

MONTHLY BULLETIN

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

President's Comments



WES PIPES, PRESIDENT
MOBILE BAR ASSOCIATION

www.MobileBarNews.com

Before taking over in January, I had to spend some time reviewing the committee preference responses that many of you were kind enough to send in. In an effort to try to involve some of our newest members in Bar Association activities, I pulled in some people who actually know them and got some recommendations. If the efforts to include any of you have been unsuccessful, please accept my apologies and give me a call at 432-7200 and I will try to have you assigned or reassigned to the committee that interests you.

Active participation in bar activities not only allows our association to perform its work, but provides the participants with an excellent opportunity to meet other lawyers and become known by them.

HENRY CALLAWAY initiated a public service committee that was instrumental in involving some of our members in the **BIG BROTHERS/BIG SISTERS** program that was very successful. The public service committee is going to be continued under the leadership of **ALEC MOSELEY** and its membership will be expanded. If you are willing to serve on that committee, call me or call Alec directly at 694-6291.

The **CONTINUING LEGAL EDUCATION COMMITTEE** continues to perform a very important service that allows our members to complete as much as they want of their annual CLE requirement locally if they choose to. When technology became a hot topic a separate committee devoted to CLE on technology issues was formed. They have been successful in educating everyone willing to learn and we're going to roll their activities into the CLE Committee under the leadership of **HELEN ALFORD**. New and challenging issues develop at an amazing pace. If you think there is a need for CLE on a topic that is not being addressed, please call Helen at 415-9214 and she will try to schedule your topic. If you are willing to develop a program on the new issue and present it that would be even better.

Henry was very successful last year in keeping the monthly meetings on schedule. We will continue to manage things so the meetings are over by 1:00 PM.

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2012 OFFICERS

- President - Wes Pipes**
- President Elect - Michael E. Upchurch**
- Vice President - J. Michael Druhan**
- Secretary - Latisha "Tish" Rhodes**
- Treasurer - Thomas M. Wood**
- Assistant Treasurer - Meegan B. Nelson**
- Pres Young Lawyers - E. Glenn Smith, Jr.**
- Executive Director - Barbara C. Rhodes**
- Editor - Ferrell S. Anders**

PROGRAM

MBA JANUARY 2012 MONTHLY LUNCHEON

FRIDAY, JANUARY 20, 2012, 11:45 AM

ADMIRAL SEMMES HOTEL

"STATE OF THE COURTS"

UNITED STATES DISTRICT COURT o UNITED STATES BANKRUPTCY COURT
 CIRCUIT AND DISTRICT COURTS OF THE 13TH ALABAMA JUDICIAL CIRCUIT
 MBA GRIEVANCE COMMITTEE ANNUAL REPORT



Browsing the Bar – With Barbara



I want to thank **HENRY CALLAWAY** for such a great year. He stayed on top of things at the MBA and kept us on our toes. He made some much needed changes and added a couple of programs that I am sure will prove beneficial in the years to come. One of his goals was to complete the pictures on the website – well, Henry, we did it! Every photo that we had is now on the website for your viewing pleasure.

One of the things I so enjoy about this job is the “new boss” every year! Don’t get me wrong, it’s not that I have not enjoyed working with each one of these ladies and gentlemen, they have been great, but I do enjoy change! I am looking forward to working with Wes and his “cabinet” in 2012 – he makes the thirty-second President that I have had the pleasure of working with over the years – what other job affords that kind of perk?

Our **HOLIDAY “EGGNOG & WINE” LUNCHEON** was great fun – we had eighteen (18) of our twenty-six (26) living past presidents with us, our invited guests for the **FOUNDATION GRANTS** as well as the **VLP** and **LEGAL SERVICES** award winners. This is always such a good time to “mix and mingle” with our guests and fellow Bar members.

The New Year is off and running and we do wish for each of you a year that will bring good health, prosperity and a closer walk with your Lord.





ANNOUNCEMENTS

DOWNTOWN HISTORIC OFFICE CONDO, O'Gwynn Building, 204 Conti Street, \$1,700.00 / mo rent, Sales Price : \$299,000.00, 1,960 +/- sf, 2 Offices / 2.5 bath, Full kitchen, Mardi gras parade route, Direct inquiries to The Drummond Group: 694-1180.

ATTORNEY POSITION AVAILABLE. Immediate opening for Attorney with good law school record and at least three (3) years experience. This person will handle business litigation, bankruptcy, transactions work and real estate matters at small established AV law firm in Mobile. Competitive pay, excellent benefits and great working environment. Mississippi or Florida license would be a plus. Please send resumes to: Hiring Partner, P. O. Box 161389, Mobile, AL 36616

Licensed attorney seeking full-time employment. Will also work on research, writing, and other projects. Please contact L. Blade Thompson at 251.421.2089 or bladethompson@gmail.com

OFFICE SPACE FOR LEASE: 209 N. Joachim Street – corner of State and Joachim Streets in Historic Detonti Square. Within walking distance of federal and bankruptcy courts and post office. Included in rent are onsite parking, client lobby, reception area, kitchen, conference room, VOIP telephone, internet, email, fax machine and large copy machine/printer/scanner. Contact EVANS CROWE at 251.431.6011.

DUE TO THE GENEROUSITY OF ITS SPONSORS, the ANNUAL MOBILE BAR ASSOCIATION “STARS ACROSS THE BAY” DOMESTIC RELATIONS SEMINAR was very proud to present \$2200 to the Family Center of Mobile. The Family Center of Mobile, whose mission is to strengthen families and prevent child neglect and abuse, was recently awarded \$168,250 in new funding for a “*Healthy Parenting and Relationships*” program from Children’s Trust Fund of AL. This funding will provide for new anger management and co-parenting classes as well a case management services for parents. All services are free and voluntary, and referrals are accepted from other service providers and legal advocates. Call 251.479-5700 for more information about these new services.

NEW MEMBERS

ZACHERY R. WEAVER,

GRADUATED FROM MISSISSIPPI COLLEGE SCHOOL OF LAW IN 2011;
ADMITTED TO THE ALABAMA STATE BAR IN 2011.

PENNY SLAWKOWSKI,

GRADUATED FROM DePAUL, CHICAGO ILLINOIS IN 1990;
ADMITTED TO THE ILLINOIS STATE BAR IN 1990;
THE ALABAMA STATE BAR IN 2011;
EMPLOYED WITH LEGAL SERVICES ALABAMA.

CAROLYN A. WILSON,

GRADUATED FROM CREIGHTON UNIVERSITY SCHOOL OF LAW IN 2000;
ADMITTED TO THE NEBRASKA STATE BAR IN 2000;
THE ALABAMA STATE BAR 2011.

DEREK A. SIEBERT,

GRADUATED FROM JONES SCHOOL OF LAW IN 2011;
ADMITTED TO THE ALABAMA STATE BAR IN 2011.

ASHLEY R. WILKINSON,

GRADUATED FROM JONES SCHOOL OF LAW IN 2011;
ADMITTED TO THE ALABAMA STATE BAR IN 2011.

LONNIE E. WEAVER,

GRADUATED FROM MISSISSIPPI COLLEGE SCHOOL OF LAW IN 2011;
ALABAMA STATE BAR IN 2011;
SOLE PRACTITIONER

ASSOCIATE MEMBER

FRANK D. CUNNINGHAM,

GRADUATED FROM CUMBERLAND SCHOOL OF LAW IN 1980;
ADMITTED TO THE ALABAMA STATE BAR IN 1980;
FLORIDA STATE BAR IN 1981 (INACTIVE STATUS).

DONALD JOSEPH ROSE,

GRADUATED FROM GEORGETOWN UNIVERSITY LAW CENTER IN 1994;
ADMITTED TO THE VIRGINIA STATE BAR IN 1995.

VLP

VOLUNTEER LAWYER PROGRAM

THE MOBILE BAR ASSOCIATION VOLUNTEER LAWYERS PROGRAM BOARD OF DIRECTORS
PROUDLY RECOGNIZES

2011 OUTSTANDING VOLUNTEER LAWYERS

BEN KILBORN LAWYER OF THE YEAR:

CRAIG CAMPBELL

DISTINGUISHED SERVICE AWARD RECIPIENTS:

LATISHA RHODES DAVIS, MARGARET DEMERANVILLE, CLAY LANHAM, CHARLES E. TAIT,
RICARDO WOODS

500 VOLUNTEER HOURS OF SERVICE:

HANK CADDELL AND BUZZY RIIS

250 VOLUNTEER HOURS OF SERVICE:

CRAIG CAMPBELL AND GREG JONES

100 HOURS OF SERVICE TO VLP:

RUSSELL BERGSTROM, STONEY CHAVERS, LUKE COLEY, ROBERT DENNISTON, BEN FORD, EDWARD
HAWKINS, JAY McDONALD, BUSTER MIDDLEBROOKS, PAMELA MILLSAPS, IAN ROSENTHAL, TRIP SMALLEY,
GREG VAUGHAN, PATRICK WARD, BILL WATTS, RONNIE WILLIAMS, AND RICARDO WOODS.

SPECIAL THANKS TO THE PANEL ATTORNEYS WHO OPENED AND CLOSED CASES IN NOVEMBER: GARY P. ALIDOR,
J. DANIEL BARLAR, JR., PAUL T. BECKMANN, RUSSELL E. BERGSTROM, JAIME W. BETBEZE, HENRY H. BREWSTER, CARL N.
BUTLER, JR., ELLA BYRD, HENRY A. CALLAWAY, III, ASHLEY E. CAMERON, F. LUKE COLEY, JR., GREGORY S. COMBS, WALTER M.
COOK, JR., CARRIE V. CROMEY, GLENN L. DAVIDSON, BRENT T. DAY, MARK A. DOWDY, STEVEN C. DUGAN, BRYAN G. DUHE',
BEN FORD, DONALD A. FRIEDLANDER, RICHARD W. FUQUAY, P. VINCENT GADY, GEORGE C. GASTON, J. W. GOODLOE JR.,
TAMEKA A. HARPOLE, SIDNEY M. HARRELL JR., R. SCOTT HETRICK, JENNIFER HOLIFIELD, THOMAS HUMPHRIES, MATTHEW R.
JACKSON, ANDREW M. JONES, GREGORY R. JONES, PETER S. MACKEY, L. A. MARSAL, JAMES H. McDONALD JR., AUGUSTINE
MEAHER III, S. C. MIDDLEBROOKS, JEFFREY G. MILLER, JENNIFER S. MORGAN, HENRY T. MORRISSETTE, D. BRIAN MURPHY,
JOHN R. NIX, WESLEY PIPES, JEAN M. POWERS, BARRY C. PRINE, THOMAS J. RADCLIFF, ROBERT S. RAMSEY, JAMES REBARCHAK,
IAN ROSENTHAL, STEVEN SCIPLE, PENNELOPE SLAWKOWSKI, JACK SMALLEY, III, APRIL D. SMITH, HENDRIK SNOW, T. JEFF STEIN,
SCOTT D. STEVENS, CHARLES E. TAIT, SHANE A. TAYLOR, RICHARD L. THIRY, DAVID P. VAUGHN, LeBREON S. WASHINGTON,
THOMAS T. ZIEMAN, JR., AND DAVID B. ZIMMERMAN.

BEGINNING JANUARY 2012 THE VOLUNTEER LAWYERS PROGRAM IS INITIATING THE
ATTORNEY FOR THE DAY PROGRAM.

Modeled after a successful program in Birmingham, Attorney for the Day provides
VLP attorneys and clients the convenience of meeting at the courthouse in an
"advice clinic" setting.

Please attend an Informational Meeting/Kick Off

January 9th at 1:30pm in

Courtroom 4100

Please contact the VLP office at 433-6693 or e-mail [ARIANA MOORE](mailto:Ariana.Moore@vlpmobile.org) at Ariana@vlpmobile.org for more information



SIGNIFICANT DECISIONS

BY DUANE GRAHAM

Refusing to deviate from the rule laid out in *Mitchell v. Davis*, 598 So.2d 801 (Ala.1992), the Supreme Court in *Ex parte Spurgeon*, No. 1101198 (Ala., October 14, 2001), the Supreme Court held that foster parents were entitled to the same parental immunity as natural parents, although this immunity did not cover wanton acts or sexual abuse. Accordingly, the Court ordered dismissal of a negligence count against foster parents to the child's drowning in the home's swimming pool. The Court refused to grant mandamus on state immunity grounds, however, because the petitioners cited no authority to support their claim that foster parents were entitled to state immunity.

In a case that bears close reading by plaintiffs intending to sue an out-of-state defendant, the Supreme Court in *Ex parte McNeese Title, LLC*, No. 1100764 (Ala., October 14, 2011) granted a mandamus requiring the trial court to dismiss a complaint against a Florida defendant because the Complaint contained no specific allegations to support the claim of personal jurisdiction against the defendant and, therefore, there was nothing to which the defendant needed to respond by affidavit and it was entitled to dismissal.

In a case of first impression, the Supreme Court in *Smith's Sports Cycles, Inc. v. American Suzuki Motor Corp.*, No. 1100400 (Ala., October 14, 2011), held that the 180-day notice of termination provision in the *Alabama Motor Vehicle Franchise Act, Ala. Code § 8-20-5*, was satisfied, even though the defendant franchisor knew of certain defects prior to 180 days because the defects in question were both continuing and evolving and because the franchisor had terminated the franchise agreement in good faith and considerable efforts to encourage compliance.

Notwithstanding that the defendant had engaged in active litigation for about a year before the motion to compel arbitration was filed, the Court in *Aurora Healthcare, Inc. v. Ramsey*, No. 1091561 (Ala., October 21, 2011), held that the defendant had not waived its right to arbitration. The main item litigated was the defendant's motion to transfer venue, and the Court noted that it had previously concluded that a defendant and the right to obtain proper venue prior to pressing its arbitration motion. See *Thompson v. Skipper Real Estate Co.*, 729 So.2d 287, 292 (Ala.1999). In addition, while the defendant had conducted discovery, the discovery did not appear to be of the kind that was not allowed in arbitration. Consequently, the Court concluded that the plaintiff had failed to demonstrate "substantial prejudice" due to the defendant's delay in requesting arbitration, which is an additional finding beyond simply substantially participating in the litigation process that must be present to constitute a waiver of the right to arbitrate.

In *Ex parte Lamb*, No. 1091668, (Ala., October 28, 2001), the Supreme Court ruled that when a criminal jury had returned a written verdict stating that the defendant was not guilty on one of several counts (contrary to the foreman's verbal rendition of the verdict) and had then been discharged, it subjected the defendant to impermissible double jeopardy for the judge to recall the jury to explain orally that it had in fact found the defendant guilty on that count. The Court rejected the notion that this was a mere clerical error that could be corrected because the jury had been discharged. The same basic result was reached in *Ex parte T.D.M.*, No. 1091645 (Ala., October 28, 2011).



YOUNG LAWYERS..... E. GLENN SMITH, JR. - 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 **TOM RADCLIFF** did last year as President.

I took the reigns of the **YOUNG LAWYERS** on January 1, 2012 as the incoming President, and I am employed at **CARR ALLISON** (gsmith@carrallison.com). Our incoming Vice President is **JOSH FRIEDMAN** who works at **BARRY A. FRIEDMAN & ASSOCIATES** (josh@bafmobile.com). Josh has done an outstanding job serving as Treasurer last year and should do well in his role as Vice President. Our incoming Treasurer is **KASEE HEISTERHAGEN** who works at **BURR FORMAN** (kasee.heisterhagen@burr.com). While Kasee has big shoes to fill, she 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. An exact date and venue has not been decided on yet, but we will let you know as soon as the details are provided to us. Every year **MICHAEL CANNON** and **PRO-LEGAL** are strong supporters of the **YOUNG LAWYERS**, and we 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 Josh, Kasee, or me know.

LAWYERS IN THE NEWS

BY SANDY G. ROBINSON

DIED: JAMES KNOX BOTELER, JR., FATHER OF MBA MEMBER **KNOX BOTELER**, DIED ON NOVEMBER 16, 2010. HE SERVED IN THE U.S. NAVY DURING VIETNAM, AND WAS A GRADUATE OF **LIVINGSTON UNIVERSITY** WHERE HE SERVED AS SGA PRESIDENT. HE WAS AN ACTIVE MEMBER OF **CENTRAL PRESBYTERIAN CHURCH**, AN AVID OUTDOORSMAN, AND A YOUTH SPORTS COACH. HE IS SURVIVED BY HIS FATHER, TWO CHILDREN, 3 GRANDCHILDREN AND MANY OTHER RELATIVES AND FRIENDS.

DIED: BLOISE ZEIGLER, FATHER OF MBA MEMBER **JIM ZEIGLER**, DIED AT THE AGE OF 98 AT HIS HOME IN OAK GROVE. HE SERVED AS MAYOR OF OAK GROVE, A SUBURB OF SYLACAUGA, FOR 20 YEARS AND HELPED BUILD ITS SENIOR CENTER, TOWN HALL AND WALKING TRACK. HE WAS AN ACTIVE MEMBER OF **FIRST BAPTIST CHURCH OF SYLACAUGA** SINCE 1948, AND ACTIVE IN MANY OTHER CIVIC AND COMMUNITY AFFAIRS. HE WAS PRECEDED IN DEATH BY HIS WIFE OF 64 YEARS, AND IS SURVIVED BY FOUR CHILDREN AND ELEVEN GRANDCHILDREN.

DIED: LORETTA ANN STRINGER REECE, MOTHER OF MBA MEMBER **BILL REECE**, DIED IN BIRMINGHAM ON DECEMBER 6, 2011 AT THE AGE OF 70. SHE WAS A MEMBER OF **OUR LADY OF THE VALLEY CATHOLIC CHURCH**, AND IS SURVIVED BY TWO CHILDREN AND FOUR GRANDCHILDREN.





THE ANNUAL BENCH & BAR CONFERENCE

THE ANNUAL BENCH & BAR CONFERENCE WAS A TREMENDOUS SUCCESS. JUDGES AND LAWYERS ALIKE SENT KUDOS TO **BARRY FRIEDMAN** AND **DAVID F. DANIEL**, CO-CHAIRS, AND THE ENTIRE COMMITTEE FOR A “JOB WELL DONE”. WE RECEIVED A “THANK YOU” NOTE FROM **PRESIDING JUDGE WILLIAM C. THOMPSON**, COURT OF CIVIL APPEALS, AND I QUOTE *“ANOTHER GREAT CONFERENCE AT THE GRAND. WE ALWAYS LOOK FORWARD TO BEING WITH THE MOBILE BAR AND ENJOY THIS WEEKEND MORE THAN ANYTHING WE DO ALL YEAR! THANK FOR EVERYTHING.”* NOW, TO BEGIN PLANNING FOR NEXT YEAR!

A BIG THANK YOU TO THE ENTERTAINMENT COMMITTEE AND ESPECIALLY **CAROL MACKEY, EMILY CALLAWAY** AND **MAMIE BEDSOLE**. THE **COURTYARD MANOR** WAS A GREAT VENUE, THE BAND, **ROMAN STREET**, WAS TERRIFIC, THE FOOD EXCELLENT AND SOME “MIGHTY FINE” DOOR PRIZES. A GREAT BIG THANK YOU TO ALL OF OUR SPONSORS:

ANDERS, BOYETT AND BRADY, P.C.
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 ZIEMAN, SPEEGLE, JACKSON & HOFFMAN, LLC
 AND ESPECIALLY W. BOYD REEVES



PLEASE GIVE

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I want to make a donation to the Mobile Bar Foundation.

In honor/memory of: _____

Acknowledgement to: Name _____

Address _____

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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

JANUARY 2012



JANUARY 10 - TUESDAY
MBA BUDGET COMMITTEE MEETING,
3:30 PM, MBA HEADQUARTERS

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

JANUARY 19 - THURSDAY
WORKERS COMP SECTION MEETING,
12 O'CLOCK NOON, ADMIRAL SEMMES HOTEL

JANUARY 20 - FRIDAY
MBA MONTHLY LUNCHEON,
11:45 AM, ADMIRAL SEMMES HOTEL

JANUARY 20 - FRIDAY
PROBATE SEMINAR,
1:30 – 4:45 PM,
ADMIRAL SEMMES HOTEL

JANUARY 26 - FRIDAY
MBA GRIEVANCE COMMITTEE MEETING,
12 O'CLOCK NOON,
MBA HEADQUARTERS



CONTINUING EDUCATION 2012

Jan. 20	1:30 - 4:45	Probate Practice	3.0 hrs
March 16	1:30 - 4:45	The Modern Law Practice	3.0 hrs.
April 20	1:30 - 4:45	Drug Court	3.0 hrs
May 18	1:30 - 4:45	Words from On High	3.0 hrs