

THE MISSISSIPPI Lawyer

VOL. LVIV

WINTER

2012-2013

NO. 2



WOMEN — IN THE — PROFESSION



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GRADUATING CLASS (MAY 2012)

- 165 JD degrees
- 2 LLM degrees (Nepal & China)

JULY 2012 MISSISSIPPI BAR EXAM

- 73 of 84 MC grads passed (86.9%) (first time takers)
- (state pass rate of 81.3%)

CLASS OF 2011 (EMPLOYMENT 9 MONTHS AFTER GRADUATION)

- 85 (52%) private law firms
- 24 (15%) judicial clerks
- 19 (12%) business
- 11 (7%) government
- 6 (3%) public interest
- 6 (3%) graduate degree
- 2 (1%) education
- 11 (7%) seeking employment
- 1 (0%) not seeking employment

Comparative employment data at www.lawschooltransparency.com (Score Reports)

ENTERING CLASS (AUGUST 2012)

- 153 JD candidates
- 60% Mississippi / 40% out of state
- 59 undergrad schools
- 163 high LSAT
- 149 median LSAT
- 4.00 high GPA
- 3.27 median GPA

- 51% male
- 49% female
- 24% minority
- \$1,058,675 awarded in merit scholarships to entering students
- 6 LLM candidates (South Africa, Mexico, Liberia, Brazil, China, Nigeria)

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The Mississippi Lawyer is published quarterly by The Mississippi Bar, 643 North State Street, P.O. Box 2168, Jackson, Mississippi 39225. Telephone (601) 948-4471.

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This issue of the magazine features articles provided by the Women in the Profession Committee of The Mississippi Bar.

The feature articles on the "Women in the Profession" were written by Selena Chavis.



THE MISSISSIPPI FELLOWS OF THE AMERICAN COLLEGE OF TRIAL LAWYERS

are proud to announce the induction as Fellows of the College

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Founded in 1950, the College is composed of the best of the trial bar from the United States and Canada. Invitation to Fellowship is extended only after careful investigation of those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, civility and collegiality. The College strives to improve and elevate the standards of trial practice, the administration of justice and the ethics of the trial profession.

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The Golden Rule is for Lawyers

The Golden Rule is for Lawyers: One of the enjoyable benefits of being President of the Bar is having the opportunity to meet and talk with lawyers around the state. Guy Mitchell, Larry Houchins and I just completed a visit with lawyers in Starkville, West Point, Aberdeen and Columbus. Our members are some of the best citizens in our communities and every time I am introduced to lawyers that I haven't met before I feel a renewed sense of pride in our profession. I always learn from my fellow lawyers when we exchange war stories.

Recently I had an opportunity to visit with a lawyer I have known for a long time but whom I rarely see because of the distance between us. During our conversation he mentioned the changes that have occurred since he and I started law practice. He commented that law practice had become a "grind" and that he was making less money today than he did fifteen years ago but working just as hard or harder. We both agreed that we had practiced law in the golden age of lawyers where a small firm lawyer could make a good living representing working folks, small businesses and perhaps the local bank, municipality or school district and occasionally get hired on a plaintiff's case where a good contingency fee could be earned. These plaintiff cases helped pay off a car loan, pay children's tuition or even pay off the home mortgage. We both regret that it seems those days are gone and that today only skillful lawyer advertisers get hired on those good Plaintiff's cases.

He told me a war story that is encouraging to me. It seems that a lady came to his office with a situation where her husband had been killed in an automobile accident. She had responded to a number of lawyer advertisements and had interviewed several attorneys that handle just plaintiff's cases. He asked her why she came to him a generalist and her reply is the basis for my feeling encouraged. She told him that a number of years ago he had represented her first husband in their divorce and that because my friend had treated her with courtesy and fairness even though they were on opposite sides, she promised herself that if she ever needed another lawyer she was going to at least talk to him. It turns out that she hired my friend to represent her in the wrongful death case and when the case was settled the attorney fee was a high six figure amount. In telling this story my friend expressed that it just confirmed to him that living by the golden rule was the right way to live and practice law. Doing to others as you would have them do unto you resulted in "gold" for my friend. While we can't ever anticipate how our encounters with other lawyers and litigants will impact our future, we can for sure know that building relationships and treating others like we expect to be treated is certainly the best policy.

Law practice today presents a number of challenges and the future promises even more. No matter what challenges face our profession there is one constant that hopefully will never change. As lawyers we are servants. We serve our clients, our communities and our profession. Although law practice is changing, join me in being encouraged that even in these difficult times the Golden Rule remains the rule to live by. ■



*Lem Adams
President of The Mississippi Bar
2012-2013*

Godwin
Full Page Color

WOMEN

— IN THE —

PROFESSION

Women in the Profession. Since 1916, women lawyers in Mississippi have made themselves known. It was at that time that newspaper headlines proclaimed, “First Girl Lawyer is Admitted to Supreme Court of Mississippi” when Susie Blue Buchanan took the oath to practice law. This made her the first woman lawyer ever qualified to practice before the highest court in Mississippi. As the twentieth century moved towards its end and we entered the twenty-first century, women came into their own, not just as members but as leaders in the profession.

You will read on the following pages about the past fourteen women lawyers who have received the Susie Blue Buchanan Award since 1999. This award honors an outstanding woman in the profession who has achieved professional excellence and has actively paved the way to success for other women lawyers. You will understand clearly the reasons these female lawyers were selected as Susie Blue Award recipients.

The story of these women lawyers is not simply of their accomplishments, but it is a story of women lawyers who demonstrated and continue to demonstrate their dedication to the legal system. This is a tribute to these fourteen women lawyers and Judges, but also to the thousands of women lawyers in Mississippi who daily serve the public and legal profession in our state. ■



*By Amanda Green Alexander
Editor, The Mississippi Lawyer*



Judge Sharion Aycock, *Aberdeen*

It was a mere suggestion from a professor at the Mississippi State University that would ultimately lay the groundwork for the exceptional legal career of Judge Sharion Aycock—the first woman to be nominated and confirmed as United States district court judge from the state of Mississippi. “It’s fair to say that I had not given much thought to going to law school,” she said, recalling that she considered taking the LSAT only after it was offered as a suggestion. “I always assumed I would return to our family business.”

One class was all it took, though, and Aycock was hooked. “I absolutely fell in love with law school and the study of law,” she said. “It captured me.”

Sworn in to her current position on October 26, 2007, Aycock was unanimously confirmed by the U.S. Senate after being vetted for nearly a year. In announcing her appointment, Senator Thad Cochran said: “The Mississippi legal community has long recognized Judge Aycock’s competence as a practitioner and as a judge. Judge Aycock has earned the respect and admiration of her fellow lawyers and judges who have worked with her and who know her well. She will serve on the federal bench with great distinction.”

Aycock credits 22 years of private practice in her rural hometown of Fulton for laying a foundation that would position her well for public service. “It threw me into public service, which I absolutely love,” she said. Prior to her federal appointment, Aycock served as circuit court judge for the First Circuit Court District.

Aycock also humbly appreciates the faith others have had in her ability and the opportunities that have existed during an era characterized by efforts to bring more diversity to the bench. Looking ahead, Aycock plans to “keep learning.” She will become chief judge of the Northern District in 2014, opening up a new realm of administrative duties and leadership opportunities.



Deborah H. Bell, *Oxford*

Deborah Bell has a passion for students. A professor at the University of Mississippi School of Law since 1981 as well as a visiting professor at Ohio State and Emory University, Bell has found her niche in bringing the realities of the legal profession to the education setting.

“I love working with students on cases or projects, where learning happens in reaction to a real-world setting,” she said. “It’s challenging and messy—like law practice—and teaches substantive law, procedure, professional responsibility and lawyering skills all at once.”

Bell helped establish the Civil Legal Clinic at University of Mississippi School of Law, a program where students serve as lead attorneys, working under the direct supervision of experienced lawyers. As one of the initiatives that Bell has most valued over the course of her career, the program’s goal is to teach skills that are essential to the competent practice of law. Equally important to her is the role she has played in founding and directing the new Pro Bono Initiative at the university to address community legal needs by having students put legal education into practice.

Focusing primarily on family and poverty law in the classroom, Bell said that she has learned a great deal over the years doing CLEs and working with practicing lawyers and judges. “They understand how family law actually works,” she noted, adding that she loved the five-years of research and writing that produced *Bell on Mississippi Family Law*, a definitive reference work on divorce, custody, child support, and all things family law in Mississippi.

A graduate of the University of Mississippi School of Law magna cum laude, Bell said that she was drawn to the profession in the 1970s because she believed it would offer a range of options where one could become involved in addressing social problems. It was also an exciting time for women in the profession as the field was still a new frontier.

Patricia W. Bennett, *Jackson*

Trial law is not for the faint of heart. Just ask Patricia Bennett, who made a name for herself in the courtroom for her ability to successfully prosecute difficult criminal cases—including violent crimes and a number of high-profile cases that received state-wide and national attention.

Bennett's legacy to women lawyers and contributions to the field have definitely proven that there is a place for women as lead counsel in a courtroom. The late Carol West summed it up this way when presenting Bennett as Susie Blue Buchanan Award winner: "She wanted the judge, other trial lawyers and lay persons on the jury to recognize and appreciate the fact that women could be superb in positions traditionally occupied by men. She also wanted other women lawyers to be encouraged and motivated by what she was doing....Most important, she wanted to prove that women could be an able advocate and successful in trials against some of the best men trial lawyers in the state."

A 1979 graduate of the Mississippi College School of Law, Bennett has held such positions as special assistant attorney general for the state justice department, assistant district attorney for Hinds and Yazoo counties as well as the Southern District of Mississippi. She also served as a member of the Judge Advocate General's Corps with the Mississippi Army National Guard Reserve and the U.S. Army Reserve, handling cases ranging from theft and assault on military bases to soldiers going AWOL. She briefly became a judge when she served a term as a special circuit judge for the Hinds County Drug Court Diversion Program.

A professor at the Mississippi College School of Law since 1989 (tenured in 1994), Bennett brings real-world experience to the classroom as one of the school's most respected teachers. She has also served as a visiting professor for the Harvard Law School Trial Advocacy Program, Emory University School of Law Trial Techniques Program and University of Arkansas School of Law.

Kay B. Cobb, *Oxford*

When Kay Cobb enrolled in the University of Mississippi School of Law shortly after her family moved to Oxford in 1975, a legal career seemed like a logical move. Believing a law degree would open up many options to her, Cobb graduated in 1978 and set out to begin what would become decades of distinguished service.

The second woman to serve on the Mississippi Supreme Court, she was the third-longest serving justice when she retired in 2007. By seniority, she served as a presiding justice over three-judge panels of the court to decide cases. She also served as state senator for District 9 from 1992 to 1996.

Cobb began her career practicing law in Oxford until 1982, when she became director of prosecutor programs at the Mississippi Prosecutors College within the University of Mississippi School of Law. She later served as senior attorney for the Mississippi Bureau of Narcotics as well as an instructor at the Mississippi Law Enforcement Officers Training Academy. She established a North Mississippi regional office as special assistant attorney general and served as state coordinator for the State Wide Education, Enforcement and Prevention System (SWEEPS) program, where she was responsible for community mobilization in drug education and prevention efforts.

When Cobb retired from the Supreme Court, Chief Justice Smith was quoted saying, "Presiding Justice Cobb has been invaluable in her service to the Court, to the state of Mississippi, and especially to me during my tenure as chief justice. I have never seen a more dedicated public servant who is committed to justice and fairness to all people. Justice Cobb is meticulous and very studious. She works harder than any other justice I've ever known."





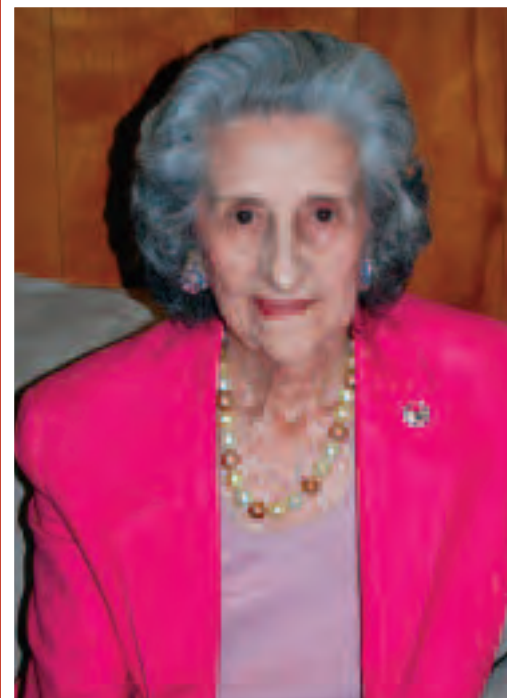
The late Evelyn Gandy, *Hattiesburg*

The late Evelyn Gandy will be remembered by many as an individual who opened more doors for women in Mississippi than any other of her era. Her efforts challenged the societal institutions of the day and blazed a trail for women to be treated with respect and equality in every area of society.

A dynamic speaker from a young age, Gandy addressed audiences for political candidates in high school and later won the state oratorical contest while a law student at the University of Mississippi. Her political aspirations took her straight to the U.S. Senate following graduation where she served three years as a legislative assistant. From there, her pioneering spirit led her to complete a successful campaign to become the first woman to represent Forrest County in the state legislature, where she supported progressive legislation in the areas of education and human services.

That election was not the only “first” in Gandy’s remarkable resume. Appointed as the first woman to fill the role of assistant attorney general in Mississippi in 1959, she was elected state treasurer the same year as the first woman to hold a state-wide constitutional office. Other firsts include her appointments as the first woman to serve as commissioner of public welfare and insurance commissioner. She would later serve as the first woman Lieutenant Governor in 1975.

Gandy’s career spanned nearly six decades before her passing in 2007. Her life of public service has been heralded and recognized on state and national levels through such awards as the Lindy Boggs Award (Southern Women in Political Science), Susie Blue Buchanan Award (Women in the Profession Committee of The Mississippi Bar), Margaret Brent Award (American Bar Association) and the Lifetime Distinguished Service Award (The Mississippi Bar).



Clare Sekul Hornsby, *Biloxi*

The esteemed legal career of Clare Sekul Hornsby could easily be characterized as “timeless.” A practicing attorney since the completion of her juris doctor degree in 1945, Hornsby is perfectly content to continue her Biloxi-based practice that has existed since graduation. As president of Sekul, Hornsby and Tisdale law firm, she noted that she delights in the ability to “wake up every day and know that all my children and family are here, and then, of course, to be able to practice the profession I love.”

And who could ask for a better future than that, she asks? Crediting her parents for helping her find her passion for the law, she said that law school was simply an act of obedience to their desires for her future. Immigrants from Yugoslavia, Hornsby recalled that they believed law to be a noble profession for her and her older brother. “Lucky for me my parents knew me better than I knew myself, because I have loved the law since the first day of classes,” she noted.

Over her career, Hornsby has served in the Chancery Court of the Second Judicial District of Harrison County as a Master, the Mississippi Women’s Cabinet on Public Affairs and as a referee in Harrison County Family Court. She is distinguished as the first woman president of the Harrison County Bar Association.

Although her practice started in criminal law, she later gravitated to family law, where she believes some of her greatest achievements have occurred in the area of adoptions. “It just does my heart good to know that I am helping to place a child with a family that will love them,” she said. Family is very important to Hornsby who has four children, nine grandchildren and 11 great-grandchildren. She was married to Warren Hornsby from 1946 until his passing in September of 1996.

Justice Ann H. Lamar, *Senatobia*

Following graduation from the University of Mississippi in 1982, Ann Lamar's career aspirations were focused on operating a small-town law practice with her husband in Senatobia. And while that marked the start of her career, the legal field had entirely different plans for Lamar.

Elected as the third woman to serve on the Mississippi Supreme Court in 2009, Lamar's career spanning more than three decades has encompassed such positions as circuit court judge in the 17th Circuit Court District, district attorney for the 17th District and assistant district attorney. According to Lamar, she could have never predicted the journey.

"It's been a great run," she said, noting that many of the role changes throughout her career occurred without her foresight. "It's kind of come in leaps and bounds often taking me by surprise. You could put me back in any position I have held, and I would be happy."

Lamar pointed to the establishment of the 17th Circuit Drug Court under her tenure as circuit judge as one of her greatest achievements. The successful endeavor has become a model program for other court systems looking to address the revolving door effect of substance abuse in the legal system. "I have gotten a tremendous amount of satisfaction from making real changes in people's lives," she said.

Following in the footsteps of her father, the late Chancery Judge Leon Hannaford, Lamar chose the legal field in the 1970s when there were not near as many women seeking career paths as lawyers. Since that time, she noted that the field has expanded to offer tremendous opportunity for women today.

As Lamar completes an eight-year term on the Mississippi Supreme Court, she said that she plans to keep her options open. "I've just quit making plans," she laughed. "I plan to take life as it comes."



Mary Libby Payne, *Pearl*

When Mary Libby Payne retired more than a decade ago, her influence had touched nearly every aspect of the legal landscape of Mississippi—from private practice and academia to the bench and all three branches of state government. And since that time, she has continued to build a heritage of service as a public servant, advocate for women's issues, motivational speaker and Christian leader.

One of 11 recipients of the Mississippi Medal of Service in 2011 for significant contributions to the state, Payne was the only female lawyer to receive the national Christian Legal Society's Lifetime Achievement Award in 2002 and the second woman to receive the Mississippi Bar's Lifetime Achievement Award in 2005.

Payne was one of the original members of the Mississippi Court of Appeals and was the first woman to serve on the court. Over the course of her very active and successful career, she was a legislative draftsman, executive director of the Mississippi Judiciary Commission and assistant state attorney general. Prior to her election to the Court of Appeals, she was a professor of law and founding dean of the Mississippi College School of Law.

When Payne started school at Mississippi University of Women, her sights were set on a ballet career, but she said God had other plans for her. In coverage of her 2001 retirement, she was quoted saying, "It was in July 1951 at Johnson Springs in Ridgecrest Baptist Assembly, in the prayer garden that I really felt God's call to the ministry of jurisprudence. I'm not sure how the Holy Spirit speaks to everybody. But in my heart I knew that day that this was what was God's will for my life."

Payne resides in Pearl with her husband of more than 55 years. She recently chronicled the complex story behind the history of the Mississippi College School of Law titled *A Goodly Heritage*.





Joy Lambert Phillips, *Gulfport*

Along with many notable career achievements, Joy Phillips is distinguished as the first female president of The Mississippi Bar, the first corporate bar president and the organization's 100th president. Equal to the opportunities that her tenure brought to the association were the challenges that she faced when Hurricane Katrina wreaked havoc on the Mississippi coast six weeks after being sworn in.

"It was my honor and privilege to have led The Mississippi Bar during this trying time," she recalled, adding that the event touched her on a very personal level as someone who lives and works in the city of Gulfport. "The far-reaching impact of the pro-bono legal assistance desks at the FEMA Disaster Recovery Centers was a true credit to the caring nature of our legal profession."

Phillips' legal career has been primarily focused in the practice of commercial litigation and banking law. Following a period of time working in the city of Jackson, her career moved to Gulfport, where she served as a partner with Allen, Vaughn, Cobb and Hood before taking a position with Hancock Holding Company in 1999. Ten years later, she was promoted to executive vice president of the company and was then designated as corporate secretary in 2011.

Having the opportunity to work with the Mississippi Supreme Court's Access to Justice Commission (ATJC) has been one of the highlights of Phillip's career, one that she takes very seriously. As one of the original co-chairs appointed by the court in 2006, she still serves on the commission to ensure that the less fortunate have access to the judicial system.

Crediting much of her career success to inspiration and encouragement provided by her mother, Phillips recalls being told at a young age that girls could be anything they wanted—even doctors and lawyers—and "not to let anyone tell her otherwise." Looking ahead, Phillips hopes to keep learning on the job following Hancock's large acquisition of Whitney Holding Company in 2011.



Lenore L. Prather, *Columbus*

When the Carroll Gartin Justice Building was dedicated in 2011, the portraits of four historic Mississippi Supreme Court justices were unveiled to grace its walls including the state's first female justice—Lenore Prather. Appointed to the high court in 1982, Prather was known for her work to improve the integrity of the judiciary. Her leadership was also instrumental in bringing the new home of the Mississippi Supreme Court and Court of Appeals to fruition.

"I was honored and considered it my privilege to have a fulfilling career in public service," Prather noted. "When I left the Supreme Court, I was proud of a number of accomplishments during my time as chief justice. By that time, the funding was secure, and plans were in place for the construction of the new Carroll Gartin Justice Building, which I believe will provide a fitting home for those who strive for justice for all Mississippians."

Prior to her appointment to the Mississippi Supreme Court, Prather served as chancery judge for the 14th Chancery District, consisting of Lowndes, Clay, Oktibbeha, Noxubee, Webster and Chickasaw counties. Like her Supreme Court appointment, she was also the first woman to hold the chancellorship in Mississippi.

"Based on my experiences as a chancellor, I was pleased to have the opportunity to advance chancery law with regard to the equitable distribution of marital assets in divorce and determining child custody based on the best interest of children," she said, recalling a notable achievement from her legal career spanning more than five decades.

Prior to her appointments to chancery judge and Mississippi Supreme Court Justice, Prather held a private practice until she was appointed as municipal judge in West Point. After leaving the Supreme Court, Justice Prather served as interim president of Mississippi University for Women in Columbus and was awarded an honorary doctorate degree.

A recipient of numerous accolades over the course of her career, Prather has also held esteemed positions as mother of three daughters and grandmother of two grandchildren.

Lydia M. Quarles, *Starkville*

The 2011 winner of the Susie Blue Buchanan Award, Lydia Quarles has long been a proponent of women's legal and economic issues and has worked diligently to engage women in politics at every level—local, state and national.

"We have learned from the European Union that a legislative body comprised of 30% women can make a perspective shift," she said. "We need to continue to work to achieve that shift in the US."

And that is precisely what Quarles intends to do as she continues to operate a thriving private practice and engage in government and academic initiatives through her position as a senior policy analyst with Stennis Institute of Government at Mississippi State University.

It was Quarles' aim to pursue a legal career since her earliest memories. "My mom says that when I was five and we lived across the street from Cumberland Law School, I told her that I was going to read every book in the library," she recalled.

Following post graduate work in public policy and administration and a period of time clerking for the Alabama Supreme Court, Quarles' career path led her to private practice until she was appointed administrative judge with the MS Workers' Compensation Commission. She served in that position for more than eight years and was then appointed commissioner of the MS Workers' Compensation Commission.

A Fellow of the Mississippi Bar, Quarles has also been honored with the Bar's Distinguished Service Award and the Joan Fiss Bishop Award from the American Society of Public Administration. She believes that some of her greatest career accomplishments have occurred through the success of the Kids' Chance Mediation Project and her time spent mentoring young women lawyers. She served as the Women in the Profession Committee Chair from 2005 to 2007.



Constance Slaughter-Harvey, *Forest*

When Constance Slaughter-Harvey enrolled as a scholarship recipient at Tougaloo College, she had dreamed of such careers as becoming a missionary or physician. It was not until a defining moment occurred in her life that all paths pointed to the legal profession, and it began with an introduction to civil rights leader Medgar Evers.

"Six days after I met him, he was murdered," she recalled. "That caused me to change my outlook on life and how I could help bring about change for the better."

Graduating from the University of Mississippi in 1970 as the first African-American woman to receive a law degree from the institution, Slaughter-Harvey became a strong advocate of civil rights beginning with her employment with the Lawyers' Committee for Civil Rights Under Law, where she represented the families of two students brutalized by highway patrolmen. She has held such positions as president of the Magnolia Bar Association, the first African-American judge in Mississippi and the first African-American and woman to be elected president of the National Association of Election Directors.

Her resume includes a long history of dedication to civil rights, but two career achievements particularly stand out for Slaughter-Harvey as proud moments during her tenure as assistant secretary of state for elections and public lands. These include her part in the efforts to successfully lobby for mail-in voter registration and the reform of the Sixteenth Section School and Public Trust Lands. She also pointed to the success of the highway patrol desegregation lawsuit, *Morrow vs. Crisler* as a notable achievement.

Memorable career moments aside, Slaughter-Harvey emphasized that her greatest life achievement has been the privilege of becoming a mother and grandmother. "The older I get, the more I realize how precious that part of life is," she said. "It requires more skill than any part of my law practice."

Now retired from private practice, Slaughter-Harvey serves as president for both the Legacy Education and Community Empowerment Foundation and the W.L. Slaughter Memorial Foundation.





Carolyn Ellis Staton, *Oxford*

When Carolyn Staton completed law school in 1972, the legal profession was not a typical career path for women. Undaunted, Staton studied at Yale Law School determined to follow in the footsteps of her two older brothers. “I thought it would be a good way to serve the community, helping people solve their problems,” she said.

With a newly-acquired law degree, a previously-completed masters degree and a stint teaching on the high school level under her belt, Staton set out to find her niche in the legal field. “Ultimately I realized that I loved the intellectual challenge of the law, but I also loved teaching. So the idea of going into law teaching seemed a natural move,” she recalled.

And the rest is history. In 2009, Staton retired from the University of Mississippi after 32 years of employment at the institution holding positions ranging from professor and interim dean of the law school to provost and vice chancellor of academic affairs. “My career had been very stimulating and very fulfilling, and at times, very demanding,” she said. “I wanted time to explore other things—interests that I had put on the shelf for years.” Most recently, Staton has turned her passion for books into an antiquarian book business.”

Staton noted that the opportunity to teach others about law has been her greatest experience and achievement in the field. Looking ahead, she believes that the cost of education will be one of the greatest challenges to the legal profession. “I am heartened by the current national conversation about reducing the course work to two years. Obviously, students can’t take every course that might be useful to them, even in three years,” she reasoned. “The thing we need to do is focus on legal research, legal writing, and legal reasoning. The third year could be an apprenticeship of sorts, whether done in law school clinics or internships.”



The late Carol C. West, *Jackson*

Touted for her tremendous legacy of encouragement, motivation and advocacy for the advancement of women lawyers, the late Carol West is also remembered by those in the legal field as someone who persevered and excelled with all tasks she undertook. And some of those tasks were momentous.

Following her graduation from law school at the University of Mississippi, she was immediately identified as an individual with the talent and know-how to develop—from scratch—the Legislative Reference Library for the state of Mississippi. A task never undertaken in the state before, West successfully organized and ran the first reference library until she was asked to complete the same task at the newly-established Mississippi College School of Law. By the time she reached full tenure at the institution, the law library contained 228,886 volumes, a staff of ten persons and a computer lab with fifteen computers.

As a faculty member at Mississippi College, West was one of the originators of the Women Students’ Bar Association, serving as faculty advisor for more than twenty years and often welcoming students into her home. She is remembered as a hands-on mentor to women lawyers, a strong ally and friend. During West’s introduction for the Susie Blue Buchanan Award, Mary Libby Payne said, “I know of few professors who have been as active in helping to place graduates in positions of significance, not only in law firms but also in government offices where she has enormous contacts. Also, she, perhaps more than any of the faculty members or former faculty members, follows up on the whereabouts and lives of graduates long after they have become alumni.”

Nina Stubblefield Tollison, 2010-2011 Mississippi Bar president, fondly recalled the encouragement offered to her by West and her commitment to her students. “When I was elected president of the Bar, she sent me an email that stated, ‘I am so, so, so excited for you. Know that I will help you in any way that I can.’”

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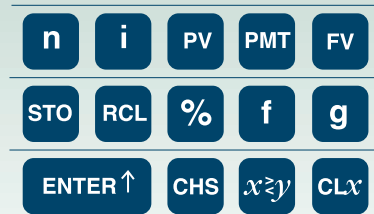
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Law Practice Is Harder

Seated: Cathy Beeding Mackenzie, Nina Stubblefield Tollison, and Alison Goodman; Standing: Polly Covington, Alison Baker, Judge Linda Anderson, Karen Sawyer, Jenny Tyler Baker, Selene Maddox, and Tammra Cascio.



er In Heels... Or Is It?

By Diala Chaney, Oxford

Judge. Litigator. Solo Practitioner. LOBBYIST. Prosecutor. In-House Counsel. Lawyer. Wife. MOTHER. Caregiver. Woman.

Women lawyers have the opportunity to play several roles in the course of their lives and careers. Does playing so many different roles make life harder? These women don't think so. In fact, they seem to make it all look easy.

FROM THE BENCH



**Judge Linda Anderson
Jackson**

Growing up in Holmes County, Mississippi, United States Magistrate Judge Linda Anderson had never met a “real person lawyer.” However, she found herself captivated by “TV lawyers” and engaged by their representation of justice and fair play. Although Anderson was captivated with the law, her career path did not lead her straight to it.

After college, Anderson and her husband both became public school teachers for several years. Even though they both loved teaching, Anderson and her husband decided that it was time to seek out the professions that they both truly wanted. Anderson went to law school and her husband went to dental school. They graduated the same year.

Anderson started her legal career as a legal clerk for former Mississippi Supreme Court Justice Reuben Anderson. She later worked as an Assistant District Attorney in Hinds County and then as an Assistant United States Attorney (criminal and civil divisions). In July of 2006, she was appointed United States Magistrate Judge for the Southern District of Mississippi.

Being able to balance her impressive career along with being a wife and a mother came with a small price. “I view my family time as the most precious possession that I had to forfeit – not all, but more than I wanted,” says Anderson. However, she says that “it made the time that we did have even more special, and we came to appreciate both quantity and quality time together. In retrospect, having to work and strive for a goal served to set an example in our home for working together and supporting each other.”

Anderson has no regrets when it comes to juggling a career and home life: “While I had to make sacrifices to make progress in my field, anything worth having requires work and sacrifice.” Would she do it all again? “Absolutely.” Anderson starts by saying that she would do it again, but with a better plan- “saved more money, managed time better, studied harder, started right out of

college, etc.” But then she quotes the old adage, “If you want to make God laugh, tell him your plan.” She admits that “His plan worked better than anything I could have ever dreamed.”



**Chancellor
Deborah Gambrell
Hattiesburg**

Chancellor Deborah Gambrell is no stranger to the challenges of being a working woman and mother. Gambrell was a senior in high school when Dr. Martin Luther King, Jr. and Bobby Kennedy were killed. She knew then that she would use her life to “help make the world a better place in which to live for people of all colors, economic backgrounds, religion and gender.”

Gambrell entered law school as a wife and mother to her first daughter. She spent those years commuting from Hattiesburg to Jackson in order to fulfill her commitment as both a wife and mother. Gambrell says, “I had to learn to give quality time to my family as opposed to quantity of time.” Two years after she graduated from law school, Gambrell found herself building a solo practice, newly divorced, raising two daughters, trying to stay afloat financially and trying to prove herself professionally. Gambrell says that she had to learn to rely on family to assist her in helping care for her small children. She also learned to involve her children in her work, “by taking them with me to court sometimes and having a television and games set up at my office so that as I worked, they could too.”

Fast forward through thirty years of successful law practice and part time service as a Justice Court Judge and you will find Gambrell sitting on the bench as one of four Chancery Court Judges in the 10th Chancery District, re-married, and mother to six daughters (including one set of triplets). Yes, SIX! Gambrell strongly believes that “you don't have to choose between family and profession... they can both work if you are committed to being well organized and to trust and depend on others to help you.” Gambrell says that women lawyers have to “accept that we are human and don't necessarily have to be ‘superwoman’ to make all of the ‘pieces fit.’”

For Gambrell, seeing her daughter and niece follow her into the profession (and maybe more daughters to follow in the future), getting a hug from a client or a thank you card saying “you don’t know how much you’ve helped me,” make it all worth every minute of the price she has paid to become part of this great profession.

FROM THE LITIGATORS



La'Verne Edney
Jackson

La'Verne Edney knew she wanted to be a lawyer from a very young age. She enjoyed debating with family and friends and has always loved to read. “I was fascinated by Perry Mason and Matlock,” she says, “I could see myself in their shoes and I always thought I could do a better job than they were doing.” Unfortunately for Edney, growing up in rural Mississippi made it hard to find legal role models other than Mason and Matlock. Because of the lack of real role models, she found herself putting her dream of becoming a lawyer on the backburner until she was already married and had a son. It was not until she started working for lawyers at the College Board that she realized she could actually do what they were doing. “Through influence from the attorneys I worked for and my four-year-old son’s belief in me, I applied to law school,” says Edney. The rest is history.

Edney is now a seasoned litigator and shareholder at one of Fortune Magazines “100 Best Companies to Work For” Baker, Donelson, Bearman, Caldwell & Berkowitz, PC. Her practice focuses on tort liability and commercial and health care litigation. She has tried numerous cases on nursing home liability, premises liability, medical malpractice, bad faith insurance and many more.

Edney has accomplished all of this while raising two boys. She says that “preparation is key and sometimes that requires improvising when necessary to make sure you become successful.” Edney has found herself improvising in more ways than she ever thought she would. She says “When I started law school my son was four. While I tried not to miss a soccer game, football game, or any of his activities, I would often be seen with my law books at those events.” Edney says those habits did not change when she joined the Brunini law firm in the late 90s. She knew she had to continue the trend to which she had become accustomed.

“Women don’t stop being mothers, wives, best friends, home keepers, grocery shoppers, cab drivers, etc., when they become lawyers. We can’t/won’t pass off those responsibilities,” says Edney. She understands the positives and negatives of having all those responsibilities. “When the compensation committee comes together at most firms, they have one visual that tells them the story of how successful each person is in that firm,” says Edney, “It’s the numbers.” Edney points out that there is no consideration for being out with your sick child, the hours spent on loads of

laundry, cooking dinner, taking children to lessons, school activities and everything else that adds up outside of the office. That being said, Edney says that she would definitely go back and do it again. “I love what I do daily,” says Edney, “I think the practice of law is one of the most admirable professions around.”



Karen Sawyer
Gulfport

During the 1960s when Karen Sawyer was growing up, females usually thought about becoming either a nurse or a teacher. In fact, the thought of being a lawyer never crossed her mind when she chose to go into nursing. Sawyer spent fifteen years working first as a registered nurse and then as an OB/GYN nurse practitioner. Sawyer decided to make the career change to law because she “wanted to function more independently” and she was “intrigued by the practice of law.”

Sawyer is a partner in the Gulfport office of Copeland, Cook, Taylor and Bush, with a practice focused on civil litigation. Her work is predominantly concentrated in insurance coverage analysis, construction, medical malpractice, and personal injury defense. “I consider myself to be a problem solver for my clients,” says Sawyer, “and that is key in those kinds of cases.”

Sawyer understands that there are sacrifices to be made, but she gladly makes them:

Everyone who practices law, particularly litigation, has spent time preparing for a trial when everyone else was at a Super Bowl party. In addition, my work involves some travel, so it’s hard to keep the kind of routine schedule that allows you to have a stable, predictable schedule. But it’s not too high of a price to pay for the privilege of being a lawyer.

Sawyer has spent the last twenty-five years married to an emergency department physician and director of the ambulance service on the coast. Sawyer and her husband both have high pressure, unpredictable work lives. Because of this, “we can both really understand how it goes for each other,” says Sawyer. What Sawyer sees most among her women colleagues is “difficulty in dealing with the challenges of balancing a healthy active family life and the 24/7 demands of a successful law practice, especially in a firm.” Sawyer understands that it is a tough task to find enough time for fulfillment of obligation to family and to give what it takes to practice law, including putting in the billable hours for making partner. She also understands that the “opportunities are probably there, but a woman lawyer can find it hard to do everything it takes in order to take advantage of some of them.” Hard, but clearly not impossible, as she has proven. “This privilege of practicing law gives you professional independence,” Sawyer says, “and at the same time, it is a career that is intellectually challenging and filled with interesting experiences and some very entertaining people.”

Continued on next page

FROM THE SOLO PRACTITIONERS



Nina Stubblefield Tollison
Oxford

American psychologist and philosopher William James once said, “Act as if what you do makes a difference. It does.” Nina Stubblefield Tollison has kept this quote in mind as she has worked to build her career and life in Oxford, Mississippi. A past President of The Mississippi Bar, a solo practitioner with over thirty years of practice under her belt, and a grandmother to three are just many of the things that kept Tollison busy over the course of her career and life; but don’t expect to hear her complain. “All lawyers have to work very hard, putting in long hours to become established and meet the demands of their practices,” says Tollison. She goes on to say “There is always a balance to be achieved within a person’s life of both personal and professional

demands. At any given time, that balance can be more difficult to achieve than at others. With the ebb and flow, you make your choices for that balance in the best way you can, dealing with what’s best given the current circumstances.”

Tollison was not initially drawn to a legal career after college. Several years after graduating from college, she found herself unfulfilled and needing to plan for a better future. Thanks to the influence of several exemplary lawyers, Tollison decided to attend law school and found herself taking the LSAT within a week of making her decision.

Today, women lawyers like Tollison make up approximately twenty-five percent of our Bar. According to Tollison, they are “integral to our profession.” Her advice to other women lawyers is that it requires confidence to become an accomplished person. Perhaps confidence is what drove Tollison to run for bar president and allowed her to win the election, or maybe it is simply that volunteerism is ingrained in Tollison. “Volunteerism within our Bar has been extremely important to me and is a facet of my law practice which cannot be segregated from my legal career.” She explains, “the most valuable benefits of my practice have been meeting the lawyers with whom I’ve had the opportunity to interact, both in state and out of state.”

Thinking back over the past thirty years, Tollison is overwhelmed when considering whether she would do it all again, but she does say this: “I’ve always been proud to be a lawyer... being a lawyer is a responsibility as well as an honor.”



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Polly Covington
Quitman



Polly Covington has practiced law for thirty-three years in the small rural town of Quitman, Mississippi. After several years of practicing what she jokingly calls “threshold law” (whatever walked through the door), she has been able to become more selective about what she chooses to do. She does confess, however, that “it is a rare day that I do not give free legal advice to someone in the community.”

Covington, who wanted to be a “landman”, was advised by Martha Gerald, an attorney in Jackson, to go to law school and then decide what she wished to do. After graduating from law school, Covington entered law practice with her husband. They were married for thirty-eight years before he passed away in January 2013. She is mother to one child and four stepchildren. Covington understands that law practice is a difficult and demanding career, but she does not feel that she had to give anything up to become successful in her field of practice. “Many of my female friends are lawyers who are successful in the banking industry, in their own private law firms, or as judges,” says Covington. She now advises, just as she was once advised, young women that law school is a good graduate program, and explains to them that it may give options and opportunities in professional choices.



Selene Dunn Maddox
Tupelo

Selene Dunn Maddox credits her mother as her reason for becoming a lawyer. “The example set by my mother in her daily life; work ethic she exemplified during my formative years; and her setting and reaching high career goals, greatly impacted my decision to pursue a post graduate degree more than anything else,” says Maddox. Her mother returned to college to complete her Bachelor of Science in Nursing when Maddox and her sister were under the age of eight. Maddox’s mother then obtained her Masters of Nursing while Maddox was in junior high. Coupled with her mother’s influence, Maddox remembers growing up with an interest in law, even though she had no immediate family members in the legal profession. “My parents had a large leather bound business law textbook on a shelf in our living room and I was enthralled reading it,” she recalls.

Looking back on her twenty-six years of practice as a bankruptcy attorney and as a bankruptcy trustee, Maddox recalls that in the early years of her practice she was required to pledge countless hours above and beyond a forty hour work week to succeed. She has found that even though she has scaled back somewhat over the years, and has learned to manage time differently, she still puts in many hours. “I do whatever it takes to represent my clients to the fullest,” Maddox says.

Maddox believes that demonstrating a professional demeanor earns the respect of others. By being confident in herself and her abilities, she feels that she has gained and earned the respect of others in the legal field, both male and female. Maddox explains that each experience and work phase along the way has made her the lawyer she is today. Maddox admits that she would not change the career decisions she made in the past and that she is happy in her life and in her law practice. “I have a good life- I have the love of and for God, family, friends, and myself,” says Maddox, “I have love for the law.”

FROM THE LOBBYIST



Serena Clark
Madison

Serena Clark’s love for politics and law started at a young age. In high school, she served as a page in the Mississippi Senate. In college, she served as an intern for Senator Trent Lott. Clark knew that attending law school would help pave the way into her current profession as President of AvantGarde Strategies, LLC, a full service government relations firm.

“The foundation I have in law allows me to think outside of the box for clients, look at alternative ways to meet my clients goals,” says Clark, “but, more importantly I believe it makes me more professional as a lobbyist.” Clark understands that non-lobbyist lawyers do not view ethical conflicts between clients the way lawyer lobbyists do. She strongly believes that lawyer lobbyist are “better able to negotiate and navigate the legislative process, and to not take defeat or adversarial problems personally.”

Clark’s busiest time of year is when the legislature is in session. From mid-December to April she is gone a lot at night and often works on the weekends. During that time, she finds herself missing the school activities and extra curricular activities of her three children. However, the flexibility of working for herself outweighs the fact that she misses activities during that time. Plus, she is able to spend the other eight months of the year at home with her children. Clark says, “I remind them that I do a year’s worth of work in four months.” The children agree that it is a fair trade.

Continued on next page

FROM THE PROSECUTORS



Alison Bryant Baker
Gulfport

Alison Bryant Baker went against the grain when she decided to go to law school. “I always heard that I couldn’t do it, that I should do something else better ‘fit’ for a woman,” says Baker. “I wanted to prove the naysayers wrong.” Having always had an interest in the law and how it provides avenues to help people work through traumatic times is exactly what brought Baker to her current job as Assistant District Attorney (ADA) for Harrison County, Mississippi.

During trial, Baker often spends long days at work. She finds herself relying on her husband, Ian Baker, who is also an attorney, to help with their four-year-old daughter. Putting aside the traditional notions of motherhood and being a wife can sometimes be difficult for Baker. “You grow up watching TV shows where the mom is home early enough to bake cookies for her children after school snack, drive them to activities, and then cook supper – every night,” says Baker, “I’ve realized I can’t do everything, every day.” However, she feels that she is “not so much giving up something, but having to redefine what works for our family.” Baker is encouraging when she says, “I’ve learned how to allocate my time where I am able to spend quality time with my family and still devote time to my practice.”



Shundral Hobson
Gulfport

During an elementary school black history program, Shundral Hobson learned about United States Supreme Court Justice Thurgood Marshall. She was fascinated by his role in the Civil Rights Movement and the landmark case *Brown v. Board of Education*. Justice Marshall was a true legend and she admired his legal career. From the moment she learned about Justice Marshall, Hobson knew that she wanted to be a lawyer so that she could make a difference in people’s lives as he did.

Hobson is doing just that as an Assistant District Attorney for the Second Circuit Court District, which includes Harrison, Hancock and Stone Counties. “As a prosecutor, I have been able to help victims and their families begin the process of closure after

a crime has been committed against them,” explains Hobson. “Often times, the first step in healing for a victim is seeing the person who harmed them prosecuted and held accountable for their actions. I enjoy being able to be a part of that process.”

Hobson credits her success as a lawyer to her family and their endless support. As a woman lawyer she understands that men and women approach law practice differently, and that one approach is not necessarily better than another. She also understands that traditional notions of what a successful woman lawyer is supposed to do can sometimes be a hindrance. Regardless of this, Hobson says, “I get to wake up every morning and go to a job that I love knowing that I’m doing my part to make my community a better place for future generations. If I had to go back and do it over again, I definitely would.”



Christine Tatum
Oxford

Before entering law school Christine Tatum glamorized the idea of trial work and she wanted to litigate in the courtroom. After she started practicing in 1995 she quickly learned that most of the work was done outside of the courtroom. After nearly eighteen years of practice, Tatum often finds herself in and out of the courtroom as an Assistant District Attorney (ADA) for Marshall County, Mississippi. But Tatum did not start out as an ADA. She spent several years practicing insurance defense. Ultimately, she knew she wanted to be a prosecutor and when the job became available, she took it. The job change, although it meant less compensation, meant more time for family.

Tatum understands that she can’t be “all to everyone,” and she understands that “no one is to blame.” She says, “That’s just the nature of the struggle between work and family. If I didn’t need sleep and had an unlimited supply of energy, maybe I could meet my family obligations during the day and work obligations at night. But that is not to be as I love/require sleep and I certainly don’t even have half a day’s worth of energy.”

Regardless of the amount of sleep or energy she has, Tatum loves the empowerment that being a lawyer has brought her. “In most aspects of life, I feel as if I know how to protect myself and help others,” says Tatum. “Law is an integral part of every day life and I have the tools to deal with it – the tools given the me by law school and the practice of law.”

FROM THE SMALL FIRM PRACTITIONER



Jenny Tyler Baker
Gulfport

The late Bob Tyler was the type of southern gentleman lawyer who cared deeply about every single client that walked through the door. Their cause was his cause. When you meet his daughter, Jenny Tyler Baker, you can tell that the apple did not fall far from the tree. "I am continually inspired to be the lawyer he was," says Baker. "He was a talented trial lawyer, with a special knack for bad faith litigation," says Baker, "he kept those insurance companies honest."

Baker is making a name for herself at the Tindell Law Firm in Gulfport, Mississippi. She, like her father, is a trial lawyer specializing in personal injury and criminal defense. "I enjoy helping people," says Baker. "The days that are harder than the rest, in the end, make for some pretty good stories... and make you a better lawyer and better person."

Baker, a mother of two daughters, has been practicing law for over eight years. She understands that there will always be challenges for a woman working in a male dominated field. According to Baker, there are two things she feels she had to give up to be successful in her field: "a clean house and an organized closet." Those seem like a small price to pay for the justice she is helping to secure for her clients.

FROM THE IN-HOUSE COUNSEL



Cathy Beeding Mackenzie
Gulfport

Growing up with a criminal defense lawyer for a mother meant Cathy Beeding Mackenzie was no stranger to the practice of law. "It would be fair to say that advocacy was in our blood and at an early age we (my sisters and I) were indoctrinated into the lawyer's life," says Mackenzie. It is no surprise that Mackenzie and two of her four sisters grew up to be lawyers.

Continued on next page

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Mackenzie started her professional career teaching seventh grade geography before heading to law school. While she loved the fulfillment that came from teaching young minds, she found that teaching seventh graders was extremely challenging for her. According to Mackenzie, it did not take her long to realize that even the toughest law professor was a walk in the park compared to teaching seventh graders. She now fulfills her yearning to convey knowledge by teaching gaming law to undergraduate students at the University of Southern Mississippi.

Along with teaching, being a wife, and mother to two daughters, Cassidy, age 10, and Camille, age 9, Mackenzie works full time as Vice President and General Counsel for Island View Casino. "I was lucky to come in contact at the age of 28 with three gentlemen (all non-lawyers) who believed in me and hired me to be their general counsel," Mackenzie says. "They believed I could do whatever I put my mind to and gave me the opportunity to either prove it, or fall on my face trying." Mackenzie admits that she has fallen on her face more times that she cares to remember, but that she has also accomplished many more things that she ever imagined possible. Mackenzie explains, "I never would have had those opportunities without someone believing I could succeed, and for that I am grateful."



**Tammra Cascio
Jackson**

As a child and teenager, Tammra Cascio loved reading, writing, history and studying the political process. Cascio grew up in a very small town in the rural, southern part of Illinois. "There were no women lawyers there when I was young and growing up, but all of the male lawyers were the leaders in the community," recalls Cascio. "I remember realizing that I wanted to be a leader and be in the position to influence how things were done."

Cascio's father passed away unexpectedly at a young age, leaving her mother to provide for Cascio and her sister, which, according to Cascio, was a struggle. She explains that her mother instilled in her sister and herself the idea that they should pursue a profession where they always would have the education, means and ability to support themselves and their children. Although her mother had only a high school education and limited financial means, Cascio says that she [her mother] would always try to help anyone around who had less; and she made sure that Cascio and her sister understood that, by getting an education and expanding their opportunities, they would be in the position to help others more as well.

Cascio has held the position of General Counsel for Gulf Guaranty Life Insurance Company since 2000. She is also the primary caregiver and custodial parent to her two sons; Robert, age 10, and Reed, age 7. Cascio admits that although she enjoys working, being their mother is the most wonderful, challenging, interesting, educating and fun part of her life. She tries to strike a

healthy balance between family and career, but she acknowledges that she has had to make some time concessions and be away from her children in order to achieve success professionally. "Knowing that my time with my sons sometimes is limited by work obligations, I have an even greater incentive to focus on the quality of the time I spend with them rather than merely the quantity," says Cascio.

Cascio agrees that there are sacrifices involved with being a lawyer and a mother, but she counters with the fact that there are sacrifices to be made in any path one takes. "For the most part, having a law degree has opened paths for me that most likely never would have been available to me otherwise," explains Cascio. She understands that great strides have been made by women in the legal profession. "I can say with confidence that I would not have been given the same opportunity to be general counsel of a corporation in Mississippi in 1970 as I was in 2000," says Cascio. She advises that the key to women lawyers' great success is "to throw their hats in the rings and really promote themselves and their unique talents and skills along with doing a better job of creating networks and forming alliances to help each other reach goals, and to work collectively to advance women in the profession."

FROM THE LARGE FIRM PRACTITIONERS



**Alison Goodman
Tupelo**

Alison Goodman's love of Japan is what prompted her to become a lawyer. After passionately studying the Japanese language and culture during her undergraduate and post-graduate tenure, Goodman decided to attend law school for its versatility and to enable herself to earn a solid financial future doing work that she enjoys. After five years of practicing workers compensation law in Jackson, she found herself transitioning into the general business section of a firm in Tupelo, where, for the past five years, Goodman's practice has had a specific focus on the firm's corporate and individual Japanese clients.

Goodman understands that no matter the practice, a woman in the legal profession will be faced with challenges in attaining the work-life balance she desires. "This profession often grants us the power to maintain control over our schedules such that we do have the flexibility to achieve our own personal goals regarding work-life balance," says Goodman. The flexibility coupled with the strong and varied role models and willing mentors help provide excellent opportunities for women to succeed in the legal profession, according to Goodman.

Goodman defines success as "the accomplishment of one's goals." Goodman feels successful when she allows herself to focus

on making career decisions designed to let her do legal work that she cares about, while being kind to herself, remaining actively involved in community projects that are important to her, and being a good mom to her two daughters and wife to her husband. “I find I am at my happiest when I give myself permission to evaluate and reevaluate my goals and make adjustments accordingly,” says Goodman.



**Anita Modak-Truran
Jackson**

Coming from a long line of medical professionals, Anita Modak-Truran broke the mold when she decided to become a lawyer. A doctor for a father and a registered nurse for a mother, Modak-Truran certainly felt pressure to go into the medical field. “My dad, who is from India, is very proud of the family’s long commitment to the practice of medicine, but it wasn’t the right choice for me,” says Modak-Truran. “I have always been loud and a strong advocate for different causes.”

When Modak-Truran was rejected from the seventh grade choir, she was told that her vocal projection would be best suited for public speaking. This recommendation led her to stage performance and ultimately the court room. Since 1987, Modak-Truran has spent her time practicing in a variety of different areas: healthcare litigation, product liability litigation, copyright litigation, intellectual property, and entertainment and media law. She understands that long hours come with the territory. “My contracts professor drilled into our heads that the law was a jealous mistress,” explains Modak-Truran.

Modak-Truran and her husband of twenty-eight years have

raised one son, who is now a freshman at the University of Chicago. Although the hours are long, law practice provides a good living to raise a family and helps support their son through college, according to Modak-Truran. “I have no regrets in choosing to practice law,” she says. “The benefits of the practice of law are the opportunities to help others, unique and stimulating intellectual challenges and transferable skills.”

The Same, Yet Different

These women all have one thing in common: they are all lawyers. That is where the similarities end. Yes, some share being wives and mothers, but each one has lead a unique and different life. Each woman loves what she does for a living and she would not change a thing. In a profession that some refer to as a “jealous mistress” it is refreshing to know that these women are able to balance work and home life and that they would all go back and do it all over again. ■



DIALA H. CHANEY is a staff attorney for the Department of Human Services, where she serves Panola County and Lafayette County in the Child Support Enforcement Division. Chaney graduated from the University of Mississippi in 2001 and from the University of Mississippi School of Law in 2004. In 2007, she completed her LL.M. in Taxation from the University of Alabama. Chaney is a past President of the Lafayette County Bar Association and the Mississippi Women Lawyers Association.

She currently serves as President of the Tri-County Young Lawyers Association and as a Subcommittee-Chair of the Mississippi Bar’s Women in the Profession Committee. Chaney has been an active member of the Mississippi Bar Young Lawyers Division and is currently the Chair of the Nominations Committee. She has previously served on its Board of Directors and as Co-Chair and Oxford Regional Chair of the High School Mock Trial Committee. She was a member of the inaugural class of the Mississippi Bar’s Leadership Forum. She currently serves as an adjunct professor at the University of Mississippi School of Law, where she teaches a section on chancery court practice. Chaney is a graduate of Leadership Lafayette and is the Hospitality Director for the Oxford Film Festival. She is an active member of the Junior Auxiliary of Oxford. Chaney lives in Oxford with her husband, Phillip, and their two boys, Elliott and Michael.

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Intellectual Integrity in The Practice of Law: One Solution to Incivility and Unprofessionalism

Lawyers have a professional responsibility to be intelligent. Lawyers have a professional responsibility to have integrity. Lawyers have a professional responsibility to exercise and at all times utilize Intellectual Integrity.

Good news: simply by holding a license to practice law in the State of Mississippi you have both intellect and integrity – you couldn't have successfully earned your Juris Doctorate and been admitted to practice law otherwise. But practicing law with “*Intellectual Integrity*” is much more than possessing qualities of intellect and integrity. One internet source actually defines the phrase “Intellectual Integrity” as follows:

The recognition of the need to be true to one's own thinking; to be consistent in the intellectual standards one applies; to hold one's self to the same rigorous standards of evidence and proof to which one holds one's antagonists; to practice what one advocates for others; and to honestly admit discrepancies and inconsistencies in one's own thought and action.

<http://www.criticalthinking.org/pages/valuable-intellectual-traits/528>

In his book, *Three Steps to Integrity: Connecting How You Think, What You Do, Why You Do It, to Who You Are*, Dr. William L. Jenkins writes, “Ethics by themselves are ‘faith without works.’ “Virtues by themselves are simply ‘good deeds.’” “It is only when ethics and virtues align through the agency of character, including pure motives and excellent habits, that the wholeness of integrity comes into focus.” Jenkins, p. 177. From an attorney's per-

spective, then, intellectual integrity would refer to any action taken with justice—rather than “mere” victory in the courtroom—as the objective. We submit that intellectual integrity can be implemented into our daily practices and our daily lives, and that doing so can increase the quality of justice, make us more successful for our clients, bring honor to our profession, and even bring peace to our personal lives.

We, both individually and collectively, must do something about the losses our profession has suffered in the court of public opinion. Practicing the law with intellectual integrity as an ethos will enable us to reverse that trend. Consider the ways that a lawyer with intellectual integrity will deal the quotidian details of practice. All lawyers are called to help people and, we believe, most lawyers have every intention of doing just that. However, we often lose sight of our primary mission of serving the public, the profession and the legal system, and we get caught up in the minutia of day-to-day tasks and difficulties. We have pressures from each and every area of our lives—financial pressures, family pressures, peer pressures, professional pressures such as looming deadlines, billable hours, unrealistic client expectations, expectations to measure up and move ahead in the profession, etc. Working in such a pressure cooker wears down our tolerance for each other and can lead to behaviors that result in consequences we never intended. And before we begin to

Continued on next page

By Jennifer Ingram Wilkinson, Hattiesburg, and Michelle D. Easterling, West Point



Jennifer Ingram Wilkinson



Michelle Easterling

Intellectual Integrity in The Practice of Law

focus on all those other lawyers who are guilty of this, let's focus on the fact that it happens to all of us. We fire off that letter blaming the other attorney and assigning malicious intent when none actually exists. We refuse to respond to that letter, phone call or email because the attorney writing, calling or emailing has previously done something we don't like. We arbitrarily withhold our consent or agreement to reasonable requests for extensions of time or to accommodate a travel schedule because we think we may be giving up one of our client's rights and we don't want to be viewed as weak or a pushover. And, truth be known, we really don't trust that other attorney because in our minds, at least, that attorney has not earned our trust or has done something to make us believe they are untrustworthy. As a result we develop a reputation for being uncooperative causing other attorneys to harbor resentment for us, and so the cycle continues. The consequences of this type of incivility don't only affect us as colleagues and contemporaries, but they negatively affect our clients, the clients on the other side of us, the general public, and the profession as a

whole.

In addition to rampant incivility toward one another, we have also come to a place where successfully representing a client means to "win at all costs." Similar to what seems to be happening to society as a whole (at least where politics are concerned), we as attorneys are polarized in our positions simply because we believe there has to be one winner and one loser and we want to be sure our side wins. We find ourselves capable of saying and doing things that we might ordinarily admonish another lawyer for doing. There is almost no such thing as an uncontested fact or stipulation or agreement, unless such a stipulation or agreement results in some advantage to our clients. Ultimately this fosters and exacerbates already very negative feelings among the clients that are legally adverse to one another and ends up costing both sides in time, effort, energy and money. Think about this: sometimes we represent clients that shouldn't "win." Sometimes our clients have put themselves in situations that make them legally vulnerable. Sometimes our clients are victims of someone else's illegal or

unethical activities, but are none-the-less legally responsible for their circumstances. Should these clients "win" just so we can claim success for them? Sometimes we advance causes of actions or defenses to causes of action that later turn out not to be supported by the actual facts and evidence or that are contrary to the current pronouncement of the applicable law. However, even though we may know this, we engage in mental and factual gymnastics to make our argument credible because we aim to project our reputations as winners rather than uphold justice. Fear of "giving in" or "losing" on one particular issue keeps us from fairly and honestly looking at the facts and doing the right thing.

As attorneys, we are called to be protectors of the truth and protectors of the justice system. If we as attorneys do not protect truth and justice, it will not be done. A cynic may claim that this is the equivalent of allowing the inmates to run the asylum. However, we are not only called to do better, but also required by the Mississippi Rules of Professional Conduct and the statutes of the State of Mississippi to do so:

A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." *Preamble to the Mississippi Rules of Professional Conduct.*

As a **client representative**, the lawyer functions as an advisor of the client's legal rights and responsibilities, an advocate of his client's position, a negotiator between the client's (and lawyer's) sincere desire to win and the responsibility to win fairly and honestly, an intermediary between clients seeking to find common ground and an *evaluator* of statuses of matters, and strengths and weaknesses of claims and defenses. *Preamble: A Lawyer's Responsibilities*, ¶ 2 (emphasis added).

As an **officer of the legal system**, the lawyer is bound by the law not only with regard to his professional representation of his client, but also in his own life and work. "A lawyer should use the law's procedures *only* for legitimate purpose and not to harass or intimidate others." *Preamble*, ¶ 5 (emphasis added). A lawyer should respect the integrity of the

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legal system and seek to protect and preserve it, treating judges, fellow lawyers and public officials with courtesy and respect.

The lawyer as **public citizen having special responsibility for the quality of justice** is expected to promote the law and the legal system and strive to improve both in his life and work. "A lawyer should further the public's understanding of and confidence in the rule of law and the justice system...." *Preamble*, ¶ 6. It matters what we do. It matters what we say. Our work product matters, not only to ourselves, to our law partners, and to our clients, but also to the public and to the system of justice as a whole—not only because what we say is worthy, but because what we say and do, we say and do as attorneys and counselors in the law charged with special responsibilities, duties, and obligations. This role contemplates more than just learning the law for purposes of representing clients or practicing law to make a living: we are by profession officers of a court system in which we are duty bound to preserve and protect:

It is the duty of attorneys:

- (1) To support the Constitution and laws of this state and of the United States;
- (2) To maintain the respect due to courts of justice and judicial officers;
- (3) To employ for the purpose of maintaining the causes confided to them, such means only as are consistent with truth, and never to seek to mislead by any artifice or false statement of the law;
- (4) To maintain inviolate the confidence and, at every peril to themselves, to preserve the secrets of their clients;
- (5) To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which they are charged;
- (6) To encourage neither the commencement nor continuance of an action or proceeding from any motives of passion or personal interest;
- (7) Never to reject, for any consideration personal to them-

selves, the cause of the defenseless or oppressed.

Duties of Attorneys; Mississippi Code Section 73-3-37

Consider also the Oath taken by each new attorney admitted to the practice of law in Mississippi:

"I do solemnly swear (or affirm) that I will demean myself, as an attorney and counselor of this court, according to the best of my learning and ability, and with all good fidelity as well to the court as to the client; that I will use no falsehood nor delay any person's cause for lucre or malice, and that I will support the Constitution of the State of Mississippi and the Constitution of the United States. So help me God." *Attorneys' Oath for Practice of Law in Mississippi; Mississippi Code Section 73-3-35.*

To demean oneself "with all good fidelity as well to the court as to the client" unequivocally rejects the "win at all costs" approach to the practice of law. Rather, we must remember that we advocate not only for our clients, but also for the sanctity of the law itself.

There are fifty-five (55) specifically enumerated Rules in the Mississippi Rules of Professional Conduct that frame our obligations to each other, to the court and to the public. The most frequently cited of these Rules obligate a lawyer to be competent, prompt and diligent, to maintain communications with his or her client, to keep that client "reasonably informed" regarding the matter of representation, and most importantly, to maintain client confidentiality in all respects, "except so far as disclosure is required or permitted by the Rules of Professional Conduct." *Preamble*, ¶ 4. Considering the call for Intellectual Integrity in the practice, consider the role of the lawyer as "advocate" and Rules 3.1, 3.2 and 3.4.

M.R.P.C. Rule 3.1 "Meritorious Claims and Contentions"

Rule 3.1 requires that in any action we bring or defend, or with regard to any issue we allege or dispute, there must exist a basis in law or in fact—not frivolous—for the action or position. This is not to say that one's facts could not stand to change the law—or abolish it entirely. Our legal

system endures because it changes with the society it represents. Yet an underlying element of good faith must govern any attempt to alter or abolish a law or rule of procedure. The Comment to Rule 3.1 charges the attorney with dual responsibilities of both using legal procedure "for the fullest benefit of the client's cause," while simultaneously refraining from utilizing legal procedure for improper or abusive purposes. See Comment, M.R.P.C. Rule 3.1. The Comment further sheds light on what constitutes a frivolous action, defense or position: Where an examination of the intent of the client reveals an improper motive – "for purposes of harassing or maliciously injuring" another, the action, defense or position is frivolous. Likewise, when the attorney is unable to make a good faith argument in support of his claim, defense or position, or basis for changing or abolishing the current law in effect, the action, defense or position is frivolous.

The Mississippi Rules of Civil Procedure and the Mississippi Litigation Accountability Act are two tools that the

Continued on next page

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Intellectual Integrity in The Practice of Law

Courts use to enforce the duties and requirements placed upon attorneys to be accountable for their words and actions in the courts. In a case recently decided by the Mississippi Court of Appeals, the Court affirmed a chancellor's award of \$42,922.91 in attorney's fees jointly and severally imposed against a plaintiff and his counsel pursuant to the Mississippi Litigation Accountability Act and Miss.R.Civ.P. 11 following the trial court's denial of plaintiff's motion for recusal and the dismissal of their civil action on summary judgment. *Sullivan et al v. Maddox*, 2011-CA-00820-COA (January 22, 2013)¹ The plaintiff filed suit to quiet and confirm title against the defendants, the adjacent landowners, by adverse possession, to property that was titled in the United States of America. (§1). The chancellor noted that the attorney for the plaintiff admittedly required his client to execute a waiver prior to the filing of the lawsuit in which the client acknowledged that the attorney had advised him of the weakness² of the case and further, during the course of discovery, the plaintiff's own expert, a real estate appraiser, testified that no patent conveying the property out of the United States had ever issued. (§8). The Court of Appeals affirmed the chancellor's denial of the motion for recusal³ and affirmed the imposition of the award of attorneys fees jointly between the plaintiff and his attorney for the filing of frivolous pleadings and legal arguments made "for the purposes of harassment and delay, without substantial justification and with disrespect for the integrity of the court." (§11).

M.R.P.C. Rule 3.2 Expediting Litigation

Despite what appears to be a clear and concise directive, it's arguably one of the



most subjective of the imperatives: "A lawyer shall make **reasonable efforts** to expedite litigation consistent with the interests of the client." The official comment pinpoints the true measure of whether the delay, though frowned upon, is a result of legitimately crowded dockets, desks and obligations of counsel and judiciary, or whether is a tactic by design to wear down or wipe out financially the other party: "The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay."

M.R.P.C. Rule 3.4 Fairness to Opposing Party and Counsel

Among other things, M.R.P.C. Rule 3.4 "Fairness to Opposing Party and Counsel" strictly prohibits lawyers from certain actions and behaviors relating to evidence (or materials with potential evidentiary value) (M.R.P.C. 3.4(a)), as well as introduction of knowingly false testimo-

ny or falsification of evidence or improper inducement for a witness' testimony. (M.R.P.C. 3.4(b)). For purposes of this article, however, consider the prohibitions relating to discovery:

Rule 3.4 Fairness to Opposing Party and Counsel

"A lawyer shall not:

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party."

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

- (1) the person is a relative or an employee or other agent of a client; and
- (2) the lawyer reasonably believes that the person's interest will not be adversely affected by refraining from giving such information.

For example, when a lawyer fails to use "reasonable diligence" or intentionally avoids answering interrogatories that seek discoverable, relevant information, the result is a waste of the requesting attorney's time and the court's time and a wasteful dissipation of the requesting client's money, all to secure information that the requesting party is entitled to receive and the responding party is obligated to produce under the Rules of Civil Procedure. This increases tensions dramatically between the lawyers, annoys the court, inflames the parties further, and results in



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increased costs of litigation by virtue of the endless good faith letters, motions to compel discovery and hearings on motions to compel. Not to mention the fact that it takes that much longer to get the case to trial—most judges and/or court administrators won't set cases for trial unless discovery is concluded. The Rules of Civil Procedure are designed to protect against this sort of abuse of the process by attorneys. See Comment, Miss.R.Civ. P. 33 ("Miss.R.Civ.P. 33(b)(1) emphasizes the duty of the responding party to provide full responses to the extent not objectionable.").

Responses to requests for production exemplify another opportunity for abuse of the discovery process. Ostensibly worse than "will supplement," consider the age-old "document dump" technique, by which counsel opposite responds to your fifteen (15) distinctly stated production requests with a generic, "See attached" and then deluges you with mounds of paper, in no apparent organizational scheme or order – date, relevance, request or otherwise. Miss.R.Civ.P. 34(b)'s obligation to produce the records as maintained in the "usual course of business" or to "organize and label them to correspond with the categories in the request that call for their production" was designed specifically "to deter deliberate attempts by a producing party to burden discovery with volume or disarray or deliberately mixing critical documents with others in an effort to obscure significance." See Comment, Rule 34. Sadly, the old "document dump" (albeit by means of a shiny compact disk or cute little thumb drive) is alive and well in Mississippi practice.

Likewise, advising non-party fact witnesses (other than relatives, employers/employees or agents of the client) "not to talk to the other attorney" in an attempt to obfuscate the facts about which the witness plans to testify to create an element of surprise is a slippery slope: There's nothing wrong with attempting to gain an advantage by playing your hand close to your vest, but we must be cautious as to what and how we advise those non-relative/employer/agent witnesses so as not to violate the terms of Rule 3.4(f).

The amount of time, money and effort required to obtain relief from these kinds of discovery abuses is often much, much more than an already over-extended attor-

ney wants to take on in the practice. Perhaps, that by practicing with a greater degree of intellectual integrity will diminish the impact of this sort of misconduct. The fact is that by shirking our responsibilities under the rules, we damage our individual professional relationships and reputations, and erode the public's confidence in our profession.

By living up to the rules of professional conduct to which we have given our oaths, we will anneal the public image of attorneys. In short, we will be seen as those who uphold justice rather than as those who twist facts in order to subvert it. For this to happen, we must first accept that we as attorneys are required to be seekers and protectors of the truth at all costs – **not** to be tough winners. Yes, we are called to represent our clients' best interests, but we must do so only within the confines of the truth and with the intent to promote and protect the integrity of the legal system and to promote the quality of justice. Promoting and maintaining the quality of justice

means that we are seekers of justice and truth and that we value justice and truth above our desire to "win" or "get ahead" in the profession. We should honestly assess, using common sense and practicality, each and every situation for what is true and accurate, and use our good judgment to do the right thing in the interest of the pursuit of justice. Practicing with *Intellectual Integrity* promotes truth, honor, justice, and fairness, which maintains, and hopefully improves, the quality of justice. This, and nothing less, is required of us. ■

1 This is an unpublished case and may be subject to M.R.A.P. 35-B(b).

2 Specifically, the attorney advised the client that title to the property had never passed outside of the United States, there was no description of the boundaries of the land, there was no government survey of the property, the attorney could not deraign title and the plaintiff had no color of title. (¶8).

3 The basis of the plaintiff's motion for recusal was the allegation that one of the lawyers for the defendants had represented the husband of the court administrator in a criminal matter that was pending in the circuit court. (¶5)

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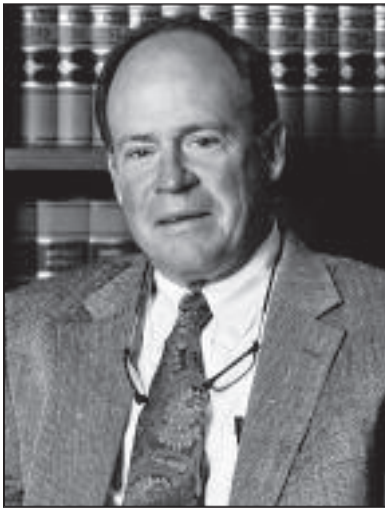
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MB Election Results



Eugene M. Harlow
Laurel, MS
President-Elect
of The Mississippi Bar

Gene Harlow has become President Elect Designee of The Mississippi Bar. He will assume his elected position during the Bar's Annual Meeting in Sandestin in July. Tupelo attorney Guy Mitchell will assume presidency of the Bar at that time.

In addition to the race for President-Elect, the following have been certified as newly elected members of the Board of Bar Commissioners:

3rd Circuit Court District – Post 1

Kent E. Smith, Holly Springs

3rd Circuit Court District – Post 2

Lawrence L. Little, Oxford

7th Circuit Court District – Post 1

Laura M. Glaze, Jackson

7th Circuit Court District – Post 2

William Liston, III, Jackson

11th Circuit Court District – Post 3

Cynthia I. Mitchell, Clarksdale

12th Circuit Court District

Chadwick L. Shook, Hattiesburg

14th Circuit Court District

Mark R. Holmes, McComb

16th Circuit Court District

Michelle D. Easterling, West Point

19th Circuit Court District

Jessica M. Dupont, Pascagoula

20th Circuit Court District – Post 2

Whitney M. Adams, Pearl

20th Circuit Court District – Post 3

David L. Morrow, Jr., Brandon

YLD Election Results

Jessica Dupont of Pascagoula has been elected Secretary of the Young Lawyers Division. Certified to serve on the Young Lawyers Division Board of Directors are the following:

Central District

Eric L. Patterson, Brandon

Coastal District

Jeremy T. England, Ocean Springs

Hinds Post IV

Alexander C. Martin, II, Jackson

Hinds Post V

Graham P. Carner, Jackson

Hinds Post VI

Lindsay C. Thomas, Jackson

North East District

R. Brannon Kahlstorf, Tupelo

South West District

Cheli K. Durr, Brookhaven

Director-at-Large

Bradley M. Reeves, Jackson




Jennie S. H. Pitts
Jackson, MS
President-Elect
of the Young Lawyers Division

Jennie Pitts has been elected to the position of President-Elect Designee of the Young Lawyers Division of The Mississippi Bar. Her term will begin in July of this year. Julie Gresham of Biloxi will assume duties of President of the YLD at that time.

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Alison Baker of Gulfport and Catherine Bryant Bell of Jackson.



Mary Libby Payne of Pearl and Patricia Bennett of Jackson.



Andre'a Barnes and Dana Sims, both from Jackson.



Pam Johnson of Jackson, Jennie Pitts of Jackson, and Brandi Gatewood of Ocean Springs.

Mississippi Court of Appeals Judge Donna Barnes and Aleita Sullivan of Mendenhall.



Judge Sharion Aycock of Aberdeen and Kristi Johnson of Ridgeland.



Nina Stubblefield Tollison of Oxford, Cindy Mitchell of Clarksdale, and Maura McLaughlin of Hattiesburg.



Legislator Sherra Hillman Lane, Waynesboro; Jennifer Ingram Wilkinson, Hattiesburg; Brandi Gatewood, Ocean Springs; and Vicki Slater, Madison.



Kathy Fewel of Jackson and Emmy Stone of Brandon.



Alexis Farmer of Oxford and Sumeka Thomas of Okolona.



Judge Jennifer Schloegel and Joy Lambert Phillips, both from Gulfport.



Amanda Green Alexander of Jackson, Gandy Lecture Series Chair Parker Kline of Aberdeen, and MS Bar President Lem Adams of Brandon.



Suzanne Baker-Steele of Biloxi and Elizabeth Hyde of Oxford.



Lydia Quarles, Starkville; Michelle Easterling, West Point; Deborah Davis of Tupelo, Susannah Dougherty of Columbus, and Lisa Meggs of Columbus.



Tammra Cascio of Ridgeland and La'Verne Edney of Jackson.

20th Annual Evelyn Gandy Lecture Series



Mississippi Court of Appeals Judge Virginia Carlton and Tammra Cascio of Jackson.



Elizabeth Hyde of Oxford and Tiffany Graves of Jackson.



Johnnie Ruth Hudson of Clinton and Shirley Norwood Jones of Jackson.



Virginia LoCoco of D'Iberville and Sherra Lane of Waynesboro.



Judge Jannie Lewis, Judge Janace Harvey-Goree, and Patricia Chatelain, all from Lexington.



Rachel and Jim Waide of Tupelo.



Laura Glaze and Jennifer Hall, both from Jackson.



Tametrice Hodges, Jackson; Kamesha Mumford, Ridgeland; Davetta Lee, Jackson; Tami Munsch, Ridgeland; and Kendra Lowrey, Lumberton.



Wesla Leech of Mendenhall and Susan Tsimortos of Jackson.



Rachel Pierce Waide
Young Lawyers Division President
2012-2013

As 2013 begins, the various committees of the Young Lawyers Division of The Mississippi Bar are actively engaged in outreach projects across our state. For example, the Mock Trial Committee is building on the success of previous contests by hosting one of the largest ever mock trial competitions. While teams and coaches are already in place, because of the large number of participants this year, volunteer opportunities remain available for judges. If you would like to judge one or more of those competitions, please contact RenÈ Garner via email at rgarner@msbar.org.

The Prison Dogs Committee, in only its first year of existence, is experiencing similar success. Under the leadership of Krissy Casey, the pilot program has started in Monroe County. With direction from Sheriff Cecil Cantrell and guidance from a certified dog trainer, Monroe County inmates are now training shelter dogs in basic obedience. The dogs come from the Aberdeen Animal Shelter and have been temperament tested prior to being placed in the jail. The inmates who participate are those housed in the Monroe County Jail and selected for participation by Sheriff Cantrell. The Committee's goal is to expand the program to all correctional facilities in Mississippi. That expansion, of course, will require more manpower, more dog trainers, and more food and supplies. To volunteer, to make a donation, or to make a recommendation for a volunteer dog trainer, contact Krissy Casey at caseyk@phelps.com.

Young Lawyers Division News

The Lawyer in Every Classroom Committee, led by Brad Reeves, is hard at work pairing attorneys with teachers for presentations on law-related topics in classrooms. This program offers any teacher in the state the opportunity to have an attorney visit his or her classroom and address the students. Lawyers and educators in sixteen (16) counties have been paired thus far, and The Mississippi Bar provides written materials covering a broad range of topics for use by the lawyers who participate. Because I spent time with Paula Ainsworth's class in Nettleton, Mississippi, as a part of this project, I can personally attest to its benefits for lawyers and students alike. If you are interested in volunteering as a lawyer in the classroom, please email RenÈ Garner for more information.


The Public Service Committee held Wills for Heroes events across the state during December and January. On December 6, the group drafted wills for the Starkville Police Department, and on December 11, they assisted the Lauderdale County Sheriff's Department. On December 18, the Committee and its volunteer lawyers were on site with the Copiah County Volunteer Firefighters, and on January 17 those assisted were employees of the Jackson County Sheriff's Department. Wills for Heroes, chaired by Vicki Rundlett, continues to be one of the most widely-known YLD projects, and our group is proud to serve first responders in a tangible way.

Led by Diala Chaney, the Nominations, Election, and Awards Committee, too, has been busy in the New Year. The ballots for the 2013 officers and directors of the YLD were tabulated in January 2013. Jennie S.H. Pitts of Jackson was elected President-Elect, and her term will begin at the conclusion of

the 2013 Annual Meeting of The Mississippi Bar. Jessica M. Dupont of Pascagoula was elected Secretary. The following people were elected to the Board of Directors: Eric L. Patterson, Brandon, Central I; Jeremy T. England, Ocean Springs, Coastal II; Alexander C. Martin II, Jackson, Hinds Post IV; Graham P. Carner, Jackson, Hinds Post V; Lindsay C. Thomas, Jackson, Hinds Post VI; R. Brannon Kahlstorf, Tupelo, North East; Cheli K. Durr, Brookhaven, South West; and Bradley M. Reeves, Jackson, Director at Large. ■

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Planning Your Legacy

Legacy” is a handsome word that originated around the mid-14th century. It refers to “a gift by will of money or other personal property, a bequest” or to “something transmitted by or received from an ancestor or predecessor or from the past – the legacy of the ancient philosophers.” Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/legacy>.

Each of you are, *ipso facto*, not totally isolated from meaningful friend or family relationships. Therefore, you will leave a legacy of some sort when you depart this realm. The *form* of the legacy may be tangible (money or property) or intangible (values taught and experiences shared). The *recipients* of the legacies may be spouses, children, grandchildren, extended family, life partners, significant others, close friends, beneficiaries of your charitable efforts, or those who have observed and admired you from the wings of your life.

Chaos is a feature of nature and of our lives. When left unmanaged, circumstances and people can quickly become unmanageable. So it is with accidental or thoughtless legacies. When money or property are left behind by heads of families, it is not uncommon to find the children begin to assert their respective positions and entitlements and fight for their rights to the fiscal carcass. Family cohesion and goodwill from good values taught over the years may give way to mercenary motives and self-interest that will, without some outside control, lead to family discord and even break-up. In order to prevent this chaos and confusion over unmanaged legacy, it is necessary for you to place controls on the form and recipients of what you leave behind so that it will be used in the most effective ways for the purposes and the people you intend. The development and implementation of these external controls is called planning, and it is the subject of that which follows.

Planning Your Health Care Legacy

Most people have heard the term

“estate planning.” Estate planning once meant simply the drafting of wills or trusts to address the disposition of assets at death. However, today there is much more to family security planning. Today we must plan well for longer life. According to the 2010 Census, thirteen percent of our population – over 40.2 million people – is over the age of 65 (57% female, 43% male). Approximately 79 million “baby boomers” began to reach Social Security early retirement age in 2008. By 2030, over 72 million persons, or one-fifth of the American population, will be over 65, with the fastest growing contingent being (as it is now) the over-85 group. Breakthroughs in medical science and health-care have made it less likely that we will die younger of communicable disease, and we will more likely live a longer and healthier life than at any time in history. This longer life will, in all likelihood, be punctuated by periodic illnesses and hospitalizations associated with the aging process or by one or more chronic conditions such as Alzheimer’s disease, pulmonary disease, or congestive heart problems. Thirty-eight percent (38%) of adults age 65 and older have disabilities, while 10% of persons age 18 – 64 and 5% of children age 5 – 17 have disabilities. 2008 American Community Survey; <http://factfinder.census.gov>.

Planning for incapacity can be as important, if not more so, than preparing a will or trust. Statistically, an adult is three and a half times more likely to become disabled than to die within any period in the future. Who will manage your affairs, pay your bills, make your health care decisions if you become incapacitated and



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Jackson, Mississippi*

unable to do those things for yourself? Your physical presence may become a legacy for others to care for in the event you are not able to do so. Since the United States Constitution and cases have established that you are the only person with authority over your body and your property, it is important for you to give the reins of control to others with the constraints you wish applied to that control. By using a **durable power of attorney**, you can select the person(s) who will have legal authority to make decisions about and carry out your care and financial affairs if you become incapacitated. Since each person's situation is unique, powers of attorney should be customized for your particular needs. An **advance health-care directive** will allow you to designate the person(s) who will have authority to make health-care decisions about your medical treatment in the event you become unable to do so. Such decisions carry very personal values and must consider the persons who will be chosen to carry them out and the directives imposed by the principal.

A. Advanced Health-Care Directive (AHCD). An AHCD allows you to control and direct decisions about your health-care after you may become disabled, by selecting the most appropriate person to handle such decisions and by giving directions based on your personal values. This document, prescribed under Mississippi Code § 41-41-201, -209 (1972), allows you to designate one or more other persons as your agent to make *medical and health-care treatment* decisions if you later become incapacitated and unable to make such decisions. In the AHCD, you can state personal decisions about keeping or removing life-support treatments in the event of terminal illness and other choices concerning medical treatment based on your own personal values.

Section 1 of the AHCD is the health-care power of attorney, in which one or more persons may be listed in the maker's order or choice and designated as agents to make *medical and health-care treatment* decisions for the maker. You can select whether the agent may make such decisions without prior determination of your incapacity, or whether one or more

doctors must first determine your incapacity before the agent can make decisions for you. Section 41-41-205(5) provides:

(5) Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity.

The statutory presumption is against the exercise of authority by the agent without a prior determination of incapacity of the principal. However, the principal may override this presumption by checking a box to make the authority effective immediately upon execution. You should consider fully the effect of this conveyance of authority prior to execution, since full access to medical information and decision-making will go along with the authority given to the agent. In some cases, you may not wish to "give up" such authority until you are no longer able to control those decision-making processes (a "springing" power of attorney).

In **Section 2**, you can state any personal health-care decisions, such as about keeping or removing life-support treatments or tube-fed food and liquids in the event of terminal illness, and other choices concerning medical treatment based on your own personal values. Section 41-41-205(7) states:

(7) An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

This provision codifies the two standards for vicarious decision-making established in case law. In 1977, the Massachusetts Supreme Court in Superintendent of Belchertown State School v. Saikewicz, 370 N.E.2d 417 (Mass. 1977) recognized

the "substituted judgment" test as the appropriate first standard when making decisions for an incompetent patient. Under this standard, the agent is required to decide on the basis of what the patient would have chosen if she had been able to make the choice for herself. A later case, Guardianship of Doe, 583 N.E.2d 1263, 1268 (Mass. 1992) listed five factors that must be considered: "the patient's expressed preferences; the patient's religious convictions and their relation to the refusal of treatment; the impact on the patient's family; the probability of adverse side effects; and the prognosis with and without treatment." See Regan, John J., Morgan, Rebecca C. and English, David M., *Tax, Estate and Financial Planning for the Elderly* (LexisNexis, 2011), § 14.04[2]. Therefore, in order for a designated health-care agent to be able to make decisions under this standard, s/he must have had some conversations or relationship with you that provided information regarding your preferences, religious preferences and family dynamics.

If the agent lacks sufficient knowledge or information to know what the incapacitated principal's choices would be regarding health care, then s/he must use the second standard for decision-making – the "best interest" test. The Kentucky Supreme Court in Woods v. Kentucky, 142 S.W.3d 24 (Ky. 2004) set forth a list of nine factors to be considered in determining the best interest of the incapacitated patient in connection with a proposed medical care decision. These factors included the patient's present level of physical, sensory, emotional and cognitive functioning and possibility of improvement; any relevant statements or expressions made by the patient when competent; the patient's philosophical, religious, and moral views and life goals to the extent known; degree of pain caused by the current condition, any proposed treatment and termination of treatment; and degree of humiliation, dependence and loss of dignity probably resulting from the condition or treatment.

The American Bar Association provides a free online Consumer's Tool Kit for Health Care Advance Planning to address these issues. This kit contains explanations, checklists and worksheets

Continued on next page

Planning Your Legacy

for you to use to express their health-care wishes, evaluate proposed agents and start conversations about your personal values and judgments in the area of health-care and medical procedures. The Tool Kit may be downloaded at: http://www.americanbar.org/content/dam/aba/uncategorized/2011/2011_aging_bk_consumer_tool_kit_bk.authcheckdam.pdf

Mississippi Code § 41-41-207(4) provides that a decree of annulment, divorce or legal separation revokes a prior designation of the spouse as agent in an Advance Health Care Directive, unless otherwise specified. Therefore, even where there is an amicable divorce or separation, a new directive may be necessary to specify that the ex-spouse is desired to continue as agent if that is your wish.

B. HIPAA Authorization. In April 2005, the federal Health Insurance Portability and Accountability Act (HIPAA) implemented stringent privacy regulations governing the release of per-

sonal medical information by all types of health care providers. As a result of these regulations and the penalties they impose for improper release of such personal medical information, many doctors, hospitals and other health care providers are reluctant to release health care information without strict compliance with HIPAA. The HIPAA Privacy Rule regulations, in the Code of Federal Regulations (“CFR”) at 45 CFR §164.502(a)(2), requires a “covered entity” (a hospital, clinic or other health-care provider covered by the Act) to disclose protected personal health information to the individual upon request by her. Section 164.502(g) provides that a covered entity must treat a “**personal representative**” as the individual and can therefore disclose protected health information of an adult to a person who is properly designated as personal representative. Such authority could be given by a written authorization from the individual approving certain health-care action by the representative.

Do the HIPAA rules permit a doctor to discuss a patient’s health status, treatment, or payment arrangements with the patient’s family and friends? The answer is “Yes.” The HIPAA Privacy Rule, at 45 CFR §164.510(b), specifically permits covered entities to share information that is directly relevant to the involvement of a spouse, family members, friends, or other persons identified by a patient, in the patient’s care or payment for health care. If the patient is present, or is otherwise available prior to the disclosure, and has the capacity to make health care decisions, the covered entity may discuss this information with the family and these other persons if the patient agrees or, when given the opportunity, does not object. The covered entity may also share relevant information with the family and these other persons if it can reasonably infer, based on professional judgment, that the patient does not object. Under these circumstances, for example:

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- A doctor may give information about a patient's mobility limitations to a friend driving the patient home from the hospital.
- A hospital may discuss a patient's payment options with her adult daughter.
- A doctor may instruct a patient's roommate about proper medicine dosage when she comes to pick up her friend from the hospital.
- A physician may discuss a patient's treatment with the patient in the presence of a friend when the patient brings the friend to a medical appointment and asks if the friend can come into the treatment room.

In addition, the Privacy Rule expressly permits a covered entity to use professional judgment and experience with common practice to make reasonable inferences about the patient's best interests in allowing another person to act on behalf of the patient to pick up a filled prescription, medical supplies, X-rays, or other similar forms of protected health information. For example, when a person comes to a pharmacy requesting to pick up a prescription on behalf of an individual he identifies by name, a pharmacist, based on professional judgment and experience with common practice, may allow the person to do so.

The HIPAA Privacy Rule does not compel medical professionals or facilities to disclose protected patient or resident health information to others, and the Rule provides protection from liability to such medical entities who act in keeping with reasonable policies and judgment.

One practical use of the HIPAA Authorization is to permit family members other than the agent named in the Advance Health Care Directive to have access to information about the medical status of the principal. While the Directive agent will have authority to make decisions about medical and health-care treatment, the holders of HIPAA authorizations will be able only to obtain information about your health care. This may prevent suspicion or jealousy among siblings when only one is named as agent, and may prevent the non-agent family members from being shut out of information about your health status.

C. Durable General Power of Attorney (DPOA).

A durable power of attorney allows you to maintain control and direction of your personal and financial affairs after incapacity by selecting the most appropriate person to carry out your affairs with individualized directions. In order to be "durable," the instrument must contain a statement that the power granted shall not be affected by your subsequent disability or incapacity, or lapse of time, or language of similar meaning. Mississippi Code Annotated § 87-3-105. A durable power of attorney gives the agent (the "Attorney-in-Fact") the authority to make decisions for you for those purposes stated in the DPOA. Even though you may become mentally disabled after executing the DPOA, the Attorney-in-Fact will continue to have the power to act for you during such incapacity. The DPOA may give the Attorney-in-Fact all the powers over your affairs and property that you would have (a "general" power of attorney), or it may provide that the Attorney-in-Fact does not have certain powers or only has certain powers (a "limited" power of attorney). It may state that the Attorney-in-Fact has the immediate power to act as soon as you have signed the document ("immediately effective"), or it may state that the Attorney-in-Fact may only exercise the powers upon the happening of some future event, such as one or more physicians certifying that you have become incapacitated and are no longer able to manage your own affairs (a "springing" power of attorney).

Powers of attorney should be **customized** for your particular situation and should only be drafted by a knowledgeable attorney who understands your goals and objectives. Simple or "cookie cutter" power of attorney forms which do not address your specific needs, financial circumstances and family dynamics can actually limit or prevent certain actions on your behalf later. The attorney must obtain information about the types of assets you own, whether you wish for persons other than the designated Attorney-in-Fact to be included in certain transactions with client property, etc. The granting to an agent of certain powers, including the following, requires special consideration:

- (a) **Power to Change Principal's Domicile.** Persons lacking capacity may be unable to form the intent required to change their domicile. The inability to change domicile could result in loss of public benefits if you are moved to another state, or could result in continued application of the former state's law pertaining to taxes or other matters.
- (b) **Power to Transfer Principal's Property to Self.** Self-dealing by an agent is ordinarily considered a breach of fiduciary duty and generally creates a presumption of undue influence. However, you may wish to specify in your power of attorney that the loved and trusted agent shall have such power by express authorization.
- (c) **Power to Create, Amend or Revoke a Trust.** The Uniform Power of Attorney Act of 2006 and the laws of several states do not allow an Attorney-in-Fact to amend or revoke a trust unless specifically authorized to do so by the power of attorney. Express authority is also required for an agent to create a trust with your assets. However, such a trust might eliminate the problem of third party refusal, result in gift tax or estate tax savings, or assist in eligibility for Medicaid assistance (as with a Medicaid "income trust").
- (d) **Power to Change Beneficiaries or Rights of Survivorship.** You should consider whether to authorize the agent (or a special designated agent) to change beneficiaries on life insurance, POD or retirement accounts in the event the circumstances of any of the current beneficiaries change after you become incapacitated. Without express direction for such changes, they would likely be challenged and invalidated.
 - The case of *Beckley v. Beckley*, 961 So.2d 712 (Miss. App. 2006) found that a change of ownership

Continued on next page

of CDs using a power of attorney should be invalidated on the basis of confidential relationship and un rebutted presumption of undue influence.

- (e) **Power to Make Gifts.** The power to make gifts of your assets presents significant risk of abuse, but can also result in gift/estate tax savings, Medicaid eligibility, and furtherance of your ultimate dispositive goals. Mississippi Code Annotated § 87-3-7 provides that where a power of attorney gives the agent all authority of the principal, the agent will be authorized to make gifts to individuals and organizations “in accordance with the principal’s personal history of making or joining in the making of lifetime gifts.”

• The case of *Seay v. Seay*, 818 So.2d 1255 (Miss. 2005) held that gifting authority in a power of attorney must be for benefit of principal unless otherwise specified (deed by Attorney-in-Fact voided as not for benefit of principal).

- (f) **Power to Loan Money.** You may have given or loaned money to a child or family member over the years and may anticipate that, if you become incapacitated, the other person will continue to demand money. In order to protect the Attorney-in-Fact and protect your remaining financial resources, you can provide in the power of attorney that the agent shall have no authority to make loans to any other person.

- (g) **Power to Sell or Dispose of Real Property.** Family property, often passed down through the years, can have significant sentimental value to the principal and to certain other members of the principal’s family. Others, however, may feel no such attachment. You should consider if you wish to include in the power of attorney a provision that any sale or disposition of valued real property (or other assets) may only be made by the agent upon prior unanimous

written consent of other children or family members.

Specific Homestead Provision for Married Principal. If you become incapacitated, it may be necessary for you to move from your homestead to an assisted living or nursing facility or with a child or other family member. Mississippi homestead exemption law has long prohibited an Attorney-in-Fact from executing deeds to convey any interest in a homestead. However, in 2008 Mississippi Code Annotated § 89-1-29 was amended to read, in part:

A conveyance, mortgage, deed of trust or other incumbrance upon a homestead exempted from execution shall not be valid or binding unless signed by the spouse of the owner if the owner is married and living with the spouse or by an attorney in fact for the spouse. . . All powers of attorney authorizing any conveyance, mortgage, deed of trust or other incumbrance upon a homestead shall designate an attorney in fact other than the spouse and shall comply with the provisions of Chapter 3 of Title 87. (emphasis added)

Therefore, Mississippi law requires that someone *other than* your spouse be named in your power of attorney as the agent to convey your interest in residence property. Because such a decision could result in you being moved from your home, the identity of such agent and the fidelity to your values and judgments are vitally important and should be carefully considered in preparation of the document.

Planning Disposition of Your Property Legacy

Numerous alternatives are available to a client for intended disposition of assets to family members or others. The advisability of some of these options depends on the personal dynamics of others involved.

A. **Outright gifts.** You may give assets to others and thereby ensure that assets go to the intended recipient. However, there are certain disadvantages that may accrue as a result. (a) Gifts in excess of \$14,000 per person per year (\$28,000 per person from a married couple) may create an obligation to file gift

tax return. (b) Gifts made within five (5) years prior to Medicaid application may delay qualification due to Medicaid “transfer penalty” rules. (c) The gifted legacy becomes subject to the debts and liabilities of the recipient.

Personal considerations: Gifts should be made only to donees who are able to effectively use and manage such property. The capacity of children or other family members to manage money or assets must be considered. Where gifts are considered in planning for tax savings or Medicaid or veteran’s benefits planning, the use of an irrevocable trust should be discussed with a knowledgeable attorney as an alternative. By using such a trust, you can segregate assets for the intended beneficiary without giving outright ownership and control to such person. Thus, the beneficiary will not be able to quickly or unwisely dispose of the assets, if this is an outcome you wish to avoid.

Also, gifts of disproportionate amounts to various children may create conflict or dissension among them or between the “slighted” donees and you, the donor parent. The use of a “pot” trust and an independent trustee with authority to make discretionary and unequal distributions for stated purposes for the benefit of any of the beneficiaries who share the “pot” may be a solution to this problem.

B. **Joint ownership.** Joint ownership is often chosen by clients as an alternative to probate. If you own property with someone else as joint tenants “with rights of survivorship”, then your joint interest will not pass according to the terms of your will or trust. Mississippi Code Annotated § 81-5-63 provides that any deposit to an account in the name of two or more persons and payable to any of them is presumed to be a joint account with rights of survivorship, and the bank can pay over the balance not exceeding \$12,500 to the “successor” of the deceased account holder without liability to other successors or heirs.

While joint ownership may yield positive outcomes such as access to funds in the event one owner becomes incapacitated and possible step-up in tax basis at the first death, potential dangers often outweigh these effects. Such dangers include the ability of another joint owner to freely

withdraw any jointly-owned financial account funds, leaving a client without funds for self-support, and exposure of jointly-owned assets to the judgments, lawsuits and bankruptcy of any joint owner. You should carefully consider these risks and the alternative solutions (such as placing a child on a checking account as “authorized signer” only to pay bills, but without co-ownership).

Full ownership of jointly-owned assets will pass to the other joint owner(s) at your death, without any legal requirement that s/he share them with other children or family members. We have found that older clients may be tempted to put financial accounts and even real property in joint ownership with one of several children who lives nearby and provides most of the oversight and help to the parent. However, the older client should consider that, upon her death, the surviving joint owner/child will not be required to share the assets with other children. Confronted with this scenario of likely conflict among the children after her death, the client may wish to instead rely on a power of attorney or authorized signer authority for incapacity and a will or trust to ensure equal distribution of assets to all children at death.

C. Designated beneficiaries. Life insurance policies, retirement plans, and annuities will pass to the person(s) designated as beneficiary of those benefits, not under the terms of a client’s will or trust. One or more secondary beneficiaries should be named in case the primary beneficiary dies first. When a proposed ben-

eficiary is incapacitated, on assets-based public assistance, or unable to wisely handle such funds upon distribution, then other options should be considered. A testamentary or inter vivos trust may be designated as beneficiary of a life insurance policy, annuity or retirement account so that the trustee will be able to hold and disburse the funds over time. However, there are important tax issues associated with such trusts, the details of which are beyond the scope of this paper. For instance, an irrevocable life insurance trust with Crummey withdrawal powers may be required in order to remove life insurance from your estate and give deductible gift tax treatment to the annual premium gifts made to the trust. Also, a trust is not a recognized “beneficiary” of a qualified retirement account for purposes of permitting a stretched-out distribution (and taxation) of the account after the owner’s death, unless the trust meets certain criteria as a “conduit” trust or an “accumulation” trust. Use of these trusts can prevent a spendthrift beneficiary from taking his entire IRA inheritance out and “blowing it”, by allowing a trustee to receive and hold the funds for distribution over a course of years based on the beneficiary’s needs.

D. Last Will and Testament. A Last Will and Testament is merely a document which gives written instructions about how the Testator wants her assets to be distributed at death. There are a number of personal decisions that you must make in developing the will, such as: (a) Who

will be future guardian(s) for minor or disabled adult children after your death; (b) to whom, and in what amounts or proportions, do you wish to leave assets; (c) who should serve as trustee – or as trust protector or advisor – of any testamentary trusts to be established for the benefit of minor, incapacitated or spendthrift children or family members the client wishes to favor with a share of the estate. The considerations necessary to properly decide these things extend to the family circumstances, marital stability, personal habits, moral conduct and many other facets of those potential candidates for positions as trustee, co-trustee or trust advisor. You must carefully address these personal issues in developing a plan that will successfully achieve your goals of leaving a positive, helpful legacy.

The Incapacitated Spouse Will. One particular client scenario often seen in an elder law office is the married couple in which one of the spouses has been diagnosed with a progressive incapacitating condition, such as Alzheimer’s disease or other dementia. The “healthy” spouse may be desperate at the thought of the financial and caregiving impact this health problem will cause for her own security, as well as that of her ill spouse. Often such couples have all their assets in joint ownership and have named each other as designated beneficiaries of life insurance and retirement accounts. If, after compassionate discussion with the client, it is agreed that the ill spouse is

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unable to independently manage such assets for his own benefit, a successful plan may include having the client move all assets into sole ownership of the healthy spouse and preparing a Will for her that leaves all her estate (or such portion as she desires) into a testamentary “supplemental benefits trust” for the benefit of her husband. In this way, if she should predecease her ill husband, the assets would be held by a trustee designated by her (and competent to manage such assets) for the benefit of her spouse for his lifetime and, at his death, would pass without probate to the remainder beneficiaries (usually children). This will prevent the necessity for a court-supervised conservatorship if she should die first. Also, 42 USC § 1396p(d)(2)(A)(ii) provides that a **testamentary** discretionary trust established by a person’s spouse will not (unlike other types of trusts) be counted as a resource of the person for Medicaid purposes.

Clients do not understand probate, unless they have participated in one before. However, many older clients have attended seminars and read articles from “senior benefit” organizations that proclaim the horrors of probate – most often in an effort to promote the sale of revocable “living” trusts and annuities as estate planning solutions. The truth is that probate is generally not as expensive in Mississippi as many clients think (or have heard) it is. You should consult with an attorney (whose primary practice is not the sale of such trusts) regarding the fees, costs and proceedings associated with preparation of a will and later probate (court filings and appearances, publication of notice to creditors, marshaling of assets, etc.) versus the greater initial cost of preparation and implementation (including assistance with funding, recordation of certificate of trust and deeds, etc.) of a revocable trust and later trust wrap-up at death. Only in this way can you make an informed decision regarding which planning process you want to undertake. When presented with the facts about cost and effort required, some clients will then be able to focus on whether they wish to pay more “up front” to relieve their children of the “burden” and delay of probate later.

E. Revocable Living Trust. An alternative to a will is the revocable living trust. The trust document contains similar provisions to a will, but it becomes effective immediately after it is signed. As noted in the Last Will and Testament section above, many adults have attended seminars and read articles proclaiming that the “Living Trust” is the best estate planning solution for everyone. This is not so. Both provide for the same post-death disposition of assets to intended beneficiaries. Both can accomplish the same estate tax advantages if needed. Medicaid treats assets owned in a revocable trust as fully owned by the grantor/beneficiary and thereby provides no greater benefit for Medicaid eligibility over outright ownership. And a revocable trust can be challenged in court by disgruntled beneficiaries or aggrieved omitted persons on grounds of incapacity or undue influence, similar to will challenges.

A revocable living trust is particularly helpful to allow persons who own real property in more than one state to avoid the necessity of probates in all those states upon death. Also, the trust (as owner of the assets) can provide a stronger management plan for incapacity of the grantor/beneficiary than a power of attorney (as mere agent of the principal), particularly in situations where the client’s assets are in financial institutions that have policies preventing the compliance with personal powers of attorney. (We have experienced this with two major banks in the Jackson area which no longer honor powers of attorney direction over depositor accounts.) If a client feels that she may become incapacitated and that she wishes for her child or family member to be able to manage her financial resources in such event, the revocable trust may be an appealing option and should be discussed.

A revocable living trust is often referred to as a “will substitute” since it contains similar provisions to a will. The grantor of the RLT is also the beneficiary of the trust during his/her lifetime. The grantor can act as trustee or appoint a person or financial institution to serve as trustee. The grantor/beneficiary then transfers substantially all of her assets to the trust to manage. At the grantor/bene-

ficiary’s death, a new trustee (“successor trustee”) will either continue to hold assets for, or will distribute the trust assets to, the persons named as the remainder beneficiaries (“heirs”) in the trust document. A revocable living trust affects the assets immediately upon their transfer to the trust, and no probate is required to permit the trust to continue after the grantor’s death and to permit the trustee to transfer ownership of assets to the remainder beneficiaries. Some possible advantages of the revocable living trust include: (a) To prevent the need for court-supervised guardianship by appointing a successor trustee to hold and distribute assets for minor children until they become adults; (b) to protect assets from an heir’s creditors by leaving those assets to a trustee for the use and benefit of that heir (a “spendthrift trust”); and (c) to avoid the costs and lack of privacy associated with probate of a will. The cost of preparing and implementing a revocable living trust is considerably higher than the cost of a will that outlines the same type dispositive plan. The reason is that, immediately following the drafting and execution of the trust, all necessary transfer documents (deed, bill of sale, assignment of leases, etc.) must be prepared and executed, and all other steps must be taken, by the grantor to transfer ownership of all assets into the trust. The preparation of these documents and communications with financial institutions, insurance companies and other entities can be time consuming, but the attorney should be prepared to assist the client with these tasks. Without this proper follow-up to implement the funding of the trust, the client may later die with an unfunded or partially funded trust and require a probate of the estate. Mission unaccomplished.

F. Trust Provisions. Trusts are incredibly useful tools for use in crafting gifts to others. Trusts can achieve such objectives as tax savings, preservation of public benefits eligibility (for SSI and Medicaid), and management of assets for the benefit of a child or adult who may be unable to effectively manage those assets for himself or herself. Clauses and provisions may be included in trusts that will enable the trustee to meet needs of a beneficiary and even exhort a beneficiary to

behave in desired ways. Various trust clauses are included below (as examples only – consult your attorney for use of particular clauses), starting with a trust introductory clause and a form of revocability clause for a revocable living trust:

FORM CLAUSE

Trust Introduction

THIS TRUST AGREEMENT is entered into by and between Jane Doe, of Copiah County, Mississippi, (“Grantor” herein), and Jane Doe, of Copiah County, Mississippi, (“Trustee” herein). The name of this Trust shall be “The Jane Doe Revocable Trust”.

Reference in this Trust to “Trustee” shall be deemed a reference to the initial Trustee or to whomever is serving as Trustee or Co-Trustees, whether initial, alternate, or Successor.

Grantor is also the initial primary Beneficiary of the Trust Estate.

This Trust shall be effective the date on which Grantor signs the Trust Agreement.

Revocation and Amendment

A. Rights of Revocation and Amendment

During Grantor’s lifetime, Grantor may at any time and upon successive occasions, (i) revoke this Trust in whole or in part or (ii) alter or amend any of its provisions. Any Amendment may be similarly canceled or amended.

B. Power to Revoke or Amend for

Incapacitated Beneficiary

If Grantor becomes incapacitated and unable to manage Grantor’s financial affairs (as described in Article ___ below), such power to revoke, alter, or amend the Trust may be exercised by the Attorney-In-Fact for said incapacitated Grantor under any valid durable power of attorney or, if there is no such Attorney-in-Fact then serving or willing to exercise such power, by the Guardian or Conservator at the direction of a Court of competent jurisdiction. The determination of whether Grantor shall be incapacitated and unable to manage Grantor’s financial affairs shall be made as set forth in Article ___ below.

[end form]

Child’s or Grandchild’s Trust.

When a parent dies intestate with surviving minor children, the law dictates that each such child’s share be held in a court-supervised guardianship until the child reaches age 21 or becomes emancipated. This will incur fees and expenses for court accountings and withdrawals for education and other expenses – an unwelcome method of administering the child’s legacy by the guardian. The same result can occur where a grandmother leaves her estate to her children and one of her children predeceases her with surviving children (her grandchildren). Therefore, in any will or revocable trust for a person with minor children or grandchildren, it is wise to include a Child’s or Grandchild’s Trust and a direction that “notwithstand-

ing any other provision of this will, I direct that any bequest that would pass directly to a minor shall instead be distributed to my Trustee named herein and be administered in accordance with the terms of the Child’s or Grandchild’s Trust set forth in Article ___ in this will.” The Trust can provide for payout of the principal in portions at various ages rather than all at age 21, as with a guardianship. The Trust can also provide for payment of any types of needs, as set forth in the sample clause below:

FORM CLAUSE:

A. Until that child reaches the age of [twenty-one (21) / _____], the trustee shall pay to or apply for the benefit of that child so much of the net income and principal of the trust as the trustee shall deem necessary or advisable to [provide for the child’s general health, education, maintenance and support] / **[OR select from the following]** (a) pay necessary and reasonable medical or dental expenses not covered by other insurance; (b) pay education expenses, including tuition, fees, books, room, board and transportation costs, for college, vocational school, and/or graduate school; (c) provide summer trips, camps or other cultural or recreational experiences; (d) purchase a reasonably priced car based on the needs of the beneficiary, as determined by the trustee; (e) provide a down payment not to exceed \$_____for purchase

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of a first home for the beneficiary / _____.

The trustee shall accumulate any income not so distributed and shall add the same to principal annually.

B. After that child reaches the age of [twenty-one (21) / _____], the trustee shall pay to or apply for the benefit of that child all of the net income of the trust in quarterly or more frequent installments and may pay such amounts of the principal of such trust as the trustee may deem necessary or advisable to [provide for the child's general health, education, maintenance and support] / [OR select from the following] (a) pay necessary and reasonable medical or dental expenses not covered by other insurance; (b) pay education expenses, including tuition, fees and transportation costs, for college, vocational school, and/or graduate school; (c) provide summer trips, camps or other cultural or recreational experiences; (d) purchase a reasonably priced car based on the needs of the beneficiary, as determined by the trustee; (e) provide a down payment not to exceed \$_____ for purchase of a first home for the beneficiary; (f) [other:] _____.

C. The trustee shall distribute the trust principal to the beneficiary in the following amounts or proportions at the following ages or times:

- a. _____ % when that child reaches age _____;
- b. _____ % when that child reaches age _____;
- c. _____ % when that child reaches age _____;

D. The trustee shall distribute to that child all the remaining principal and accrued income when that child reaches age _____ (____), and the separate trust shall terminate.

Incentive Trust. In a Child's Trust or Grandchild's Trust, the grantor may wish to include provisions that encourage positive behavior in order to instill positive values for the beneficiary's lifetime. One example of such an "incentive" provision – one that seeks to encourage good academic study habits – is shown here:

FORM CLAUSE:

A. So long as the Beneficiary shall be

enrolled in a full-time academic program of study at a four-year college or an accredited community college, the Trustee shall distribute the sum of \$500.00 in cash from the trust to the Beneficiary at the conclusion of any semester during which the Beneficiary has obtained a cumulative grade-point average equivalent of B or higher for the semester, if the Beneficiary's overall average is a B or higher.

Credit Shelter Trust. A "credit shelter trust" or "exemption equivalency trust" is used to take advantage of the grantor's applicable exclusion for federal estate tax purposes. Under the American Taxpayer Relief Act of 2012, the estate tax applicable exclusion amount is \$5 million per person (anticipated to be \$5.25 million in 2013 due to inflation indexing). The Act also continues the "portability" of a deceased spouse's unused exclusion amount, which can be added to the surviving spouse's exemption. Assume that Howard and Betty own \$7 million of assets. Howard could leave (through his will, trust or otherwise) all of his ownership in the couple's assets to Betty at his death, and the unlimited marital deduction would prevent any payment of estate tax at Howard's death. Upon Betty's death she would own the entire \$7 million of assets. Her \$5 million applicable exclusion, plus the unused \$2 million attributed to Howard, could be used to shelter her entire \$7 million estate from estate tax.

For estates of couples in excess of \$10 million combined, it may be advisable for the wills to include a "credit shelter trust" clause something like the following:

FORM CLAUSE:

ARTICLE ____: If my spouse survives me, I give to my trustee the largest amount that can pass free of federal estate tax by reason of the unified credit, the state death tax credit and any other estate tax credits allowed by the Internal Revenue Code; provided, however, that (1) the state death tax credit shall be taken into account only to the extent that it does not result in an increase in state death taxes which would otherwise be payable; (2) the sum disposed of by this Article shall be reduced by the value of property which passes outside the terms of this will

or which passes under other Articles of this will and which does not qualify for the estate tax charitable or marital deductions; and (3) the sum disposed of by this Article shall be reduced by charges against the principal of my estate which do not qualify as federal estate tax deductions. In making the computations necessary to determine the amount of this pecuniary bequest, valuations and credit amounts as finally determined for federal estate tax purposes shall control. I direct my trustee to hold, administer and distribute the trust as follows:

A. During the lifetime of my spouse, my trustee shall pay to or for the benefit of my spouse, in quarterly or more frequent installments, all of the net income of the trust.

B. During the lifetime of my spouse, my trustee, in its sole and absolute discretion, may also pay to or apply for the benefit of my spouse such portions of the principal of the trust as my trustee deems advisable to liberally provide for my spouse's health, support and maintenance after taking into account my spouse's other resources.

C. During the lifetime of my spouse, my trustee, in its sole and absolute discretion, may also pay to or apply for the benefit of any child or children of mine such portions of the principal of the trust as my trustee deems advisable to liberally provide for such child or children's health, support, maintenance and education (including higher or special education); provided, however, that no such principal invasion shall be made for the benefit of any child or children of mine until my spouse's health, support and maintenance shall first have been adequately provided for.

D. Upon the death of my spouse, my trustee shall divide the remaining trust principal into as many equal shares as shall provide one (1) share for each child of mine then living and one (1) share for each predeceased child of mine who is survived by a child or children (my "grandchild" or "grandchildren") then living, and shall distribute such shares in accordance with the provisions of the following Article.

[end form]

If Howard and Betty own \$10 million and Howard dies first, this clause will permit his estate to fund his \$5 million of assets into the trust. The trust will be exempt from estate tax by application of his applicable exclusion to the trust. Betty will receive payments from the trust pursuant to the distribution standard described in the trust. At her death, Howard's trust will not be taxed, and her \$5 million exclusion will shelter her assets from tax as well.

Marital Deduction Trust. The marital deduction trust provides an alternative to an outright gift to a surviving spouse. In the Howard and Betty example above, assume that Betty owns \$3 million and that Howard is her second husband. If Betty wishes to provide for Howard during his lifetime but make sure her children from a prior marriage receive her ultimate legacy, she may leave her \$3 million into a "marital deduction" trust, which will provide income and, if needed, principal payments to Howard for his lifetime and the remainder to Betty's kids at Howard's death. This type trust is designed to qualify for the unlimited marital deduction in order to avoid taxation in Betty's estate at her death.

FORM CLAUSE

ARTICLE ___: If my spouse survives me, I give all the rest, residue and remainder of my property, of every kind and nature and wheresoever situated, whether real or personal (my "residuary estate"), to my trustee to be held, administered and distributed as follows:

A. My trustee shall pay to or for the benefit of my spouse all of the net income from the trust in quarterly or more frequent installments so long as my spouse shall live.

B. My trustee, in its sole and absolute discretion, may also pay to or apply for the benefit of my spouse such portions of the principal of the trust as my trustee deems appropriate to liberally provide for my spouse's health, support and maintenance after taking into account my spouse's other resources.

C. My spouse is authorized, at any time and from time to time, upon written notice delivered to my trustee, to with-

draw from trust principal an amount or amounts not to exceed, in the aggregate, five thousand dollars (\$5,000.00) per year or five percent (5%) of the principal market value of the trust per year, whichever is greater, as determined on the last day of the calendar year during which such withdrawal is made. The right of withdrawal shall be non-cumulative.

D. I authorize my executor, in my executor's sole discretion, to elect, under Internal Revenue Code Section 2056(b)(7) or equivalent state provision, to qualify all or a specific portion or none of the trust created in this Article for the federal or state estate tax marital deduction. It is my wish or desire that my executor shall exercise such discretion so as to elect to minimize the estate taxes payable by my estate, where appropriate. However, my executor shall also consider the size and taxable status of my spouse's estate in exercising this discretion. My executor shall make such election in the timely filed federal estate tax return for my estate and such election shall not be subject to challenge by any affected parties.

E. Upon the death of my spouse, my trustee shall divide the remaining trust principal, or the part thereof as to which the power of appointment was not validly exercised, into as many equal shares as shall provide one (1) share for each child of mine then living and one (1) share for each predeceased child of mine who is survived by a child or children (my "grandchild" or "grandchildren") then living.

[end form]

The marital deduction trust would also be useful to allow a trustee to manage the trust assets for the benefit of a surviving spouse who may be unable to effectively manage the assets for his or her own benefit.

F. Special Needs Trusts. The primary purpose of a special needs trust (SNT) is to hold assets for the benefit of a disabled spouse or child who receives Medicaid or SSI benefits in such a way that the trust assets are not counted as assets of the disabled person and do not thereby disqualify him or her for SSI or Medicaid. There are two basic types of SNTs based on who is placing assets in the trust.

(1) *Third party SNT (or "Estate Planning SNT").* Parents or grandparents of children with disabilities, or the healthy spouse of a person in a nursing home, may have no will or estate plan, so that at their death the disabled person receives a share of their assets by inheritance. Or, the will or living trust of the parent or spouse may state that at their death, their assets are left to their children, spouse or heirs (including the child or spouse with a disability). Parents of disabled children and spouses of disabled adults who have no will or who merely leave assets through their wills or trusts to their children or spouse will unwittingly disqualify the disabled child or spouse for Medicaid or SSI assistance. The inherited funds will be counted as the resources of the disabled child or spouse by SSI and Medicaid rules. Likewise, guardianship or conservatorship funds held for a child or adult are deemed to be resources of that child or adult. It is imperative that families of disabled children or adults take particular care in crafting an estate plan which will provide access to all available resources for the disabled person's future needs and which will not result in disqualification for Medicaid benefits by accident. A Special Needs Trust may be set up by the mother, sister, aunt, or by the healthy wife, as part of their estate plans, or by anyone else who wishes to establish a fund that can later receive gifts of money or assets for the disabled beneficiary by lifetime gift(s) or by last will and testament gifts. The assets in this type trust will be used for the disabled beneficiary's needs during his/her lifetime, and the assets remaining in the trust at the death of the beneficiary will be distributed to the persons and in the manner prescribed in the trust (such as to other children or family members, non-profit groups, etc.). This trust can be established in the will of the parent or healthy spouse (or separate from the will) and prevent the disabled child or spouse from losing Medicaid benefits by inheritance. Medicaid will not be entitled to claim any of the funds or assets in this type trust.

(2) *Self-settled SNT.* A special needs trust created to hold the assets *already owned by the disabled beneficiary*, or that

Continued on next page

Planning Your Legacy

the beneficiary is entitled to receive through a lawsuit settlement, inheritance or life insurance settlement, is called a “self-settled” trust. Federal law (42 USC § 1396p(d)(4)) states that the assets of a disabled person placed in a properly established irrevocable trust for that person’s benefit are not to be counted as assets of the disabled person for Medicaid purposes. Such a self-settled trust must be created (that is, the trust document signed) by the beneficiary’s parent, grandparent, legal guardian or a court, or as part of a larger “pooled” trust (holding the assets of more than one disabled person in separate accounts and managed by a non-profit organization). At the beneficiary’s death, Medicaid must be first in line to recover from the trust assets the amount Medicaid has paid for the beneficiary’s medical care. Any remaining balance in the SNT can be paid to those persons designated by the creator of the trust (the “remainder beneficiaries”).

G. Irrevocable Trust. When a parent wishes to gift assets to children but wants to avoid some of the dangers described in the section about outright gifts above, the parent may convey ownership of the assets to an irrevocable trust. Funding of such an irrevocable trust constitutes a completed gift of the assets out of the parent’s estate and for Medicaid transfer purposes. Therefore, the assets will not pass through a probate at the parent’s death and will pass free of the claim of Medicaid. Further, the assets will be protected from the creditors and liabilities of the beneficiaries while those assets are held in the trust and prior to distribution to the beneficiaries. In this way, a parent may find a way to provide for a challenged (or challenging) child while including that child in the overall dispositive planning.

As grantor of an irrevocable trust, you must carefully consider whether you wish to part with ownership and control of the assets to be conveyed to such a trust in light of the advantages to be gained by creating the trust. The parent (or grandparent, etc.) establishing the trust must select a competent trustee to hold and manage the assets while the parent is living and who can make distributions of some or all of the assets to the beneficiary(ies) in accordance with the

parent/grantor’s wishes as stated in the trust. One or more children can be named as beneficiaries of the trust entitled to any income or principal distributions, and power to withhold distributions can be included in the trust if a beneficiary has *internal* problems (substance abuse, mental/intellectual deficits, gambling addiction, spendthrift behavior) or *external* problems (divorce, bankruptcy, creditor attacks, threatened or pending litigation). A sample trustee’s power clause addressing this is offered below.

FORM CLAUSE

Trustee Power to Withhold Distribution. Regardless of any other contrary provisions herein, if in the sole and complete judgment and discretion of the Trustee, should any beneficiary of the trust be or become mentally incapacitated, a debtor in any bankruptcy proceeding, a creditor or defendant in any filed or threatened legal proceeding, subject to any gambling, alcohol or drug abuse or addiction, or in any way incapacitated, or shall not have manifested to the Trustee the ability which would qualify such beneficiary to prudently use and conserve the principal or income to be distributed to such beneficiary at the time of any scheduled distribution, the Trustee is authorized in its sole discretion to withhold such distribution of income or principal and continue to maintain such trust assets for the benefit of said beneficiary until such condition is removed. My Trustee shall have sole and absolute discretion to determine whether a beneficiary is disabled, incompetent, incapacitated or unable to prudently use and conserve any assets to be distributed, and to determine when such conditions as detailed above have been removed.

Provisions may be incorporated in the irrevocable trust to provide some retained control and protection for the grantor. If the irrevocable trust is drafted as an “intentionally defective grantor trust” (“IDGT”), any income generated by the trust would be taxed to the grantor (there-

by avoiding having the trust income taxed at higher trust income tax rates) even though the trust assets are irrevocably removed from the grantor’s ownership. The assets transferred to the IDGT would be includible in the grantor’s estate, either because of a retained interest in the trust that would cause inclusion under Section 2036 of the Internal Revenue Code, or because the gift to the trust is incomplete for estate tax purposes because of the retention of a limited power of appointment. Either provision will permit the beneficiaries of the trust to obtain a stepped-up tax basis in the trust assets at the grantor’s death. Thus, instead of receiving the assets with the “carry-over” tax basis of the grantor (as with an outright gift), the beneficiaries would receive the assets with a basis “stepped-up” to the value of the assets at the grantor’s date of death. This would result in a reduced capital gains income tax payable by those beneficiaries upon later sale of the assets and, consequently, a greater legacy.

A single person can convey her home to an irrevocable intentionally defective grantor trust (IDGT) which names her child(ren) as lifetime and remainder principal beneficiary, and wait at least five years before applying for Medicaid. In this way, the home is removed from her probate estate and from the “estate recovery” claim by Medicaid for nursing home payments made for the grantor’s care. The grantor may achieve additional security by providing in the trust that the grantor can: (a) replace the trustee with another trustee (other than the grantor) of her choosing, or (b) deprive a beneficiary/trustee of his or her inheritance through the trust by exercise of a limited power of appointment. The trust may also provide that the home may not be sold without the consent of a “trust protector” named by the grantor. The retention of a limited power of appointment by the grantor will cause the trust to be included in the grantor’s estate (as an incomplete gift in trust) and will thereby qualify the trust assets for (i) eligibility for the IRC § 121 exclusion from gain of any profits (up to \$250,000) from sale of the residence and (ii) full step-up in basis at the grantor’s death. If it becomes necessary for the grantor to enter nursing home care and apply for Medicaid before

the five-year look-back has expired, without sufficient assets to private pay for the entire term, the trustee may distribute to the children a partial interest in the corpus, which they could use to pay part of the grantor's care.

H. Irrevocable Income-Only Trust.

If you, as grantor, wish to gift assets to your family but want to keep the income from those assets and protect them from the liabilities and creditors of those family members, you may place those assets in an irrevocable income-only trust. This trust would provide that you will receive all the *income* from those assets, which would be counted for Medicaid eligibility purposes. However, the *assets* themselves would pass to your family members at your death. If your residence is placed in such a trust, the property tax and income tax advantages of your ownership could be retained with proper drafting and implementation, as noted in the preceding section. (There would also be an ineligibility period for nursing home Medicaid from the date of transfer of assets into such a trust, and there is a 5-year "look-back" period for transfers to such trusts.)

(NOTE: "Self-settled trusts" are trusts created by a grantor for her own benefit and funded with the grantor's own assets. Under Mississippi Code Annotated § 91-9-509, a self-settled irrevocable trust cannot protect your assets from claims of your own creditors, even where a spendthrift provision is included.)

Planning Your Long-Term Care Legacy

There are basically five ways to pay for long-term care when health declines and it becomes necessary to obtain assistance with activities of daily living: (1) private pay from personal financial resources, (2) long-term care insurance, (3) Medicare, (4) Medicaid, and (5) let your kids pay for it. By virtue of the title of this presentation, I will assume the fifth means does not apply, and the private pay method would serve to deplete any legacy you might leave to your successors. However, long-term care insurance, Medicare and Medicaid may all be used to pay for health care, thereby freeing private resources to pass down to loved ones.

1. Long-term Care Insurance. For persons whose health and financial status

allows them to qualify for long-term care insurance, such coverage is an excellent way to protect family assets from the costs of long-term care and possibly provide payment for at-home services not covered by Medicaid. You must consider the long-term affordability of such a policy, since the premiums will not go down even after you may have lost income from retirement or otherwise. The cost of such insurance varies based on the features of the policy chosen. You should seek a knowledgeable long-term care insurance agent who will discuss your personal needs and find the right policy with the right mix of features for you. Among the terms to address in reviewing a policy are:

A. Type of policy. The options are individual, joint or life insurance with long-term care attached. With joint policies, couples may choose between a single policy with two owners sharing a single pool of funds, or two policies with a sharing provision, allowing one spouse to use the other spouse's benefits when his run out. Life insurance can be purchased with a long-term care insurance rider that allows policyholders to access a certain percentage of the death benefit each month.

B. What the policy should cover. Skilled (nursing home), intermediate and custodial care are usually covered. Home care, adult day care and assisted living – often not covered. Since you never know where you may need care, you should consider buying a comprehensive policy that covers home care, adult day care, assisted living and nursing home care.

C. Triggering events. When does the policy take effect? Triple trigger may be best: Cognitive impairment (e.g., Alzheimer's), or Medical necessity, or impairment in 2 of 6 ADLs (activities of daily living — Eating, toileting, transferring, bathing, dressing & continence)

D. The daily benefit. May want to insure for the maximum daily benefit one might need in a local nursing home, minus the amount you are able to pay per day from other sources ("coinsurance"). Is there a lesser rate payable for home care?

E. Benefit period. How long will the benefits last? Lifetime coverage is expensive and not necessarily a good value, and some companies may no longer write this.

The average claim is less than 36 months, so a four- or five-year benefit may make most sense unless there is a history of Alzheimer's or you have sufficient funds to buy more.

F. How the policy pays. Is the plan "reimbursement" or "indemnity"? Reimbursement pays the reasonable and necessary claims submitted by nursing home, home health, etc. and is the least expensive option (used by 70 - 80 percent of policyholders). Indemnity pays a set cash benefit, and policyholder keeps the difference if daily benefit exceeds claims. Indemnity is 50 percent more expensive.

G. Elimination period. This is the waiting period before benefits kick in. Sets forth the number of days the client will pay the bill herself. Same idea as deductible, only measured in days, not dollars. May be a mistake to buy a 90-day elimination period because the period is not based on calendar days but on days of reimbursable service, which can get very complicated. May want shorter period of zero or 30 days. Some carriers offer zero on home care but 90 days for nursing home care.

H. Inflation protection. A specified factor or index or an option to purchase additional coverage. Policyholders under age 62 or 63 may want "compound" inflation protection. Otherwise, "simple" inflation increases are adequate, since compound protection will result in higher premium.

I. Is there a waiver of premium? Not having to pay while receiving benefits under the policy.

J. Repeat stays in nursing home. Is there an elimination period – a certain number of days required between stays? Possibly best to have a single, accumulated number of days over life of policy

K. Preexisting conditions. What is excluded from coverage?

2. Medicare is a medical insurance-type program developed to pay medical costs for retired or disabled persons who have paid into the Social Security system. Medicare Part A pays for hospitalization costs and Part B pays for doctor visits, outpatient therapies, medical equipment, home health care, etc. Any recipient of

Continued on next page

Planning Your Legacy

Social Security Retirement or railroad retirement benefits is eligible for Medicare Part A coverage beginning at age 65. The beneficiary should apply for Medicare and will elect either original Medicare or Part C (Medicare Advantage). Medicare Part C allows eligible individuals to elect coverage from approved Medicare Advantage plans through private companies (HMOs, PPOs, etc.) as an alternative to traditional fee-for-service Medicare. A person who continues working past age 65 is still eligible for Medicare benefits provided a Medicare application has been filed. A person who does not apply for Social Security or Medicare Part A benefits until after age 65 is entitled to Part A (hospital) benefits retroactive for 6 months prior to the month of application. Medicare coverage is not dependent upon the income or assets of the recipient. Medicare Part B is a voluntary program for individuals who are eligible for Part A and who enroll in the program and pay the monthly premiums. Enrollment occurs either by written application or automatically by establishing entitlement to Social Security benefits or Part A coverage. Notice of automatic enrollment is sent to eligible individuals and may be declined by sending a signed statement to the local SSA office stating that they do not wish such insurance. A person may voluntarily enroll during the "initial enrollment period", which begins three months prior to the month when all the eligibility requirements are first met (typically the 65th birthday) and extends seven months thereafter. Since the beginning date of coverage depends on the date of application, it is important to file early to avoid the gap in insurance coverage that could occur when private medical insurance expires at age 65 without immediate continuing coverage under Medicare. Those who fail to enroll during the initial enrollment period may do so only during a "general enrollment period", which is the first quarter of each calendar year.

Also, persons under age 65 who are receiving or are entitled to receive Social Security disability or Railroad Retirement disability benefits for not less than 24 months become eligible for Medicare Part A benefits in the 25th month of disability.

Contrary to popular belief, Medicare

only pays part of the first 100 days of nursing home care for qualified nursing home residents, and only the first 20 days in full. Such Medicare coverage requires that the individual be admitted to a nursing home within thirty (30) days after a hospital stay of at least three (3) days.

There are premiums, deductibles and co-payments for Medicare coverage. These premiums, deductibles and co-payments may be paid by Medicaid for individuals whose income and assets are below poverty level limits (known as "Qualified Medicare Beneficiaries" or "QMBs"), or by private "Medigap" insurance policies (see section on **Medigap Insurance** below).

The **Medicare Prescription Drug, Improvement and Modernization Act of 2003** implemented the new Medicare **Part D Prescription Drug Benefit**. On January 2006, the Medicare Part D drug benefit went into effect. Medicare recipients may voluntarily join a drug plan run by a private company. Those who do not sign up for a plan within 6 months after becoming Medicare-eligible will have to permanently pay a higher premium for late enrollment (1% increase for each month delayed). Each participant must pay a monthly premium for the plan (average approximately \$35, set by each company). The participant must then pay the first \$325 in prescription drugs costs (the "deductible") during the year. After this is paid, the recipient will pay 25% of the next \$2,645 in drug costs. After total drug costs of \$2,970, the participant must pay 100% of the next \$3,763.75 of drug costs (the "coverage gap" or "doughnut hole")(50% brand discount / 14% generic discount). After the participant has paid \$4,750 in total out-of-pocket costs (not including premiums), Medicare will then pay up to 95% of drug costs (the "catastrophic benefit"), and the participant must pay the greater of 5% of cost or a \$2.65 generic/\$6.60 brand-name co-pay for each drug. Contact Medicare (800-633-4227), Mississippi Medicaid (800-421-2408), AARP (601-206-1848), or go to their websites (www.medicare.gov or www.aarp.org/prescriptiondrugs) for assistance to determine the best plan for you and to learn how to request an application form from the selected plan company.

Persons with Medicare and Medicaid

coverage, with annual incomes below approximately \$16,335 (individual) or \$22,065 (married couple), and countable assets less than \$12,640 (single) or \$25,260 (married) may be eligible for "extra help" in paying for drugs. This generally means the participant will pay no premium, will have no "coverage gap," and will pay no or reduced deductibles and co-payments. "Countable" assets are generally all assets except the home, car, burial plot, \$1,500 burial funds, term life insurance and cash value life insurance with a face value not more than \$1,500.

Medicare Advantage Plans. In addition to the original Medicare "fee-for-service" program, Medicare offers beneficiaries the option to receive care through private insurance plans. These private insurance options are part of Medicare Part C, which has also been known as Medicare+Choice plans, and is now called **Medicare Advantage**. The most common type of Medicare Advantage plans are health maintenance organizations (HMOs). To date, most Medicare beneficiaries who participate in Medicare Advantage receive managed care through health maintenance organizations. Medicare Advantage is a means of receiving health care and Medicare coverage. The beneficiary must specifically opt to receive Medicare coverage and care through an HMO, or other private plan insurance. Once the choice is made, the beneficiary must generally receive all of her care through the plan's providers in order to receive Medicare coverage. The main premise is that, through preventive care and the use of a primary physician who acts as a "gatekeeper" to specialized care, health care costs can be reduced while beneficiary health can be maintained.

HMOs are required to provide those services and supplies that are covered under Parts A and B of Medicare. In addition, they must generally provide "**additional**" **benefits** to enrollees beyond those covered by Medicare. These additional benefits may take the form of either or both a reduction in the premiums, deductibles and coinsurance payments ordinarily required or the provision of health benefits or services beyond the required Part A and B coverage. Generally, all substantive coverage rules

under the regular Medicare benefit must also be met by a Medicare HMO enrollee. In addition, time limitations on coverage that exist in the regular Medicare benefit, such as 100 days of skilled nursing facility care, apply to HMO services. The Medicare Advantage plan should *not* have its own additional rules or criteria which further limit coverage.

3. Medigap Insurance. A person who begins Medicare coverage at age 65 (or earlier, if on Social Security Disability) will find that Medicare does not pay for 100% of medical expenses. A Medicare Supplement (or “Medigap”) insurance policy pays some or all of the original Medicare’s deductibles and copayments and may pay for some health services not covered by Medicare. Most Medigap policies require that the services be medically necessary, and they pay only up to the amounts approved by Medicare. In 1990 Congress established federal standards for these policies, including:

(A) Each policy must provide a core package of benefits, including Part A hospital coinsurance for days 61 – 150, all charges for an extra 365 hospital days, deductibles for first three pints of blood, and Part B coinsurance payments.

(B) The issuer must provide a summary information sheet prior to sale of the policy, to allow comparison shopping.

(C) The policy must be guaranteed renewable or cancelable only for nonpayment of premiums or material misrepresentation, but not solely for health status. The policy must provide for continuation coverage on an individual basis if a group policyholder terminates the group.

(D) A claim for benefits cannot be denied for a preexisting condition more than six months after the effective date of coverage.

(E) The insurer must obtain from the purchaser a statement indicating whether the latter is covered by other Medigap policies or by Medicaid and that the purchaser understands that only one Medigap policy is necessary to supplement Medicare, or that none is needed if eligible for Medicaid.

(F) Medigap policies and premiums are suspended if an individual qualifies for Medicaid and requests the suspension.

There are ten standardized plans of coverage, designated by various letters A through N, with varying combinations of coverage. Medigap insurers are permitted to sell only these packages, and all must offer Plan A. Prices for the packages may differ from one insurer to another, and not all policies may be available in all states. (See www.medicare.gov/find-a-plan/questions/medigap-home.aspx) **NOTE:** Insurers are prohibited from checking on the health of applicants age 65 or older during the first six months after they apply for Medicare Part B. Therefore, persons with pre-existing medical problems should consider purchasing Medigap insurance **within six months** after enrolling in Medicare Part B, which typically occurs at age 65. These persons cannot be denied or charged more for Medigap coverage if they act within this time frame, nor can subsequent claims for benefits be denied due to preexisting conditions. The 2012 Medicare guidebook entitled “Choosing a Medigap Policy” may be found at

<http://www.medicare.gov/Pubs/pdf/02110.pdf>.

4. Medicaid provides payment of medical expenses for persons age 65 or over or disabled (in accordance with Social Security disability definitions), who also qualify in terms of limited assets and income. Medicaid is administered by state agencies under a federally approved medical assistance plan. For many disabled individuals who cannot obtain other medical insurance, Medicaid provides the only safety net for health care. Medicaid pays for many more services than Medicare, including prescription drugs and nursing home care. In Mississippi, any SSI recipient is automatically entitled to receive Medicaid benefits. If the beneficiary receives income or has assets that are in excess of the SSI limits, s/he is likely to lose his or her SSI eligibility — and the automatic Medicaid coverage along with it. The loss of Medicaid coverage

Continued on next page

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Planning Your Legacy

can be a more serious problem than the loss of SSI benefits, especially if alternative medical insurance is not readily available. In Mississippi, there are a number of Medicaid programs, including for nursing home care and home-and-community-based services, which are not tied to SSI eligibility and are available to non-SSI recipients. Medicaid coverage is dependent upon income and assets.

The Medicaid program is a broad range of services provided to many different “coverage groups”. A summary of these groups that apply to adults follows, along with statements for each group regarding: (1) the “income limit” for that group (i.e., the maximum countable income a person can have to be eligible); (2) the “resources limit” (i.e., the maximum cumulative value of countable resources a person can own to be eligible); and (3) whether there is a “transfer penalty” for eligibility (i.e., whether transfer of assets by the applicant will result in any period of ineligibility).

SSI-Eligible. Any Mississippi resident who receives any payment of SSI benefits is automatically eligible for Medicaid services. The income and resource limits of the SSI program apply.

Qualified Medicare Beneficiary. An individual who is Medicare-eligible and whose income is below 100% of the federal poverty level (plus \$50 in Mississippi - \$981 individual / \$1,311 couple) is eligible for this Medicaid program. Medicaid will act like supplemental insurance to Medicare, paying the monthly Medicare Part B premium as well as other Medicare deductibles and co-payments for the individual. There is no resource (asset) limit for this coverage.

Specified Low-Income Medicare Beneficiary (SLMB). An individual who is Medicare-eligible and whose income is below 120% of the federal poverty level (plus \$50 in Mississippi - \$1,157 individual / \$1,563 couple) is eligible for this Medicaid program. Medicaid will pay the monthly Medicare Part B premium only for the individual.

Working Disabled. An individual who is disabled and working at least 40 hours per month may be eligible for Medicaid assistance if her *earned* income

is below \$4,721 single / \$6,371 couple and *unearned* income is below \$1,307 single / \$1,753 couple, and if countable assets are less than \$24,000 single / \$26,000 couple. If gross *earned* income is greater than \$2,859 single / \$3,849 couple, the recipient must pay a monthly premium in the amount of five percent (5%) of “countable earnings” (1/2 gross earnings - \$32). There is no transfer penalty applied to this program and the “spousal impoverishment” rules (see Long-Term Care group below) do not apply.

Healthier Mississippi Waiver. This group provides medical services payments for persons who have no Medicare eligibility, monthly income less than 135% of the federal poverty level (plus \$50 in Mississippi - \$1,307 individual, \$1,753 for couple), and countable assets of less than \$4,000 (\$6,000 for couple). No doctor’s certification of disability is required. Only 5,500 recipients statewide are authorized for this coverage group.

Home and Community-Based Services (HCBS) Waiver Programs. Mississippi has obtained federal waivers to use Medicaid funds to offer services in “home and community-based” programs designed to help recipients avoid institutionalization. These include: (1) **Elderly and Disabled Waiver**, which provides respite, adult day care, meals, homemaker and other services for older persons with deficits in at least 3 of the activities of daily living; (2) **Independent Living Waiver**, which provides personal care attendant services to physically disabled persons; (3) **Intellectually Disabled/Developmentally Disabled (ID/DD) Waiver**, which provides “day-habilitation”, respite care, attendant care, and speech/physical/occupational therapies to persons who would, without such services, require the level of care in an Intermediate Care Facility for the Mentally Retarded; (4) **Assisted Living Waiver**, which provides homemaker, attendant care, medication supervision, social and recreational therapies, transportation and other services to residents of certified personal care homes and congregate living facilities who would otherwise require placement in a nursing facil-

ity; and (5) **Traumatic Brain Injury Waiver**, which provides services to persons with traumatic brain or spinal cord injuries necessary to help them avoid institutionalization. There are other eligibility criteria, services and population limitations on these groups. The monthly income limit for these groups is generally the nursing home income limit (\$2,130 in 2013) for an individual. The resource limit is \$4,000 and liberalized resource and “spousal impoverishment” rules apply (see following section). There is a Medicaid transfer penalty for these groups.

Long Term Care (or Nursing Home) Group. This coverage pays nursing home costs in excess of the Medicaid recipient’s monthly share of cost. A single Medicaid applicant may have monthly countable income of up to \$2,130 (2013) and countable assets of up to \$4,000 to qualify for Medicaid for LTC. Under “**spousal impoverishment**” rules for married applicants, the at-home spouse (“community spouse” or CS) may keep all of his/her own separate income, plus enough of the applicant’s income to get the CS’s income up to \$2,898 per month (the “monthly maintenance needs allowance”) (2013) if the CS’s separate income is less than this amount. The CS may own separate countable resources of up to \$115,920 (the “community spouse resource allowance” or CSRA). Assets may be assigned from the nursing home spouse to the community spouse to achieve these levels. In addition, the applicant (nursing home spouse) may have separate income of up to \$2,130 and separate countable assets of up to \$4,000. The separate income (Social Security, etc.) of the applicant spouse that is not assigned to the CS as part of the monthly maintenance needs allowance must be applied to pay nursing home cost as the applicant’s “share of cost”, but the community spouse’s income and assets need not be spent for this care. Medicaid transfer penalties are imposed for uncompensated transfers of resources by the applicant or the applicant’s spouse.

Medicaid’s spousal impoverishment rules often permit one spouse to become eligible for Medicaid by transferring all ownership of countable assets to the

“community spouse.” Where the couple are in a second or later marriage and have children from prior marriages, complications can arise. The children of the nursing home spouse may be unwilling to permit transfer of their parent’s assets and income to the step-parent in order to qualify their parent for Medicaid. Also, if the step-parent is the one seeking Medicaid eligibility, the children of the community spouse may be decision-makers for their incapacitated parent and may be unwilling to take steps necessary to rearrange countable assets and align the parent’s countable assets within the spousal allowance limits. If the couple were not married, then the nursing home spouse could seek Medicaid as a single person without any cooperation or action by the other partner. While Medicaid does not penalize transfers of assets between spouses to achieve these allowance limits, transfers by an individual to an unmarried partner will result in ineligibility for Medicaid assistance.

There are many misconceptions about Medicaid eligibility for nursing home care. Medicaid will pay nursing home costs for persons who are disabled and whose “countable” income and assets are under certain limits. While these limits are low, a number of assets are excluded in determining “countable” assets and income.

Excluded Assets. A number of assets are **not counted** when determining eligibility for Medicaid. These include: the value of the residence up to \$500,000 equity (*unless* it is in a revocable living trust); all household furnishings; up to two automobiles, based on use; certain life estate or inherited interests in property; some income producing property; property used in trade or business for self-support; certain mineral and timber rights; certain life insurance policies; pre-paid or designated funeral contracts and burial plots; and 401k, IRA or similar retirement or annuity accounts in regular pay-out mode.

The “Look-back Rule”. Many people have heard: “A client will have to wait 3 years after giving anything away to get Medicaid.” The Truth: The look-back for gifts made before February 8, 2006 was 3 years, and in some cases there was

no disqualification at all. The Deficit Reduction Act of 2005 (“DRA”) changed the look-back for transfers made **on or after February 8, 2006**, the effective date of DRA. The new law requires disclosure of all transfers made after the effective date and within **five (5) years** prior to Medicaid application, whether they were transferred to a trust or otherwise. Medicaid may refuse to pay nursing home benefits for a period of time based on the amounts and dates of such gifts made during the look-back period. (See section (3) Transfer Penalty below.) However, the rules penalizing transfers do not apply to all transfers.

Transfer Penalty. If assets were *given* away (that is, without any value in return) to persons other than a spouse or disabled child after February 8, 2006, and if the donor applies for Medicaid within 60 months after such gift, Medicaid will impose the following penalty on such gifts: Medicaid will refuse to pay the giver’s nursing home care for a number of months based on the state average nursing home cost (\$5,700 since January 2011; \$4,600 pre-January 2011). Under the DRA, the penalty period for gifts made on or after February 8, 2006 does not begin to run until the Medicaid Applicant has **both** entered a nursing home **and** is otherwise financially eligible for Medicaid. Therefore, if the applicant gave away \$46,000 on March 1, 2010 and goes into a nursing home and applies for Medicaid March 1, 2013, there would be a 10-month ineligibility period (\$46,000 divided by \$4,600 average cost) before Medicaid will begin **if** he files a Medicaid application. Even though his assets are below the Medicaid eligibility limit (\$4,000) when he applies for Medicaid, he must private pay for his nursing home for the additional 10 months of ineligibility.

The DRA has dramatically changed the Medicaid eligibility rules. Therefore, it is imperative that, if substantial gifts have been made, a Medicaid application must **NOT** be filed prematurely. Clients and attorneys should consult an experienced elder law attorney about any gifts and their effect on Medicaid eligibility.

Estate Recovery. Federal law requires that each state Medicaid agency

seek to recover reimbursement from the “estate” of each deceased Medicaid recipient for nursing home or home and community based waiver services paid by Medicaid after the recipient was 55 years of age. 42 USC § 1396p(b)(1). This claim – which the children of such deceased Medicaid recipients consider to be against their legacy – will be waived by Medicaid (a) if there is a surviving spouse; or (b) if there is a surviving dependent who is under the age of twenty-one (21) years or who is blind or disabled; or (c) as provided by federal law and regulation, if it is determined by Medicaid or by court order that there is undue hardship. 42 USC § 1396p(b)(2). A 2011 Mississippi court case also held that Medicaid has no claim against the Medicaid recipient’s **residence** at death IF the homestead value is less than \$75,000 equity AND s/he is survived by a spouse, child or grandchild who would take the residence as an inheritance. *Estate of Darby v. Stinson*, 68 So.3d 702 (Miss. App. 2011).

Planning Your Professional Legacy

The best form of legacy is one free of complications and restraints on its use by the recipients. If you should happen to leave your law practice due to incapacity or death, chaos would likely ensue if you have neglected to plan for an orderly transition. Family successors may be left in the dark about where to find important documents or who to call to “wrap up” ongoing client matters and professional engagements. Bills may go unpaid if vendors are unknown, and important insurance coverage may lapse as a result. Therefore, it is imperative that you provide your loved ones – let’s call them “legatees” – with some basic instructions as to how to resolve your professional responsibilities and realize the economic benefits from your efforts with the least amount of uncertainty and confusion. ■

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Distinguished Service Award

This award shall be granted to a lawyer or lay person for outstanding achievement in or a significant contribution to the legal profession. The recipient must be cited for specific actions which occurred no longer than five (5) years immediately prior to the date of the award. The Distinguished Service Award is presented annually and multiple awards may be presented.

Lifetime Achievement Award

This award will be granted for devoted service to the public, profession and administration of justice over the span of a professional career. Only lawyers or individuals who have worked within or contributed significantly to the system of justice or legal profession will be qualified to receive this award. The Lifetime Achievement Award is presented only on those occasions when a deserving recipient is nominated and selected.

Guidelines for The Mississippi Bar Awards

Judicial Excellence Award

The Judicial Excellence Award recognizes a judge who has exceeded the fall of the judicial office. The recipient should be an exceptional county, circuit, chancery or state appellate judge who is an example of judicial excellence, a leader in advancing the quality and efficiency of justice and a person of high ideals, character and integrity. To be eligible, a judge must be serving as a county, circuit, chancery or appellate judge. Judges on senior status are eligible if they continue to be active on the bench.

Nominations shall be reviewed by the Executive Committee of The Mississippi Bar. The Executive Committee shall make its recommendations to the Board of Commissioners at its Spring Board Meeting. Upon approval of the Board, award recipients shall be notified by the Executive Director of the Bar. All awards shall be presented at the next Annual Meeting of the Bar following their selection by the Board of Commissioners.

DUE BY MARCH 22! Nominations for The Mississippi Bar Awards DUE BY MARCH 22!

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Aaron Storer Condon

Aaron Storer Condon, 85, of Oxford, died January 1, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1952. He was an officer in the U.S. Army, serving in World War II and the Korean War. He continued serving in the Army's Judge Advocate General Corps as a reserve officer, retiring after having reached the rank of Colonel. In the early 1960's he practiced law in Kosciusko, serving as Attala County Attorney. In 1966 he began a long-term teaching career at the University of Mississippi School of Law.

Robert Elijah Covington, Jr.

Robert Elijah Covington, Jr., 88, of Quitman, died January 7, 2013. A graduate of North Carolina State University School of Law, he was admitted to practice in 1948. After two years in the Naval Reserve, he served on active duty with the U.S. Navy from July 1943 until June 1946, including as Commanding Officer of the U.S.S. PC 574 at the time of his discharge. He first practiced law in Brookhaven before moving his practice to Quitman in 1951. He was joined in his practice in 1980 by his wife, Polly J. Covington. Covington was active in civil affairs and was a member of the First Baptist Church of Quitman, where he served as a Sunday School teacher for many years. He also served two terms as mayor of Quitman from 1953 until 1961. Covington was a long-time member of the Executive Council of the Boy Scouts Choctaw Area Council and for more than 40 years served as attorney for the Enterprise School Board and also as Executive Committee Chairman of the Mississippi Democratic Party in Clarke County.

Robert Adkins Crawford

Robert Adkins Crawford, 73, of Jackson, died January 17, 2013. A graduate of Mississippi College School of Law, he was admitted to practice in 1969. While in the Mississippi National Guard for over six years, Crawford served active duty with the 114th Military Police Company, from 1961 through 1962. He achieved the rank of corporal and was an assistant squadron commander. After being admitted to practice, he joined the Agnew Law Office in Jackson as associate attorney in 1969, serving until the present. He was also named an Honorary Colonel for the Inauguration of Mississippi's Governor John Bell Williams in 1968. Crawford was a Reserve Deputy Sheriff for both the Hinds and Copiah Counties' Sheriff Departments for over ten years, having joined the Hinds County Department in July of 1999 and the Copiah County Department in 2006. During his tenure as a Reserve Deputy, he achieved the rank of Lieutenant and was Legal Counsel for the Reserve Unit. At the time of his death, Robert A. Crawford was on the Professional Steering Committee of the National Rifle Association. He practiced law in Jackson for forty-four years.

Ricky Jay Hemba

Ricky Jay Hemba, 58, of Ocean Springs, died January 25, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1981.

Lori W. Holland

Lori W. Holland, 52, of Ridgeland, died November 25, 2012. A graduate of the University of Mississippi School of Law, she was admitted to practice in 1983. In both 1981 and in 1983 she was listed in the publication "100 Outstanding Young Women of America." She was a member of Leadership Madison County. She was a part-time Judge in Ridgeland.

Rolfe Lanier Hunt, Jr.

Rolfe Lanier Hunt, Jr., 50, of Coffeetown, died November 30, 2012. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1962. Hunt was a 50 Year Member of the Bar. He served many years in private practice but most of them were spent serving the United States Army during active military duty and later as a military procurement specialist in Washington, DC. He served in Vietnam and was a civilian attorney for the Army.

William Harbin Myers

William Harbin Myers, 71, of Ocean Springs, died February 7, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1969. Myers nobly served in the United States Army from 1964-1966 during the Vietnam War era. While in the Army, he earned the rank of 1st Lieutenant and received the Army commendation medal. Myers was engaged in the private practice of law in Pascagoula for 23 years until his appointment as Chancellor for the 16th Chancery Court District in Mississippi in July 1992. He served continuously as Chancellor until 2000. In June of 2000, he was appointed to the Mississippi Court of Appeals. He was re-elected to the Court and served as a presiding Judge from November 2005 until his retirement in December 2011.

James Calhoun Pittman, Jr.

James Calhoun Pittman, Jr., 82, of Hattiesburg, died February 3, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1955. Pittman served in the US Army as 1st Lt. in the Judge Advocate General's Corps for three years before joining the law firm of Odom & Odom in Greenwood. In 1969, he returned to Hattiesburg where he joined the law firm of Pittman and Pittman. He recently retired from the firm, Montague, Pittman, and Varnado. He was a member of Hattiesburg's Main Street Baptist Church and had served as a deacon and Sunday school teacher at First Baptist Church in Greenwood and Temple Baptist Church in Hattiesburg.

Continued on next page

IN MEMORIAM

Donald Otis Simmons, Sr.

Donald Otis Simmons, Sr., 85, of Gulfport, died November 11, 2012. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1952.

Bennie L. Turner

Bennie L. Turner, 64, of West Point, died November 27, 2012. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1974. Turner was a State Senator serving in the seat representing all of Clay and parts of Lowndes, Oktibbeha and Noxubee counties since 1992. He was current chairman of the Senate Ethics Committee, vice chairman of judiciary, and former chairman of judiciary. He was past president of the Clay County Bar Association, served four terms as Clay County prosecutor and was past president of the Magnolia Bar Foundation.

Joseph Charles Webster

Joseph Charles Webster, 65, of Clarksdale, died January 16, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1972. Webster was a retired youth

court judge. Webster practiced law in Clarksdale until elected Judge in 1982. He retired after 20 years of service. After retirement, he became Senior Status Judge and would hear cases assigned to him by the Supreme Court of Mississippi. He was a member of the Coahoma County Bar Association. He was a member of St. Pauls United Methodist Church.

James Webster Wilson

James Webster Wilson, 72, of Ocean Springs, died January 5, 2013. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1972. He served in the United States Navy from 1963 to 1968. He attended University of San Diego School of Law, and received his Juris Doctor from the University of Mississippi in 1972. Wilson was a City Attorney from 1977-1980, and then founded boutique law firms in Biloxi and New Orleans. He then founded Wilson Elder Law Center. He served on the Board of Directors for the Gulf Hills Civic Association and was a past president. He also served on the Board of Directors for the ARC of Mississippi. He was an annual participant in the DREAM Program's golf tournament, and a supporter of the Special Olympics of Mississippi, the Gulf Coast Down's Syndrome Society, the American Heart Association, and the Alzheimer's Association.

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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. 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.

MARCH

- 19 MS School Boards Assn "CSBA Seminar on School Law." 6.0 credits (includes ethics). Ridgeland, MS, Embassy Suites. Contact 601-924-2001, April Mills.
- 19 Lorman Business Center "Employment Law Update." 6.7 credits. Jackson, MS. Contact 715-833-3940.
- 20 MS School Boards Assn "Legal Hot Topics with Jim Keith: Family Medical Leave Act." 3.0 credits. Ridgeland, MS, Embassy Suites. Contact 601-924-2001, April Mills.
- 22 MC School of Law "Mediation Conference." 7.0 credits (includes ethics). Jackson, MS, MC School of Law. Contact 601-925-7107, Tammy Upton.
- 22-24 MS Bar/LJAP "Camp LJAP." 8.0 credits (includes ethics). Louisville, MS, Lake Tiak-O'Khata. Contact 601-948-0989, Carolyn Barrett.
- 28 NBI "Applying the Rules of Evidence: What Every Attorney Needs to Know." 6.0 credits (includes ethics). Jackson, MS. Contact 715-835-8525.
- credits (includes ethics). Oxford, MS, Yerby Conference Center. Contact 662-915-7283.
- 24 MS School Boards Assn "Legal Hot Topics with Jim Keith: Family FLSA, Workers Comp & Other Matters." 3.0 credits. Ridgeland, MS, Embassy Suites. Contact 601-924-2001, April Mills.
- 30 MS School Boards Assn "MSBA Legislative Update & School Law Review." Jackson, MS, Hilton Hotel. Contact 601-924-2001, April Mills.

MAY

- 2 NBI "Find it Free & Fast on the Net: Strategies for Legal Research on the Web." 6.0 credits. Contact 715-835-8525.
- 3 MC School of Law "15th Annual Guardian Ad Litem Training." 6.0 credits (includes ethics). Jackson, MS, MC School of Law. Contact 601-925-7107, Tammy Upton.
- 3-4 UM CLE "Mississippi Law Update." 12.0 credits (includes ethics). Natchez, MS, Monmoth Plantation. Contact 662-915-7283.
- 17 UM CLE "Current Issues in Foreclosure/Real Estate." 6.0 credits (includes ethics). Ridgeland, MS, Embassy Suites. Contact 662-915-7283.
- 17 NBI "As Judges See It: Top Mistakes Attorneys Make in Court." 6.0 credits (includes ethics). Jackson, MS. Contact 715-835-8525.
- 31 UM CLE "Employment Law Update." 6.0 credits (includes ethics). Gulfport, MS, Courtyard Marriott. Contact 662-915-7283.
- 31 Sterling Education Services, Inc. "Fundamentals of Employment Law." 6.7 credits. Biloxi, MS. Contact 715-835-0495.
- 13 Sterling Education Services, Inc. "Family Law Hot Topics & Current Issues." 6.7 credits (includes ethics). Jackson, MS. Contact 715-8355-0495.
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The Double Bind

“Well-Behaved Women Seldom Make History” – Laurel Thatcher Ulrich

In a recent episode of *Downton Abbey*, Lord Grantham gasps from behind his newspaper at the breakfast table. He simply cannot believe that his daughter, Elizabeth has seen fit to write an article for the local newspaper, and the paper has published it. My Heavens, an aristocratic woman having opinions on current events and committing them to paper for dissemination, no less; oh the scandal, what will the Dowager Countess think?

Fast forward roughly one hundred years and into life in the “real world”. Are things different? Are they better? What does it mean to be a woman? A successful woman? A successful woman lawyer? Are these roles possible? Compatible?

In her CD series entitled *Men, Women, and Worthiness*, Brené Brown, PhD, LMSW comments on a 2005 study from a research team led by James R. Mahalik. One of the foci of the study was to determine societal gender “norms” and roles. Brown summarized, with a mixture of disappointment and disgust, the key feminine norms “thin, nice, modest, and using all available resources on appearance.” Terming this as being an unreasonable expectation would seem to be a woefully inadequate understatement.

In 2013, the presence of these “norms”, especially to the exclusion of other characteristics, seems superficial and quite contrary to an authentic life. That appears to be the consensus of the women with whom I’ve discussed them. Most of the women I know and with whom I’ve worked are “dancing as fast as they can.” Career, family, social and civil obligations, the list goes on and on.

Brown’s treatment of these “norms” is especially fascinating and useful in trying to appreciate the struggles that women can face in the practice of law. To compound the inherent struggle described above, how would these “norms” serve a woman as a successful attorney? Having known many powerful women both in my personal and professional life, I concur with Brown’s disdain for these unreasonable expectations. Our disdain, however, does not diminish their prevalence. Modest? Nice? These would seem to create a second bind for women who want to be a successful lawyer. Apparently, no points are awarded for intelligence or “zealous advocacy.”

What are women to do with these binds? While no quick easy answers spring to mind, there are some concepts, which I believe can help women strug-

gling with these issues:

First, make an honest assessment of the expectations you place on yourself and those placed on you by others (family, employer, society, etc.). Set aside some time to commit these to paper; be frank and thorough with your list. Compare your list to your values, your hope and dreams. Second, talk about the results of your self-assessment with a trusted friend or colleague, and listen to their feedback. If you are caught in an unreasonable bind by these or any issues, you need an outlet to express those feelings, and to receive feedback and support. Finally, do not suffer alone, reach out to others who you believe have been or are currently struggling with similar issues. There is no substitute for the power of healing community; people who share their struggles and fears, along with their experience, strength, and hope with one another in an caring supportive environment.

If you need more support or guidance that you can identify in your immediate circles, please contact LJAP. ■

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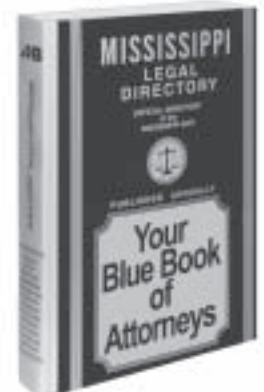
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