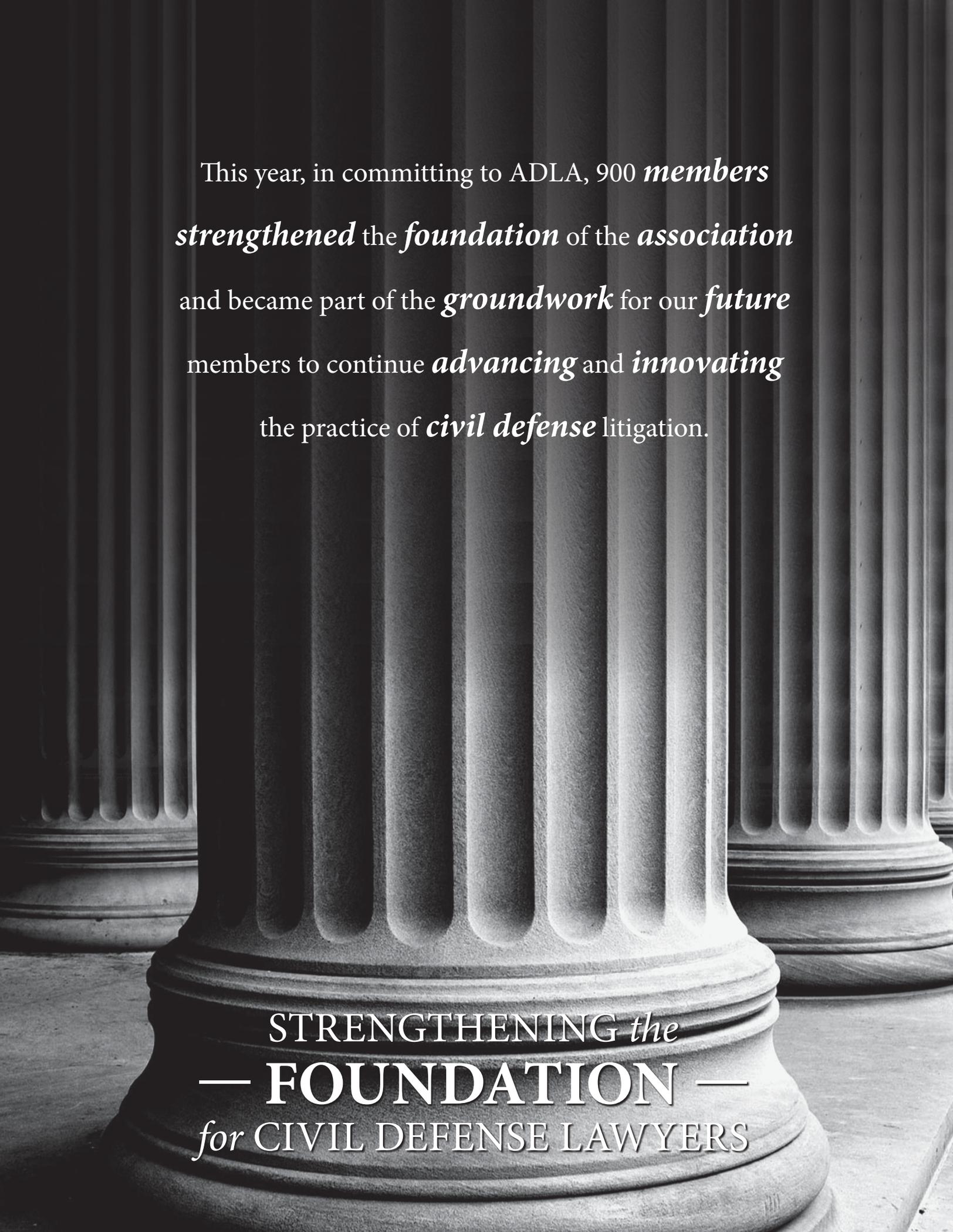


JOURNAL

ALABAMA DEFENSE LAWYERS ASSOCIATION | VOL. 34 | NO. 2



ADLA WELCOMES NEW PRESIDENT
AND BOARD LEADERSHIP



This year, in committing to ADLA, 900 *members*
strengthened the *foundation* of the *association*
and became part of the *groundwork* for our *future*
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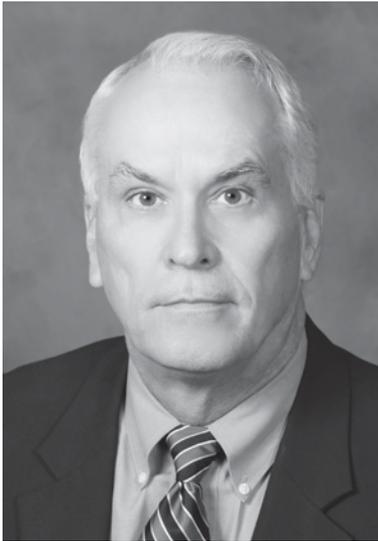
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in this issue

**ADLA Installs New
Leadership and 2018
Annual Meeting
Wrap-Up**

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It's no secret we have the best members; a few opened up about work, family and their mentors who had a huge impact in their professional careers.



DENNIS R. BAILEY
President

What a difference a year makes! Last year at this time we were without an executive director. Today we not only have a director (we just finished a terrific annual meeting at Orange Beach thanks to the hard work of our new executive director, **Jennifer Hayes**, and executive assistant, **Leigh Stinebaugh**), but we are in this issue of the *Journal* announcing the birth of a new **Alabama Property and Casualty**

Adjuster Association (APCAA) under the auspices of ADLA.

ADLA has been instrumental in helping to form a new statewide property and casualty adjusters association. The brainchild of **Andy Rutens** and **David Sikes** of AMIC, the APCA will promote our working together with Alabama adjusters to further our joint interests in service to citizens of Alabama involved in potential litigation claims. To promote networking and continuing education, the APCA will hold its meetings concurrently with ADLA perhaps as soon as the 2019 Annual Meeting in Sandestin. We are planning for them to have meeting space with us in 2019, 2020 and 2021. Please do all you can to encourage potential members of the APCA to join this new effort to rekindle a statewide organization of professional adjusters. Hopefully, by January 1, 2019, the organization will be collecting dues and starting operations.

The Young Lawyers Section under the leadership of **Megan McCarthy** has been rejuvenated. The YLS has already recorded presentations for obtaining CLE online, most recently the legal update presented by **Alex Holtsford** at the Annual Meeting. Providing free YLS led CLE opportunities to ADLA members is a value-added benefit of membership. The YLS in 2018-2019, led by **Baines Fleming**, will also provide the new Alabama claims organization some continuing education before our next annual meeting.

I think we all owe a debt of special gratitude to Immediate Past President **Sharon Stuart**. As you all know, she took office without an executive director in place at an annual meeting that could have become a disorganized mess. But thanks to her steady hand, and a herculean effort by **Leigh Stinebaugh** and Leigh's daughters, the meeting went off without any visible glitches. Sharon then proceeded to fulfill her promise to the membership

“I hope I can stand on their shoulders and maintain the strong reputation of this organization and, hopefully, even leave it better than I found it.”

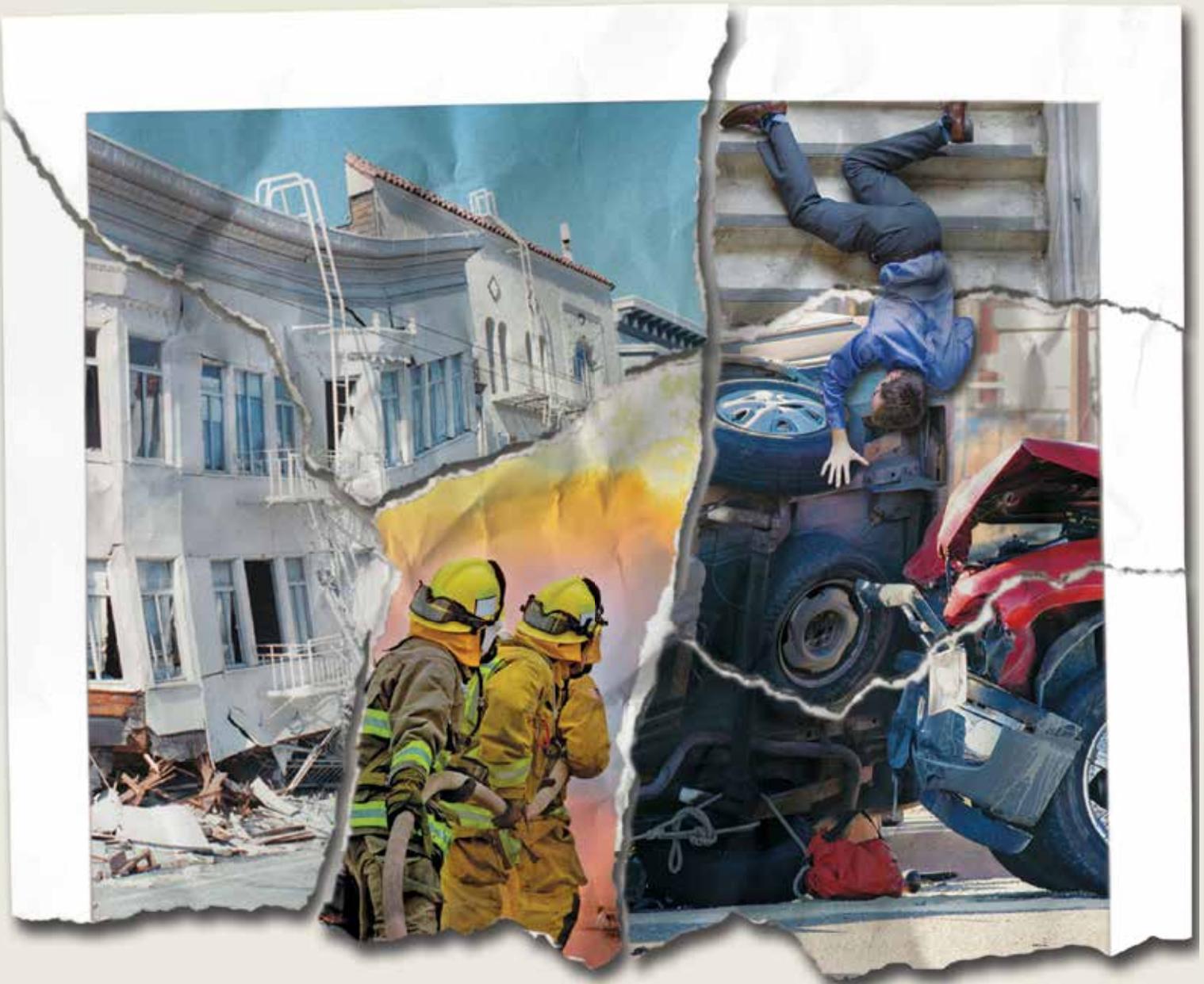
to have a new executive director in place in a relatively short time. Thanks also to the Executive Director Search Committee, made up of **Bruce Barze**, **Harold Stephens**, **Christie Estes**, **Pat Sefton** and **Michael Upchurch**. These volunteers performed the due diligence necessary to screen numerous worthy candidates which eventually led to the hiring of **Jennifer Hayes** as our Executive Director in January of this year.

Our new executive director **Jennifer Hayes** has been a dynamo of energy who has pushed our organization to the next level. If you missed the Annual Meeting this year, you missed the most exciting meeting we have had in years. At the 2018 Annual Meeting, attendees enjoyed a beach bonfire with inflatable bouncy slides for the kids, a fishing trip, a petting zoo, a fun photo booth, a circle of beach chairs dedicated for attendees and a great band Saturday night, all in addition to the great CLE, golf, face painting, and swag members are used to experiencing at our family-friendly annual meetings. The feedback from the meeting was extremely positive, even including rave reviews for the facilities at the Perdido Beach Resort. Judges and lawyers particularly liked the short walks to the less-crowded beach when compared to Sandestin. Jennifer and Leigh did a fantastic job to make sure it all went smoothly.

President-Elect **Christina May Bolin** is already working on a great lineup of speakers for our 2019 Annual Meeting. Potential speakers are clamoring for the opportunity to make presentations before you. Note that due to the lead times for contracts for such events, we will return to Sandestin in 2019 but given the feedback we have received, Orange Beach will be high on our radar when decisions are made concerning future meetings after current commitments to Sandestin expire in 2021.

Jennifer is also aggressively recruiting new members and encouraging former members to rejoin resulting in higher member numbers and an upward trend that is the envy of other state defense lawyer associations. She organized a Topgolf member event in August in Birmingham, in conjunction with the **ADLA Bibb Allen Memorial Trial Academy** – which, along with ADLA's **Deposition Boot Camp**, is another one of the major lawyer education programs which led to the formation of ADLA by founding President **Thomas F. Parker** in the first place.

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Piece by piece. Fact by fact. **Getting to the Big Picture.**

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ADLA is having an incredible year and we are not done yet! Membership events are gaining momentum, we've welcomed new members, and we have members who have volunteered to serve on various committees for the first time. Since January, **ADLA has grown 10% in overall membership.** Additionally, ADLA welcomed back previous members who dropped their membership more than a year ago. As we move into the fall season, continue to watch your email and visit our website at www.adla.org to remain informed of all Association news and events.

In just a short amount of time, ADLA has redesigned the association's brand and image. The anticipation continues to build as we prepare for the release of our new website – we are now only weeks away from our launch! The redesigned website will feature enhanced member benefits, including access to free CLE, that promise to bring more value to your membership.

We hope you have been receiving ADLA's weekly e-newsletter, the **Wednesday Briefcase**. Beginning in September, the e-newsletter will be delivered bimonthly until the end of the year, unless we have timely news that we need to pass along to you. If you are not receiving the e-newsletter, please contact us at adla@adla.org.

I am also pleased to report that ADLA's **Journal** publication had a significant increase in marketing support and circulation in 2018, giving our sponsors more exposure compared to previous years. We have given the **Journal** a new look and expanded its circulation. As a result of these improvements, ADLA now provides new marketing opportunities for its sponsors, which will result in an enhanced value to our members. Without the loyal support of our sponsors, the annual conference and other membership activities would not be successful. Please continue to thank our sponsors as you cross paths with them at various events.

Our **Annual Meeting at Perdido Beach Resort** in Orange Beach was a huge success! Although it was in a different venue from previous years, we sincerely appreciate those who attended the conference. Change is sometimes tough, but this year was no doubt a welcome exception. Beautiful weather provided the perfect backdrop for our two nightly events, both held beachside. Our Thursday night bonfire on the beach was a relaxing time to

“ADLA has a unique dynamic when it comes to our members’ scope of practice, and we are committed to providing a variety of opportunities for member engagement, policy influence, and benefits through your membership dues.”

catch up with friends and family. Light Travelers, our Saturday night musical entertainment, was definitely a crowd pleaser. The music, food and drinks were such a hit that we extended the band's playing time and kept the bar open. Make plans to join us at next year's Annual Meeting at the **Sandestin Golf and Beach Resort**, June 13-15, 2019 in Destin, Florida. The room block is now open for you to make your reservations.

ADLA proudly teamed up with the **AL CASA Network** and **Alzheimer's of Central Alabama** to help these organizations fulfill the needs of individuals, both young and old, who are suffering in our local communities. At the Annual Meeting, ADLA and DRI collected school supplies for children who will be starting school this year in a new foster home after being removed from their own home. The new school supplies will give these children self-confidence and the tools they need to start the school year off right, particularly during a very uncertain time in their lives. During our Topgolf event in August, our members brought art supplies that were distributed to adult daycare centers which provide art therapy to those suffering with Alzheimer's. Art therapy offers them a calming way of self-expression, as well as a means to remain connected during times where they feel completely lost. With your generosity, we were able to fill a costly need.

Our **District Mixers** are on the rise. We encourage you to attend and invite other civil defense attorneys if you see one planned in your area. Networking at the district mixers provides you with a valuable opportunity to remain connected with other ADLA members throughout the year. We know your time is valuable, so it's important to ADLA that these events are not only beneficial, but a lot of fun! The next scheduled mixer is Tuesday, September 18th in **Huntsville at Martin Bar and Bistro**.

Finally, staff will be personally contacting member firms around the state to encourage more attorneys to join ADLA if they qualify for membership. Check with other attorneys in your firm and if they are not members of ADLA, let us know so we can get them plugged in. ADLA has a unique dynamic when it comes to our members' scope of practice, and we are committed to providing a variety of opportunities for member engagement, policy influence, and benefits through your membership dues. We thank you for choosing to be a member of ADLA. If there is anything I can do for you, please reach out to me anytime at jhayes@adla.org. 



JENNIFER HAYES
Executive Director

ADLA AFTER HOURS

ADLA To Host District 1 Mixer In Huntsville September 18th

Make plans to join us on Tuesday, September 18th from 5-7 p.m. at The Martin Bar & Bistro on Washington St. SE. Join us at the new and upscale open-air bar for networking, brews and cocktails – it can't get any better than that! All ADLA members are invited, so if you happen to be in Huntsville, please join us! We encourage you to invite ADLA members in your firm, and bring anyone who is not a member that should be; we don't want them to miss out!

ADLA members in District 4 gathered after work at the Bluegill Restaurant and Bar on the beautiful Mobile Bay in April. Members enjoyed networking, seafood, cocktails and the best weather you could imagine on the coast.



John Browning, Andy Rutens, Eddie McDonough, Blair Mattei, Robert Shreve and Kirk Mattei



Andy Rutens, Christina May Bolin and Robert Shreve



Bill Lancaster, Mary Margaret Bailey and Ross Frazer

GONE ARE THE DAYS OF THE TEAR-STAINED LETTER: EMOJIS AS EVIDENCE IN THE DIGITAL AGE

By: Ashley L. Crank



In today's culture, emails, text messages, and social media platforms are common methods of digital written communications. Non-digital and digital written communications tend to lack various emotional dimensions that in-person communications offer, such as vocal expressions, facial expressions, and body language. Just as written communications have evolved to adapt to today's digital culture, so have non-verbal communications. While different than non-verbal communications involved in in-person interactions, emojis¹ and emoticons² are pictographs that bridge the gap between non-verbal communications and emotions in written, digital communications. Emojis and emoticons, while different, both articulate and emphasize an author's tone or meaning, and potentially even an author's mood or mental state, in digital communications. The use of emojis in all forms of digital communications is ever-increasing.³ For example, the "heart eyes cat" emoji has appeared in over 66 million tweets on Twitter, and domain names incorporating emojis are currently being developed.⁴ As emojis and emoticons continue to play an extensive role in how we communicate digitally, they will continue to create evidentiary issues.

While a fairly new facet of digital communications, courts have begun to recognize and address emojis and emoticons in both the civil and criminal contexts.⁵ In 2012, the Middle District of Alabama evaluated the use of an emoticon in a text message, and coupled with other factors, held there was "a close-temporal proximity between [a supervisor's] love letters, the negative-performance review, *the emoticon-text message*, and [plaintiff's] termination."⁶ In a wrongful termination action in Ohio, a court analyzed the employer's use of "smiley face" and "frowning face" emoticons in emails regarding the plaintiff.⁷ The plaintiff argued the use of frowning emoticons in emails related to plaintiff's performance implied ill-will or malice toward him.⁸ The court ultimately held that while "the use of emoticons in [defendant's] emails may have been unprofessional or immature, the court finds that her opinions expressed in the emails do not rise to the level of malice, bad faith, or reckless conduct."⁹

Emojis and emoticons have also made their way into defamation lawsuits. In *Ghanam v. Does*, a defamation case, the Michigan Court of Appeals interpreted the use of an

"As emojis and emoticons continue to play an extensive role in how we communicate digitally, they will continue to create evidentiary issues."

emoticon at the end of a digital statement and ultimately held that the emoticon displayed the author's intent at the time the statement was made.¹⁰ The statement and emoticon at issue was as follows:

They are only getting more garbage trucks because Gus needs more tires to sell to get more money for his pockets :P¹¹

The court concluded "[e]xamination of the statements *and the circumstances under which they were made* show them to be mere expressions of rhetorical hyperbole and not defamatory as a matter of law."¹² More specifically, the court reasoned the use of the ": P" emoticon made it clear the author intended the statement as a joke, and therefore, a reasonable reader could not have interpreted the statement as defamatory.¹³ Courts have also analyzed the use of emoticons in workplace harassment cases.¹⁴

Interestingly, an Israeli small claims court judge recently found that emojis served to prove the element of reliance in a contract dispute.¹⁵ In this lawsuit, a landlord posted an online ad seeking a prospective tenant.¹⁶ A prospective tenant digitally communicated with the landlord and included various emojis in his communication, such as a smiley, a bottle of champagne, dancing figures, and more.¹⁷ The parties continued communicating back and forth, but the prospective tenant eventually ceased communications.¹⁸ However, as a result of the parties' communications, the landlord alleged he took down his online ad because he relied on the prospective tenant to lease the property based on the digital communications.¹⁹ As a result, the landlord sued the prospective tenant for damages.²⁰ According to the judge, the prospective tenant's positive emojis coupled with his words displayed interest, which the judge held the landlord relied upon.²¹ The judge specifically noted that emojis are

an integral part of modern communication and are thereby subject to legal interpretation.²² The landlord was awarded 8,000 shekels in damages and legal fees, which amounts to approximately \$2,200.00.²³

As it relates to criminal cases, in September 2016, emojis depicting a police officer, a handgun, and a bomb included in a Facebook post led to probation of an Illinois citizen.²⁴ Recently, an Ohio court allowed testimony from a witness regarding the intent behind a “winky face” emoji found in digital communications in a criminal case involving aggravated burglary and felonious assault charges.²⁵ The witness testified that the “winky face” emoji sent by the individual that the defendant allegedly assaulted meant that the individual wanted “to sleep with her again.”²⁶ On appeal of his conviction, the defendant argued this testimony was evidence of provocation. Taking the evidence most favorably for the defendant, the appellate court found that it was “insufficient to convey words of infidelity and to find otherwise would require [the court] to make an unsupported assumption of the emoji’s meaning.”²⁷

Before discussing interpretation issues related to specific emojis, it must be noted that emoji senders and recipients could view the same emoji images differently from the onset of a digital communication because different devices, softwares, and operating systems convey different emoji images. That is, senders and recipients may not see the same image. There are two types of emojis—Unicode emojis and proprietary emojis.²⁸ The Unicode emoji system does not determine emojis’ characteristics, such as color, shape or size.²⁹ Therefore, the final depiction of an emoji is left up to the particular device, operating system or software and as a result, emojis can be conveyed differently between a sender and a recipient.³⁰ Furthermore, proprietary emojis are only recognized on the platform they are offered, and as a result, a recipient of a proprietary emoji may not be able to view the emoji at all if he is not using the requisite platform.³¹

While it is positive that various courts are recognizing and beginning to address emojis as evidence in various lawsuits, courts need to address emojis and their application uniformly and consistently. For example, as recognized by *State v. Shepherd*, interpretation of emojis is an issue.³² Courts, lawyers, witnesses, jurors, and even recipients of emojis can analyze the same emoji and reach different, but rational, conclusions as to the meaning of the same emoji. This is no different than other interpretative challenges, such as words and other symbols that generate multiple meanings. Because emoji interpretation is an issue, several online dictionaries related to emojis have already been created.³³

Due to the interpretation issues related to emojis, courts should consider incorporating actual emoji images, rather than textually describing emojis, into their opinions and other written orders in order to establish uniform precedent for the meanings of specific emojis. Of course, in order to do this, actual emoji images at issue must be adequately preserved by practitioners, which must be done during the discovery phase of any lawsuit. Therefore, it comes with no surprise that practitioners must be mindful of evidentiary issues surrounding emojis. Just like the evidentiary hurdles currently associated with social media evidence, emojis must be properly authenticated and, likely, will need to survive hearsay objections. Perhaps, under certain circumstances, emojis may be admissible under certain hearsay exceptions outlined in Rule 803. In order to be prepared for these issues prior to trial, practitioners must evaluate all evidentiary issues that could arise with emojis at the on-set of a case and continue to evaluate the same as the case develops.

Following the logic of the interpretation issues above, courts and practitioners must evaluate and determine the best way to present emojis, if admissible, to juries in order to prevent jury confusion. Written communications, such

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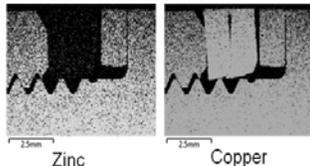


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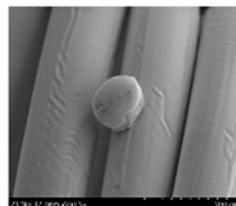


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Chemical mapping of artifact from fire



Glass fused to headlamp filament indicating that lamp was on when broken



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message from the president

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Our **Legislative Committee** has provided value to our members by screening bills for potential impact on our organization. Last year, after a member of the committee noted last-minute changes to SB 39, we mobilized our membership to exercise their First Amendment rights to contact legislators about the bill's effect on the burden of proof in opioid cases and attempt to adopt enterprise liability. Our efforts were appreciated by legislators unfamiliar with the ramifications of those features. This year **Stephen Still** will chair the committee which will include **Allen Estes, Ed Howard, Andy Rutens, Mary Margaret Carroll** and **Keith Miller**. Based upon the rate that members open the legislative update emails, the value of this committee to the membership is great.

Our **Amicus Curiae Committee** keeps us on the front lines of legal issues affecting our profession and often of concern to many of our clients. Alabama Appellate Courts have in the past sought ADLA *amicus* participation on such issues. This year **Craig Alexander** will chair the committee which consists of over a dozen experienced appellate lawyers, some of whom have served on the committee for many years.

Of course, since you are reading this column you already know about the ADLA **Journal** and how valuable it is to ADLA members. Because Christina is now President-Elect, she has turned over the Editor reigns to **Gaby Reeves** who will be working with our terrific Editorial Board. Efforts to make the articles searchable will make the *Journal* even more useful to ADLA members.

With all of these successful programs and important committees, I hope you agree that membership in ADLA is worth your time and membership fees. If there are other areas you believe ADLA should consider, please let me or any member of the Board of Directors know. We plan to meet in October in Montgomery to discuss strategic planning, so get your suggestions in before October 15 if you can.

Finally, it is an honor to be elected to serve as the President of this organization. When I reviewed the list of past presidents of ADLA, I was humbled by the number of outstanding lawyers and judges who have served the ADLA membership in the past. I hope I can stand on their shoulders and maintain the strong reputation of this organization and, hopefully, even leave it better than I found it. Given the work of my predecessors, that may be a tall order. 



GABY REEVES
Editor

Many people make a good first impression, but only a few make a good lasting one; **Christina May Bolin** has certainly done so as Editor of the ADLA *Journal*. Christina has served as Editor of the *Journal* since 2011. To put that in perspective, this means she has overseen publication of 14 editions of the *Journal* for which she managed to procure three to five articles for each publication, which means she has edited somewhere between 42 and 70 articles submitted for print. However, a *Journal* editor's role is not just to correct spelling, grammar and sentence structure; a *Journal* editor's key role is to educate readers about the profession associated with the *Journal*, while also promoting the *Journal* itself as *the Journal* that best provides that information. Christina has gone above and beyond in doing that, acquiring articles covering a wide-range of topics from new developments in the law to ever-present issues concerning the legal profession itself that will always warrant attention. She has secured articles that are not only of interest, but that are also *interesting* (there is a distinction). As a result of her work, the *Journal* has not only increased in professional and practical value to its membership, but has attracted an extended audience. Now, Christina is

setting aside her quill to focus her attention on her role as ADLA's new President-Elect. There is no doubt she will make a good lasting impression in that role as well.

I confess I am a little anxious about being next in line as Editor; Christina's a tough act to follow. However, I am also excited about serving as Editor and consider it a real compliment to have been asked to do so. To the members of the Editorial Board, thank you for agreeing to serve another term. Your collective experience will be a great help to me and I look forward to working with each of you. I ask that any of the ADLA members who have any suggestions regarding the *Journal* to please contact me; this is *your Journal*, after all. I also encourage you to consider submitting an article for publication and, if you wish to do so, please contact me, a member of the Editorial Board or our Executive Director, Jennifer Hayes. Really, "[t]here is nothing to writing. All you do is sit down at a typewriter and bleed." - **Ernest Hemingway**.

Congratulations to ADLA's new Board of Directors: **Dennis Bailey**, President; **Christina May Bolin**, President-Elect; **Andy Rutens**, Secretary-Treasurer; and, **Sharon Stuart**, who will continue to serve on the Board as Immediate Past President. Congratulations also to **Bains Fleming**, the new President of the Young Lawyers Section, **Allen Estes**, our new DRI State Representative, **Craig Alexander**, the new Chair of the *Amicus Curiae* Committee, and **Stephen Still**, the new Chair of the Legislative Committee. While congratulations are in order, so are thanks to all of you for agreeing to serve in these positions.

This issue of the *Journal* features four articles addressing pertinent, but very different, topics. **Robert Thornhill**, Director of the Alabama Lawyers Assistance Program, has submitted an article

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Gone are the Days of the Tear-Stained Letter

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as emails and text messages, can be read to the jury once deemed admissible. What happens if an emoji is contained in such communication and is read, or described, by a lawyer to the jury? Conversely, what happens if a lawyer omits the emoji from the written communication? The opposing party could certainly object either way due to mischaracterization and/or any likelihood to confuse the jury. Must an actual image of the emoji be presented to the jury to avoid these obstacles? Moreover, generational gaps between jurors are also likely to create issues. Certain jurors may not be familiar with emojis and different generations could associate a different meanings with the same emoji. While the use of emojis as evidence creates the above complications, courts and practitioners must evaluate and consider emojis' evidentiary value as they are a novel form of non-verbal communication that can substantially aid (or hinder) a practitioner's case. 



Ashley L. Crank is an associate at Christian & Small LLP where she maintains a civil litigation practice focusing on insurance defense, insurance coverage, personal injury, and other civil matters. Ashley serves on the Young Lawyers' Board of Directors of the Alabama Defense Lawyers Association, serves on the editorial board for the Birmingham Bar Bulletin, and serves on the Board of Trustees for the Birmingham Legal Aid Society. In addition, Ms. Crank is an active member of DRI's Insurance Section, Women's Section, and Young Lawyers' Section.

Endnotes

¹ "Emoji" is a Japanese term for picture character and is a "small digital image or icon used to express an idea, emotion, etc., in electronic communications." Goldman, Eric, *Surveying the Law of Emojis*, Santa Clara Univ. Legal Studies Research Paper (May 1, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2961060.

² "Emoticon" is a hybrid of the words "emotion" and "icon" and "are letters, numbers and other standard keyboard characters sequenced to create a pictograph." Goldman, *supra* note 1.

³ See, e.g., *Jackson v. McCurry*, 303 F. Supp. 3d 1367, 1377 (M.D. Ga. 2017) (explaining that student in § 1983 action had to identify recipients in her messages that were identified by emojis instead of names).

⁴ <http://emojitracker.com> (last visited July 16, 2018); Michael J. Coren, *The Land Rush For Emoji Domains Is Coming*, QUARTZ (Nov. 5, 2016), <https://qz.com/828436/the-land-rush-for-emoji-domains-is-coming>.

⁵ See, e.g., *Murdoch v. Medjet Assistance*, 294 F. Supp. 3d 1242, 1253-54 (N.D. Ala. 2018) (recognizing "smiley face" emojis in digital messages when evaluating employment discrimination case); *NEXUS Servs., Inc. v. Moran*, No. 5:16-cv-00035, 2018 WL 1461750, at *4 (W.D. Va. Mar. 23, 2018) (interpreting the use of a "Hitler emoji" in email communications and reasoning "the emoji was contained in an internal email between two work colleagues in which, taken in context, one was jokingly calling the other a 'meanie' and

a taskmaster"), *appeal filed*; *Ukwuachu v. State*, NO. PD-0366-17, 2018 WL 2711167, at *6 n.12 (Tex. Crim. App. June 6, 2018) (recognizing and publishing "winky face" emoji in opinion).

⁶ *Mims v. Chilton Med. Ctr.*, No. 2:11cv41-MHT, 2012 WL 685280, at *6 (M.D. Ala. Mar. 2, 2012).

⁷ *Kara v. Ohio Dept. of Taxation*, No. 2012-03794, 2014 WL 713335, at *7 (Ohio Ct. Cl. Feb. 21, 2014).

⁸ *Kara*, 2014 WL 713335, at *7.

⁹ *Id.*

¹⁰ *Ghanam v. Does*, 845 N.W.2d 128, 145-46 (Mich. App. Ct. 2014).

¹¹ *Ghanam*, 845 N.W.2d at 145.

¹² *Id.* at 146 (emphasis added).

¹³ *Id.* at 145.

¹⁴ See *In re Shawe and Elting*, No. 9661-CB, 2015 WL 4874733, at *23 (Del. Ch. Aug. 13, 2015) (reasoning that ";" at the end of defendant's text message sent to non-parties displayed intent that defendant looked forward to another opportunity to harass the plaintiff).

¹⁵ Ephrat Livni, *Emojis prove intent, a judge in Israel ruled*, QUARTZ (May 19, 2017), <https://qz.com/987032/emojis-prove-intent-a-judge-in-israel-ruled>.

¹⁶ Livni, *supra* note 15.

¹⁷ Livni, *supra* note 15; Ido Kenan,  *Show Intention to Rent Apartment, Says Judge*, <http://room404.net/eng/%F0%9F%92%83%F0%9F%8F%BB%F0%9F%91%AF%E2%80%8D%E2%9C%8C%EF%B8%8F%E2%98%84%EF%B8%8F%F0%9F%90%BF%EF%B8%8F%F0%9F%8D%BE-show-intention-to-rent-apartment-says-judge> (last visited July 16, 2018) (shows messages with emojis in Hebrew).

¹⁸ Livni, *supra* note 15.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ See *Emojis Taken as Threat Against Officer Lead to Probation for Peoria Man*, CHI. TRIB. (Sept. 17, 2016, 6:24 AM), <http://www.chicagotribune.com/news/local/breaking/ct-emojis-threat-peoria-20160917-story.html> ("A Peoria man pleaded guilty to threatening a police officer based on the emojis he included in a Facebook post has been sentenced to more than two years of probation.")

²⁵ *State v. Shepherd*, 81 N.E.3d 1011, 1020 (Ohio Ct. App. 2017).

²⁶ *Shepherd*, 81 N.E.3d at 1020.

²⁷ *Id.*

²⁸ Goldman, *supra* note 1.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Shepherd*, *supra* note 25.

³³ See Emojipedia, <http://emojipedia.org> (last visited July 16, 2018); The Emoji Dictionary, <https://emojictionary.emojifoundation.com> (last visited July 16, 2018); Dictionary.com, <http://www.dictionary.com/e/emoji> (last visited July 16, 2018).



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STEPHEN W. STILL JR.
Chair

I hope everyone is having a fabulous summer. When Dennis Bailey asked me to Chair ADLA's Legislative Committee, I immediately responded that I was happy to help however I was needed. When I accepted, however, I did not fully appreciate the added benefit that ADLA provides to its membership through the Legislative

Committee. In fact, a few seconds after I committed to Chair the Committee, I had the same thought that I suspect many of you may have – "What is the Legislative Committee and what does it do?"

For those of you who (like me) do not understand the Legislative Committee's purpose or what the Legislative Committee does, here is a brief explanation of what ADLA does through the Legislative Committee. First, ADLA receives and reviews proposed legislation that may impact (positively or negatively) the practice of law, the ADLA membership, and/or clients of the ADLA membership. ADLA and the Legislative Committee will, from time to time, circulate new or proposed legislation to the membership to keep all members abreast of current legislative issues and developments. I trust you have received such emails from ADLA in the past. Second, depending on the impact that proposed legislation may have on the practice

of law, the ADLA membership, or clients of the ADLA membership, the Legislative Committee will involve the ADLA Board of Directors, membership, other lawyers, and/or other interested individuals and entities to work with legislators to promote or oppose certain legislation. In looking into the Committee's past work, I am pleased to report that the Committee and ADLA as a whole has a strong track record on this front.

This year's Committee is made up of **Allen Estes** of Balch & Bingham LLP, **Ed Howard** of Ford Howard & Cornett, P.C., **Keith Miller** of Alfa Insurance Companies, **Mary Margaret Carroll** of Fine Geddie & Associates, **Andy Rutens** of Galloway Wettermark Everest & Rutens LLP, and me. We look forward to working with you during this coming year. Please do not hesitate to contact us if we can be of any assistance.

Thank you to everyone for your participation in ADLA. 



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LATE TO THE PARTY? ALABAMA BECOMES THE LAST STATE TO ENACT A DATA BREACH NOTIFICATION LAW

By: Jonathan W. Macklem

On March 28, 2018, Governor Kay Ivey signed a bill that made Alabama the 50th state to enact statutory requirements for maintaining private data and for providing notification of a data breach, just days after South Dakota became the 49th. The debate will continue as to which was actually “last;” Alabama’s statute became effective on June 1st and South Dakota’s did not become effective until July 1st. The Alabama Data Breach Notification Act of 2018 (the “Act”) requires “covered entities” (more on that in a moment) doing business in Alabama to do the following: (1) To take reasonable steps to protect sensitive customer data; (2) To provide notice if the entity discovers it is the subject of a data breach; and, (3) To dispose of sensitive data in a secure manner. The Act has tentatively been placed under Section 8, Chapter 19F of the *Code of Alabama*.¹

A “covered entity” is broadly defined in the Act to include essentially any person or entity, including government entities, which acquire or use sensitive data of other people. Data subject to the Act is defined as a first name or initial, plus a last name, plus any one of a number of specific types of information that correspond to the name, such as a credit card or account number, online login credentials, medical or health insurance information, etc. Sensitive information specifically excluded from the scope of the Act includes information lawfully made public in specific ways and anonymous or encrypted data.

A covered entity must take reasonable steps to protect sensitive data, taking into account certain factors related to the covered entity’s risks, the type of data that it holds, appropriate safeguards already in place, the use of third-party agents, and other measures.² The Act lists a number of security measures that covered entities should consider, including performing a security audit, designating an employee to handle information security for the company, and having data security policies and procedures in place.

In the event of a data breach as defined by the Act, a covered entity must investigate the breach and notify those individuals whose information “has been acquired . . . or reasonably believed to have been acquired” if the breach “is reasonably likely to cause substantial harm” to those individuals. Depending on the scope of the breach, notification may be given directly or by publication. Regardless of the method of notification, notice of the breach must contain specific information, *e.g.*, the type of information involved, the steps the covered entity is taking to remedy the breach and



“While the Act specifically excludes companies regulated by federal laws that require data breach notification, such as banks and health care entities, the Act will have a profound effect on Alabama businesses throughout most industries, including law firms.”

how to obtain additional information regarding the breach. In the event of a breach involving 1,000 or more individuals, the covered entity must provide the Alabama Attorney General with certain information regarding the breach. Notice to individuals and, if required, to the Attorney General, must be made within 45 days of the discovery of the breach and the determination of reasonably likely harm. Notification may be delayed upon a written request from law enforcement.

If a breach occurs and the covered entity determines that notification is not required under the Act, the covered entity must document the reasons for its decision and must maintain that documentation for at least five years beyond any other legal or business requirement for the information.

The Act establishes civil and criminal penalties for covered entities that fail to comply with the statutory requirements. A

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ATTORNEY WELLNESS - ARE YOU TAKING CARE OF YOU?

By: Robert B. Thornhill, MS, LPC, Director



Addiction is one of the most pressing problems facing our nation. The recent and highly publicized heroin and opioid epidemic is the most current example of the ongoing and pervasive destruction that the disease of addiction has wrought upon Americans since the 1960's. The pervasiveness of the disease has been, and continues to be, devastating to our healthcare system, to law enforcement and corrections systems, to employers, to families and to our culture.

Numerous studies show that the addiction rate in the legal profession is significantly higher than that in the general population. In February of 2016, the Journal of Addiction Medicine published a study entitled, "The Prevalence of Substance Use and Other Mental Health Concerns among American Attorneys", in which the authors reported that their "most significant findings [were] the rates of hazardous, harmful, and potentially alcohol dependent drinking and high rates of depression and anxiety symptoms." The study included almost 13,000 practicing attorneys from 19 states, including Alabama. The study utilized an instrument known as the Alcohol Use Disorders Identification Test (AuDIT -10), which screens for levels of problematic alcohol use. Of the subject attorneys, 21% to 36% (depending on variables such as age and type of legal work) scored in a range consistent with an alcohol use disorder. This range is three to five times higher than that of the general population. The study also showed that 28% of these attorneys reported concerns with mild or higher levels of depression, 19% reported mild or higher levels of anxiety. Overall, 23% reported mild or higher levels of stress.¹

Lawyers tend to be hard-working and ambitious individuals, who are highly motivated to yield the best possible results for the people they represent. They routinely provide counsel and guidance to their clients, many of whom are struggling with mental illness or addiction. Sadly, lawyers often fail to acknowledge or seek assistance when they themselves or a colleague are struggling with the same issues. Many do not seek assistance for themselves because they fear their peers will judge or ostracize them. The results of the study confirm this, citing the two primary reasons why attorneys do not reach out for help as being: (1) the fear others will find out they needed help; and, (2) concerns about privacy and confidentiality. The Alabama Lawyer Assistance Program (ALAP) offers invaluable assistance to those who may be struggling with these problems and to those who are concerned about a colleague or friend. ALAP can reach out to a lawyer in need and frequently touch that lawyer's life in ways that others

cannot. ALAP has a committee of volunteer attorneys who are ready and willing to reach out and provide assistance. Many of our committee members are recovering from addiction or other mental health conditions such as depression or anxiety, which makes them uniquely qualified to win the confidence of an attorney in the throes of active addiction, depression/anxiety. Because they have personally experienced the ravages of undiagnosed and untreated addiction and have discovered the miraculous and life-changing power of genuine recovery, they are passionate about providing assistance to others in need.

Untreated Addiction is a primary reason that formal complaints are forwarded to the Office of General Counsel at the Alabama State Bar. One of ALAP's top priorities is to provide completely confidential assistance to a struggling attorney before his or her license is in jeopardy or before there is significant involvement with law enforcement. Any lawyer who may be experiencing active addiction or depression/anxiety can seek help through our program and rest assured that their involvement will remain confidential.

Tragically, many attorneys will simply be unwilling or unable to accept help until they have experienced significant negative consequences. For these lawyers, it will be the formal complaints and/or legal consequences such as a DUI or Domestic Violence conviction that provide the necessary motivation to seek help. At this point, voluntary involvement with ALAP is essential for those attorneys who desire to have a means of support that includes a comprehensive monitoring program. We have assisted many attorneys in their recovery and it has been our pleasure to provide support and accountability throughout the process of regaining their license to practice law.

Addiction is a chronic, progressive and fatal illness. In the early stages of the disease, the compulsive use of addictive substances appears to be helpful. But, without treatment and recovery, the disease will continue to grow progressively worse until the final-stage symptoms such as around-the-clock use and life-threatening physical withdrawal occur. Most addicts do not survive to these final stages. They die in a variety of ways, including automobile accidents while under the influence, organ failure due to chronic ingestion of alcohol or drugs, accidental drowning or burning, homicide or suicide or overdose.

The disease of addiction also negatively affects mental health. Most alcoholics and addicts possess traits for depression, anxiety

disorder, bipolar disorder and even personality disorders; many easily meet the diagnostic criteria for one or more of these mental illnesses. Fortunately, the realities of these “co-occurring” disorders has been recognized for quite some time and are routinely addressed in treatment. For many recovering addicts, symptoms of depression or anxiety lessen over time and become more manageable simply by working the 12-Step program offered by Alcoholics Anonymous and utilizing coping skills acquired in treatment. For others, these “co-occurring” disorders will persist in recovery and will require ongoing psychiatric treatment, medication management and therapy. But all can experience sustained and effective recovery, provided they remain committed to a program that includes accountability.

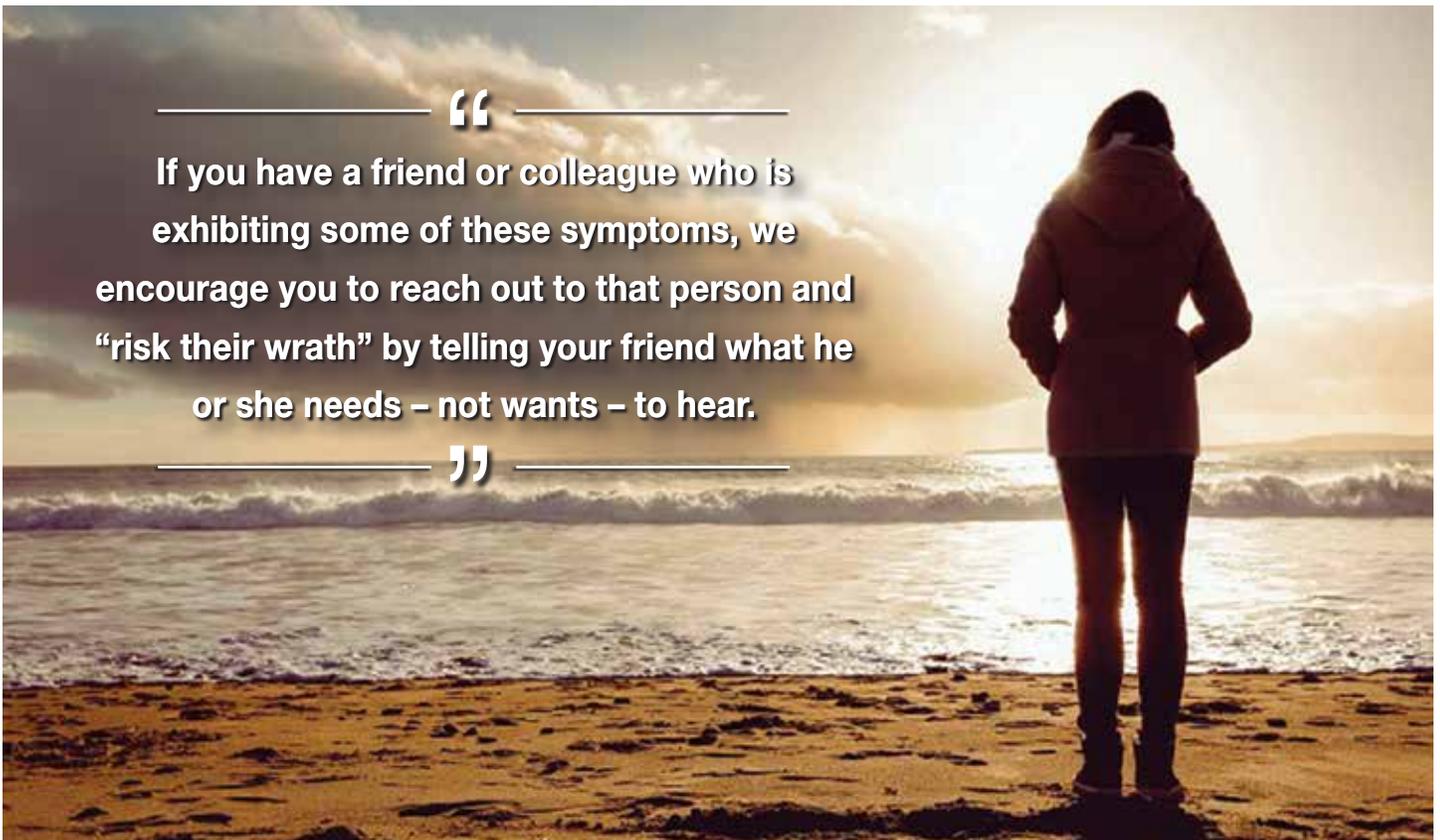
Among those of us in recovery and those who have worked in the field of addiction, there is wide-spread agreement that the area of human life that is the most significantly affected by this disease is the spiritual dimension and, that in order to truly recover, one must first focus on matters of the spirit. The founders of the fellowship of Alcoholics Anonymous discovered that alcoholics are, most importantly, spiritually sick. Through trial and error, they came upon a spiritual solution to the disease of alcoholism that has since been “borrowed” and used in countless other programs that have proven to be life-changing and effective. Many experts agree that AA is an essential part of any genuine and effective recovery program. In Staying Sober: A Guide for Relapse Prevention, authors Gorski and Miller stated, “Alcoholics Anonymous is the

single most effective treatment for alcoholism. More people have recovered from alcoholism using the program of AA than any other treatment. It is for this reason that AA needs to be a vital part of any alcoholic’s sobriety plan.”²

The process of intervening in someone’s life and guiding them to evaluation, treatment and effective recovery is rarely smooth and easy. It usually consists of multiple interactions and interventions, accompanied by inevitably worsening negative consequences. It is frequently difficult, challenging and unpleasant for everyone involved. The Alabama Lawyer Assistance Program can help with this process. We are happy to receive calls of concern regarding a colleague or family member. When we receive such a call, we attempt to gather as much information as possible and provide specific recommendations based on that information. Should a caller wish to remain anonymous, he or she may do so. Once we gather the necessary information, if we feel that there is a legitimate cause for concern, we will reach out directly to the attorney in question. If the parties involved are willing, we will help arrange an informal intervention.

If you have a friend or colleague who is exhibiting some of these symptoms, we encourage you to reach out to that person and “risk their wrath” by telling your friend what he or she needs – not wants – to hear. There is no doubt that when people have the

continued on page 35



“
If you have a friend or colleague who is exhibiting some of these symptoms, we encourage you to reach out to that person and “risk their wrath” by telling your friend what he or she needs – not wants – to hear.
”

ADLA Hosts Topgolf Member Event & Presents Collected Art

ADLA members and Trial Academy attendees gathered at Topgolf after a long day at work in August for networking, golf, cocktails and lots of food. In addition to watching members' demonstrate their impressive golf swings, we showed our support for **Alzheimer's of Central Alabama** by presenting collected art supplies for local adult daycare centers.

"Thanks to our members' generosity, we were able to collect art supplies for those who are suffering with this disease," said **ADLA president Dennis Bailey**. "We are proud to know that art supplies will be placed into the hands of very special individuals who will create beautiful art work for others to enjoy." ACA's executive director, **Miller Piggot**, and community relations'



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ADLA president, Dennis Bailey presents art supplies to ACA executive director, Miller Piggot.



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Supplies To Alzheimer's of Central Alabama

representative, **Vance Holder**, were onsite to receive the supplies.

After all the food and drinks were depleted, we awarded two golfers with \$100 Dick's gift cards. The lucky winners were Bill Lancaster, Armbrecht Jackson; and Rachel Moore, Christian and Small. We also would like to recognize the generosity of our **exclusive Topgolf sponsors** for supporting our event.



Stacy Moon, Chris Chrisie, Jay Watkins, Christine Segarra and Bill Lancaster



Bains Fleming, Jay Watkins and Bill Lancaster catching up.



Lana Olson, Sharon Stuart and Katie Davis



Bernie Brannan and Thomas DeBray, ADLA Trial Academy Director



Jonathan Hooks, Adam Israel and Pat Thetford



Jennifer Hayes, ADLA Executive Director, Dennis Bailey, ADLA President, and ADLA Past Presidents Sharon Stuart, Allen Estes and Melody Eagan



Maggie, daughter of Lana Olson, organized the art supplies and personally picked out a few of her favorite items to donate.

It is a great honor to be given the opportunity to serve as President of the Young Lawyers Section (YLS) of the ADLA this year. Special thanks to Megan McCarthy who has set the table for us to have a great year as a section in 2018-19.

At the ADLA Annual Meeting, the ADLA Board of Directors approved new by-laws for the YLS. Our hope is that these by-laws provide a structure for the section's success going forward. The most important highlight of the new by-laws is an updated definition of a young lawyer.

A young lawyer is now defined as an ADLA member who is 40 years of age or less or who has been practicing law for ten years or less, regardless of age.

(Note—gratefully, the color and/or amount of hair is no longer a determining factor for classification.)

If you, or someone in your firm, qualifies as a young lawyer, please consider joining the Section. We have a lot of great events in the works for this year.

One of those events is the annual Bibb Allen Memorial Trial Academy hosted by the YLS at Cumberland School of Law in Birmingham. By the time you read this column, 20 or more of the best and brightest young defense lawyers in Alabama will have experienced first-hand, real-world trial preparation and presentation over two days under the guidance of ADLA members from across the State. The Trial Academy has proven to be a successful training ground for defense trial lawyers in an environment where “real” trials are few and far between. Big thanks to **Thomas DeBray** at Balch for organizing this year’s Trial Academy and all of the faculty and participants.

In addition to the training provided at Trial Academy, the YLS has now launched a webinar series. These 1 hour webinars are open and available to **all** ADLA members, will feature some of the brightest minds in the ADLA from across the state, and offer FREE CLE credit. If you have a webinar idea that you would like to share or any other ideas that can benefit the young lawyers in ADLA, please contact me.

As I close, I am reminded of a story Doug McElvey told at the ADLA Annual Meeting at Perdido Key Beach Resort (If you weren’t there you missed a great event!). During his ethics presentation, Doug shared a story his lawyer-uncle told a young Doug beginning to practice law: “Being a successful lawyer is 95% relationships and 5% the amount of law you know.” The YLS hopes to educate, but also build the bounds of relationships among members of the Section. I look forward to seeing you at social events and CLEs throughout the year. 



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message from the editor

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addressing the prevalence of alcoholism among lawyers and the anxiety and depression that often accompany substance abuse. Rob's article addresses the devastating effects these illnesses can have on an attorney's career, personal life and health and describes the completely confidential help – and hope – that the Alabama Lawyers Assistance Program offers to lawyers who need assistance, as well as to lawyers who are concerned that a colleague may be struggling with alcoholism. **Jon Macklem** has written a piece succinctly explaining the requirements of the recently enacted Alabama Data Breach Notification Law and offers practical advice for ensuring compliance with the Act. The article by **Willis Garrett** and **Larry Wettermark** discusses judicial estoppel arising in the context of a civil case filed by a plaintiff who either was or is a debtor in a bankruptcy proceeding and the application of judicial estoppel as an affirmative defense in such a situation. For

those of us with little experience in bankruptcy proceedings (like me) and who practice insurance defense law, this article is particularly informative. **Ashley Crank** reports on recent developments in the evidentiary role that emoticons and emojis have begun to play in both criminal and civil cases. Her article addresses the problems that arise from the multiple meanings associated with one particular emoticon or emoji and the significance of pre-trial discovery regarding such multiple interpretations in trial preparation. If you are under the impression that an emoji's meaning should be obvious to anyone, think again.

All of these articles provide information that will apply to one or more issues that will surface at some point in your practice, if they have not done so already.

If you are interested in writing an article for the 2019 Spring ADLA *Journal*, please contact me at gereeves@csattorneys.com or (251) 415-9264. The submission deadline is **January 15, 2019**. Please type articles in Times New Roman, 12 point font and make citations in endnotes. 

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Trial Academy CLE Program Now Follows Deposition Boot Camp Fact Pattern

ADLA's 2018 Bibb Allen Memorial Trial Academy, held annually in August at Cumberland School of Law, once again attracted sharp young lawyers who were eager to develop and fine-tune their trial skills in the courtroom. Trial Academy lawyers received exceptional hands-on-experience by participating in small work groups led by seasoned ADLA members with significant trial experience and judges to develop and/or polish basic trial skills.

Beginning in 2018, ADLA's Deposition Boot Camp and Trial Academy programs now go hand in hand, each following the same case fact pattern. The refreshed series features a specific court case so lawyers can focus on their deposition skills in part one, and then follow up with trial preparation in part two. Offered as a members' only benefit, both courses offer curriculums that are tailored to lawyers who primarily practice in civil defense litigation.

Due to the popularity of these two intensive programs, along with the requirement to be an ADLA member to attend, **we welcomed 33 new members** this year. Members who attended earned 12.5 hours of CLE at Deposition Boot Camp and 15 hours of CLE at Trial Academy, both included 1 hour of ethics. We are already planning ahead for the 2019 Deposition Boot Camp on March 21-22 in Montgomery at Jones School of



Chris King spoke during lunch about Ethics.

Law; so make sure you mark your calendar.

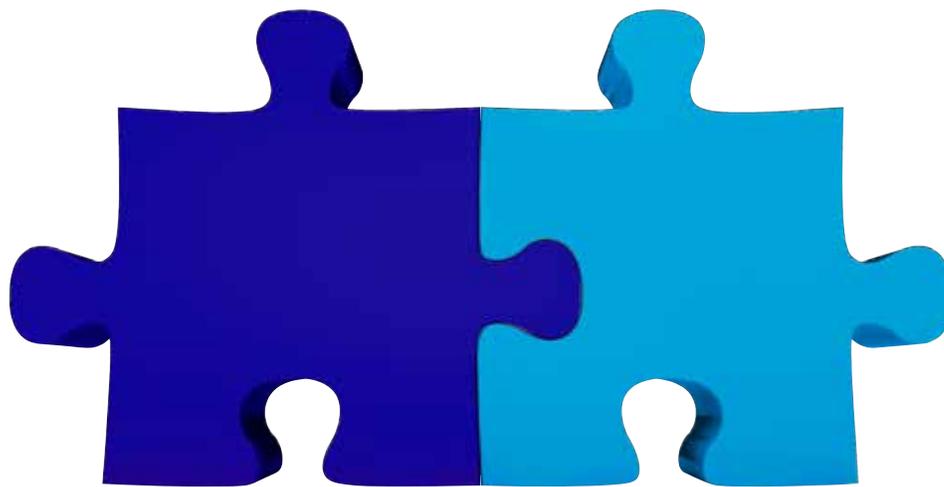
ADLA appreciates the generous support of our **Trial Academy sponsors. Brewer Walker Trial Consultants** and **Birmingham Reporting Services** sponsored the lunches; and **Freedom Reporting and Page One Legal** sponsored the breakfasts.

Trial Academy would not occur without the dedication of the faculty and speakers who are committed to the professional development of young civil defense lawyers in Alabama. We would like to specifically recognize **Dean Steve Emens** for his exceptional leadership and talent that he continues to bring to the program each year. This year's faculty also included

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THE CONUNDRUM OF CONFLICTING TESTIMONY: JUDICIAL ESTOPPEL ARISING FROM A PRIOR OR PENDING BANKRUPTCY PROCEEDING

By: J. Willis Garrett, III and Lawrence M. Wettermark



By far the most recognizable bankruptcy matters impacting litigation practice are the imposition of the automatic stay and the order of discharge. Stay of proceedings pending a bankruptcy or the outright dismissal of claims due to a discharge are well-known amongst the litigation defense bar as the common bankruptcy issues affecting trial practice. However, the failure of a debtor to disclose a possible cause of action as an asset of his bankruptcy estate can call into question the validity of a litigation proceeding. Such nondisclosure presents issues affecting the abandonment of a claim through estoppel or the standing of a plaintiff to initially bring the action. As the disclosure of a debtor's assets in bankruptcy is testimony under oath, the failure to assert ownership of a litigation claim in a debtor's schedules is testimony under oath that a valid claim does not exist. When the same debtor alleges in a separate proceeding that such a claim is valid the affirmative defense of judicial estoppel should be raised.

As the practice of law is reliant upon the binding and guiding effect of prior precedent to inform the parties as to their positions and possible outcomes, so too is reliance on the prior position of a litigant as fixed in stone a necessary component for determining strategy and properly advocating one's defense. The purpose of the doctrine of judicial estoppel is to prohibit parties from deliberately changing positions according to the exigencies of the moment. Unlike other estoppel theories such as collateral estoppel, judicial estoppel focuses on the connection between the litigant and the judicial system rather than any prior relationship between the parties. Judicial estoppel can often arise in the context of defending litigation against a plaintiff who has previously been, or is at present, a debtor in a bankruptcy proceeding.

Full Disclosure: The Foundation of Bankruptcy

Proper adjudication of a bankruptcy petition under any of the chapters of Title 11 is premised upon and reliant on full disclosure by the debtor in his bankruptcy schedules and statement of financial affairs which are filed under penalty of perjury at the inception of the bankruptcy. Having the debtor furnish information under oath on his bankruptcy schedules was designed to ensure that the debtor provides the trustee and creditors with complete and reliable information essential to efficient administration of his bankruptcy estate.¹ The schedules require a full and detailed listing of the debtor's assets, including any potential civil causes

of action and identifying any currently pending claims filed against any party.² The debtor has a paramount duty to consider all of the questions posed on his schedules and statement of financial affairs very carefully and to see that each question is answered completely in all respects. It is not the job of the debtor to determine which of the questions are relevant or material.³ Any debtor who omits important information from his schedules and fails to make a complete and full disclosure places his right to discharge in serious jeopardy.⁴ This is not only based on the fact that the debtor is in the best position to answer these questions, but it is rooted in a sense of fairness to the non-moving parties in a bankruptcy such as the creditors of the debtor. As such, courts and creditors are not required to speculate as to financial history or condition of a debtor, nor are they compelled to reconstruct a debtor's affairs separate and apart from testimony provided in schedules as supplemented by any testimony at a meeting of creditors.

While valuing a claim in litigation is often a speculative practice at best, the difficulty in estimating possible damages does not excuse a debtor from listing a possible claim. Even his belief that certain assets have no value does not excuse him from truthfully and accurately disclosing these assets on his bankruptcy schedules because it is not for him to decide whether a particular asset has any value; his duty is to list all assets and leave it to his creditors and the trustee to decide what assets might benefit them.⁵ A debtor's potential assets include any contingent, dependent or conditional claims which must be disclosed if he has enough information to suggest that he may have possible cause of action.⁶ A debtor does not even need to know all the facts, or even the legal basis, for a civil claim in order for disclosure to be mandated. If he has enough information to suggest he may have any possible cause of action against another party, then it is deemed a known cause of action that he must disclose.⁷

The Current Status of Case Law in Alabama

The disconnect between the world of bankruptcy practice and civil litigation becomes far more pronounced when the litigation is governed by the Alabama Rules of Civil Procedure as opposed to the federal procedure shared by the bankruptcy courts. On procedural as well as substantive matters the divide between

state and federal practice is oftentimes a sizeable one. However, Alabama converged with the mainstream of jurisprudence when it adopted the factors for judicial estoppel set forth by the United States Supreme Court in *New Hampshire v. Maine*, 532 U.S. 742 (2001). The factors as established by *New Hampshire*, and embraced by the Alabama Supreme Court in *Ex parte First Alabama Bank*, 883 So.2d 1236 (2003), state that for judicial estoppel to be applicable:

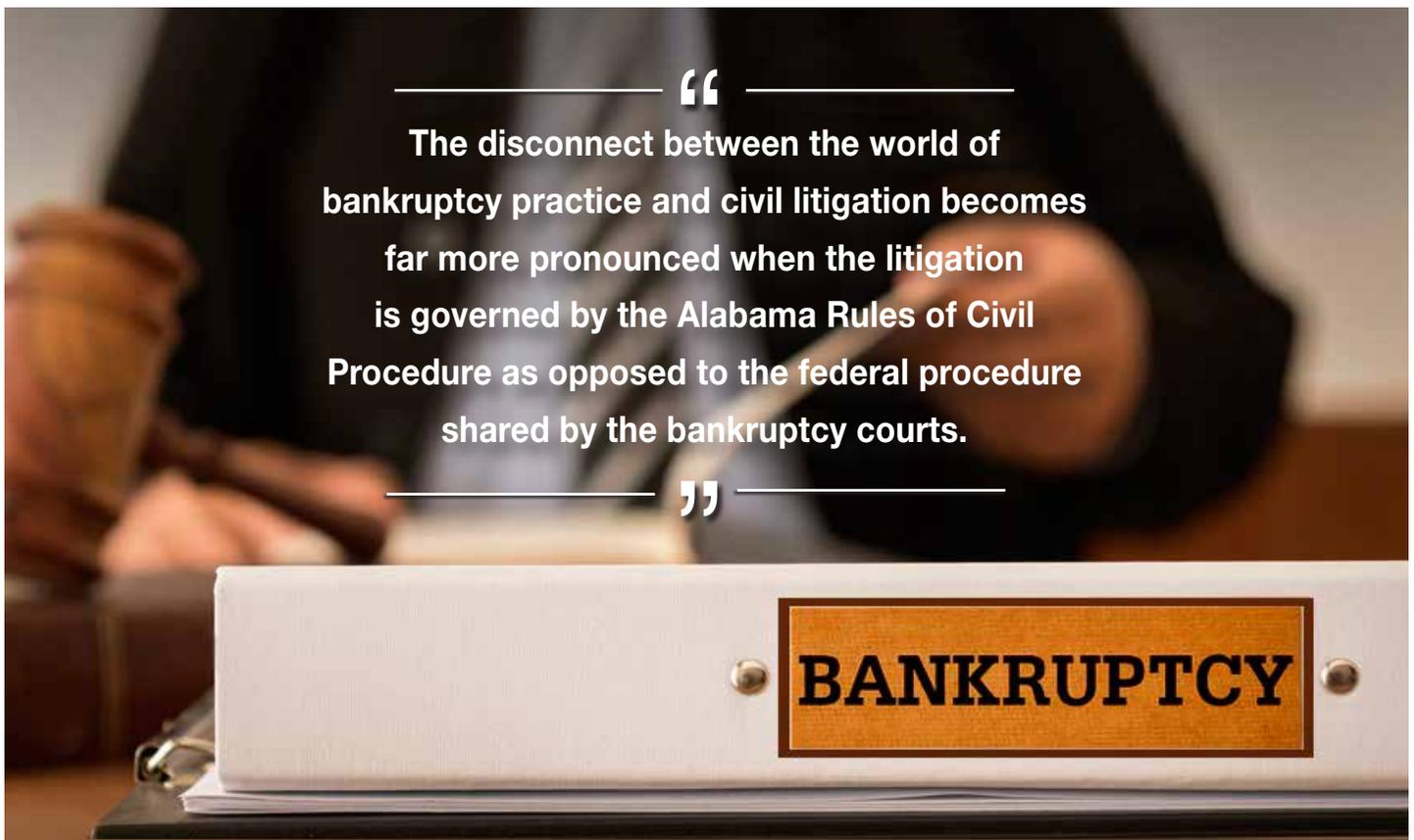
(1) “a party’s later position must be ‘clearly inconsistent’ with its earlier position”; (2) the party must have been successful in the prior proceeding so that “judicial acceptance of an inconsistent position in a later proceeding would create ‘the perception that either the first or second court was misled’”; and (3) the party seeking to assert an inconsistent position must “derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.”⁸

Relative to the bankruptcy context envisioned herein, these three factors as interpreted by subsequent Alabama opinions are not difficult to establish in unison. The first factor requiring a “clearly inconsistent” position is usually applicable if the defense of judicial estoppel is being asserted in the first place; one would not argue this position if the debtor had, in fact, disclosed the present cause of action. The second factor requiring a party to “have been successful in the prior proceeding” has been interpreted as requiring a successful discharge in the debtor’s case.⁹ There

are numerous instances in which a debtor may fail to disclose a cause of action and subsequently not receive a discharge. For example, the bankruptcy could be dismissed, the debtor could be denied discharge due to a violation of § 727 of the Bankruptcy Code, or the discharge is not due until plan completion as in the case of a Chapter 13. If the Debtor has not received his discharge at the time the affirmative defense of judicial estoppel is argued, the current line of reasoning will find that the second factor has not been met. However, if the case has resulted in a successful order of discharge, then the debtor is determined to “have been successful,” thus fulfilling the requirements of the second factor. The third factor requiring that the debtor “derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped” appears at first glance to examine the debtor’s position in litigation relative to the litigation defendant; however, the former clause (“derive an unfair advantage”) has been interpreted by the Alabama Supreme Court to apply to a debtor’s unfair advantage over his creditors.¹⁰

While Alabama courts have been quick to condemn the dishonest debtor who fails to disclose a known cause of action, the applicability of judicial estoppel is not extended to a trustee who is substituted for the debtor in litigation. After being notified that a pending cause of action was not disclosed in a prior or pending bankruptcy, shrewd plaintiff’s counsel will often have the

continued on page 26



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is governed by the Alabama Rules of Civil
Procedure as opposed to the federal procedure
shared by the bankruptcy courts.**
”

BANKRUPTCY

The Conundrum of Conflicting Testimony

continued from page 25

debtor amend his schedules to list the claim or even petition the bankruptcy court to reopen the case for such amendment if it has already been closed. There are several reasons the court may allow this amendment especially if substantial unsecured claims exist in the debtor's case. In this event, the bankruptcy trustee will become the real party in interest and pursue the claim on behalf of the estate. The Alabama Supreme Court has held that while all the factors may be met to bar a debtor from pursuing a cause of action under the theory of judicial estoppel, this does not extend to an innocent trustee. In adopting the rationale and analysis of *Parker v. Wendy's International, Inc.*, 365 F.3d 1268 (11th Cir. 2004), the Alabama Supreme Court held that "imposing the doctrine of judicial estoppel on an innocent bankruptcy trustee, which, in turn, punishes innocent creditors for the mistakes of a debtor, does not further the purpose of protecting the integrity of the judicial process."¹¹ However, while the trustee may not be estopped from pursuing a debtor's claims under the current precedent, the trustee's recovery is limited to the amount necessary to satisfy all creditors, costs and fees.¹² As such, damages are capped to the extent the debtor may not profit from his own wrongdoing.

The Current Status of Case Law in the Eleventh Circuit

Subsequent to the *New Hampshire* decision from which the current Alabama common law on this issue arises, the Eleventh Circuit began to establish its own line of precedent which took a very dim view of a debtor's failure to fully disclose a cause of action in his bankruptcy schedules. The federal courts have traditionally held that the doctrine of judicial estoppel applies in this particular context if the debtor (1) took a position under oath in the bankruptcy proceeding that was inconsistent with his pursuit of a civil lawsuit and (2) intended to make a mockery of the judicial system.¹³ Prior precedent in the Eleventh Circuit has treated an omission in the debtor's schedules to establish the requisite intent required by the second prong with the burden on the debtor to overcome the presumption of his intent. This has been the law of the land in our Circuit following the decisions in *Barger v. City of Cartersville*, 348 F.2d 1289 (11th Cir. 2003) and *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282 (11th Cir. 2002). *Barger* and *Burnes* essentially whittled the two-part test for estoppel to a one-part test by determining intent based on an inference that if a debtor A.) fails to disclose a claim of which he has knowledge and B.) he has a potential motive to hide the claim from creditors, then a nearly un rebuttable presumption has arisen that the debtor intended to make a mockery of the judicial system.¹⁴ As such, the number of instances in which the innocent omission of a cause of action be proven to allow a pending federal civil matters to proceed under this precedent are few.

The test under *Barger* and *Burnes* made the affirmative defense of judicial estoppel a powerful argument for dismissal in federal practice by stacking the deck in the favor of the litigation defendant. However, this precedent has recently been overturned by the Eleventh Circuit's decision in *Slater v. U.S. Steel Corporation*, 871 F.3d 1174 (11th Cir. 2017). The core of the *Slater* decision is a dramatic overhaul of the prior precedent in determining the intent of the debtor:

We hold that to determine whether a plaintiff's inconsistent statements were calculated to make a mockery of the judicial system, a court should look to all the facts and circumstances of the particular case. When the plaintiff's inconsistent statement comes in the form of an omission in bankruptcy disclosures, the court may consider such factors as the plaintiff's level of sophistication, whether and under what circumstances the plaintiff corrected the disclosures, whether the plaintiff told his bankruptcy attorney about the civil claims before filing the bankruptcy disclosures, whether the trustee or creditors were aware of the civil lawsuit or claims before the plaintiff amended the disclosures, whether the plaintiff identified other lawsuits to which he was party, and any findings or actions by the bankruptcy court after the omission was discovered. We overrule the portions of *Burnes* and *Barger* that permitted the inference that a plaintiff intended to make a mockery of the judicial system simply because he failed to disclose a civil claim.¹⁵

The result of *Slater* is that actual misconduct by the debtor must be shown rather than presumed. This is a considerable change in the application of judicial estoppel with the doctrine now only being applied when the facts are egregious and warrant equitable intervention. While on its face this seems to be a very debtor-friendly change of precedent, this is not what the reasoning would indicate. As the cause of action belongs to the debtor's estate as opposed to the debtor, the shifted burden works to the favor of the debtor's creditors who could lose out on valuable sources of repayment due to the inaction or inadvertent omission of the debtor. Prior application of the *Burnes* or *Barger* tests often worked to the detriment of the debtor's creditors by rendering these assets worthless. This is the same public policy and equity argument for burden shifting that has been cited in the Alabama cases finding that undisclosed claims may proceed.¹⁶

Practical Considerations for the Litigation Defense Practitioner

While the state of judicial estoppel as a trump-card affirmative defense is somewhat waning with the recent decisions outlined above, this defense should be pled as a matter of course when the facts allow. It is the best practice to routinely search PACER prior to filing a responsive pleading to determine if a plaintiff

has been a debtor to a recent bankruptcy proceeding and if an order of discharge has been entered. Whether a plaintiff listed a present litigation matter as an asset of his bankruptcy estate can be established by a quick review of his bankruptcy schedules and any subsequent amendments thereto. In the event the facts of a particular case are egregious enough to bar that plaintiff's claims, then the reward is obviously worth the extra time involved in making this search a routine part of one's early case evaluation process. However, even if a plaintiff is allowed by the court to amend his bankruptcy schedules and substitute a bankruptcy trustee as the real party in interest, the effort can still benefit the savvy defense counsel; a trustee is not emotionally invested in the plaintiff's case, typically has less knowledge of the matter, and is often willing to settle for a more economical figure than the original plaintiff. While the recent decisions have dulled the edges of the affirmative defense of judicial estoppel, it may still be a reliable tool in your litigation toolkit. 



Lawrence M. Wettermark is a senior partner with Galloway, Wettermark & Rutens, LLP. His 42 years of practice include defense work for various insurance carriers. He was retained as Mobile County Attorney for 20 years and City of Mobile Attorney for 8 years.

Endnotes

- ¹ *In re Boone*, 236 B.R. 275 (M.D. Fla. 1999).
- ² *Weakley v. Eagle Logistics*, 894 F.3d 1234 (11th Cir. 2018).
- ³ *In re Coon*, 396 B.R. 772 (M.D. Fla. 2008).
- ⁴ *In re Matus*, 303 B.R. 660 (N.D. Ga. 2004).
- ⁵ *In re Mitchell*, 496 B.R. 625 (N.D. Fla. 2013).
- ⁶ *Spann v. DynCorp Technical Services, LLC*, 403 F.Supp.2d 1082 (M.D. Ala. 2005).
- ⁷ *In re Baldwin*, 307 B.R. 251 (M.D. Ala. 2004).
- ⁸ *Ex parte First Alabama Bank*, 883 So.2d 1236, 1244-5 (Ala. 2003) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750-52 (2001) (quoting *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 (6th Cir.1982))).
- ⁹ *See Middleton v. Caterpillar Industrial, Inc.*, 979 So.2d 53 (Ala. 2007).
- ¹⁰ *See Martin v. Cash Express, Inc.*, 60 So.3d 236 (Ala. 2010).
- ¹¹ *Hamm v. Norfolk Southern Ry. Co.*, 52 So.3d 484, 497 (Ala. 2010).
- ¹² *Id.* at 498.
- ¹³ *Slater v. U.S. Steel Corp.*, 871 F.3d 1174 (11th Cir. 2017)
- ¹⁴ *Id.*
- ¹⁵ *Id.*
- ¹⁶ *See Hamm v. Norfolk Southern Ry. Co.*, 52 So.3d 484 (Ala. 2010); *see also Jinright v. Paulk*, 758 So.2d 553 (Ala. 2000).



J. Willis Garrett III is a partner with Galloway, Wettermark & Rutens, LLP. A substantial portion of his practice is dedicated to complex, bankruptcy issues including Chapter 11 reorganization, involuntary bankruptcy petitions and litigating adversary proceedings before the Bankruptcy Courts for the Southern and Middle Districts of Alabama.



@ALDefenseLaw



Alabama Defense Lawyers Association

“
I'm a member for the networking and resources!
 Stacy Moon
 F&B Law Firm PC


“
Other than the fact that it was the S.O.P. for young associates at my first large firm out of law school, I joined ADLA for the networking opportunities and as an additional resource to lean on for practice pointers as a civil defense attorney.
 Jeremy Dotson
 Porterfield Harper Mills Motlow & Ireland PA


“
I'm a member for networking and for the excellent resources and scholarship among the defense bar.
 Jonathan Hooks
 Christian & Small LLP


DRI continues to welcome all ADLA members as new, or renewed, members of DRI. DRI members get access to a superb set of national programs that are a great compliment to your ADLA state benefits. No matter what area of litigation you normally practice in, DRI is a great way to stay up to date on national legal trends that may impact your cases. If you have questions about DRI, please contact me at aestes@balch.com or (205) 226-8717.

DRI continues to update its latest communication tool – DRI Circles. When you download that app you can very quickly get in touch with a variety of lawyers throughout the country who share your legal practice and/or your personal interests. DRI Circles is updated often as more members utilize it and suggest additional features, so check the app at least weekly to see the latest options. DRI and ADLA also keep you informed on Twitter – @DRICommunity and @ALDefenseLaw – and on the organizations websites. Please follow each organization so that you can stay informed regarding what programs and benefits each organization is offering.

Two upcoming DRI seminars that ADLA members should consider attending are the Fire and Science Seminar (Washington, D.C. September 13-14, 2018 – with four controlled burns being a part of the program), and the

Insurance Coverage and Practice Symposium (New York, November 29-30, 2018). In addition, the DRI Annual Meeting is in San Francisco, October 17-21, 2018. Every DRI Annual Meeting is an educational bonanza coupled with countless networking events. And beyond the CLE program, you are guaranteed to see things in San Francisco that you can't locate here in Alabama. I'll include some of my Bay Area experiences in the Spring *Journal*; or maybe even on Twitter before then if they are sufficiently enlightening.

ADLA and DRI continue to work together to represent the interests of defense attorneys and our clients. If there is ever anything you think DRI can do better to advance our goals, please let me know. 



ALLEN M. ESTES
Alabama DRI Representative



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ADLA LEADERSHIP ATTENDS DEFENSE RESEARCH INSTITUTE REGIONAL MEETING



ADLA leaders attended the Southeastern/Southern Regional meeting in Jacksonville, Florida in April. Leaders from these regions gathered to discuss membership issues, new and improved ways to better serve our SLDO members, legislative strategies, and how the DRI is working to protect the work of civil defense attorneys nationwide.

SLDO executive directors also gathered to collaborate on membership outreach efforts, member benefits, effective communication strategies and more.

ADLA representatives were: **Sharon Stuart**, 2017-2018 President; **Allen Estes**, DRI Representative; **Dennis Bailey**, 2017-2018 President-Elect; and **Jennifer Hayes**, Executive Director.



TDLA and ADLA Executive Directors Mary Gadd and Jennifer Hayes

ADLA's New Website Reveal Coming Soon!
www.adla.org

ADLA 2018 ANNUAL MEETING

ADLA's 2018 Annual Meeting included a new meeting location, informative CLE speakers, fun-filled nightly events, aid for Alabama CASA and the Alabama Gulf Coast Zoo, and a record number of sponsors and exhibitors. This year's meeting at the Perdido Beach Resort marked the first change in venue for an annual meeting since 1995.

The CLE offerings this year included a message from Alabama Supreme Court **Chief Justice Lyn Stuart**, case law updates from Alex Holtsford, a panel discussion regarding interlocutory appeal, and topics ranging from insurance company metrics to smartphone forensics. ADLA would like to thank the guest judges who attended and answered questions during the CLE session: **Chief Justice Stuart, Justice Mike Bolin, Justice Tom Parker, Justice Jim Main, Justice Tommy Bryan, Justice Will Sellers, Justice Brad Mendheim, Judge Bill Thompson, Judge Craig Pittman and Judge Terry Moore.**

Attendees and their families enjoyed a beach bonfire, s'mores and a bouncy house at the Thursday night reception. Friday fun began with ADLA's traditional golf tournament and a thrilling deep-sea fishing trip. The Friday night reception ended with a huge seafood raw bar, photo booth and a visit from the Alabama Gulf Coast Zoo where ADLA gave a charitable donation for much needed blankets and supplies. On Saturday a circle of beach chairs dedicated for attendees were available. Saturday night entertainment included a great live band, face painting, and a wave rider inflatable; all topped off with a special cocktail made for everyone to enjoy on behalf of outgoing president, Sharon Stuart. If you missed out on all the fun, be sure to make plans to attend the 2019 Annual Meeting in Sandestin, June 13-16!



Dennis Bailey presents President's awards to Sharon Stuart



Chief Justice Lyn Stuart addresses the attendees



Megan McCarthy receives YLS President's award



Lana Olson, DRI SE Regional Director Ted Freeman and speaker John C. Trimble



ADLA members, Alabama Justices and Judges, and exhibitors enjoyed the Saturday night reception



Justice Jim Main, Sharon Stuart, Gerald Swann, Dennis and Stacia Bailey at the bonfire



Dennis Bailey presents Hannah Torbert Kennedy with a gift card



Everyone enjoyed Saturday night's live music performed by Light Travelers from Fairhope



Bains Fleming and Kirby Howard take in the beach



President's brew on the beach deck



Ed Howard sends everyone to the beach



Balloon fun on the beach



Lemur from the Alabama Gulf Coast Zoo



Dennis Bailey, Shawn Johnson and Gerald Swann ready for an afternoon on the golf course



Andy Rutens and Sharon Stuart enjoying ADLA's final evening at Perdido Beach Resort



ADLA Past Presidents Dudley Motlow, Bill Gamble and Allen Estes



The weather was perfect for ADLA's beach deck buffet and live music



Dennis Bailey congratulates Rich Slaby on winning ADLA's annual golf tournament with teammates Allen Estes and Jeff Luther



On her first deep sea fishing trip, Warren Averett's Lyn Bius caught this 34 inch, 20 pound snapper to win ADLA's fishing tournament.



Ann Clark Fleming and Wright Still having fun in the Social Snaps Photo Booth



Bill and Bunny Gamble, Jack and Cathy Torbert, and Hannah Torbert Kennedy at the Friday night reception



Sharon Stuart, Lee Sellers, Justice Will Sellers and Judge Bill Thompson



Bree Wilbourn and family enjoy Social Snaps Photo Booth



There were s'mores for everyone at the Thursday night beach bonfire



Jude Jones and Brooks McCarthy enjoy the beach



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Annual Meeting Sponsors*

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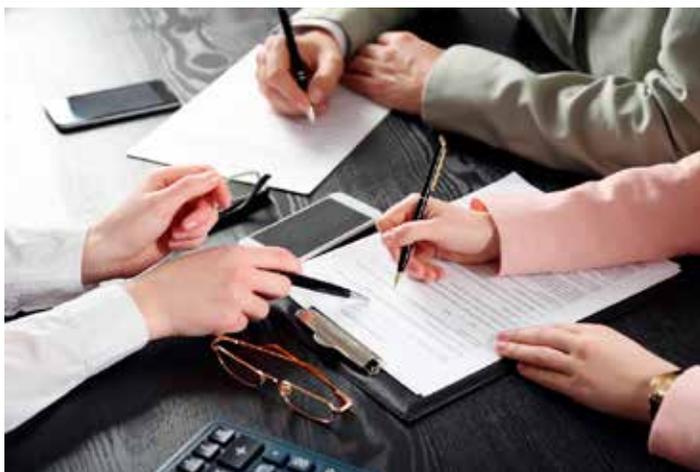
ADLA & DRI PARTNER TOGETHER AT ANNUAL MEETING TO BRING SCHOOL SUPPLIES TO CHILDREN IN NEED

The Alabama CASA promotes awareness of child abuse and neglect in our state through the development of their local CASA programs and encourages efforts to ensure that every abused, neglected or abandoned child in Alabama will have a safe, nurturing, permanent home.

CASA/CAJA (Court Appointed Juvenile Advocate) programs assist family court in carrying out its role in the child services protective services system. During the Annual Meeting, attendees and exhibitors collected school supplies for children who will begin the upcoming school year in a new home, and possibly a brand new school where they may or may not have any friends. Providing new school supplies will give the children confidence and a fresh new start to a school year during a difficult time in their lives.



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The Alabama Lawyer Assistance Program

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genuine courage to make these folks aware of their concern, the path to recovery has begun.

We also encourage you to contact our office so that we can assist in this process. Addiction and other mental health illnesses, such as depression and anxiety, rarely “work themselves out on their own.” Without help, they grow progressively worse. It is important to remember that we all have problems and could benefit from counseling or other forms of assistance. It is truly a sign of mental health to acknowledge a problem and to reach out for help. 



Robert B. Thornhill, MS, LPC, is the director of the Alabama Lawyer Assistance Program of the Alabama State Bar. He is also a Certified Alcohol and Drug Counselor. Mr. Thornhill has worked in the field of mental health and substance abuse for the past 20 years, and currently oversees program operations including coordinating evaluations, assessments and monitoring services.

Endnotes

1. Krill, Patrick R., et al. “The Prevalence of Substance Use and Other Mental Health Concerns among American Attorneys.” *Journal of Addiction Medicine*, vol. 10, no. 1, Feb. 2016, pp. 46-52.
2. Gorski, Terence T., and Merlene Miller, *Staying Sober: A Guide for Relapse Prevention*. Herald House/Independence Press, 1986.

ADLA Sponsors CLE Session at the Alabama State Bar Annual Meeting



Michael Vercher recently spoke about *The Privacy and Ethical Implications of Using Information from Interconnected (Internet of Things) Devices in Litigation* at an ADLA sponsored CLE session at the Alabama State Bar Annual meeting.

Expert

An expert witness is someone with extensive knowledge and experience through their professional work who is called in for an expert witness deposition.

Searching for information about the Plaintiff's expert witness in an upcoming case? **ADLA's Expert Witness Database** is a searchable list of inquiries from ADLA members regarding Plaintiffs' experts. Utilize this **member benefit** for gathering information about the expert witness who may be sitting on the other side of the deposition table or across the courtroom aisle.

If you have a question about a particular expert witness not listed in ADLA's database, an email blast inquiry can be sent out to fellow ADLA members. ADLA's email blast system can also be used to request a referral for a Defense expert.

Expert witness requests can be made using ADLA's new website or send requested containing the following information to adla@adla.org:

- Requesting ADLA member's name, firm name and city;
- Contact email address and/or phone number for responses (member, paralegal, assistant, etc.);
- Name and city/state of each expert;
- Field of expertise or subject matter about which each expert is expected to testify.

If request responses need to be expedited, please provide the date by which responses are needed.

ADLA members **Andy Rutens** and **Melissa Hunter** obtained summary judgment in favor of the City of Jackson in the Southern District Court for the Southern District of Alabama. The Plaintiff, a Radio Control Officer with the Jackson Police Department, filed suit against the City alleging claims of race discrimination, retaliation, and age discrimination, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 1981 and 1983 and the Age Discrimination in Employment Act. Specifically, the Plaintiff alleged that she was discriminated against in that she was denied educational opportunities, merit wage increases, and the opportunity to work overtime hours. She also alleged that she was scored lower than a similarly situated Caucasian on an employment review. The Plaintiff further alleged that she was retaliated against in that she was given a negative employment evaluation and denied additional overtime hours.

In its Motion for Summary Judgment, the City argued that the employment evaluation and denial of educational opportunities were not adverse employment actions in that they did not cause serious or material harm to the Plaintiff. The City was able to offer legitimate, non-discriminatory reasons for the lack of merit wage increases and the opportunity to work overtime hours. Similarly, the City was able to offer legitimate, non-discriminatory reasons as they concerned the Plaintiff's specific allegations regarding her retaliation claim. The Plaintiff failed to offer sufficient evidence to conclude that the reasons proffered were pretexts for discrimination and summary judgment was granted in favor of the City as to all claims asserted by the Plaintiff.

On April 6, 2018, a jury returned a defense verdict in favor of the City of Guntersville and an employee both of whom were represented by ADLA member **Stacy Moon** and **Ryan Blount** of F&B Law Firm, P.C. The case involved a tractor trailer that lost its brakes as it came down a mountain on U.S. 431 in Guntersville. The Defendant employee was driving a brush truck owned by the City of Guntersville at a stop light. Plaintiff was also stopped at the stop light, but on the other side of U.S. 431. The driver of the tractor trailer had slowed his vehicle significantly, but he was not able to stop at the light when it turned red and Defendant's and Plaintiff's light turned green. He did not honk or give any other notice that he was not able to stop. The Defendant entered the intersection. His passenger warned him at the last minute that the tractor trailer was not stopping, and he sped up to try to avoid the accident. He was unsuccessful and was hit by the tractor-trailer in the rear of the truck. That collision knocked the brush truck onto the top of plaintiff's car. Plaintiff alleged a compression fracture of the neck, wrist injury, knee injury, emotional distress, and loss of wages. After the various



Melissa P. Hunter



Andy Rutens

parties settled their claims against the driver of the tractor trailer, Plaintiff pursued his claim against the Defendant employee and the City of Guntersville for negligent entrustment (which was dismissed on summary judgment), negligence, and wantonness. At trial, Plaintiff argued the Defendant should have seen that the tractor trailer was not stopping and should not have entered the intersection when the light turned green. Ms. Moon tried the case, focusing on the relative speed of the tractor trailer and on the fact that Plaintiff himself did not recognize any danger before he saw the brush truck speed to avoid being hit. Plaintiff's motion for new trial was denied by operation of law, but the deadline to appeal has not yet passed.

Murry S. Whitt recently had a successful result in a case tried before a jury in Elmore County. The case was related to a rear end car accident on June 18-19. The Plaintiff had reached a settlement with the tortfeasor. The tortfeasor's liability policy excluded punitive damages and they decided to pursue a direct action against the underinsured motorist carrier. The Plaintiff claimed that the tortfeasor was texting on her cell phone just prior to the accident and such conduct constituted wantonness. After a day of testimony, the jury took just over an hour to deliver its verdict. The jury awarded the Plaintiff only \$5,000 in compensatory damages, far less than he had received from the tortfeasor in a settlement. The jury awarded the Plaintiff no punitive damages and did not find the tortfeasor's conduct was wanton. The Court, based on Motion for Post Trial Set Off, entered a judgment for the Defendant.

Christian & Small Partner **James L. Pattillo** obtained a complete summary judgment in the Northern District Court of Alabama on behalf of a national insurer. The claim involved the application of Kansas law and the internal stacking of underinsured motorist benefits. The Plaintiff's estate argued that it was entitled to stack the coverage on the decedent's policy up to three times as provided by the Alabama Underinsured Motorist ("UIM") statute. Pattillo argued, and the Court agreed, that the Alabama UIM statute did not override a Kansas insurance policy or Kansas law, neither of which allow for internal stacking of UIM benefits.

Frazer Greene Upchurch & Baker partners **Brent Baker** and **Ross Frazer** with **Hunter Compton** of Manley Traeger Perry Stapp & Compton won a medical malpractice defense verdict in Marengo County. The 67 year old plaintiff claimed that the physician who performed his circumcision removed too much skin, thereby creating a peno-scrotal web which "buried" his penis. The circumcision was medically indicated for phimosis and was performed by a family practice physician using a Gomco clamp. At trial, the plaintiff complained of pain and suffering, permanent injury, and loss of sensation from the circumcision. Plaintiffs also made a claim for loss of consortium and asked the jury to award over \$600,000. After deliberating for just over an hour, the jury returned with a defense verdict.

In February 2018, ADLA member **Ed Howard** obtained a successful ruling from the Alabama Supreme Court in a case about the collapse of a sidewall of dump truck belonging to the Dekalb-Cherokee Counties Gas District. The Court reversed a \$100,000 jury verdict and rendered judgment in favor of the District.

The favorable ruling was based on the lack of foreseeability of the collapse of the sidewall, a piece of steel so heavy that it took a backhoe to put it back on the truck. Plaintiff claimed that 1) the driver's clutch-popping maneuver to shake out debris that was stuck in the truck bed was negligent and caused the sidewall's collapse; and/or 2) the District's failure to inspect the truckbed and sidewall led to the sidewall's collapse.

DC Gas argued numerous times—on summary judgment, petition for mandamus after denial of summary judgment, and on Rule 50 motions at trial—that the collapse of a huge steel sidewall of a dump truck was not foreseeable. No one knew of such a thing happening before; there was no expert testimony that the District should have known that such a thing could happen; there was no evidence, lay or expert, of why the sidewall collapsed in the first place; there was no evidence that had DC Gas inspected the truck bed and sidewall, it would have known such a thing would happen—in sum, there was a dearth of evidence to make such a thing foreseeable. Finally a court agreed. Sometimes persistence (or, in peer terms, “buttheadedness,”) pays off.

R. Gordon Sproule, Jr. and Charles J.

Fleming, Jr. successfully defended a long-term care facility in a medical malpractice case that was tried before an arbitrator in Jefferson County, on March 6, 2018. The personal injury action was brought by a quadriplegic nursing home resident who sustained head and facial injuries when he fell out of bed. The injuries resulted in permanent loss of vision in one eye. Plaintiff claimed the long-term care facility failed to conduct a proper fall risk assessment and failed to implement appropriate interventions to prevent falls. However, during the two-day trial, Defense counsel proved that the resident's injuries were not caused by a breach in the standard of care. Thus, the Arbitrator returned a verdict for the Defendant long-term care facility.



Gordon Sproule



Charles Fleming

Harold Stephens and **Hal Mooty** with the Huntsville office of Bradley Arant Boult Cummings LLP and George Barnett of Guntersville recently obtained a defense verdict in the Circuit Court of Marshall County. The Plaintiff/patient had been injured in a motorcycle accident in Guntersville, treated at Marshall County Medical Center and transferred to Huntsville Hospital. He was subsequently transferred to HealthSouth Rehab where he

continued on page 53

Save the Date for ADLA's 2019 Annual Meeting

**June 13-15, 2019
Sandestin Golf &
Beach Resort**

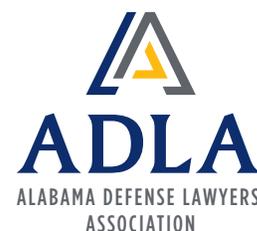


Make plans to join us next year!

Discounted room block rates begin at \$208. ADLA group rates will expire on May 11th.

Call 800-622-1038 to make your reservation. We expect the resort to sell out early, so book early.

Meeting details coming soon at www.adla.org



In the 2018 election of Alabama Bar Commissioners, the following ADLA members were elected from their respective circuits for a term commencing July 1, 2018, and ending June 30, 2021: **LaBella S. Alvis** – 10th Judicial Circuit, Place 5; **Pat Sefton** – 15th Judicial Circuit, Place 2; **Bradley Cornett** – 16th Judicial Circuit; and **Mark Boardman** – 18th Judicial Circuit, Place 2.

Starnes Davis Florie LLP is pleased to announce that in the 2018 edition of *Chambers USA*, ADLA members **Billy Bates**, **Bob MacKenzie**, **Mike Wright**, and **Breanna Young** were recognized as 'Leaders in their Field.'

Bradley Arant Boult Cummings LLP is pleased to announce that **Ryan P. Robichaux** has been elected as a Fellow of the American Bar Foundation. A member of Bradley's Government Affairs Practice Group, Mr. Robichaux specializes in political advocacy and compliance, representing clients before the executive and legislative branches of government in Washington, D.C., Alabama and other states. His practice includes representation of businesses, trade associations, political action committees, nonprofits, government contractors, and other individuals and entities that are involved in the political process. He also has significant experience representing candidates for public office. Mr. Robichaux received his J.D. from the University of Alabama School of Law and his Bachelor of Arts from the Catholic University of America.

Emily Sides Bonds, a partner in the Business & Commercial Litigation Practice Group at Jones Walker LLP, was named a Top Woman Attorney by *B-Metro Magazine*. This award recognizes female attorneys for their excellence in the field of law as well as community involvement.

Holtzford Gilliland Higgins Hitson & Howard, PC is pleased to announce that **Robert C. Alexander II** and **Matthew A. Laymon** have joined the firm as associates in the Gulf Shores Office and **Jason R. Herbert** has joined the firm as an associate in the Central Alabama Office. They will represent and defend individual and business clients statewide.

Hall Booth Smith, P.C. is pleased to announce that ADLA members **Sean Mims** and **Rhett Owens** have been named partners at its firm.

Sean Mims is a Partner in the firm's office in Columbus, Georgia, and he specializes in dental, fiduciary litigation, general liability, insurance coverage, retail and hospitality and workers' compensation matters. He has successfully defended personal injury claims, premises liability claims, transportation, disputes regarding insurance coverage, bad faith claims, breach of contract actions, workers' compensation claims, employment law claims, education issues and business litigation. Mims has represented clients in both motor vehicle accidents and accidents involving common carriers, and has an

active appellate practice in Alabama and Georgia courts. Mims earned a Juris Doctorate from the Cumberland School of Law at Samford University and a Bachelor of Arts degree from the University of Alabama-Birmingham.

Rhett Owens is a Partner in the firm's Birmingham office. His practice covers a wide range of professional liability matters, including medical malpractice, elder care abuse and regulatory non-compliance cases. In 2016 and 2017, Owens was recognized as a Mid-South Super Lawyers Rising Star. Owens earned a Juris Doctorate, *cum laude*, from Cumberland School of Law at Samford and a Bachelor of Arts in Political Science and English, *magna cum laude*, from Hampden-Sydney College.

Huie Fernambucq & Stewart is pleased to announce that **Eris Bryan Paul** and **Gordon Jimmy Brady** have been selected for the 2018 edition of the *Benchmark Litigation 40 & Under* Hot List. This accolade honors the achievements of the nation's most accomplished legal partners of the age of 40 or younger.

Throughout his career, **Bryan Paul** has represented a wide variety of individuals, companies and insurers. He has tried civil cases to verdict as a first chair lawyer in State, Federal and Bankruptcy courts in Alabama. He has also succeeded in appellate issues in front of both the Alabama Supreme Court and the Alabama Court of Civil Appeals. Paul is also proud to serve Huie as a member of the Executive Committee.

Since joining Huie in 2005, **Jimmy Brady** has successfully litigated claims and secured defense verdicts in the areas of construction, employment and fraud/bad faith insurance litigation. In addition to his active practice, he is often commissioned to provide analysis and legal recommendations to insurance companies facing difficult issues concerning coverage. He also brings his detail-oriented approach to pro-bono opportunities, providing counsel in the area of family law to those unable to afford an attorney.

Christian & Small is pleased to make the following announcements:

- The following ADLA members have joined our firm over the past several months: **Rachel J. Moore**, **Ashley L. Crank**, **James L. Pattillo**, and **Jordan C. Loper**.
- The following 13 ADLA members were recognized in the 2017 Mid-South Super Lawyers rankings: **LaBella S. Alvis**, **Thomas W. Christian**, **Deborah Alley Smith**, **Richard E. Smith**, **Sharon D. Stuart** and **Michael A. Vercher**. Additionally, **Deborah Alley Smith**, **LaBella S. Alvis** and **Sharon D. Stuart** were named to the 2017 Top 50 Women Mid-South Super Lawyers List.
- **M. Jansen Voss** and **Irving W. Jones Jr.** were recognized by the *Birmingham Business Journal* as 2017 "Rising Stars of Law." Additionally, Jones was recognized by the *Birmingham Times* as one of its 2018 "Lawyers on the Rise."

- ADLA members **Thomas W. Christian, Deborah Alley Smith** and **Richard E. Smith** were each recognized by *Chambers USA* in 2018. Christian was recognized for General Commercial Litigation (Senior Statesman), Debbie Smith was recognized for Appellate Litigation, and Richard Smith was identified as a “Recognized Practitioner” for Healthcare.
- **Irving W. Jones** was selected for the Birmingham Bar Association’s 2018 Future Leaders Forum
- **LaBella S. Alvis** and **Sharon D. Stuart** were recognized on Benchmark Litigation’s 2018 “Top 250 Women in Litigation” list. This is the fourth and fifth time that Alvis and Stuart respectively have been honored with this recognition. Additionally, **M. Jansen Voss** was selected for Benchmark Litigation’s 2018 “Under 40 Hotlist.”
- **Sharon D. Stuart** was recently selected as a Fellow of the Birmingham Bar Foundation, elected to Samford University’s Board of Trustees, and is serving as Chair of the International Association of Defense Counsel’s (IADC) Insurance and Reinsurance Committee.
- **LaBella S. Alvis** recently completed her two-year term on the Alabama State Bar Board of Commissioners for District 10 and received the Commissioners’ Award at the 2018 Alabama State Bar Meeting.
- **LaBella S. Alvis, Sharon D. Stuart** and **Deborah Alley Smith** were once again recognized by *B-Metro* magazine in its “Top Women Attorneys” issue. This is the fourth consecutive year that these three lawyers have received this recognition. Additionally, Alvis, Smith and Stuart, along with **Michael A. Vercher**, were all recognized by *B-Metro* earlier this year in its “Top Flight Attorneys” issue.
- **M. Jansen Voss** was among the six Christian & Small attorneys honored by *Birmingham Magazine* in its 2018 “Top Attorneys” list.

Eight ADLA member Lightfoot Franklin & White LLC attorneys volunteered to meet with local veterans and advise them on legal matters. The attorneys met with the pro bono clients at the Veterans Administration Medical Clinic in Birmingham. The attorneys who participated were: **A.J. Enyinnia, Wes Gilchrist, Henry Gimenez, Charles Greene, Bridget Harris, Sandy Hooper, Nikaa Jordan, and Jay Sewell.** The firm adopted the month of April for the Veterans Help Desk run by the Birmingham Bar Volunteer Lawyers Program (BBVLP). The BBVLP hosts the legal clinic on the fourth Wednesday of every month to provide legal help to local veterans and their families. Attorneys provide assistance with a variety of matters including driver’s license reinstatement, divorce, bankruptcy, housing and other issues.



Lightfoot Franklin & White LLC is pleased to announce that the newest edition of *Chambers USA* recognizes five ADLA member Lightfoot attorneys: **Sam Franklin** (Litigation: General Commercial), **John M. (Johnny) Johnson** (Environment), **M. Christian King** (Litigation: Appellate and General Commercial), **Adam Peck** (Litigation: General Commercial), and **Harlan Prater** (Litigation: General Commercial).

Two Lightfoot Franklin & White LLC ADLA members have been named to the 2018 class of the Birmingham Bar Association’s Future Leaders Forum. **Reid C. Carpenter** and **Amie A. Vague** were chosen as members for the selective annual program.

Carpenter maintains a general litigation practice, but the majority of his experience falls in three key areas: natural gas, products and healthcare. He graduated from the University of Alabama School of Law where he was a member of the Order of Barristers and received the American College of Trial lawyers and the International Academy of Trial Lawyers Student Advocacy Award.

Vague focuses her practice on product liability, medical malpractice and commercial litigation, among other areas. She graduated, *cum laude*, from the Pepperdine University School of Law and joined the firm after a two-year clerkship for the Honorable Camille R. McMullen in Memphis, Tennessee.

For the second year in a row, *Benchmark Litigation* has named Lightfoot Franklin & White LLC partner and ADLA member **Lana A. Olson** to its 2018 list of Top 250 Women in Litigation. The list recognizes leading female litigators who have participated in some of the most significant litigation matters in recent history and who have earned the respect of their peers and clients.

Olson is a long-time active member of DRI and serves on its Board of Directors as a National Director. She also chairs the organization’s Philanthropic Activities committee and is a former chair of its Women in the Law committee. Olson focuses her practice on complex, high-stakes litigation in a variety of areas, including environmental and toxic torts, product liability, business litigation and catastrophic injury. Her clients are located all over the country and range from Fortune 100 multinational companies to small family businesses. For more than seven years, Olson has served as the Assistant General Counsel for a leading heavy truck component distributor. 

ADLA WELCOMES NEWEST MEMBERS



Robert Charles Alexander, II

Holtsford Gilliland Higgins Hitson
& Howard

Daphne

Robert C. Anderson

Balch & Bingham

Birmingham

Leon A. (Bo) Boyd, V

Cobb & Boyd

Dothan

Bernie Brannan

Gaines Gault Hendrix

Birmingham

Wesley R. Bulgarella

Balch & Bingham

Birmingham

H. Warren Cobb, Jr.

Cobb & Boyd

Dothan

Joe Davis

Carr Allison

Birmingham

Christopher Jason Doty

Smith & Bahakel PC

Birmingham

Roderick J. Evans

Wallace Jordan Ratliff & Brandt

Birmingham

Daniel J. Fortune

Huie Fernambucq & Stewart

Birmingham

Kara Deal Gamble

Scott Dukes Geisler

Birmingham

James Willis Garrett, III

Galloway, Wettermark & Rutens
Mobile

Sarah F. Henson

Grace Matthews & Debro

Huntsville

Jason Herbert

Holtsford Gilliland Higgins Hitson
& Howard

Montgomery

Thomas “Dillon” Hobbs

Gaines Gault Hendrix

Birmingham

Mary Lauren Kulovitz

Thornton Carpenter O’Brien Lawrence
& Sims

Talladega

Greer B. Mallette

Christian & Small

Birmingham

Jackson McGinnis Neal

Dodson Gregory LLP

Birmingham

Woods Parker

Huie Fernambucq & Stewart

Birmingham

Christine Segarra

Burr & Forman

Mobile

Caroline Sims

Huie Fernambucq & Stewart

Birmingham

Michael Stallings

Carr Allison

Daphne

David S. Terry

Laney & Foster

Birmingham

Andrew Townsley

Lanier Ford Shaver & Payne

Huntsville

David T. Trice

Partridge Smith PC

Birmingham

Lee Griffin Tyndall

Christian & Small

Birmingham

Spencer E. Walker

Wilson & Berryhill PC

Birmingham

John P. S. Walter

RichardsonClement PC

Birmingham

Zachary Weaver

Carr Allison

Daphne

Aaron M. Wiley

Carr Allison

Daphne

Robert “Rylee” Zalanka

Carr Allison

Birmingham

Garrett Zoghby

Adams and Reese

Mobile

Late to the Party?

continued from page 15

knowing violation of the Act constitutes a deceptive trade practice under Alabama's Deceptive Trade Practices Act.³ The Act provides for civil penalties up to \$500,000.00 for knowing violations and includes a penalty of \$5,000.00 per day for a covered entity's failure to provide timely notification of a breach.

The Act reserves enforcement for the Alabama Attorney General and specifically states that it does not create a private cause of action. Notwithstanding these exclusions, we anticipate attorneys for individuals affected by a breach will argue that the Act serves as a basis of liability under a negligence *per se* theory, which allows the standard of care to be set by statute when certain circumstances exist. By analogy, plaintiff's attorneys have sought to use HIPAA's privacy provisions as the basis of a negligence or breach-of-contract claim, despite virtually every federal court determining that HIPAA itself does not create a private cause of action. State decisions addressing HIPAA-based common law claims have had mixed results.⁴

While the Act specifically excludes companies regulated by federal laws that require data breach notification, such as banks and health care entities, the Act will have a profound effect on Alabama businesses throughout most industries, including law firms. Companies should evaluate whether their data protection measures and policies are compliant with the Act. In addition, the Act intensifies the need for businesses to have a data breach response plan in place. This plan should include engaging necessary stakeholders, such as IT personnel, data breach

counsel, human resources, public relations, outside forensic investigators, and various operational and business unit personnel. Businesses should strongly consider procuring cyber liability insurance before a breach occurs. The need for cyber liability insurance is particularly compelling, given that general liability and other insurance policies cover very few expenses arising from a data breach, whereas cyber liability policies cover the costs of both a forensic analysis and notification – which taken together can be expensive. 



Jonathan W. Macklem is a partner at Christian & Small LLP, where he represents and advises clients on a broad range of matters. Jon's practice centers on handling management/shareholder and labor and employment matters, but in recent years he has handled a number of data breach/cyber liability matters as well.

Endnotes

¹ Act of March 28, 2018, No. 18-396, § 1 (to be codified at Ala. Code § 8-19F-1, *et seq.*)

² See Ala. Code §8-19F-3 (tentative placement).

³ Ala. Code § 8-19-1, *et seq.*

⁴ See *K. St. Mary's Medical Center*, 735 S.E.2d 715 (W.Va. 2012); *Byrne v. Avery Center for Obstetrics and Gynecology, P.C.*, 2014 WL 5507439 (Conn. 2014). See also *Allen v. Delchamps*, 624 So. 2d 1065, 1087-68 (Ala. 1993) (although the Food, Drug and Cosmetic Act did not allow for a private cause of action, the Court allowed the negligence *per se* claim based on a violation of the FDCA to proceed).

Did You Know?

What city was the original capital of Alabama? The first ADLA member who responds to adla@adla.org with the correct answer wins a \$200 Amazon gift card.



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ADLA PRESENTS UNIVERSITY OF ALABAMA FREDERICK DOUGLASS MOOT COURT AWARD

The Alabama Defense Lawyers Association presented the University of Alabama Frederick Douglass Moot Court award to two outstanding team members on April 5, 2018. Pictured are Imani Shaw, **Jennifer Hayes**, ADLA Executive Director, and Jodi Wilson.



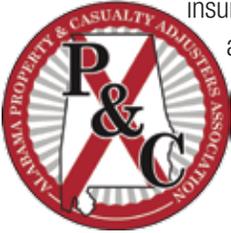
**STAY UP TO DATE
WITH ADLA'S**

Wednesday Briefcase

It's important to us to keep our members informed. Each week members receive timely information on association events, legislative updates, important news bites and more. Please contact us at adla@adla.org if you are not receiving the e-newsletter.

New Association Formed To Serve Property And Casualty Adjusters In Alabama

We are very proud to announce the formation of the **Alabama Property and Casualty Adjusters Association (APCAA)**! A group of insurance industry leaders have worked with some ADLA Board members for several months to bring this entity to fruition. The purpose of APCAA will be (1) to develop the workforce of existing Property and Casualty Insurance Claims Adjusters by developing and offering quality continuing insurance and legal education in Alabama and (2) to promote the Property and Casualty sector of the Alabama insurance industry that will attract excellent talent and strengthen the future of the profession. Now, we will begin our work to accomplish these goals.



Pictured from left to right: Mike Lovelady, Alfa Insurance Company, Brian Sigmon, Evers & Associates, Inc., David Sikes, Alabama Municipal Insurance Corporation, Andy D'Entremont, EPIC Insurance Brokers & Consultants, Greg Brown, West Alabama Claims Services, Inc., Scott Land, Land Adjustment Company, LLC.

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CRAIG A. ALEXANDER
Chair

Greetings from the ADLA *Amicus Curiae* Committee. We have a new chair to announce to our membership. **Craig A. Alexander**, a long-time member of the Committee, has been appointed to lead the important work of this Committee. He is looking forward to his new role in carrying out the Committee's mission that most recently was performed by **Mark Hess** and also to continuing to

work with the very capable and selfless ADLA members who serve on this Committee.

There have been no new *amicus* briefs filed and there have been no decisions released in any appeals in which an *amicus* brief had been filed since the Spring 2018 issue of the ADLA *Journal* was published.

The ADLA's policies that govern the Committee's work are set forth below, but please feel free to contact Craig or any member of the Committee if you have any questions about the policies or about the process of submitting a request for an *amicus* brief. We continue to look forward to the opportunity for the Association to "weigh in" when an appeal involves significantly important issues to the defense bar or to the fair administration of justice.

Also, please remember that as part of a renewed and invigorated effort of the leadership of the ADLA to serve its members, recent *amicus curiae* briefs have been made available for download on the ADLA's website.

ADLA POLICY RE: REQUESTS FOR *AMICUS CURIAE* BRIEFS IN CASES IN WHICH AN ADLA MEMBER IS COUNSEL FOR AN ADVERSE PARTY

At ADLA's Board of Directors meeting on April 11, 2008, the Board voted to institute the following policy to be adhered to when a request for an *amicus curiae* brief is made in a case in which an ADLA member is counsel for an adverse party: (1) the request for an *amicus curiae* brief by ADLA will be considered solely on the basis of the issue presented, and membership in ADLA by a lawyer whose interest is adverse will not be a factor to be considered by the *Amicus Curiae* Committee in determining whether a brief should be submitted on behalf of

ADLA; and, (2) the request submitted to the *Amicus Curiae* Committee and all attachments thereto, the names of the *Amicus Curiae* Committee members considering the request for the brief, the details of the deliberation process, the vote of the Committee members, and the name of the ADLA member who has been asked to write the brief shall remain confidential (with the understanding that the name of the attorney writing the brief will be disclosed when the brief is filed). At ADLA's Board of Directors meeting on June 13, 2013, the Board voted to institute a new ADLA policy precluding opposing counsel from having the opportunity to address the *Amicus Curiae* Committee.

ADLA POLICY RE: \$3,000 PAYMENT OF FEE FOR PREPARATION OF *AMICUS CURIAE* BRIEF

ADLA's Board of Directors has approved the payment of up to \$3,000 per *amicus curiae* brief to help underwrite the costs. In addition to the \$3,000 fee, the Association will reimburse reasonable copying and binding costs associated with the brief. ADLA continues to adhere to the policy that no Association member can accept payment from any party for the preparation of *amicus curiae* briefs.

REQUESTS FOR *AMICUS CURIAE* BRIEFS

Please inform the Committee as soon as possible of issues on appeal that you believe would be of interest to the Association. The following information should be furnished with the request: (1) the name of the case and the appellate court where the case is pending; (2) a summary of the facts of the case and its procedural history; (3) a statement of all the issues of law involved in the appeal, identifying those issues with respect to which ADLA involvement is sought; (4) the date by which an *amicus* brief would have to be filed; and, (5) the consent of the attorney of record for the party in support of whom ADLA involvement is being sought. The request must be in writing to be considered by the *Amicus Curiae* Committee. Please submit the request to the Chair of the *Amicus Curiae* Committee at the following address:

Craig A. Alexander

Rumberger, Kirk & Caldwell, P.C.
2001 Park Place North, Suite 1300
Birmingham, Alabama 35203-2700
Telephone: (205) 572-4920
e-mail: calexander@rumberger.com

It shall be the policy of the Association to authorize the filing of briefs *amicus curiae* sparingly and only in appropriate cases as described. Briefs *amicus curiae* authorized by the Association shall be filed only in the name of the Association.

A. APPROPRIATE CASES

1. Only at the appellate level and only in the highest court where the issue is likely to be determined.
2. Only when such a brief would constitute a significant contribution to the determination of the issue or issues involved and only where the issue or issues sought to be determined is:
 - (c) of particular significance to the interests of the defense trial bar; or
 - (b) of particular significance to the fair administration of justice.
3. Only to advance argument with respect to the legal issues and not factual questions.

B. AUTHORIZATION

Briefs *amicus curiae* filed on behalf of the Association shall be authorized by the *Amicus Curiae* Committee.

C. APPLICATION

1. Application for authorization of briefs *amicus curiae* may be submitted to the President who will refer the matter to the Executive Committee with the advice of the Chair of the *Amicus Curiae* Committee.

2. Each application shall be accompanied by:

- (a) A full statement of the facts of the controversy and the status of the litigation;
- (b) A statement of the principle or principles of law to be supported together with an explanation of the applicant's reasons for believing that the case is an appropriate one for Association involvement;
- (c) A full disclosure of any personal or professional interest in the matter of any applicant or proponent of the application.

D. JOINT BRIEFS

As a general rule, the Association will not join in briefs *amicus curiae* with other organizations except other local defense associations.

E. COSTS

1. The Association will NOT accept payment from any applicant for the preparation or argument of briefs *amicus curiae*.
2. Costs of printing and filing the brief shall be borne by the Association. A fee of up to \$3,000 may be paid to the author of the brief upon approval of the Committee Chair.

F. APPEARANCES

The brief *amicus curiae* shall show as counsel for the Association, the author of the brief, the President of the Association and Chair of the *Amicus Curiae* Committee.



On ADLA Members the Record

Nobody tells your story better than you do. Our new **ADLA Members On the Record** feature in the *Journal* will spotlight several members in each issue. ADLA members will give us the inside scoop on what makes them tick, their success (and challenges), and what being a member means to them. Chances are you just might learn something about a member that you would have never known.

▲ R. Alan Alexander
Helmsing Leach Herlong Newman & Rouse PC

Where did you grow up and what college did you attend?

I grew up in rural Arkansas and moved to Mobile when I was a junior in high school. I was a first generation college student when I went to the University of South Alabama in 1974; receiving my degree in Accounting in 1978. I spent three years working in the paper industry before I went to law school at Cumberland.

Most memorable moment on the job?

Defense verdict in a medical negligence case against a young nurse who had been accused of mis-identifying the bodies of two men who had both been killed in an automobile accident. It was gut-wrenching from beginning to end; including the mother of one of the decedents shouting and calling me a liar during my opening statement.

Unusual job perk?

I was fortunate to join a firm in 1996 that believed strongly in supporting the physical and mental well-being of its lawyers, to the extent that we had a sabbatical program that gave the partners three months off with pay, every seven years, in addition to regular annual vacation time.

What is the furthest you have traveled for work?

Red eye from San Francisco to Atlanta; then connection to Mobile. Uncivilized. I don't even like to think about it.

What is the most rewarding aspect of your career?

Successfully navigating through the law and the medicine of a complex medical negligence case.



Ole Miss Law School Graduation 2017. Now there are three lawyers in the family.

Most frustrating?

Dealing with the ambiguity and uncertainty of federal regulations governing the healthcare industry in this country; particularly the HIPAA privacy regs and MMSEA regs. [Yea, I hate the alphabet soup, too.]

What is your best advice to young lawyers? Two things:

1. Maintain a running law

file of issues you encounter, because there is a good chance you will see them again.

2. If you are a trial lawyer, keep a journal of the cases you have tried; not only as first chair, but second [or third] chair as well.

Thirty years from now, you will remember the ones you lost, but not the ones you won.

What was your biggest lesson learned when you started to practice that you didn't already know?

Witnesses will lie to you; including your own witnesses.

Why are you a member of ADLA?

I joined the organization at the urging of more senior lawyers in the firm with which I was practicing at the time. It became immediately obvious our organization was fortunate to have a collegial and generous membership from whom much could be learned. My relationship with the organization has continued for over thirty years and I continue to benefit from my membership, both professionally and through the many personal relationships I have developed over the years.

If you had to choose a different profession, what do you think you would want to do?

Fishing guide; writer/editor of fiction; in that order.

Who was/is your role model/mentor in the profession?

My late partner, Fred Helmsing, taught me the importance of personal relationships in the practice of law. Not only was Fred the ultimate rain-maker, but he also left us with a lifetime of stories. Not a week goes by that I don't miss him.

Who do you pull for on football Saturday's?

My children and my money go to The University of Alabama.

What do you like to do in your spare time when you are not focused on work?

Fishing, hunting, spectator golf

What is the last book you read?



Alabama Graduation 2018. This graduate decided three lawyers was enough. She started UAB Med School in July.

“It became immediately obvious our organization was fortunate to have a collegial and generous membership from whom much could be learned.”

My Reading Life by Pat Conroy.

Favorite movie?

Tough call. If you are a lawyer [particularly an Alabama lawyer] and don't consider *To Kill a Mockingbird* a favorite, there is something wrong with you.

Biggest Pet Peeves?

Lawyers who don't do what they say they are going to do; and lawyers who don't keep up with their business.

Favorite concert you've attended?

THREE WAY TIE:

1. St. Paul and the Broken Bones; Mardi Gras weekend 2014.
2. The Eagles [opened by Dan Fogelberg], Spring 1978.
3. Billy Joel, Spring of 1979.

What is one of your most embarrassing moments?

The Supreme Court of Alabama granted oral argument in a case I briefed very early in my career. They did not realize I was not getting paid, and I think they thought they were doing me a favor. Justice Red Jones and I were well-acquainted, since I had a summer internship with him and Justice Janie Shores while I was in law school. Red called me by the wrong name during the entire argument. I was too embarrassed to correct him. No matter. The court rule my way.

If you could choose one ADLA member who has had a special impact on you, please tell us who and what you want us to know.

Former ADLA Executive Director Ed Livingston. I was privileged to speak on the occasion of Ed's retirement and remarked

For as long as I have known Ed Livingston, he has been the embodiment of a gentleman lawyer; a status to which I aspire, but will likely never attain. He is faithful to his clients; fair and civil to opposing parties and counsel; respectful to not only courts, but all lawyers; genuinely concerned for the welfare of his brother and sister lawyers; respectful to the profession; and a willing servant to our system of justice and the public.

Ed Livingston is the kind of lawyer we should all strive to be. I am a better lawyer for having been able to call him my friend.

Is there anything you want us to know about your family?

We are a family of mostly lawyers. My wife is a "recovering lawyer," now working as a political consultant. My son entered the profession last year and is following in his old man's footsteps as a defense trial lawyer. My daughter has avoided the affliction. She starts medical school in three weeks. My dog only barks at the plaintiff's lawyers who jog in my neighborhood. She does not bark at the defense lawyers. Smart dog.



My smart dog. She is one cool cat!

"My late partner, Fred Helmsing, taught me the importance of personal relationships in the practice of law. Not only was Fred the ultimate rain-maker, but he also left us with a lifetime of stories. Not a week goes by that I don't miss him."

**▲ Kara Deal Gamble
Scott Dukes & Geisler, PC**

Where did you grow up and what college did you attend?
I grew up in Martinsville, Virginia, a small town in southern VA, and attended Liberty University for my undergraduate studies.

Most memorable moment on the job?
Helping a partner with a motion for summary judgment that the court granted.

Unusual job perk?
"Forced firm fun"—as a social, fun-loving partner at my firm calls it—when she forces everyone to participate in a fun activity; one afternoon, we all left work early to play Topgolf. I was surprised that I actually earned some points! (I am not athletically inclined.)

What is the furthest you have traveled for work?
Probably Marshall County, Alabama (I do not do a lot of traveling for work).

What is the most rewarding aspect of your career?
Obtaining a good result for a client.

Most frustrating?
Laws that do not work justice.

What is your best advice to young lawyers?

Two things:
(1) Treat all people with same dignity and respect, and
(2) as advised in a gift from my first boss—a judge I greatly respect and admire—always strive to be "candid with clients and honest with adversaries."

"Unusual job perk?"
"Forced firm fun"—as a social, fun-loving partner at my firm calls it—when she forces everyone to participate in a fun activity; one afternoon, we all left work early to play Topgolf. I was surprised that I actually earned some points! (I am not athletically inclined.)"

What was your biggest lesson learned when you started to practice that you didn't already know?

The management side of practice, coming up with methods for staying organized and on top of everything—not a glamorous part of practice but vitally important.

Why are you a member of ADLA?

Because my boss told me to join, and I'm glad he did.



Kara has four sisters – the youngest, Anna, is adopted from China. "I love my family dearly and would not be the person I am without them."



Kara and John Gamble married in June 2018. They met in law school and were in the same 1L section at the University of Alabama School of Law. "I couldn't ask for a better partner to love, support, and challenge me."

If you had to choose a different profession, what do you think you would want to do?

Some sort of engineer or repair technician, I love figuring out how things work and fixing things. Or maybe something with animals—at one point, as a child, I planned to be a zoologist.

Who was/is your role model/mentor in the profession?

Stanley Murphy, because he genuinely loves legal practice. He has a contagious enthusiasm for the law, and I am grateful to have worked for him during law school.

Who do you pull for on football Saturday's?

The Tide! That's where I learned to love football—and where better!

What do you like to do in your spare time when you are not focused on work? Yoga, hiking, or anything outdoors.

What is the last book you read?

Voyager, in the *Outlander* novel series.

Favorite movie?

Anne of Green Gables. Bonus: one my favorite quotes from the movie, "I can't help soaring on the wings of anticipation. It's as glorious as soaring through a sunset . . . almost pays for the thud." Another is "Tomorrow is always fresh with no mistakes in it yet," which reminds me of one of my favorite Bible verses, "The faithful love of the Lord never ends! His mercies never cease. Great is His faithfulness; his mercies begin afresh each morning." Lamentations 3:22-23. I am a lover of mornings and fresh starts.

Biggest Pet Peeves?

Loud chewing.

Favorite concert you've attended?

I recently attended a Celtic Woman concert at the BJCC and loved it! My favorite song of the performance was "May It Be," a song by another artist I love, Enya, which was composed for Lord of the Rings: the Fellowship of the Ring—another one of my favorites.

What is one of your most embarrassing moments?

Misspelling a judge's name in an email.



"I wanted to be a lawyer from about seventh grade when I read a book about Sandra Day O'Connor. I'm so thankful to have realized that dream."

If you could choose one ADLA member who has had a special impact on you, please tell us who and what you want us to know.

Being fairly new to ADLA, I have not had the privilege of getting to know many members. However, I have had the privilege of working with ADLA member, Carter H. Dukes, at my law firm. From the time I started working here, I have been impressed with Carter's service to his clients. I really enjoy watching him at his skill—whether it be obtaining needed information from a client, sharply recalling inconsistent facts during an unemployment appeals hearing, or friendly but firmly defending a client's interest during a mediation. He is great at what he does and his clients are lucky to have his skill and dedication.



Visiting Egypt. Kara taught math in English at a school in Zarqa, Jordan, between her undergraduate and law school studies. She still knows a little Arabic, but says she is greatly out of practice.

Is there anything you want us to know about your family?

I recently married John J. Gamble, also a lawyer. His father, Michael J. Gamble, is another lawyer that truly inspired me. He had a passion for the law and for serving his clients. I loved talking through legal issues with him. Mr. Gamble also clerked for the Alabama Supreme Court after law school, and I have a signed picture of the Justices on the Court from my time clerking on the Court just like one he received during his time on the Court. Thinking of his passion and dedication for his work motivates me to strive for excellence in my legal work.

"My best advice to young lawyers, as advised in a gift from my first boss—a judge I greatly respect and admire—always strive to be candid with clients and honest with adversaries."

**▲ Harold Stephens
Bradley Arant Boult Cummings, LLP**

Where did you grow up and what college did you attend?

Enterprise, Alabama; University of Alabama for undergraduate; University of Alabama School of Law (by way of Southern Baptist Theological Seminary).

Most memorable moment on the job?

Hearing the jury foreperson read the verdict form saying, "We the jury find in favor of the Defendant."

Unusual job perk?

Getting to handle litigation matters in places like San Francisco

and Hilton Head, and getting to take a deposition at Pebble Beach.

What is the furthest you have traveled for work?

Florence, Rome, Athens; (seriously, California)

What is the most rewarding aspect of your career?

In general, helping people resolve their problems, especially when serving as a mediator.

Most frustrating?

Timesheets

What is your best advice to young lawyers? Two things:

1. Work hard! Lawsuits are won not by the smartest lawyers but by those who work the hardest.

2. Keep your priorities in life straight: faith, family and friends, then work.

What was your biggest lesson learned when you started to practice that you didn't already know?

The importance of getting to know your judges and fellow lawyers.

Why are you a member of ADLA?

ADLA provides a wonderful opportunity to get to know other members of our profession, especially those whose practice is focused on defense litigation. The Annual Meeting and seminars presented by ADLA provide an opportunity to meet and visit with many of our appellate judges as well as to keep up to date on important legal topics.

If you had to choose a different profession, what do you think you would want to do?

This is an easy answer. I told my parents after spending the most miserable summer of my life that I thought I had done well enough to pass the State Bar exam. However, I assured them that if I had not done so that I would never put myself through such misery again and would instead go be a national park ranger.

Who was/is your role model/mentor in the profession?

There really are too many to name, but I would especially note these: J.R. Brooks hired me as a summer law clerk in the U.S. Attorney's office in Birmingham and gave me my first "real" job in the legal profession as an Assistant United States Attorney for the Northern District of Alabama. J.R., along with Harold ("Fish") Herring and Jimmy Davis taught me how to try cases. Charles Shaver, Sr. and Pete Lanier taught me much about the legal

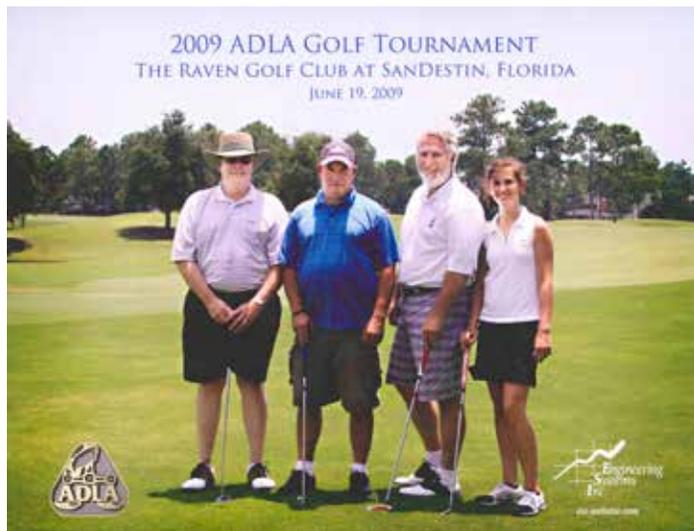
profession and life in general.

Who do you pull for on football Saturdays?

The Alabama Crimson Tide – and, since my wife and all three of my daughters attended college at the loveliest village on the Plains, Auburn –



Harold, Jordan, Caroline and Harper at Cheeseburger in Paradise in Maui.



Left to right Ed Livingston, Tim Harbarger (Harold's brother-in-law), Harold and Caroline (Harold's daughter).

except for one Saturday out of the year!

What do you like to do in your spare time when you are not focused on work?

Travel with my wife and family, play golf with my family and friends and teach in our Sunday School class.

What is the last book you read?

End of the Spear by Steve Saint.

What is your favorite movie?

Caddyshack

Biggest Pet Peeves?

I bother myself by my own lack of patience with others (especially my family when I'm hungry)!

Favorite concert you've attended?

Faith Hill and Tim McGraw (followed closely by Elton John, Linda Ronstadt, Chicago, Willie Nelson and the Beach Boys).

What is one of your most embarrassing moments?

Locking my keys in my car on the first day of college.

If you could choose one ADLA member who has had a special impact on you, please tell us who and what you want us to know.

The one ADLA member who has had a special impact on my life would be Louise and Ed Livingston. From the outset, Louise and Ed (they do count as "one") made ADLA not only a legal association but a family. They created a lasting and rich legacy of becoming friends with all of us who were privileged to be ADLA members, board members and officers during the years of their unselfish service to this organization.

Is there anything you want us to know about your family?

I am truly blessed by my wonderful wife, Julie, who has put up with me for 31 years of marriage, our oldest daughter, Jordan, and son-in-law Drew (who live in Huntsville where Drew works

"Football Saturday's The Alabama Crimson Tide – and, since my wife and all three of my daughters attended college at the loveliest village on the Plains, Auburn – except for one Saturday out of the year!"



Jordan and Harper at the Eiffel Tower.



Harold and Julie at #16 Kensington Street in London, England.

with Turner Construction and Jordan is an associate with Maynard Cooper); Caroline (who is about to begin a clerkship with Judge William Pryor on the U.S. Court of Appeals for the 11th Circuit and who will then continue her legal career as an associate at Bass Berry & Sims in Nashville) and Harper (who is currently working as Deputy Press Secretary for Congresswoman Martha Roby in Washington, D.C. and who will likely start law school in the fall of 2019)! Julie, our girls and I have shared many happy moments at ADLA meetings with wonderful colleagues and friends like Pat Sefton, Helen Alford, David Howard, Dudley Motlow, David Stevens, Johnny Nix, Clark Summerford, Melody Eagan, Billy Middleton, Bruce Barze and so very many others.

“Most memorable moment on the job, hearing the jury foreperson read the verdict form saying, “We the jury find in favor of the Defendant.”

**William J. “Bill” Gamble
Gamble Gamble Calame & Jones LLC**

Where did you grow up and what college did you attend?

I was born and raised in Selma, Alabama. I attended the University of Alabama and the University of Alabama Law School.

Most memorable moment on the job?

There are so many, but one will always be remembered. I was a young lawyer up against a well known and feared trial attorney. I agreed to take a claim for a small contractor who had constructed a drag strip for a local owner. He had underbid the project and lost money. Almost the entire amount of the contract was owed. My client needed the money. I sued the owner and he filed a counterclaim for defective work. My client was older and in poor health. After his deposition, he asked me to dismiss his case if the owner would dismiss his

**“Football Saturday’s
When I was a child I was a huge Auburn fan. However;
“When I was a child, I spoke like a child, I reasoned like a child.
When I became a man, I gave up childish ways.”
I Corinthians 13:11.
ROLL TIDE!”**

counterclaim. The owner refused. We went to trial and the jury found for the full amount of my client’s claim and against the owner. My client broke down in tears when the jury returned its verdict. I don’t think I have ever felt that good about any other successful verdict.

Unusual job perk?

Today it is being able to go home most every day at lunch and take a 20-minute nap. (I live 2 blocks from my office.)

What is the furthest you have traveled for work?

I can’t remember, but I have been to some places that are out of this world.

What is the most rewarding aspect of your career?

So many come to mind, but perhaps a conversation I had not too long ago with a client can sum it up. I had done some non-trial work for a local lady. When the matter had been completed, she asked me if I was going to retire. I told her I had no such intention, she said “Thank God, we need you”. Knowing that you helped people and getting a genuine thank you from them, is as good a reward as you can get.

Most frustrating?

Discovery and judges who either fail to timely rule or rule before I have a chance to properly respond.

What is your best advice to young lawyers? Two things:

My father said “Son, have you read the statute?” Never think you are better than some other attorney and always have good manners with everyone.

What was your biggest lesson learned when you started to practice that you didn’t already know?

Learning how to practice law would never end.

Why are you a member of ADLA?

First, because I practice defense litigation. All who do should be members. Second it makes for great networking. Finally, and most importantly, I have made wonderful friends and have been around

“My most embarrassing moment was when I had some clients in the office signing official documents. A man started signing with his left hand. I’m left handed and sometimes make jokes about left-handed people. I told him to stop signing as all official documents had to be signed with your right hand. He raised his right arm. He had no right hand.”



Bill and Bunny Gamble with their children – Mary, Katie and Will.

a lot of good people I admire in the legal profession.

If you had to choose a different profession, what do you think you would want to do?

An Episcopal priest.

Who was/is your role model/mentor in the profession?

There are probably two. First and foremost, my father, with whom I had the privilege of practicing law for over 25 years. Secondly my brother.

We have been together in this realm for over 50 years. I trust his wisdom and admire him as a person and as an attorney. He has been my mentor on a multitude of matters.

Who do you pull for on football Saturday's?

When I was a child I was a huge Auburn fan. However; "When I was a child, I spoke like a child, I thought like a child, I reasoned like a child. When I became a man, I gave up childish ways." I Corinthians 13:11. **ROLL TI DE!**

What do you like to do in your spare time when you are not focused on work?

Drink some good wine, take my nap and be out on a boat.

"The one ADLA member who had a special impact on me was our former Executive Director, Ed Livingston, did more for this organization than most folks will ever know. It was his leadership that brought ADLA from a few lawyers to what it is today. He made us the envy of most all defense lawyer associations in the nation. He was the Nick Saban of the SLDO (the acronym for State and Local Defense Organizations)."

It depends upon what you mean by "concert". I sure did enjoy Willie Nelson and B.B. King at The Wharf a few years ago.

What is one of your most embarrassing moments?

I had some clients in the office signing official documents. A man started signing with his left hand. I'm left handed and sometimes make jokes about left-handed people. I told him to stop signing as all official documents had to be signed with your right hand. He raised his right arm. He had no right hand.

If you could choose one ADLA member who has had a



Three generations of Gamble lawyers – Katie Courtney, Bill Gamble and Harry Gamble.

What is the last book you read?

Beulah, by the Rt. Rev. Kee Sloan.

Favorite movie?

Brigitte Bardot in And God Created Woman, circa 1957(at least, it was at the time). I've seen a lot of good ones (and many bad ones) since.

Biggest Pet Peeves?

Being told by my wife how to load the dishwasher

Favorite concert you've attended?

special impact on you, please tell us who and what you want us to know.

This is an impossible question to answer. However, our former Executive Director, Ed Livingston, did more for this organization than most folks will ever know. It was his leadership that brought ADLA from a few lawyers to what it is today. He made us the envy of most all defense lawyer associations in the nation. He was the Nick Saban of the SLDO (the acronym for State and Local Defense Organizations).

Is there anything you want us to know about your family?

I am the most blessed person you can imagine having had my family. My father, who came to the office almost every day until he was well in his 90ties, was the finest gentlemen I have ever known. He, along with my amazing mother, instilled in me a sense of loyalty, faith, honesty and love that I seek to attain every day. My three children, Katie Courtney, Mary Yancey and Will Gamble (and I might add my grandchildren) have made me proud beyond my wildest dreams. Finally, I have been blessed to have had my wife, Bunny, who has loved me, raised my children "right" and been my beloved companion and friend for over 50 years. She is remarkable. We have had so much fun.



**▲ Kaasha Griffin
Holtsford Gilliland Higgins
Hitson & Howard**

Where did you grow up and what college did you attend?

Centralia, IL; Northwestern University

What is the furthest you have traveled for work?

Mobile

Why are you a member of ADLA?

I joined ADLA to learn more about my colleagues and build my network in Alabama

If you had to choose a different profession, what do you think you would want to do?

Open a bakery/coffee shop

Who was/is your role model/mentor in the profession?

The first is my former law school professor, Judith Teeter. The second is one of my former colleagues, John Ott.

Who do you pull for on football Saturday's?

Northwestern. Go Cats!

What do you like to do in your spare time when you are not focused on work?

Try new recipes at home and talk to my niece Alexa on FaceTime

What is the last book you read?

Just Mercy by Bryan Stevenson

**"Football
Saturday's
Northwestern.
Go Cats!"**



Kaasha and husband Greg Griffin, Jr.

Favorite movie?

Remember the Titans

Biggest Pet Peeves?

When events do not start on time

Favorite concert you've attended?

Beyonce or Bruno Mars

If you could choose one ADLA member who has had a special impact on you, please tell us who and what you want us to know.

Megan McCarthy. Megan has looked out for me and provided me with some invaluable experiences as a young attorney. From ADLA webinars to the ADLA Deposition Bootcamp, Megan is always giving me advice and encouragement on ways to

“I joined ADLA to learn more about my colleagues and build my network in Alabama.”

expand my knowledge and experience for my career. Megan also gave me the rare opportunity to gain trial experience as a young lawyer. It has been a thrill to work with her.



Left to right: Judge Greg Griffin, Mrs. Debra Griffin, Greg Griffin, Jr., Kaasha Griffin, and Christopher Griffin.

See what our members are saying about us:



1. I love the thorough Briefcase updates
2. The day-to-day updates on things like room availability and efforts to find backup rooms for the conference
3. The mixers are great too
4. So appreciative for the effort to amend the bylaws and get everything settled on that.

Jonathan Hooks

Christian & Small, Birmingham



The best benefit I receive from being a member of ADLA is my connection with excellent, experienced defense attorneys in my practice area(s)!

Kara Deal Gamble

*Scott Dukes & Geisler
Birmingham*



The weekly briefcase is a huge improvement. I now know what is going on! I also like the ability to provide input. I think this will strengthen the organization.

Caroline T. Pryor

*Carr Allison
Birmingham*

wins for the defense

continued from page 37

remained only a very short time and left against medical advice. Based upon the patient's clinical presentation at HealthSouth and his prescription medical history, the Defendant/physician diagnosed him with a dependency upon narcotic pain medication. Because the patient was a school bus driver and out of concern for the safety of school children, the Defendant physician contacted the plaintiff's employer, who subsequently placed him on administrative leave. The Plaintiff filed suit asserting claims of false light, defamation and medical malpractice. The trial court granted summary judgment as to the Defendant/physician on the false light claim and, subsequently, at the close of the plaintiff's case, granted Defendant's motion for judgment as a matter of law as to the defamation claim. The jury returned a verdict in favor of the Defendant/physician as to the medical malpractice claim.

Richard Lewis and **Joseph E. B. (Jeb) Stewart** of the law firm of Austill, Lewis, Pipkin & Maddox, P.C., recently prevailed on a motion for summary judgment in an employment discrimination case pending in the United States District Court for the Southern District of Alabama.

In *Donald Jackson v. the Housing Authority of the City of Prichard, et. al.*, (Case No. 17-0149-WS-M), the Plaintiff alleged the defendants violated his First Amendment right to free speech by retaliating against him, and wrongfully terminating him, for speaking with the Office of Inspector General, in violation of 42 U.S.C. § 1983. The Plaintiff had been charged with a DUI and possession of marijuana after having an automobile accident in Biloxi, Mississippi. Although he acknowledged having an accident, he failed to disclose the criminal charges to his employer. 20 months later, after learning about these charges, the Housing Authority terminated his employment. Given the long time frame which had passed from the accident to his termination, Plaintiff argued the actual reason he was terminated was because he fired another favored employee and excised his Constitutional right to free speech in objecting to rehiring her. The Defendants were able to persuade the Court that: (1) Plaintiff did not speak as a citizen on a matter of public concern because all of his speech was made within his official duties; and (2) the alleged speech was not the substantial motivating factor in his termination because of legitimate non-retaliatory reasons related to his criminal charges. 

Find Yourself Looking for Free CLE throughout the Year?



ADLA is now offering free 1 hour webinars for members.

NEXT WEBINAR OCTOBER 11

War Stories and the Lawyer's Duty of Confidentiality:

The Potential Impact of ABA Formal Opinion 480

Presenter: **Craig Alexander** of Rumberger Kirk & Caldwell

Email adla@adla.org to register.

ADLA's new website will offer members free access to past webinars which include:

-  Managing Clients and Creating Collaborative Relationships
Presenter: **Jeremy Richter** of Webster Henry Bradwell Cohan Speagle & DeShazo PC
-  Medicare Secondary Payer Issues: Section 111 Reporting, Conditional Payments, & Medicare Set-asides
Presenter: **Jennifer S. Baker** of Carr Allison
-  Alabama Case Law Update: Significant Recent Civil Decisions of the Alabama Supreme Court
Presenter: **Alex Holtsford** of Holtsford Gilliland Higgins Hitson & Howard

Trial Academy CLE Program Now Follows Deposition Boot Camp Fact Pattern

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Bernie Brannan, Chris Christie, Melody Eagan, Bains Fleming, Jonathan Hooks, Megan Jones, Chris King, Bill Lancaster, Jonathan Little, Bob MacKenzie, Stacy Moon, Daniel Newton, Harlan Prater, Richard Smith, and Jay Watkins. We also welcomed special guest, **U.S. District Court Judge Madeline Haikala. Thomas DeBray** served as the Trial Academy's Director again this year. Finally, we would like to recognize ADLA members **Kirby Howard, Hal Mooty, Austin Hagood and Christina Bolin** who worked diligently on the course material to make Deposition Boot Camp and Trial Academy a case series. 



Dean Steve Emens, Bill Lancaster, Melody Eagan, and Mike Edwards.

ADLA is pleased to report

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1,266

keeping our members & other key individuals informed

EXPANDED CIRCULATION

10%

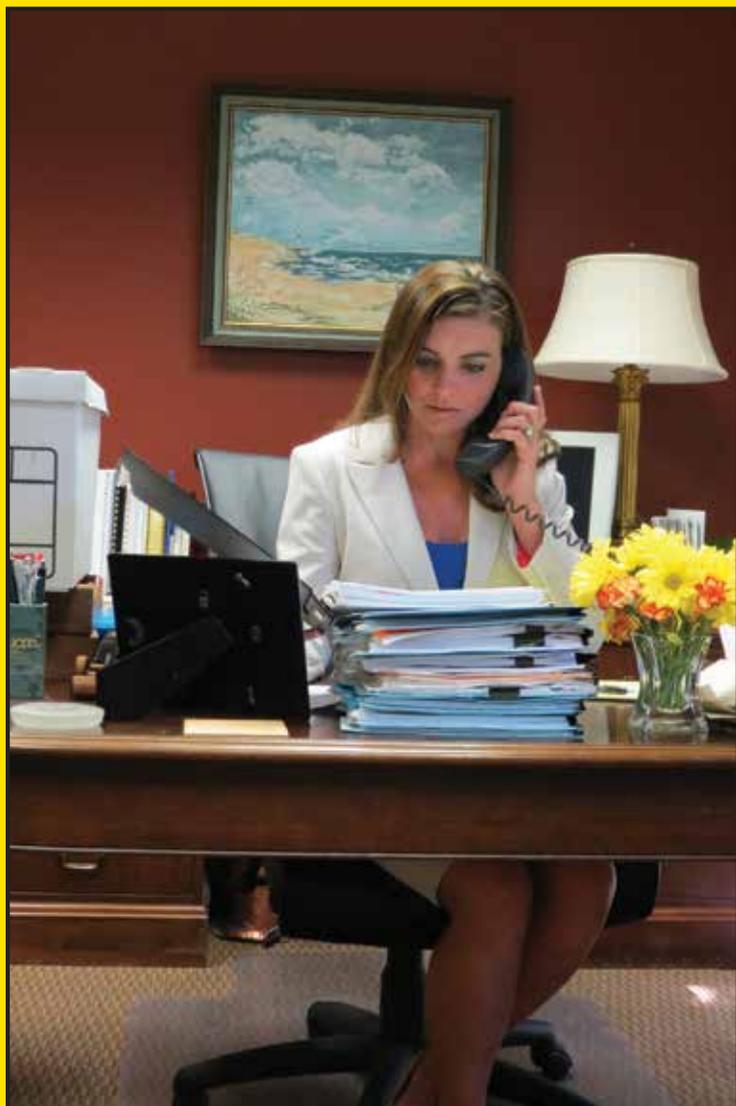
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September 18

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FREE CLE WEBINAR

October 11

Hosted by YLS Section
*War Stories and the Lawyer's Duty
of Confidentiality: The Potential
Impact of ABA Formal Opinion 480*
11:30 AM-12:30 PM

**2019 DEPOSITION
BOOT CAMP**

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Jones School of Law
Montgomery

**2019 ANNUAL
MEETING**

June 13-16

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Destin, Florida