

# MONTHLY BULLETIN

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

## President's Comments



**MIKE DRUHAN, PRESIDENT**  
**MOBILE BAR ASSOCIATION**



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### 2014 OFFICERS

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The month of May is a particularly “American” month. Beginning with Law Day on May 1st we are reminded that our Country is special and throughout its history it seems everyone wants to share the “Dream”. We need to remember to spare a minute or a prayer that day for our new legally naturalized countrymen and think about this year’s theme, “America Democracy and the Rule of Law: Why Every Vote Matters.”

With the foregoing in mind, isn’t it appropriate that the last days of May should concentrate our thoughts on the legions of patriots that have died for our Country, by celebrating Memorial Day on May 26th. It is their blood and sacrifice that has kept the Dream vibrant to the point that legal immigrants seek and receive citizenship.

Memorial Day means a lot to me, not just a holiday to drink beer and eat barbeque. It is a vivid moving picture for me, peopled by lads who will never walk our way again. I’d like to just mention two such soldiers with whom I had the distinct honor to serve.

Lieutenant Steven Doane served in my unit, the First Battalion, 5th Infantry Regiment, 25th Infantry Division, in Vietnam. On March 25, 1969 he was serving as a platoon leader when his company, engaged in a tactical operation, abruptly contacted an enemy force concealed in protected bunkers and trenches. Three of the leading soldiers were pinned down by enemy crossfire. One was seriously wounded. After efforts of one platoon to rescue these men had failed, it became obvious that only a small group could successfully move close enough to destroy the enemy position and rescue or relieve the trapped soldiers. LT Doane, although fully aware of the danger of such an action, crawled to the nearest enemy bunker and silenced it. He was wounded but continued to advance to a second enemy bunker. As he prepared to throw a grenade, he was again wounded. Undaunted, he deliberately pulled the pin on the grenade and lunged with it into the enemy bunker, destroying this final obstacle. Doane’s supreme act enabled

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## PROGRAM

ON FRIDAY, MAY 16, 2014,  
WE WILL CELEBRATE  
**THE ANNUAL LAW DAY**  
**PROGRAM**

11:45 AM, THE BATTLE HOUSE HOTEL  
MOONLIGHT BALLROOM  
THE PROGRAM WILL BE

**SPEAKER: JUSTICE CHAMP LYONS, JR.**

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his company to rescue the trapped men without further casualties.

Likewise Staff Sergeant Marvin R. Young on August 21, 1968 while serving as a squad leader conducting a reconnaissance mission in the vicinity of Ben Cui, his company was suddenly engaged by an estimated regimental-size force of the North Vietnamese Army. During the initial volley of fire the point element of the 1st Platoon was pinned down, sustaining several casualties, and the acting platoon leader was killed. S/Sgt. Young unhesitatingly assumed command of the platoon and immediately began to organize and deploy his men into a defensive position in order to repel the attacking force. As a human wave attack advanced on S/Sgt. Young's platoon, he moved from position to position, encouraging and directing fire on the hostile insurgents while exposing himself to the hail of enemy bullets. After receiving orders to withdraw to a better defensive position, he remained behind to provide covering fire for the withdrawal. Observing that a small element of the point squad was unable to extract itself from its position, and completely disregarding his personal safety, S/Sgt. Young began moving toward their position, firing as he maneuvered. When halfway to their position he sustained a critical head injury, yet he continued his mission and ordered the element to withdraw. Remaining with the squad as it fought its way to the rear, he was twice seriously wounded in the arm and leg. Although his leg was badly shattered, S/Sgt. Young refused assistance that would have slowed the retreat of his comrades, and he ordered them to continue their withdrawal while he provided protective covering fire. With indomitable courage and heroic self-sacrifice, he continued his self-assigned mission until the enemy force engulfed his position. At the end of the action his company had lost 17 killed and 24 wounded.

If my seven year old granddaughter ever asks "What did you do in the War, Pop?" I can tell her that I had the high honor to be among "Eagles". Both Steven and Rex were awarded Medals of Honor.

God Bless America and Resquiscat in Pace Steven and Rex.

## LAWYERS IN THE NEWS

BY SANDY G. ROBINSON

### LEGAL MILESTONES:

**MARRIED: MBA MEMBERS KATHRYN MEGAN BROOKS AND BRYAN E. COMER** WERE MARRIED ON MARCH 29, 2014 AT ASHLAND PLACE METHODIST CHURCH. MEGAN IS THE DAUGHTER OF **CIRCUIT JUDGE BEN H. BROOKS, III**. AFTER A HONEYMOON IN TAHITI AND BORA BORA, THE COUPLE WILL CONTINUE TO PRACTICE LAW IN MOBILE.

**MBA MEMBERS, ALEXANDRA K. GARRETT AND J. WILLIS GARRETT, III** WELCOMED THE BIRTH OF THEIR SON, **JAMES PORTERFIELD GARRETT**, FEBRUARY 7, 2014.

**DIED: DR. WILLIAM RUFUS HARVEY, JR.**, FATHER OF MBA MEMBER **STEPHEN HARVEY**, DIED ON MARCH 18, 2014. DR. HARVEY WAS A PROUD VETERAN OF WWII, AND PRACTICED DENTISTRY IN CAMDEN, ALABAMA, FOR 56 YEARS. HE WAS AN ACTIVE MEMBER OF CAMDEN BAPTIST CHURCH, WHERE HE SERVED AS A DEACON. HE IS SURVIVED BY FOUR CHILDREN AND EIGHT GRANDCHILDREN.

**DIED: MARGARET JOHNSON "PEGGY" SMELSER**, WIFE OF MBA MEMBER **ED SMELSER**, DIED APRIL 8, 2014 AT A LOCAL HOSPITAL. SHE WAS A MEMBER OF FIRST BAPTIST CHURCH IN MOBILE, AND AT THE TIME OF HER DEATH SHE AND ED HAD BEEN MARRIED FOR 47 YEARS. SHE IS ALSO SURVIVED BY THREE CHILDREN AND SIX GRANDCHILDREN.

## *Browsing the Bar – With Barbara*

The CONTINUING LEGAL EDUCATION COMMITTEE has the 2014-15 CLE SCHEDULE just about complete. There will be over 40 hours of Education provided at a very reasonable fee. Please check the June BULLETIN for the final list and get ahead of the game – mark your calendars with your choices.

The summer months are almost upon us and that means children home from school all-day-long, vacations to plan, etc. but do not forget your Bar functions. We will have a luncheon in June (20th), the ALABAMA STATE BAR ANNUAL MEETING in Destin in July (10th – 12th) and August (15th) brings DANNY SHERIDAN back into our midst. Again I remind you to mark your calendars so you do not miss these special functions.

**I've learned...** That no matter how serious your life requires you to be, everyone needs a friend to act goofy with.

**I've learned...** That life is like a roll of toilet paper. The closer it gets to the end, the faster it goes!

**I've learned...** that everyone wants to live on top of the mountain, but all the happiness and growth occurs while you're climbing it.



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# SIGNIFICANT DECISIONS

BY DUANE GRAHAM



In a case of first impression, the Supreme Court in *Alfa Mutual Insurance Co. v. Culverhouse, No. 1121127* (Ala., Feb. 14, 2014), held that it was not an abuse of discretion for a trial court to consider an argument on a post-judgment motion that had not been previously presented, even though the moving party offered no explanation as to why the issue had not been previously presented.

In another case of first impression, the Supreme Court in *Beam v. Taylor, No. 1120678* (Ala., Feb. 14, 2014), held that, under Ala. Code § 26-2-2 governing removal of conservatorship proceedings from probate court to circuit court, which is closely analogous to Ala. Code § 12-11-41 governing the removal of estates, the circuit court does not gain jurisdiction unless a petition for removal is filed in the circuit court and the circuit court enters an order granting that removal. In this case, the petition and order had only be filed and entered in the probate court and, thus, were insufficient. Moreover, the Court held that an administrator ad litem of a decedent's estate lacked the ability to petition for removal absent a special equity showing.

Distinguishing a number of prior cases, the Supreme Court in *Ex parte Hodge, No. 1121194* (Ala., Feb. 7, 2014), held that a medical malpractice action accrued when the defendant left a surgical hemostat in the plaintiff's body after surgery for the purposes of beginning the running of the statute of limitations, even though no symptoms developed from the hemostat until several years later.

In another case of first impression, the Supreme Court held in *Ex parte U.S. Bank National Association, No. 1120904* (Ala., Feb. 7, 2014), that a writ of mandamus should issue determining the proper choice of law to be applied to a malicious prosecution claim where the trial judge had refused to certify a permissive appeal, that under the principle of *lex loci delicti* the law of the state where the previous action had successfully been terminated in favor of the plaintiff governed the malicious prosecution action, and that because the resulting Washington state law that applied did not allow for a malicious prosecution claim under the facts present, the case must be dismissed.

In *Ex parte Southern Erectors, Inc., No. 2130164* (Ala. Civ. App., Feb. 21, 2014), the Court of Civil Appeals held that, while the employment contract was entered in Alabama, the employment primarily centered in Kansas and, thus, when the employee was injured on the job in Kansas, the Alabama workers' compensation laws were not applicable.

In *Weiss v. Nave, No. 2120743* (Ala. Civ. App. Feb. 14, 2014), the Court of Civil Appeals held that a trial court committed reversible error by failing to hold a hearing on a post-judgment motion as to which one of the grounds had probable merit. The Court noted that while Rule 59(g) generally requires that a hearing be held on post-judgment motions, the harmless error rule prevents any reversal on appeal for the failure to hold such a hearing, but only if none of the grounds alleged in support of the motion had probable merit.



**SAVLP**



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Congratulations to **ANDY CITRIN INJURY ATTORNEYS** for winning the Best of the Bay Award. Thank you for your support and participation!

Congratulations to the **BALDWIN COUNTY BAR** for winning the Battle of the Bay between the Baldwin and Mobile County legal communities. The oar will return to the Eastern Shore.

**1ST PLACE FINISHERS: JEANNIE CITRIN (1 MILE KAYAK- F), KEN BREWINGTON (1 MILE KAYAK-M), MICHAEL AND MARY ALDEN WING (1 MILE TANDEM KAYAK), JEAN POWERS AND TREY OLIVER (1 MILE CANOE), MIKELLE WILLIAMSON (3 MILE KAYAK- F), BROOKS CRAWFORD (3 MILE KAYAK- M), MIKE DASINGER AND TANK DASINGER (3 MILE CANOE)**

For complete race results go to the SAVLP website or Facebook page.



**Two (2) BANKRUPTCY JUDGESHIP POSITIONS  
IN THE NORTHERN DISTRICT OF ALABAMA**

- Decatur and Tuscaloosa.

Applications are available on the Court's Website at [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov) or by calling: 404-335-6535 and from any federal clerk of court in the States of Alabama, Florida and Georgia. Applications must be submitted by potential nominees to the Circuit Executive's Office, and must be received by May 14, 2014.

Email and faxed copies of applications WILL NOT be accepted.

**One (1) BANKRUPTCY JUDGESHIP POSITION  
IN THE SOUTHERN DISTRICT OF ALABAMA**

- Mobile, Alabama

Deadline for applications for this position is May 28, 2014.

**PUBLIC NOTICE OF VACANCY  
CHAPTER 13 STANDING TRUSTEE**

- Mobile, Alabama

The United States Bankruptcy Administrator is seeking qualified applicants for appointment by the Bankruptcy court to the position of Chapter 13 Standing Trustee. This position will be located in Mobile, Alabama with entry on duty January 1, 2015.

A list of qualifications and application requirements may be obtained by visiting the website of the Bankruptcy Administrator at [www.alsba.uscourts.gov/jobs.php](http://www.alsba.uscourts.gov/jobs.php).

Applicants will be considered without regard to race, religion, national origin, ethnicity, gender or age (over 40 years of age).

Deadline for submission of completed applications is May 15, 2014.

**SOUTHERN ENVIRONMENTAL LAW CENTER** is seeking a staff attorney with five or more years of experience in litigation for its Birmingham, Alabama office. Send letter of interest, resume, law school transcript (with date of birth and social security number redacted) and at least three references to Lori Cates at

[ALjobs@selcva.org](mailto:ALjobs@selcva.org).

Please include "AL STAFF ATTORNEY APPLICATION" in subject line.





# ANNOUNCEMENTS

**ARMBRECHT JACKSON LLP** takes pleasure in announcing that **STEVEN C. PEARSON** has become a partner and **S. GAILLARD LADD and LINDSAY SCHAFFER HURT** have become attorneys with the firm.

**OFFICE SPACE FOR RENT:** 1 or 2 offices for rent, partially furnished. Copier, internet and phones provided. Rent negotiable. Contact [isee3@aol.com](mailto:isee3@aol.com) or 251.470.0303

**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 431.6011 or [crowe@evanscrowe.com](mailto:crowe@evanscrowe.com)

**ATTENTION ALL ATTORNEYS WITH YOUNG CHILDREN: NEW DAYCARE DOWNTOWN!** Azalea City Montessori, 209 S. Washington Ave., serving children aged 2 ½ - 6 years. See <http://azaleacitymontessori.org/> for details.

**CORRECTION:** Please note this correction of an announcement in the April edition. The purpose of the correction is to correct the spelling of **MCCULLOCH** in **KRISSY's** name and in the new firm name.

The Law Firm of **CONRAD & BARLAR** is pleased to announce that **KRISTINE "Krissy" McCULLOCH** has become a partner of the firm. The firm name has changed to **CONRAD, BARLAR & McCULLOCH**.

# MOBILE CHAPTER OF THE ASSOCIATION OF LEGAL ADMINISTRATORS NEW OFFICERS

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

The Young Lawyers would like to thank Mobile Bay Reporting and Source One for hosting the April YL meeting. The Haberdasher was a fun location for the meeting and it was well-attended. The May YL meeting will be held on Thursday, May 22 from 5:30-7:30 P.M. Hand Arendall will be hosting the meeting, location TBA - so watch for an email update. All are welcome! If your firm is interested in hosting a YL meeting in 2014, the July meeting is still open for sponsorship.

### **FUN FEST AT ST. MARY'S HOME**

Thank you to all who participated in our annual Fun Fest at St. Mary's Home. Committee Chair Kate Browning and her team did an excellent job of organizing a fun day for all of the residents. This year we were able to make a \$1,000.00 donation and provide the children with some fun items including beach towels, flip flops, and fishing poles. Thank you to our generous sponsors: Burr & Forman, Carr Allison, Gardberg Clausen, Hand Arendall, Helmsing Leach, and Starnes Davis Florie.

### **YL GOLF TOURNAMENT**

We are gearing up for our annual YL Golf Tournament on Friday, June 6. All proceeds go to benefit the Wounded Warrior Project. This year's co-chairs for the tournament are Steven Savarese (ssavarese@hglawpc.com) and Weathers Bolt (wbolt@starneslaw.com). Please contact them or any member of the executive committee in order to enter your team in the tournament or be a sponsor. Hole sponsorships are \$200 and closest to pin/longest drive sponsorships are \$300. The entry fee is \$500/team (\$125/individual) but if your firm would like to sponsor a hole and enter a team, the fee is only \$650.

If you would like to get involved with the Golf Tournament, are interested in sponsoring an upcoming meeting, or if you have any questions, concerns, or comments please e-mail me ([kspark@burr.com](mailto:kspark@burr.com)), Vice President Jonathan Maples ([jmaples@carrallison.com](mailto:jmaples@carrallison.com)), or Treasurer Russ Johnson ([rjohnson@law-alabama.com](mailto:rjohnson@law-alabama.com)).

# MEMORIALS

DONATIONS IN MEMORY OF

MAURY FRIEDLANDER

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## PLEASE GIVE

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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



**MAY 5 - MONDAY**

ANNUAL LAW HELP LINE  
6:00 AM TO 6:00 PM, LOCAL TV 15

**MAY 8 - TUESDAY**

MBA EXECUTIVE COMMITTEE MEETING,  
12 O'CLOCK NOON, ADMIRAL SEMMES HOTEL

**MAY 13 - THURSDAY**

WOMEN LAWYER LUNCHEON  
12 O'CLOCK NOON, MIDTOWN KITCHEN

**MAY 16 - FRIDAY**

ANNUAL LAW DAY LUNCHEON  
11:45 AM, BATTLE HOUSE MOONLIGHT BALLROOM

**MAY 22 - THURSDAY**

MBA GRIEVANCE COMMITTEE  
12 O'CLOCK NOON, MBA HEADQUARTERS

**MAY 22 - THURSDAY**

ANNUAL YOUNG LAWYERS MEETING  
5:30 PM

**MAY 23 - THURSDAY**

MBA GRIEVANCE COMMITTEE MEETING,  
12 O'CLOCK NOON, MBA HEADQUARTERS

**MAY 26 - MONDAY**

MEMORIAL DAY HOLIDAY

