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Section Chair's Corner

By Stanley Q. Smith, Esq.

Welcome to the Spring 2014 issue of The Mississippi Business Law Reporter. I am pleased to report that your Business Law Section of The Mississippi Bar has been very active over the past several months in providing benefits and services to our membership and to the Mississippi legal community.

On December 3, 2013, we co-hosted with the Mississippi Corporate Counsel Association a social at Nick's Restaurant in the Fondren area of Jackson. Our guests of honor were Secretary of State Delbert Hosemann and his Chief of Staff, Doug Davis. The opportunity to visit with our colleagues as well as the top two people from an agency which is so important to Mississippi business, was appreciated by many as it was one of the best attended Business Law Section social events in recent years.

The New York State Bar Association's Business Law Section made available to our Section's membership a free-of-charge seminar on December 11, 2013, concerning the Securities and Exchange Commission's recent crowd-funding regulation proposal. This two-hour webcast featured speakers from the SEC, the Federal Reserve Bank of New York, and several distinguished attorneys. A week prior to the event, I sent via LISTSERV an announcement regarding this program to each of our Business Law Section members. The program was very informative, and the materials offered for download to all attendees were invaluable.

On April 2, 2014, our Section co-sponsored a CLE program for the first time with the Appellate Practice Section. We were fortunate to have retired Chief U.S. Bankruptcy Judge David Houston present a teleseminar entitled "Springtime Potpourri: Arbitration, Officers & Directors and LLC Liability Issues." Provided without cost to members of our two sections, attendees received one hour of CLE credit.

The Business Law Section has made matching monetary donations to the Mississippi Volunteer Lawyers Project and the Mission First Legal Aid Office. Both of these fine organizations do an outstanding job of providing legal services to Mississippians in need. I encourage you to consider how you can individually support one or both of these groups by visiting them on the web at the following addresses:

Mississippi Volunteer Lawyers Project:
<http://www.mvlp.net>

Mission First Legal Aid Office:
<http://www.missionfirst.org/legalaid>

Our Section has continued its tradition of presenting a scholarship award to outstanding business law students at both the University of Mississippi School of Law and Mississippi College School of Law. The deserving recipients for 2014 are Brian Stuart at Ole Miss and Adam Wisner at MC.

In the coming weeks, the Business Law Section will be providing additional CLE opportunities to our membership. You should give serious consideration to attending each of the following which should be outstanding programs.

- June 10, 2014, at the River Hills Club: "The Ethical Thicket of Social Media Facing Mississippi Lawyers." This seminar, being co-sponsored with the Mississippi Corporate Counsel Association, has been approved by the Mississippi Commission on Continuing Legal Education for one (1) ethics hour CLE credit. Nationally-known speaker, Mike Rubin, with his unique blend of scholarship and humor and one of the most unusual multi-media presentations you'll ever see, will challenge your thinking, raise issues to ponder, and give you something to smile about.

The registration form for this seminar can be found toward the end of this newsletter.

- June 26, 2014, at the Sandestin Hilton: “Mississippi Construction Lien Legislation” presented by Cliff Harrison and “Legal Issues of the Affordable Care Act” presented by Mike Chaney, Mississippi Commissioner of Insurance. This program will be offered in conjunction with the Health Law Section as part of the Business Law Section’s annual

meeting. Attendees will receive up to two (2) hours of CLE credit.

Information about these and other programs of the Business Law Section can be found at our webpage on The Mississippi Bar’s website or by going to: <http://www.msbar.org/inside-the-bar/sections/business-law.aspx>

I hope to see you at the upcoming CLE programs and the annual meeting.

Mississippi Secretary of State's 2014 Business Legislation Update

By Delbert Hosemann, Mississippi Secretary of State

When you hired me as Secretary of State, one of our main goals was to create a more business-friendly Mississippi. To promote economic development and growth through common-sense business proposals, the Secretary of State's Office has collaborated with state lawmakers, attorneys, business professionals, CPAs, and other subject matter experts to recommend, review, and draft improvements to Mississippi's business laws. Since 2008, the Legislature has adopted nearly thirty (30) business-related legislative proposals developed through the Secretary of State's Office. The proposals included changes to Mississippi's corporate, LLC, nonprofit, trademark, and securities laws.

The 2014 Regular Session of the Mississippi Legislature was a productive session for business reform and refinement. The Legislature passed seven (7) business-related bills from the Secretary of State's legislative agenda. Here is a look at these new laws.

I. Encouraging Economic Growth and Development

1. Headquarters Relocation (HB 785)

HB 785 is intended to encourage companies to relocate their national or regional headquarters to Mississippi. Under the proposal, a company relocating its corporate headquarters to Mississippi, and creating at least 20 jobs, may apply with the Department of Revenue for a tax credit. If the Department of Revenue finds the business meets the requirements it will allow a tax credit for actual relocation expenses against the company's state income tax liability for the taxable year in which the relocation costs are paid.

The Mississippi Department of Revenue determines relocation costs, which the bill defines as non-depreciable expenses that are necessary to relocate headquarters employees to the headquarters in conjunction with the initial establishment of the headquarters facility. These relocation costs may include typical moving expenses to relocate furnishings, household goods, and personal property of the employee and members of their household, as well as travel expenses to and from Mississippi in search of a new home.

The maximum cumulative amount of the credit claimed against the State in any one year is capped at \$1,000,000. The credit is non-refundable but excess may be carried forward and used for a period of five-year period.

Representative Jeff Smith sponsored HB 785, which takes effect on July 1, 2014. Senator Joey Fillingane sponsored the counterpart bill in the Senate.

2. Tax-Forfeited Properties (SB 2394)

Corporations now will be allowed to purchase tax-forfeited lands from the state, increasing the pool of potential purchasers for these properties. A corporation can purchase up to one-quarter (1/4) section of public land (160 acres).

Senator David Blount sponsored SB2394, which takes effect on July 1, 2014. Representative Tom Weathersby sponsored the counterpart bill in the House.

II. Modernizing Mississippi's Business Laws

1. Amendments to Agricultural Cooperative Marketing Associations Law (HB 914)

Mississippi's Agricultural Cooperative Marketing Associations Law (§§79-19-1, et seq.) was first adopted in the 1930s and has not been updated to take advantage of changes to antitrust laws.

HB 914 provides a much-needed update. The legislation allows a cooperative to do business with nonmembers not to exceed the amount of business it does for members and it also streamlines the adoption of changes to the bylaws. Previously, it was very difficult for a cooperative to reach a quorum. Under the new law if a vote is scheduled but no quorum is present, the meeting will be adjourned and rescheduled for the specific purpose of voting on that amendment.

The bill also allows perpetual existence of the cooperative (previously 99 years), and clarifies that Mississippi's non-profit corporation laws apply to Agricultural Marketing Cooperatives, to the extent not covered by the cooperative statute.

The updates to Mississippi's marketing cooperative law are intended to broaden Mississippi's appeal as a legal situs for marketing cooperatives currently in Mississippi or in other states.

Representative Bobby Howell sponsored HB 914, which goes into effect on July 1, 2014. Senator Buck Clarke sponsored the Senate counterpart bill.

2. Mississippi Entity Domestication and Conversion Act (SB 2322)

On March 19, 2014, Governor Phil Bryant signed into law the Mississippi Entity Domestication and Conversion Act. This Act allows business entities to change their legal form (known as conversion) or change their state of incorporation (known as domestication) through a filing with the Mississippi Secretary of State's Office.

The frequent number of calls the Secretary of State's Business Service Division received from callers wishing to convert their businesses from one form to another led the Secretary of State's Office to form a study group to consider whether a law authorizing domestication and conversion was needed. After receiving a favorable study group recommendation in 2012, the Secretary of State's Office worked with a sub-committee to draft the proposal later introduced in the Legislature.

The Act is intended to give business entities a simple, efficient, and inexpensive procedure to change their business form or location. Previously, a business faced several cumbersome steps if it wanted to change from one entity form to another. Under the new law, a plan of conversion must be approved by interest holders in the pre-existing entity. The plan describes the conversion and its effect in detail. The plan is required to include: the name and type of the current entity; the name, jurisdiction of organization, and type of the new converted entity; the manner for converting the interests in the pre-existing entity; the proposed public organic document of the new converted entity if it will be a filing entity; and the private organic rules of the converted entity. After approval of the plan by the interest holders, a statement of conversion must be filed with the Secretary of State's Office. A form for this is under development and will be available when the Act becomes effective on January 1, 2015. The filing makes the transaction a matter of public record. It becomes effective upon the date and time of filing, unless a later date or time is specified.

The process for domestication is similar. Over the years, many companies in the state were formed under the laws of another state such as Delaware or Nevada. This may have been done due to perceived advantages in forming your business using statutes of those states. Recent changes in the laws governing corporations and LLCs in Mississippi make it now more advantageous to be domesticated in Mississippi. This Act will allow those companies to

become Mississippi entities by filing only a single form with the Secretary of State.

The language in the bill was based heavily on the Model Entity Transaction Act (META), a model act promulgated in 2004 by the National Conference of Commissioners on Uniform State Laws, a group of volunteer lawyers appointed by the Governors or Legislatures of their respective states to draft model states laws. One notable difference between the Mississippi and the model act is Mississippi did not adopt META's provisions on mergers and interest exchanges. Those transactions will be governed by existing law.

Senator Sally Doty sponsored SB2322. Representative Mark Baker sponsored the counterpart bill in the House.

3. Name Reservation Provisions (SB2511)

The Legislature also passed a bill harmonizing the name reservation procedure for Business Corporations, Nonprofit Corporations, Limited Partnerships, and Limited Liability Companies. The reservation of a business name occurs prior to the formation of the actual business entity. It allows for the entity to reserve the name and plans to use in the future for a set period of time. This prohibits any other entity from forming using that same name.

Previously, name reservation procedures were inconsistent across business entity forms. For example, limited liability companies and limited partnerships were allowed to reserve a name for six months, then had to wait 60 days after the expiration to reserve it again for another six months. Corporations, on the other hand, were allowed to renew their name reservation immediately upon expiration. Foreign corporations, on the other hand, were allowed to register their name in the state for a year with unlimited renewals.

The new act treats all entity types the same. And name may now be reserved for six months with one additional six-month renewal. This prevents foreign

companies from "parking" unused names in the Secretary of State's database. If a foreign company wishes to keep its name from being used in the state, it can register with the Secretary of State.

Senator Sally Doty sponsored SB2511, which goes into effect on July 1, 2014. Representative Mark Baker sponsored the counterpart bill in the House.

III. Making Mississippi More Competitive For Trust Business

Trusts are important estate planning tools and may be a strong economic driver for a state. Mississippi has limited trust laws. Through some law exists, much of the current trust law is scattered and sparse, leading to uncertainty for both practitioners and citizens wishing to form a trust in Mississippi.

Trusts are easily established in any jurisdiction, regardless of the settlor's or beneficiary's state of residence, and many practitioners and trust professionals are under a fiduciary obligation to recommend the best location for the trust. Due to the updated trust laws in Tennessee and other states, some Mississippi citizens are taking their trust business elsewhere. At a trust conference in November 2013, a presenter (only half-jokingly) referred to Mississippi's trust law as a great job-creator for the State of Tennessee.

In March 2013, the Mississippi Secretary of State's office assembled a group of accountants, attorneys, financial planners, bankers, insurance professionals, and trust officers to review and consider trust legislation, with the goal of making Mississippi's trust laws current, competitive, progressive, and attractive for individuals and business. The Legislature adopted two major proposals recommended by the study group – the Mississippi Uniform Trust Code and the Mississippi Qualified Disposition in Trust Act. Both take effect on July 1, 2014.

1. The Mississippi Uniform Trust Code (SB 2727)

On March 24, 2014, Governor Bryant signed the Mississippi Uniform Trust Code. The new law provides a much-needed update to Mississippi's default rule on trusts. It is intended to reduce uncertainty, suppress costly and needless litigation, and help grow the trust industry. The law provides guidelines where none currently exist, while also permitting the settlor maximum flexibility in setting up the trust. The Mississippi Uniform Trust Code is based on the Uniform Trust Code, a uniform act approved in 2000 by the National Conference of Commissioners on Uniform State Laws. The UTC has been adopted in 27 states and the District of Columbia. While the Mississippi Uniform Trust Code is based on a uniform act, it has a number of non-uniform provisions. A Task Force on the UTC met for several months, going line-by-line through the act and considering improvements to the uniform language.

The Mississippi Uniform Trust Code generally follows the format of the UTC. It includes an article addressing trust advisors and trust protectors which was not part of the uniform law, and leaves out the article on creditors' rights, opting instead to use existing Mississippi law in this area.

Article 1 contains general provisions and definitions.

Article 2 provides guidance on judicial proceedings, and clarifies a court in the trust's principal place of administration has jurisdiction over both the trustee and beneficiaries regarding matters related to the trust. The code does not attempt to address most issues surrounding jurisdiction or procedure.

Article 3 governs representation, both by a fiduciary (personal representatives, guardians, conservators) and through virtual representation. This article also confirms the court's authority to appoint representatives to represent and approve settlements for minors, and the incapacitated, unborn, or individu-

als whose identity or location is not reasonably ascertainable. Many practitioners have issues involving trusts with unborn or minor contingent beneficiaries. In these cases, practitioners must go to court, get a guardian ad litem appointed for the minors and unborns, who then examines the situation and makes a report to the court – even though the interests of the minor/unborns are the same as their parents who are trust beneficiaries. With virtual representation, if the parents are in a position to represent those interests, the costly and time-consuming guardian ad litem process will be avoided.

Article 4 provides statutory framework for creating, modifying and terminating trusts. The requirements do not generally depart from traditional doctrine. The trust code does utilize a three-part classification of trusts: charitable, non-charitable, and honorary. The most common trust is the non-charitable trust. Non-charitable trusts require a valid purpose and ascertainable beneficiary or beneficiaries. Charitable trusts have the opposite purpose, which is to benefit the public as a whole. The honorary trust was unenforceable at common law but is recognized under the trust code. An honorary trust lacks an ascertainable beneficiary. The most common example is a trust to care for an animal.

In addition to the terms on creation and validity, Article 4 provides terms on modification and termination of a trust. The modification provisions are intended to help preserve the intent of the settlor, but provide flexibility if a provision of the trust no longer serves a material purpose. It also provides for termination of trusts, if properly approved, when the size of the trust is insufficient to justify continued administration.

Article 5 of the uniform act addresses creditors' rights and was not adopted in this bill; Mississippi will instead rely on the current creditors' rights laws.

Article 6 addresses revocable trusts. Generally, revocable trusts are treated as the equivalent of a

will under the trust code. Trusts are presumed revocable unless the terms provide otherwise. The article also provides the procedure to amend or revoke the trust.

Article 7 covers the office of the trustee. All of the default rules found in Article 7 may be modified by the trust terms. The rules address acceptance of the office, the role of co-trustees, changes in trusteeship, resignation, removal, appointing successor trustees, and compensation.

Article 8 governs the duties and powers of trustees.

Article 9 is omitted since the Mississippi Uniform Prudent Investor Act is already enacted in Mississippi and codified in Sections 91-9-601 through 91-9-627.

Article 10 provides for the liability of trustees and rights of those dealing with trustees.

Article 11 is the miscellaneous provisions section of the act and provides for the effective date and that this bill will apply to all trusts created before and after the effective date.

Article 12 addresses trust advisors and trust protectors. It provides a non-exhaustive list of powers that may be given to trust advisors and protectors. Under Article 12, fiduciary responsibilities are placed on trust advisors and protectors, to the extent the trust advisor or trust protector is granted power in the trust instrument. A trust advisor or trust protector is considered an excluded fiduciary with respect to each power granted or reserved exclusively to another individual. These excluded fiduciaries, are under no duty to review actions by other individuals or recommend, report, communicate with beneficiaries, or take any other action unless the terms of the trust provide otherwise. An excluded fiduciary is not liable for the actions of other individuals. Only the individuals who hold the power may be liable for the failure to exercise a power or the results of exercising that power. Likewise, administrative activities or recordkeeping

required by an individual's role with a trust will not give rise to any duty concerning the exercise or non-exercise of a power exclusively held by another. A claim against a trust advisor or trust protector must be brought within one (1) year of the date the trust beneficiary or representative of the trust beneficiary received a report indicating the existence of a potential claim. If no such report was provided, the claim must be made within three (3) years of the termination of the beneficiary's interest, the termination of the trust, or the removal, resignation, or death of the trust advisor or trust protector.

To avoid conflicting and overlapping provisions, SB2727 repeals Articles 1, 3, 5, and 7 of Title 91, Chapter 9.

Senator Sean Tindell sponsored SB2727. Representative Trey Lamar sponsored the counterpart bill in the House.

2. Mississippi Qualified Disposition in Trust Act (HB 846)

A qualified disposition trust, also referred to as a self-settled spendthrift trust or a domestic asset protection trust, is an irrevocable trust in which the trust creator (settlor) is allowed to be a beneficiary of a trust while also receiving limited asset protection.

Under the previous state law, only assets placed in trust for the benefit of a separate beneficiary received creditor protection.

To take advantage of a qualified disposition trust, the trust creator must first sign an affidavit stating the trust creator is solvent, has title and authority to transfer the assets being put into trust, is not taking any action to defraud creditors, is not aware of any undisclosed pending or threatened court action, is not involved in any undisclosed administrative proceeding, does not plan to file bankruptcy, and is not transferring assets into the trust that were derived from any unlawful activity. The transferor

is required to secure a general liability policy of at least \$1,000,000 dollars.

The trust can be attacked through the Uniform Fraudulent Transfer Act, Section 15-3-101, et seq. An action must be commenced within two (2) years of the qualified disposition or within six (6) months after the creditor knows or should have known the property had been transferred into trust. If the person becomes a creditor after the trust is created, the action must be brought within two (2) years after the qualified disposition was made. The creditor must prove by clear and convincing evidence the transfer of property was made with intent to defraud the specific creditor.

A creditor's right to trust assets can prevail in cases involving court orders for payment of alimony, child support, or equitable distribution of marital

property, compensation for death, personal injury or property damage occurring before the date of a qualified disposition, and judgments payable to the state or a political subdivision, including court-ordered restitution. In the event the settlor did not maintain the \$1,000,000 dollar liability policy, a creditor may attach trust assets for satisfaction of a debt, but the collection cannot exceed \$1,500,000 dollars.

Representative Trey Lamar sponsored HB846. Senator Sean Tindell sponsored the counterpart bill in the Senate.

Prolegomena to a Future Economic Development: Mississippi Targets Health Care and Life Science Industries

By Tray Hairston

I. Introduction

For years municipalities in Mississippi through their elected leaders and stakeholders have been arduously seeking creative ways to enhance the quality of life of local citizens and improve economic development opportunities for their communities. Simultaneous the entire state, from its *Balance Agriculture With Industry Plan* in 1935 juxtaposed to its aggressive recruitment of the automotive industry in the new millennium, has also sought to promote economic development but is challenged by authorities like Fitch Ratings Inc., a nationally recognized credit rating agency, which revised Mississippi's 2013 outlook to negative and noted the following regarding the state's manufacturing based economy: "The economy continues to diversify and some successful economic development initiatives should bolster employment in the coming years; however, the manufacturing concentration well exceeds national levels." To thwart findings like Fitch's, Mississippi should diversify its economy and adopt health care or life science based economic development initiatives like H.B. 1582 (2014)¹ – the Mississippi Health Care Industry Zone Master Plan Act (the "Health Care Zone Master Plan legislation") – where municipalities could potentially issue health care zone municipal bonds and lease the facilities of the project back to a private health care industry in a revenue generating capacity or use specially allocated new market tax credits for gap financing.

¹ H.B. 1582 (2014) passed the Mississippi House of Representatives on February 25, 2014 with a vote of 117 to 0; however, the bill died in the Mississippi Senate in the Senate Finance Committee on March 18, 2014.

II. Mississippi Health Care Zone Act (2012)

In 2012, the Mississippi Legislature passed the Mississippi Health Care Industry Zone Act (the "Act") codified at Miss. Code Ann. § 57-117-1 *et seq.* The Act incentivizes medical supply companies, biologic companies, laboratory testing companies, medical product distribution companies, diagnostic imaging companies, biotechnology companies, medical service providers, nursing and assisted living facilities, and medical equipment or medicine production and related manufacturing or processing companies that create 25 jobs or make a \$10,000,000.00 investment in health care industry zones ("Health Care Zones") in Mississippi. Health Care Zones are characterized by a five mile radius around a hospital or hospitals in a county in Mississippi that either has 375 acute care hospital beds or more or a county that is contiguous² to three counties which in the aggregate account for up to 375 acute care hospital beds. If a certified health care

² Before the Act reached Governor Bryant's desk, the goal was to focus only on communities/counties that had over 375 acute care hospital beds. Those communities are Lauderdale, Rankin, Hinds, Lee, Forrest, Desoto, Jackson, and Harrison. Through an amendment that was offered at the end of the 2012 Mississippi Legislative Session that increased the number of Health Care Zones in Mississippi [which can be seen here - <http://www.youtube.com/watch?v=6tkLFGdeB9g&feature=youtu.be>] and found at Miss. Code Ann. § 57-117-5(1)(a)(i). The amendment provided that a county can also participate as a Health Care Zone enabling it to reach up to 375 beds by using 3 contiguous county language. For example, Hinds County and Rankin County have well over 375 acute care hospital beds. Madison County which borders those two counties does not. As a result of the amendment which is a part of the Act, Madison County and many other similarly situated counties can qualify to be Health Care Zones as well.

facility or company locates in one of these Health Care Zones and creates the requisite amount of jobs or makes the requisite investment, then it can be eligible for certain health care zone tax incentives.³

III. The creation of Health Care Zone Master Plans in Mississippi

In 2013, Governor Phil Bryant used the Health Care Zone concept to facilitate more affordable housing in Mississippi for workers associated with the health care industry and tied the five mile zone concept to a document called the Qualified Allocation Plan (the “QAP”). The QAP is a federally mandated planning requirement that states annually use to explain the basis upon which they distribute their Low-Income Housing Tax Credit Program (“LIHTC or LIHTCs”) allocations. The Mississippi Home Corporation (the “MHC”) is the Housing Finance Agency (“HFA or HFAs”) created by the Mississippi Legislature pursuant to Miss. Code Ann. § 43-33-701 which administers Mississippi’s QAP in addition to raising funds from private

investors to finance the acquisition, construction and rehabilitation of residential housing for persons of low to moderate income in Mississippi.

To qualify for these very lucrative LIHTCs under the Health Care Zone section of the 2013 QAP, developments must have been located within a county which has certificates of need for more than 375 acute care hospital beds and be within 5 miles of a hospital with acute care hospital beds in that county. The 2013 QAP provided that counties that currently have more than 375 acute care beds are Lee, Lauderdale, Rankin, Hinds, Forrest, Jackson, and Harrison. Additionally, DeSoto County is also eligible for this scoring category in the Health Care Zone section of the 2013 QAP.

The 2013 QAP also provided that developments could also locate in a county that have less than 375 acute care hospital beds so long as the county’s health care zone i.e., its five mile radius zone had a master plan from an AICP certified planner (American Institute of Certified Planners) with experience working in Mississippi. The Governor’s Office issued a memo dated March 8, 2013 and titled “Official Health Care Zone Master Plan Requirements for 2013 QAP” explaining the rules and requirements for Health Care Zone Master plans. The memo provided that the goal with respect to master planning was to provide an asset to Mississippi communities that would make a sizable economic impact. With a Health Care Zone Master plan, the intent was to give communities the blueprint for growing successfully their health care economy. In order to qualify for LIHTCs in a county with less than 375 acute care beds, the private housing developer was required to finance the county’s Health Care Zone Master plan. In addition, the AICP planner and developer were also required to work closely with their community’s local economic developers and local leadership to create the final product. This requirement has resulted in a true public-private partnership. Inevitably, these plans, similar to those used at the Research Valley Biocorridor in Texas, are blue-

³ (i) *An Accelerated 10-Year State Income Tax Depreciation Deduction.* See Miss. Code Ann. § 17-29-7 which provides that the accelerated depreciation deduction shall be computed by accelerating the depreciation period required by Title 35, Part III, Subpart 5, Chapter 4, Mississippi Administrative Code, to a five-year depreciation period. Chapter 4 on depreciation cites Miss. Code Ann. § 27-7-17(1)(f). The rules states that a reasonable allowance for the exhaustion, wear and tear and obsolescence of property of income shall be allowed as a depreciation deduction. The allowance is that amount which should be set aside for the taxable year in accordance with a consistent plan, so that the aggregate of the amounts set aside will equal the cost or other basis of the property. The allowance shall not reflect amounts representing a mere reduction in market value. Mississippi will follow Federal depreciation guidelines as are not deemed contrary to the context and intent of Mississippi Law. (ii) A *Sales Tax Exemption* for Equipment and Materials purchased from the date of the project’s certification until three months after the facility is completed. See Miss. Code Ann. § 27-65-101(pp). (iii) *Fee in Lieu* of Property Taxes. Miss. Code Ann. § 27-31-104. (iv) *Ad Valorem Tax Exemption* (not state ad valorem taxation, school district) for 10 years for any certified project with an investment of more than \$10,000,000 or 25 jobs at the city or county’s discretion. Miss. Code Ann. § 27-31-101(j).

prints for local economic development directors to create jobs.

There are currently 12 communities that have Health Care Zone Master plans in Mississippi. As a result of the MHC's program, the policies put in place by the Governor's Office, and the funds of private housing developers, the communities that have Health Care Zone Master plans are Clarke County (Quitman, MS), Clay County (West Point, MS), Copiah County (Hazelhurst, MS), Humphreys County (Belzoni, MS), Madison County (Canton, MS), Marshall County (Holly Springs, MS), Montgomery County (Winona, MS), Noxubee County (Macon, MS), Panola County (Batesville, MS), Scott County (Morton, MS), and Yazoo County (Yazoo, MS).⁴

At the Governor's Health Care Economic Development Summit on August 15, 2013, the Mississippi Development Authority ("MDA") designated these 12 communities as certified Health Care Zone Master plan communities and each were given certificates. The MHC program that was put in place in the 2013 QAP could be repealed in the 2015 QAP when new LIHTCs are allocated. The program was meant to be a one-time jump start to the health care based housing industry.

IV. The Health Care Zone Master Plan legislation and the certification of Health Care Zone Master Plan Communities

The Health Care Zone Master Plan legislation introduced in the 2014 Mississippi Legislative Session would have codified MDA's certification process for Health Care Zone Master Plan communities in Mississippi. The 12 communities given certificates by MDA met the nine (9) requirements

below before they were certified.⁵ The certification requirements are as follows:

1. An Environmental scan & asset mapping of existing resources of the five mile radius that the health care zone master plan contemplates as further defined by MDA regulation;
2. A market demand analysis, target industry study, and center of excellence determination as further defined by MDA regulation;
3. Benchmarking and best practice models of similar communities or developments that serve as a model example or approach to generating successful and positive target development as further defined by MDA regulation;
4. Zone or district parameter identification as further defined by MDA regulation;
5. Healthcare district and zone site master planning as further defined by MDA regulation;
6. Overlay district regulatory outline as further defined by MDA regulation;
7. Incentive opportunity identification as further defined by MDA regulation;
8. Economic impact analysis as further defined by MDA regulation; and
9. Public relations/marketing and recruitment strategy as further defined by MDA regulation.

⁴ See e.g., Governor Phil Bryant website for more detail on "Health Care Zone Master Plan Certified Communities."
<http://www.governorbryant.com/health-care-zones/> (accessed February 5, 2014)

⁵ Mississippi Health Care Zone Master Plans are public-private partnerships similar to those used at the Research Valley Biocorridor in Texas and Texas Medical Center. Ultimately, health care zone master plans are blueprints for local economic development directors to create jobs and will require participation from both the public and private sectors.

Essentially, Health Care Zone Master Plans take detailed looks at existing assets and economic-demographic conditions, create a physical framework master plan for health care industry development, and provide detailed recommendations and strategies for implementing the plan and growing the local health care industry.

V. Incentives for a Certified Health Care Zone Master Plan Community

If the Health Care Zone Master Plan legislation were to become law in Mississippi in 2015, the legislation would create additional incentives for communities with certified Health Care Zone Master Plans and allow other communities to create certified Health Care Zone Master plans per the requirements above as well. The legislation would require the Health Care Zone Master plan to be created by an AICP Certified Planner with experience in Mississippi. The additional incentives that a community would qualify for as a result of having a certified Health Care Zone Master plan are as follows:

1. *Health Care Zone Grant Fund* (grant proceeds could be used for soft costs for public, private, for-profit and non-profit entities to initiate new ventures and institutions etc.);
2. *Health Care Zone Revolving Loan Fund* (loan proceeds could be used for soft costs for public, private, for-profit and non-profit entities to initiate new ventures and institutions etc.);
3. *Health Care Zone Master Plan Job Training Grant Fund* (funds could be used to incentivize training in any health care or related field at community colleges and other institutions or higher learning in Mississippi);
4. *Health Care Zone Master Plan Advantage Jobs* (a rebate of a percentage of the new health care facility's Mississippi payroll could be paid to that business for a period up to 10 years as a result of locating in one of the certified health care zone master plan communities);
5. *Health Care Zone Master Plan State New Market Tax Credit Allocation* for certified health care zone master plan communities; and
6. *Health Care Zone Municipal Bonds*.

These incentives would be limited to communities that have gone to the lengths of having their health care zone master plans certified by MDA.

The Benefits of Maintaining the Historical Tax Credits

By Andrew Hatten and Drew Norwood

A Note from The Editor: *I am pleased to continue a new feature to The Mississippi Business Law Reporter. Beginning with last fall's issue, we are presenting two articles written by students at each of Mississippi's two law schools: the University of Mississippi School of Law (Fall 2013) and the Mississippi College School of Law (Spring 2014). Each article was chosen by faculty at the respective law schools from those submitted during a competition among the law student members of each school's Business Law Section.*

A productive tax incentive program has come under heavy fire in recent years. Lawmakers at both the federal and state level have tried to attack programs that provide tax credits for the rehabilitation of historic structures. At the federal level, tax reforms have been proposed that might do away with historic tax credits ("rehabilitation credits").¹ Most significantly, Dave Camp, Chairman of the House Ways and Means Committee, has proposed sweeping changes to the current tax law—including a repeal of the current rehabilitation credit.² Camp's proposal addresses a wide array of tax issues, but his reforms are all aimed at simplifying and equalizing the tax code.³ It is in this vein that Camp and others have begun to revisit and scrutinize the utility of the rehabilitation credit.

Similar state level historic tax credit programs have approached legislative deadlines that threaten to discontinue these credits. Mississippi's program approached such a deadline at the end of this year, however the legislature was able to extend the program at the end of its most recent session. With the amount of attention that federal and state historic tax credits have received, it is important to cut through the rhetoric in order to realize the benefits the programs can bring.

A. Federal Historic Tax Credits

The rehabilitation credit is currently found in section 47 of the Internal Revenue Code. With the rehabilitation credit, Congress has provided an

incentive to private investors by extending tax credits to those willing to fund the rehabilitation of certain historic structures. The legislature has altered the structure of historic tax credits over the years, but currently the statute provides benefits in two tiers: 1) twenty percent credit to investments made to a "certified historic structure"; and 2) ten percent to investments made to a "qualified rehabilitated building."⁴ A certified historic structure is generally understood to be one listed in the Federal Register.⁵ Alternatively, a "qualified rehabilitated building" encompasses a broader range of buildings and, additionally, requires that these buildings be "substantially rehabilitated" pursuant to a specific set of standards.⁶

According to research conducted by Rutgers University Center for Policy Research, in 2013 the rehabilitation credit generated 62,923 jobs for completed projects alone. These jobs came from 803 certified projects, which produced \$6.73 billion worth of investments to rehabilitation projects.⁷ While the numbers appear to be strong, several groups strongly oppose these tax credits.

Opposition to the rehabilitation credit has come from all sides. But while both Democrats and Republicans have voiced concerns, their concerns stem from different precepts. Typically, Democrats propose the repeal of rehabilitation credits because they feel that private investors are soaking up the overwhelming majority of the funds, instead of merely acting as a conduit to funnel these funds to

historic renovation projects and, thus, to taxpayers. According to this line of reasoning, tax credits are extended to focus the attention of private investors—who have the power to revitalize a dying community—and provide them with the proper incentive to facilitate that change. However, if private investors are being enriched from the rehabilitation credits then something must be wrong. And revision or repeal is required.

On the other hand, Republicans who oppose tax credits usually argue that a repeal of the rehabilitation credit should come as a byproduct from closing up loopholes and ensuring tax simplicity and fairness. Often the cry for a repeal of the rehabilitation credit comes alongside arguments for a flat tax. In this view, tax credits such as the rehabilitation credit are seen as a symptom of an underlying disease: tax favoritism and inequality. This line of reasoning is what led Camp to eliminate the rehabilitation credit in his proposed tax bill.⁸

However, both of these views mischaracterize the cause and overlook the effect of the rehabilitation credit. Both arguments draw mainly from a repulsion of tax credits in general more so than the merits of the rehabilitation credit in particular. When examining the usefulness of a tax credit one must consider its function as well as its fruit.

The “misuse” argument—that private investors are benefitting at the expense of taxpayers—is built on a “zero-sum game” approach. But, the fact that private investors benefit from a tax credit does not preclude taxpayers from also realizing significant benefits. Further, the benefit received by private investors does not come at the expense of other taxpayers. Although in one sense it is true that income foregone is income lost, a tax credit does not equate to a subsidy as this view implies. A subsidy is the government funding a project with income gleaned from other taxpayers; a tax credit is the government allowing a business or individual to keep more of its own income. In essence, a subsidy is taxing Peter to pay Paul; a tax credit is the government waiving its right to tax Paul.⁹ Conse-

quently, whatever gain a private investor gets from the rehabilitation credit can benefit the investor while also adding value to the community.

The “loophole” argument holds that the rehabilitation credit is an inequity that must be justified. But the rehabilitation credit exists in order to incentivize investments in historic projects. The incentive is necessary to persuade investors to revitalize buildings of historic significance rather than demolish them and start anew. The loophole was created for just this reason—to stack the deck to make rehabilitation more appealing than demolition. The credit unashamedly shows favoritism. On a level playing field, the money needed to revitalize historic structures is not there. As a result, a tax credit that rewards investors who help this cause is required. This type of incentivizing happens all of the time without being labeled as an inequity or favoritism. One example would be the U.S. Department of Housing and Urban Development (“HUD”). HUD’s programs reward investors that provide housing to low-income communities. Housing and the rehabilitation of historic buildings are two areas, among many others, where the government has enlisted the help of private individuals for the betterment of the community. Whatever fault the rehabilitation credit may have, creating inequities in the tax code is not one of them.

Still the future of the rehabilitation credit remains uncertain. Camp’s view of the tax credit, as seen in his tax reform proposal, represents a widely held view that credits of this nature should be cut for two reasons: 1) to raise additional government revenue, and 2) to block loopholes that are abused by the wealthy. If the public adopts this view, then the rehabilitation credit may be on its way out; but if the rehabilitation credit is seen for the life it has quickened in main streets and historic buildings around the country, then perhaps the rehabilitation credit will be spared. State tax credits face similar opposition and are also in jeopardy of facing the firing squad.

B. Mississippi's Rehabilitation of Historic Structures Tax Credit

The state of Mississippi has recognized the need for maintaining its state-level historic tax credit program. In the eleventh hour of the 2014 legislative session, both houses of the state legislature adopted the Conference Committee Report of H.B. 787, which included an extension of the historic tax credit program by three years. Section 38 of the Committee Report amends Mississippi Code § 27-7-22.31 to require individuals or entities that seek these historic tax credits to apply for or to receive certification from the Mississippi Department of Archives and History before December 31, 2017, rather than the previous deadline of December 31, 2014.¹⁰

This new deadline is the second extension of the law's original version, which provided for an automatic repeal of the state historic tax credit program on December 31, 2011.¹¹ The law was amended in 2011 to extend the deadline to December 31, 2014 and provide for a cut off date of project applications and certifications rather than a repeal of the entire program.¹²

Before being included in the Conference Committee Report of H.B. 787, House Speaker Philip Gunn introduced a bill that extended the historic tax credit program by fifteen years, however it did not pass both houses. Under H.B. 1435, qualified applicants would have had until December 31, 2029, to apply for or receive certification of the historic tax credits. The bill passed unanimously in the state house of representatives, however, on March 4th, the bill died in the senate finance committee without ever being brought to a vote on the senate floor. Although this move seemed inexplicable at the time, legislators were confident that the program would be extended by the end of the legislative session.¹³

An examination of the code provision itself is enough to show why this deadline needed to be extended. The historic tax credit program provides for a state income tax credit equivalent to 25% of

the expenses incurred in the restoration of structures certified by the Department of Archives and History, a 5% higher credit than the federal historical tax credit.¹⁴ The Department certifies rehabilitation of structures that are listed or are eligible to be listed on the National Register of Historic Places. Structures that are not listed on this register, but are located in historic districts that are included on the register, may also be certified by the Department and eligible for the rehabilitation tax credits.¹⁵ Such discretion allows the state to consider a wider array of structures and buildings that may confer a positive economic impact upon the communities in which they stand.

Furthermore, statistics show the positive economic impact within states that implement a state-level historic tax credit to be used in accordance with the federal counterpart. First, the state tax credits allow greater returns on investment for investors and developers of historic structures. The credits reduce the total income tax costs because the state tax credits allow a reduction in state income taxes in addition to the reduction of federal income taxes received from the federal credits. Secondly, the number of projects eligible for historic tax credits increases when states implement their own historical tax credit. For example, historic tax credit projects in Kansas rose from 2.4 projects per year before implementation of a state historical counterpart, to 68 projects per year after implementation of its state historical program.¹⁶ Since Mississippi implemented its historic tax credit program in 2006, the state has approved over 200 projects, or just over 22 projects per year. These projects have spurred investment within the state of over \$195 million, while costing the state only around \$49 million from the credits.¹⁷ Finally, and perhaps most importantly, these projects have created over 3,000 jobs within the state, which clearly demonstrates the economically beneficial results of the state historic tax credit program.¹⁸

Obviously, had the extension of the program not been achieved under the H.B. 787 Committee Report, Mississippi would have lost a great state tax

incentive that spurs significant economic growth. As the data shows, the implementation of these historic tax credit programs on both the state and federal level has created a positive economic impact. Additionally, the legislation behind these programs has drawn support of lawmakers from both parties at both the state and federal levels. Such economically beneficial and politically harmonious incentives should not be repealed or discontinued, but rather extended and continued through bipartisan legislation. These incentives will not only be enjoyed by the entities and individuals who claim them, but the towns and communities that host the rehabilitated historical structures will reap their economic benefits as well.

¹ Historic Boardwalk Hall, LLC v. Commissioner, 694 F.3d 425, 430 (3rd 2012) (citing the Tax Reform Act of 1976; the Revenue Act of 1978 and later amendments added in 1981; the Tax Reform of 1986; and the “economic substance doctrine” implemented in 2010).

² Tax Reform Act of 2014: Discussion Draft: Section-by-Section Summary, COMMITTEE ON WAYS AND MEANS (2014), *available at* http://waysandmeans.house.gov/uploadedfiles/ways_and_means_section_by_section_summary_final_022614.pdf (last visited Apr. 9, 2014).

³ Dave Camp, *Camp Tax Reform Press Conference Remarks*, COMMITTEE ON WAYS AND MEANS (Feb. 26, 2014), *available at* <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=371028>.

⁴ 26 U.S.C.A. § 47(a) (2008).

⁵ 26 U.S.C.A. § 47(c)(3)(A) (2008).

⁶ 26 U.S.C.A. § 47(c)(1)(A) (2008).

⁷ *Federal Tax Incentives for Rehabilitating Historic Buildings: Annual Report for Fiscal Year 2013*, HISTORIC TAX CREDIT RESEARCH CENTER (Mar. 28, 2014) *available at* http://www.novoco.com/historic/resource_files/research/nps_annual_report_2013_031014.pdf.

⁸ Tax Reform Act of 2014, *supra* note 3.

⁹ Murray Rothbard, *A Case Against the Flat Tax*, THE MISES INSTITUTE, at 4, *available at* <http://mises.org/rothbard/flattax.pdf> (last visited April 9, 2014).

¹⁰ Conference Committee Report of H.B. 787

¹¹ Miss. Laws Ch. 420 (S.B. 3067)

¹² 2011 Miss. Laws WL No. 477 (H.B. 1311)

¹³ Chandler, Clay. *Clarion Ledger*. “Historic Tax Credit Bill Dies in Committee.” March 21, 2014. <http://blogs.clarionledger.com/brickandmortar/2014/03/21/study-3000-jobs-in-three-years-connected-to-state-historic-tax-credits/>

¹⁴ Miss. Code Ann. § 27-7-22.31(2)

¹⁵ Miss. Code Ann. § 27-7-22.31(1)(c)

¹⁶ McLaughlin, Matthew. *Building Purpose*. “Economic Impact of the Historic Tax Credit.” March 6, 2014. <http://buildingpurpose.com/2014/03/06/economic-impact-of-the-historic-tax-credit/>

¹⁷ Mississippi Department of Archives and History

¹⁸ McLaughlin, Matthew. *Building Purpose*. “Update: Mississippi Historic Tax Credit.” March 31, 2014. <http://buildingpurpose.com/2014/03/31/update-mississippi-historic-tax-credit/>

The Mississippi Advantage: Encourage Your Clients to Create Music, Movies and Books in Mississippi's Entertainment Economy

By **X.M. (Mike) Frascogna, Jr.**

Often during one of my classes in Entertainment Law at Mississippi College or at Ole Miss a student will ask, "Where do you think is the best place to start an Entertainment law practice – Los Angeles, New York or Nashville?" My response to this frequently asked question never fails to startle all the students in the class.

My standard answer is, "If I were beginning my legal career and wanted to focus on entertainment law, the place with the most advantages would be anywhere in Mississippi." The initial looks of disbelief from the students automatically generates the follow-up question, "Why Mississippi?"

It is at this point I begin my factual build-up to support my statement.

After 36 years of practicing entertainment law and teaching courses in Negotiation and Entertainment Law for over 30 years, I have condensed my Mississippi centric argument to "10 Reasons to Create Music, Movies and Books in Mississippi's Entertainment Economy". Here is the first of those reasons to support my position.

Reason #1 Follow the Mississippi's Blues Trail to Ignite Your Creative Passion:

Creative people are passionate people. They are moved by emotion and relate to the emotion wrapped into any artistic creation in their particular genre, be it music, movies, literature, fine art, dance or whatever the art form. Because of this instinctive sensitivity creative people look all around them for inspiration. One of the primary sources for a jolt of creativity comes from the works of predecessors no

matter where they may be found. For the lover of blues music, young or old, amateur or professional, the mecca for inspiration from the past can be found in the Mississippi Blues Trail.

Dotting the landscape of Mississippi are 174 Blues Trail "Markers", each of which commemorates a famous person or place that has significantly contributed to helping the music known as the "blues" to flourish, and flourished it has in a way that separates Mississippi from any other place on earth.

Let's start in Indianola, home of the "King of the Blues" – B.B. King – considered to be the most influential musician in the history of the blues.

BB (short for Blues Boy) spent his earliest years living in a share cropper's cabin a little more than half a mile from the present location of his Blues Trail marker. From humble beginnings in 1925 to 2008 when Mississippi honored him with the opening of the B.B. King Museum and Delta Interactive Center in Indianola his global reach is unparalleled in the world of blues music. Consider a few of his collaborative recordings with artists covering a wide musical spectrum such as Willie Nelson, U2, Eric Clapton and Luciano Pavarotti. These super stars sought out the son of a Mississippi share cropper to attach themselves to his legacy. B.B. King allowed them inside his throne room - in Mississippi.

The Mississippi Blues Trail leads you to Magnolia, just south of McComb, where one of the founders of Rock n' Roll was born in 1928. Bo Diddley's songs have been covered by a cast of musical greats –

Buddy Holly, the Rolling Stones, The Who and many others. Bo Diddley's distinctive rhythm and beat and his pioneering use of electronic distortion still reverberate through hit recordings of today.

There are many stops along the trail paying homage to Charley Patton, Charlie Musselwhite, Denise LaSalle, Honeyboy Edwards, Howlin' Wolf, Son House, Willie Dixon, Sonny Boy Williamson and Pinetop Perkins just to name a few. Of course, no blues lover can leave the trail without visiting the marker for Muddy Waters and the shrine to Robert Johnson. Considered one of the most legendary Delta blues musicians, Robert Johnson's compositions have been recorded by iconic artists such as Elmore James, Eric Clapton, the Rolling Stones and Led Zeppelin.

Also appearing on the Blues Trail is a marker in Meridian for the "Father of Country Music", Jimmie Rogers. Why is a country artist commemorated on a blues marker? Any blues aficionado can tell you – because Jimmie Rogers influenced blues music with his famous "blue yodels" which can be heard in the music of Mississippi blues artists such

as Howlin' Wolf, Mississippi John Hurt, Tommy Johnson and the Mississippi Sheiks. More than a third of Rogers' recordings were blues. Many of his most popular recordings were versions of old blues classics such as Frankie and Johnnie.

One last marker to visit – Elvis Presley. He revolutionized popular music and is hailed as the "King of Rock n' Roll". Many of the first songs Elvis recorded were covers of earlier blues recordings which he continued to incorporate into his records and live performances throughout his career.

For the passionate blues musician in China, Brazil, Japan, Canada, Australia, or at home in the U.S.A., Mississippi is the place these enthusiasts look to for inspiration. The Mississippi Blues Trail provides them with shrines to their musical heroes to help fuel their creative passion. No other place can offer this awe inspiring link to the past which in turn guarantees the continuation of the blues in the future. Just another reason why Mississippi is the Birthplace of America's Music.

Contributors to this Issue

Delbert Hosemann, Secretary of State



Elected in November 2007, the Honorable Delbert Hosemann serves as Mississippi's eighth Secretary of State since 1900. Secretary Hosemann has long served the citizens of the State of Mississippi. Delbert was Chairman of the Board of Mississippi Blood Services and Treasurer of the Jackson Medical Mall Association and served on the Board of Directors for Jackson State University Development Foundation. He was a Paul Harris Fellow and is a member of the North Jackson Rotary Club. Some of his accolades include the George L. Phillips Community Service Award from the US Department of Justice in appreciation for his distinguished service as Chairman of Project Safe Neighborhoods, and for his efforts in the Hurricane Katrina First Responder Assistance Project. Delbert was also awarded the J. Tate Thigpen Award for exemplary leadership, support, and commitment to the American Red Cross. Raised in Warren County, Mississippi, Secretary Hosemann comes to the position with a background in Business and Taxation Law. He has his undergraduate degree in Business from Notre Dame, a law degree from Ole Miss, and a Masters of Laws in Taxation from New York University. He is a former partner of Phelps Dunbar, LLP and was selected to the Best Lawyers in America for 18 consecutive years. Secretary Hosemann also served his country in the United States Army Reserves.

Tray Hairston

Tray Hairston is an attorney with Butler Snow LLP, practicing in the areas of Public Finance, Economic Development Incentives, Municipal Bonds, and Health Care Industry Zone Incentives, among others. Prior to joining Butler Snow, Tray was Counsel and Policy Advisor to Governor Phil Bryant. Mr. Hairston advised the Governor's office on numerous public finance transactions. During his time at Butler Snow, Tray has presented at numerous meetings on various topics. Prior to joining Butler Snow, Tray served as a Project Manager at the Mississippi Development Authority. Tray is a graduate of the Mississippi College School of Law, earned his M.B.A. from Belhaven College and earned his B.A. from Tougaloo College.



Mike Frascogna



X.M. Frascogna, Jr. is the senior partner in the law firm of Frascogna Courtney, PLLC which was established in 1972 in Jackson, Mississippi. He has been involved in international corporate litigation and commercial transactions, corporate acquisitions and mergers, copyright and trademark matters together with an extensive practice in entertainment and sports law. Frascogna remains active in alternative dispute resolution, serving on the American Arbitration Association's panel of arbitrators and mediators. He has arbitrated and mediated numerous international and domestic commercial disputes and has served as a special master to numerous circuit courts throughout Mississippi. In addition, Frascogna has experience in hostage negotiation.

He is admitted to practice before the U.S. Supreme Court, U.S. Court of Appeals, Fifth Circuit and U.S. District Court, Southern Districts of Mississippi and all state courts of Mississippi. Frascogna served as a Bar Commissioner of the Mississippi State Bar Association from 1994-1997. Frascogna is a graduate of Mississippi State University (BS -1969, MA – 1970) and Mississippi College (MBA – 1976, MSS - 1982) and the Mississippi College School of Law (JD with distinction – 1972). He is a member of the American Bar Association (Forum Committee on Entertainment and Sports Law and the Section of Alternative Dispute Resolution) and Mississippi State Bar Association.

Andrew Hatten and Drew Norwood



Andrew Hatten is a second year law student at Mississippi College School of Law. In law school, Andrew is the Trial Advocacy Chair of the Moot Court Board, a member of the Business Law Society, and a member of Phi Alpha Delta. He has also competed in multiple competitions, including the National Transactional LawMeet. Prior to law school, Andrew attended Millsaps College, where he received a B.B.A. and M.B.A. Andrew is a native of Hattiesburg, MS.



Drew Norwood is a second year law student at Mississippi College School of Law. Originally from Hattiesburg, he attended Mississippi State University where he graduated *summa cum laude* in Accounting. While at Mississippi State, he was a member of Phi Kappa Phi and Beta Gamma Sigma. In law school, Drew serves on the school's Law Review and Moot Court Board. As a member of the Law Review, he recently wrote an article discussing the hazy line between user fees and taxes in Mississippi law, which was selected for publication. As a member of the Moot Court Board, Drew has represented his school in the Duberstein Bankruptcy Moot Court Competition where the team came in second place overall. Drew is a member of Redeemer Church, PCA.

About the Chair

Stanley Q. Smith

Stan Smith is a partner in the Jackson office of Jones Walker LLP. A graduate of the University of Mississippi (1976 B.B.A. in Accountancy; 1979 J.D.), Stan was employed by the Houston, Texas, office of Arthur Andersen & Co. prior to attending law school. Stan concentrates his law practice in the areas of communications and public utilities law. Stan is admitted to all state and federal courts in Mississippi, the United States Fifth Circuit Court of Appeals, and the United States Tax Court. He is a current member of the American Bar Association's National Advisory Panel, and he has twice served as President of the Associate Members of the Alabama-Mississippi Telecommunications Association. Stan has been a speaker at national communications conferences on the topic of the Low Income Program of the federal Universal Service Fund. He handles matters involving wireline and wireless communications, including certificates, transfers of authority, corporate restructures, and rates and tariffs; broadband and internet; utility pole attachments for power and communications carriers; cable systems; water and sewer services; and gas and electric issues. Stan has been listed in the *The Best Lawyers in America*® for the areas of Communication Law and Energy Law annually since 2001. Stan is a member of the Board of Deacons of First Baptist Church of Jackson.



About the Editor

Neal C. Wise

Neal Wise is an associate in the Jackson office of Jones Walker LLP, where he practices in the firm's Banking & Financial Services Practice Group. His practice focuses on representation of banks and other financial institutions. He handles both transactional and regulatory matters for financial institution clients including corporate issues, mergers & acquisitions, capital planning, and bank regulatory and securities issues. Mr. Wise is a 2011 graduate of The University of Mississippi School of Law, where he received his juris doctor degree, magna cum laude. He served on the Mississippi Law Journal as Mississippi Cases Editor and the Moot Court Board. Mr. Wise is a 2008 graduate of Mississippi State University, where he received his Bachelor of Business Administration in Economics and a Bachelor of Business Administration in General Business, cum laude.



How to Contribute

Persons interested in submitting news, a proposal or an article for publication in The Mississippi Business Law Reporter should submit it by e-mail to the editor Neal Wise at nwise@joneswalker.com. All news, proposals and articles are subject to review and approval by the Editor and Section Leadership.

When submitting an article, the article should be the original work of the author and must not have been previously published (unless proof of consent to reproduction can be provided). Articles shall not, to the best of the author's knowledge, contain anything which is libelous, illegal, or otherwise infringes upon anyone's copyright or other rights. Authors are responsible for the accuracy of all citations and quotations.

Articles should be arranged in the following order: (i) article title, (ii) author's name, (iii) acknowledgement of assistance, if applicable or desired, and (iv) text of the article. All contributions should be submitted in MS Word format.

A short biographical statement should also be provided at the time the article is submitted. The statement should include, at a minimum, the author's (i) current position, (ii) practice areas, (iii) professional affiliations. A head and shoulder photograph of the author(s) in color is requested but not required.

Section News & Announcements

Business Law Section Gives Donations and Scholarships

The Business Law Section of The Mississippi Bar recently donated \$2,000 to the Mission First Legal Aid Office. Pictured at the presentation are Lee Thigpen (Executive Director of Mission First), Patti Gandy (Director of Mission First Legal Aid Office), Stan Smith (Chair of the Business Law Section), and Jim Rosenblatt (Dean of Mississippi College School of Law). Mission First Legal Aid Office provides legal assistance to disadvantaged people in Mississippi. Legal services include, but are not limited to, family law, consumer law, government benefits, housing, and debtor/creditor issues. The Mission First Legal Aid Office was established as a partnership between Mississippi College School of Law and Mission First. To volunteer, donate, or learn more about Mission First Legal Aid visit <http://www.missionfirst.org/legalaid>.



The Business Law Section of The Mississippi Bar also donated \$2,000 to the Mississippi Volunteer Lawyers Project (MVLP). Pictured at the presentation are Stan Smith, Chair of the Business Law Section, and Tiffany Graves, Executive Director/General Counsel of MVLP. MVLP provides free legal assistance and advocacy to disadvantaged people throughout the State of Mississippi. To volunteer, donate, or learn more about MVLP visit <http://www.mvlp.net>

The Business Law Section of The Mississippi Bar recently presented a \$1,000 scholarship to an outstanding business law student at the University of Mississippi School of Law. Pictured at the Scholarships and Awards Reception on March 21, 2014, are Brian Stuart, scholarship recipient, and Stan Smith, Chair of the Business Law Section.



Business Law Section Co-Hosts Christmas Social

The Business Law Section of the Mississippi Bar and the Mississippi Corporate Counsel Association jointly hosted their 2013 Christmas Social on December 3, 2013 at Nick's Restaurant in Fondren – on the Patio in Jackson, Mississippi. The groups were honored to recognize the Secretary of State of Mississippi, Delbert Hosemann, and his Chief of Staff, Doug Davis, as their guests of honor.



Business Law Section Jointly Hosts Legislative and Ethics CLE

On April 29, 2014, the Business Law Section provided a seminar at the Mississippi Bar Center titled “2014 Update on Mississippi Business Law.” Discussing the business legislation which arose from the recent 2014 Legislative Session were the following distinguished speakers: Philip Gunn, Speaker of the House; Drew Snyder, Assistant Secretary of State; Sen. Will Longwitz; Rep. Andy Gipson; and Jimmie Reynolds, Director of Government Relations for The Mississippi Bar. This seminar was approved by the Mississippi Commission on Continuing Legal Education for a maximum of three (3) hours CLE credit.

The Business Law Section of the Mississippi Bar will co-host along with the Mississippi Corporate Counsel Association: *The Ethical Thicket of Social Media Facing Mississippi Lawyers* on June 10, 2014 at the River Hills Club in Jackson, Mississippi. Information about this event follows.

 <p>THE MISSISSIPPI BAR</p> <p>Business Law</p>	<p>The Mississippi Bar's Business Law Section and The Mississippi Corporate Counsel Association presents:</p> <p><i>THE ETHICAL THICKET OF SOCIAL MEDIA FACING MISSISSIPPI LAWYERS</i></p> <p>Tuesday, June 10, 2014 River Hills Club - 3600 Ridgewood Road - Jackson</p>								
<p><i>1 Ethics Hour CLE Credit</i></p>									
<p>About the Seminar</p>									
<p>When more than half of all in-house counsel report using social media for news and information, when 83-year old Rupert Murdoch uses Twitter, when the Association of Corporate Counsel has a user group on LinkedIn, when lawyers tweet and when law firms maintain blogs, there can be no doubt that social media permeates society. No lawyer can afford to ignore social media; however, social media usage raises a host of ethical and professionalism issues, ranging from "friending" judges to investigating witnesses and jurors to improper "advertising" to being held to have engaged in the inadvertent unauthorized multi-state practice of law to the First Amendment rights of lawyers. Nationally-known speaker Mike Rubin, with his unique blend of scholarship and humor, and with one of the most unusual multi-media presentations you'll ever see, will challenge your thinking, raise issues to ponder, and give you something to smile about.</p>									
<table border="1"> <thead> <tr> <th style="width: 50%;">Agenda</th> <th style="width: 50%;">Notes</th> </tr> </thead> <tbody> <tr> <td>11:00 am Registration Check-in</td> <td>Cost: \$50, includes lunch.</td> </tr> <tr> <td>11:30 am Lunch</td> <td>Registration: All registrations and payments must be received no later than Friday, June 6 at 3:00 p.m. Seating will be limited.</td> </tr> <tr> <td>Noon - 1:00 Ethics CLE Seminar</td> <td>Questions: Contact René Garner at rgarner@mshbar.org</td> </tr> </tbody> </table>		Agenda	Notes	11:00 am Registration Check-in	Cost: \$50, includes lunch.	11:30 am Lunch	Registration: All registrations and payments must be received no later than Friday, June 6 at 3:00 p.m. Seating will be limited.	Noon - 1:00 Ethics CLE Seminar	Questions: Contact René Garner at rgarner@mshbar.org
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<p>Michael H. Rubin</p>									
<div style="display: flex; align-items: flex-start;">  <p>Mike Rubin, one of the leaders of the multi-state firm of McGlinchey Stafford, PLLC, has presented over 375 major papers in the U.S., Canada, and England on social media, legal ethics, appellate law, real estate and finance, and legal writing. He is a past-president of the Bar Association of the U.S. Fifth Federal Circuit, of the American College of Real Estate Lawyers, and of the Louisiana State Bar Association. He currently serves as Chair of the ABA Real Property Section's Ethics Committee. In addition to his full-time practice of law in appellate law, finance, and major commercial litigation, for more than three decades he also has served as an Adjunct Professor teaching courses in finance, real estate, and advanced legal ethics at the law schools throughout Louisiana. He is an author, co-author, and contributing writer of thirteen books and over thirty articles; his works on finance and real estate are used in law schools and have been cited as authoritative by state and federal trial and appellate courts. Mike is a Life Member of the American Law Institute and a Commissioner on the National Uniform Law Commission. Mike's first novel, a legal thriller entitled <i>The Cottoncrest Curse</i>, will be published by a national award-winning press and will be available in your local bookstores and as an e-book in the Fall of 2014.</p> </div>									
<p>Registration Form</p>									
<p>The Ethical Thicket Of Social Media Facing Mississippi Lawyers Tuesday, June 10, 2014 - River Hills Club - Jackson, MS <i>Cost: \$50, includes lunch</i></p>									
<p>Full Name: _____ Bar #: _____</p> <p>Preferred First Name for Badge: _____ City: _____</p> <p>Email (required to register): _____</p>									
<p>Make check payable to The Mississippi Bar and return with this registration form to: The Mississippi Bar, Attn: Rene' Garner, P.O. Box 2168, Jackson, MS 39225-2168</p>									

Business Law Section Annual Membership Meeting

The Business Law Section is excited to announce its Annual Membership Meeting in Sandestin, Florida on June 26, 2014 in conjunction with the Annual Meeting of the Mississippi Bar. We hope you will make plans to join us in Sandestin.



Section Leadership

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**The Business Law Section
of the Mississippi Bar has a
listserv.**



**As a member of the
Business Law Section you
are automatically a member
of the listserv.**

**To send a message to the
following listserv email address:**

BusinessLaw@listbox.com

LISTSERV RULES AND ETIQUETTE

TO MB LISTSERVE PARTICIPANTS:

Please review the listserve rules, etiquette and legal disclaimer below. This email is forwarded to participants on all MB listserves on a periodic basis to remind everyone of the rules and etiquette of MB listserves.

Listserve Rules and Etiquette

By joining and using The Mississippi Bar's listserves, you agree that you have read and will follow the rules and guidelines set for this listserve. You also agree to reserve list discussions for topics intended for discussion on this listserve.

As with any community, there are guidelines governing behavior on the listserves. Please take a moment to acquaint yourself with these important guidelines. MB reserves the right to suspend or terminate membership on all lists for members who violate these rules.

- **When sending messages use a meaningful subject line.** State concisely and clearly the specific topic of the comments in the subject line. This is a time-saver for all participants. Listserve participants will know if something can wait. Also, if they are not interested in the subject matter they can delete the message.
- **Do not post commercial messages.** The cyberspace term for this is "spamming". Contact people directly with products, programs and services that you believe would be of interest to them.
- **Stick to the topics intended for discussion on the listserve.**
- **Be polite, professional and civil.** Do not challenge or attack others. The discussions on MB listserves are meant to stimulate conversation, not to create contention. If you have a conflict with an individual, please settle it by private email.
- **Include a signature tag on all messages.** Include your name, affiliation, location, and e-mail address. Include only the relevant portions of the original message in your reply, delete any header information, and put your response before the original posting.
- **Warn other list subscribers of lengthy messages.** Either in the subject line or at the beginning of the message body with a line that says "Long Message."
- **Do not post anything you do not want to be seen in public.** Remember that e-mail is very easily forwarded and reproduced and can show up anywhere. Do not post anything in a listserve message that you would not want the world to see or that you would not want anyone to know came from you.
- **All defamatory, abusive, profane, threatening, offensive, or illegal materials are strictly prohibited.**
- **Don't send meaningless messages with no content.** Messages such as "thanks for the information" or "me, too" to individuals--not to the entire list. Do this by using your e-mail application's forwarding option and typing in or cutting and pasting in the e-mail address of the individual to whom you want to respond.
- **Do not send administrative messages through the listserve.** Messages such as "remove me from the list", should be directed to Rene' Garner at rgarner@msbar.org
- **Use caution when discussing products.** Information posted on the listserve is available for all to see, and comments are subject to libel, slander, and antitrust laws.
- **Use virus detection/protection software.** Make sure you have and use virus detection/protection software on your PC. If you receive a email that has a virus please post a message to the listserve immediately with "WARNING VIRUS" in the subject line followed by an explanation.

- **Do not send attachments through MB Listserves.** Many virus are spread by way of attachments. If you wish to send an attachment to someone please email directly and DO NOT POST to listserve .

Disclaimer and Legal Rules

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Messages should not be posted if they encourage or facilitate members to arrive at any agreement that either expressly or impliedly leads to price fixing, a boycott of another's business, or other conduct intended to illegally restrict free trade. Messages that encourage or facilitate an agreement about the following subjects are inappropriate: prices, discounts, or terms or conditions of sale; salaries; profits, profit margins, or cost data; market shares, sales territories, or markets; allocation of customers or territories; or selection, rejection, or termination of customers or suppliers.

MB does not actively monitor the site for inappropriate postings and does not on its own undertake editorial control of postings. However, in the event that any inappropriate posting is brought to MB's attention, MB will take all appropriate action.

MB reserves the right to terminate access to any user who does not abide by these guidelines.