2012; LAW CLERK FOR JUDGE SARAH STEWART

## **NEIL CHUNN JOHNSON, JR.,**

UNIVERSITY OF ALABAMA SCHOOL OF LAW 2012; ALABAMA STATE BAR 2012

## **FREDERICK JAMES MOORE, III,**

UNIVERSITY OF ALABAMA SCHOOL OF LAW 2012; ALABAMA STATE BAR 2012; SOLE PRACTITIONER

## **JESSICA BREANNE STANLEY ZARZOUR,**

CUMBERLAND SCHOOL OF LAW 2012; ALABAMA STATE BAR 2012; WITH PHELPS DUNBAR

## **DANIELLE MARIE WHITE,**

BIRMINGHAM SCHOOL OF LAW 2007; ALABAMA STATE BAR 2007; SOLE PRACTITIONER

## **SONDRA DEMPSEY,**

BIRMINGHAM SCHOOL OF LAW 2010; ALABAMA STATE BAR 2012; SOLE PRACTITIONER

## **JONATHAN G. FESTA**

OLE MISS LAW SCHOOL 2007; ALABAMA STATE BAR 2007; WITH STEWART HOWARD PC

## **RICHARD R. HOLMES,**

UNIVERSITY OF ALABAMA SCHOOL OF LAW 2012; ALABAMA STATE BAR 2012; WITH HOLMES & CUNNINGHAM, LLP

## **JAMES "CALEB" CUNNINGHAM,**

UNIVERSITY OF ALABAMA SCHOOL OF LAW 2012; ALABAMA STATE BAR 2012; WITH HOLMES & CUNNINGHAM, LLP

## **JOSEPH FREDERICK MCGOWIN, IV,**

UNIVERSITY OF ALABAMA SCHOOL OF LAW 2012; ALABAMA STATE BAR 2012; WITH LAW OFFICE OF J. ALLAN BROWN

## **SPENCER A. PHILLIPS,**

SOUTHERN UNIVERSITY LAW CENTER 1995; ALABAMA STATE BAR 1998; WITH BELL LAW FIRM.

## **HEATHER NICOLE DOLBARE,**

MISSISSIPPI COLLEGE SCHOOL OF LAW 2012; ALABAMA STATE BAR 2012; SOLE PRACTITIONER

## **BENJAMIN DALE DICKENS,**

BIRMINGHAM SCHOOL OF LAW 2011; ALABAMA STATE BAR 2011; SOLE PRACTITIONER

## **DOUGLAS MARTIN,**

CUMBERLAND SCHOOL OF LAW 1980; ALABAMA STATE BAR 1980; SOLE PRACTITIONER





# SAVLP

## SOUTH ALABAMA VOLUNTEER LAWYERS



THE SOUTH ALABAMA VOLUNTEER LAWYERS PROGRAM  
 BOARD OF DIRECTORS  
 PROUDLY RECOGNIZES  
 2012 OUTSTANDING VOLUNTEER LAWYERS



**BEN KILBORN LAWYER OF THE YEAR:**

RENEE E. THIRY

**MARIE DANIELS AWARD:**

HON. MICHAEL E. McMAKEN

**DISTINGUISHED SERVICE AWARD RECIPIENTS:**

K. MEGAN BROOKS, PETER S. MACKEY, IAN D. ROSENTHAL,  
APRIL D. SMITH, LUCY E. TUFTS



**250 VOLUNTEER HOURS OF SERVICE:**

RUSSELL E. BERGSTROM, WESLEY J. HUNTER, MICHAEL A. WING

**100 VOLUNTEER HOURS OF SERVICE:**

K. MEGAN BROOKS, CHARLES E. TAIT

**SPECIAL THANKS TO THE PANEL ATTORNEYS WHO OPENED AND CLOSED CASES IN NOVEMBER:** MICHAEL E BALLARD , J. DANIEL BARLAR JR., RUSSELL E BERGSTROM, BAYLESS E BILES JR., EDWARD G BOWRON, HENRY H BREWSTER, DANIEL L BURKARD, HENRY A CALLAWAY III, CRAIG CAMPBELL, L. BRIAN CHUNN, ALICIA M CORLEY, SAMUEL N CROSBY, AURELIUS EVANS CROWE, EDWARD A DEAN, SCOTT E DENSON, REBECCA DING, CAROLYN M DOHN, BRYAN G DUHE', MAURY FRIEDLANDER, GEORGE C GASTON, JASON C GERTH, WILLIAM CRAIG HAMILTON, N. STEWART HANLEY, KATIE H HASSELL, EDWARD G HAWKINS, R. SCOTT HETRICK, JENNIFER HOLIFIELD, HERNDON INGE III, GEORGE R IRVINE III, BRIAN C ISPHORDING, MATTHEW R JACKSON, SIDNEY W JACKSON III, NEIL C JOHNSTON, ANDREW M JONES, GREGORY R JONES, KYLA KELIM, JOSHUA G KESLING, GILBERT B LADEN, JAMES H McDONALD JR., SAMUEL G MCKERALL, AUGUSTINE MEAHER III, S. C. MIDDLEBROOKS, LEONARD F MIKUL, JOHN R NIX, KEN A NIXON, TERRIE OWENS, JAMES D PATTERSON, MARY E PILCHER, JEANNE D RASCO, LATISHA RHODES DAVIS, ROBERT RICCIO, IAN ROSENTHAL, JOHN W SHARBROUGH III, JACK SMALLEY III, SCOTT W SOUTULLO, JEFFREY R SPORT, T. JEFF STEIN, GREGORY VAUGHAN, RICHARD R WILLIAMS, MARION E WYNNE JR., THOMAS T ZIEMAN JR., AND DAVID B ZIMMERMAN.

PLEASE NOTE: SAVLP ALWAYS SPEAKS WITH PANEL ATTORNEYS BEFORE REFERRING A CLIENT. WE WILL NEVER SEND A CLIENT TO YOUR OFFICE WITHOUT YOUR PERMISSION. IF YOU HAVE ANY QUESTIONS ABOUT OUR PROCEDURES, PLEASE CALL SAVLP AT 433-6693.







# SIGNIFICANT DECISIONS

BY DUANE GRAHAM

In a lengthy opinion addressing an issue of first impression, the Supreme Court in *Ex parte Bole, No. 1110868* (Ala., August 31, 2012), held that the circuit lacked subject matter jurisdiction over defamation and relating tort claims by a Methodist minister against a member of his former congregation because the claims would necessarily have to involve an impermissible intrusion into the inner workings of the Church's disciplinary proceedings involving the minister.

Over three dissenting votes in another case of first impression, the Supreme Court in *Nationwide Mutual Insurance Co. v. Thomas, No. 1101332* (Ala., August 24, 2012), responded to a certified question from a federal court by declaring that a "carry-for-a-fee" exclusion in an automobile liability policy, under which coverage when the vehicle operator was delivering items or people on behalf of another for a fee, was valid. In answering a second certified question, the Court stated that the exclusion terminated as soon as the last item was delivered and, thus, was not applicable while the operator was returning to his place of employment after making the last delivery. The dissent primarily argued that this was not a declaration of law per se but merely an interpretation of a contract and, thus, not something subject to being resolved by way of a certified question.

In a complex case involving the jurisdiction of probate courts, the Supreme Court in *Hoff v. Goyer, No. 1111078* (Ala., August 17, 2012), held that the removal of a conservatorship proceeding from probate to circuit court was governed by Ala. Code § 26-2-3 (applying to guardianship and conservatorship proceedings) and not by Ala. Code § 12-11-41 (applying to decedents' estates), even though the ward for whom the conservator had been appointed had died. The Court held that even after the ward's death, the conservatorship proceeding and the ward's decedent's estate proceeding were separate proceedings and would remain so. In this case, the conservatorship proceeding, as to which a final settlement was still required, had been removed to circuit court by some heirs. However, the Court held that heirs do not have statutory standing under Ala. Code § 26-2-3 to remove the proceedings and, thus, the circuit court's eventual remand of those proceedings back to probate court was proper.

In a case with potentially significant impact on certain aspects of residential subdivision developments, the Supreme Court in *Limestone Creek Developers, LLC v. Trapp, No. 1110838* (Ala., August 17, 2012), held that a contract between the developer and an investor under which the investor was to buy a number of lots in the subdivision was void because the contract had been entered prior to approval of the subdivision by the county. Section 11-24-2(a) of the Alabama Code prohibits the sale or offering for sale of lots in a future subdivision to the public prior to county approval of the subdivision. The Court did not specifically hold that this contract violated that statute per se because the developer argued that the investor was not really a member of the "public" within the meaning of the statute. However, a resolution promulgated by the county under the authority of related statutory provisions prohibited all sales prior to approval for the purpose of creating, establishing or modifying a subdivision, and the Court concluded that the contract violated this provision.

In *Regions Bank v. Lowrey, No. 1101541* (Ala., August 10, 2012), the Supreme Court held that a trustee was entitled to reimbursement of attorneys' fees and expenses after successfully defending itself against claims of breach of fiduciary duty resulting from Hurricane Ivan damage to timberlands.



# YOUNG LAWYERS ● ● ● ● ● ● JOSHUA D. FRIEDMAN, PRESIDENT

The Young Lawyers had a phenomenal year in terms of fundraising and overall atmosphere at the monthly meetings last year, neither of which would have been possible without the generosity of our sponsors and the hard work of the officers and Executive Committee. We are looking forward to another great year for the **YOUNG LAWYERS** as we try to build upon the great job **GLENN SMITH** did last year as President.

I took the reins of the **YOUNG LAWYERS** on January 1, 2013 as the incoming President, and I am employed at **BARRY A. FRIEDMAN & ASSOCIATES, P.C.** ([josh@bafmobile.com](mailto:josh@bafmobile.com)). Our incoming Vice President is **KASEE HEISTERHAGEN**, who works at **BURR FORMAN** ([ksparks@burr.com](mailto:ksparks@burr.com)). Kasee has done an outstanding job serving as Treasurer last year and should do well in her new role as Vice President. Our incoming Treasurer is **JONATHAN MAPLES**, who works at **CARR ALLISON** ([jmaples@carrallison.com](mailto:jmaples@carrallison.com)). While Jonathan has big shoes to fill, he too should do well keeping this organization headed down the right path.

We are wasting no time in getting the year started off right as **PRO-LEGAL COPIES** has agreed to sponsor this first meeting of the month. The January Meeting will be held on January 24th, 2012 at **CALLAGHAN'S IRISH SOCIAL CLUB** at the corner of Charleston & Marine beginning at 5:30. Every year **MICHAEL CANNON** and **PRO-LEGAL** are strong supporters of the **YOUNG LAWYERS**, and we truly appreciate their continued support, so everyone come out for what is sure to be a great time. If you are not on the Young Lawyers e-mail list and would like to be, please let Kasee, Jonathan, or me know.





# LAWYERS IN THE NEWS

BY SANDY G. ROBINSON

**MARRIED:** MBA MEMBER **GWENETH CAMERON PFEIFFER** AND **MICHAEL SHANE TRAYLOR** WERE UNITED IN MARRIAGE AT THE LITTLE CHAPEL AT SAINT PAUL'S EPISCOPAL CHURCH ON NOVEMBER 10, 2012. A RECEPTION FOLLOWED AT THE BRAGG-MITCHELL MANSION. THE BRIDE IS A CAREER LAW CLERK FOR THE **HONORABLE U. S. DISTRICT JUDGE KRISTI K. DuBOSE** AND THE GROOM IS A GEOLOGIST FOR **SOUTHERN EARTH SCIENCES, INC.** THE COUPLE WILL RESIDE IN MOBILE.

**DIED:** **MARILYN JEAN STIKES VOLLMER**, WIDOW OF THE LATE **U. S. DISTRICT COURT JUDGE RICHARD W. VOLLMER, JR.** AND MOTHER OF MBA MEMBERS **RICK VOLLMER** AND **JAMES VOLLMER**, DIED ON NOVEMBER 23, 2012 AT HER HOME IN MOBILE. SHE WAS A GRADUATE OF MURPHY HIGH SCHOOL, A MEMBER OF DAUPHIN WAY UNITED METHODIST CHURCH AND AN AVID GOLFER. SHE IS SURVIVED BY FIVE CHILDREN, 14 GRANDCHILDREN, AND MANY OTHER RELATIVES AND FRIENDS.

**DIED:** **MARJORIE SMITH MILLING**, MOTHER OF MBA MEMBER **U. S. MAGISTRATE JUDGE BERT MILLING** AND GRANDMOTHER OF MBA MEMBER **BROOKS MILLING**, DIED PEACEFULLY AT HER HOME IN MOBILE ON NOVEMBER 28, 2012. SHE ATTENDED MARY WASHINGTON COLLEGE IN FREDERICKSBURG, VIRGINIA AND MET HER HUSBAND, BERT, WHILE SHE WAS IN SCHOOL THERE. THEY MARRIED IN NOVEMBER, 1943, FOUR HOURS AFTER BERT'S GRADUATION FROM ARMY FLIGHT SCHOOL. SHE HAD MANY INTERESTS, INCLUDING NEEDLEWORK, GOLF, AND GARDENING, ALL OF WHICH SHE ENJOYED WITH HER FRIENDS. SHE WAS A MEMBER OF SPRINGHILL BAPTIST CHURCH AND THE DAUGHTERS OF THE AMERICAN REVOLUTION. SHE IS SURVIVED BY HER HUSBAND OF 69 YEARS, 5 CHILDREN, 13 GRANDCHILDREN, 15 GREAT-GRANDCHILDREN AND MANY OTHER RELATIVES AND FRIENDS.

JOIN THE ESI ROUNDTABLE ON FRIDAY, JANUARY 11, 2013:  
**"FRCP/ARCP E-DISCOVERY AMENDMENTS & PANEL DISCUSSION"**

**SPEAKER: CLAY RANKIN, ESQ. (HAND ARENDALL)**

**PANEL: HON. SONJA BIVINS (U.S.S.D.), HON. MICHAEL YOUNGPETER (MOBILE COUNTY), WILLIAM E. BONNER, ESQ. (CUNNINGHAM BOUNDS), RUSSEL MYLES, ESQ. (MCDOWELL KNIGHT)**

**MODERATOR: ALLISON SKINNER, ESQ. (AMERICAN COLLEGE OF E-NEUTRALS)**

2 HOURS CLE, INCLUDING 1 HOUR OF ETHICS

JANUARY 11, 2013

12:00 PM – 2:00 PM

HAMPTON INN & SUITES, 62 S. ROYAL STREET, MOBILE, AL

ATTORNEYS - \$50/LAW FIRM STAFF - \$35

(ONLY 60 SEATS AVAILABLE)

RSVP AT [WWW.ESIROUNDTABLE.ORG](http://WWW.ESIROUNDTABLE.ORG) OR [ROGO@ESIROUNDTABLE.ORG](mailto:ROGO@ESIROUNDTABLE.ORG)  
 MENTION THIS ANNOUNCEMENT AND RECEIVE \$5 OFF COST OF ADMISSION.





**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)

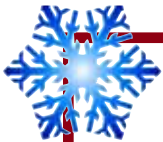
Associate (\$100 or more)

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



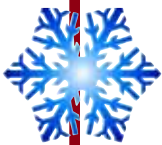
# MOBILE BAR FOUNDATION



SOME OF THE MOBILE BAR FOUNDATION'S 2012 GRANT RECIPIENTS  
WITH FOUNDATION PRESIDENT KATHY MILLER.

## MEMORIALS

In Memory of **JUDGE VIRGIL PITTMAN**  
by **JUDGE SONJA BIVINS**



# 2013



## JANUARY 2013

**JANUARY 1 - TUESDAY  
HOLIDAY,  
NEW YEAR'S DAY**

**JANUARY 10 - THURSDAY  
EXECUTIVE COMMITTEE MEETING,  
12 O'CLOCK NOON,  
BIENVILLE CLUB**

**JANUARY 18 - FRIDAY  
MBA MONTHLY LUNCHEON,  
11:45 AM  
THE BATTLE HOUSE MOONLIGHT BALLROOM**

**JANUARY 18 - FRIDAY  
PROBATE LAW SEMINAR,  
1:30 - 4:45 PM,  
THE BATTLE HOUSE MOONLIGHT BALLROOM**

**JANUARY 24 - THURSDAY  
GRIEVANCE COMMITTEE MEETING,  
12 O'CLOCK NOON,  
MBA HEADQUARTERS**



## CONTINUING EDUCATION 2013

**2013  
January 18 - FRIDAY  
PROBATE SEMINAR, 3.0 hrs.**

**March 15 - FRIDAY  
The Modern Law Office, 3.0 hrs.**