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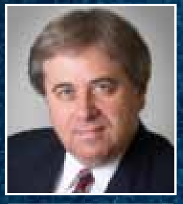
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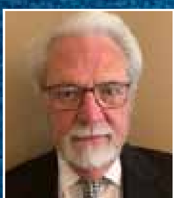
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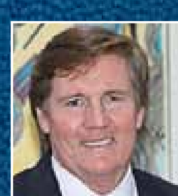
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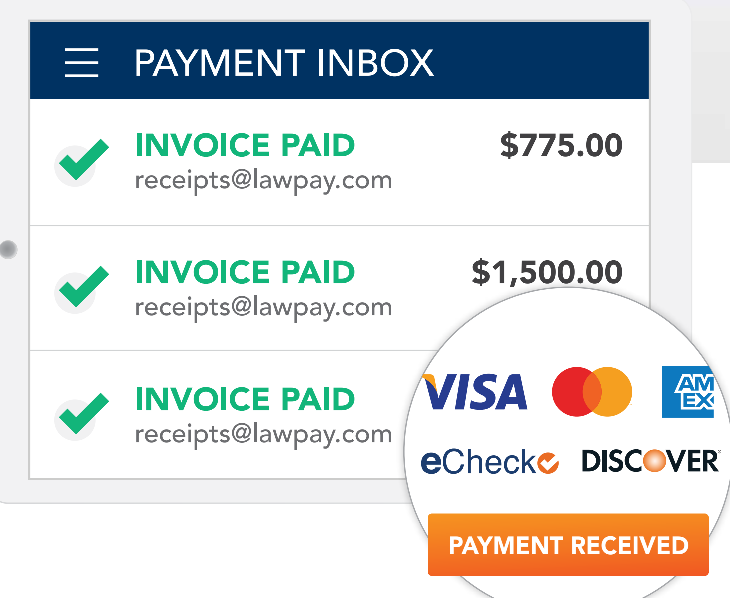

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Cover Photo: Amanda and Gray Tollison's photo was taken in front of Rowan Oak in Oxford.

Amanda and Gray Tollison photographed at The Graduate in Oxford.

Welcoming the 114th President of The Mississippi Bar

Amanda Jones Tollison
Oxford, Mississippi

In 2018, The Mississippi Bar Board of Bar Commissioners adopted a Strategic Plan to guide our professional organization for the next three to five years. The Strategic Planning Committee, appointed by then Bar President Rick Barry, included twenty lawyers from all regions of the State, with different levels of legal and life experiences, diverse in age, race, gender, and practice areas, who spent months developing a strategic framework for the Bar to implement. Over the last year as President, Pat Bennett has been implementing the Strategic Plan. As I have prepared to take the oath and lead The Mississippi Bar this year, I have often referred to the Strategic Plan as a guiding resource. Just as a ship's captain maps his course before he begins a voyage and continually refers back to it to make sure he stays on course, I view the Strategic Planning process as mapping our course as an organization and the Strategic Plan that the Board adopted as our map for the future. So before we embark on this journey together, let's look back at our map, remind ourselves of the Bar's mission, be inspired by the Bar's vision, and renew our commitment to our organizational values.

MISSION:

The Mississippi Bar shall serve the public good by promoting excellence in the profession and in our system of justice.

VISION:

The Mississippi Bar is an invaluable partner in every attorney's practice and a trusted community leader that ensures the justice system is evolving to meet the needs of all Mississippi residents.

ORGANIZATIONAL VALUES:

These core values direct how The Mississippi Bar will conduct itself as it works to achieve its goals and fulfill its mission.

Integrity	Collaboration
Professionalism and civility	Compassion
Civic responsibility	Innovation
Diversity and Inclusion	Excellence

Continued on next page

As you read the mission and vision of the Bar, did you agree? Were you reassured by those core values? The Bar aspires to be your partner in the practice of law in whatever form that takes – whether you are a solo practitioner, work in a small family firm, in a big law firm or are corporate in-house counsel, or whether you work in state or federal government as a prosecutor or public defender or as an advisor to agencies, boards and commissions, whether you are in public service, work for a non-profit organization or run your own business or even a family household. As partners in this profession and members of the Bar, we must work together to ensure that The Mississippi Bar fulfills its mission, stays true to its vision and achieves its goals as set forth in the Strategic Plan. Below are The Mississippi Bar's goals, and after each goal I have provided examples of concrete plans, programs or opportunities for how we as the members of the Bar can help achieve them:

Goal 1:
The Mississippi Bar promotes the highest standards of competence and professionalism and fosters a legal profession equipped to serve the legal needs of clients and the larger community.

We will be working toward Goal 1 in several ways this year. First, the new Future of the Profession Committee will examine issues identified during the Strategic Planning process, such as reasons why fewer and fewer Mississippi law school graduates are taking the Mississippi Bar Exam, the growing trend of new attorneys leaving the state to practice law, the impact of retirements on the profession, the potential opportunities to match new attorneys with rural areas that have very few lawyers, today's need for mobility and remote practice, and other challenges ahead for our profession. Second, the Professionalism Committee will continue to study developments in the area of professionalism and make recommendations to the Board of Bar Commissioners on ways to promote the highest standards of competence and professionalism, to improve client-attorney relations and the image of the profession as well as the quality of life of lawyers as they relate to professionalism. I have also tasked the Professionalism Committee and the Lawyers and Judges Assistance Committee with studying the Report from the National Task Force on Lawyer Well-Being and making recommendations to the Board of ways we can encourage greater well-being, increased competence and greater public trust in our profession. Speaking of wellness, the Mississippi Bar Young Lawyers Division, under the leadership of former YLD President Ann Marie Pate, has focused on and implemented multiple wellness initiatives over the last year. Jaklyn Wrigley, as the newly installed YLD President, plans to continue YLD's emphasis on wellness during the 2019-2020 Bar Year. I look forward to collaborating with Jaklyn and the YLD in expanding some of those great YLD wellness programs and offering new ones to the entire membership.

There are a host of other member benefits and discounts that you can find under the "For Members" tab on The Mississippi Bar website.

Goal 2:
The Mississippi Bar cultivates members' professional success with valuable practice resources and opportunities for meaningful member engagement.

We will continue to offer the CLE on the Road program in each Supreme Court District in the state. Last year, I learned from the Technology Committee's speaker at the the CLE on the Road about one of the Bar's new member offerings – Identillect Technologies – which provides secure communications that work with your existing email platform. Did you know that the Bar's Technology Committee also vetted the various legal research services available and recommended the Bar contract with Fastcase? This free legal research tool is available to all members as part of our membership dues. There are a host of other member benefits and discounts that you can find under the "For Members" tab on The Mississippi Bar website. Additionally, there are currently sixteen Sections of the Bar that members can join that focus on particular areas of the law or that are made up of lawyers with special interests in particular substantive areas of practice. There is likely a Section in your area of practice that offers seminars for CLE credit and that will help you stay abreast of any developments in that area of the law.

Goal 3:
The Mississippi Bar fosters diversity and inclusion among members of the bar community.

The new Diversity Committee will lead and coordinate diversity and inclusion efforts within the Bar, create more intentional pathways for involvement and leadership for all members, and strengthen relationships with local and statewide affinity bars. Be on the lookout for new initiatives from the Diversity Committee with which you can get involved.

Goal 4:
The Mississippi Bar strives to increase access to legal services and to promote and support a justice system that affords prompt and fair resolution.

The Mississippi Bar's Access to Justice Committee, created in 2018 as part of the Strategic Plan, will continue to work closely with the Supreme Court's Access to Justice Commission in its endeavors and activities and to strive to accomplish its goals by raising awareness among members about the justice gap and its implications for the profession, supporting and providing opportunities for members to participate in traditional access to justice initiatives and continuing legal education seminars on representing low-income individuals, collaborating with the judiciary to improve the admin-

istration of justice, and leading innovative efforts to address gaps in legal services.

Goal 5:
The Mississippi Bar builds public trust in the justice system through education about lawyers and the law.

The Public Information Committee is updating the Bar's video on jury duty and civic engagement this year, which will be available to Mississippi judges for juror education prior to jury service. The Bar will continue to introduce children and young adults to the justice system and legal careers through the Mississippi High School Mock Trial Competition now in its 37th year. Lawyers of all ages will again have the opportunity to volunteer to serve as judges. The Young Lawyers Division's "Lawyer in Every Classroom Program" is also open to all lawyers, young and old, affording us the opportunity and resources to make a presentation on the legal profession or justice system to students in our local communities.

Goal 6:
The Mississippi Bar sustains a responsive, flexible organization that advances its mission and the strategic plan.

The Mississippi Bar is continually developing a technology infrastructure to flexibly deliver services and information to members across the state. The staff and leadership at the Bar are regularly evaluating the Bar's programs, processes and communications to adapt to the changing needs and expectations of all members of the profession and the public. I hope that this column informs you of The Mississippi Bar's Strategic Plan and helps equip you to fulfill your role and responsibility as a member of the Bar and as a member of this great profession.

This year, with your help, The Mississippi Bar will stay true to its vision and conduct itself according to its core values as it works to achieve its goals and fulfill its mission to serve the public good by promoting excellence in the profession and in our system of justice. ■

Watkins & Eager Welcomes Emily R. Sumrall To The Firm's Family Law, and Probate, Trusts and Estates Practices

Left to right: Lewis W. Bell, Susan L. Steffey, Clark C. Luke, Emily R. Sumrall, and Jamie G. Houston III.

Watkins & Eager is pleased to announce that Emily R. Sumrall has joined the firm as an associate. Emily received a B.A. in Journalism from the University of Mississippi, and a J.D. from the University of Mississippi School of Law, where she graduated *cum laude*. After being admitted to the Mississippi Bar in 2016, Emily served for over two years as a staff attorney with the Honorable James C. Walker of the 11th Chancery District of Mississippi. Emily's practice is focused primarily in the areas of Family Law, where she works alongside Susan L. Steffey and Lewis W. Bell, and Probate, Trusts and Estates, where she works closely with Jamie G. Houston, III and Clark C. Luke.

Watkins & Eager has extensive experience handling divorces, prenuptial and postnuptial agreements, estate matters, and related mediations.

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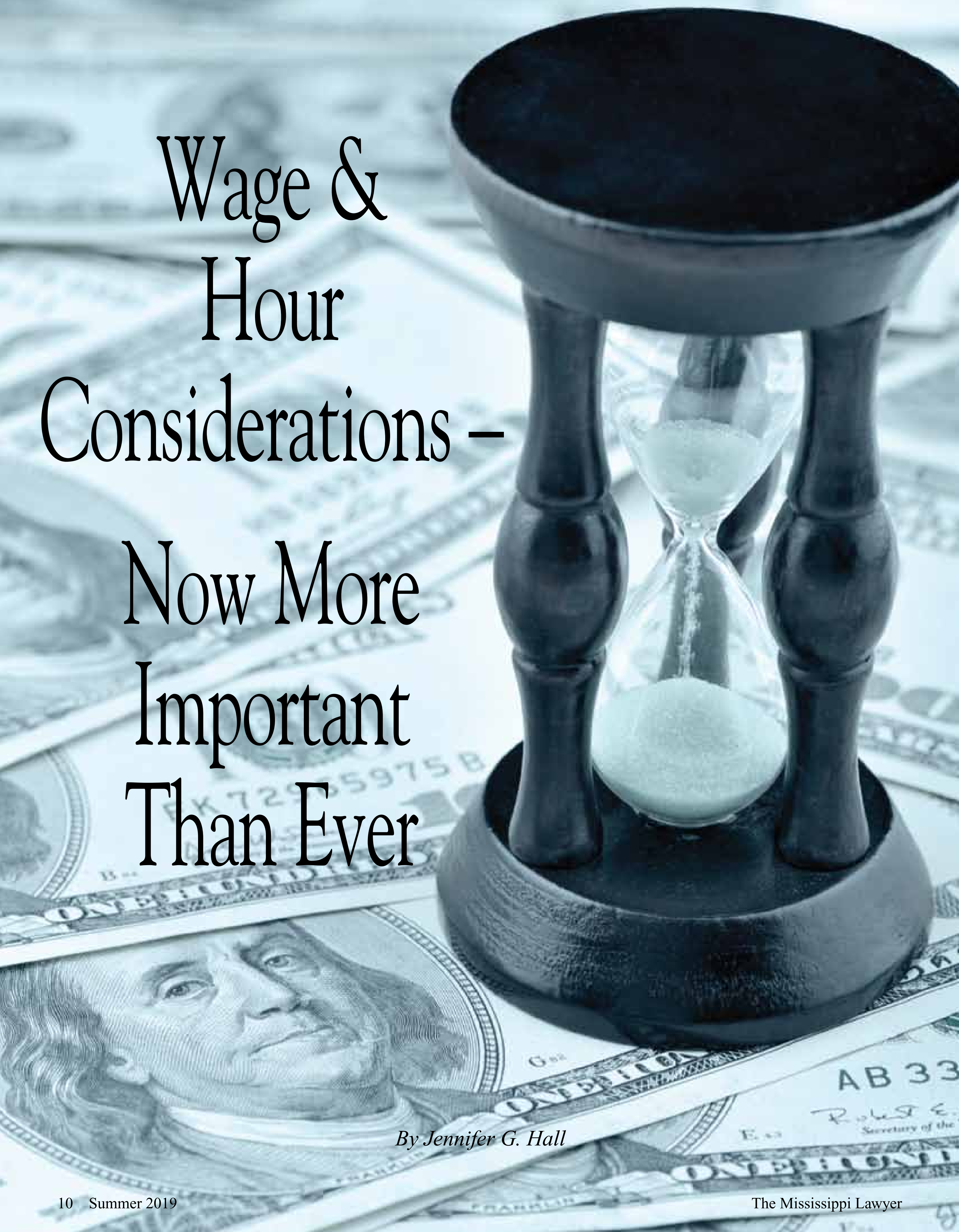
Wage & Hour Considerations – Now More Important Than Ever

By Jennifer G. Hall



In recent years, the U.S. Department of Labor has been "cracking down" on violators of the wage and hour rules, especially overtime rules, under the Fair Labor Standards Act.

The fifty-year old regulations, however, have been difficult for employers to interpret. Such difficulties have led in recent years to widespread litigation with the DOL and employees over claimed overtime pay. This paper sets out the key rules as they are currently in effect and have been interpreted by the DOL and the courts.

I. Overview of the FLSA

There are many goals and purposes of the FLSA, as it is a comprehensive statute which covers a variety of wage and hour considerations. The primary purposes of the FLSA include (1) to fix minimum wages for workers who come within its scope; (2) to provide overtime pay for such workers; (3) to safeguard child workers who are entitled to federal protection; and (4) to require equal pay for equal work regardless of sex.

II. The FLSA - Primary Considerations

A. EXEMPT V. NON-EXEMPT EMPLOYEES

The Fair Labor Standards Act ("FLSA") provides that an employer must compensate an employee for hours worked in excess of forty hours per week at the rate of no less than one and one half times the employee's regular rate of pay. 29 U.S.C. § 207(a)(1). The FLSA also provides that an employer must pay an employee at least the minimum wage for hours worked. See id. § 206(a). Certain employees, however, are exempt from these requirements.

1. Administrative, Executive, and Professional Exemption

The most commonly-invoked exception to the FLSA's requirements is the so-called "white collar" exemption. Employees who qualify as "bona fide executive, administrative, or professional [employees] . . . as such terms are defined and delimited from time to time by regulations of the Secretary of [Labor]" are exempt from the overtime pay and minimum wage provisions of the FLSA. Id. § 213(a)(1). To qualify as an exempt executive, administrative, or professional employee, the employee must be responsible for performing certain duties and the employer must pay the employee on a salary basis."[1] See 29 C.F.R. §§ 541.1(f), 541.2(e)(2), 541.3(e). Thus, the employee generally must meet (1) the salary test; and (2) the duties test.

Importantly, on April 20, 2004, the U.S. Department of Labor (DOL) released its long-awaited final regulations on the "white-collar" exemptions to federal overtime pay requirements. The revised regulations update the standards used to determine whether executive, administrative, professional, outside sales and computer employees are exempt from the overtime requirements of the FLSA. The changes implemented by the 2004 regulations include the following: the salary level for exempt employees was significantly raised to $455 per week; the salary level for highly compensated employees was raised to $100,000; the salary basis test was revised to define situations when an exempt employee's salary status could be lost for inappropriate pay-docking; and the duties tests for all white collar exemptions have been streamlined. Those regulations took effect on August 23, 2004.

a. Minimum Salary Level Increased

To be classified as exempt under the "white collar" classifications, most employees must be paid a minimum amount and be paid on a "salary basis." The 2004 regulations increase the pay requirement for every classification (i.e. executive, administrative and profes-

Continued on next page

By Jennifer G. Hall
Baker Donelson

sional) except outside sales employees (which do not have a salary requirement under either the previous or 2004 regulations, in recognition of the fact that many outside salespeople are paid on a commission basis) and certain other employees, including doctors, lawyers, teachers, and certain computer professionals who need not be paid on a salary basis. To be classified as exempt under the 2004 regulations, most employees must earn at least $455 per week, in addition to fulfilling the applicable duties tests described below. This is significantly higher than the minimum required under the old regulations, and should prompt all employers to reevaluate the classification of workers determined to be exempt under the old regulations.

b. Highly Compensated Employees Exemption Revised

The 2004 regulations include a special, streamlined exemption for employees paid $100,000 or more annually. Under this rule for highly compensated employees, employees paid $100,000 or more annually and performing non-manual work are exempt if they have an identifiable executive, administrative or professional function. These highly compensated employees do not have to meet all the elements of the standard duties test discussed below to qualify for the exemption as a highly compensated employee. Instead, because such employees' high level of compensation is a strong indicator of their exempt status, they will be exempt if they customarily and regularly perform one or more of the exempt duties or responsibilities of an executive, administrative or professional employee. In addition, the 2004 rule for highly compensated employees permits counting base salary, commissions, non-discretionary bonuses and other non-discretionary compensation in determining whether an employee earns $100,000 or more annually.

To qualify as a highly compensated employee under the 2004 regulation, any commissions or non-discretionary bonuses have to be settled and paid out to the employee as due on at least a monthly basis. An employee who works only a portion of a year, whether because the employee begins work during the year or leaves before the end of the year, must be guaranteed a pro-rata portion of the $100,000 annual guarantee. The pro-rata portion should be based upon the number of weeks the employee works in such a position. If an employee's total annual compensation does not total at least the guaranteed $100,000 by the end of the year, the 2004 regulation allows the employer to make a payment by the next pay period sufficient to bring the employee to the guaranteed level. The employer is not required to make this payment; however, if the employer elects not to make the one-time payment, the employee is not exempt as a highly compensated employee, although he may still be exempt if he fulfills the requirements of the applicable standard duties test.

c. Salary Basis Test Revised

As noted before, under both the previous and the 2004 regulations, the white collar overtime exemption is generally only available to employees who are compensated on a "salary basis." Under the 2004 regulations, the DOL has revised the test used to determine whether an employee is compensated on a salary basis. Although the 2004 rule retains the substance of the old salary basis test and its concept of guaranteed pay, at least two significant updates are included in the 2004 regulations.

i. <u>Disciplinary Deductions</u>. The 2004 regulations allow an exception to the no pay-docking rule for deductions from pay for full-day disciplinary suspensions. For example, an employer is permitted to suspend an exempt employee without pay for reasons such as sexual harassment or workplace violence. The current regulations permit such deductions only for penalties imposed for infractions of safety rules of major significance and for unpaid suspensions for one or more full workweeks (i.e., Monday to Friday). The 2004 change allows employers, for instance, to suspend exempt employees without pay for discriminatory harassment for two days, four days or 10 days, as appropriate to respond to the misconduct. Such suspension must be imposed pursuant to a written policy applicable to all employees.

ii. <u>Safe Harbor Provision</u>. Under the prior regulations, an employer who made improper deductions from pay risked losing the exemption for an entire class of employees. However, the old rules also included a "window of correction" provision, under which an employer who inadvertently made an impermissible deduction could, in some circumstances, retain the exemption by reimbursing employees for any improper deductions. Unfortunately, the "window of correction" proved difficult for the DOL to administer and has been the source of considerable litigation. The 2004 rule clarifies the circumstances and the extent to which an improper deduction causes an employee or group of employees to become nonexempt. Under the 2004 rule, the exemption would be lost if there is an actual pattern and practice of improper deductions, and then only for employees in the same job classification and working for the same manager responsible for the improper pay docking decision or policy. For example, if one manager at a single company facility routinely docks the pay of engineers for partial-day absences, then

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all engineers at that one facility whose pay could have been docked by that same manager are not exempt. Engineers at other facilities or working for other managers would remain exempt. Further, the 2004 rule created a new "safe harbor" provision: if an employer has a written policy prohibiting improper pay deductions, notifies employees of that policy and reimburses employees for any improper deductions, then that employer will not lose the exemption for the employees who experience the improper deductions unless the employer continues to make the improper deductions following employee complaints.

d. Duties Tests Revised

Unlike the old regulations, the 2004 regulations contain a single duties test for each exempt category. The old regulations, as you may recall, had both "long" and "short" tests to determine whether an employee is exempt. The short test generally provided that the employee must earn a certain weekly salary, plus perform a certain number of defined duties. The long test generally had a lowered salary requirement, but was more exacting in the duties the employee must perform. The two-test system has been a significant source of confusion for employers, and has been eliminated in the 2004 regulations.

i. <u>Executive employees</u>. To qualify as an exempt executive under the 2004 regulations, an executive employee must: (1) have a primary duty of managing the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (2) customarily and regularly direct the work of two or more other employees; and (3) have the authority to hire or fire other employees or have particular weight given to suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees.

The requirement that exempt executive employees possess the authority to hire and fire constitutes the most significant change from the test required by the previous regulations. Employees formerly classified as exempt executive employees under the old short-duties test by virtue of having the primary duty of managing the enterprise and customarily and regularly directing the work of two or more employees, will lose that exemption unless they possess this authority. Therefore, employers should carefully review the status of foremen, shift supervisors, managers and the like, and either re-classify them as non-exempt, check to see whether they fit into one of the other exempt classifications, or consider extending hiring and firing authority in appropriate cases.

ii. <u>Administrative employees</u>. An employee will meet the duties test for the administrative exemption if the employee's primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers and the employee's primary duty includes the exercise of "discretion and independent judgment" with respect to "matters of significance." "Management or general business operations" refers to the type of work performed by the employee. Typically, such work must be directly related to assisting the running or servicing of the business. The 2004 regulations make clear that exempt duties do not include working on a manufacturing production line or selling a product in a retail or service establishment. The types of jobs the DOL has defined as typically administrative in nature, i.e., related to management or general business operations, include the following: tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, human resources, employee benefits, labor relations, public and government relations, legal and regulatory compliance, computer network, internet and database administration, and employees acting as advisors or consultants to clients or customers.

iii. <u>Professional employees</u>. The 2004 regulations pertaining to the professional employee exemption makes changes similar to those proposed for the executive and administrative exemptions. For learned professionals, the 2004 standard test provides that employees qualify for exemption as a learned professional if they have a primary duty of performing office or non-manual work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by an equivalent combination of intellectual instruction and work experience. This 2004 standard test for learned professionals focuses more on the knowledge of the employee and how that knowledge is used in everyday work, not on the educational path followed to obtain that knowledge. The clarified test is intended to reflect changes in the 21st century workplace in how some "knowledge workers" acquire specialized learning and skills. For example, an employee who obtained advanced knowledge by completing college courses in a field such as engineering, and who worked in that field for a number of years, could qualify for exemption if the knowledge acquired was equivalent to that of an employee with a baccalaureate degree in engineering.

For creative professionals, the 2004 regulations essentially adopt the old short test with slight modifications. This 2004 standard test applies the creative professional exemption to any employee with the primary duty of "performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor." This language, although simplified, is not intended to make any material changes from the existing regulations regarding creative professionals.

The 2004 test for teachers is unchanged from the previous short test, with the exception of the deletion of the requirement that the employee's work require the consistent exercise of discretion and judgment.

iv. <u>Computer employees</u>. Under the prior regulations, an exempt computer employee was required to earn $27.63 or more per hour, have the primary duty of: application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional applications; or design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or

Continued on next page

design, documentation, testing, creation or modification of computer programs related to machine operating systems; or a combination of duties described above, the performance of which requires the same level of skills; and be employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field. Thus, this exemption did not include those employees whose work was merely computer-intensive, such as data entry or word processing personnel. The employee must have the "back end" duties described in the regulation. The 2004 regulation makes no changes to this test, other than allowing pay of either $27.63 per hour or $455 per week, if paid on a weekly basis.

v. Outside sales employees. Under the old regulations, outside sales employees were required to be customarily and regularly engaged away from the employer's places of business making sales or obtaining orders or contracts for services or the use of facilities. ("Inside sales" employees are not within the scope of this statutory exemption for "outside sales" employees.) The regulatory interpretations examined whether any given employee's chief duty or primary function is to make sales or take orders while away from the employer's premises, by analyzing the character of the job as a whole, to distinguish exempt outside sales employees from other nonexempt occupations (e.g., route delivery personnel). Under the old regulations, outside sales employees also could not exceed a 20 percent tolerance, per work week, performing duties unrelated to their own outside sales or solicitations. Activities that are incidental to, and in conjunction with, their own outside sales or solicitations, including incidental deliveries and collections, are not counted against the 20 percent nonexempt work limitation. There was no salary or fee requirement for the outside sales employee exemption.

In keeping with similar changes to the other "white collar" exemptions, the 2004 regulations adopt a primary-duty concept similar to the other exemptions, and eliminate the particularly confusing 20 percent restriction on nonexempt work by outside sales employees. The essential elements required for exemption continues, i.e., the outside sales employee's primary duty must be to make sales or obtain orders or contracts for services or the use of facilities, and the employee must be customarily and regularly engaged away from the employer's place of business performing such duty.

e. Compliance with the Executive, Administrative, and Professional Exemptions

Employers should conduct an internal audit to ensure that employees currently classified as exempt under the "white collar" exemptions are still classified as such. The most rudimentary assessment should begin with the identification of employees earning less than $455 per week or more than $100,000 per year who are performing non-manual work. These are the employees most likely to be affected by the changes. From there, it is imperative to determine whether those employees currently classified as exempt executives (and who earn less than $100,000 per year) have the requisite authority to hire and fire necessary to continue in this exempt classification. Failure to properly classify these employees could result in significant liability for the employer. For formerly exempt employees who are made non-exempt by regulations, consider not permitting the employee to work overtime, if feasible and appropriate. Finally, review your policies on employee absence and disciplinary leave to ensure that employees are not unnecessarily paid for time away from the job. Also, strongly consider adopting a deduction policy that complies with the safe harbor provision. To avoid liability, consult the applicable statutes and regulations, and address any questions to an expert in federal wage and hour law.

2. Miscellaneous Exemptions

Numerous other industry and employee exemptions exist under the FLSA. These exemptions can be found at 29 U.S.C. § 213 and the accompanying regulations and Interpretative Bulletins. Exemptions from both the overtime pay and minimum wage requirements of the FLSA include:

- employees of amusement parks, recreational establish-

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ments, camps, or religious or non-profit educational centers that do not operate for more than seven months a year or that earn more than 3/4 of their gross receipts in half a year, except this exemption does not apply to most establishments engaged in providing services or facilities in national parks or forests under contract to the government;

- employees engaged in certain fishing related occupations;
- agricultural employees who work on a small or family farm (as defined) or who perform hand harvest labor and are paid at a piece rate, or who are under the age of 16, work on the same farm as one of their parents or guardians and are paid the same rate as older employees on the same farm, or who are engaged in the production of range livestock;
- any employee exempt by any regulation, order, or certificate of the Secretary of Labor;
- employees employed in connection with the publication of a weekly, semi-weekly, or daily newspaper with a circulation of less than 4,000, the major part of which is within the county where the newspaper is published or in contiguous counties;
- any switchboard operator employed by an independently owned public telephone company that does not have more than 750 stations;
- seamen on non-American vessels; and
- babysitters and companions for the aged or infirmed.

Exemptions from the overtime pay, but not minimum wage, provisions of the FLSA include:

- any employee of an employer engaged in the operation of a common carrier subject to the provisions of the Motor Carrier Act;
- any employee of a carrier by air subject to the provisions of Title II of the Railway Labor Act;
- any employee engaged as an outside buyer of poultry, eggs, cream or milk, in their raw or natural state;
- seamen;
- announcers, news editors, and chief engineers of radio and television stations, the chief studio of which is in a city or town of population of 100,000 or less outside of a standard metropolitan statistical area having that population, or in a city or town of 25,000 or less inside such standard metropolitan statistical area but more than 40 airline miles from the principal city of such area;
- salesmen selling farm implements, cars, trucks, boats, and airplanes to their ultimate users, and mechanics servicing farm implements, cars and trucks for their ultimate users;
- drivers and drivers' helpers making local deliveries and paid on the basis of trip rates or under certain other payment plans;
- employees engaged in maintaining irrigation systems not owned for profit and used exclusively for agricultural purposes;
- livestock auctioneers whose primary occupation is farming and whose auctioneering activities are adjunct to farming and who are paid the FLSA minimum wage for their auctioneering;
- certain employees of country elevators employing fewer than six employees;
- any employee engaged in processing maple sap into sugar (other than refined sugar) or syrup;
- any employee engaged in the transportation of fruits or vegetables to the point of first processing or first marketing within the same state or engaged in the transportation between a farm and any place within the same state of employees engaged or to be engaged in the harvesting of fruits or vegetables;
- taxi cab drivers;
- publicly employed firefighters and law enforcement personnel (including prison guards) if employed by an agency employing fewer than five employees for such tasks;
- live-in domestics;
- an employee who is employed with his spouse to serve as a "parent" to residents of an orphanage and who receives room and board at no cost and who is compensated, with his spouse, at an annual rate of

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- employees of movie theaters;
- employees engaged in planting, tending or felling trees or in certain other forestry occupations and whose employer employs fewer than nine employees; and
- employees of privately owned amusement or recreational establishments located on national parks or in national forests under contract with the government who are paid at one and one-half times their hourly rate after working 56 hours in a workweek. See 29 C.F.R. § 213(b).

B. COMPENSABLE & NON-COMPENSABLE TIME

1. General Rule on Compensability

In general, an employer must pay nonexempt employees for all hours that an employee "suffer[s]" or is "permitted to work." Such time includes, among other things:

- Time that an employee works off the clock when the employer has reason to know of the employee working off the clock; and
- Time that an employer has reason to know an employee is working beyond regular hours and permits such work.

The following activities normally constitute compensable "working time" under the FLSA:

- Rest or break periods of 20 minutes or less in duration;
- On-duty waiting time during which an employee is unable to use effectively for his or her own purpose;
- Reporting time for the period of time during which an employee is required to remain at the worksite;
- Training time designated to help the employee perform his or her job more effectively or prepare the employee for another job with the employer;
- Grievance adjustment time between management and employees; and
- Civic and charitable work if done at the employer's request or under the employer's direction or while on the employer's premises.

2. Time That the DOL Generally Considers Non-compensable

- Bona fide meal periods usually lasting at least 20 minutes in duration and where the employee is completely relieved of his or her duties during the period;
- Break periods of more than 20 minutes, especially when the employee is free to leave the employer's premises;
- Training programs if the employee voluntarily attends the program outside the employee's regular working hours, the program is unrelated to the employee's job, and during the training program the employee does not perform work;
- Waiting time during which the employee is completely relieved from duty and is of a sufficient duration to enable the employee to use the time for his or her own purposes;
- Absences for illnesses; and
- Absences for vacations and holidays.

3. Travel Time

a. Home-to-Work Travel

Normal travel from home to work and from work to home is not considered working time. When an employee is called out on an emergency job after he or she has gone home for the day, however, the employee's travel time is compensable if the employee goes to a customer's premises to do the work. The DOL takes no position as to whether travel time to the employer's premises is compensable when an employee is called back to work on an emergency. In light of the DOL taking no position on that issue, an employer likely need not compensate employees for such travel.

If an employee is required to report to a meeting place to receive instructions or to pick up tools or other employees or equipment before going to a worksite, an employee's compensable working time begins from that meeting.

b. Travel During Work Day

Time spent by an employee traveling from job site to job site during a workday is compensable working time. Traveling to an outlying job at the end of a scheduled workday is also compensable work time. If an employee, however, goes directly home from a job instead of returning to the employer's premises, the trip home is noncompensable home-to-work travel.

c. Out-of-Town Trips

When an employer sends an employee out of town for one day on an assignment, the employer need not pay that employee for the time the employee spends traveling from home to a railroad, bus, or plane terminal, but the employer must pay the employee for all other travel time, except time spent while eating meals. When an employee travels overnight on business, the employer must pay that employee for time spent in traveling, except for meal periods, during that employee's normal working hours on his or her nonworking days, such as Saturdays, Sundays, and holidays, as well as on his or her regular working days. For example, if an employee who regularly works Monday through Friday from 9:00 a.m. to 5:00 p.m. travels overnight on an assignment from Saturday at 12:00 p.m. to Tuesday at 7:00 p.m., the employer must pay that employee for travel time occurring between 9:00 a.m. and 5:00 p.m. on Saturday, Sunday, Monday, and Tuesday. An employer must also pay an employee any time the employee spends performing duties while traveling outside his or her regular hours.

4. On-Call Time

Whether on-call time constitutes compensable working time must be analyzed on a case-by-case basis. In making that analysis, courts generally consider the following factors:

- whether an on-premises living requirement exists;
- whether the employer imposes excessive geographical restrictions on an employee's movements;
- whether the frequency of the calls create undue restrictions;
- whether a fixed time limit for respond-

ing to calls creates undue restrictions;

- whether the on-call employee may trade on-call responsibilities;
- whether the use of a pager may ease restrictions; and
- whether the employee actually engaged in personal activities during the on-call time. See Owens v. Local 169, 971 F.2d 347, 351 (9th Cir. 1992).

No single factor is dispositive in this analysis. Id. Courts balance the facts to determine whether the limitations on an employee prevent him or her from using time effectively for his or her own private purposes. Id.

C. PAYROLL ISSUES

The FLSA requires overtime to be paid if an employee works in excess of a specified number of hours during a workweek. It does not require overtime pay for hours worked in excess of any daily number, or for work done on weekends, holidays, or before or after regular working hours. However, state law or collective bargaining agreements may impose more stringent requirements.

1. The Workweek Standard

The workweek is a fixed and regularly recurring period of 168 hours–*i.e.*, seven consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day.

- Overtime pay is figured on a workweek basis, whether an employee is paid daily, weekly, biweekly, monthly or on a piecework basis.
- Each workweek stands alone–employers may not offset overtime hours worked in one week against non-overtime hours worked in another week.
- Overtime must be calculated on a weekly basis, but may be paid to the employee on his regular pay schedule.

2. Regular Rate, Overtime Rate & Premium Pay

Overtime is paid at time and one-half of an employee's "regular rate." The regular rate is determined by dividing an employee's total remuneration for employment (minus certain statutory exclusions) by the total number of hours actually worked by the employee in that workweek. If an employer provides board and lodging, meals, lunch expenses, free merchandise from company stores, traveling expenses to and from work, or meals, these items are included in the regular rate.

For example, consider an employee who works 44 hours a week for $300.00, and also boards and rooms with his employer. If the reasonable cost of room and board is $96.00 per week, the employee's weekly earnings are $396.00. Thus, the employee's regular rate is $396.00 divided by 44 hours, which is $9.00 an hour. He is entitled to overtime pay for four hours as follows: $9.00 divided by 2= $4.50; $4.50 x 4= $18.00 for a total of $414.00.

Certain payments may be ignored when computing an employee's regular rate:

- Gifts, including Christmas bonuses;
- Idle-time payments, as for holidays and absences;
- Reimbursements for expenses;
- Certain bonuses;
- Profit-sharing and savings-plan payments by employers; and
- Welfare-plan contributions by employers.

Sums paid to employees in addition to their straight-time wages are known as "premium pay." Some premium pay may be excluded from the regular rate:

- Premium pay for any amount of hours in excess of eight a day or in excess of the straight-time maximum in the statutory workweek applicable to the employee;
- Premium pay of any amount for hours worked in excess of normal or regular daily or weekly standards;
- Premium pay resulting from time and one-half rates paid for Saturday, Sunday, holiday, day-of-rest, sixth or seventh day work; and
- Premium pay resulting from time and one-half rates paid for work outside of a contractual daily period not exceeding eight hours or outside of a contractual weekly period not exceeding the maximum straight-time hours in the statutory workweek applicable to the employee.

3. Effect of Bonuses

Some bonuses must be included in the regular rate calculation while other bonuses need not be included in that calculation. Consider the following:

- Christmas bonuses may be excluded from an employee's regular rate;
- Discretionary bonuses, or bonuses based on a percentage of total wages, may be excluded from an employee's regular rate; and
- Bonuses for accuracy of work,

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attendance, continuation of employment relationship, incentive, production, or quality of work may NOT be excluded from an employee's regular rate.

For example, consider a situation in which an employee who is paid $8.00/hour received a monthly bonus of $105.60 for meeting certain production goals. The employee worked 44 hours the first week, 42 hours the second week, 41 hours the third week and 49 hours the fourth week. The employer cannot allocate a particular portion of the bonus to each of the four weeks worked, so the employer assumes that the employee earned the same amount of bonus each hour the employee worked during the month. The employee worked 160 straight-time hours during the month, and 16 overtime hours. The bonus amount divided by the total hours worked results in an amount of $.60/hour. Thus, the employer must pay overtime for 16 hours based on a rate of $8.60/hour as follows: $8.60 divided by 2= $4.30; $4.30 x 16= $68.80.

4. **Pay For Time Not Worked**

Certain "idle-time" pay may be excluded when computing an employee's regular rate, including absence pay for attending the funeral of a family member;

- holidays;
- jury duty;
- sickness; and
- vacation.

5. **Contests and Prizes**

Contests and prizes for attendance, cooperation, courtesy, efficiency, number of overtime hours worked, production, quality of work, or sales stimulation may NOT be excluded from an employee's regular rate.

6. **Credits Against Overtime**

An employer may credit certain premium pay against overtime pay:

- Premium pay of any amount for any amount of hours in excess of eight a day or in excess of the straight-time maximum in the statutory workweek applicable to the employee;
- Premium pay of any amount for hours worked in excess of normal or regular daily or weekly standards;
- Premium pay resulting from time and one-half rates paid for Saturday, Sunday, holiday, day-of-rest, sixth or seventh day work;
- Premium pay resulting from time and one-half rates paid for work outside of a contractual daily period not exceeding eight hours or outside of a contractual weekly period not exceeding the maximum straight-time hours in the statutory workweek applicable to the employee; and
- Certain commissions paid by retail or service establishments.

For example, consider the situation of an employee who is hired to work at $8.00/hour, and is paid $10.40/hour for all hours worked in excess of eight daily. The employee works ten hours on Monday and Tuesday, and eight hours on Wednesday, Thursday, and Friday, for a total of 44 hours. The employee receives straight-time pay of $352.00 ($8.00/hour times 44 hours) and premium pay of $9.60 ($2.40/hour times 4 hours) for a total of $361.60.

The premium pay is excluded from the computation of the employee's regular rates. Thus, under the FLSA, the

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employee is owed straight time pay of $352 ($8.00/hour times 44 hours) plus overtime pay of $16.00 ($4.00/hour times 4 hours) for a total of $368.00. The premium pay may be credited against the overtime pay required by the FLSA, and the employer thus owes only an additional $6.40. If the employee works thirteen hours on Monday, ten hours on Tuesday, and seven hours on Wednesday, Thursday, and Friday, he would receive straight time pay of $352.00 and premium pay of $16.80 ($2.40/hour times 7 hours) for a total of $368.80.

As in the first example, the employee worked 44 hours, and must be paid $368 under the FLSA. Thus, in this case, the employer would not owe anything additional to the employee.

7. Fluctuating Workweek Pay

The DOL has authorized employers to compensate its employees on a "fluctuating workweek" basis without violating the overtime pay provisions of the FLSA. The purpose of this section is to explain how pay on a fluctuating workweek basis works.

a. Fluctuating Workweek Pay in General

Pay on a fluctuating workweek basis involves the payment of a fixed weekly salary to an employee when the employee and the employer have an understanding that such salary is intended to compensate him or her for all hours worked during any particular workweek. Under this type of agreement, an employee is still entitled to receive overtime pay for all hours worked over 40 during a workweek, but the amount of overtime pay that the employee is entitled to receive differs from the amount of overtime pay that a nonfluctuating workweek employee is entitled to receive.

Under the FLSA, an employee is generally entitled to one and one-half times his or her "regular rate" for all hours worked over 40 during a workweek. An employee's regular rate is usually a fixed amount. For instance, if an employer agrees to pay an employee $10 an hour, that employee's regular rate is $10 per hour, and his or her overtime rate is $15 per hour. With respect to an employee who is paid on a fluctuating workweek basis, however, his or her "regular rate" fluctuates. This is because the employee receives a fixed weekly salary for hours that fluctuate. The less hours a fluctuating workweek employee works, the more the employee's regular rate increases. Conversely, the more hours a fluctuating workweek employee works the more the employee's regular rate decreases. For instance, if an employee who is paid on a fluctuating workweek basis earns a weekly salary of $400 and works 40 hours one week and 50 hours the next week, the employee's regular rate is $10 per hour for the first week and $8 per hour for the second week.

When calculating the amount of overtime to which a fluctuating workweek employee is entitled to receive, the employer need only include one-half of the employee's regular rate in the overtime pay calculation. This is because the employee has already received his or her regular rate for the hours worked over 40. In other words, the employee has already received the "one" portion of the "one and one-half" overtime formula.

Consider the following example:

> A is hired at a weekly salary of $400 under an agreement that the salary will cover all hours worked. In the first week, A works 45 hours, resulting in a regular rate of $8.89 ($400 ÷ 45). Because A has already received $8.89 for his five hours of overtime, the employer need only pay him an additional one-half of his regular rate for the five overtime hours. Thus, A's overtime pay is equal to $22.22 computed as follows: $8.89 x ½ x 5 hours.
>
> In A's second week, A works 50 hours. His regular rate is $8 per hour ($400 ÷ 50). He is entitled to overtime pay in the amount of $40 computed as follows: $8 x ½ x 10 hours.

The overtime pay savings for an employer that utilizes pay on a fluctuating workweek basis can be significant. In the above example, for instance, the employer pays $22.22 in overtime rather than $75.00 for a nonfluctuating workweek employee in the first week and pays $40 in overtime rather than $150 for a nonfluctuating workweek employee in the second week.

b. Hourly Rate Less Than FLSA Minimum Wage

As noted above, under pay on a fluctuating workweek basis, the amount of an employee's regular rate decreases the more hours that an employee works. An employer, however, may not reduce an employee's regular rate below the minimum wage. If an employee's regular rate in a particular week is less than the minimum wage, the minimum wage becomes the basis for computing both regular and overtime pay for that workweek. The current minimum wage is $6.55 per hour, and the rate will increase to $7.25, effective July 24, 2009.

c. Limitation on Salary Deductions

Part of the justification for employees receiving what is in effect less overtime under the pay on a fluctuating workweek basis is that the employee receives his or her salary even when he or she works less than 40 hours during a workweek. Accordingly, an employer that utilizes pay on a fluctuating workweek is generally not permitted to make deductions for absences of less than a week. Only in the last couple of years have the DOL and the courts been clearer on what deductions are permissible from the salary of an employee who is paid on a fluctuating workweek basis. Prior to that time, many employers had understood that permissible deductions from salary under the fluctuating workweek method of pay mirrored the permissible deductions from salary under the salary test for exempt executive, professional, or administrative employees. That has proven to be incorrect. Deductions from salary under the fluctuating workweek method are much more limited than deductions from salary for exempt employees. Deductions from salary under the fluctuating workweek method are permissible only for "willful absences or tardiness or for a situation such as an employee being sent home from work because of drunkenness." Wage and Hour Opinion Letter, May 28, 1999. An employer generally may not make deductions for absences as a result of an employee's personal business or illness. Id.

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d. Agreement to Pay an Employee on a Fluctuating Workweek Basis

The DOL requires that an employee and an employer have "a clear and mutual understanding" that the employee's fixed salary is compensation, apart from overtime pay, for all hours worked each workweek. It is not necessary that this understanding be in writing, but a written agreement is preferable.

e. Bonuses, Benefits, and Other Pay in Addition to Fixed Salary

If an employee receives a bonus in addition to his or her fixed salary, it may be necessary for the employer to add that bonus to the employee's salary before computing the employee's regular rate. As noted above, incentive bonuses, such as bonuses for reaching certain sales goals, generally must be included in an employee's regular rate, while discretionary bonuses need not be included in an employee's regular rate. Furthermore, because a fixed salary for a fluctuating workweek covers short, as well as long workweeks, an employer must include in the regular rate calculation such additional pay as vacation, holiday pay, and sick pay. Of course, an employee who is absent due to vacation, holiday, or sickness during a week will not likely work over 40 hours during that week. Thus, it will probably be of no consequence that additional pay for such absences is included in the regular rate calculation.

f. Administrative Difficulties Associated With Pay on a Fluctuating Workweek Basis

A major disadvantage to utilizing pay on a fluctuating workweek basis is that it is difficult to administer. This is because the nature of the pay plan requires payroll personnel to calculate a fluctuating workweek employee's regular rate, and corresponding overtime pay, for each week in which the employee works overtime. Payroll personnel will need the appropriate training before making the fluctuating workweek pay calculations.

D. MILITARY LEAVE RULES

Federal law does not require that an employer pay a non-exempt employee while he or she is on military leave. Under the salary basis test, however, an employer may not deduct from the salary of an executive, administrative, or professional employee for absences due to temporary military leave. It is unclear whether that rule applies only to temporary military leaves of less than one workweek. As previously noted, the salary basis test generally does not require an employer to pay an employee's salary when the employee performs no work during the workweek. The best reasoned approach is that an employer is not required to pay an employee's salary when the employee performs no work due to military leave during the workweek.

E. RECORDKEEPING UNDER THE FLSA

Under the FLSA, employers are required to "make, keep and preserve records" of employees and of their "wages, hours, and other conditions of practice and employment." 29 U.S.C.A. § 211(c). Such records are to be kept in accordance with the regulations prescribed by the Administrator of the U.S. Department of Labor's Wage and Hour Division. 29 C.F.R. § 516.1. Compliance with the record-keeping requirement of the FLSA means employers must comply with several different aspects of the record-keeping process, including: the form of the records, record-keeping systems, basic information required in an employee's record, record preservation, and posting requirements. Of these requirements, only the information required in each employee's record is different for exempt versus non-exempt employees. Employers should also be aware of the consequences of violating the FLSA, which are often burdensome and costly. Each of these issues is discussed more fully below.

1. Record-Keeping Requirements

Employers of non-exempt employees should ensure that their records comply with FLSA requirements, which include the form of the records, record-keeping systems, basic records required, record preservation, and posting requirements.

a. Form of Records

The only restriction placed on the form of records an employer must keep under the FLSA is that the records be identifiable by date or pay period. 29 C.F.R. § 516.1. This allows employers to use symbols, such as an "x" or a checkmark, in the records that are kept, so long as a key is provided for the interpretation of the symbols. The use of time clocks, while permissible, is not required. 29 C.F.R. § 785.48

b. Record-Keeping Systems

There is no specified system an employer must use to store the records of its employees, but regardless of the system an employer chooses to use, the records must be capable of being converted into a form that can be inspected within 72 hours. This allows records to be kept on paper, microfilm, computers, or any other medium in which the employer can access and present for inspection the records with only three days' notice. Thus, for the employer who chooses to store employee records electronically, there must be adequate viewing facilities available for the inspection of those records in their electronic format or the employer should have resources available to print these records onto paper.

c. Basic Records Required

i. Non-Exempt Employees

There are twelve records that an employer must keep for each non-exempt employee under the FLSA:

(1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. 29 C.F.R. § 516.2(a)(1).

(2) Home address, including zip code. Id. at § 516.2(a)(2).

(3) Date of birth, if under 19. Id. at § 516.2(a)(3).

(4) Sex and occupation in which employed. Id. at § 516.2(a)(4). The sex of an employee may be indicated by the use of prefixes (Mr., Mrs., Miss., or Ms.). Id.

(5) Time of day and day of week on which the employee's workweek

begins. Id. at § 516.2(a)(5). If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice. Id.

(6) Regular hourly rate of pay for any workweek in which overtime compensation is due. Id. at § 516.2(a)(6). The employer must explain the basis of pay by indicating the amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and the amount and nature of each payment that is excluded from the employee's regular rate. Id.

(7) Hours worked each workday and total hours worked each workweek. Id. at § 516.2(a)(7). For purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of 7 consecutive workdays. Id.

(8) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation. Id. at § 516.2(a)(8).

(9) Total premium pay for overtime hours. Id. at § 516.2(a)(9).

(10) Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Id. at § 516.2(a)(10). Also, in individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions. Id.

(11) Total wages paid each pay period. Id. at § 516.2(a)(11).

(12) Date of payment and the pay period covered by payment. Id. at § 516.2(a)(12).

Employers must keep records that include all twelve categories of information for each employee that is non-exempt under the FLSA. One notable exception to the above listed required records pertains to number 7, which mandates an accounting of the hours worked each day and week. This exception applies to employers whose employees work fixed schedules. Those employers may, instead of specifying the hours worked for each day and week, include in the records a schedule of that employee's normal daily and weekly hours. Id. at § 516.2(c)(1). This relieves employers from having to enter the number of hours their employees work each day and week. However, the employer must still actively indicate in the records that the employee worked the number of hours per week that is represented on the schedule, which the employer can accomplish by placing a checkmark next to each week the employee works in accordance with the schedule. If the employee does not adhere to the schedule included in the records and works more or less than normal in a certain week, then the employer must show the exact number of hours the employee worked each day and week for that period. Id. at § 516.2(c)(2).

ii. Exempt Employees

Employers of employees that are exempt under the FLSA are subject to different record-keeping requirements. The requirements an employer must follow for exempt employees will depend on which exemption to the FLSA those employees fall under. This paper discusses the record-keeping requirements for employers of white collar and outside sales employees, who are exempt under 29 U.S.C.A. § 213(a)(1). However, there are other exemptions under which employees may fall, not all of which will be subject to these same record-keeping requirements.[2]

An employer that employs outside sales employees or white collar employees, which is an employee in an executive, administrative, or professional capacity, must maintain the same records as for non-exempt employees with the exception of records 6 through 10 listed above.[3] Records 6 through 10 deal with the computation of overtime, which is not applicable to outside sales employees and white collar employees. However, the employer must still maintain the remaining records, which consist of records 1 through 5, and 11 and 12 listed above. An additional record that must be kept for this type of exempt employee is the basis on which wages are paid. 29 C.F.R. § 516.3. Enough information should be included in this category to allow a calculation, for each pay period, of the total remuneration to the employee. Id. Fringe benefits and perquisites are included in an employee's total remuneration and should therefore be included in the records. As with the records for non-exempt employees, these records are also subject to the requirement that an employer should be able to present them for inspection within 72 hours

d. Preservation of Records

Generally, an employer should preserve each of the records discussed above for a minimum of three years. Id. at § 516.5(a). An employer may choose to keep the records at the place

Continued on next page

of employment or at an off-site central record-keeping office, but regardless of the location in which the records are kept, they must be safe and accessible. 29 C.F.R. § 516.7(a). The importance of easy accessibility to the records stems from the requirement that they be capable of being viewed and inspected with only 72 hours notice. Id. When deciding where to store these records, the employer should also keep in mind that it may be required to make extensions, recomputations, or transcriptions of the records, as well as provide any report detailing the persons employed and the general information of the employment, including wages and hours, at the Administrator's request. Id. at § 516.8.

e. Posting of Notices

Any employer who employs non-exempt worker(s) is required to post notices that explain the FLSA. 29 C.F.R. § 516.4. These notices are required to be posted in conspicuous locations in every establishment that a non-exempt worker is employed. If an employer fails to properly post these notices, or fails to post the notices at all, then that employer could be charged with a violation of the record-keeping requirement. At the request of an employer, permission may be granted under this section by an appropriate Department of Labor official to post notices that have been reduced in size. The official may grant permission to post the smaller notices if there is not an attempt on the part of the employer to evade the posting requirements and the notices are of such size that they can be easily read by the employees. An employer that employs only employees exempt from the minimum wage requirement or the overtime requirements is at liberty to alter the notice to indicate those provisions do not apply. Id. at § 516.4. However, when the employer has both exempt and non-exempt employees, the employer is no longer free to alter the notices to reflect the exemptions that apply to the portion of its employees that are exempt.

2. Penalties for Violating Record-Keeping Requirements

Any violation of the record-keeping requirements listed above, including a violation of the posting of notices requirement, will result in an employer being held liable for a violation of the FLSA. An employer cannot escape liability under the FLSA by delegating its record-keeping obligations to another, any breach of the requirements under the FLSA will result in the employer being held responsible. In certain situations, a business is composed of two or more separate and distinct employers – a "joint employer" situation. In this instance, the employer that actually pays funds to the employees will have the primary duty of compliance with the record-keeping requirements of the FLSA. Where multiple employers make direct payments to the employees in a joint employer situation, the employer that is under investigation at that time will be deemed to have the primary responsibility under the record-keeping requirements.

If any employer has violated the FLSA, there is the possibility of an injunction being issued against future violations or perhaps even criminal sanctions. 29 U.S.C.A. § 216(a). The Department of Labor does not, however, have the authority to impose civil money penalties for record-keeping violations. In lawsuits where an employee is claiming back wages as damages, a violation of record-keeping requirements also results in the burden of proof shifting to the employer to prove the amount of appropriate back wages. Id. at § 215(a)(5). This result could very well be the most expensive consequence of a record-keeping violating, as the United States Supreme Court has held that, in the absence of employment records, monetary damages should be awarded to the employee as long as the evidence shows the employee performed work for which there was improper compensation and the amount and extent of the work is reasonably inferable.[4] With the shifting of the burden of proof, the employer then bears the responsibility of coming forward with evidence to negate the reasonableness of the inference drawn from the evidence set forth by the employee. If there are no records of the employee's prior work history due to the employer's violation of the FLSA record-keeping requirements, then that employer is unable to argue that the number of hours worked or the back pay owed is too uncertain or approximate and the employee will receive the benefit of all reasonable inferences. Without adequate records, an employer faces a very difficult challenge in disproving these such inferences.

It is worth mentioning that "working backward," a common method of computating an employee's total compensation, has been found by the courts to constitute a willful violation of the FLSA record-keeping requirements and will result in the employer being held liable under the FLSA. "Working backward" is a method of computation where the employer determines the total compensation amount for a workweek by applying a straight-time regular rate calculation for all hours worked, including

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overtime. The employer then records 40 hours at a lower rate and all overtime hours at 1½ times the lower rate to end up with the amount previously calculated. As mentioned before, this method of computation is violates the FLSA and should not be used.

F. SURVIVING A WAGE & HOUR AUDIT

The DOL at times visits worksites to investigate alleged violations of the wage and hour laws. Those investigations usually commence as the result of a complaint by a current or former employee. When the investigations occur, a local agent for the DOL typically visits the worksite and requests documents and employee interviews. What should you do if a DOL agent appears at your worksite to investigate a complaint? Consider the following:

1. Be Cooperative

It is important that you cooperate with the DOL agent and not be hostile or defensive. Being hostile and defensive will only increase the agent's suspicion and the odds of a more protracted and broad investigation. Although, from a legal standpoint, a DOL agent may need a search warrant to examine an employer's documents at the worksite without the employer's consent, withholding that consent would likely only exacerbate the problem. You should instead ask the agent what information he or she needs and begin to gather that information. You should serve as an information gatherer at this point rather than an advocate. You should also avoid any admissions of wrongdoing.

2. Contact Your Attorney

After you have learned from the agent what information he or she is requesting, and after you have begun to gather that information (but before producing it), you should contact the employer's attorney. You have the option of informing the agent from the outset that you will only communicate with him or her through your attorney and that the request for information should be directed to the attorney, but that approach may unnecessarily antagonize the employer's working relationship with the agent. Instead, it is preferable to at least learn what information the agent is requesting, begin to gather that information, and then introduce the employer's attorney to the agent. You can inform the agent while information is being gathered that the employer has an attorney and that the attorney would like to speak with the agent about his or her request for information. In any event, you should involve the employer's attorney before you produce any records to the agent or make any employee available for an interview with the agent.

3. Provide Information

With the assistance of your attorney, you should provide the agent with information that will help complete the investigation and resolve the applicable complaint. Your attorney will help you determine the scope of information that you need to produce and help avoid any production of privileged or irrelevant information.

With respect to employee interviews by the agent, your attorney should request that he or she be able to participate in the interviews. If the agent denies that request, your attorney should, as a general rule, interview the employees.

4. Work Toward a Resolution

By participating in the entire process, your attorney should have a good idea of the employer's potential exposure, if any. Based on that information, you will be in a position to determine whether to challenge any allegations of wrongdoing or to negotiate a settlement with the DOL. If the DOL is satisfied that a violation has occurred and you choose not to settle, then the DOL has the option of filing a lawsuit against the employer. The individual employees who allege the violations may also choose to file suit.

It typically makes sense to negotiate a resolution with the DOL agent when the employer has significant exposure for wage and hour violations. Negotiating a resolution may help the employer avoid paying any civil penalties or liquidated damages, reduce legal fees, and avoid protracted and unnecessary litigation.

5. Complete Appropriate Settlement Documentation

If you are able to negotiate a settlement with the Department of Labor, you must ensure, in conjunction with your attorney, that you complete the appropriate documentation for the settlement. A settlement and release of wage and hour claims under the Fair Labor Standards Act is valid and enforceable only if the settlement is supervised and facilitated by the DOL or pursuant to a court order. It is important, therefore, to ensure that the DOL agent authorizes the settlement in writing and that the settlement constitutes an enforceable waiver of rights by employees who are receiving compensation as part of the settlement.

6. Do Not Retaliate

The FLSA makes it unlawful for an employer to retaliate against an employee for complaining about alleged unlawful wage payments or practices. Accordingly, it is important that an employer take all appropriate measures to ensure that it, including its supervisors, takes no adverse employment action against or harasses an employee for making a complaint.

Being investigated by the DOL can be an unsettling experience. Nevertheless, with proper preparation and a plan for responding, you can minimize the undesirable effects of the investigation. ■

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1 An administrative and professional employee may also be paid on a "fee basis." See 29 C.F.R. §§ 541.2(e)(2), 541.3(e). Pay on a "fee basis" is characterized by the payment of an agreed sum for a single job regardless of the time required for its completion. Id. § 541.313(b). Typically, the fee is paid for a unique service rather than one that is repeated numerous times. Id. Because pay on a salary basis is more common than pay on a fee basis, these materials focus more on the requirements for pay on a salary basis.

2 Other categories of exempt employees include, but are not limited to, workers employed in: amusement or recreational establishments, fish and seafood catching, small newspaper publishing, switchboard operators for small independently owned public telephone companies, seamen on foreign vessels, newspaper delivery, and wreath making. Also subject to exemptions are: employees of an air carrier, employees who sell automobiles or work as mechanics on automobiles owned by the ultimate purchaser, and drivers employed by taxicab operators. See discussion infra.

3 White collar workers also includes academic administrative personnel and teachers in elementary or secondary schools.

4 Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).

keep
it
simple

Business Drafting Basics Every Lawyer Should Know

By Wendy R. Mullins

Continued on next page

I. Introductory Comments.

Regardless of where you practice law or the area of law that you practice, writing will be vital to your success. At its very core, the practice of law involves your ability to communicate your client's position to others.

Whether you are hired to communicate why your client is not responsible for an act or inaction, whether you are hired to convince others that your client was the victim of or in some way damaged by the act or inaction of others, or whether you are hired to ensure that the details of a transaction between your client and someone else is clear and uncomplicated so that anyone reading it can understand – you simply must be able to communicate, and even for litigators, that is done through your ability to write.

I. Well Drafted Contract versus the Poorly Drafted Contract.

The best advice I could provide to anyone trying to convey a client's position, is to *keep it simple and concise*. **Do not fall into the trap of trying to sound "lawyerly" or thinking that for the agreement to be legal it must be complicated or use complex terms or language. Contrary to popular opinion, a well drafted contract should not be over complex, wordy or too sophisticated. There are far too many contracts that take 20 pages to accomplish what could have been succinctly covered in 15 or even 10-12 pages. Your document should be well-organized, address the pertinent topics and terms, and describe clearly and succinctly what the parties have agreed to, using plain English.**

> *Practice Point:* Keep your audience in mind. As you are drafting, continuously ask yourself not only can your client read your work and will they understand what you have written, but will they ever actually pick it up to read at all? I hate to disappoint you but more times than any of us care to admit, our clients are not reading every single word of our work. I have found, that the odds improve significantly that the document will be read if it is no longer than it truly needs to be, is broken down by topic through the use of good outlining, and if the most important terms (usually the important business terms) are near the beginning of the document. Also, you cannot put a price on a good table of contents.

So while I just spoke of brevity, you do have to make certain you cover everything that needs to be covered within your document. The courts will look to the four-corners of the contract to determine the intent of the parties, so as the drafter, you want to make sure the intent is clearly stated within those corners. A good test to put any writing through is to ask yourself whether someone completely unrelated and unfamiliar with the matter could determine what the parties agreed to, relying solely on the words on the page.

In academic circles, there are many who encourage young drafters to avoid recitals. While it is true that those recital provisions are not part of the contract and are therefore not enforceable, as a practicing attorney, I have a different opinion. I believe that succinct recitals help a third-party understand the background and goal of the contract. As a result, especially in more complex contracts, I always include recitals as a way of describing background information and context to the agreement about to be described in the contract. Then, if the recitals provide something more than background, I simply include a reference in the body of the contract to incorporate the recitals into the agreement.

It is also common in larger transactions for other documents to be incorporated

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into a contract by specific reference. While this is an efficient way to address what are often many different components of a transaction, be careful not to create either conflict or ambiguity. When utilizing multiple contracts to document a complex transaction, they should be evaluated both as separate contracts – meaning they must include the appropriate components to be capable of being found valid and enforceable standing alone, but they must also be prepared in such a way as to create a cohesive and complete body of terms that fully and completely address the parties' intent with respect to very different topics.

It is worth a reminder, going all the way back to your first year contracts class in law school that to be enforceable, a contract must consist of an offer, acceptance and consideration – without those three legal elements, there can be no enforceable contract.

II. Discussion of Topics Covered in Nearly Every Business Document.

In addition to the three fundamental elements necessary for a contract to be legally enforceable, to be a good contract, it should cover several other key areas

A. <u>Who is doing what for whom</u>?

Whether organized as an introduction, scope or purpose, your agreement should start by advising the reader what the expectations are between the parties. I wrote above about the use of recitals, and perhaps they addressed some of this, but remember the recitals are not part of the contract unless you incorporate them and cause them to be included. Depending on the purpose of the agreement you could use sub-headings to introduce a consulting arrangement, a buy/sale transaction, delivery of goods, development of software, etc. The point is, give an explanation of the subject-matter of the agreement.

This is also a good time to determine if the relationship formed by this agreement is intended to be exclusive. Are there any other limitations placed on either party to not do business with competitors? Does that limitation apply forever (unlikely) or can your concerns be addressed with a strong confidentiality agreement?

B. <u>Time and Money</u>.

Time. Every agreement should clearly state the time the agreement becomes effective, often defined by a specific date, but sometimes by the occurrence of another event. If this starting point is relevant to other actions or rights in the document, then it should be a defined term "Effective Date" for a shorthand reference. In addition to the start, you need to be clear on when the end occurs. This period between the start and the end is the Term. Once you define the length of that Term, you need to provide for whether the Term will or can be renewed, and if so how that is accomplished. Does it renew automatically unless one party takes an action to prevent that renewal (commonly referred to as an "Evergreen clause") and if so what type of action must be taken to prevent the renewal (typically, advance notice *always in writing* to the other party a minimum of "X" days). An alternative method for addressing the Term is to decide if it will not automatically renew but rather, one party or the other must take some action to request a renewal, and if so, what must that action involve? In larger contracts it is not uncommon for the parties to provide a mechanism whereby the contract terms (not the Term but the various terms) will be renegotiated prior to any renewal, and that process may begin as much as six to twelve months prior to the end of the current Term.

> *Practice Point:* Speaking of notice, you should also make it as simple as possible for your client (and the other party) to understand how to calculate days whenever they come into play. Do "days" include every calendar day (Sunday through Saturday) or perhaps only Monday through Friday, excluding federal holidays, in which case you will need to include and define a "Business Day."

Don't forget to address if, how and by whom the agreement can be terminated before the Term expires. Does either party have a right to terminate for any reason or for no reason at all? (Commonly referred to as a termination for convenience.) If so, this is typically accomplished by the person desiring to terminate giving the other party X number of days' advance *written* notice. Can the parties mutually agree to terminate? What about a termination for Cause – meaning one party did not meet their obligations and as a remedy the other party is free to walk away. All of these situations and circumstances need to be thought through and then the logistical steps that a party must take to act on a termination should be spelled out in the document.

Money. In addition to a start and stop, every agreement must involve the exchange of adequate consideration, which is nearly always accomplished by one party paying money to the other party for their performance. Your agreement should clearly define what the payment

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BACKGROUND

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obligations are – one lump sum payment, monthly payments, completion or progress payments? Unfortunately, parties do not always do what they are contractually supposed to do… so what happens if payment is late? Is there an added penalty or interest added to the amount due? If this happens often, what is the remedy to the injured party? Is termination of the agreement an available option? What about your costs to pursue legal remedies? Consider whether you should include language regarding collection activities and the right to recover expenses.

C. What promises are being made about whatever is being done?

Business Promises. At its core, the point of the agreement is to ensure that both parties are clear on their own rights and responsibilities, and conversely, the rights and responsibilities of the other party. So, your draft should clearly spell out those starting with the obligations around deliverables or performance. What is a party being paid to do, and how do you measure that performance? In other words, when has a party earned that payment? While a large part of your job drafting is to clearly provide for what is supposed to happen, it is equally important (and in fact maybe more important) that you provide for what happens when things do not occur as they were expected. When that happens, one party is said to have defaulted on a contractual provision. In that default situation, contracts typically provide for a right to cure or correct the problem. Your drafting should take into account the specific performance or deliverable expected, and provide for what would be an acceptable handling of a default – maybe that involves financial penalties, or a "do-over" opportunity. What if this agreement involves the performance of services that are merely one piece of an overall project, and the entire project is delayed or cannot be completed without this piece? Often the injured party can and does identify someone else to perform and then hold the original contractual party (who failed to perform) responsible.

While the tone thus far has been about performance in general, promises can also be made about the status, condition, or quality of the goods delivered (new, good working order, free and clear of liens), or the services to be performed and whether they meet or exceed industry standards and are performed timely. Your document should identify and describe any warranties being given, or to the contrary provide if no warranties are offered. You may also include service levels or quality assurances, perhaps delivery timelines. When drafting these provisions, ask yourself what problems are likely to arise, and how can you address them ahead of time, to provide both parties with the roadmap on how to overcome them.

Intellectual Property. A few words unique to intellectual property. If IP is involved with or is the main focus of the agreement you are drafting, consider engaging someone experienced in that area of law. There are unique principles in this area of law that can be tricky and ultimately very costly for the client if not handled in the correct way with proper wording. For example, and I've had clients fall victim to this (prior to engaging a lawyer…), just because you paid for something that was created for you, does not mean you automatically own it and you certainly do not own it exclusively. You need to be certain that you address such principles as "*works made for hire*" and that your document includes the appropriate language regarding ownership being transferred to the proper party both at the time of delivery and coupled with a commitment to cooperate in the future with any challenges to that ownership. Any project that involves joint collaboration is filled with ownership related issues that need to be thought through carefully, and again, I encourage you to seek out experienced IP counsel to assist or perhaps for the referral. If you are on the receiving end of an IP related contract, you will also want to be careful to address any infringement claims that come your way. Be sure to get an iron clad representation and warranty from the developer or selling party that the deliverable does not infringe anyone else's IP, and provide specific IP remedies if it does.

Authority and Performance. In addition to the business or project related promises, well drafted agreements will also address certain broader promises. For example, each party's authority to enter into the agreement and to perform, and statements that the agreement creates

a binding legal obligation of each party.

D. What happens when someone doesn't do what they promised to do?

Dispute Resolution. When someone doesn't do something at all or up to the standard that was agreed upon, the injured party is entitled to seek a remedy. In the vast majority of times, that comes as a result of the parties speaking with one another about the situation and then crafting a remedy that fits the situation. We have already mentioned several such remedies including, a financial penalty being assessed (or in the reverse, a modification to the consideration due from the injured party), an opportunity to cure the problem or sometimes a complete do-over. Escalating from internal discussions, the parties could seek to have their matter heard by an objective third-party in the form of mediation or arbitration. When drafting your agreement and with input from your client, you should determine whether such informal resolution methods should be mandatory before a lawsuit is filed. And of course, filing a lawsuit is the most-escalated method for addressing a dispute. The agreement should already prescribe the law that will govern and the proper venue for any such action. Generally the courts will look to the body of the agreement and will utilize the state law agreed upon by the parties, however it is prudent that there be some causal connection between the state law selected and the site of performance.

Damages. Unless prescribed in the agreement, typically the determination of damages will rest on those that can be actually proven. Given the subject-matter of the agreement, you may include that incidental damages are appropriate. You should also discuss whether those damages should be limited in any way, whether to a dollar cap or to exclude all consequential or punitive damages.

Insurance. When thinking about damages, always be mindful of whether a party could actually pay the damages your client is likely to demand. It is always a good idea to include a requirement that the parties carry adequate insurance, with the adequacy being defined in the agreement based on the project. Again, depending on the size and scope, your agreement may require additional language concerning the rating of the insurance provider, and notice to you of any changes to the policy, or whether you should be formally added as an additional insured to the policy.

Indemnification. It is sometimes easier to think of indemnity as the right of one person to seek reimbursement or refund from another party, because of something that happened to the party seeking the reimbursement or refund, that really should have happened to (or been covered financially) by someone else. Black's Law Dictionary describes indemnity as "a duty to make good any loss, damage, or liability incurred by another." You might also hear indemnity obligations referred to as "hold harmless" obligations, since one party is obligated to hold another harmless. This type of protection is typically included as a section of an agreement, but in some cases can be the subject of a stand-alone agreement.

The parties are typically referred to as the Indemnitee or the Indemnified Party – referring to the person wanting protection, or the Indemnifier or Indemnifying Party – referring to the person promising (warranting) to minimize harm to the indemnitee.

To be addressing what on its face is a fairly simple concept, indemnification provisions are notoriously complex and must be prepared with great caution. While not always, many times a contract will include a mirrored-type indemnity obligation between the parties, such that Party A agrees to indemnify Party B for certain losses or damages, and in return Party B agrees to indemnify Party A for certain other losses or damages. It is also common for there to be exclusions to the losses or damages that will be addressed by indemnification. Perhaps the most common exclusion is for negligence or fault of the party seeking indemnification. The theory is that a party bearing all or partial responsibility for the loss (due to negligence or fault) should not benefit at the expense of another (what would be the Indemnifying Party).

Indemnification provisions often include very methodical steps to follow when a

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loss is experienced, so that the other party is immediately notified and given the opportunity to step in and take control of the process. It is also quite common, especially in business sales transactions for there to be caps and baskets on the amount an Indemnifying Party can be required to pay. As the name suggests, a cap places an upper limit on the amount that can be recovered by an Indemnified Party from an Indemnifying Party; a basket should be thought of as a deductible – the out-of-pocket amount the Indemnified Party must spend before it can seek any indemnification from an Indemnifying Party.

E. That long, section at the end of the document.

READ IT! While you may think that large section near the end all reads the same, and by and large it usually will be similar, things can be slipped in that come back to haunt you. Below is a list of topics typically included in the Boilerplate section and things for you to consider as you draft your agreement:

- Notice: to whom, how and when is it provided? Think about technology – is email acceptable now, what will the future view as acceptable.
- Counterparts: Signatures on multiple pages have been the norm for years, now expect to receive faxed, or more likely PDF or possibly even electronic signatures.
- Headings: He/she/it designations, significance of headings
- Construction; Counsel: Did one party take the lead in drafting? If so, should that party be held to a higher standard? Was each party afforded an opportunity to engage counsel of their choosing?
- Assignment: Never allowed, sometimes if certain steps are first taken, by one or both parties? What about to an affiliate or a buyer of substantially all the assets or control of a party?
- Entirety of Agreement: Does the four corners of the agreement include all of the terms? Or are there side letters that should be included, or perhaps a previously signed NDA? These should be incorporated by specific reference to continue their validity and enforceability. What about subsequent orders or addendums? (such as with a Master Agreement and orders submitted afterwards)
- Severability: what happens if a court determines any provision is invalid or otherwise unenforceable? Should the entire contract be tossed? Should the court "blue line" the agreement to make the necessary edits to make the provision enforceable to the fullest extent of the law?
- Survival: Are there any provisions that should continue to be valid and in effect even after a termination? Confidentiality and non-compete obligations for example.
- Further Assurances: are any subsequent documents or certificates likely to be necessary to fully accomplish what is intended by the agreement?
- Waiver: If one party lets the other "slide" in one instance, is that party now obligated to allow the slide again?
- Remedies Cumulative & not exclusive: provides clearly that either party may pursue any remedy specifically provided for in the agreement, but also seek any others that exist elsewhere (statutory, equity, etc.)

IV. Tips for Drafting Common Business Documents:

A. Settlement Agreements and Releases.

While all contracts are important, additional caution should be taken when drafting a settlement agreement and release. As the title suggests, parties are agreeing to settle a dispute, thereby giving up potential legal remedies they might otherwise be entitled to pursue, in exchange for an agreed upon resolution. It is critical that as the drafter, you ensure that you have a very clear understanding of the

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agreement and that nothing is left open to interpretation.

To do this, the settlement must address the parties involved, describe the claims stated by one against the other, and how the parties have agreed to resolve their differences. This typically means one party agreeing to do (or not do) something in exchange for the release of the claim; or one party is willing to give up and another to receive something in return for releasing a claim. The typical two-party settlement is usually quite easy to understand and therefore to draft; what becomes particularly challenging is when there are multiple parties, with claims and counterclaims against one another. In these situations, it is important that the drafting party takes the time to slowly and methodically walk through each step of the settlement, being sure to recite each step in the settlement to ensure that no expectation or obligation is unintentionally omitted from the settlement. In both the two-party and multi-party situations, you will want to be sure you provide that the settlement is binding as to any spouses, successors, heirs, and assigns, where applicable.

A settlement agreement will often recite only a basic level of background facts. In many settlements the party accused of wrong-doing will specifically state that it denies liability for the act/inaction it is accused of but to avoid prolonged litigation, is willing to settle the matter. Accordingly, some but often not many background facts will be recited in a settlement agreement, as the parties may not be in complete agreement on those "facts."

Included with all settlement agreements is language pertaining to the release. A release can be mutual or one-sided, and may be general or specific. The party giving a release will want the scope to be very narrow, whereas the party benefiting from a release will want the scope to be very broad. The scope of the release will depend on your client's particular position in the situation, and will often turn on which party has the upper hand in negotiation of the settlement.

As with all contracts, a settlement agreement should address the typical boilerplate provisions, such as governing law, dispute resolution, severability, a recitation that the settlement is the entire agreement on the matter, how the settlement may be signed and delivered. If the settlement includes payment of money, then those terms need to be very clearly defined in the settlement. Is a certified check or wire of funds to be made by a certain time? Does the paying party have clear instruction on how to deliver payment?

If the settlement is in connection with a matter pending before a Court, be sure to include language in the settlement addressing dismissal of the matter, with prejudice so that the matter cannot be reopened. Likewise the settlement should discuss payment of any Court-related fees or expenses.

B. <u>Real Property Leases</u>

There is a list of basic issues that should be addressed in every lease, regardless of whether the lease addresses a single or multiple parcels. First and foremost, like every contract, the lease must identify the parties. Residential leases typically define the parties as landlord and tenant whereas commercial leases typically use lessor and lessee, although these are not absolute rules. As we covered earlier, the use of shorthand or defined terms for the parties is to avoid anyone becoming confused, so you may be better served by using more identifying terms.

Every lease should define the property at issue. The best way to do this is with both a street address (which may include an apartment or office number and a building name) but also a legal description (such as in the case of unimproved real property). In Mississippi neither the lease itself nor a memorandum of lease is required to be filed in the real property records of the chancery court where the property is located, but it could be, and if that is the case then the actual legal description of the property will be required. The obvious key is to avoid any misunderstanding as to exactly what is being leased.

The term of the lease is also critical. While this may seem like a simple concept, care should be taken to clearly define when the lease term begins and ends, and also exactly what happens as the term comes to an end. Does the lease renew automatically or does it have a definite end date? Speaking of renewal, must notice be given to renew (or to avoid auto-renew)? If so, you must be very clear on exactly when, how and to whom such notice must be given. As is the case with every contract, notice should be given in writing, and the lease should specify whether an electronic mail or fax is acceptable.

Besides the property description and term, the provisions dealing with money must be clear and concise. A well-drafted lease will clearly state the amount of rent, when rent is due, and where it should be paid, and when/if the landlord/lessee may alter the rent amount. The lease should clearly set the expectations of both parties, and prescribe the mechanism for addressing disputes and seeking remedies for defaults.

Additionally, the lease should specify if any prepayments or deposits are required at the inception of the lease term, and if so, where those funds must be held. It is important to know at the beginning of the relationship if interest can be earned on any held funds, and if so, to whom does the interest belong. At the end of the term

Continued on next page

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it is important to have been clear in the lease, how deposited funds may be used (repairs, damages, cleaning, etc.) and how quickly deposits must be released.

A lease should also specify how the parties expect the property to be used, and it is quite common for a landlord/lessee to place restrictions on that use. There may be restrictions on assignment or subleasing, as well as provisions that address a party's use of common areas and parking. Additionally, most leases will allow the landlord/lessee to access the premises under certain circumstances, which may include routine inspection or repairs, but may also include the right to show the party to prospective new tenants if notice to terminate has been delivered.

Finally, most leases will include a provision that waives the obligation on the landlord to give notice of things like when the rent is due, placing the burden of knowing that date on the tenant. And while it may be obvious given the location of the property, it is always best to include a provision addressing governing law and venue.

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One closing word of caution, real estate leases, as the name suggests, address matters of real estate that are very state-specific matters. If you are called upon to review a lease involving property in another state, first make sure you are familiar with that state's specific laws regarding real estate matters and consider whether the prudent course is to retain local counsel.

C. Intellectual Property

We discussed some of the nuances around ownership in an earlier section, but in addition, you should take care to address issues of control and confidentiality. Can the developer use anything they learned while working with you, in future projects unrelated to you? Your confidentiality provisions (or separate agreement) should be very clear on what, if anything, can be used. Likewise you might consider tying your payment obligations to a deliverable structure. Be careful not to get to the end of a contract, having paid everything due to the developer, only to learn (a) there is a problem with the final product or (b) the developer simply refuses to deliver the product to you. It seems implausible that anyone would behave in such a way, but it does happen. For this reason, you should consider an escrow arrangement (especially on larger and more costly projects) where components of a development are deposited with a neutral third-party as they become available (and, as you pay for them). This way, you will always be able to get access to what is yours, without the fear of being held hostage.

D. Covenants Not to Sue

Earlier I discussed settlement agreements and releases, and the covenant not to sue is certainly a related concept. Suppose that one party has a claim against another party, but has not yet filed a complaint with a Court; the parties reach an understanding on how they will resolve the claim. The parties will enter into a settlement agreement and release of the claim at issue, but since there is no pending litigation, adding a covenant not to sue provides an additional layer of protection for the released party, in that the party with the claim promises to not pursue additional relief from the court. The covenant not to sue protects a party from future lawsuits.

E. Joint Venture Agreements

You may be called upon to draft a Joint Venture Agreement when two or more business entities or individuals decide they want to enter into a temporary business relationship, often to pursue a particular project. This is viewed as a way to share the risk and reward associated with a business opportunity. The joint venture model also allows parties to gain access to larger opportunities that a party acting alone might not be fully competent or capable of pursuing. This model is often utilized by businesses wanting to share resources and/or contacts, to gain access to projects, such as government contracts – many of which have specifically defined participation.

These parties like having the ability to work together under a contractually negotiated set of terms, but without long-term commitment. Joint Ventures are typically structured as either pure contractual creatures or the parties may formally organize a partnership.

1. Contractual. Just as the name suggests, the parties retain their separate identify and merely enter into a contract to set out the terms under which they will work together on a particular project. This contract will address such topics as decision-making by the parties, roles, obligations and expectations by and among the parties – often parties enter into a joint venture to bring together parties with compatible strengths and weaknesses. The contract will also address how profits and losses are allocated among the parties. While the parties are often working very closely with one another, each retains its own legal identity, separate from the other, maintains separate accounting records, and possesses no decision-making authority over the other. You see this more informal structure used to pursue business endeavors related to research and product development.

2. General Partnership. If the project being pursued is of a significant enough size and opportunity, the parties may decide to enter into a more formal arrangement as a general partnership,

which today can also be accomplished via the limited liability company entity. In this structure, a partnership or operating agreement will be entered into by the parties, which will address how decisions are made for the new entity, roles, obligations and expectations by and among the parties and with the new entity, but this time with respect to financial matters, all funds will flow through the entity and then out to the partners/members as distributions. You see this more formal structure in real estate or government contracting opportunities.

A typical Joint Venture Agreement will address the type of venture details, such as its name, address, purpose, etc., a specified term of the venture, names of the parties to the venture and details around each party's contribution to the venture, the roles, expectations and obligations, voting rights, details on management of the venture, details on the financial structure of the venture and how/when distributions will be made, how and when the venture may be dissolved and if/when a party's interest may be assigned to a third-party, as well as confidentiality, non-disclosure, non-solicit and other like restrictive provisions.

F. Employment Agreements

Mississippi is an "at will" state meaning an employment agreement is not a requirement, however in certain factual situations, having an agreement in place is prudent. When that is the case, there are several concepts that should be fully considered and included in the agreement.

> *Practice Point:* Employment law, like Intellectual Property, is another area where you should consider engaging someone who practices in this area on a regular basis.

The name of the parties, including address; the start date; the title and description; the location where the employee will be expected to appear for work; the hours of work that are expected, including any regulations associated with the employment; if the employee starts on a probation or trial period, that should be spelled out in the agreement; salary, stated as a gross figure before taxes and applicable deductions; benefits (if any) as well as any related expenses to the employee and the handling of those employee paid expenses (paycheck deduct or paid by the employee); handling of work related expenses; vacation or personal leave and the handling of same (i.e. all earned in January or earned over the course of the year, can unused time be rolled over from year to year) and holiday time; issue around long-term sickness or disability (doctor's note, release to work, etc.); confidentiality, non-compete, non-solicit provisions; dispute, grievance and disciplinary procedures; applicability of handbook or other company policies.

In addition to the employment-specific terms identified above, the employment agreement should include customary boilerplate provisions such as governing law, venue, notice provisions, entire agreement, how and when the document may be signed and accepted by the employer.

G. Purchase and Sale Agreements

The first thing I would offer is that there are entire seminars, some lasting for multiple days, dedicated solely to the topic of drafting Purchase and Sale Agreements. Building off of what I have already covered in the more general contract drafting sense, below are a few new areas or areas that take on greater importance in the case of agreements related to buying and selling substantially all of a party's assets, stock or membership, etc. To simplify this discussion, I have approached this in terms of an asset acquisition.

- Purchased Assets: Be clear on the outset what is and is not being purchased. Schedules are typically used to specify assets being purchased.
- Assumed Liabilities: What liabilities, if any, are being assumed?
- Due Diligence: Due diligence will be a new area addressed in the sale agreement setting. How, when, with whom and at whose expense will it be conducted?
- Purchase Price; Adjustments: How will the purchase price be calculated? Unlike standard purchase agreements for goods, many times a calculation is involved and/or the final price cannot be determined until only days prior to closing. What is the process for making that calculation, and then reviewing and reaching agreement on

Continued on next page

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it? What happens if the parties are unable to agree?

- Escrow: Will there be an escrow or a holdback of a portion of the purchase price? Were their particularly troubling matters revealed during due diligence? Litigation or environmental issues?
- Representations and Warranties: Extreme care and consideration must be paid to the representations being made. It is within these representation provisions that the average lawyer is separated from the extraordinary. You need to spend time with your client, make sure you understand their business, and any unique or unusual risks or practices (environmental, medical).
- Intellectual Property: As with contracts addressing IP matters, confidentiality is of utmost importance in this setting. Will there be non-compete and/or non-solicit obligations owed by the selling entity and perhaps its principals after the closing?
- Prerequisites to Closing: What other events must (or must not) occur before either party is obligated to close?
- Closing; Covenants: Will the parties sign and close simultaneously, or will there be a period between signing and closing? If the latter, as the purchaser you may want to include covenants setting forth what the seller can and cannot do with the assets during that window. Is permission required before taking or not taking certain steps?
- Employees: Beyond typical assets, are there particular employees that are critical to the transition and ongoing success of the business after the close? Should agreements with those individuals be a condition to closing?
- Termination: Can, or under what circumstances may either party terminate the purchase discussions or a previously signed agreement? Is the non-terminating party entitled to damages to cover costs incurred in good faith?
- Remedies; Indemnification: Contractual provisions addressing a party's right to seek particular remedies (specific performance?) or damages if performance is not feasible should be carefully considered and drafted. Indemnification provisions are quite standard in such agreements. Should there be a "basket" or perhaps a "cap" for some or all indemnifiable events?

To recap, a well written contract is concise, clear, unambiguous, and addresses all of the issues that need to be covered within your document. ■

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Irrevocable Resignations:

June A. (Placer) Oswald of Metarie, Louisiana: The Supreme Court of Mississippi accepted the **Irrevocable Resignation** of Ms. Oswald in Cause No. 2018-BD-01637-SCT and entered an order of **Disbarment** based upon her disbarment from the practice of law in Louisiana. Ms. Oswald is not eligible to apply for reinstatement.

Suspensions:

Daniel Bradley Mahan of Ripley, Mississippi: A Complaint Tribunal imposed an **Eighteen (18) month Suspension** effective forty-five (45) days from February 15, 2018, in Cause No. 2017-B-1284 for violations of Rules 1.2(a), 1.3, 1.4(a), 4.1(a), 8.4(a)(b)(c) and (d), MRPC. Mr. Mahan must apply for Reinstatement in accordance with Rule 12 of the Rules of Discipline of the Mississippi State Bar (MRD), in order to return to the practice of law.

Mr. Mahan was retained in August of 2015 to handle a divorce. The client changed her mind multiple times over the next year as to whether to pursue a divorce from her husband. In June of 2016 the client contacted Mr. Mahan to resume the divorce process. Mr. Mahan told the client that he would file the petition and have a temporary hearing set. Mr. Mahan failed to file the petition or set the temporary hearing. Approximately two months later the client's grandmother demanded an order from the temporary hearing. Mr. Mahan superimposed the Chancellor's signature from a different order on a temporary order Mr. Mahan had previously prepared. Mr. Mahan gave the forged order to his client's grandmother and then later filed the petition for divorce. The client's grandmother attempted to have the sheriff's department enforce the forged order. The sheriff's department contacted the chancery court and the chancellor determined the signature on the order was not his.
At the hearing, Mr. Mahan admitted the allegations of the Formal Complaint and also offered in mitigation that he had no prior disciplinary history and at the time of trial was dealing with a series of personal family issues.

Rule 1.2(a), MRPC, states that a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued. Rule 1.3, MRPC, states that a lawyer shall act with reasonable diligence and promptness in representing a client. Rule 1.4(a), MRPC, states that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. Rule 4.1(a), MRPC, states that in the course of representing as client a lawyer shall not knowingly made a false statement of material fact or law to a third person. Rule 8.4(a), MRPC, states that it is professional misconduct for a lawyer to violate or attempt violate the rules of professional conduct. Rule 8.4(b), MRPC, states it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. Rule 8.4(c), MRPC, states it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(d), MRPC, states it is professional misconduct to engage in conduct that is prejudicial to the administration of justice.

Public Reprimands:

Cory Nathan Ferraez of Petal, Mississippi: A Complaint Tribunal imposed a **Public Reprimand** in Cause No. 2018-B-1599 for violations of Rules 8.4(a)(b) and (c), MRPC.

On May 15, 2018 Mr. Ferraez advised the Bar that he had pleaded guilty in Lowndes County Circuit Court to the misdemeanor crime of voting outside the district of his legal domicile, which was a violation of Miss. Code Ann. § 97-13-35(1). Mr. Ferraez voted by absented ballot in Lowndes County, Mississippi in October of 2015, while he was a full-time resident of Forrest County, Mississippi. In order to vote absentee ballot in the November 2015 election, Mr. Ferraez was required to and did sign a sworn statement that he was "duly qualified and registered in the Brandon Precinct of the County of Lowndes, and State of Mississippi, coming with the purview of the definition of 'ABSENTEE ELECTOR' will be absent from the county of my residence on election day…" Mr. Ferraez's absentee ballot was actually mailed to the address where he was residing in Forrest County, Mississippi. At the time that Mr. Ferraez voted in the election by absentee ballot, he was not duly qualified to vote as an absentee elector in Lowndes County because he was a resident of Forrest County.

Rule 8.4(a), MRPC, provides that it is professional misconduct to violate the rules of professional conduct. Rule 8.4(b), MRPC, provides that it is professional misconduct to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. Rule 8.4(c), MRPC, provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Private Reprimands:

A Complaint Tribunal imposed a **Private Reprimand** in Cause No. 2018-B-1069 for violations of 1.4(a) and 1.5(b), MRPC.

An attorney was hired to enroll and collect a foreign judgment against a Mississippi resident. Most of his communications were through the client's Louisiana lawyer who obtained the original judgment. The attorney agreed to perform the work for a flat fee of $2,500.00. The Louisiana lawyer sent the attorney a letter confirming the representation and forwarding the client's check for $2,500 to be billed against at a rate of $200 per hour. The attorney failed to correct the client or Louisiana lawyer's misunderstanding as to the basis of his fee. The attorney also admitted that he failed to reasonably communicate with the client early in his representation. The attorney continued to represent the client and has charged her no additional fee to complete the representation.

Rule 1.4(a), MRPC, requires a lawyer to keep a client reasonably informed about the status of the matter and promptly comply with reasonable requests for informa-

Continued on next page

tion. Rule 1.5(b), MRPC, requires a lawyer to communicate the basis of his fee, preferably in writing, before or within a reasonable time after commencing the representation.

Reinstatements

Joe Gregory Stewart of Gulfport, Mississippi: The Supreme Court of Mississippi **Denied Reinstatement** in Cause No. 20174-BR-1553.

Richard Vaughn Johnson of Wiggins, Mississippi: The Supreme Court of Mississippi **Reinstated** Mr. Johnson from **Disability Inactive Status** in Cause No. 2017-BR-1531. Pursuant to the Court's Order Mr. Johnson shall refrain from practicing law pending the outcome of previously stayed disciplinary matters. ■

You are invited to attend a Memorial Service honoring deceased members of The Mississippi Bar

Tuesday, October 15, 2019 at 2:00 p.m.

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Reception following Service

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Young Lawyers Division News

The Young Lawyers Division's Board of Directors met at the Annual Meeting. Pictured (front row) Christina Seanor, Christy Malatesta, Jaklyn Wrigley, Ann Marie Pate, Geoffrey Calderaro, (back row) Matthew Shoemaker, Alex Shoemaker, Brad Reeves, Dr. Will Pepper, Catie Hester, Ashley Gunn and Taylor Lawrence.

Young Lawyers Division President Ann Marie Pate with guest speaker Dr. Will Pepper who spoke on "The Dividends of Leadership: Invest in Yourself and Spread the Wealth"

Officers and Newly Inducted Fellows of the Young Lawyers – Officers seated: Cham Trotter, Fellows Past President; Jennifer Ingram Johnson, Fellows President; Chad Russell, Fellows Vice-President; York Craig, Fellows Secretary-Treasurer. New Inductees: Corey Hinshaw of Jackson; Joyce Hall of Jackson; Amanda Evans of Biloxi; Keith Pearson of Oxford; and Brad Reeves of Jackson

At the end of the Fellows of the Young Lawyers Breakfast, President Jennifer Ingram Johnson passed the gavel to incoming Fellows President Chad Russell

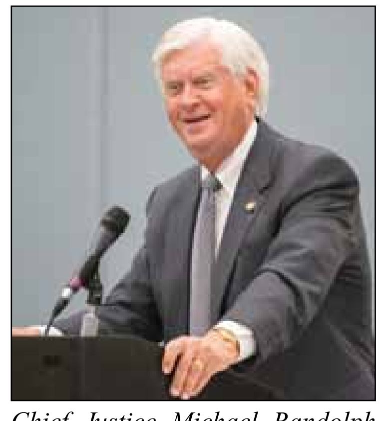
114th Annual Meeting Highlights of the 2019 Bar Convention

MS Bar President Pat Bennett, pictured right, presented the gavel to incoming President Amanda Tollison of Oxford

Annual Business Session

Mississippi Access to Justice Commission presented "The Mississippi GAP Act: Protecting the Rights of Vulnerable Adults" with speaker Judge Catherine Farris-Carter

Judge Keith Starrett, pictured left, received the Chief Justice Award from Chief Justice Michael Randolph



Chief Justice Michael Randolph addressed the Annual Business Session

The Attorney General Candidates Forum was moderated by The MS Bar's Public Information Committee Chair, Chad Russell, pictured left. Candidates participating in the Forum were Jennifer Riley-Collins, Andy Taggart, and Lynn Fitch

Mississippi Federal Judiciary presented Thursday's General Assembly with guest speaker Mark Lanterman, pictured center. Also shown are Judge Sharion Aycock and Chief Judge Dan Jordan

David Caldwell, Senior Attorney with the Mississippi Department of Revenue, spoke on "Legal Ethics in the Public Sector"

Becky Pruett Denham of Hattiesburg, Kim Harlin of Hattiesburg and Lauren Harless of Purvis following a Section Meeting

Mississippi Federal Judicial General Assembly

Price Prather Luncheon – Guest speaker Elizabeth Heiskell, pictured left, author of "What Can I Bring" Cookbook and "Southern Living Party Cookbook" with Price Prather Luncheon Subcommittee Chair Jennifer Scott

Price Prather Luncheon – Wes Johnson and Jennifer Ingram Johnson

Price Prather Luncheon – Rodger and Ruthie Wilder

Breakfasts and Luncheons

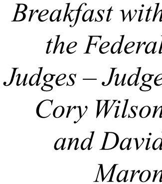
Price Prather Luncheon – Judge Catherine Farris-Carter and Judge Lillie Blackmon Sanders

Price Prather Luncheon – Judge David McCarty and Judge Tony Lawrence

Price Prather Luncheon – RaToya Gilmer, Greta Harris, and Judge Deborah Gambrell

Price Prather Luncheon – Judge Lisa Dodson, Judge Jacqueline Mask, Nina Stubblefield Tollison, and Amanda Alexander

Breakfast with the Federal Judges – Judge Carlton Reeves, Arthur Johnston, and David Crews



Breakfast with the Federal Judges – Judge Cory Wilson and David Maron

Breakfast with the Federal Judges – Judge Selene Maddox, Danny Miller, and Judge Katharine Samson

Sandcastle/ Sand Sculpture Contest Winners

Legal Runaround

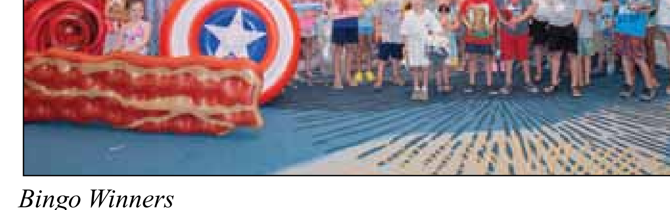
Hoola Hoop Contest Winners

Family Events

Legal Runaround

Kids' Limbo Contest Winner

Bingo



Bingo Winners

Adam Hopper of Grenada and family

Lee Ann and Calvin Thigpen of Jackson

Fred Banks of Jackson and family

"You've Got a Friend in Me" Welcome Reception

Jenny Tyler Baker of Biloxi and family

Judge Jack Wilson of Madison and family

The Lamar family from Senatobia

Judge Keith Starrett of Hattiesburg and family

Lee and Martha Ann Thorne of Jackson

Bryon Russell and Judge Carol Russell of Hattiesburg

Judge Jim Chaney and Monnie Chaney of Vicksburg and Sean Culhane of Birmingham, AL

Sam and Kim Kelly of Madison and family with David and Catherine Case of Oxford and family

Brooke and Mitch Driskell of Oxford and family

"You've Got a Friend in Me" Welcome Reception

Katharine and Joe Surkin of Madison

Bubba and Celeste Bramlett of Madison and Marc and Mandy Bryant of Brandon

Matthew Thompson of Madison and family

Robert and Debra Gibbs of Jackson

Caroline and Miles Forks of Oxford

Tiffany and James Graves of Jackson

Chad Montgomery of Grenada and family

Chad Reynolds of Brandon and family

Business Law and Gaming Law Sections

Business Law and Gaming Law Sections

Section Meetings

Government Law Section

Government Law Section

Litigation and Appellate Law Sections

Litigation and Appellate Law Sections

ADR Section

Health Law

Health Law

Prosecutors Section

Prosecutors Section

Family Law Section

Real Property Law Section

Real Property Law Section

Section Meetings

Family Law Section

Family Law Section

Workers' Compensation and Labor & Employment Law Sections

Workers' Compensation and Labor & Employment Law Sections

SONREEL Section

Estates & Trusts and Taxation Section

"All That Jazz" President's Reception

MS Bar President Pat Bennett with her husband Claude Brown

Josh Wise of Tupelo and family

Arthur and Beverly Johnston of Madison and daughters

Richard and Catherine Sliman of Gulfport and Mary Cate Sliman

Judge Cory Wilson, Stephanie Wilson, Amanda Tollison and Gray Tollison

Judge Celeste Wilson of Southaven with family

Christy and Jacob Malatesta of Jackson

Judge Larry Little and Debbie Little of Oxford

Judge Smith Murphey and Carole Murphey of Batesville

Sam Buchanan of Hattiesburg and family

Meade and Holly Mitchell of Jackson

Gene and Jan Harlow of Laurel

"All That Jazz" President's Reception

Matt and Jennie Eichelberger of Jackson

Judge Tom Lee and Norma Ruth Lee of Jackson

Cham Trotter, Linda Thompson, James Robertson, and Ben Griffith

The Tollison family of Oxford

Everyone enjoyed the "All That Jazz" President's Reception

Music was provided by a great jazz band

Children's "Build-a-Bear" Party

2018-2019 Distinguished Service Award

Carlyn M. Hicks
Jackson

The Mississippi Bar President Pat Bennett, pictured right, presented the 2019 Distinguished Service Award to Carlyn Hicks of Jackson during the Awards Program at The Mississippi Bar's Annual Meeting

2018-2019 Judicial Excellence Award

Judge Denise Owens
Jackson

Judge Denise Owens, pictured left, accepts The Mississippi Bar's 2019 Judicial Excellence Award from Mississippi Bar President Pat Bennett during the Awards Program at The Mississippi Bar's Annual Meeting

2018-2019 Lifetime Achievement Award

Edwin Lloyd Pittman
Ridgeland

Edwin Lloyd Pittman accepts The Mississippi Bar's Lifetime Achievement Award from Mississippi Bar President Pat Bennett during the Awards Program at The Mississippi Bar's 2019 Annual Meeting

2018-2019 50 Year Anniversary Members

50 Year Anniversary Members attending Convention were Judge Jerry Mason, Meridian; David Houston, III, Tupelo; Charlie Swayze, Greenwood; David Cobb, Gulfport; Carter Dobbs, Amory; and Warren Cox, Jackson

2018-2019 Susie Blue Buchanan Award presented by the Women in the Profession Committee

Chief Judge Donna Barnes
Tupelo

Chief Judge Donna Barnes, pictured right, accepts the Susie Blue Buchanan Award from Women in the Profession Committee Chair Jennifer Hall

2018-2019 Outstanding Young Lawyer Award presented by the Young Lawyers Division

Christina M. Seanor
Jackson

The Young Lawyers Division Past President Brad Reeves presents Christina Seanor with the 2019 Outstanding Young Lawyer Award at The Mississippi Bar's Annual Meeting

2020 Calendar

published by The Mississippi Bar Young Lawyers Division

CONTENTS INCLUDE

- County, Circuit, Chancery, Court of Appeals and Supreme Court Judges
- U.S. Bankruptcy Court & U.S. District Court Personnel
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- 2020 Calendar
- MS Legal Organization Listings
- Federal & MS Real Estate Taxes
- MS State Government
- MS Bar Staff Roster
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A special thanks to the following Mississippi Attorneys and Judges who served as facilitators during the Bar's 2019 James O. Dukes Law School Professionalism Orientation Program

F. Hall Bailey....Jackson
Robert Biggs III....Jackson
William Brown....Hernando
Sam Buchanan....Hattiesburg
Roy Campbell III....Jackson
Neely Carlton Lyons....Ridgeland
Michael Carr....Cleveland
Mark Chinn....Jackson
Jennifer Hinds Collins....Memphis
John Cox....Cleveland
Frank Dantone, Jr.....Greenville
Joey Diaz....Madison
Robert M. Dreyfus, Jr.....Meridian
Brooke Driskell....Oxford
La'Verne Edney....Jackson
George Fair....Jackson
Steven E. Farese, Sr.....Ashland
Steven E. Farese, Jr.....Ashland
Barry Ford....Madison
Joseph Gibbs....Clarksdale
RaToya Gilmer....Jackson
Judge Jim Greenlee....Oxford
Ben Griffith....Oxford
Judge Tiffany Grove....Jackson
Eugene M. Harlow....Laurel
Renee Harrison Berry....Hazlehurst
Leyser Hayes....Jackson
Taylor Heck....Senatobia
F. Ewin Henson III....Greenwood
Jennifer Ingram Johnson....Hattiesburg
Robert Jolly....University
Walker W. Jones, III....Jackson
Judge Winston Kidd....Jackson
Adam Kilgore....Jackson
Parker Kline....Oxford
Penny Lawson....Vicksburg
Maureen McDonald....Jackson
Nicole McLaughlin....Tupelo
Larry Moffett....Oxford
Steve Montagnet III....Ridgeland
William Myers....Hernando
Jody Neyman....Hernando
Richard Noble....Indianola
Judge Troy Odom....Flowood
CO Oldmixon....Poplarville
Beth Orlansky....Jackson
Steve Orlansky....Jackson
Lanny Pace....Jackson
Judge Michael Parker....Hattiesburg
Ben Piazza, Jr.....Jackson
Randy Pierce....University
Crymes Pittman....Jackson
Judge John Price....Magnolia
Steve Rosenblatt....Ridgeland
John Rouse....Jackson
Chad Russell....Jackson
Missye Scott....Jackson
Catherine Servati....Tupelo
Bob Smith....Ocean Springs
Dellwyn Smith....Jackson
Rhea Tannehill....Oxford
Gray Tollison....Oxford
Jeremy Vanderloo....Jackson
Leonard Van Slyke, Jr.....Jackson
Judge George Ward....Natchez
Paul Watkins....Oxford
Rebecca Wiggs....Jackson
Juan Henry Williams....Memphis
Margaret Williams....Jackson
Tommy Williams....Ridgeland
Marcus Wilson....Jackson
Tom Womble....Batesville

21st Annual James O. Dukes Law School Professionalism Orientation Program

James O. Dukes Law School Professionalism Orientation Program

Bar Volunteers Meeti

Access to Justice Committee

Bench-Bar Liaison Committee

Child Welfare and Child Advocacy Committee

Ethics Committee

Lawyers and Judges Assistance Committee

ng on Committee Day

Military Assistance Committee

Technology Committee

Unauthorized Practice of Law Committee

Women in the Profession Committee

Professionalism Committee

SAVE THE DATE

The Eighth Annual Mary Libby Payne Lecture on
Christianity and the Law
December 4, 2019
11:30 a.m.
Mississippi College School of Law Student Center

Featuring:
Stan Buckley
Executive Director of But God Ministries

About Stan Buckley:

Stan is the founder and Executive Director of But God Ministries and formerly served as Senior Pastor of three churches over a 16 year period. In addition, he practiced law in Hattiesburg, MS for four years before becoming a pastor in 1995. His education includes degrees from the University of Southern Mississippi (B.S. 1988), Mississippi College School of Law (J.D. 1991), and New Orleans Baptist Theological Seminary (M.Div. 1998, D.Min. 2009). Stan has been married to Jewell since 1989 and they have twin sons (1993) and a daughter (1996).

History of the Mary Libby Payne Endowed Lectureship on Christianity and the Law

Mary Libby Payne served not only as the first Dean of Mississippi College School of Law but she was also elected as one of the first members of the Mississippi Court of Appeals. A long time member of the faculty of MC Law, she established the Christian Legal Society chapter at the law school. The Mary Libby Payne Lecture Series on Christianity and the Law was established in 2012.

The Mississippi Bar Receives Harrison Tweed Award from American Bar Association

The Mississippi Bar has been selected to receive the ABA's 2019 Harrison Tweed Award. This award is given on behalf of the American Bar Association Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association. The award recognizes bar associations that have made extraordinary efforts to improve civil legal services or indigent defense services available to people living in poverty in their communities.

The award was presented to the Mississippi Bar President, Pat Bennett, at the August 9th meeting of the American Bar Association in San Francisco, California.

Mississippi Bar President Pat Bennett stated, "I am elated that The Mississippi Bar has been named the recipient of the Harrison Tweed Award. The award recognizes our bar association for making extraordinary efforts to improve legal services to people living in poverty. In 2018-2019, members of the bar and judiciary made an extraordinary effort to sponsor legal clinics and work to improve access to justice for so many families and marginalized and disenfranchised members in every county in Mississippi. We performed pro bono legal services to ensure access to justice for persons who would not otherwise have access to the courts. The Mississippi Bar is working to transform lives and our communities throughout the entire State."

Harrison Tweed award presentation at ABA meeting – The Mississippi Bar President, Pat Bennett, (pictured center) receiving the Harrison Tweed Award on behalf of The Mississippi Bar at the August Annual Meeting of the American Bar Association. The co-sponsors of the award are Radhika M. Singh, Chief, Civil Legal Services, National Legal Aid & Defender Association (NLADA) and Theodore Howard, Chair, ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID).

In 2018, over 450 Mississippi lawyers provided over 1,300 hours of free legal services to 850 Mississippians in need. Legal clinic events were organized and supported by the Mississippi Access to Justice Commission, chancellors and their staffs in every judicial district in the state, the Mississippi Volunteer Lawyers Project, Legal Services offices, local bar associations, and volunteer lawyers. The statewide pro se initiative began with a challenge from the then Chief Justice of the Mississippi Supreme Court, Bill Waller, to all chancellors and members of The Mississippi Bar to help pro se litigants in every chancery court district. Volunteer attorneys provided free legal advice and/or limited assistance to pro se litigants in the areas of divorce, custody, emancipation, name changes, guardianships, expungements, and simple estate planning.

Joy Phillips, past Mississippi Bar President and past Co-Chair of the Mississippi Access to Justice Commission, stated, "to see its work come to this point where it was carried out at a local level in every judicial district in our state in the course of a year is inspiring. This is an extraordinary delivery of legal services to the citizens of the State."

Incoming Mississippi Bar President Amanda Tollison stated, "When more than 850 people living in poverty in Mississippi are granted guardianships, are awarded custody or adopt a child, have visitation and child support issues resolved, obtain wills or emancipations – that is cause for celebration, and the 450-plus lawyers and judges who volunteered to provide over 1,300 hours of free legal services should be recognized. That is why I was pleased to nominate the Mississippi Bar for the Harrison Tweed Award. The Statewide Legal Clinic Events initiated by the Mississippi Access to Justice Commission, supported by the Mississippi Supreme Court, coordinated by chancellors in every judicial district in the state, and staffed by volunteer members of the Mississippi Bar and law students from both law schools expanded the delivery of civil legal services to those in need and helped make progress in closing the access to justice gap in Mississippi."

LL.M. Programs at Mississippi College School of Law

MC Law's first group of foreign LL.M. students in 2013 included students from South Africa, Brazil and Liberia.

In addition to the traditional J.D. degree, MC Law offers an LL.M. (Master of Laws) for lawyers who wish to gain expertise in a specialized field of law. An LL.M. is an internationally recognized postgraduate law degree that generally takes one year to complete. MC Law offers several post-J.D. degree programs, including a nationally recognized LL.M. program for foreign-educated lawyers.

In June of 2019, the American Bar Association granted its acquiescence to MC Law's most recent LL.M. program, the Military & Veteran's LL.M. degree. The law school designed this specialized program in association with a board of federal judges, law professors and prominent Judge Advocates from all military services. This LL.M. is designed for working professionals in the Reserve Component or aspiring applicants to the Judge Advocate Generals' Corps and will launch in the spring of 2020.

This newest program will join the four LL.M. degrees currently offered at MC Law. The Traditional (General) LL.M. allows lawyers to craft a unique academic plan in a specialized subject matter, such as intellectual property/cyber law, health law, civil law, international law, business/corporate law, criminal law, or human and civil rights. The Advocacy LL.M. focuses on hands-on practical training and skills development for lawyers who wish to improve their advocacy skills. Lawyers wishing to study abroad can do so through MC Law's International & European Law Studies LL.M., which includes a semester of study at Lille Catholique University of France.

In the summer of 2018, Senator Roger Wicker met with LL.M. students, including students in the general LL.M., International & European Law Studies LL.M., American Legal Studies LL.M. programs, and an exchange student from Slovenia.

Now in its sixth year of operation, the LL.M. in American Legal Studies prepares foreign-trained lawyers to pass a U.S. bar exam. The program includes a summer immersion class that introduces foreign attorneys to the U.S. legal system and includes on-site instruction in Washington, D.C. In 2019, *The International Jurist* magazine named MC Law's American Legal Studies LL.M. as an "A+" rating for value and overall law school experience and as an "A" for career opportunities. Participating students range from seasoned practicing lawyers from foreign countries to recent graduate students of foreign universities. No matter the stage of their legal career, these students work closely with Professor Richard Meyer, MC Law's Director of LL.M. programs, who serves as a personal mentor to students enrolled in the LL.M. programs. ■

SAVE THE DATE

The 8th Annual Mary Libby Payne Lecture on Christianity and the Law

December 4, 2019
11:30 a.m.

Mississippi College School of Law Center

featuring
Stan Buckley
Executive Director
of
But God Ministries

University of Mississippi Law School

Butler Snow Lecturer and Professor of Law at UM Mercer Bullard has been selected to serve on the Independent Task Force on Enforcement for the Certified Financial Planner Board of Standards.

UM Law was recently named a Best Regional Law School for Black Students by Lawyers of Color's Black Student's Guide to Law Schools and Firms.

UM Law alumna Kimberly Russell has assisted Mississippi Supreme Court Justice Dawn Beam (also a UM Law alumna) in the implementation of the Family First Initiative of the Commission on Children's Justice. Russell began serving on Beam's staff in 2018 to help write memos, analyze the law and offer advisement.

UM Law's incoming class of 2022 has 159 students from 66 undergraduate institutions in 25 states.

In September, the UM sponsored a trip to Sumner, Mississippi for law students and undergraduates to visit the courthouse where the Emmett Till murder trial took place. Students also visited the Emmett Till Interpretive Center to understand more about the history and significance of Till.

The UM School of Law and School of Business have collaborated to launch a concurrent J.D./MBA program. Students in the program have the option to complete both degrees in a total of three years.

Alexander A. Alston, Jr

Alexander A. Alston, Jr, 82, of Jackson, died June 1, 2019. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1964. He spent three years in the Marine Corp as a Marine Captain. During his legal career, he was a member of the American College of Trial Lawyers and American Board of Trial Advocates. He was elected President of The Mississippi Bar in 1991 - 1992. Alston received the John Minor Wisdom Award for Public Service and Professionalism Award and the American Bar Association's Pro Bono Public Service Award. He became a Scout Master in Jackson for Troop 302. After twenty years of service he was honored with the Council's highest honor, Silver Beaver Award. He was a supporter of Stewpot Community Services being a board member and in 1997 the Board President. He was an advocate for the Mississippi Natural Science Museum and was President of their foundation. He was also trained and volunteered for the Mississippi Crisis Line. He co-authored the book, Devil's Sanctuary.

Thad Cochran

Thad Cochran, 81, of Oxford, died May 30, 2019. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1965. Cochran was a longtime U.S. Senator. When Cochran stepped down from the U.S. Senate last year due to health concerns, he was celebrated by Senate colleagues, constituents, and friends as one of the last exemplars of reserve and acumen in the Congress, earning the title "the Quiet Persuader" from Time magazine in their 2006 story on Cochran as one of the Ten Best Senators. His willingness to work across the aisle and commitment to making headway rather than headlines consistently characterized his forty-five years of Congressional service. Cochran was an Eagle Scout. He served on the USS MACON prior to entering law school. After graduating law school, he joined the firm of Watkins & Eager, making partner in under three years. During that time, he served as chairman of the Mississippi Law Institute, lawyer's chairman for the Heart Fund and United Givers Fund, president of the Young Lawyers Division of The Mississippi Bar, board member of the Jackson Rotary Club, and chairman of the Legal Services program of the Jackson Junior Bar. Cochran became involved in local and statewide campaigns for various candidates and ultimately served as executive director of Mississippi Citizens for Nixon-Agnew in 1968. Four years later, Cochran was elected to the U.S. House of Representatives, representing the Fourth District of the state. In 1978, Cochran successfully ran for the U.S. Senate, becoming the first Republican in over 100 years to win statewide election in Mississippi. He served as chairman of the Appropriations Committee.

Albert H. Dickens, Jr

Albert H. Dickens, Jr, 93, of Jackson, died May 23, 2019. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1952. He joined the US Navy, serving in the South Pacific from 1943-1945. After obtaining his law degree he worked for USF&G and Allstate Insurance Company. Then, Albert opened and operated his own law practice in Jackson for close to 40 years. Dickens was a long-term member and greeter at Christ United Methodist Church. He was a member of the North Exchange Club. He served as President and received the Exchangeitte of the Year Award for his outstanding contributions.

Lester G. Fant, III

Lester G. Fant, III, 78, of Washington, DC, died May 19, 2019. A graduate of Harvard Law School, he was admitted to practice in 1966. A native of Holly Springs, Mississippi, Fant spent most of his adult life in Washington, D.C. He was on active duty in the U.S. Marine Corps from 1966-69, rising to the rank of captain and earning a Navy Achievement Medal for his service. Fant was Chairman of Galway Partners and Tow-Path Partners, LLC and their predecessor specialty finance companies that he founded in 1999. He was founder and Managing Director of Arena Investments. Highlights of his legal career include tenures as a partner at Cohen & Uretz and Sidley & Austin, where he sat on the executive committee, and as in-house counsel for Cassidy and Associates. Fant was an adjunct professor at Georgetown University Law Center for 18 years while he practiced law, teaching an advanced course in corporate taxation and ethics in the graduate program. He was awarded the American Bar Association Award for Professional Merit. He served on the Visiting Committee of the College of Arts and Sciences at Vanderbilt University and on the Dean's Advisory Board at Harvard Law School. He was a Trustee of Sidwell Friends School and Aidan Montessori School. He was Chairman of the Fudan Foundation, which supports the Center for American Studies at Fudan University in Shanghai, China. Fant was Chairman Emeritus of President Lincoln's Cottage. He served on the Board and as Chairman the Civil War Trust (now American Battlefield Trust). He served on the Board of the National Trust for Historic Preservation. Ruff sat on the Advisory Board of the Partnership for Responsible Growth. Ruff was a member of Foundry United Methodist Church and attended St. Alban's Episcopal Church.

Preston H. Gough, Jr

Preston H. Gough, Jr, 68, of Ridgeland, died August 8, 2019. A graduate of Mississippi College School of Law, he was admitted to practice in 1978. After law school, Gough continued working for F.W. Williams Agency, Inc. and in 1981 joined Southern Cross Underwriters, Inc. He was elected President of the company in 1982. In 2003, Southern Cross was sold to BB&T/CRC. Gough remained Chairman of the Underwriting Division of the CRC Wholesale Group and was planning to retire at the end of the year.

William G. Gragson, Jr

William G. Gragson, Jr, 76, of Lake Charles, LA, died April 13, 2019. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1968.

Joshua Green

Joshua Green, 96, of Jackson, died August 11, 2019. A graduate of Vanderbilt University Law School, he was admitted to practice in 1949. Green was a lifelong member of St. Andrews Episcopal Church, where he sang in the Boys' Choir for six years. During WWII, he served from 1943-1946 in the U.S. Army in Panama. After law school, Green returned to Jackson where he practiced law from 1949 until his retirement in 2015. He joined the family firm founded by his grandfather in 1874, now Green, Cheney & Hughes, LLP. Green served as president of the Mississippi Art Association and the Jackson Civic Arts Council, Inc. As an avid sailor, he served as Commodore of the Jackson Yacht Club the year the Club House was built. He was also a trustee of St. Andrews Day School.

Michael K. Henry

Michael K. Henry, 65, of Franklin, TN died June 25, 2019. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1980. He was an acting Principal for Compass Compliance Services, LLC. He was an active member of the Church at Woodbine and the Tennessee Bar.

Jay L. Jernigan

Jay L. Jernigan, 65, of Hattiesburg, died August 14, 2019. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1979.

William B. Kirksey

William B. Kirksey, 67, of Brandon, died May 11, 2019. A graduate of the Jackson School of Law, he was admitted to practice in 1976. Kirksey was an Eagle Scout. After law school, he practiced law in Batesville until he came to Jackson in April of 1977 and commenced his practice with Alvin M. Binder. He was board certified as a Criminal Trial advocate and practiced criminal law for forty-two years. He was the only National Trial Board Certified Criminal Defense Attorney in the state of Mississippi. He was recognized by the Mississippi Association of Justice by being awarded a lifetime achievement award and by an honorary Master of Laws Degree from Mississippi College School of Law. During his years in Jackson he also served as an adjunct professor at Hinds Jr. College and Mississippi College School of Law. He was an Honorary Member of The Blue Knights and a representative for the Police Benevolent Association.

C. E. McRoberts, Jr

C. E. McRoberts, Jr, 86, of Jackson, died July 4, 2019. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1958. He was called to active duty in the United States Army where he was stationed at Fort Devens, Massachusetts, Pine Camp (Fort Drum), New York and Taejon, Korea. He separated from the service in 1952. He was a recipient of the Ole Miss Law School Alumnus of the Year Award; and to have served as the founding chairman of The Lamar Order and as president of the University of Mississippi Law School Alumni Association. McRoberts was a member of First Presbyterian Church and served as a Deacon and as Ruling Elder. He also served as a Trustee of the Presbyterian Church of America (PCA) Foundation and as a Moderator of Mississippi Valley Presbytery of the PCA. He practiced law in Jackson for 40 years, retiring in 1998 from Butler, Snow, O'Mara, Stevens & Cannada, PLLC. He was a Fellow in the Mississippi Bar Foundation and served as the founding president of Mississippi Bar Legal Services, Inc. McRoberts was active in the civic affairs of Jackson having served as the president/chairman of the board of Hinds County Ole Miss Alumni Association, Downtown YMCA, Jackson Preparatory School, and Capitol Investors, Inc. He also served on the boards of Metropolitan YMCA, University of Mississippi Foundation, Central Mississippi Legal Services Corporation, First Presbyterian Day School and River Hills Tennis Club.

Richard A. Montague, Jr

Richard A. Montague, Jr, 65, of Jackson, died May 18, 2019. A graduate of Vanderbilt University Law School, he was admitted to practice in 1980. Montague practiced bankruptcy law for many years at Wells, Moore, Simmons and Hubbard and more recently at Phelps Dunbar. During his law career, he served as Chair of the Mississippi Bar's Lawyers and Judges Assistance Committee, President of the Capital Area Bar Association, Editor of the Hinds County Bar Association Newsletter, and was a member of the Mississippi Bankruptcy Conference and American Bankruptcy Institute. He was also active in service to the community, predominantly through Northminster Baptist Church and Habitat for Humanity, where he served as President in 1996-1997. He was a Sunday school teacher for 5th and 6th graders at Northminster Baptist Church for over 25 years. He preached monthly as a lay minister at Castlewoods Place, a senior living community.

Sheila K. Nicholson

Sheila K. Nicholson, 57, of Cape Coral, FL, died June 12, 2019. A graduate of Stetson University College of Law, she was admitted to practice in 2004.

Lloyd G. Spivey, Jr

Lloyd G. Spivey, Jr, 84, of Canton, died June 10, 2019. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1963. Spivey received his commission as a 2nd Lieutenant in the United States Marine Corps and was stationed in Quantico, Virginia. At the end of his military commitment Spivey returned to complete Law School, and in 1963 moved back home to Canton to practice law in his father's firm; Ray, Spivey & Cain. Lloyd eventually started his own firm focusing primarily on oil and gas opportunities throughout the Southeast.

Continued on next page

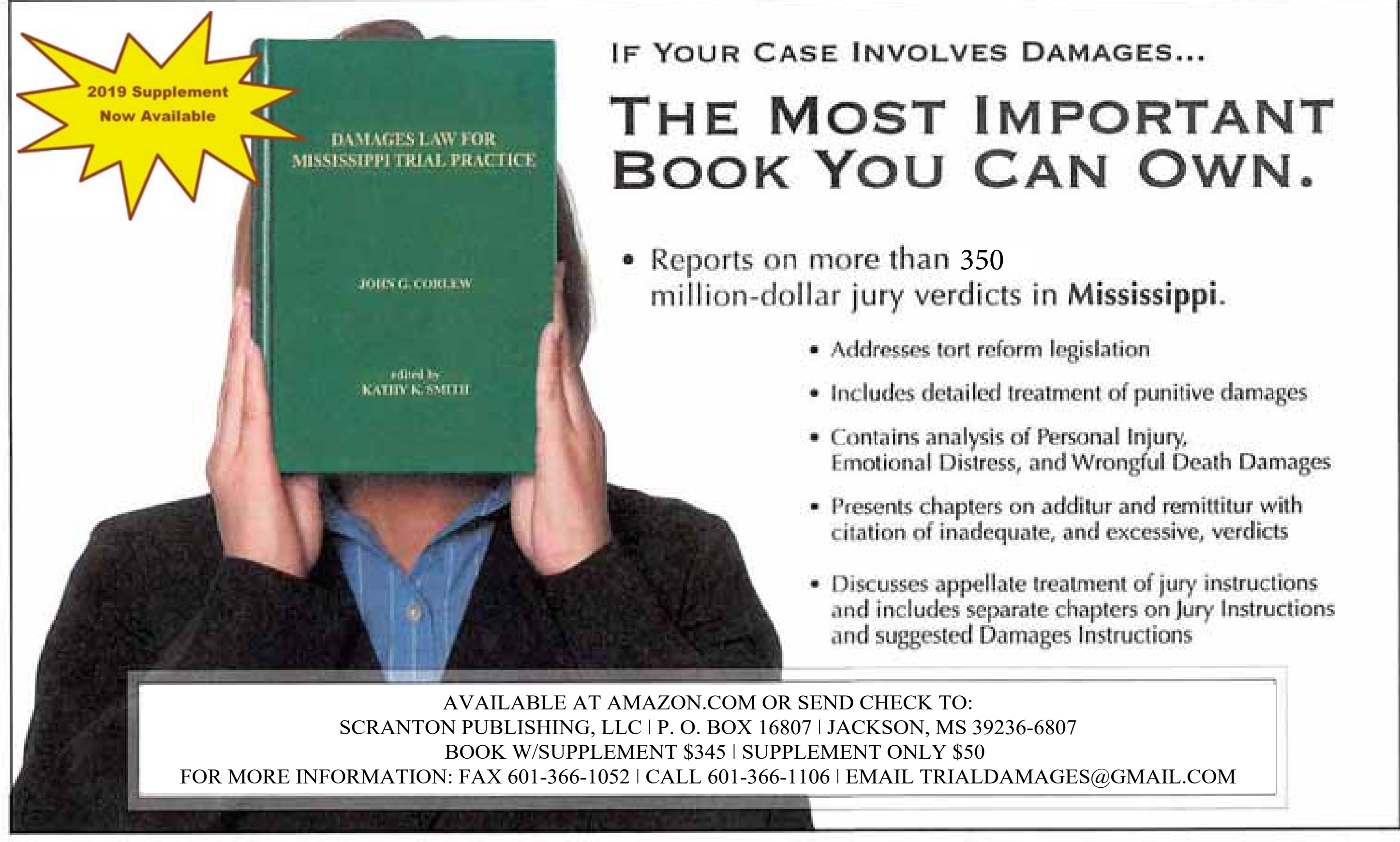
In 1996, Lloyd and his son, Danny, joined forces to form the Spivey & Spivey Law Firm, which Lloyd engaged in until his death. In addition to his oil and gas and legal work, Spivey founded Diamond Energy Corporation and Rainbow Development. Spivey was a life-long member of Grace Episcopal Church in Canton. He was also a member of the Rotary Club. Spivey was involved with the Boy Scouts of America where he received the Silver Beaver Award.

W. Scott Welch, III

Scotty Welch, 79, of Madison, died June 14, 2019. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1964. He served three years in the United States Air Force, as Assistant Staff Judge Advocate at Vandenberg Air Force Base. He was a past President of The Mississippi Bar, a past National President of the American Board of Trial Advocates (ABOTA) and of the Foundation. He received the 2012 Mississippi Defense Lawyers Association Lifetime Achievement Award, the 2014 Lifetime Achievement Award from The Mississippi Bar, and the 2016 Professionalism Award from the Capital Area Bar Association. He also won the 2016 Edmund S. Muskie Pro Bono Award. He was a member of Northminister Baptist Church.

David A. Yost

David A. Yost, 86, of Meridian, died June 21, 2019. A graduate of Mississippi College School of Law, he was admitted to practice in 1983. Yost was a 25-year veteran of the U.S. Navy, where he served as Naval Aviator. Yost was a Vietnam veteran, having flown dozens of combat missions and serving aboard the USS Oriskany, the USS Ranger, and the USS Bon Homme Richard. Following his naval service, Yost trained both Navy and Marine pilots for many years as a civilian flight instructor. He practiced law in Meridian for 18 years, representing the US Department of Housing and Urban Development and East Mississippi Legal Services Corporation. He was a lifetime member of the VFW and a member of the Military Officers Assoc. of America, Meridian Area Chapter. Yost was a member of Trinity Lutheran Church since 1971. The City of Meridian honored Yost by proclaiming December 1, 2011 as "Dave Yost Day" in appreciation of his 60 plus years of service to our country.



Procrastination Problems

By Dr. Jessica Cole

As I sit here today, I have procrastinated writing this article. The soft deadline has already passed, and the hard deadline is looming. Writer's block is what I have blamed it on, not knowing what to write about and staring at a blank page on a computer screen. Procrastination is an interesting phenomenon. It relieves stress in the short term because you allow yourself to focus on non-stress related items, but it ultimately causes ten-fold the amount of stress by pressing up against the deadline, leaving no time for a potential crisis to occur – which inevitably does occur. Procrastination seems benign, but it can cause serious productivity and career issues.

When delving into the research regarding procrastination, I found an article by Eric Jaffe called "Why Wait? the Science Behind Procrastination." Jaffe discusses how procrastination is far more than just putting things off until tomorrow and considerably more than a time-management issue. He breaks down procrastination into acts of procrastination and chronic procrastinators. Chronic procrastination can have long term detrimental effects. It can cause a negative thought feedback loop which can lead to lower productivity. Lower productivity leads to negative self-talk, and so on… Jaffe interviewed several psychologists within the article. One psychologist, Dr. Ferrari, suggested that "telling a chronic procrastinator to *just do it* would be like telling someone who is depressed to *get happy*." It is not going to happen.

But what about in the legal world? Is procrastination an issue? Lawyers learn in law school to be deadline driven, then continue to practice in this manner as counsel. This can cause relational problems with clients as well as opposing counsel. Other reasons attorneys may procrastinate is the work is extremely difficult, demanding and time sensitive. Unless the attorney is doing relatively routine work that he does on a regular basis, having to sort through obscure legal issues and deal with difficult clients can cause the attorney to delay working on the more difficult cases. Lawyers may think they have to take every client that calls or comes in the door. In doing so, they create a backlog of work and tend to procrastinate on the more time-consuming cases. Lastly, lawyers constantly work on business development more than business management. This creates the same backlog causing lawyers to resort to procrastination. One attorney that I spoke with suggested turning away business if it is going to keep you from taking care of your existing clients and focusing on business management to generate more revenue and increase client satisfaction.

> *The initial step to working on procrastination is figuring out the thoughts behind the anxiety. If you find yourself procrastinating, you may want to listen to what your thoughts are about the work.*

In a CLE article for the Texas Bar Association, Mark Murray cites the number-two reason clients file a complaint against an attorney is "failure to work on the matter." He notes that "procrastinating on prosecuting a claim or a defense is a mistake." Procrastination can lead to a step toward losing your license to practice – not so benign.

Kara Loewenentheil, former litigator turned certified coach, stated in her 2017 article "One and Done: How to Stop Procrastinating," that every lawyer she knows procrastinates. She says lawyers are deadline-driven, but during non-deadline times, they are procrastinators. Loewentheil's perspective is that lawyers procrastinate because the work makes you anxious. Then, when the deadline gets closer, it is the deadline that makes you more anxious than the work, so you try to get the work done to beat the deadline.

The initial step to working on procrastination is figuring out the thoughts behind the anxiety. If you find yourself procrastinating, you may want to listen to what your thoughts are about the work. One reason you may feel anxious about the work is you think you are not going to do it perfectly or do not have time to do a good job. Loewentheil's hypothesis is if you can change the negative thoughts around the work, this will help with procrastination. For example, if you think to yourself, "I do not know how to do X," this will cause anxiety and you will put if off until later. What happens if you change that thought to, "I have never done this before, but I have done many things well the first time"? Taking the negativity out of the thought makes it less anxiety producing. Replacing the negative thought to a more positive or neutral thought may stop the negative feedback loop of procrastination.

Next time you find yourself putting something off, ask yourself what is the thought behind it. Think of an alternative to that thought and practice changing it in your mind. Let me know how it goes!

Lawyers Support Groups: Oxford, Jackson, and Gulfport. Call LJAP for more information 601-948-4475. ■

For Confidential Help Call
The Lawyers and Judges
Assistance Program.
1.800.593.9777

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.

SEPTEMBER

27 Barristers Educational Services "Recent Developments in MS Law." 6.0 credits (includes ethics). Ridgeland, MS, Embassy Suites. Contact 1-800-874-8556.

27 MS Bar "Bridge the Gap: Rule 3 – New Lawyer Program." 6.0 credits (includes 3.0 ethics). Jackson, MS, MS Sports Hall of Fame. Contact 601-355-9226, Rene Garner.

27 UM CLE "Last Chance CLE." 6.0 credits (includes ethics). Jackson, MS, Hilton Hotel. Contact 662-915-1354.

27 US District Court/Northern District of Mississippi "Bench and Bar CLE Seminar/The Rule of Law." 4.0 credits (includes ethics). Oxford, MS. Contact 662-281-3029, Gina Kilgore.

30 Barristers Educational Services "Top 10 New Developments in Law Practice for 2019." 6.0 credits (includes ethics). Jackson, MS, MS Sports Hall of Fame. Contact 1-800-874-8556.

OCTOBER

10-11 MC School of Law "New Lawyer Training Fall 2019." 12.0 credits (includes 6.0 ethics). Jackson, MS, MC School of Law. Contact 601-925-7107, Tina Burroughs.

18 UM CLE "The Cutting Edge of Conservatorships & Guardianships: The NEW GAP Act and Other Practical Considerations." 6.0 credits (includes ethics). Ridgeland, MS, Embassy Suites. Contact 662-915-1354.

NOVEMBER

1 MC School of Law "Guardian Ad Litem & Child Advocacy." 6.0 credits (includes ethics). Jackson, MS, MC School of Law. Contact 601-925-7107, Tina Burroughs.

1 MS Bar "Bridge the Gap: Rule 3 – New Lawyer Program." 6.0 credits (includes 3.0 ethics). Oxford, MS, Oxford Conference Center. Contact 601-355-9226, Rene Garner.

1 UM CLE "DUI Defenders Conference." 6.0 credits (includes ethics). Flowood, MS, Hilton Garden Inn. Contact 662-915-1354.

8 UM-CLE "Mid-South Conference on Estate Planning." 6.0 credits (includes ethics). Memphis, TN, Doubletree by Hilton. Contact 662-915-1354.

19-20 NBI "Estate Planning & Administration: The Complete Guide." 12.0 credits (includes ethics). Pearl, MS, Courtyard by Marriott Airport. Contact 715-833-3940.

DECEMBER

9-10 UM CLE "CLE by the Hour, Memphis." 12.0 credits (includes 2.0 ethics). Memphis, TN, Hilton Hotel. Contact 662-915-1354.

JANUARY

16 UM CLE "MS Municipal Attorneys Assn (MMA) Winter Conference." 6.0 credits (includes ethics). Jackson, MS, Hilton Jackson. Contact 662-915-1354.

17 UM CLE "Workers' Compensation Law CLE Seminar." 6.0 credits (includes ethics). Jackson, MS, Hilton Jackson. Contact 662-915-1354.

FEBRUARY

7 UM CLE "Mid-South Conference on Bankruptcy Law." 6.0 credits (includes ethics). Memphis, TN, Hilton Hotel. Contact 662-915-1354.

MARCH

6 UM CLE "21st Annual Guardian Ad Litem Certification CLE." 6.0 credits (includes ethics). Ridgeland, MS, Embassy Suites. Contact 662-915-1354.

MAY

1 MS Bar "Bridge the Gap: Rule 3 – New Lawyer Program." 6.0 credits (includes 3.0 ethics). Jackson, MS, MS Sports Hall of Fame. Contact 601-355-9226, Rene Garner.

JUNE

5 MS Bar "Bridge the Gap: Rule 3 – New Lawyer Program." 6.0 credits (includes 3.0 ethics). Biloxi, MS, Biloxi Lighthouse and Visitors Center. Contact 601-355-9226, Rene Garner.

DAVIS & CRUMP, P.C.

is pleased to announce that

TREVOR B. ROCKSTAD

has become a shareholder in the firm.

Mark W. Davis
Martin D. Crump
Trevor B. Rockstad
Robert D. Cain, Jr.
Gerald J. Waltman III
Taylor S. Hardenstein

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