



MONTHLY BULLETIN

Mobile Bar Association, 153 Government Street, Mobile, Alabama 36602 (251) 433-9790

President's Comments

WHEN THE SMOKE CLEARED



MIKE DRUHAN, PRESIDENT
MOBILE BAR ASSOCIATION

What a blessing we all celebrate on Friday. The **FOURTH OF JULY** offers every one of us the opportunity to enjoy our incredible freedom to be American. Whether we think about it or not, every one of us feels just a bit more uplifted by our special national birthday. It's a happy day, a happy birthday.

Please take a little time this year to interrupt the festivities and reflect on what a great treasure we have received just by the accident of being born in the United States. Yes, many have sacrificed and suffered for our happiness. They very probably were glad to do their part for us. We must honor them and their sacrifices.

It is all too common today to hear "this country is going to hell in a hand basket." But, that's hogwash. If you think about it, on our worst American day, we are living like kings as opposed to all the rest of the world. We live in a singularly exceptional country and there is no real second.

Every year for more than forty-five, I have occasion to recall another 4th of July when I had deployed from Cu Chi to the west end of Tan Son Nhat airfield attached to a Cav unit, because the Vietcong were planning a main force attack on it. It turned out that that didn't materialize, but there was heavy mortar fire and some 122 rocket traffic. As things calmed about midnight some of our spirited troops fired a group of parachute flares in celebration over the field and as I looked back east I could see --- you guessed it --- our flag flying over the control tower, steady and stately, through the smoke of the shelling and the wisps of haze from the flares. I've never forgotten it.

God Bless America!



2014 OFFICERS

- President – J. Michael Druhan
- President Elect – Brian P. McCarthy
- Vice President – Peter S. Mackey
- Secretary – Ruthie F. Alexander
- Treasurer – Ginger P. Gaddy
- Assistant Treasurer – Bess P. Creswell
- President Young Lawyers -
Kaisee S. Heisterhagen
- Executive Director – Barbara C. Rhodes
- Editor – Ferrell S. Anders

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PROGRAM

Due to the
**ALABAMA STATE BAR
ANNUAL MEETING,**

*There will be no monthly
luncheon in July*

The next scheduled
luncheon will be:

**August 15, 2014, 11:45 am
The Battle House Hotel
Speaker : Danny Sheridan**



YOUNG LAWYERS

KASEE HEISTERHAGEN, PRESIDENT

The Young Lawyers would like to thank Armbrecht Jackson for hosting the June YL meeting at The Bull. By all accounts the turnout was great, the food and drinks were fantastic, and the summer associates had a great time.

The July YL Meeting is going to be held on Thursday, July 24 from 5:30-7:30 and will be hosted by . . . The MBA Young Lawyers! We are working on details now, so watch your email and our YL Facebook Page. Since it is July you can expect a low key and relaxed social event. We may even bring back an old favorite: arm wrestling with former YL President Brian Murphy.

Thank you to all who have participated in our fundraising efforts so far this year. We have had wonderful support from the Bar Association and we could not accomplish much without our volunteer Young Lawyers.

If you would like to get involved with the Golf Tournament, are interested in sponsoring an upcoming meeting, or if you have any questions, concerns, or comments please e-mail me (ksparks@burr.com), Vice President Jonathan Maples (jmaples@carrallison.com), or Treasurer Russ Johnson (rjohnson@law-alabama.com). Also, if you have any events to share with your fellow Young Lawyers, let us know and we will be sure to include it on our YL Facebook Page.

Browsing the Bar – With Barbara

I hate to be the bearer of bad news but do you realize that 2014 is half over? That means we are on the downward slide toward some of the most exciting times of the year - the beginning of the 2014-15 school year, Labor Day, Halloween, Thanksgiving, Christmas and New Year 2015! Need I say more? In the meantime, enjoy these lazy, hazy, crazy dayze of summer before settling back into the grind.

SOME TRUTHS FOR MATURE HUMANS

1. I think part of a best friend's job should be to immediately clear your computer history if you die.
2. There is great need for a sarcasm font.
3. Was learning cursive really necessary?
4. Map Quest really needs to start their directions on #5. I'm pretty sure I know how to get out of my neighborhood.
5. I wish Google Maps had an "Avoid Ghetto" routing option.
6. Even under ideal conditions people have trouble locating their car keys in a pocket, finding their cell phone, and Pinning the Tail on the Donkey – but I'd bet everyone can find and push the snooze button from 3 feet away in about 1.7 seconds, eyes closed, first time, every time.





THE HISTORY OF “THE BUBBA RULE” IN US DISTRICT COURTS

BY: MAX CASSADY, former law clerk to Judge Howard

BUBBA MARSAL tried a case in front of Judge Howard when I was a law clerk there. Bubba hired a lawyer at **HAND ARENDALL (BLANE CRUTCHFIELD)** to handle every aspect of the trial except the closing argument. Bubba just sat there during the opening, every bit of the evidence, every single argument, every moment. Until closing.

I was told by the clerk that there had been a blow up between **BUBBA MARSAL** and a federal judge which had led to an 11th Circuit case affirming “The Bubba Rule.” The “Bubba Rule” was that a lawyer could not comment on a response from a witness:

Q: What were you doing that day?

A: Peeling potatoes.

Q: I’m sure you were! Hmmm. Peeling potatoes . . .

THE COURT: Counsel, that’s not a question - you’re commenting on the evidence.

Bubba decided to hire a lawyer to try the case for him until the golden moment of closing argument. No way would a federal judge put pie in his mouth.

Bubba’s plaintiff clients were an old country man and woman who had been fishing in a small aluminum boat on the river just north of the City of Mobile. A big cruiser boat roared by from somewhere and sent a big wake that rocked the little aluminum boat. The old man stood up and starting cussing the big cruiser. The cruiser was full of drunk guys partying. They turned the big cruiser back around and some drunk on the cruiser got out a shotgun. He aimed it at the old man and woman in the aluminum boat. Tempers continued to flare and the drunk with the shotgun on the cruiser pulled the trigger.

Bird shot pellets hit the old woman in the face and she fell into the river. The cruiser took off. The old man husband somehow got the old woman back in aluminum boat and they flew down the river and got the registration number.

And then they went to see Bubba.

Bubba could not avoid federal court. So he hired the Hand Arendall lawyer. Bubba just sat there while the Hand Arendall lawyer tried the whole case. Finally, the federal judge announced, *“Counsel for the plaintiff, please begin your closing argument.”*

Bubba stands up. He was a big, country lawyer. Very animated. A booming voice.

“A GOOD MAN AND WOMAN OUT THERE FISHIN FOR SUPPER ON A SUNDAY!”

“Then come the men on the YACHT!”

“HIGH ON ALCOHOL!”

“BIG SHINY YACHT from “SOMEWHERE UP NORTH!”

The jury was in a trance. The man who breathed heavily at counsel’s table had risen. He owned the courtroom.

“BOOM!” Bubba screamed.

“SHOT HER IN THE FACE! FELL OVER IN THE WATER! NEARLY DROWNING IN THE RIVER! MARRIED 49 YEARS AND IT’S ENDING LIKE THIS! LIFE FLASHING BEFORE THEIR EYES! AND THE YACHT SPED AWAY! CAUSE THEY KNEW THEY HAD MURDERED THIS POOR WOMAN!”

Bubba looks at the old woman at the counsel table. His client. She’s crying.

Bubba shakes his head mournfully. Dead silence in the courtroom. Bubba is breathing hard from his oration and rotund physical size. Sweating from the effort. He turns back to the jury box to talk eye to eye.

“Now. Now. Let’s talk about how this poor man and woman ought to be treated in a courtroom of SOBER people.”

Silence.

“You know, football players don’t get shot on the face on Sundays, and they--they make--why some of them make SIXTEEN MILLION DOLLARS A YEAR! That’s a MILLION DOLLARS A SUNDAY!”

Bubba let the math sink in.

“And they would not stand there and get shot in the face for one million. NOW WOULD THEY? Money is just different now. You and me, we grew up when a million was a big number. But not anymore. SO I’M ASKING YOU FOR ONE MILLION DOLLARS FOR THIS WOMAN THEY SHOT IN THE FACE! I’m asking for One Million Dollars. It’s not enough really, but it’s fair.”

The jury was out about 5 minutes. The verdict was \$1 Million. That’s what Bubba asked for. And that’s what Bubba got.



NEW MEMBERS

VEDRAN DEDIC,

Mississippi School of Law 2013; Mississippi State Bar 2013; Alabama State Bar 2014

MEGAN KAY ALLGOOD,

Jones School of Law 2013; Alabama State Bar 2013; Indiana State Bar 2014;
with Shane A. Taylor & Associates, PC

BRADLEY J. LATTA,

Birmingham School of Law 2008; Alabama State Bar 2008; sole practitioner

MOSHAE ELISE DONALD,

Vanderbilt School of Law 2011; Alabama State Bar 2013; with Mobile County Public School System

MALLORY J. MANGOLD,

Mississippi College School of Law 2010; Mississippi State Bar 2011;
Alabama State Bar 2013; with Taylor Martino, PC

KENNETH ALBERT METZGER,

Jones School of Law 2013; Alabama State Bar 2013; with Taylor Martino, PC

KENNETH W. BOYLES, JR.,

Cumberland School of Law 2012; Georgia State Bar 2012; Alabama State Bar 2012; sole practitioner



Significant Legal Decisions by Duane Graham

In a case of first impression, the Supreme Court in *Morrow v. Caldwell*, No. 1111359 (Ala., March 14, 2014), held that a claim against a city employee in his individual capacity was not subject to the \$100,000 damages cap against municipalities as provided in Ala. Code § 11-47-190.

In *Wehle v. Bradley*, No. 1101290 (Ala., March 14, 2014), the Supreme Court upheld a trial court's determination that the personal representatives' payment to themselves of a nearly \$2 million fee for handling the estate, even though the payment without prior court authorization was contrary to law, was nevertheless reasonable and subject to approval, but that the personal representatives owed interest to the estate for the period between the payment of the commission and the court's approval of same.

In another case of first impression, the Court of Civil Appeals held in *Rodgers v. McElroy*, No. 2121039 (Ala., April 18, 2014), that the personal representative of a decedent's estate was potentially entitled to a fee in the trial judge's discretion out of wrongful death proceeds based on a statutory trustee theory, but that such fees must be awarded by the trial judge that approves the settlement rather than the probate court having jurisdiction over the estate administration.

In *Ex parte Shelby County Board of Equalization*, No. 1130017 (Ala., April 11, 2014), the Supreme Court held that an appeal from an ad valorem tax assessment had to be filed with both the circuit court and with the board of equalization within 30 days of the entry of the assessment and that filing with the circuit court only was insufficient.

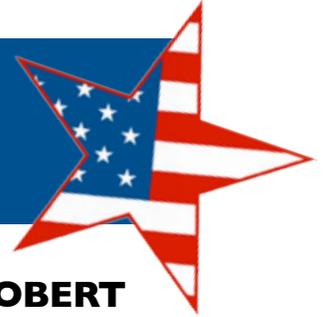
In *Laurel v. Prince*, No. 1121412 (Ala., April 11, 2014), the Supreme Court held that a medical malpractice plaintiff could not recover as a matter of law where the only claim presented was based on the plaintiff's fear of contracting HIV where the evidence indicated that there was no medical basis for that fear.

In a criminal case of first impression, the Alabama Court of Criminal Appeals in *Williams v. State*, No. Cr-12-1862, (Ala. Civ. App., April 4, 2014), held that the rule announced by the United States Supreme Court in *Miller v. Alabama*, 132 S. Ct. 2455, 2475, 183 L.Ed.2d 407 (2012), to the effect that a juvenile could not be sentenced to life in prison without parole, was a procedural ruling only and, thus, was not entitled to retroactive application.



LAWYERS IN THE NEWS

By SANDY G. ROBINSON



MARRIED: MBA members **RUTH FRANCES ALEXANDER** and **ROBERT EUGENE CLUTE, III** were married on May 16, 2014 in Mobile. The bride is the daughter of MBA member **RICHARD ALEXANDER** and the groom is the son of MBA member **BOB CLUTE**. The bride practices law with her father, and the groom practices law with his father, all in Mobile. Congratulations!

DIED: MBA member **TIM GROGAN** died in Mobile on June 1, 2014. He graduated from the Loyola University School of Law in 1973 and practiced law in Mobile for 40 years. He was active in Our Savior Catholic Parish and many other religious and civic organizations. He is survived by a son, a daughter, a loving companion and 8 of his 9 siblings.

DIED: MBA member **SID SCHELL** died at home on June 4, 2014 after a brief battle with cancer. He was born in Chatom, Alabama and graduated from Auburn University in 1961 with a degree in Aeronautical Engineering. He then graduated from the University of Alabama School of Law in 1968 and practiced maritime law in Mobile for many years. He was an artist, model builder, scuba diver, and an avid historical researcher. He was the recipient of the Elizabeth B. Gould Research Award by the Mobile Historic Development Commission for primary research on the CSS Huntsville and the CSS Tuscaloosa and recently authored two books on the subjects of Fort Powell and The Continental Navy on the Gulf Coast. He is survived by his wife of 53 years, a daughter, a son, 3 grandchildren and many other relatives and friends.

DIED: MBA member **GREG EVANS** died in Mobile on Saturday, June 14, 2014. He grew up in Florence, Alabama and was a National Merit Scholar and an Eagle Scout. He attended Washington and Lee University on an Army ROTC scholarship and upon graduation was commissioned as a second lieutenant. He was a graduate of the Cumberland School of Law and practiced in Mobile until his death. He was a member of Ashland Place Methodist Church and is survived by his parents, his wife, two children and a brother.

DIED: MARTHA JONES BEDSOLE, widow of late MBA member **MASSEY BEDSOLE** and mother of MBA member **TRAVIS BEDSOLE**. She was an active member of First Baptist Church and a member of the Junior League of Mobile. She is survived by two children, four grandchildren, and two great granddaughters.

CONGRATULATIONS: MBA member **MIKE WINDOM** was recently appointed by the governor to a 6-year term on the University of South Alabama Board of Trustees. Mike graduated magna cum laude from USA in 1983 with a B. S. degree in finance, and from the University of Alabama School of Law in 1986. He has a statewide practice as Wwindom Law LLC. Congratulations, Mike!



ANNOUNCEMENTS

HAND ARENDALL LLC is proud to announce that **T. MASSEY BEDSOLE**, an original name partner of the firm and active member of the firm for more than 60 years, was recently selected to the **ALABAMA LAWYERS' HALL OF FAME** by the **ALABAMA STATE BAR ASSOCIATION**.

OFFICE SPACE AVAILABLE: Midtown law office space sharing. Furnished, all equipment available. One or two offices available. Space for secretaries. Gmfpc1@gmail.com

LAST WILL AND TESTAMENT: Anyone with knowledge of the last will and testament of **HAROLD TRAWICK** of Theodore, AL who died on May 10, 2014, please contact **CHRISTOPHER A. CALLAGHAN**, 251.285.3425 or chris@callaghanlawoffice.com

MBA Member **PAMELA JOHNSTON** and husband **MATT JOHNSTON** welcomed their second son on May 13, 2014. **MASON CALEB JOHNSTON** was born weighing 8 lbs 0 ozs and measuring 21 inches long. Mason was welcomed home by big brother **BRILEY** and all are doing well.

MCG BUSINESS SOLUTIONS offers **COMPUTER** and **MOBILE DEVICE FORENSIC SERVICES**. Contact **LANE WHITTINGTON**, 251.650.2231, certified computer and Mobile Device forensic examiner with eighteen years of experience as law enforcement officer, twelve of which as an investigator. He received training and certification at the National Computer Forensics Institute in 2009, with annual recertification. lwhittington@mcgnow.net; 251.650.2231; www.mcgnow.net

SOUTH ALABAMA VOLUNTEER LAWYERS PROGRAM ANNOUNCES NEW EXECUTIVE DIRECTOR. The South Alabama Volunteer Lawyers Program, Inc. Board of directors is pleased to announce the appointment of Ariana H. Moore as Executive Director. Ms. Moore has admirably served SAVLP as the associate director for four years, and most recently as the Interim Executive Director.

The SAVLP is a charitable organization dedicated to delivering pro bono legal services to low-income citizens in Mobile, Baldwin, Clarke and Washington counties. Through local volunteer lawyers, the SAVLP provides free legal services in certain civil matters.

The SAVLP is honored to have Ms. Moore serve as its new Executive Director.

DISTRICT COURT JUDGE JOE BASENBERG is revising his list of attorneys who take appointments in criminal cases. If you would like to be on the new list, please obtain a form from Judge Basenberg's Courtroom Assistant, or from his office. No names from the current list will be carried over, unless the form is completed. The new list will be in use after August 1, 2014.



ANNOUNCEMENTS

ALABAMA ASSOCIATION OF PARALEGALS, INC. SEMINAR for 2014 will be held **August 8-10-2014** at the **ISLAND HOUSE HOTEL** in Orange Beach, Alabama. Two separate tracks will be offered. The Seminar track topics and speakers include:

KELLY A LAGRAVE, ACP,
PRESIDENT OF THE NATIONAL ASSOCIATION OF LEGAL ASSISTANTS;

NEW LAW REGARDING EXPUNGED RECORDS IN CRIMINAL CASES
ASHLEY CAMERON, Esq.

MEDIATION
JANA RUSSELL GARNER, Esq.

TRIAL DIRECTOR AND POWERPOINT
JEBBIE AUSTIN and Karen Hyde

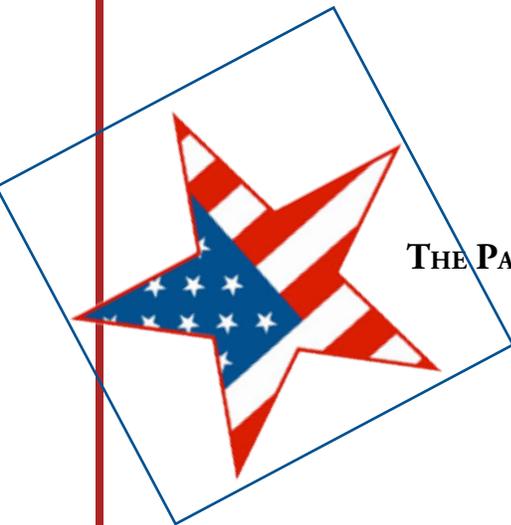
ETHICS IN BILLING
A. KELLY SESSOMS, III, Esq.

THE PARALEGAL'S ROLE IN MENTORING YOUNG ATTORNEYS
GREGORY VAUGHAN, Esq.

MEDICAL RECORDS
KRISTEN W. AKRIDGE

FAMILY LAW AND CHILD SUPPORT
CARRY MCWHORTER, Esq.

The seminar track has been approved by **NALA CERTIFYING BOARD** for 8.25 CLE hours. The CP track is a study course for **NALA'S CERTIFIED PARALEGAL** examination covering all sections of the exam, as well as a brief overview and study tips. The CP track has been approved by the **NALA CERTIFYING BOARD** for 9.75 CLE hours. For more information or a seminar brochure, contact **SONYA GRAVES** at Sonya.Graves@butlersnow.com or visit AAPI's website at www.alabamaparalegals.net





SAVLP

SOUTH ALABAMA VOLUNTEER LAWYERS

ARIANA H. MOORE, ASSOCIATE DIRECTOR

Please don't forget about SAVLP during the summer! We have clinics scheduled in Mobile and Baldwin Counties in July and August and need attorney volunteers. The Mobile clinic dates are July 10th and August 14th from 1:00 to 3:00 at the Mobile County Courthouse. The next Baldwin County clinic will be held at Prodiscee Pantry in Spanish Fort on July 24th (1:30-3:30).

Thank you to **FARAH MAJID, Esq.**, of **LEGAL SERVICES ALABAMA** (Mobile Office) who presented a CLE on consumer debt collection last month. If you attended and would like another copy of the handouts, please contact SAVLP at 433-6693. We hope to sponsor another CLE with LSA in the next few months. Information will be posted on the SAVLP website as soon as it is available.



SAVLP Board Member **LIAM SCULLY** presents the **BATTLE OF THE BAY LEGAL DIVISION PRIZE** to Baldwin County Bar Association president **MICHAEL NIEMEYER** at the Baldwin County Bar's Spring Party.

Do you like SAVLP? If so, please find us on Facebook and follow us on Twitter.



Special thanks to the following attorneys who accepted or closed cases in April and May: **GARY P ALIDOR, FERRELL S ANDERS, J. DANIEL BARLAR JR., JOHN G BAYLOR JR., PAUL T BECKMANN, RUSSELL E BERGSTROM, JAIME W BETBEZE, DARRYL T BLACKMON, BRINA I BOLDEN, ANDREA J BREWINGTON, HENRY H BREWSTER, CHAD R BROWN, PAUL D BROWN, LISA BUMPERS, PETER F BURNS, NANCY J BUSEY, HENRY H CADDELL, HENRY A CALLAWAY III, CRAIG CAMPBELL, WALTER G CHAVERS, FRANCES R CLEMENT, F. LUKE COLEY JR., ROBERT J CRANE, JUDSON E CRUMP, MARGARET F DEMERANVILLE, REBECCA DING, DONALD D DOERR JR., BEN FORD, BARRY A FRIEDMAN, WILLIAM J GAMBLE JR., JONATHAN P GARDBERG, THOMAS J GLIDEWELL, J. W. GOODLOE JR., JOSHUA M GRANTHAM, IRVIN GRODSKY, MARY A HAMPTON, N. STEWART HANLEY, JAMES K HARRED, JESSICA HATCHER, SCOTT R HAWK, FREDERICK G HELMSING JR., CHRISTINE C HERNANDEZ, R. SCOTT HETRICK, J. BRADFORD B HICKS, HERNDON INGE III, SAMUEL IRBY, LINDA COLLINS JENSEN, NEIL C JOHNSTON, KYLA G KELIM, JOSHUA G KESLING, GILBERT B LADEN, R. EDWIN LAMBERTH, MARLENE A LAY, TRACIE LEE ROBERSON, JOHN V LEE, PETER S MACKAY, E. RUSSELL MARCH III, THOMAS R McALPINE, JAMES H McDONALD JR., MATTHEW C McDONALD, S. C. MIDDLEBROOKS, EDWARD A MILLER, BRENDA J PIERCE, JOSEPH T PILCHER IV, JAMES REBARCHAK, KIRKLAND E REID, LATISHA RHODES DAVIS, TROY T SCHWANT, STEVEN SCIPLE, ATOYIA A SCOTT, L. ROBERT SHREVE, PATRICK H SIMS, HENDRIK SNOW, JOSEPH D STEADMAN, T. JEFF STEIN, RENEE E THIRY, MICHAEL J TONDER, GREGORY VAUGHAN, WILLIAM W WATTS III, JARROD J WHITE, CHRISTOPHER S WILLIAMS, THERESA N WILLIAMSON, MICHAEL A WING, PATRICIA K WOOD, RICARDO WOODS, AND JAMES WILLIAM ZEIGLER.**



PLEASE GIVE

Name: _____

Address: _____

Phone: _____ E-mail: _____

I want to make a donation to the Mobile Bar Foundation.

In honor/memory of: _____

Acknowledgement to: Name _____

Address _____

I want to become a member of the Mobile Bar Foundation.

Check enclosed

Bill my credit card \$_____ Visa/Master Card/Amex #_____

Life Member (\$5000, paid in up to 5 annual installments)

Partner (\$500 or more)

Associate (\$100 or more)

Regular Member (\$50 - \$99 annually,
or if member of MBA practicing 5 years or less \$25 - \$99)

I would like information on including the Foundation in my estate planning.

Signature _____ Exp. _____

Mail to: Mobile Bar Foundation, P.O. Drawer 2005, Mobile, AL 36652

**MOBILE BAR
FOUNDATION**

**Memorial Contributions
in memory of**

Elizabeth C. Brutkiewicz

By John C. Brutkiewicz

Sidney Henson Schell

By Charlie Fleming
& Kathy Miller

John N. Leach, Jr.

Boyd and Gladys Reeves

Timothy Michael Grogan

By Boyd & Gladys Reeves
Sharon & Eddie McDonough

Charlie Fleming
& Kathy Miller

John N. Leach, Jr.

Maury Friedlander

By Sharon & Eddie McDonough



JULY 2014

JULY 4 - FRIDAY

INDEPENDENCE DAY HOLIDAY

JULY 9-13 - WEDNESDAY-SUNDAY

ALABAMA STATE BAR ANNUAL MEETING,
DESTIN, FL

JULY 22 - TUESDAY

NOMINATING COMMITTEE MEETING,
3:00 pm,
Frazer, Greene

JULY 31 - THURSDAY

GRIEVANCE COMMITTEE MEETING,
12 o'clock noon, MBA Headquarters



CONTINUING LEGAL EDUCATION



AUGUST 15

**CRIMINAL LAW UPDATE INCLUDING
NEW DUI LAW,**
3.0 HOURS

AUGUST 22 OR 29

**ANNUAL "STARS ACROSS THE BAY"
FAMILY LAW SEMINAR,**
8.0 HOURS

SEPTEMBER 19

PROFESSIONALISM,
3.0 HOURS.

OCTOBER 17

ANNUAL VLP SEMINAR,
3.0 HOURS.

OCTOBER

NEW LAWYER ORIENTATION,
5.0 HOURS

NOVEMBER 7

ANNUAL CLE BY-THE-HOUR,
8.0 HOURS

NOVEMBER 21

ASB ROAD SHOW,
3.0 HOURS

DECEMBER 5

**26TH ANNUAL BENCH & BAR
CONFERENCE**

DECEMBER 19

CIVIL LAW UPDATE,
3.0 HOURS

JAN 16

**JUDGES PANEL: DO'S & DON'TS, RULE
CHANGES,**
3.0 HOURS.

MAR 20

EMPLOYMENT LAW,
3.0 HOURS.

APR 16

**APPELLATE SEMINAR
INCLUDING CRIMINAL & CIVIL ISSUES,**
3.0 HOURS