

# THE MISSISSIPPI Lawyer

VOL. LVII

SUMMER

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NO. 4



## *Lawyer Citizenship Award*



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# THE MISSISSIPPI Lawyer

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# An Expression of Farewell

Last year, I began my term of office as President of our Bar with great pride, an honest sense of humility and a bit of wonder. As my term has come to an end, I have an increased sense of all the same emotions.

During a speech at the Price-Prather Luncheon at the Bar Convention in July, I recited a quote from Thomas Edison who said “If we all did the things we are capable of, we would astound ourselves.” We are capable of so many things as lawyers. I, personally, think that being a lawyer demands thinking, learning, listening, sharing, acting, being courageous, and being willing to lay ourselves on the line when necessary. Being a lawyer is certainly a personal endeavor, but, also, immensely global as well. We owe a great deal to our society since we are among those to whom a great deal has been given and are capable of so much. Since I believe that our responsibilities are great, we, as lawyers, must possess and utilize our leadership capabilities for those who need us. This leadership can manifest itself in the many ways of our own choosing.

It is with a deep sense of gratitude that among the positives of the past year, the Bar began its Lawyer Citizenship Award recognizing members of our Bar who are exemplary as they have given back to their communities. This edition of the “MS Lawyer” highlights the lives and accomplishments of eleven lawyers who are the first recipients of The MS Bar’s Lawyer Citizenship Award. I hope you enjoy reading about your colleagues who chose ways in which to unselfishly give back to their communities. This award will be given annually to recognize and honor lawyers who are making a difference in their communities and in the lives of others. Please watch for notices in the BarBriefs, Facebook and on our website so that in the future you can nominate a lawyer whom you consider to be worthy of this award.

There have been times which have been quite the personal tests for me of endurance, patience, temper, and understanding; but those difficult times were few, managed with the assistance of those around me who were invaluable in helping me through a few quagmires. Recently, a non-lawyer asked me what my “favorite part” of being Bar President has been. After mentally composing a long list from which to choose, I kept coming back to the benevolent gifts of kindness which I have received repeatedly throughout the past year. Lawyers have come to my aid and to the aid of our Bar more times than I can count, assisting with ultimate grace, skill and intelligence to ensure successful resolutions of problems facing us. Additionally, the expressions of kindness to me and support of me personally have now become cherished memories.

The word “farewell” is defined as “an acknowledgment or expression of goodwill at parting.” Now as I say farewell as your President, I must say that I believe in lawyers more now than ever before. I humbly thank you for the opportunity to serve as President of our Bar. I wish my successor, Hugh Keating, all the best as he most ably takes the helm for the upcoming year. Hugh and his wife, Donna, will be wonderful ambassadors for our Bar and state as they navigate their way through this year.

Finally, my gratitude to Larry Houchins, Melanie Henry and all the members of the Bar staff is never ending. ■



*Nina Stubblefield Tollison*  
*President of The Mississippi Bar*  
*2010-2011*

# SEAN AKINS

Ripley, Mississippi

As a lawyer, Sean Akins considers himself a teacher—an advisor who educates his clients about the law. As a volunteer, he extends this role to the classroom, teaching students about the practical applications of the law as it pertains to DUIs, divorce, contracts, courts, wills and real estate.

“Students have a natural curiosity about the law. It is satisfying to have a student tell you that they’ve made a better decision because of something you taught them,” he said.

Since 2008, Akins and his law partner, Bart Adams, have taught “Street Law” at Ripley High School each morning before starting their work day. The idea came from colleague and attorney John Booth Farese, who had been teaching the class for years.

“There is nowhere else in school that students get any training on how the law works. The state gives us a teaching license so the students get full credit,” he noted, adding that the course has a curriculum and a textbook from which students work.

Akins has a passion for working with youth and has also been involved with the Boy Scouts for most of his life. “I joined the Boy Scouts when I was 10 years old and have never really left. I suppose that every youth looks for a place to belong and Scouting filled that role for me,” he said. “My leaders became mentors who helped me to set goals. I simply would not be in the position that I am without Scouting, so everything I do as a volunteer is just pay-back.”

Self-defined as a country lawyer in Ripley for the past 18 years, Akins has also participated in the Mississippi Volunteer Lawyers Project and the Lawyer in Every Classroom program as well as representing the Tippah County Board of Supervisors.



Presenting the award to Sean Akins, pictured center, at Ripley High School during his “Street Law” class is Mississippi Bar President Nina Tollison. Also present is Ripley High School Principal Jeff Palmer.

# DEREK CUSICK

Gulfport, Mississippi

Attorney Derek Cusick has no children of his own, but he has found a way to have a dramatic impact on the lives of many children through his active involvement in the Child Abuse Prevention Center (CAP) located in Gulfport. More than three years ago, Cusick joined the ranks of the board of directors for that organization in association with a number of his attorney colleagues and is currently serving his second year as president.

Cusick joined the board at a time when the organization lost a healthy grant and was facing major budget issues. Since that time, he has spent countless hours in fundraising meetings and events in an effort to continue the work of having a positive impact on the lives of children in abusive situations.

“At this time, we are in such financial straits that I’m really focused on keeping the doors open,” he emphasized. “I want to make people aware that there are non-profits out there really struggling.”

The aftermath of Hurricane Katrina had a tremendous impact on Cusick’s desire to give back to his community and others. Having lost his own law office in the destruction, he noted that he watched the region at large suffer as the government focused its relief efforts in neighboring states and communities.

“It was volunteers out of state and in our community who really got the area back together,” he recalled. “It made me aware of how many people there are out there who want to do good. It made me want to get involved and help others.”

Cusick has operated a law practice in Gulfport for about 14 years, specializing in commercial and construction litigation. He noted that the economy has slowed down his business somewhat opening up more opportunity for him to get involved in the community.



Mississippi Bar President-Elect Hugh Keating, pictured left, presents the Lawyer Citizenship Award to attorney Derek Cusick at the Child Abuse Prevention Center in Gulfport.

# JUDGE DEBORAH GAMBRELL

Hattiesburg, Mississippi

**A** practicing attorney for 30 years before her appointment to the 10th Chancery Court this past January, Chancellor Deborah Gambrell noted that she has witnessed the disparate treatment of women in the workplace over the years and its impact. That's why the volunteer work that she finds most satisfying is the opportunity to make a difference in the lives of young girls.

"I want them to know that they can be whatever it is that they want to be," she expressed. "It brings me so much joy to run into doctors, lawyers, teachers and social workers that were once my Girl Scouts. I feel that I might have played a small part in helping them grow into the women that they've become."

Gambrell started volunteering with a local Girl Scout troop in an effort to spend more quality time with her daughters. One troop evolved into three, and once she saw how she could influence and mentor young girls, Gambrell said she "was hooked."

Over time, she served in scouting leadership roles, ultimately receiving the Thank Award and later representing her state at national conferences. "I think that was the beginning of my advocacy work on behalf of young ladies and women which catapulted me into working for the Committee of Racial Ethnic Women of the Presbyterian Church USA," she said, adding that she has worked as a speaker and advocate representing the church across the globe.

Gambrell has used her skills with the YMCA, United Way and Dubard School's Advisory Board. She received the Tom Joyner Morning Show "Hurricane Katrina" volunteer award for opening her home to shelter 21 family members in the aftermath of the hurricane.

"I feel an obligation to give back because if it were not for the 'strong shoulders that I was able to stand on' I might not have been able to fulfill my dreams," she asserted.



Presenting the award to Judge Deborah Gambrell at the United Way of Southeast Mississippi Board meeting are Mississippi Bar Commissioner Pat Zachary of Hattiesburg on left and Bar President-Elect Hugh Keating of Gulfport.

# TONY GALOR

Jackson, Mississippi

**F**rom working to enhance the cohesiveness of the community he lives in to improving the lives of African Americans and youth afflicted by drug addiction, Tony Gaylor's volunteer leadership has touched many areas of the Jackson community.

A healthy community is important to Gaylor, whose practice with Chambers & Gaylor Law Firm, PLLC is also community focused with specialties in public finance, municipal law, commercial transactions and general civil litigation. "I enjoy my practice because I typically get the opportunity to see the immediate impact of my advice on my community. Whether it's an annexation, public finance deal, or small business expansion, the advice I give typically leads to an improvement that the community can experience in the immediate future," he noted.

When the opportunity arose for Gaylor to lead the board of directors for the National Urban League in Jackson, he said that he "enthusiastically pursued the opportunity." Founded a century ago, the organization has evolved through its mission to help African Americans achieve social and economic equity in America. "Locally, our mission has tracked that of the national organization while addressing the unique problems that plague the Greater Jackson area," Gaylor said. "We have operated programs related to housing, homelessness, crime victim assistance, workforce development and education."

Gaylor also serves as President of the Alpha Epsilon Lambda Chapter of Alpha Phi Alpha Fraternity. "Our chapter has remained dedicated to the uplift and enlightenment of people in the Jackson Metropolitan area by providing leadership, knowledge, support, guidance and service—in an attempt to bring about a more cohesive community," he noted, adding that during his tenure, the organization operated national programs to encourage high school students in finding a path to graduation from high school and matriculation through college.

The benefits of Gaylor's volunteer leadership have also been extended to New Horizon Ministries, overseeing the operations of a drug treatment center and school for boys as well as Anderson United Methodist Church.



*Attorney Tony Gaylor, pictured left, receives the Lawyer Citizenship Award at Kirksey Middle School in Jackson from Mississippi Bar Past President George Fair*

# STAN KYNERD

Brandon, Mississippi

**N**ot many youth can say that they have canoed the Buffalo River, rock climbed and rappelled in the Ozarks of Arkansas, gone spelunking in the caves of Tennessee or backpacked in the Talladega National Forest of Alabama. But if you are a boy fortunate enough to have been in Stan Kynerd's Boy Scout troop, you've had all of these opportunities and more.

"I want our youth to know that there is simply nothing they cannot achieve if they are willing to properly plan and work toward the goal," he emphasized. "It is rewarding without explanation to see a 14-year-old youth overcome his fears by backing off a 50 foot rock face for the first time."

To say that Kynerd has a passion for Scouting would be an understatement. For more than 14 years, he has loyally given his time to the cause of mentoring youth in this capacity on a selfless, committed level.

He says that his enthusiasm for the program stems from the foundational mission of the Boy Scouts that covers three aims: growth in moral strength and character; participating in citizenship; and, development in physical, mental and emotional fitness. "My philosophy in Scouting is really quite simple; if the youth in my troop, when 90 years of age, are able to reflect upon their Scouting career with a smile, then I will have succeeded," he said. "More directly, I want to instill in our youth a self-confidence to enable them first to dream and then to accomplish their goals."

Kynerd has served as General Counsel for Pruet Oil Company and a group of affiliated companies since 1981. He has received the District Award of Merit, the highest district-level award given by the Boy Scouts of America and the Silver Beaver Award, the highest council-level award. He has also earned the Scoutmaster Award of Merit.



*Incoming Mississippi Bar President-Elect Lem Adams of Brandon, pictured left, presents the Lawyer Citizenship Award to attorney Stan Kynerd at the Boy Scouts of America building in Jackson.*

# DOLTON McALPIN

Starkville, Mississippi

**M**any people would recognize the hard work of volunteers who labor for Habitat for Humanity, a well-respected Christian ministry that seeks to build housing to serve the homeless and poor. It's the complexities of the behind the scenes work that might otherwise go unnoticed.

That's where Dolton McAlpin comes in. An attorney who has performed pro bono legal services for the Starkville Habitat for Humanity, McAlpin ensures that the nonprofit receives the best legal representation in real property matters. He has completed title work, made court appearances and confirmed title to Habitat real properties. His efforts have resulted in the organization obtaining blighted real property, which is then transferred into an appropriate home for a deserving family.

"It's easy to see results when I can secure a title for a piece of property and then watch a house go up on it," he said, adding that the end result is very satisfying. "I hope to continue to help Habitat find those sites."

McAlpin has held a legal practice in Starkville since 1974, specializing in title work and real estate. He noted that his volunteer work with Habitat for Humanity was a natural progression.

"Starkville Habitat for Humanity has many volunteers, but Dolton is a special volunteer," said John "Mickey" Montgomery, president of the Starkville Habitat for Humanity. "His pro bono legal work is a vital part of the success of the ministry, positively impacting the lives of Starkville families not only for this generation but generations to come."

Not very far from retirement, McAlpin said that he hopes to assist the organization in a more direct way once he has more time.



*Presenting the Lawyer Citizenship Award to attorney Dolton McAlpin, pictured left, at the construction site of a Starkville Habitat for Humanity house is Mississippi Bar Commissioner Charlie Winfield.*

# GUY MITCHELL III

Tupelo, Mississippi

Attorney Guy Mitchell believes strongly in a credo expressed by George McLean, founder of the CREATE Foundation years ago—“It is the responsibility of the people of Mississippi to try to raise the level—economically, educationally, spiritually and otherwise—of all the people of the state. There is nobody else who is going to come in here and do it for us.”

And his lifetime commitment to improving the lives of people in his community reflects this belief. The CREATE Foundation is one of many worthy organizations that has benefited from the leadership and service of Mitchell. A volunteer with the organization for nearly 30 years, the community foundation serves a 16-county region in northeast Mississippi, identifying and addressing specific needs of communities such as high school dropout rates, teen pregnancy and education.

A long-term volunteer with North Mississippi Health Services (NMHS) as well, Mitchell has aided in the non-profit organization's efforts to operate more than 30 clinics and four hospitals in the region. A nationally-recognized health system, NMHS is the second highest provider of charity care in the state.

Mitchell has volunteered with Mississippi Methodist Senior Services for more than 20 years, a passion that grew out of his father's commitment to the organization. “I became involved as a volunteer on the local level and then with the parent organization which has grown to a statewide network of 11 different retirement facilities which offer a wide range of options for seniors from independent living to extended care,” he noted.

Last by not least, Mitchell has served as a volunteer board member with the Community Development Foundation (CDF) since 1978. In tandem, his firm, Mitchell, McNutt and Sams, has served as legal counsel since CDF's inception in 1948.

Looking to the future, Mitchell hopes to “continue serving people both as a practicing lawyer and as a volunteer and to enjoy my wonderful wife and family which now consists of our two daughters, their husbands and seven delightful grandchildren.”



At the North Mississippi Health Services in Tupelo, attorney Guy Mitchell, pictured 4th from left, received the Lawyer Citizenship Award from Mississippi Bar Commissioner Jim Johnstone of Pontotoc, pictured 4th from right. Also at the presentation were (from left) Dr. Jim Cooper, Board of Directors member of NMHS; Liza Mitchell Fruge, Mitchell's daughter; Susan Mitchell, Mitchell's wife; Mitchell; Johnstone; John Heer, CEO of NMHS; Grace Clark, Board of Directors member of NMHS; and Dr. Dick White, Board of Directors member of NMHS.

# JAMES PRICE, JR.

Corinth, Mississippi

The turbulence of the school integration years of the 1960s is something many witnessed from a distance or have read about only in books. As a member of the Corinth City School Board during those years, James Price not only experienced the era first-hand but also provided legal counsel gratuitously to the school district.

“Our greatest achievement as a school district in the 60’s was the peaceful and successful way in which we integrated our schools,” he emphasized, adding that prior to integrating, the school board met separately with white parents and black parents to explain the process. “We told both groups that we could not continue to teach civics if we were not willing to obey the law.”

Price noted that Corinth was the first school district in the nation to come out from under a court desegregation order—and with no community problems. “We were able to maintain high academic standards because our prior black school provided those students with a quality education, being one of the few that was accredited,” he noted.

While Price has served in a number of volunteer leadership capacities including president of the Corinth Welfare Association, president of the Corinth-Alcorn County United Way, president of Hillandale Country Club and director of the Alcorn County Red Cross to name a few, he said that he has gotten the most satisfaction from coaching Little League baseball. “I loved working with the young boys and teaching them not only how to play baseball, but more importantly how to live. One of my most rewarding moments occurred a few weeks ago when one of my former players told me how much I had affected his life and moral standards,” he said.

A Rhodes Scholar, Price served as a county prosecutor and general practitioner for many years and currently represents the Corinth and Alcorn School Districts and the Alcorn County Electric Power Association.



*Presenting the Lawyer Citizenship Award to James Price, Jr. at Corinth Elementary School is Mississippi Bar President Nina S. Tollison of Oxford.*

# PAUL ROGERS

Madison, Mississippi

**P**aul Rogers has a passion for children with disabilities and the families who support them and for good reason. As a parent of two children with disabilities, he understands the challenges and uphill battles these individuals and families face on a daily basis.

More than 20 years ago, Rogers and his wife Mandy started the Challenger Baseball League when they identified a need for more recreational activities to serve children with disabilities. The first game featured 20 participants. Today, the same league has grown to more than 100 players—ages 5 to 65—who participate in games every Saturday during the summer.

More recently, Rogers has focused his efforts on Hope Hollow Ministries, a Christian ministry with a mission to provide people with special needs the adventure, independence and fellowship that a typical camp experience can provide.

“I think this experience can give young and old a new perspective and appreciation for life and open their eyes to the capabilities of persons with disabilities and what they have to offer,” he emphasized. “Sometimes volunteers come away with more than the people they volunteer with. Sometimes we have volunteers who set their careers after their volunteer work.”

Rogers has practiced law since 1986 in Jackson as a general practice attorney and is also a licensed CPA. He said that he plans to continue his current activities with the Challenger League and Hope Hollow Ministries as so much of his life’s passion has been invested in each.

“Most recently I have become involved in Mississippi Special Olympics and will be travelling with a softball team to Elgin, Illinois, for a tournament as a coach,” he noted. “Many of our Challenger League players are on our Special Olympics team.”



Attorney Paul Rogers, pictured far right, receives the Lawyer Citizenship Award during a Challenger Baseball League practice in Ridgeland from incoming Mississippi Bar President-Elect Lem Adams of Brandon, pictured far left. Also present were Rogers' wife, Mandy, and their two sons.

# BRADLEY WELLBORN

Jackson, Mississippi

In 2012, Boy Scout Troop 23 hopes to go to Philmont, a high adventure camp for Scouts in the Rocky Mountains of New Mexico. A mentally and physically demanding two-week hiking expedition, this dream represents a lofty goal for this troop on both a personal and financial level.

The reason? Troop 23 was created as an outreach program to serve underprivileged children in the Greater Broadmoor Neighborhood and beyond. And attorney Bradley Wellborn has been instrumental in helping the group realize its potential amid a number of uphill battles.

To begin with, there is little or no tradition of Scouting among the children in this community, and the children have little or no outdoor adventure experience. Add the fact that most families simply cannot afford to send their children to camps or events, and the ability to run an active troop becomes difficult at best.

When asked to take an active role in the group, Wellborn readily stepped up to the plate and met the challenge head-on. He instilled a “Spartan” philosophy in the children to “adapt and overcome,” teaching them to focus on how to make things work with the tools they have at their disposal. “Besides wilderness skills, Mr. Wellborn has been a key force in training these boys in responsible citizenship and to be team players,” said Gene Dent, charter organization representative for the troop.

In anticipation of Philmont, Wellborn has personally provided legal services in exchange for safety equipment and then organized and instructed the boys on running a business. The only troop in the world where boys manage and operate a business, these Scouts will effectively earn their way to Philmont learning real life skills.

Wellborn currently runs a general practice law office in Ridgeland.



Presenting the Lawyer Citizenship Award to attorney Bradley Wellborn, pictured 4th from left, at the Boy Scout Troop 23 meeting at Redeemer Presbyterian in Jackson is Mississippi Bar Past President George Fair, pictured 3rd from right.

# JIMMY WOODS

Olive Branch, Mississippi

Anyone who has experienced an Olive Branch High School (OBHS) football game probably knows Jimmy Woods as the “Voice of the Quistors.” Telecasting the high school’s football games since the early 80s, he has become an integral community image who people know and recognize. In fact, he is a member of the Olive Branch High School Football Letterman’s Club.

“I enjoy being a part of the community,” he said. “Olive Branch was a growing area when I came here, and I’ve had the opportunity to watch it grow and evolve.”

Many who know Woods would suggest that he has helped the community grow through his many contributions. Not only has he spent hours in support of fundraising activities for OBHS athletic programs, he was a charter member of the Olive Branch Rotary Club where he served as president and received the Paul Harris Fellow Award. He has also been a member of the Lions Club for more than 35 years as well as a former member of the Board of Directors for the Olive Branch Chamber of Commerce, serving as president for both of these organizations as well.

Now 70-years-old, Woods noted that he isn’t quite as involved in the community as he used to be, but he hopes to continue to contribute in a meaningful way. “People have been really nice to me here,” he said. “I just figured I needed to do my part.”

Woods served as the city attorney for Olive Branch for 27 years. He currently represents the Marshall County School Board, Northcentral Mississippi Electric Power Association and the Town of Byhalia. Woods most recently became a member of the YMCA Board of Directors. “That’s a new venture for me,” he noted.



Attorney Jimmy Woods, pictured 2nd from right, receives the Lawyer Citizenship Award in front of the Olive Branch City Hall from Past Mississippi Bar Commissioner Gary Snyder of Olive Branch, Mississippi Bar President Nina Tollison of Oxford, and Mississippi Bar Commissioner Kelly Hagan Smith of Southaven.

# More Justice for All: Expanded Pro Bono Opportunities

**O**n January 19, 2011, the Mississippi Supreme Court amended Rules 1.1 and 1.2 of the Mississippi Rules of Professional Responsibility, and adopted a new rule, Rule 6.5. These changes enhance opportunities for attorneys to assist pro bono clients by explicitly recognizing various forms of limited assistance and by removing conflict-related barriers in brief service settings.

## ACCESS TO JUSTICE: THE UNMET NEED

The Mississippi Access to Justice Commission recently released its report, “The Unmet Civil Legal Needs of Low-Income Mississippians.” The report reflects that in Mississippi “one-half million people [live] at or below the federal poverty line, and . . . are eligible for federally funded Legal Services.” The Report documents the valiant efforts of the state’s legal services programs and the Mississippi Volunteer Lawyer’s Project to serve the low-income population. The commission noted that the two Legal Services programs and MVLP handled approximately 15,000 cases in 2007, but that the legal service programs are forced to turn away one in two applicants for assistance. “Conservative estimates are that programs should be serving 200,000-250,000 clients a year to handle the need.” MISSISSIPPI ACCESS TO JUSTICE COMMISSION, REPORT OF PUBLIC HEARINGS ON THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME MISSISSIPPIANS 37 (2010).

Among other proposals, the Report recommends that legal services providers develop methods of assisting low-income clients through “unbundled services” or limited assistance. The Mississippi Supreme Court, based on the recommendation of the Access to Justice Commission made changes to the Mississippi Rules of Professional Responsibility that recognize various

## forms of limited representation. UNBUNDLED LEGAL ASSISTANCE: OUTSIDE OF COURT

### *A. Fact-specific legal advice – counsel and advice*

An attorney may provide limited legal advice (“counsel and advice”) based on a client’s brief explanation of the facts of his or her case. Low- and moderate-income clients often receive this kind of assistance through call centers, pro bono centers, legal clinics, and legal aid or other non-profit legal offices. This is not a new concept — private attorneys as well as public interest attorneys frequently provide limited legal advice on a particular issue without being further engaged in a case.

Fact-based counsel and advice creates an attorney-client relationship, with all of the ethical obligations that accompany that relationship. It can be of substantial assistance to clients in assessing their situation and determining how to proceed. The primary concerns with counsel and advice are that a client will misunderstand the relationship or the scope of the advice, that an attorney will lack information necessary for an accurate assessment (or even an accurate disclaimer) and that there may be an undiscovered conflict of interest.

This type of service should be distinguished from educational or informational assistance provided by legal services, bar centers, and pro bono attorneys. Education about law and the judicial system may be provided through brochures and websites

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Professor of Law  
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School of Law*

that provide information on various legal topics (divorce, custody, eviction, foreclosure) or proceedings (chancery court procedure, how to file a lawsuit). Or, attorneys may offer educational seminars or pro se clinics that provide information about particular types of actions, such as divorce or eviction. If the legal information is not tailored to the facts of a particular case, the assistance does not create a lawyer-client relationship and does not raise the same issues.

### B. Limited assistance – brief service

Attorneys often agree to assist a client in case assessment, investigation, negotiation, or to provide other limited services without agreeing to represent a client in litigation (“Brief Service”). For example, an attorney may agree to prepare a letter, make a phone call, meet with an agency, or handle an administrative hearing without agreeing to handle any litigation that ensues from the dispute. This form of unbundled assistance is also common among public and private attorneys.

### C. Assistance in case preparation

Attorneys may go beyond providing counsel and advice or brief service to help prepare a client to present a case pro se, explaining what arguments to make, how to present or object to evidence, or how to respond to particular questions. This assistance may also take the form of clinics that go beyond the pure informational clinics described above. Some legal organizations offer divorce, landlord-tenant, or other clinics in which volunteer lawyers assist clients in filling out form pleadings, discuss the facts of their individual cases, and offer advice on how to present their cases. Under these circumstances, an attorney-client relationship exists and the organization must obtain informed consent to the limited representation, consider conflicts issues, and other ethical concerns.

## UNBUNDLED LEGAL ASSISTANCE: IN LITIGATION

### A. Drafting pleadings

Attorneys sometimes draft individualized pleadings (as opposing to provision of forms described above) for a pro se litigant without entering an appearance in the case (sometimes called “ghostwriting”). The

practice has been controversial in some states, even when no ethical rule expressly prohibits the practice. A few ethics commissions and courts have held that an attorney who ghostwrites pleadings commits a fraud on the court by not revealing his or her involvement in the case.

### B. Limited appearance

An attorney may appear in litigation in a limited manner, representing a client in a single hearing or on a single issue in a case. For example, an attorney might rep-

resent a client on the issue of divorce but not custody, or agree to appear at a temporary support hearing but not in the divorce action.

A number of issues are raised by this practice, including whether a particular matter is appropriate for limited representation, the advice that should be given to, and consent obtained from, the client, and whether the court should be advised in advance of the limited representation.

*Continued on next page*



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C11-0318-012 (3/11)

## More Justice for All: Expanded Pro Bono Opportunities

### THE PROFESSIONAL RESPONSIBILITY CONCERNS

#### A. Competent representation

A lawyer has a duty to provide competent representation, which requires “thoroughness and preparation reasonably necessary for the representation.” MISS. R. PROF. RESP. 1.1 One might question whether counsel and advice or brief service is “competent” representation in a particular matter. Rule 1.2(c) allows a lawyer to limit representation if the client gives informed consent to the limited scope. On the other hand, the comments state that a “client may not be asked to agree to representation so limited in scope as to violate Rule 1.1.”

The following was added to the comments to MISS. R. PROF. RESP. 1.2 to clarify that limited scope representation in all forms is encouraged, but that attorneys must (1) determine that limited representation is reasonable under the circumstances, (2) explain to the client any disadvantages involved in limited representation, and (3) obtain the client’s informed consent.

*“Limited scope representation is an important means of providing access to justice for all persons regardless of financial resources. Lawyers are encouraged to offer limited services when appropriate, particularly when a client’s financial resources are insufficient to secure full scope of services. For example, lawyers may provide counsel and advice and may draft letters or pleadings. Lawyers may assist clients in preparation for litigation with or without appearing as counsel of record. Within litigation, lawyers may limit representation to attend a hearing on a discrete matter, such as a deposition or hearing, or to a specific issue in litigation.*

*Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client’s objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer’s services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not suf-*

*icient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.”*

#### B. Duty of candor to the court: drafting pleadings

The Mississippi Rules of Professional Responsibility do not explicitly prohibit a lawyer from assisting a client in case preparation or even drafting pleadings for a pro se litigant. However, courts and ethics commissions in a few states have found that undisclosed assistance in the form of drafting pleadings or case preparation violates the ethical duty of candor and truthfulness. The amendment to the comments to MISS. R. PROF. RESP. 1.2, quoted above, clearly state that an attorney may prepare pleadings for a client without appearing as counsel.

#### C. Termination of representation

Limited representation in matters in litigation presents additional concerns, since a lawyer’s withdrawal from the matter may require court approval. Rule 1.13 of the Uniform Rules of Circuit and County Practice, and Rule 1.08 of the Uniform Rules of Chancery Practice provide that a lawyer may not withdraw without permission of the court. Rule 1.16 of the Mississippi Rules of Professional Responsibility allows an attorney to withdraw from a case if the client’s interests will not be materially adversely affected, or (among other reasons) if “other good cause for withdrawal exists”. The comments to 1.16 were amended to add the italicized language:

“A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives or scope of the representation.”

#### D. Conflicts

Providing legal services through limited representation creates an attorney-client relationship that carries with it the obligations of that relationship, including

the duty of confidentiality and the duty to check for conflicts of interest. Identifying conflicts is problematic with regard to certain forms of pro bono limited representation. For example, assume an attorney who volunteers to provide counsel and advice on a Saturday at the local legal aid office, or who answers calls on a bar association hotline, is asked for advice by a tenant who is being evicted. The young lawyer is unaware that his firm represented the landlord in drafting his lease and handles evictions for the landlord when they are appealed.

Rule 1.9 of the Mississippi Rules provides that “A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes: (1) the representation will not adversely affect the relationship with the other client; and (2) each client has given knowing and informed consent after consultation.” Conflicts checks under these circumstances are not realistic. In the scenario above, the attorney may inadvertently give the legal services client limited advice about his rights in eviction without knowing that his firm’s client is the landlord.

A majority of states have resolved this issue by amending the Rules of Professional Responsibility to limit conflicts in this situation to known conflicts. These amendments remove the need for extensive conflicts checks, but preserve the protection against misuse of confidential information. The Mississippi Supreme Court adopted the ABA Model Rule dealing with this issue, with some modification, as Rule 6.5 of the Mississippi Rules of Professional Responsibility.

The new rule provides that a lawyer providing one-time, limited assistance through a bar association or nonprofit organization does not violate ethical rules regarding conflicts unless he or she is aware of a conflict. Nor does the lawyer’s firm violate conflicts rules by continuing to represent a party adverse to the one-time, pro bono client. If the volunteer lawyer decides to expand representation of the pro bono client, he or she is required to check with the firm for conflicts. If a conflict is revealed, the lawyer may not accept ongoing or continued representation of the pro bono client. However, he or she must

*Continued on next page*

continue to preserve all confidences received in the short-term representation. The volunteer lawyer must also take all necessary steps to be insulated from the firm's ongoing representation of a party adverse to the pro bono client. The text of the new rule is set out below.

**Rule 6.5 Nonprofit and court-annexed limited legal service programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited pro bono legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer in her firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

*Comment*

[1] *Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.*

[2] *A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation.*

*See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including the duty of confidentiality set out in Rule 1.6 and 1.9(b) are applicable to the limited representation.*

[3] *Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.*

[4] *Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. The lawyer participating in the pro bono representation is disqualified from continued representation of the pro bono client or from participating in his firm's representation of a client with interests adverse to the pro bono client. However, his personal disqualification will not be imputed to other lawyers in his firm.*

[5] *If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.* ■

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# Prisoner Reentry: Who's Coming To Your Neighborhood?

**A**fter I had been a circuit judge for about six years, I came home one evening to an uncomfortable situation. My wife told me a woman who lived down the street “dropped by” to speak with me about her son who had recently been released from prison.

The next day, I called the local Department of Corrections to ask about felons living near me. I learned that three people I sentenced to prison lived within 100 yards of my front door.

This event prompted me to realize that when people I sentenced are released from prison, they return to my town and, specifically, to my neighborhood. Over the years I have sentenced more than 10,000 people in felony cases. In most cases, I had the discretion to determine whether the offender was incarcerated or placed on probation. I mistakenly thought that prison rehabilitated people, and that a sufficiently severe punishment would teach the offenders a lesson, allowing them to come back home as law-abiding citizens. My own naiveté became clearer when I began to see the same offenders I had previously sentenced to prison return home after serving their time and promptly commit another crime. Like everyone, I wanted to be successful in my work, but as I sentenced people to prison for the second, third, or even fourth time, I knew something was wrong. Of course, if what you're doing doesn't work, you should try something different. Therefore, I started looking for answers.

In 1998, Judge William Hunter from Franklin, Louisiana, introduced me to drug courts, beginning a new chapter in my search for solutions to the problems of our criminal justice system. I am now convinced that drug courts work. Over 20 years of research and my personal experience as a judge have proven to me that

they should be part of our criminal justice system.

The Mississippi Department of Corrections (MDOC) effectively houses over 20,000 Mississippians on any given day. MDOC's cost to incarcerate a single prisoner for a day is among the lowest in the nation. Therefore, if efficient incarceration were the sole measure of a justice system's success, Mississippi would be at the top of the class. However, – based on observation of former inmates in my community and the recidivism rates I have seen throughout my career – I have concluded that incarceration should be about more than punishment alone. Our justice system should also work toward reducing recidivism and, as a result, improving community safety. Prisons are necessary, and some people should be locked away for long periods of time. Nevertheless, all people who commit crimes are not bad people; rather, they made bad choices. It is generally accepted that only 20 percent of persons in prison are sociopaths or have sociopathic tendencies. Therefore, the good news is that 80 percent of those in prison are not sociopaths, and they can be productive citizens if given the opportunity.

## WHERE WE ARE NOW

Of course, Mark Twain famously said, “There are three kinds of lies: lies, damned lies, and statistics.”<sup>1</sup> No one likes to be bombarded with statistics, but to understand the issues discussed in this article, one must be aware of some basic

*By Judge Keith Starrett  
Hattiesburg*

numbers regarding our justice system. MDOC reports:<sup>2</sup>

**Total inmates incarcerated** 20,972

**Total number of offenders in the communities** 37,131

**(Probation, parole, intensive supervision, earned release supervision or medical release)**

**Total offenders in Mississippi incarcerated or in community corrections** 58,103

**2010 Releases (male and female)<sup>3</sup>** 10,318

Now consider the recidivism rates based on inmates released during calendar year 2006 (the most recent year for which statistics are available):<sup>4</sup>

**Total number released calendar year 2006** 17,873

**Returned to custody in less than one year** 2,527

**One to two years** 1,666

**Two to three years** 1,056

**Greater than three years** 283

**Total** 5,532

Therefore, 31 percent of the inmates MDOC released in 2006 returned to custody. Admittedly, Mississippi's recidivism rate is not unreasonably high when compared to national statistics. However, that is no reason to accept it as the best we can do. Lowering our recidivism rates would not only improve community safety but also save taxpayer dollars.

**COSTS**

The costs of government and the reduction of those costs are on everyone's mind these days. MDOC accounts for a significant chunk of the state budget. The following chart is taken from the legislative budget fiscal year 2011 presentation presented by Commissioner Christopher Epps on September 22, 2009.

As the figures above demonstrate, MDOC anticipated an overall deficit of \$7,295,095.00 during fiscal year 2010. Therefore, we know that approximately 31 percent of those released by MDOC in

MISSISSIPPI DEPARTMENT OF CORRECTIONS ORIGINAL FISCAL YEAR 2010 REQUEST COMPARED TO FISCAL YEAR 2010 APPROPRIATION <sup>5</sup>			
Program	Original FY 2010 Request February 2, 2009	FY 2010 Appropriation	Potential FY Deficit
Support	\$ 172,139,076	\$ 170,524,330	\$ (1,614,746)
Private Prisons	\$ 86,713,427	\$ 81,131,302	\$ (5,582,125)
Regional Facilities	\$ 34,019,883	\$ 33,346,866	\$ (673,017)
Local Confinement	\$ 9,129,015	\$ 8,836,714	\$ (292,301)
Medical	\$ 56,758,822	\$ 45,841,309	\$ (10,917,513)
Agricultural Program	\$ 4,000,546	\$ 4,001,145	\$ 599
Parole Board	\$ 907,317	\$ 744,749	\$ (162,568)
	\$ 363,668,086	\$ 344,426,415	\$ (19,241,671)
Savings from Lower Population, Bed Management, and New Legislation	\$ 11,946,576		\$ 11,946,576
Amended FY 2010 Request	\$ 351,721,510	\$ 344,426,415	\$ (7,295,095)

2006 eventually returned to incarceration, and that MDOC expected a \$7,295,095.00 budget deficit in fiscal year 2010. The pertinent question moving forward is to what degree could we have mitigated that deficit by lowering the recidivism rates of those released in years past? To what extent can we do so in the future?

**THE BOTTOM LINE:**

**LOWER RECIDIVISM = LESS CRIME = LESS COST = FEWER VICTIMS = SAFER COMMUNITIES**

Where does Mississippi go from here? If we want to improve our state's criminal justice system, we've got to work smarter. Around the country, many corrections professionals are pushing for what is called "Evidence-Based Practice," which, simply

put, means practicing what the evidence and research have proven to work. Social scientists constantly evaluate and study the criminal justice system. Wise stewardship of one's resources is always a virtue. Further, Mississippi's economic situation requires that we do more with less when it comes to corrections. We must determine what practices work, then implement them here. One of the most encouraging developments in evidence-based practice has been the dramatic increase in the number of reentry programs across the country. The purpose of such programs is to promote the effective reintegration of offenders into communities after their release from prison.

Reentry programs involve a comprehensive approach to addressing the prob-

*Continued on next page*

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## Prisoner Reentry: Who's Coming To Your Neighborhood?

lems faced by inmates once they are released from prison. Their goal is to assist offenders in acquiring the life skills necessary to become law-abiding citizens and productive members of the community. A variety of programs contribute to this effort, including prerelease programs, drug rehabilitation, mental health treatment, vocational training, housing assistance, and work programs. President Obama recently announced a "reentry initiative" designed to provide funding to state governments for the implementation of institutional and community-based offender reentry programs. Many of these programs are funded through grants provided by the Second Chance Act. For example, the West Jackson Community Development Corporation recently received a \$300,000.00 grant from the Department of Justice to assist young offenders in reintegrating into the West Jackson community.<sup>6</sup> The program can assist 40 people, but that's only a small fraction of the 10,318 people who are released in Mississippi every year.

Reentry programs have been very successful in other states. However, if our state's leadership decides to pursue reentry programs as a method of addressing recidivism, they will cost money. The West Jackson program mentioned above costs \$7,500.00 per participant each year. However, a particularly successful form of reentry programs is the "judge-supervised reentry court," and such programs can be operated for about \$2,500.00 per participant each year.

A judge-supervised reentry program works similarly to a drug court. The judge presides over weekly or biweekly meetings with the program's participants, who are closely monitored between meetings by special probation officers. Those participating in reentry courts typically serve their entire sentence – a fact which often provides comfort to skeptical citizens and political cover for public figures supporting such programs. Reentry programs can also begin during the last six to twelve months of an inmate's sentence. In that scenario, the money saved on an inmate's

bed space provides ample funding for a reentry program. However, when considering the economic impact of judge-supervised reentry programs, the most important fact to consider is the decrease in recidivism rates.

Judge-supervised reentry programs have been tremendously successful across the country. There are approximately 40 judge-supervised reentry programs in the federal court system. Two of them are in the state of Mississippi – in Hattiesburg and Gulfport. Most states have some type of organized prisoner reentry program, and many of them include judge-supervised reentry courts. Most judge-supervised reentry courts operate in this manner:

1. Before release, all inmates are given a test to measure their risk for recidivism. In the federal system, the test is called a Risk Prediction Index – "RPI." An inmate's risk of recidivism is measured on an ascending scale of one to nine.
2. Persons with the highest RPI scores (5 or greater in the federal system) are considered candidates for judge-supervised reentry programs.
3. Participants can volunteer to participate in the program or, alternatively, they may be required to do so as a condition of release.
4. The program functions in essentially the same manner as a drug court. Participants have frequent contact with the supervising judge, and probation officers closely monitor them between court sessions. Participants are required to seek employment, and they are frequently tested for drug use. They also receive treatment for their addictions.
5. The program employs sanctions and incentives to motivate participants. The most severe sanction, of course, is being returned to prison. However, as an incentive, the court may also reduce the participant's term of parole or supervised release.

Many states' reentry programs have shown promising results, significantly reducing recidivism rates. States which have aggressively pursued such programs

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have taken advantage of federal funding through the Second Chance Act.

### THE TEXAS SITUATION

In 2007, Texas, which incarcerates a slightly larger percentage of its population than Mississippi does, faced a crisis in its corrections system. Between 1985 and 2005, Texas experienced a 300 percent increase in its prison population, and it invested \$2.3 billion in an additional 108,000 prison beds. In 2005, projections showed that Texas would need an additional 14,000 to 17,000 prison beds over the next decade. The Texas legislature reached a bipartisan agreement to address the state's need for corrections reform. In an effort to address recidivism rates, it allocated funds to a variety of pre-incarceration and post-release programs, including prisoner reentry programs. After implementation of the reforms, projections showed virtually zero growth in the state's prison population over the next five years, obviating the need for up to 17,000 new prison beds.<sup>7</sup> Since Texas enacted these reforms, social scientists have studied the state's reentry programs and concluded that they produce a significant reduction in recidivism rates.

Mississippi has 17 adult drug court programs across the state which operate according to certain statewide standards. These drug courts function at a cost of only \$1,500.00 per participant each year. The infrastructure for judge-supervised reentry programs is the same as that for drug courts. Both involve drug testing, case management, frequent contact with the supervising judge, close monitoring by probation officers, job counseling, substance abuse treatment and aftercare, and the expectation that each participant will be responsible and accountable for doing what he or she must in order to fully reintegrate into their community.

Many inmates never receive effective drug treatment. Therefore, they return to their home communities at significant risk of failure. Mississippi's drug court judges have done good work, and their efforts have reduced recidivism among drug-addicted offenders. Shouldn't we also pursue the most efficient use of our resources by putting the inmates with the greatest chance of failure upon release – whether due to substance abuse, behavioral prob-

lems, or lack of education – in a judge-supervised reentry program? Reentry programs, like drug courts, reduce recidivism. These programs work throughout the country, and they are working right now in the federal court system in Hattiesburg and Gulfport. There's no reason that they can't work throughout Mississippi's state court system.

The best way to fight crime is to prevent the next crime from occurring. We are blessed with a group of state judges committed to the drug courts. Our state's drug court program has reached the point of self-sustainability, and the infrastructure for a state-wide reentry program is already in place. The question before us now is whether we'll take the next logical step and build on the work we've already done, implementing reentry programs that have been proven to reduce recidivism rates. Will we do what's necessary to ensure the safety of our communities and bring positive change to the lives of thousands of our former prison inmates, or will we continue with business as usual in Mississippi? Only time will tell.

*Judge Keith Starrett is a United States District Judge for the Southern District of Mississippi. He is a member of the Board of Directors of the National Association of Drug Court Professionals and serves as the chairman of its Reentry Committee. He was recently appointed to the Criminal Law Committee of the Judicial Conference of the United States by Chief Justice John Roberts. ■*

<sup>1</sup> MARK TWAIN, AUTOBIOGRAPHY OF MARK TWAIN (100th Anniversary Edition, 2010).

<sup>2</sup> Mississippi Department of Corrections Monthly Statistics, March 2011.

<sup>3</sup> Mississippi Department of Corrections Fiscal Year 2010 Annual Report.

<sup>4</sup> Mississippi Department of Corrections Recidivism Report Based on Releases During Calendar Year 2006. Report Date: November 10, 2009, includes releases from parole, probation, earned release supervision, house arrest and flat timers.

<sup>5</sup> Mississippi Department of Corrections Fiscal Year 2011, Budget Presentation September 22, 2009 by Commissioner Christopher Epps.

<sup>6</sup> Jimmie E. Gates, *Grant Targets Prison Cycle*, THE CLARION LEDGER, May 27, 2011.

<sup>7</sup> Texas Legislative Budget Projection 2005-2010

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# 106th Annual Meeting Highlights of the 2011 Bar Convention



*Bar President Nina Tollison presented the gavel to incoming President Hugh Keating of Gulfport.*



*Young Lawyers Division President Derek Arrington of Hattiesburg passed the gavel to incoming President Jennifer Hall of Jackson.*

*Speakers for the Young Lawyers Division "The Future of Profession" General Assembly were Judge Carlton Reeves on the "Courts", York Craig, Jr. on "Civility", Joy Lambert Phillips on "Diversity", and Ronnie Morton on "Technology."*



*The Young Lawyers Division 75th Anniversary General Assembly*



*Many people attended the Annual Business Session to hear the State of the Judiciary Report.*



*The Mississippi Access to Justice Commission speakers included Judge Denise Owens, Rodger Wilder, Judge Donna Barnes, and La'Verne Edney.*



*Visiting with exhibitors are Harold Mitchell of Greenville and Judge John Gregory of Okolona.*



*Golf Tournament*



*"Bob Barnett" Memorial Tennis Tournament*



*The Crab Hunt Contest is sponsored by The Koerber Company during the Family Beach Bash.*



At the Fellows of the Young Lawyers Breakfast, the newly inducted Fellows were introduced – Kirk Milam of Oxford, Chad Russell of Jackson, Dean Jim Rosenblatt of Jackson, Deanne Mosley of Jackson, and Brad Dillard of Tupelo.



Blake Teller of Vicksburg, President of the Fellows of the Young Lawyers, passed the gavel to incoming President Camille Evans of Ridgeland.

## Breakfasts, Luncheons and Classes



Price Prather Luncheon – Chief Justice William Waller, Jr. and Charlotte Waller



Price Prather Luncheon – Clare Hornsby of Biloxi and Karen Sawyer of Gulfport



Price Prather Luncheon – Jessica Dupont, Price Prather Luncheon Committee Chair; Michelle Easterling, Women in the Profession Committee Chair; and Christine Tatum, Susie Blue Buchanan Award subcommittee member.



Price Prather Luncheon – Laura Glaze of Jackson, Amanda Alexander of Jackson, and Jennifer Wilkinson of Hattiesburg



Price Prather Luncheon – Julie Gresham of Biloxi and Rachel Pierce of Tupelo



50 Year Anniversary Breakfast – Lawrence Magdovitz, Clarksdale; Dan Martin, Brandon; Max Graves, Meadville; Charles Pickering, Sr., Petal; Charles Brewer, Jackson; and Judge Billy Bridges, Brandon

Members of the 2011 Women in the Profession Committee - front row:

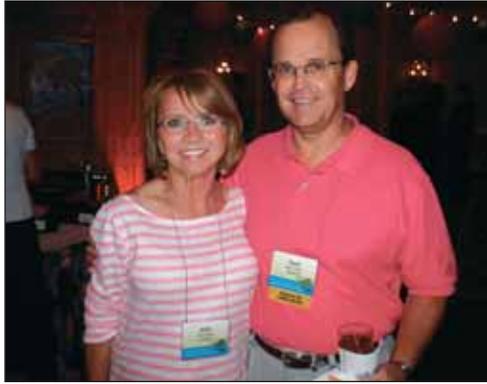


Judge Allan Alexander, Maura McLaughlin, Tanya Weber, Christine Tatum, Cheryn Baker, back row: Nina Tollison, Michelle Easterling, Jessica Dupont, Jennifer Wilkinson and La'Verne Edney

Larry and Nouth Magdovitz of Clarksdale enjoying the Swing Dance Class



# Welcome Reception



*Kim and Sam Kelly of Jackson*



*David Case of Hernando and Stephen Simpson of Gulfport*



*Guy Mitchell of Tupelo, pictured right, and family*



*Martin and Dolores Smith of Poplarville*



*Judge Kent McDaniel of Brandon with wife Jo Ann*



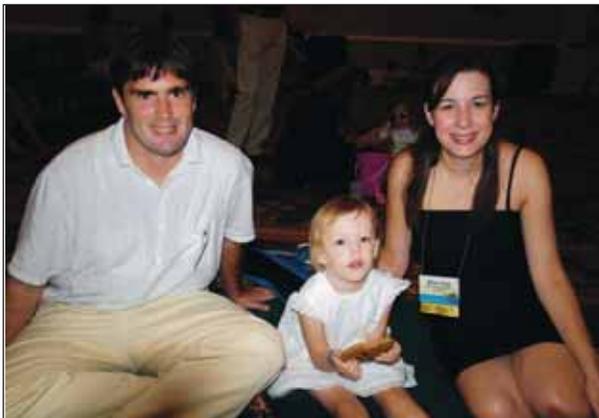
*Stan and Angie Smith of Madison*



*Kevin and Mary Margaret Gay of Jackson*



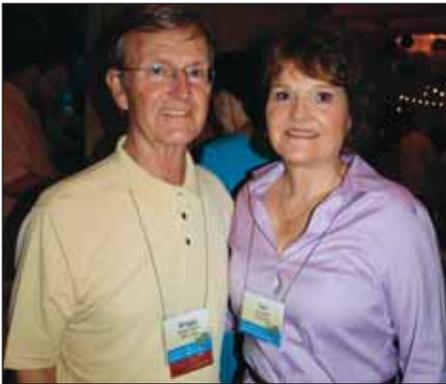
*John and Judy Hunter of Pascagoula*



*Mary Clay Morgan of Jackson and family*



*Lanny and Angie Pace of Brandon with daughter Molly*



*Briggs and Dot Smith of Batesville*



*President Nina Tollison of Oxford and Tammra Cascio of Jackson*



*Pepper and Angela Cossar of Madison*



*Aleita Sullivan of Mendenhall, Judge Deneise Lott of Jackson, Wesla Leech of Mendenhall, and Judge Virginia Carlton of Jackson*

## Welcome Reception

*Michael Wolf of Jackson and family*



*Farish Percy of Oxford, Cheryn Baker of Gulfport, and Mary Nichols of Biloxi*



*Judge David Ishee of Gulfport and Joe Stevens of Hattiesburg*



*Judge Jim Kitchens and Jo Ann Kitchens of Columbus*



*Tameka Wilder of Madison and Tondre Buck of Madison*



*Gene, Daphne, and Jan Harlow of Laurel*



*William and Jennifer Dukes of Madison with James and Melissa Findley of Jackson*



*Tommy Billups of Jackson, Sherri Flowers-Billups of Jackson, and Matthew Thompson of Madison*

## Welcome Reception



*Doug and Sara Whelan Morgan of Jackson*

*Judge John Grant of Brandon with daughter, Annalissa Grant, enjoying the tropical birds at the "Tropical Paradise" Welcome Reception*



*Cherie and Matthew Wade of Biloxi and Meta Copeland of Jackson*



*Anthony and Pamela Simon of Jackson*



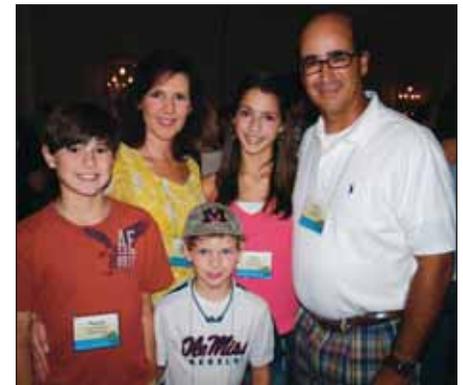
*Dorsey and Susan Carson of Jackson and daughter Hays*



*Trey and Jill Lamar of Senatobia with son Ford*



*Richard and Ginny Roberts of Ridgeland and Hugh and Donna Keating of Gulfport*



*Perry Phillips of Hattiesburg, pictured right, with family*



*Business Law and Health Law Sections*



*Business Law and Health Law Sections*

## Section Meetings



*Government Law Section*



*Government Law Section – Speakers included Leonard Van Slyke, Ron Rychlak, Pieter Teeuwissen, and Attorney General Jim Hood*



*Government Law Section*



*Alternative Dispute Resolution Section*



*Real Property Section*



*Prosecutors Section – Lt. John Harless with the MS Bureau of Narcotics addressed the audience*



*Prosecutors Section*



*Prosecutors Section*



*Gaming Law Section*



*Estates & Trusts and Taxation Sections*



*Litigation Section*

## Section Meetings



*Family Law Section – Judge Eugene Fair, Judge Joe Lee, and David Bridges*



*Family Law Section*



*Workers Compensation & Labor and Employment Law Sections*



*Workers Compensation & Labor and Employment Law Sections*



*SONREEL Section*

# “Nina’s Reception” and Bingo



*Nina Tollison of Oxford and Judge Cynthia Brewer of Madison*



*Bill and Ginger Ready of Meridian*



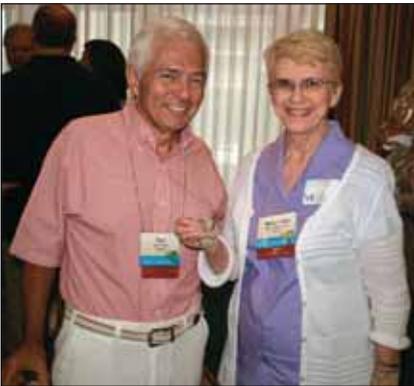
*Judge Michael McPhail of Hattiesburg and family*



*Jim and Susan Johnstone of Pontotoc and Marcie Fyke Baria of Bay St. Louis*



*Rodger and Ruthie Wilder of Gulfport*



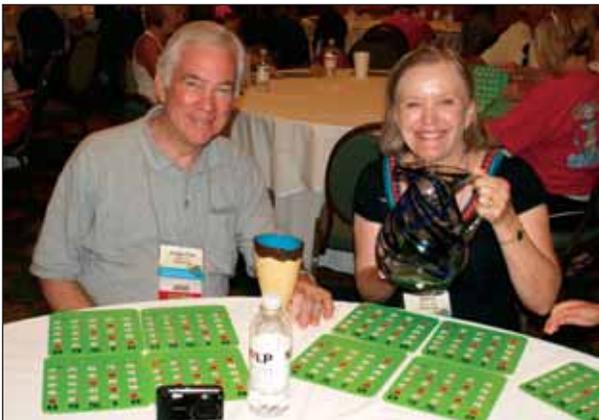
*Don Fruge of Oxford and Mary Libby Payne of Pearl*



*March Chinn of Jackson and Warner Alford of Oxford*



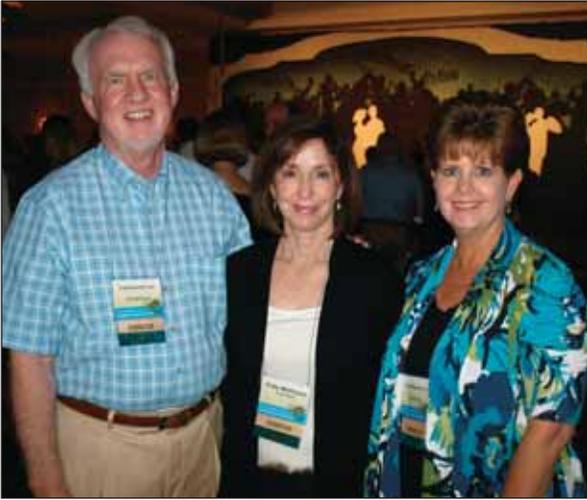
*Bingo Winners*



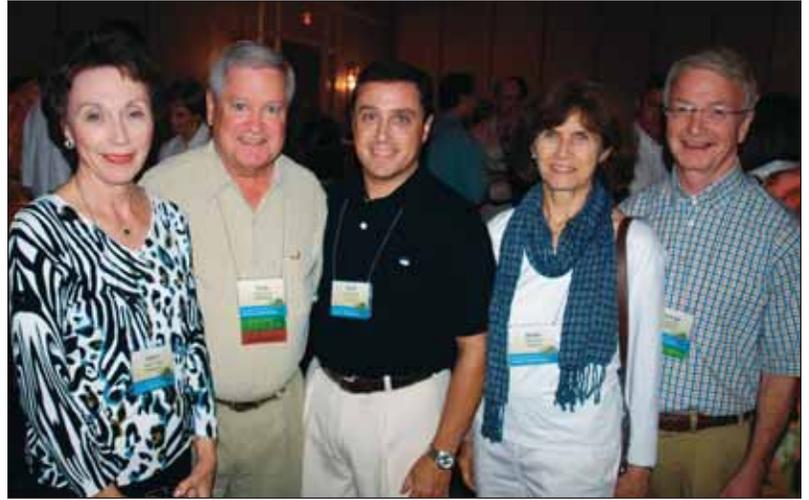
*Judge Gene Fair and Stella Fair of Hattiesburg*



*Matthew Thompson of Madison, Judge Betty Sanders of Greenwood, and Criss Lott of Jackson*

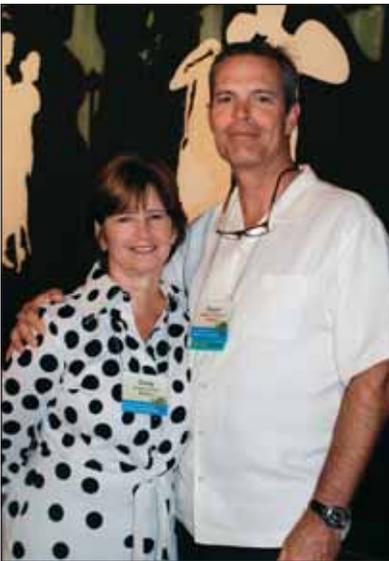


*President's Reception sponsor, Fox-Everett – Bill and Patty Mathison, and Sandi East*

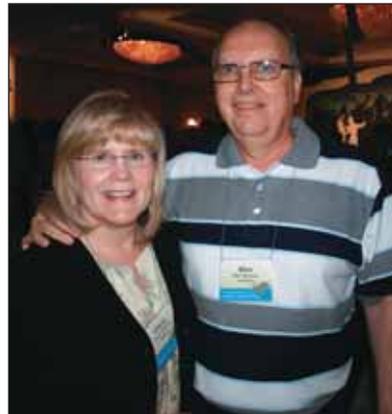


*Helen and York Craig, Jr. of Ridgeland, York Craig, III of Jackson, and Bette and George Fair of Jackson*

## President's Reception



*Pepper and Cindy Crutcher of Madison*



*Mike and Cherie Maloney of Jackson*



*Chris and Cheryn Baker, and Margaret Anne and Marcy Forester*

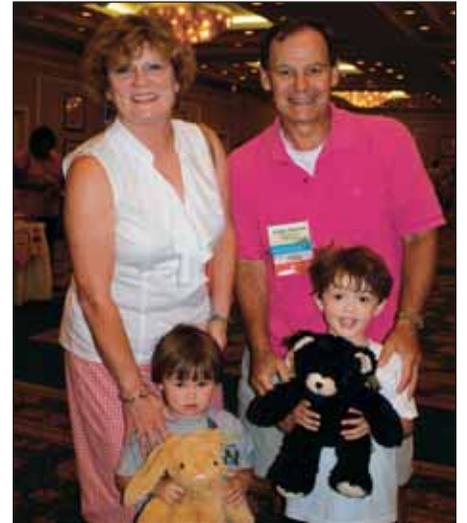


*Judge Bob Walker and Debbie Walker of Gulfport, Dean Jim Rosenblatt of MS College School of Law, Judge Halil Ozerden of Gulfport, and Judge Louis Guirola of Hattiesburg*

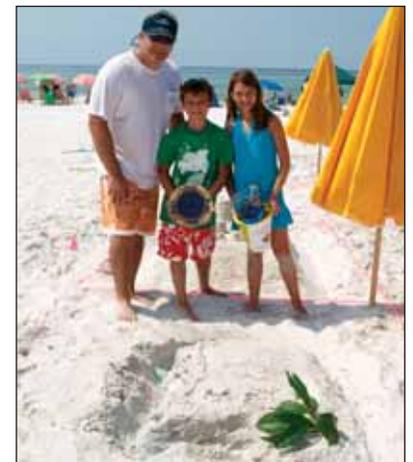


*Judge Jimmy Maxwell of Oxford and Harold Mitchell of Greenville*

## Children's "Build-a-Bear" Party



## Sandcastle Contest



## 2010-2011 Distinguished Service Award

**Amanda Green Alexander**  
Jackson



*Amanda Alexander, pictured left, was awarded the 2010-2011 Distinguished Service Award. Presenting the award was Mississippi Bar President Nina Tollison.*

**Thomas B. Alexander**  
Jackson



*The Mississippi Bar awarded the 2010-2011 Distinguished Service Award to Tom Alexander, pictured right. Presenting the award was Mississippi Bar President Nina Tollison.*

## 2010-2011 Lifetime Achievement Award

**Jack F. Dunbar**  
Oxford



*Jack Dunbar, pictured left, received The Mississippi Bar's 2011 Lifetime Achievement Award for devoted service to the public, profession, and the administration of justice over the span of his distinguished legal career. Presenting the award was Mississippi Bar President Nina Tollison.*

## 2010-2011 Judicial Excellence Award

**Judge David W. Houston, III**  
Aberdeen



*The Mississippi Bar honored Judge David Houston, pictured right, with the 2011 Judicial Excellence Award. 2010-2011 Bar President Nina Tollison presented the award.*

**2010-2011  
Susie Blue Buchanan  
Award presented by the  
Women in the  
Profession Committee**

**Lydia Quarles**  
Starkville



*Lydia Quarles, pictured left, received the 2011 Susie Blue Buchanan Award from the Women in the Profession Committee. Presenting the award is MS Bar President Nina Tollison.*

**2010-2011  
Curtis E. Coker  
Access to Justice Award  
presented by MVLP**

**Debra Giles, Jackson**  
and  
**Brunini Grantham Grower & Hewes**



*The Curtis E. Coker Access to Justice Award was presented to Brunini Grantham Grower & Hughes law firm with Sam Kelly, pictured left, accepting on their behalf, and to Debra Giles, pictured right. Presenting the award is incoming Bar President Hugh Keating, pictured center.*

**2010-2011  
Outstanding Young Lawyer  
Award presented by the  
Young Lawyers Division**

**Tiffany Graves**  
Jackson



*Tiffany Graves received the 2011 Outstanding Young Lawyer Award. Presenting the award was Young Lawyers Division President Derek Arrington of Hattiesburg.*

**2010-2011  
50 Year  
Anniversary Members**



*50 Year Anniversary members attending convention were Atley Kitchings of Birmingham, AL, Charles Pickering of Laurel, Judge Billy Bridges of Brandon, Dan Martin of Brandon, and Lawrence Magdovitz, Sr. of Clarksdale.*

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# 2011-2012 President-Elect Nominees

Ballots will be sent in January, 2012



**Guy W. Mitchell, III**  
Tupelo

Review Activity, both located in Washington, D.C. Following active duty he, his wife Susan, and their two children settled in Tupelo where he entered the private practice of law with Mitchell, McNutt & Bush, a firm his grandfather had begun in 1904. Mitchell has been engaged primarily in insurance defense litigation, public entity liability, real estate, banking and probate. In addition, he has served as general counsel for the city of Tupelo for 35 years.

Professionally, he is a shareholder of Mitchell, McNutt & Sams, P.A. In The Mississippi Bar, he has held a number of positions, including chairman of the Civil Justice Reform Act Advisory Committee for the Northern District of Mississippi and the Judicial Liaison Committee, director of the Young Lawyers Section, and chair of the Summer School for Lawyers. He has served on the Special Task Force to Strengthen Confidence in the Legal System and the Mississippi Supreme Court Advisory Committee on Rules, and is a Fellow of the Mississippi Bar Foundation. He is a past president of the Law Alumni Chapter of the University of Mississippi School of Law and is a member of the Lamar Order.

Mitchell is a past president of the Lee County Bar Association and the Mississippi Defense Lawyers Association. He is a member of the American Bar Association, the American Judicature Society, the International Association of Defense Counsel, and the American College of Mortgage Attorneys.

Outside of his practice, Mitchell has been deeply involved in community and economic development, healthcare and charitable endeavors. He serves on the board of BancorpSouth and on the boards of directors of North Mississippi Health Services, Community Development Foundation, and the CREATE Foundation. He has been chairman of the United Way of Greater Lee County, and chairman of the board of directors of Mississippi Methodist Senior Services. He is also a charter member of the board of the Autism Center of Tupelo and has previously served on the board of directors of the Tupelo Symphony and of the Tupelo Community Concert Association. He has served as president of the Kiwanis Club and was a charter member of the Association for Excellence in Education and Leadership Lee County. He was named Tupelo's Outstanding Citizen by the Tupelo Junior Auxiliary in 1996.

In his church, First United Methodist, Mitchell has served as chairman of the Administrative Board, the Finance Committee, the Staff Parish Committee, and the Stewardship Committee.

Mitchell is married to the former Susan Frances Sudduth of Vicksburg, Mississippi. They are the parents of two daughters, Katherine Mitchell Tucker (Ricks) of Atlanta, Georgia, and Liza Mitchell Frugé (Don, Jr.) of Oxford, and are exceptionally fond of their seven grandchildren, Don Frugé, III, Rosemary Frugé, Charlie Frugé and Guy Frugé, and Francie Tucker, Eva Tucker and George Tucker.



**D. Briggs Smith**  
Batesville

**D. Briggs Smith** was born and reared in Meridian, Mississippi. He is a 1962 graduate of the University of Mississippi School of Pharmacy, and he received his Juris Doctorate degree from the University of Mississippi School of Law in 1966.

Briggs served in the military as a medic/pharmacist with the 186<sup>th</sup> United States Air Force Combat Support Squadron at Key Field in Meridian, Mississippi. He was a pharmacist at the University of Mississippi Medical Center in Jackson, Mississippi, before returning to the University of Mississippi to pursue a degree in law.

Briggs began practicing law in Batesville, Mississippi, in 1967 with the Cliff Finch Law Firm. In 1974 he co-founded the Smith Phillips Law Firm in Batesville of which he presently is of counsel. During his 37 years of practice, he has been a member of the trial bar and has handled cases involving products liability, gaming, personal injury and other cases in his general office practice. He is admitted to practice in all state and federal courts in Mississippi as well as the Fifth Circuit Court of Appeals and the United States Supreme Court.

He has been involved in numerous activities with the Bar and is a Fellow of the Mississippi Bar Foundation. Briggs served as trustee of the Mississippi Bar Foundation (1997-2000). He has served on various Bar committees. Additionally, he has participated in the James O. Dukes Professionalism Program, served as a coach and as district and state judge for Mock Trial Competition, and most recently was appointed to The Mississippi Bar Task Force to address honesty and integrity of the Bar and fairness and impartiality within the judiciary. He is a member of the American Bar Association, the Mississippi Association for Justice, and the Panola County Bar Association, having served as president.

His law related memberships include being a member of the Ole Miss Law Alumni Association of which he served as president. He was selected as Ole Miss Law Alumnus of the year (2003-2004). He is a member and past president of the University of Mississippi Lamar Order.

Briggs has memberships in the Litigation Counsel of America and American College of Barristers. Since 1995 he has been certified by the National Board of Trial Advocacy in the area of Civil Trial Advocacy. He has written articles and spoken on subjects including appellate practice and gaming law. Briggs is also a certified mediator.

Active in civic and community endeavors, Briggs has served as president and secretary of the Batesville Rotary Club. He was selected as a Rotary Paul Harris Fellow. He has held the positions of Elder and Deacon in the Batesville Presbyterian Church and twice served as chairman of the Pulpit Nominating Committee. He is currently serving as a Trustee for the St. Andrew Presbytery. Having attained the rank of Eagle Scout, Briggs has been very active in the scouting program in North Mississippi. He has participated in numerous and various school and city charitable organizations both as a member and an officer.

Briggs is married to the former Dot Fancher of Senatobia, Mississippi, and they have three sons: Dan of Ocean Springs, who is married to the former Michelle Miller of Pascagoula, a practicing attorney in Biloxi with Page, Mannino, Peresich and McDermott; Carter, who is married to the former Cassie Anderson of Jackson; and Fancher Smith of Memphis, Tennessee. Dot and Briggs have five grandchildren.

# Final Disciplinary Actions

## Disbarments, Suspensions, Inactive Disability Status and Irrevocable Resignations

**Thomas D. Keenum of Booneville, Mississippi:** The Supreme Court of Mississippi accepted the irrevocable resignation of Thomas D. Keenum in accordance with Rule 10.5 of the Rules of Discipline for the Mississippi State Bar (MRD). As a result, the Court **Disbarred** Mr. Keenum and he is prohibited from seeking reinstatement.

**Jesse Burge Goodsell of Jackson, Mississippi:** A Complaint Tribunal appointed by the Supreme Court of Mississippi **Suspended** Mr. Goodsell in Mississippi Bar v. Goodsell, 2010-B-1382, for a period of **six (6) months** for violations of Rules 1.2(a), 1.3, 1.4(a), 1.5, 8.1(b), and 8.4, MRPC.

In September 2009, a client filed a Bar Complaint against Mr. Goodsell alleging that he paid Mr. Goodsell to represent him in connection with expunging a criminal conviction. The client paid Mr. Goodsell in full in July 2008. The client unsuccessfully attempted to contact Mr. Goodsell for over a year to determine the status of the case. He also discovered that nothing had been filed in Circuit Court to effectuate the expungement. He eventually hired another lawyer who promptly handled the matter.

The Office of General Counsel sent Mr. Goodsell three demands for a response to the underlying Bar Complaint. He failed to submit a response in spite of the three demand letters. Mr. Goodsell did request additional time to respond to the Bar Complaint, but failed to do so. Therefore, Mr. Goodsell received actual notice of the demand to respond. The Committee on Professional Responsibility directed the Office of General Counsel to file a Formal Complaint against Mr. Goodsell.

The Bar filed a Formal Complaint on August 23, 2010, alleging violations of Rules 1.2(a), 1.3, 1.4(a), 1.5, 8.1(b), and 8.4, Mississippi Rules of Professional Conduct. Mr. Goodsell was personally served on August 25, 2010. He filed an Answer on September 14, 2010. On September 21, 2010, the Bar propounded discovery to Mr. Goodsell.

When Mr. Goodsell failed to respond to discovery, the Bar filed a Motion to Compel Discovery on November 4, 2010. The Complaint Tribunal entered an Order allowing Mr. Goodsell until November 25, 2010, to respond. On December 2, 2010, Mr. Goodsell requested that he be allowed until December 12, 2010, to respond. The Complaint Tribunal entered an Order allowing him to respond by January 3, 2011.

When Mr. Goodsell had still not responded by January 3, 2011, the Bar filed a Motion for Default Judgment. Mr. Goodsell did not file a response to the Bar's Motion. The Complaint Tribunal entered its Opinion and Judgment on January 27, 2011.

The Complaint Tribunal considered all of the factors required by the Supreme Court of Mississippi prior to imposing discipline. The Complaint Tribunal particularly found that another short suspension or public reprimand would not deter similar misconduct by Mr. Goodsell. In addition, the Complaint Tribunal found that Mr. Goodsell had disobeyed two orders of the Complaint Tribunal to respond to discovery propounded by the Bar and further found that Mr. Goodsell had made no material effort to participate in the disciplinary proceedings in a meaningful way.

Mr. Goodsell has received discipline on several occasions, including an Informal Admonition in 1993; a Private Reprimand in 2000; Public Reprimands in 2001, 2006, 2007 (2 Reprimands); two 14-day suspensions in 2009; and one 180-day suspension in 1995. Of particular note, Mr. Goodsell has been issued two Public Reprimands for failing to respond to Bar Complaints in December 2007 and July 2006. In addition, he was suspended for 14 days in May 2009 for failing to respond to a Bar Complaint.

**David Paul Alley of Picayune, Mississippi:** A Complaint Tribunal appointed by the Supreme Court of Mississippi **Suspended** Mr. Alley in *Mississippi Bar v. David Paul Alley*, 2010-B-0052, for a period of **one (1) year** for violations of Rules 1.2, 1.3, 1.4, 1.5, 1.16(d), 8.1(b) and 8.4 (a, c and d), MRPC.

In the cases that formed the basis of the Formal Complaint, a client hired Mr. Alley and paid him in full. Shortly thereafter, Mr. Alley closed his office in Picayune and apparently abandoned his law practice. Mr. Alley performed no work and he failed to refer the matter to another lawyer for completion. The client was unable to contact Mr. Alley by telephone or mail. Mr. Alley failed to respond to the informal complaint and failed to attend the investigatory hearing set for the matter. The Bar issued demands for a response and for Mr. Alley to attend the investigatory hearing. Mr. Alley either failed or refused to accede to the Bar's demands.

In two additional counts of the Formal Complaint, two more clients experienced similar misconduct by Mr. Alley. In total, the Bar received three separate Bar Complaints from three separate parties. Each complainant had essentially similar complaints: that each had paid Mr. Alley a fee for services that were not performed. They were unable to contact Mr. Alley because he closed his office and failed to notify the clients, the Bar, and the Supreme Court of Mississippi that he had changed addresses. In fact, the Bar was unable to determine Mr. Alley's whereabouts except through significant investigation. Mr. Alley was eventually found in Spring, Texas.

At the direction of the Committee on Professional Responsibility, the Bar filed a Formal Complaint against Mr. Alley on January 11, 2011, alleging Mr. Alley had violated Rules 1.2, 1.3, 1.4, 1.5, 1.16, 8.1(b), and 8.4(a, c and d), MRPC. A private process server personally served Mr. Alley with process on February 11, 2011. Pursuant to the Rules of Discipline for the Mississippi State Bar (MRD), Mr. Alley had twenty days following service of process to answer the Formal Complaint. Mr. Alley failed to answer the Formal Complaint within the twenty day period or afterward. Moreover, he failed to respond to the Bar's Motion for Default Judgment or file any pleading in this case.

On March 22, 2011, the Bar obtained a *Clerk's Entry of Default* pursuant to Rule 55(a) of the Mississippi Rules of Civil Procedure. The Complaint Tribunal sub-

*Continued on next page*

sequently entered a Default Judgment in the case on April 15, 2011. In the Default Judgment, the Complaint Tribunal directed the parties to file written briefs on or before April 26, 2011, regarding the appropriate discipline to be imposed in the case. The Bar filed its brief on April 26, 2011, in which it recommended the Complaint Tribunal suspend Mr. Alley from the practice of law for a period of one year. Mr. Alley failed to file a brief.

Mr. Alley's misconduct falls into two categories: violation of his ethical obligations to his clients and violation of his ethical obligations to the legal profession. Mr. Alley violated Rule 1.2, MRPC, in each underlying case by failing to perform the work for which he was paid. Mr. Alley violated Rule 1.3, MRPC, by failing to pursue the objectives of each case in a diligent manner. An attorney's failure to perform any work on a matter is a *per se* violation of this rule. Mr. Alley also violated Rule 1.4, MRPC, by failing to communicate the status of the case and by absenting himself from his office and eventually the State of Mississippi. Mr. Alley violated Rule 1.5, MRPC, by charging a fee and performing no work. An attorney's failure to perform any work on a matter for which he is paid in full is a *per se* violation of this rule. Mr. Alley violated Rule 1.16(d), MRPC, when he abandoned each case. Further, he violated this rule when failed to return documents and unearned fees in each case. Mr. Alley violated Rule 8.1(b), MRPC, which provides that an attorney shall not fail to respond to a lawful request for information from a disciplinary authority. Mr. Alley violated this rule when he failed to answer the Bar Complaints filed in these matters where the Office of General Counsel demanded that he do so. He further failed to attend the investigatory hearing in spite of the Bar's demand to do so. Finally, Mr. Alley failed to answer the Formal Complaint in the case or file a brief regarding discipline. By virtue of his violations of these rules, Mr. Alley is also in violation of Rule 8.4(a, c and d).

## Public Reprimands

**Sherry S. Deakle of Stateline, Mississippi:** The Committee on Professional Responsibility issued a **Public Reprimand** against Ms. Deakle in

docket number 09-372-2 for violations of Rules 1.8(c) and 5.3 (b and c) of the Mississippi Rules of Professional Conduct (MRPC).

Ms. Deakle received a Bar Complaint alleging that her office had prepared a will which listed her secretary, Bridgette Bonner, both as Executrix and as a Beneficiary. In responding to the Bar Complaint and as part of the investigatory hearing of this matter, Ms. Deakle admitted her secretary prepared the will for the client; that the will was prepared under her supervision; and acknowledged that the will named her employee, Ms. Bonner, as Beneficiary.

Rule 1.8(c), MRPC, requires that a lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee. By including her secretary in the document, Ms. Deakle prepared a will which included a testamentary gift to an employee of the drafting lawyer's firm.

Rule 5.3(b), MRPC, requires that a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer. Ms. Deakle herself was precluded from being a beneficiary; as Ms. Bonner was employed to assist in preparing the client's will, she is likewise precluded. Ms. Deakle failed to ensure and maintain Ms. Bonner's professional obligations.

Rule 5.3(c), MRPC, requires that a lawyer shall be responsible for the conduct of a non-lawyer employee and will be responsible for conduct in violation of a rule of professional conduct if (1) the lawyer orders or, with the knowledge of the specific conduct, ratified the conduct involved; or (2) the lawyer has managerial authority or direct supervisory authority of the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action. Ms. Deakle knew throughout the drafting of the will that a precluded testamentary gift was being included.

## Private Reprimands

A Complaint Tribunal appointed by the Supreme Court of Mississippi issued a **Private Reprimand** against an attorney for violations of Rules 3.3(a)(4) and 8.4(a and d), MRPC.

The Formal Complaint in this case came about as a result of the attorney's request that formal proceedings be instituted following the issuance of discipline in the underlying case. In the underlying case, The Bar filed an information and belief complaint against the attorney based on information obtained from an attorney under their obligation to report professional misconduct of another attorney in accordance with Rule 8.3, MRPC. The information concerned the attorney's representations to a Chancery Court in which the attorney failed to disclose and originally affirmatively denied the existence of an employment contract for services to be rendered in an estate case. T h e

Chancery Court found that had the Court been advised of the existence of the employment contract, it would have considered the employment contract carefully before ruling on the reasonableness of the attorney's fee application. As a result, when the existence of the contract was brought to the Court's attention, the Court found that the fees awarded to the attorney and his law firm should be reduced from \$420,891.50 to \$276,033.75 for work performed for the benefit of the estate. Further, the Court found that the fees awarded to the attorney and his firm should be reduced from \$213,946.23 to \$141,517.35 for work performed for the estate and a related trust. Therefore, the Court reduced the attorney's fees by \$144,857.75 and \$72,428.88, respectively, for a total reduction in the amount of \$217,286.63. The attorney's failure to inform the Chancery Court of the existence of the employment contract was a material fact.

The attorney failed to inform the Chancery Court of the existence of the contract in 2007 because he stated he was unaware of such a contract at the time. However, the attorney also failed to inform the Chancery Court of the existence of the contract when it was later brought to his attention. The Supreme

# Final Disciplinary Actions

Court of Mississippi has since affirmed the decision of the Chancery Court with regard to the attorney's conduct.

Rule 3.3(a)(4), MRPC, provides that a lawyer shall not knowingly offer evidence that the lawyer knows to be false. In the event the lawyer has offered material evidence and comes to learn it was false, this Rule provides that the lawyer has a duty to take reasonable remedial steps. In this case, the attorney may not have known that no employment contract existed when he made that representation to the Chancery Court. However, upon discovery that a contract did exist, the attorney had a duty to take reasonable remedial steps to correct the error. The violation of the rule occurred when he failed to undertake any remedial steps to correct his misstatement.

Rules 8.4(a and d), MRPC, provide that it is professional misconduct for a lawyer to violate the rules of professional conduct and to engage in conduct that is prejudicial to the administration of justice.

The Committee on Professional Responsibility issued a **Private Reprimand** to an attorney in docket number 09-230-1 for violations of Rules 1.16(d) and 8.1(b), MRPC.

A client filed a Bar Complaint alleging that her attorney had failed to return her client file and unearned attorney's fees after the representation was terminated and she had hired new counsel for her divorce matter. In response to the Bar Complaint, the attorney admitted that the new counsel for the client had contacted him requesting the file and unearned fees. The attorney stated that, at the time of submitting his response, he was making arrangements to forward the file and unearned portion of the retainer.

An investigatory hearing took place at the direction of the Committee on Professional Responsibility. At the conclusion of the client's testimony, the attorney provided a copy of the file. However, the attorney provided no meaningful explanation as to why the client file and unearned fee were not released. During the hearing, the attorney produced a letter dated November 6, 2009, addressed to the client. The attorney stated in the corre-

spondence that he was refunding the unearned portion of the fee and preparing an Agreed Order allowing his withdrawal from the case. The attorney also stated in the letter that he was willing to forward the file to the client's new attorney upon receipt of proper authorization by the client. The client testified she had not received the letter or the check, but indicated the stated refund amount was sufficient. The attorney stated he would issue a new refund check to the client and provide the Bar with a copy of the same. No subsequent copy of the letter or check was provided to the Bar.

The Bar requested supplemental information from the attorney in June and July 2010. Each request included a notice that failure to respond and provide the sought information could result in a finding of violation of Rule 8.1(b), MRPC. The attorney admitted he failed to respond to the requests for additional information from the Office of General Counsel.

Rule 1.16(d), MRPC, requires a lawyer, upon termination of representation, to take steps to the extent reasonably practicable to protect a client's interest and to, among other responsibilities, surrender papers and property to which the client is entitled and refunding any advance payment that has not been earned.

Rule 8.1(b), MRPC, requires an attorney to respond to a lawful demand for information from a disciplinary authority. While the attorney timely responded to the Bar Complaint and attended and meaningfully participated in the investigatory hearing, he failed to respond to two (2) demands for additional information. Had the attorney responded with the requested information the investigatory hearing might not have been necessary.

The Committee on Professional Responsibility issued a **Private Reprimand** to an attorney in docket number 10-208-1 for violations of Rules 1.2, 1.3 and 1.4, MRPC.

A client filed a Bar Complaint against an attorney alleging that he retained the attorney to represent him in a collection matter in September 2008. The parties agreed to settle the matter and agreed that the client would be paid in three monthly install-

ments, February, March, and April 2009. The client contacted the attorney in March 2009 and learned that no installment payments had been made. Thereafter, the client encountered difficulty communicating with the attorney. Finally, in November 2009, the client was able to communicate to the attorney that he should make one more attempt to obtain payment. The attorney thereafter failed to communicate with the client.

In response to the Bar Complaint, the attorney conceded that he did not diligently handle the client's case. The attorney drafted a complaint twice and the client signed the last one but the attorney failed to file it. The attorney also admitted that he had failed to adequately communicate to the client the status of the case.

Rule 1.2, MRPC, provides that a lawyer shall abide by the client's decisions concerning the objectives of the representation.

Rule 1.3, MRPC, provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4, MRPC, provides that a lawyer shall keep a client reasonably informed about the status of a matter and promptly respond to reasonable requests for information.

The Committee on Professional Responsibility issued a **Private Reprimand** to an attorney in docket number 10-199-1 for violations of Rules 1.2, 1.3, 1.4 and 1.16(b), MRPC.

A client filed a Bar Complaint against an attorney alleging that the attorney delayed informing her that he would not be representing the estate of her husband in a wrongful death case against several medical providers until after the statute of limitations had run for filing the lawsuit. The client's husband died March 29, 2008. The client retained the attorney in November 2009 to pursue the wrongful death action based on medical malpractice. The statute of limitations expired in May 2010; the attorney informed her in June 2010 that he would not be pursuing the case. Subsequently, no other attorney

*Continued on next page*

will take the case because the statute of limitations has expired.

In response to the Bar Complaint, the attorney provided documentation that he began work immediately to investigate the medical malpractice claim, to open the estate, and to authorize the attorney to represent the estate. The Chancellor signed the orders opening the estate and appointing the attorney to represent it on January 14, 2010. On February 13, 2010, the attorney received a medical report from an expert finding no medical negligence. On March 3, 2010, the attorney sent the statutorily required Notice of Claim to the medical providers to toll the statute of limitations. However, it was not until June 4, 2010, that the attorney informed the client that he was declining further representation in the case, one month after the statute of limitations had run.

Rule 1.2, MRPC, provides that a lawyer shall abide by the client's decisions concerning the objectives of the representation. The attorney violated this rule by not withdrawing from representation at such a

time that the client could obtain other counsel and pursue the medical malpractice claim.

Rule 1.3, MRPC, provides that a lawyer shall act with reasonable diligence and promptness in representing a client. Here, the attorney timely began work on the wrongful death matter but failed to diligently conclude his evaluation of the case within a time frame that would have allowed the client an opportunity to obtain other counsel to pursue the matter when the attorney decided to withdraw from representation.

Rule 1.4, MRPC, provides that a lawyer shall keep a client reasonably informed about the status of a matter and explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. The attorney violated this rule when he failed to inform the client about his evaluation and his decision to withdraw from representation at a point where she could make an informed decision about pursuing the litigation with another attorney.

Rule 1.16(b), MRPC, provides that a lawyer may withdraw from representation if withdrawal can be accomplished without materially adverse effect on the interests of the client. The attorney withdrew from representation only after the statute of limitations had run, adversely affecting the client's ability to pursue litigation with another attorney.

## Reinstatements

**Christopher Cofer of Hoover, Alabama:** The Supreme Court of Mississippi granted Petitioner's Motion to Withdraw Petition for Reinstatement Due to Death of Christopher Cofer.

**Azki Shah of Clarksdale, Mississippi:** The Supreme Court of Mississippi conditionally granted the Petition of Azki Shah for reinstatement to the practice of law. In order to resume the practice of law in Mississippi, Mr. Shah must take and pass the Mississippi Bar Exam. ■

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*The Chapter further announces that W. Raymond Hunter was elected to  
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# Young Lawyers Division News

## 2010-2011 Wills for Heroes

### Sponsored by the Young Lawyers Division



Derek R. Arrington  
Young Lawyers Division President  
2010-2011



Choctaw, MS - October 21, 2010  
Choctaw Police and Fire Department,  
Health Center EMTs and Wildlife & Parks  
employees



Ridgeland, MS - January 24-25, 2011  
Ridgeland Fire Department



Fulton, MS - April 2, 2011  
Itawamba County Fire, Police and Emer-  
gency Management System



Cleveland, MS - May 11, 2011  
Cleveland Volunteer Fire Department



Pascagoula, MS - June 2-3, 2011  
Pascagoula Police and Fire Departments



Brandon, MS - May 17, 2011  
Rankin County Sheriff's Department

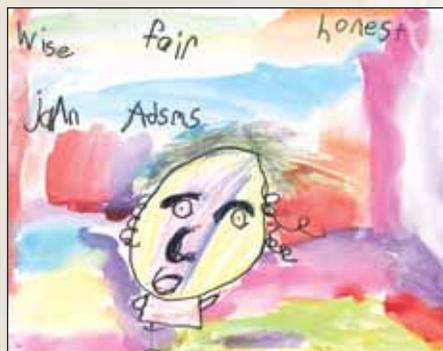


Gulfport, MS - June 10-11, 2011  
Gulfport Police and Fire Departments and American Medical  
Response Department

# Mississippi Students Grades K-12 Celebrated



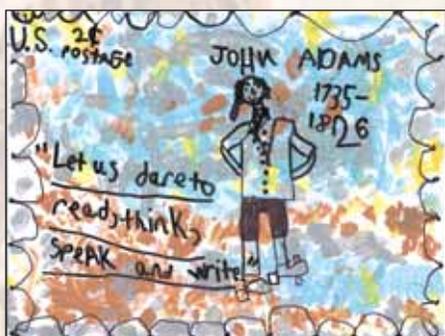
**Special Education - First Place**  
Dylan Schwartz  
North Bay Elementary



**Kindergarten - First Place**  
Anajah Laneany  
Waveland Elementary

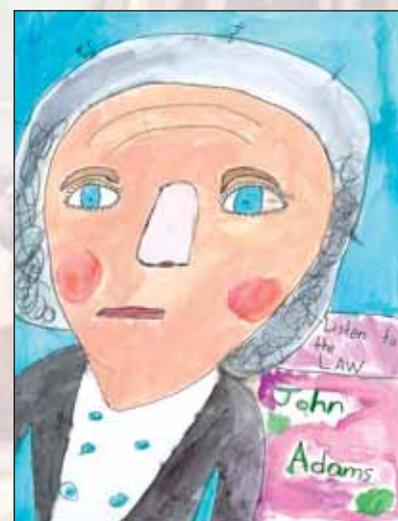


**Kindergarten - Second Place**  
Emily Arnold  
Waveland Elementary



**First Grade - First Place**  
Bryan Grove  
Clinton Christian Academy

Law Day was May 1, and this year the Mississippi Bar conducted a statewide art contest. Flyers were sent to every public and private school (K-12) in our state. The Bar received over 600 entries from 15 different schools from across the state. Winners were selected from every school per grade, and from those winners, a first and second place were awarded overall for the state for each grade. Winning students from each school received certificates, and overall winners' work was on display at the Mississippi State Capitol Building during Law Week and showcased in this issue of *The Mississippi Lawyer* magazine.



**First Grade - Second Place**  
Sadie Pohl  
Waveland Elementary



**Second Grade - First Place**  
Caroline Harrington  
Christ Covenant School

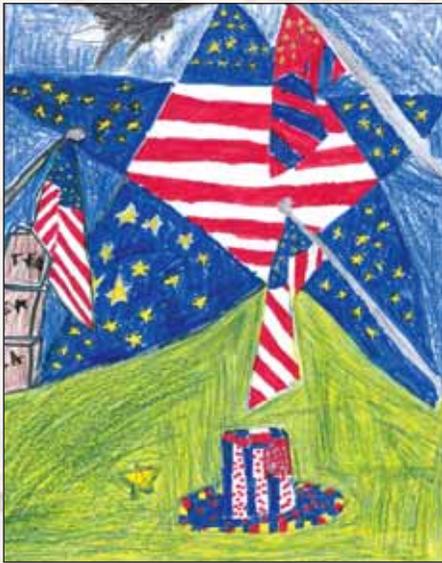


**Second Grade - Second Place**  
Mollie Jones  
Simpson Academy



**Third Grade - First Place**  
Victoria Tolito  
North Bay Elementary

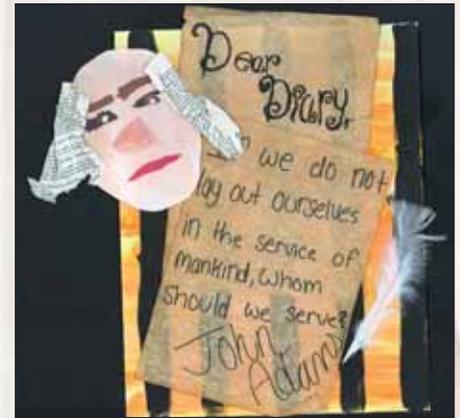
# Law Week 2011 Through an Art Contest



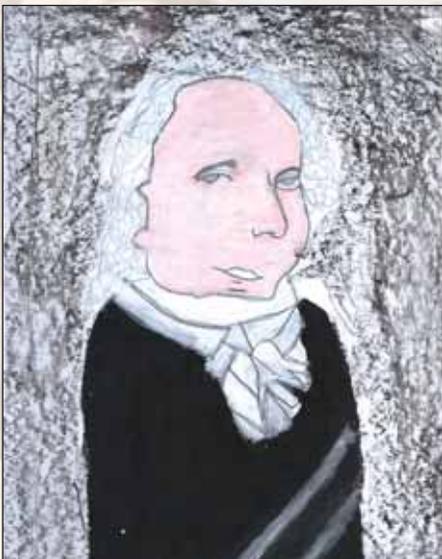
**Third Grade – Second Place**  
Lily Grace Thigpen  
Christ Covenant School



**Fourth Grade – First Place**  
Deanna Ladnier  
Weddington Elementary School



**Fourth Grade – Second Place**  
Marion Pohl  
North Bay Elementary



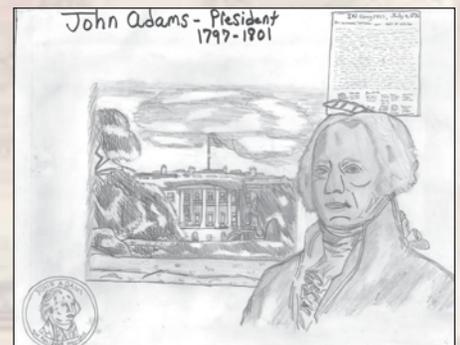
**Fifth Grade – First Place**  
Holland Meyers  
St. Richard School



**Fifth Grade – Second Place**  
Keely Jones  
North Bay Elementary

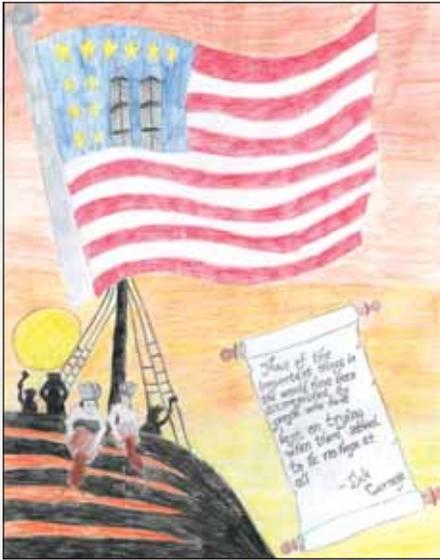


**Sixth Grade – First Place**  
Jared Vardaman  
East Rankin Academy  
Overall Division Winner Grades 1st-6th



**Sixth Grade – Second Place Tie**  
Ethan Brewer  
Simpson Academy

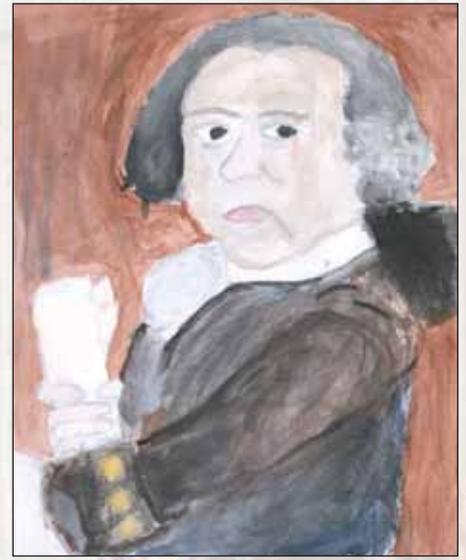
# The Theme for Law Day 2011 was "The Legacy"



**Sixth Grade – Second Place Tie**  
Maddy Sanders  
Marietta Elementary School



**Seventh Grade – First Place**  
Devin Williams  
Laurel Middle School



**Seventh Grade – Second Place**  
Keyandra Walton  
Old Towne Middle School



**Eighth Grade – First Place**  
Sophia Slusasz  
Madison Ridgeland Academy



**Eighth Grade – Second Place**  
Emily Hillhouse  
East Rankin Academy



**Ninth Grade – First Place Tie**  
Leah Whisenant  
Rosa Scott



**Ninth Grade – First Place Tie**  
Sachika Denham  
Ocean Springs High School  
Overall Division Winner Grades 7th-9th

# of John Adams, From Boston to Guantanamo"



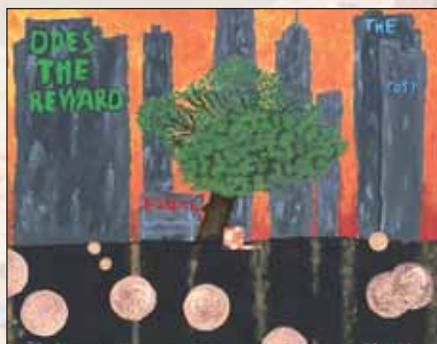
**Tenth Grade – First Place**  
Jenna Matthews  
Ocean Springs High School  
Overall Division Winner  
Grades 10th-12th  
Best In Show



**Tenth Grade – Second Place**  
Hope Henry  
Madison Ridgeland Academy



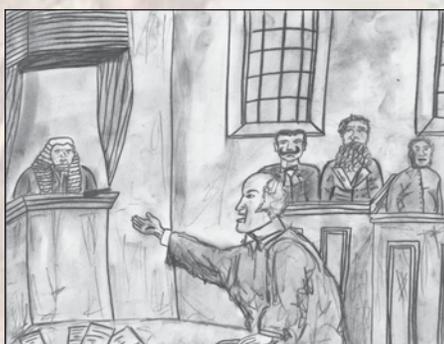
**Ninth Grade – Second Place**  
Tyler Baxter  
Madison Ridgeland Academy



**Eleventh Grade – Second Place**  
Peyton Elliot  
Madison Ridgeland Academy



**Twelfth Grade – First Place**  
Katherine Hudson  
Starkville Academy



**Eleventh Grade – First Place**  
Amber Corley  
Simpson Academy



**Twelfth Grade – Second Place**  
Rachael Headley  
Madison Ridgeland Academy

# Bar Hosts the 2011 Section Orientation Session

Over 30 new Section Officers attended the FY 2011-2012 Orientation Session in August 2011. The half-day program is designed to familiarize new Section leaders with their duties and brief them on resources available to them through the Bar. This year's session included an overview by MS Bar President Hugh Keating.



*Alternative Dispute Resolution Section Officers include Philip Gaines, Chair; Anne Veazey, Vice-Chair; and Jim Warren, Secretary-Treasurer.*



*Health Law Section is represented by Crane Kipp, Chair; and Kathryn Gilchrist, Vice-Chair.*



*2011-2012 Estates & Trusts Section Officers are Andrew Foxworth, Chair; Karen Green, Vice-Chair; and Pete Cajoleas, Secretary-Treasurer.*



*Senior Lawyers Section Officers include Meredith Aldridge, Chair; and Jim Collins, Vice-Chair.*



*Family Law Section Officers are Sheila Smallwood, Vice-Chair; and Harold Grissom, Secretary – Treasurer.*



*Representing the Labor and Employment Law Section are Robert Richardson, Vice-Chair; and Pope Mallette, Secretary-Treasurer.*



*Representing the Intellectual Property Section are Anita Modak –Truran, Chair; and Meaghin Burke; Vice-Chair.*



*The Prosecutors Section Officers are Doug Evans, Chair; John Young, Vice-Chair; and Hal Kittrell, Secretary-Treasurer.*



*Real Property Section Officers include David Allen, Vice-Chair; Julie Brown, Chair; and William Smith, Secretary – Treasurer.*



*2011-2012 Business Law Section Officers are Kenneth Farmer, Vice-Chair; and Stan Smith, Secretary-Treasurer.*



*2011-2012 Workers Compensation Section Officers are Carlos Moore, Secretary – Treasurer; and Amanda Alexander, Vice-Chair.*



*Officers representing various Sections include Ted Connell, Secretary-Treasurer of the Litigation Section and Mary Blumentritt, Chair of the Taxation Section.*



*Representing the Government Law Section are Donna Gurley, Chair; Michael Wolf, Vice-Chair; and Melissa Carleton, Secretary – Treasurer.*



*Representing the SONREEL Section are Gretchen Zmitrovich, Chair; John Brunini, Vice-Chair; and Trey Smith, Secretary – Treasurer.*

# Mississippi Rules Annotated



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**Litigation Section of**



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# Expert Witnesses: Best Practices to Employ and Pitfalls to Avoid<sup>1</sup>

*“There are two sides to every coin.”* Author unknown

**J**ust as there are two sides to every coin, for every best practice concerning expert witnesses there is a corresponding pitfall. The starting point for considering best practices and pitfalls in civil litigation is to be aware of the differences in the rules applicable to experts in Mississippi, specifically the variations between the Federal Rules of Civil Procedure and the Mississippi Rules of Civil Procedure.

The two basic criteria for selecting a *testifying* expert are (1) insuring that the expert is qualified in his field of expertise and (2) that his opinions will be allowed to be heard by the jury.

Regardless of whether a lawyer is in Federal or State court, conceptually there are two different types of rules that apply to experts. First, there are the provisions of the rules of civil procedure, specifically Rule 26, that address what attorneys must do before trial when dealing with experts. This includes provisions regarding both disclosure and discovery. As is discussed in various recent case examples that follow, absent compliance with these provisions it is entirely possible that the potential expert will be prohibited from testifying or prohibited from offering cer-

tain opinions as a part of the expert's testimony. This prohibition is not based on the expert's qualifications or the soundness of the expert's opinions. The prohibition arises from a failure to follow the requirement of the rules. Attention to these provisions is absolutely essential to insure that the groundwork is laid so that an expert's opinions will be allowed to be heard by the jury.

A side-by-side comparison of the relevant portions of the respective Rule 26 provisions demonstrates the substantial differences facing a practitioner depending on whether the case is pending in Federal or State court. The side-by-side comparison follows on the next page:

*Continued on next page*

*By United States District Judge  
Carlton Reeves,  
Ralph E. Chapman, and  
Frank M. Holbrook*

### Mississippi

#### Rule 26. General Provisions Governing Discovery

...

**(b) Scope of Discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

...

(4) *Trial Preparations: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subsection (b)(4)(C) of this rule, concerning fees and expenses, as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subsections (b)(4)(A)(ii) and (b)(4)(B) of this rule, and (ii) with respect to discovery obtained under subsection (b)(4)(A)(ii) of this rule, the court may require, and

with respect to discovery obtained under subsection (b)(4)(B) of this rule, the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

### Federal

#### Rule 26. Duty to Disclose; General Provisions Governing Discovery

##### (a) Required Disclosures.

...

##### (2) Disclosure of Expert Testimony.

(A) *In General.* In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) *Witnesses Who Must Provide a Written Report.* Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) *Witnesses Who Do Not Provide a Written Report.* Unless otherwise stipulated or ordered by the court, if the wit-

ness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) *Time to Disclose Expert Testimony.* A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

(E) *Supplementing the Disclosure.* The parties must supplement these disclosures when required under Rule 26(e).

...

##### (b) Discovery Scope and Limits. . . .

##### (4) Trial Preparation: Experts.

(A) *Deposition of an Expert Who May Testify.* A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) *Trial-Preparation Protection for Draft Reports or Disclosures.* Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) *Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses.* Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

**(D) Expert Employed Only for Trial Preparation.** Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in [Rule 35\(b\)](#); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

**(E) Payment.** Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and

(ii) for discovery under (D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

**(e) Supplementing Disclosures and Responses.**

**(2) Expert Witness.** For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pre-trial disclosures under Rule 26(a)(3) are due.

It is readily apparent that the Federal Rule is much more detailed than the corresponding Mississippi Rule. Three major differences are as follows:

- A summary of expert testimony under M.R.C.P. 26 is an interrogatory response by the party to the litigation while under the Federal Rules the expert himself, not the party, must provide a signed written report. Attorneys should consider the effect this distinction has on conducting an expert's cross-examination at trial.
- F.R.C.P. 26 requires a list of the expert's publications and prior testimony. These prior publications and an expert's prior testimony may be a fertile ground for cross-examination. While the information is available as a matter of course in federal cases, it is not required under M.R.C.P. 26.
- Under F.R.C.P. 26, the deposition of an expert is a matter of right. Under M.R.C.P., it may be taken only with leave of the court (or as a practical matter by the agreement of the parties).

The second conceptually distinct category of rules that apply to experts are the rules of evidence, specifically Rules 702-705.<sup>2</sup> Unlike the rules of civil procedure which focus on process rather than substance, the rules of evidence focus on both of the two basic criteria for selecting a *testifying* expert i.e. (1) insuring that the expert is qualified in his field of expertise and (2) that his opinions will be allowed to be heard by the jury. Although these rules deal with admission of evidence at trial, a lawyer dealing with experts has to visualize his or her case "from green to

tee". In selecting the expert to be presented at trial ("the green"), the lawyer needs to be thinking about the rules of evidence when retaining the expert ("the tee"). If the expert is not allowed to testify because he or she does not meet the criteria of the rules of evidence, the fact that the lawyer has fully complied with the processes of Rule 26 of the rules of civil procedure is meaningless.

In the rules of evidence, there are much slighter differences between the corresponding Federal and Mississippi Rules. M.R.C.P. and F.R.C.P. 702 and 705 are identical and for civil cases the corresponding versions of Rule 704 are also identical.<sup>3</sup> The first sentence in both F.R.E. 703 and M.R.E. 703 is identical; however, F.R.E. 703 adds an express limitation concerning the disclosure to the jury of facts or data relied on by an expert that is not otherwise admissible in evidence: "Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect."

Any discussion of best practices and pitfalls concerning experts need to begin with the federal standard first articulated in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*<sup>4</sup> Under the *Daubert* standard, the trial judge serves as the "gatekeeper": he is not to permit any "expert" to take the witness stand unless and until the party offering him has carried its burden of "prov[ing] by a preponderance of the evi-

*Continued on next page*



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dence that the testimony is reliable,” and otherwise meets the criteria laid down in Rule 702.<sup>5</sup> And while the gatekeeper has “discretion,” it is “discretion in choosing the manner of testing expert reliability,” “not discretion to abandon the gatekeeping function,” and “not discretion to perform the function inadequately. Rather, it is discretion to choose among *reasonable* means of excluding expertise that is *fausse* and science that is junky.”<sup>6</sup>

The Mississippi Supreme Court brought Mississippi expert law into the modern era when it amended M.R.E. 702 to mirror F. R. E. 702, and announced, in the case of *Mississippi Transp. Commission v. McLemore*, 863 So.2d 31 (Miss. 2003), that Mississippi’s standard for testing the admissibility of “expert” testimony would be the same as the federal standard first articulated in *Daubert*.<sup>7</sup> In taking this step the Court intentionally “tightened, not loosened, the allowance of expert testimony.”<sup>8</sup>

Thus, it is clear that a practitioner must focus on Rule 702 of the rules of evidence when deciding whether a potential expert will be allowed to testify at trial. The rule identifies six separate criteria and each is briefly examined here.

### a. “scientific, technical, or other specialized knowledge”

While an expert’s testimony may include opinions, what the expert offers must consist of, not merely opinions, but “knowledge.” The term “connotes more than subjective belief or unsupported speculation” - - it contemplates a “body” of facts and ideas<sup>9</sup> - - a “discipline” that has “applicable professional standards outside the courtroom”<sup>10</sup> - - a “field” in which one can “practice,” and which manifests a degree of “intellectual rigor.”<sup>11</sup> Almost always, genuine “knowledge,” within the meaning of Rule 702, “grows naturally and directly out of research . . . conducted independent of the litigation,” as contrasted with opinions developed “expressly for purposes of litigation.”<sup>12</sup>

Thus however qualified the expert may be, if what he offers does not rise to the level of “knowledge,” it is not admissible.

### b. witness “qualified as an expert”

It is not enough that the expert have specialized knowledge. The knowledge must flow from expertise that is relevant to the precise question presented. So, for example, the Mississippi Supreme Court has held that a medical doctor, despite his degrees and experience practicing, was not qualified to opine on the standard of care for dialysis procedures.<sup>13</sup> Likewise, the Court held that a witness with experience in repairing wrecked autos was not qualified to testify about the cause of a wreck;<sup>14</sup> that a neurosurgeon, even a board-certified one, was not qualified to testify as to otolaryngology;<sup>15</sup> and a retired Admiral, despite his service on a U.S. governmental panel studying the use of Agent Orange in Vietnam, was not qualified to testify about the health effects of the active ingredient, dioxin.<sup>16</sup>

Thus the purported expert must offer “knowledge” (not mere opinions) that grows directly from relevant expertise. And when he does so, an expert is unqualified if his experience is too remote in time,<sup>17</sup> or if it has been acquired largely or solely as an expert witness.<sup>18</sup>

### c. “assist the trier of fact”

Separate and apart from the forgoing, the testimony that the expert offers must “assist the trier of fact.” The test is whether the trier of fact can satisfactorily evaluate and understand the evidence without the expert’s assistance.<sup>19</sup> Expert testimony is unnecessary, and flatly inadmissible, “if all the primary facts can be accurately and intelligibly described to the jury, and if they, as men of common understanding, are as capable of comprehending the primary facts and of drawing correct conclusions from them as are witnesses possessed of special or peculiar training,” etc.<sup>20</sup>

Some frequently offered forms of expert testimony that, as a matter of law, do not assist the jury include:

- Conclusions as to the legal significance of various facts adduced at trial, including such conclusions as the defendant was “negligent,” or the product was “defective”;<sup>21</sup>
- Speculation. Just as the medical expert must testify to a reasonable degree of medical certainty – or not

at all – so any other expert must go beyond mere possibilities;<sup>22</sup>

- Testimony that simply summarizes documents, and the testimony of others;<sup>23</sup>
- Testimony about the credibility or consistency of other witnesses' testimony;<sup>24</sup> and
- Advocacy masquerading as opinion.<sup>25</sup>

### d. "sufficient facts or data"

The expert's testimony must be based on "sufficient facts or data." At its most basic, this means that if, for example, the expert proposes to testify about the chemical makeup of a sample, the sample must be large enough to meet the requirements of the testing process. In a broader sense, it means that the expert must stick to the facts. That is, he must *have* facts on which to rely;<sup>26</sup> the facts upon which he relies must not have holes in them;<sup>27</sup> and the facts upon which he relies must not contradict other known facts.<sup>28</sup>

### e. "reliable principles and methods"

The expert must disclose the principles and methods that he has employed, and must demonstrate that they are reliable, that is to say, that they produce accurate results when properly employed. In determining reliability, the

[f]actors to consider may include whether the theory or technique can be and has been tested; whether it has been subjected to peer review and publication; whether ... there is a high known or potential rate of error; whether there are standards controlling the technique's operation; and whether the theory or technique enjoys general acceptance within the expert's particular field.

*Gulf South Pipeline Co., LP v. Pitre*, 35 So.3d 494, 499 ¶7 (Miss. 2010) (quoting *McLemore*, 863 So.2d at 37).

The first-listed factor, testing, has been described as the "most significant"; "numerous cases have held that the failure to subject a proffered opinion to scientific testing justifies exclusion."<sup>29</sup>

Another test of reliability is whether the supposed expert is "proposing to testi-

fy about matters growing naturally and directly out of research [that he has] conducted independent of the litigation, or whether [he has] developed [his] opinions expressly for purposes of testifying."<sup>30</sup> "That a person spends substantially all of his time consulting with attorneys and testifying is not a disqualification. But experts whose opinions are available to the highest bidder have no place testifying in a court of law, before a jury, and with the imprimatur of the trial judge's decision that he is an 'expert.'"<sup>31</sup>

### f. "applied . . . reliably"

Finally, the expert must show that he reliably applied his principles and methods. It is not enough for him to show that an uncontaminated sample of liquid placed in an uncontaminated container will, if acidic, turn an uncontaminated strip blue litmus paper red. He must go further and show that the sample he tested, the container he put it in, and the litmus paper that he used were, in fact, uncontaminated. While we have used a "scientific" illustration here, it is important to remember that this criterion, like all of the others in Rule 702, also applies to "technical" knowledge and "other specialized" knowledge.<sup>32</sup>

One final note: Even where the proffered testimony meets the requirements of Rule 702, a Court may well exclude it under Rule 401<sup>33</sup>, 403,<sup>34</sup> or both.

## RECENT CASES ILLUSTRATING PITFALLS AND BEST PRACTICES

With the basic framework in place, practitioners should consider the following cases that illustrate particular application of "best practices" and "pitfalls". The recent cases involving experts confirm that it is critical to insure that each expert is thoroughly prepared and all information is made available to the expert. They further illustrate that the expert must be prepared to defend his position and opinion with something more than a mere conclusion. Even when an opinion has "some" support, it still may be insufficient.

### (1) IT'S A PITFALL TO FAIL TO FILE A SUPPLEMENTATION OF AN EXPERT FOLLOWING AN EXPERT'S DEPOSITION.

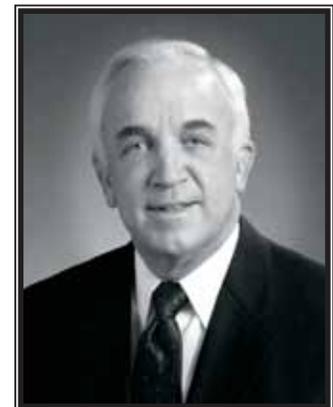
In *Hyundai Motor Am. v. Applewhite*, 53 So.3d 749 (Miss.2011) product liability-

*Continued on next page*

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## Expert Witnesses: Best Practices to Employ and Pitfalls to Avoid

ty/crashworthiness case the Supreme Court reversed and remanded a verdict in favor of the plaintiff's due to error in failing properly to supplement an expert opinion, following the deposition of plaintiff's accident reconstruction expert.

During trial, Hyundai moved to strike the testimony of Andrew Webb, Plaintiff's accident reconstruction expert, not on a question of its reliability, but because of the Plaintiff's failure to timely notify the Defendant of a change in this expert's calculations. Hyundai alleged that after his

deposition, Webb changed some of his calculations but that the Plaintiff did not supplement his opinion to reflect the changes. The Plaintiff pointed out that Webb notified Hyundai of the changes of his opinion through an errata sheet to his deposition. After the witness left the stand, Hyundai also moved to strike his testimony based on its alleged failure to comply with *Mississippi Rule of Evidence 702* and *Daubert*. The trial judge refused to grant the motion, stating that the "cow [was] out of the barn." The Supreme

Court held that, the trial judge rightly refused to strike Webb's testimony on the *Daubert* issues because the defendant had failed to make a contemporaneous objection before his testimony and the testimony was already before the jury. *Dep't of Human Services v. Moore*, 632 So.2d at 933. According to the Court, "thus, we do not find that the trial judge abused his discretion by allowing the jury to consider his opinion."

However, the Court reversed and remanded on the failure to timely supplement Webb's expert opinion. The Court held that an errata sheet is no substitute for supplemental disclosure of an expert's opinion, even if the defendant timely receives the errata sheet. The Court discussed the errata sheet at length.

At trial, Webb testified about the *errata* sheet, claiming that he had to change several variables because he realized after he had been deposed that he had made some mistakes, in his initial analysis. It is undisputed that Webb's *errata* sheet was not meant to correct errors made by the court reporter or to clarify his testimony. On the sheet itself, Webb listed the reason for the changes as "range not asked."

Hyundai moved to strike Webb's testimony, alleging that it had never received the *errata* sheet and that these changes were a surprise. In response, the plaintiffs argued that the changes were not material because they did not alter Webb's ultimate conclusion. The plaintiffs also produced a letter addressed to one of Hyundai's attorneys and dated February 11, 2008, to demonstrate that they had forwarded Webb's *errata* sheet to the defendant. The trial court heard extensive arguments on the issue and denied the defendant's motion.

The failure seasonably to supplement or amend a response is a discovery violation that may warrant sanctions, including exclusion of evidence. *Ekornes-Duncan v. Rankin Med. Ctr.*, 808 So.2d 955, 958 (Miss. 2002). Rulings on discovery violations will not be overturned absent an abuse of discretion. *Id.* (Citing *Gray v. State*, 799 So.2d 53, 60 (Miss. 2001).

Even if Hyundai did receive the *errata* sheet, simply giving the defendant this document did not relieve the plaintiffs of

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their duties under *Mississippi Rule of Civil Procedure 26(f)*. The purpose of an *errata* sheet is to correct scrivener's errors or provide minor clarification; it is not a means of making material, substantive changes to a witness's testimony.

Thus the Court concluded it was error to refuse relief to Hyundai in consequence of the plaintiff's failure to amend their responses regarding Webb's opinion under *Mississippi Rule of Civil Procedure 26(f)*.

### (2) IF THERE IS LITERATURE SUPPORT FOR AN OPINION - GET IT.

In the case of *Hill v. Mills*, 26 So. 3d 322 (Miss. 2010) the plaintiff's duly qualified expert testified that the defendant doctor was negligent in failing to take certain steps to prolong plaintiff's pregnancy. He based his testimony on his 25 years of obstetrical experience, but did not cite any medical literature which supported his opinion. However, the defendant's expert testified that plaintiff's expert opinion was totally unsupported in the scientific literature, and cited substantial peer-reviewed medical literature which contradicted plaintiff's expert's opinion. The plaintiff's expert presented nothing in response. As a result, the Court held that the trial court did not err in excluding that part of the opinion. "We state for emphasis that when the reliability of an expert's opinion is attacked with credible evidence that the opinion is not accepted within the scientific community, the proponent of the opinion under attack should provide at least a minimal defense supporting the reliability of the opinion." As to the plaintiff's expert's other opinion, that defendant was negligent in not performing an ultrasound, which the defendant's expert disputed, the Court held that the trial court did err in excluding it as this was simply a battle of the experts, and defendant's expert did not contend that there was no support in the scientific literature for that opinion.

### (3) THE BROAD CONCLUSION AFFIDAVIT

In *Sanders v. Wiseman*, 29 So.3d 138 (Miss. COA 2010), a plaintiff's expert's affidavit given in response to defendant's motion for summary judgment essentially asserted that (1) he was a physician and general surgeon, licensed in Tennessee,

(2) he had reviewed the plaintiff's medical records pertaining to the implanting and removing of the spinal-cord stimulator, (3) the device broke during the surgery, and (4) the Defendant physician's deviation from the standard of care proximately caused Sanders' injuries. The Court of Appeals held that the trial court did not err in striking the affidavit because it contained nothing more than broad conclusions unsupported by an adequate factual basis, and it did not establish or define the applicable standard of care, among other deficiencies. Since plaintiff's expert affidavit failed to provide the evidence necessary to establish professional negligence,

and the "layman's exception" did not apply, the trial court did not err in granting summary judgment for defendant. This appears to have been curable by reciting the facts and explaining the standard of care and the support or grounds for it; however, this type of affidavit is often given by experts.

### (4) HERE THE PITFALL WAS AN INTERNAL BATTLE AMONG PLAINTIFF'S OWN EXPERTS.

In *Worthy v. McNair*, 37 So.3d 609 (Miss. 2010), one of the plaintiff's expert, an obstetrician-gynecologist, testified that

*Continued on next page*

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## Expert Witnesses: Best Practices to Employ and Pitfalls to Avoid

the cause of plaintiff's baby's death was placental insufficiency, which he testified was caused by the defendant's negligence. However, another of the plaintiff's experts, a pathologist, testified that based on her experience as a pathologist, her review of the medical records and the autopsy report, and her study of the baby's placental tissues under a microscope, the cause of the baby's death was unknown, and there was no evidence of placental insufficiency. On appeal, the Court held that the trial court did not err in finding that the ob-gyn's testimony as to causation was unreliable, as he was not a pathologist, and therefore inadmissible. The trial court did not err in granting defendant's motion for summary judgment and a directed verdict after a jury had been impaneled.

### (5) THE PITFALL OF UTILIZING AN EXPERT OUTSIDE HIS AREA OF EXPERTISE.

In the medical malpractice action brought under the MTCA for alleged negligence in the performance of a kidney transplant,

*University of Miss. Medical Center v. Gore*, 40 So.3d 545 (Miss. 2010), the trial court found the defendant negligent because the surgeon did not see a tear in a renal artery which the trial court concluded was visible to the naked eye. The Supreme Court unanimously found that this conclusion was against the overwhelming weight of the evidence, which was to the effect that the tear was not visible to the surgeon. The Court pointed out that eminent expert witnesses testified to that effect, and the only testimony to the contrary was given by a pathologist/psychiatrist who knew little or nothing about modern kidney procurement and transplant procedures. The Court reversed and rendered the trial court's judgment against the defendant.

### (6) THE APPELLATE COURT ALLOWED AN EXPERT'S OPINION DESPITE THE TRIAL JUDGE'S FINDING THAT THE EXPERT WAS UNRELIABLE.

Where plaintiff's expert, board-certified in obstetrics and gynecology, testified

that a fall by a pregnant woman was a significant contributing cause of her giving birth to her baby prematurely, and his opinions were supported by the medical records and medical literature, and were based on his experience, training, and expertise as a qualified ob/gyn, the Court held that the trial court erred in finding that the expert's testimony was unreliable. The Court stated that although the medical records did not establish the cause of the mother's premature labor, his opinion constituted a scientifically grounded theory for the jury to consider, and the case was reversed and remanded. *Hubbard v. McDonald's Corporation*, 41 So. 670 (Miss. 2010).

### (7) THERE IS A NEED TO GET THE RIGHT EXPERT.

The Supreme Court reversed and rendered a judgment against defendant Certified Registered Nurse Anesthetist (CRNA) because plaintiff's expert anesthesiologist's testimony was not sufficient to show that the CRNA breached the standard of care required of a CRNA. The Court held that his testimony concerned the standard of care of an anesthesiologist and not a CRNA. *Berry v. Patten*, 51 So.3d 934 (Miss. 2011).

### (8) WHEN THE EVIDENCE IS PRESENT THE EXPERT CANNOT IGNORE IT AND USE OTHER SECONDARY EVIDENCE.

*Rebelwood Apartments v. English*, 48 So.3d 483 (Miss. 2010). In this wrongful death action the Court held that, despite the fact that the plaintiff's expert was clearly qualified, the trial court erred in admitting his testimony regarding decedent's lost future income, because the testimony was not based on sufficient facts and data, and was therefore unreliable. The expert based her opinion on the national-average salaries for high-school graduates and registered nurses with a bachelor of science degree, \$38,651, although decedent was not in college and no evidence was presented that she had applied for admission, and totally ignored her actual income before her death (\$13,099 in 2006). The expert appeared to justify her use of national averages because of the "Mississippi Black Effect," which she stated was an inherent assump-

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tion that a black person in Mississippi has no value, and the use of national averages eliminates that discrimination on the numbers. The Court held that it is in error to allow irrelevant, prejudicial and inflammatory statements that play the "race card," and explained that in providing a framework for determination of lost future income, courts are not determining the "value of a person," but are merely ensuring a reasonable and workable system for establishing damages.

### **(9) THE BEST PRACTICE IS A FORMAL OFFER OF PROOF.**

In *Abernathy v. State*, 30 So. 3d 320 (Miss. 2010), the defendant sought to call an expert to testify about migraine headaches. The judge and defense attorney discussed the relevancy of the testimony, and the attorney explained defendant's view as to why it was relevant, and the court refused to permit the testimony. On appeal the Court, in a 5-4 decision, held that it was unable to hold the trial court in error because defendant did not make an offer of proof as required by MRE 103 (a)(2). The dissenters felt that enough was said during the discussion as to relevancy to satisfy the purpose of the rule requiring an offer of proof.

### **(10) M.R.E. 106 AND 803(8) APPLY IN THE CONTEXT OF EXPERTS**

In *Rebelwood Apartments v. English*, 48 So. 3d 483 (Miss. 2010) (11) a young woman was found dead in the parking lot of defendant's apartments, where she lived, and a wrongful death action was filed against the apartment owners, contending that there was negligence in failing to provide sufficient security.

During trial the plaintiff's experts testified that they had relied on portions of the police report to formulate their opinions. The Mississippi Supreme Court held that the trial court erred in refusing to permit defendant to impeach their testimony during cross-examination by revealing the contents of the reports they had relied upon, thereby violating MRE 106, the rule of completeness.

In the same case an issue also arose as to the site where the decedent was shot. The Court held that the trial court erred in not permitting the defendant to introduce

into evidence the police report which contained facts and the officer's conclusion that she was shot at another location, and that the shooter drove her car to her apartment lot and left the car there with her inside. The Supreme Court ruled that the trial court erred in refusing to admit the report into evidence on hearsay grounds because the report was admissible pursuant to MRE 803 (8)(c). The Court held that conclusions in police reports may be admissible if based on a factual investigation and satisfy the rules' trustworthiness requirement.

### **(11) IN THIS BATTLE OF EXPERTS - ALL FAILED**

The eminent domain case of *Gulf South Pipeline Company v. Pitre*, 35 So.3d 494 (Miss. 2010) involved the taking of a 5.59 acre easement and right-of-way on the property owner's 115 acre tract. The primary question was the diminishment in value, if any, that the pipeline would cause to the remaining acreage. The owner's expert testified that there would be a loss of value, which he put a value based upon his many years of experience in the real estate business. He did not offer anything objective, such as comparable sales, in support of his opinion. The trial court admitted the testimony, and the Court of Appeals affirmed. The Supreme Court reversed and remanded, holding that an expert's opinion that is purely subjective, not based upon acceptable methodology, and admits that no basis satisfying the accepted criteria for that profession exists for an opinion, the opinion should be excluded. The Court also found that the opinion of the condemner's expert that there was no damage to the remainder was likewise inadmissible because it also was not based on accepted criteria.

### **(12) EXPERTS CANNOT PROVIDE OPINIONS ON ALL SUBJECTS.**

In *Utz v. Running and Rolling Trucking, Inc.*, 32 So.3d 450 (Miss. 2010) the decedent was killed when his car ran into the rear of defendant's truck, which was not equipped with reflective tape. The Court held that the trial court did not err in not excluding plaintiff's experts proposed testimony to what the decedent

*Continued on next page*

## MEDIATION ARBITRATION

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## Expert Witnesses: Best Practices to Employ and Pitfalls to Avoid

would have seen as he approached the truck.

In conclusion, the forgoing examples demonstrate that virtually every case involving experts is going to be subjected to a high level of scrutiny. ■

<sup>1</sup> This paper is a collaborative effort. As such, certain views and opinions expressed herein should not be attributed to all of the authors or to the attorney's firms.

<sup>2</sup> Evidence Rule 706 also deals with experts; however, this rule deals with Court appointed experts. That topic is beyond the scope of the present discussion.

<sup>3</sup> F.R.E. 704 is divided into two subparts with subpart (b) applying to criminal proceedings. As to the civil provisions, F.R.E. 704(a) is identical to M.R.E. 704.

<sup>4</sup> *Mississippi Transp. Commission v. McLemore*, 863 So.2d 31 (Miss. 2003). See also M. R. Ev. 702, Official Comment (favorably citing *Daubert* and its sequel, *Kumho Tire Co. Ltd. v. Carmichael*, 526 U.S. 137 (1999)).

<sup>5</sup> *McLemore*, 863 So. 2d at 36.

<sup>6</sup> *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999) 158-159 (Scalia, J. concurring) (emphasis original).

<sup>7</sup> *Mississippi Transp. Commission v. McLemore*, 863 So.2d 31 (Miss. 2003). See also M. R. Ev. 702, Official Comment (favorably citing *Daubert* and its sequel, *Kumho Tire Co. Ltd. v. Carmichael*, 526 U.S. 137 (1999)).

<sup>8</sup> *McLemore*, 863 So.2d at 38 (“[T]here is universal agreement that the *Daubert* test has effectively tightened, not loosened, the allowance of expert testimony”).

<sup>9</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 580 (1993).

<sup>10</sup> *Watkins v. Telsmith, Inc.*, 121 F.3d 984, 991 (5th Cir. 1997). (“The court should ensure that the opinion comports with applicable professional standards outside the courtroom and that it ‘will have a reliable basis in the knowledge and experience of [the] discipline’”) (quoting *Daubert*).

<sup>11</sup> *McLemore*, 863 So. 2d at 37-38 ¶15 (gatekeeper must be certain that the expert exercises the same level of intellectual rigor that characterizes the practice of an ‘expert’ in the relevant ‘field’) (internal quotation marks omitted).

<sup>12</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1317 (9th Cir. 1995). Thus, “one very significant fact to be considered is whether the experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying.”

<sup>13</sup> *Cheeks v. Bio-Medical Applications, Inc.*, 908 So.2d 117 (Miss. 2005).

<sup>14</sup> *Poirrier v. Degrande*, 604 So.2d 268 (Miss. 1992).

<sup>15</sup> *Troupe v. McAuley*, 2007 WL 1366251 \*8 ¶24 (Miss.).

<sup>16</sup> *Beech v. Leaf River Forest Products, Inc.*, 691 So.2d 446, 451 (Miss. 1997).

<sup>17</sup> *Wright & Gold, Federal Practice and Procedure: Evidence* § 6265 at pp. 252-53 (“In some cases the witness fails to qualify as an expert because so much time has elapsed since the witness acquired specialized knowledge, that knowledge has become obsolete...”).

<sup>18</sup> *Wright & Gold, supra*, § 6265 pp. 244-248 (“Experience developed as a professional expert witness is not sufficient”) (citations omitted); *Thomas J. Kline, Inc. v. Lorillard, Inc.*, 878 F.2d 791, 800 (4th Cir. 1989) (“[I]t would be absurd to conclude that one can become an expert simply by accumulating experience in testifying”).

<sup>19</sup> *Salem v. United States Lines Company*, 370 U.S. 31, 35 (1962).

<sup>20</sup> *Id.* (internal quotation marks omitted).

<sup>21</sup> *Torres v. County of Oakland*, 758 F.2d 147, 150 (6th Cir. 1985) (district court erred in admitting testimony that plaintiff “had been discriminated against”) (citing with approval

cases excluding testimony employing such legal terms as “unlawful,” “cause,” “fiduciary,” “inadequate,” “unreasonably dangerous,” “extra hazardous,” and “illegal”); *Shahid v. City of Detroit*, 889 F.2d 1543, 1547-1548 (6th Cir. 1989) (expert testimony that defendant was “negligent” was inadmissible); *Woods v. Lecureux*, 110 F.2d 1215, 1220 (6th Cir. 1997) (expert properly prohibited from using term “deliberately indifferent” to describe defendant’s conduct where such testimony merely told jury what result to reach, ran risk of interfering with jury instructions, could not be viewed as being helpful to jury, and concerned defendant’s state of mind, of which witness had no knowledge); *Marx & Co. v. Diners’ Club, Inc.*, 550 F.2d 505, 510 (2d Cir. 1977) (expert witness not allowed to invade the province of the jury by offering “conclusions as to the legal significance of various facts adduced at trial”). See also *Valentin v. New York City*, 1997 WL 33323099 \*16 (E.D.N.Y.) (legal conclusions from experts not only invade province of jury but “usurp the role of the judge”). See generally *In re Air Crash Disaster at New Orleans, Louisiana*, 795 F.2d 1230, 1233 (5th Cir.1986) (“trial courts must be wary lest the expert become nothing more than an advocate of policy before the jury” and that “the trial judge ought to insist that a proffered expert bring to the jury more than the lawyers can offer in argument”).

<sup>22</sup> “The party offering the expert’s testimony must show that the expert has based his testimony on the methods and procedures of science, not merely his subjective beliefs or unsupported speculation.” *McLemore*, 863 So.2d at 36 ¶11. See also *Gulf South Pipeline Co., LP v. Pitre*, 35 So.3d 494, 499 ¶8 (Miss. 2010) (“[M]erely speculative expert opinions should not be admitted. . . . the trial court is vested with a gatekeeping responsibility to prevent the admission of expert testimony based on guess or conjecture”) (internal quotations and citations omitted); *Rudd v. Montgomery Elevator Co.*, 618 So.2d 68, 72 (Miss. 1993) (expert testimony that was “nothing other than pure speculation” and “conjecture” “created no jury issue”); *Daubert*, 509 U.S. at 590 (expert testimony must be “more than speculative belief”); *Fowler v. State*, 566 So. 2d 1194, 1200 (Miss. 1990) (“Expert witnesses, however qualified, may not present the jury with rank speculation”); *Hammond v. Coleman Co., Inc.*, 61 F.Supp.2d 533, 539 (S.D.Miss.,1999) (“Dr. Rosenhan never talks in terms of probability, only possibilities. . . . Conflicts in testimony should be submitted to a jury, but speculative opinion testimony by an expert is precluded by *Daubert* and *Kumho*”).

<sup>23</sup> *Crowley v. Chait*, 332 F.Supp.2d 530, 553-554 (D. N.J. 2004) (experts are not permitted “to simply summarize the facts and the depositions of others,” nor to “repeat or summarize what the jury independently has the ability to understand”); *Hammond v. Coleman Co., Inc.*, 61 F.Supp.2d 533, 539 (S.D.Miss. 1999) (“Dr. Rosenhan’s repetition of Plaintiff’s testimony is not helpful to the jury. The Plaintiff himself can testify to what happened to him”); Michael H. Graham, 30B *Federal Practice & Procedure Evidence*, § 7047 (1st ed. 2010) (footnote omitted; emphasis supplied) (“A witness however, over proper objection should not thereof, the document ‘speaks for itself’”); *Redmond v. Breakfield*, 840 So.2d 828, 832 ¶11 (Miss. App. 2003) (no error in precluding testimony about document in evidence; “the document speaks for itself and the fact remains that the report in its entirety was available to the jury which was free to gather whatever information from it that the jury deemed helpful”).

<sup>24</sup> *Crowley v. Chait*, 322 F.Supp.2d 530, 553 -554 (D. N.J. 2004) (“Finally, no expert, including Johnson, will be permitted to opine on the credibility or consistency of others’ testimony. Listening to testimony and deciding whether it is contradictory is the “quintessential jury function of determining credibility of witnesses”) (internal quotation marks omitted).

<sup>25</sup> *Sultis v. General Motors Corp.*, 690 F.Supp. 100, 104 (D. Mass. 1988) (rejecting testimony that was “no more than an argument without reasoned support in evidence, masquerading as expert opinion”). Cf. *In Re Air Crash Disaster at New Orleans*, 795 F.2d 1230, 1233 (5th Cir.1986) (“trial judge ought to insist that a proffered expert

bring to the jury more than the lawyers can offer in argument”); *Occulto v. Adamar of N.J., Inc.*, 125 F.R.D. 611, 616 (D.N.J.1989) (noting that an expert cannot simply be an alter ego of the attorney who will be trying the case).

<sup>26</sup> It is no excuse that supporting data are simply unavailable; if this is the case, the testimony is simply inadmissible. The expert in *Gulf South Pipeline Co., LP v. Pitre*, 35 So.3d 494 (Miss. 2010), was an appraiser who candidly admitted that he had no comparable sales data to support his opinion, because none were available. The Court of Appeals gave him a pass, saying “[w]e cannot hold Hamilton’s testimony to a strict *Daubert* analysis because he was unable to find comparable sales to compute an after fair market value.” *Id.* at 497 ¶3 (quoting the Court of Appeals). The Mississippi Supreme Court granted cert and reversed the Court of Appeals: “Hamilton’s testimony was purely subjective, little more than rank speculation.” *Gulf South Pipeline*, 35 So.3d at 499-500 ¶10 (Miss. 2010).

<sup>27</sup> See *Treasure Bay Corp. v. Ricard*, 967 So.2d 1235 (Miss.2007) (expert might be able to say, from blood alcohol level at six in the morning, that driver was “visibly intoxicated” the night before, when driver left second and last bar, but his opinion that the driver was “visibly intoxicated” when he left the first bar did not rest on “sufficient facts or data” – blood test simply could not differentiate between alcohol from the two bars).

<sup>28</sup> *Bullock v. Lott*, 964 So.2d 1119, 1131 ¶34 (Miss. 2007) (error to admit expert testimony where “[m]any of th[e] ‘facts’ relied on by” the expert “are simply not in the record,” and indeed, were contradicted by the record). Cf. *Twin County Electric Power Ass’n v. McKenzie*, 823 So.2d 464, 470 (Miss. 2002) (reversing and rendering judgment for plaintiff in highway accident case, where plaintiff’s “account is inconsistent with matters of common knowledge, human experience, and defies Newton’s laws of motion and physics”).

<sup>29</sup> *Garcia v. BRK Branks, Inc.*, 266 F.Supp.2d 566, 574 (S.D. Tex. 2003). Cases insisting upon testing include *Edmonds v. State*, 955 So.2d 787, 791 ¶6 (Miss. 2007) (“We find that the circuit court did not err in excluding the testimony of Allison D. Redlich, Ph.D., concerning involuntariness of confessions because, during the extensive *Daubert* hearing held by the circuit court, Dr. Redlich herself admitted that her theories could not be empirically tested”); *Brooks v. Outboard Marine Corp.*, 234 F.3d 89, 92 (2d Cir. 2000) (failure to test theory justified exclusion); *Bouelle v. Crown Equipment Corp.*, 220 F.3d 532, 536 ¶538 (7th Cir. 2000) (same); *Moore v. Ashland Chemical Inc.*, 151 F.3d 269, 279 (5th Cir. 1998) (same); *Guy v. Crown Equip. Corp.*, 394 F.3d 320, 325 (5th Cir. 2004) (failure to test proposed alternative designs justified exclusion).

<sup>30</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1317 (9th Cir. 1995) (on remand from the U.S. Supreme Court).

<sup>31</sup> *In re Air Crash Disaster at New Orleans, La.* 795 F.2d 1230, 1234 (5th Cir. 1986).

<sup>32</sup> *Worthy v. McNair* 37 So.3d 609, 615 ¶16 & n. 4 (Miss. 2010) (“Analyzing the language of Rule 702 and the *Daubert* opinion, the *Kumho Tire* Court concluded that a trial court’s gatekeeping responsibility applies to the admissibility of expert testimony based not only on “scientific” knowledge, but also on “technical” and “other specialized knowledge.” *McLemore*, 863 So.2d at 37 (citing *Kumho Tire*, 526 U.S. at 151, 119 S.Ct. 1167)).

<sup>33</sup> *Rhaly v. Waste Management of Mississippi, Inc.*, 2010 WL 1855849, 5 (Miss.App.) (“trial judge must determine whether the expert testimony “rests on a reliable foundation and is relevant in a particular case”).

<sup>34</sup> *Guillory v. Dunbar Industries, Inc.*, 95 F.3d 1320, 1331 n.11 (5th Cir. 1996). *Accord U.S. v. Hicks*, 103 F.3d 837, 847 (9th Cir. 1996) (“The District Court is not required to admit expert testimony every time a party is able to make the threshold *Daubert* showing. The District Court may exercise its discretion to exclude expert testimony if it finds that the testimony would waste time, confuse or not materially assist the trier of fact, or be better served through cross-examination or a comprehensive jury instruction”).

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## IN MEMORIAM

### Judge Charles Edward Clark

Judge Charles Edward Clark, 85, of Jackson, died March 6, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1948. He served 23 years on the 5th U.S. Circuit Court of Appeals including 11 years as chief judge. He retired from the court on Jan. 15, 1992. He was in private practice in Jackson for 23 years, interrupted by two years in the U.S. Naval Reserve from 1951-52 during the Korean War. Clark was a fourth generation Mississippi lawyer. His great-grandfather, Charles, served as Mississippi's governor during the Civil War. He was commissioned in the United States Navy through the V-12 program, and was on a destroyer at the end of WWII. He was recalled to active duty during the Korean War and returned to the Wells, Wells, Newman and Thomas firm in 1952. In 1961, he became a founding partner in the firm of Cox, Dunn, and Clark with William H. Cox, Jr., and Vardaman Dunn. He was nominated by President Richard Nixon at the urging of Senator James Eastland on October 7, 1969, and was confirmed on October 15, 1969. Clark was very active in the operation of the federal court system, serving as chairman of the finance and executive committees of the Judicial Conference of the United States. Following his retirement from the court in 1992, Clark returned to law practice with his partners, Vardaman Dunn and William H. Cox, Jr., at the Watkins and Eager firm in Jackson. He specialized in arbitration until his complete retirement in 2009. Clark received an honorary Doctor of Laws degree from Mississippi College in 2009. He is a charter member of University of Mississippi Law School Hall of Fame. He is also a member of the University of Mississippi Hall of Fame. The Charles Clark Inns of Court was named in his honor.

### Mitchell D. Colburn

Mitchell D. Colburn, 58, of Tupelo, died March 8, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1965. He served in U.S. Marine Corps from 1972 to 1975. He practiced law in Pascagoula and Tupelo. He served on the Board of Directors of Trustmark Bank, American Red Cross and the Christian Women's Job Corps. He was a founding partner of AvonLea Assisted Living and former owner of Tupelo Engraving and Rubber Stamp Company. He was an active member of Harrisburg Baptist Church, where he taught senior adult men's Sunday School class.

### William Dewitt Coleman

William Dewitt Coleman, 89, of Jackson, died May 28, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1948. He was the former Deputy Attorney General for the State of Mississippi for many years. Earlier, he practiced law with partner Dennis Dobbs of Ackerman and later was a law partner with the late Dan Lee (former Chief Justice MS Supreme Court) and others in Jackson.

### William R. Collins

William R. Collins, 59 of Canton, died March 9, 2011. A graduate of Mississippi College School of Law, he was admitted to practice in 1979. Collins clerked for Hinds County Chancery Judge William Haynes. Upon graduation he began practicing law in Jackson before joining the Canton Law firm of Montgomery, McGraw, and Collins. He served as city attorney for the City of Canton for over 30 years and represented other municipal and county entities during his career. Collins was a member of the Madison County Business League, Canton Chamber of Commerce, Madison County Chamber of Commerce, and Canton Elks Lodge. He served as a trustee for the First Baptist Church and served on the Canton Academy School Board, the Canton Country Club Board, and the Canton Flea Market committee. Collins was an active member of MS Sigma Alumni Chapter of SAE. He was a member of First Baptist Church.

### George Ervin Estes Jr.

George Ervin Estes Jr., 82, of Gulfport, died April 23, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1950. He was a member of First Baptist Church of Gulfport for seventy years, where he served as chairman of the Deacons, taught Sunday School and was a member of numerous committees. Estes retired after sixty years of practicing law in Gulfport. He as a member of Kiwanis Club, served as President, Lt. Governor of Kiwanis International, Division 14, received the George F. Hixson award and achieved the status of lifetime member. He also served as a board member of the Salvation Army, received the Junior Chamber of Commerce Distinguished Service Award in 1961, was active in the Gulfport Chamber of Commerce and was a member of the Foundation Board of the New Orleans Baptist Theological Seminary. He was a member of the Gulfport Yacht Club, Gulf Coast Symphony, United States Power Squadron and was recognized for thirty-two years of distinguished service as a board member of Merchants Bank and Trust and Advisory Board Member of Whitney National Bank. He served as city attorney under the administration of Mayor A. W. Lang, Jr.

### Lura C. Ethridge

Lura C. Ethridge, 88, of Madison, died May 20, 2011. A graduate of Mississippi College School of Law, she was admitted to practice in 1959.

### John Marshall Grower

John Marshall Grower, 86, of Madison, died March 22, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1950. He joined the United States Navy, serving in the Naval Air Corps from 1942 until 1946. Grower was a partner in the Jackson law firm of Brunini, Grantham, Grower & Hewes until his retirement in 1992. He was a member of St. Richard Catholic Church from 1950 to the present, and served as

a member of the St. Richard Parish Council, St. Richard Catholic School Board and the St. Joseph Catholic School Board. John was a Fourth Degree member of the Knights of Columbus, a Knight of St. Gregory, and a member of the Equestrian Order of the Holy Sepulchre of Jerusalem. He was an ardent supporter of the Catholic Foundation of the Diocese of Jackson and Catholic Charities of Mississippi, and was honored by Catholic Charities for his charitable works as the 2010 "Man of the Year."

### Arnold Frederick Gwin

Arnold Frederick Gwin, 75, of Greenwood, died April 10, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1963. Gwin was an officer in the United States Marine Corps for three years from 1957 to 1960, serving in the artillery division with the Fleet Marine Force in Okinawa, Japan for a year and half. Gwin practiced law with Lott, Sanders, & Gwin law firm in Greenwood, until 1983 when he opened his own office as a solo practitioner. Gwin served as President of the Leflore County Bar Association from 1987 to 1989 and was honored with the Counselor-of-Law with Distinction Award from the Leflore County Bar Association in 2010.

### Jones H. Hoskins

Jones H. Hoskins, 76, of Brookhaven, died June 15, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1961. He was a retired member of the Lincoln County Bar Association, where he had served as past president. He was a member of First United Methodist Church.

### Charles Clark Jacobs Jr.

Charles Clark Jacobs Jr., 90, of Cleveland, died April 8, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1947. Jacobs served as a Captain in the Marine Corps during World War II, and participated in campaigns in the Marshall Islands, Saipan, Tinian, and Iwo Jima. He was awarded the bronze star for action at Saipan and a second bronze star for action at Iwo Jima. He began the practice of law in Cleveland in 1947. He served as President of the United Givers Fund in 1970, the Cleveland Chamber of Commerce in 1972, and the Cleveland Rotary Club in 1976. He served as commander of the VFW Post at Cleveland and as chairman of the Bolivar County Development Commission. Jacobs was elected to the Mississippi Legislature from 1952 through 1964, and while there, he served as chairman for the Insurance Committee and the Ways and Means Committee. He was a member of the State Budget Commission from 1960 to 1964. Beginning in 1976, Jacobs served as a member of the Board of Trustees for Institutions of Higher Learning until 1988, and he was president of the board in 1985. After his retirement, he served as a member of the Foundation Board for Mississippi Delta Community College.

### James W. Lee

James W. Lee, 86, of Forest, died October 2, 2010. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1951.

### Thad Leggett III

Thad Leggett III, 73, of Magnolia, died April 21, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1961. He began his law practice in Magnolia immediately thereafter and was elected Judge of County Court and Judge of Youth Court for Pike County in 1966. He held that position for 32 years. Judge Leggett was the founder of the CASA program in Pike County. He was a past president of the Magnolia Rotary Club and past president of the Dairy Belt Dixie Youth Baseball Organization. He was also a member of the Magnolia area Chamber of Commerce.

### Samuel Thames Lloyd Jr.

Samuel Thames Lloyd Jr., 93, of Madison, died March 26, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1948. He served in World War II as a navigator/bombardier in the U.S. Air Force. At the end of World War II he left the U.S. Air force and was actively engaged in the Oil & Gas Industry for several years. He was recalled to active duty in 1952 during the Korean War where he remained in the Air Force as a member of the JAG until his retirement as a Lieutenant Colonel. He returned to the Oil & Gas Industry. He was an active member and communicant of Grace Episcopal Church.

### Jane Cleland O'Mara

Jane Cleland O'Mara, 63, of Ridgeland, died June 4, 2011. A graduate of Mississippi College School of Law, she was admitted to practice in 1996. She practiced law in Jackson and Vicksburg until her retirement.

### William Ford (Billy) McGehee

William Ford (Billy) McGehee, 92 of Vicksburg, died February 28, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1942. After law school, he spent two years as an FBI agent before entering private law practice in Vicksburg.

### Valerie Rana Childers Meredith

Valerie Rana Childers Meredith, 37, of Oxford, died April 30, 2011. A graduate of Mississippi College School of Law, she was admitted to practice in 1999. Meredith received her L.L.M. Master of Taxation at NYU in New York City. She was active in FBLA at West Union and PBLA at Northeast Community College. She was a member of Macedonia Baptist Church.

## IN MEMORIAM

### Jean D. Muirhead

Jean D. Muirhead, 82, of Knoxville, TN, died July 15, 2011. A graduate of Mississippi College School of Law, she was admitted to practice in 1967. She was one of Mississippi's first female senators, (1968-1972). Muirhead was active in women's rights issues throughout most of her professional career. She was appointed administrative law judge (ALJ) by the Social Security Administration in September of 1991, and served as Hearing Office Chief ALJ in Memphis, TN. In 1997 she became ALJ in charge of the Division of Medicare in Falls Church, VA. In 2001, she was assigned to the Nashville Office of Hearings and Appeals, where she retired in 2003.

### Rubel L. Phillips

Rubel L. Phillips, 86, of Ridgeland, died June 18, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1951. Rubel Phillips ran twice for governor in the 1960s. Phillips was a native of Alcorn County, where he served as circuit clerk after graduating law school. He also was elected to the Mississippi Public Service Commission.

### Thomas W. Prewitt

Thomas W. Prewitt, 74, of Madison, died April 15, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1960. He was a long time active member of the fellowship of Alcoholics Anonymous.

### George Randle Thomas

George Randle Thomas, 47, of Phoenix, AZ, died June 21, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1990. He received his LL.M in corporate law from the New York School of Law. Thomas was a member of St. Andrews Episcopal Church in Jackson.

### John Hillman Rogers

John Hillman Rogers, 82, of Brandon, died April 2, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1952. After graduation he was employed by Humble Oil and Refining Company for 14 years. In 1966 he left Humble Oil to be a self-employed Independent Petroleum Landman and Attorney. He was a member of First Presbyterian Church of Jackson where he was active in the Singles and Doubles Sunday School Class and the Saturday Morning Men's Prayer group.

### Dan M. Russell Jr.

Dan M. Russell Jr., 98, of Gulfport, died April 16, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1937. He later moved to Bay St. Louis to practice law. He went on to serve in World War II in Naval Intelligence

from October 13, 1941 to October 8, 1945 as Lieutenant Commander. He was engaged in practice of law in the firm of Russell and Favre, from 1952 - 1965. In 1965, he was appointed U.S. District Judge for the Southern District of Mississippi by President L.B. Johnson, and served as Chief Judge from 1971 until 1983. Since 1983, he continued to serve in senior status until his death. Judge Russell was a member of the First Baptist Church of Bay St. Louis, from 1939 until the time of his death. He was a lifetime deacon, a teacher of men's bible class over 15 years, and had served in numerous other capacities. On November 14, 2003, the U.S. General Services Administration dedicated the new \$60 million U.S. Courthouse in Gulfport, Mississippi, and presented to the public said structure which bears the name of "Dan M. Russell, Jr. U.S. Courthouse" in his honor. On April 1, 2005, the Mississippi State Legislature, in House Concurrent Resolution No. 113, the Senate concurring therein, passed a resolution commending the distinguished career and accomplishments of the Hon. Dan M. Russell, Jr. Judge Russell was also affiliated with numerous clubs and organizations which included: Honorary member of "Dan M. Russell, Jr., W. Joel Blass, Harry G. Walker" chapter of the American Inns of Court", Honorary member - Bay St. Louis Rotary Club, Honorary member - Gulfport Rotary Club, Honored as a Paul Harris Fellow, Rotary Foundation of Rotary International, Member of American Legion Post 139, Bay St. Louis, Awarded by Gulfport Rotary Club in January 2001 the "Founder's Day Award", and 2007 American Heart Association Honoree.

### Joe H. Sanderson

Joe H. Sanderson, 84, of Brandon, died June 25, 2011. A graduate of Mississippi College School of Law, he was admitted to practice in 1965. He joined the Navy where after basic training he served aboard the submarine tender USS Pelias and USS Aegir. Upon returning home, he attended Hinds Community College and for a while he owned and operated a sawmill. After graduation from Millsaps, Joe taught radar at Keesler Field in Biloxi for two years. The next six years he worked for the Corp of Engineers in Concrete Research at the sub-station in Clinton. After graduating law school he formed the law firm, Morrow and Sanderson. Sanderson was very active in church and civic organizations. He grew up in the Oakdale Baptist Church and later became a member of First United Methodist Church for forty-six years where early on he was a steward and assistant Sunday School Treasurer and Superintendent. His last years were spent at Crossgates United Methodist Church where he served as trustee chairman and on the building committee. He also was president and a member of the Friendship Sunday School Class and member of the UMM. Joe was a longtime member of the Lions Club, served as District Governor and received the Melvin Jones Fellow Award. He was a volunteer with the Red Cross. Joe was also a member of the Veterans Administration, American Legion where he once held a state office.

**William F. Selph Jr.**

William F. Selph Jr., 82, of McComb, died May 26, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1961. He served as a commissioned officer in the the U.S. Army, 4th Infantry Division, both stateside and in Germany from 1950-52. He worked as a landman for Shell Oil Co. and Atlantic Refining Co. before moving to Dallas to become administrative division manager for Atlantic's U.S. and Canadian operations. He returned to Mississippi in 1962 to practice law in Jackson and Summit. He was an Episcopalian, a member of Veterans of Foreign Wars and the American Association of Petroleum Landmen.

**L. T. Senter, Jr.**

L. T. Senter, Jr., 77, of Aberdeen died May 18, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1959. Senter was a retired U.S. District Judge. He also ruled wind damage is covered even if storm surge contributes to a loss. Insurance companies, he said, had the burden to prove flooding caused a loss in order to deny coverage. Senter served as a circuit judge before he was appointed to the federal bench by President Jimmy Carter in 1979. From 1980 to 1982 he was a federal judge in Mississippi's Northern District, and served as the district's chief judge from 1982 to 1998. He took senior status in 1998.

**Earl S. Solomon Jr.**

Earl S. Solomon Jr., 74, of Greenville, died June 18, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1961.

**Greg L. Spyridon**

Greg L. Spyridon, 58, of New Orleans, LA, died March 8, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1977. Spyridon was a senior partner of the law firm of Spyridon, Palermo, and Dornan, LLC. Spyridon was a member of Holy Trinity Greek Orthodox Church of New Orleans, LA; he was the founder and Coach of the Mandeville High School Lacrosse team.

**J. Joshua Stevens Jr.**

J. Joshua Stevens Jr., 71 of West Point, died March 14, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1966. He moved to West Point to practice law with the late Thomas M. Tubb. Stevens served as City Attorney for West Point and also as president of the Clay County Bar Association. He was past president and a Life Member of the West Point Rotary Club, as well as a long-time board member of the Clay County Educational Foundation. Josh was a member of the First United Methodist Church, where he taught the Friendly Fellowship and Men's Sunday School Classes.

**Charles Maxwell Sudduth**

Charles Maxwell Sudduth, 94, of Jackson, died Saturday, February, 19, 2011. A graduate of Mississippi College School of Law, he was admitted to practice in 1965. Sudduth served in the United States Army as a member of the Signal Corps and did tours in France, Italy and other parts of Europe during World War II. He was employed for thirty years as comptroller of Mills Morris Automotive in Jackson until his retirement in 1982. Sudduth was a member of First Presbyterian Church of Jackson for over sixty years, where he was active in the Couples Sunday School class, and the Saturday morning men's prayer group.

**Robert Hansford Tyler**

Robert Hansford Tyler, 57 of Biloxi, died June 5, 2011. A graduate of Mississippi College School of Law, he was admitted to practice in 1982. He served as a law clerk for the Mississippi Supreme Court and then served a two year clerkship with the U.S. District Court for the Southern District of Mississippi. He served on the Ethics Committee, the Fee Dispute Resolution Committee, and the Insurance Committee of the Bar. Tyler was a member of the Board of Bar Commissioners and served on the Mississippi Commission on Judicial Performance. He also served on the Biloxi Civil Service Commission. He was a Fellow of the Mississippi Bar Foundation, a member of the American Board of Trial Advocates and a long time member of the Mississippi Association for Justice. He had served on the Administrative Board at First United Methodist Church in Biloxi where he was a member.

**Joseph Wayne Walker**

Joseph Wayne Walker, 86, of Mendenhall, died February 12, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1950.



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# CLE Calendar of Events

The following live programs have been approved by the Mississippi Commission on Continuing Legal Education. This list is not all-inclusive. For information regarding other programs, including teleconferences and online programs, contact Tracy Graves, CLE Administrator at (601) 576-4622 or 1-800-441-8724, or check out our website, [www.mssc.state.ms.us](http://www.mssc.state.ms.us) Mississippi now approves **online programs** for CLE credit. For a list of approved courses, check the Calendar of Events on our website. For information on the approval process for these programs, please see Regulations 3.3 and 4.10 posted under the CLE Rules on our website or contact Tracy Graves at the numbers listed above.

## OCTOBER

- 6 UM CLE “LLC Law in Mississippi after Kinwood Capital.” 6.0 credits (includes ethics). Oxford, MS, The Depot. Contact 662-915-7232.
- 7 US District Court/Northern District of MS “Fourth Annual Bench & Bar Seminar.” Oxford, MS, The Inn at Ole Miss. Contact 662-281-3029, Gina Kilgore.
- 13 NBI “Medicare Set-Asides in Personal Injury Litigation.” 6.0 credits (includes ethics). Jackson, MS, Jackson Convention Complex. Contact 1-800-930-6182.
- 14 UM CLE “LLC Law in Mississippi After Kinwood Capital.” 6.0 credits (includes ethics). Ridgeland, MS, Embassy Suites. Contact 662-915-7232.
- 20 MS Defense Lawyers Association “Joint Seminar of the MS Claims Assn and the MS Defense Lawyers Assn.” 6.0 credits (includes ethics). Flowood, MS, River Room Conference Center. Contact 601-992-8645.
- 24 Mediation Media, Inc. “Mediation Process & the Skills of Conflict Resolution.” 14.0 credits (includes ethics). Jackson, MS. Contact -800-237-3476, Troy Smith.
- 28 Truck Litigation Resource Center “Advanced Commercial Trucking Law.” 5.5 credits. Jackson, MS. Contact 1-800-292-5855, David Nissenberg.
- 29 UM CLE “LLC Law in Mississippi After Kinwood Capital.” 6.0 credits (includes ethics). Gulfport, MS, The Marriott Hotel. Contact 662-915-7232.
- 29 UM CLE “DUI Defenders Annual Conference.” 6.0 credits (includes ethics). Gulfport, MS, The Marriott Hotel. Contact 662-915-7232.

## NOVEMBER

- 2 NBI “Eminent Domain From Start to Finish.” 6.0 credits (includes ethics). Jackson, MS, Jackson Convention Complex. Contact 1-800-930-6182.
- 4 UM CLE “Effective Communication As An Art Form – Second in a Series.” 6.0 credits (includes ethics). Natchez, MS, Dunleith Plantation. Contact 662-915-7232.
- 4 MS College School of Law “13<sup>th</sup> Annual Guardian Ad Litem Training.” 6.0 credits (includes ethics). Jackson, MS, MS College School of Law.” Contact 601-925-7107, Tammy Upton.
- 8 M. Lee Smith Publishers “2011 PMLA Master Class.” 6.3 credits. Jackson, MS. Contact 615-661-0249, Amy Kelly.
- 11 MS College School of Law “Mediation Conference.” 7.0 credits (includes ethics). Jackson, MS, MS College School of Law.” Contact 601-925-7107, Tammy Upton.
- 30 Sterling Education Services “Commercial & Residential Landlord-Tenant Law.” 6.7 credits (includes ethics). Jackson, MS. Contact 715-855-0495.

## DECEMBER

- 5-6 UM CLE “CLE by the Hour.” 12.0 credits (includes 2.0 ethics). Memphis, TN, Memphis Hilton. Contact 662-915-7232.
- 16 Barristers Educational Services “Recent Developments in TN Law.” 6.0 credits (includes ethics). Memphis, TN. Contact 1-800-874-8556, Sarah Middleton.
- 29 Barristers Educational Services “Recent Developments in AL Law.” 6.0 credits (includes ethics). Mobile, AL. Contact 1-800-874-8556, Sarah Middleton.
- 30 Barristers Educational Services “Evidence in Trial Practice.” 6.0 credits (includes ethics). Memphis, TN. Contact 1-800-874-8556, Sarah Middleton.

## JANUARY

- 26 UM CLE “Winter MS Municipal Attorneys’ CLE Seminar.” 6.0 credits (includes ethics). Jackson, MS, Hilton Hotel. Contact 662-915-7232.
- 27 UM CLE “Social Security Disability Law.” 6.0 credits (includes ethics). Ridgeland, MS, Embassy Suites. Contact 662-915-7232.

## FEBRUARY

- 10 UM CLE “18<sup>th</sup> Annual Mid-South Conference on Bankruptcy Law.” 6.0 credits (includes ethics). Memphis, TN, Memphis Hilton. Contact 662-915-7232.
- 10 E. Farish Percy “Summary of Recent MS Law.” Oxford, MS, The Inn at Ole Miss. Contact 662-832-8605, E. Farish Percy.
- 24 UM CLE “19<sup>TH</sup> Annual Evelyn Gandy Lecture Series.” 6.0 credits (includes ethics). Memphis, TN, Peabody Hotel. Contact 662-915-7232.
- 24 E. Farish Percy “Summary of Recent MS Law.” Biloxi, MS, Imperial Palace Hotel & Casino. Contact 662-832-8605, E. Farish Percy.

## MARCH

- 2 UM CLE “12<sup>th</sup> Annual Guardian Ad Litem Certification CLE.” 6.0 credits (includes ethics). Ridgeland, MS, Embassy Suites. Contact 662-915-7232.
- 2 E. Farish Percy “Summary of Recent MS Law.” Jackson, MS, Jackson Convention Complex. Contact 662-832-8605, E. Farish Percy.

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