

*Alabama  
Law  
Institute*

**REPORT TO THE ALABAMA  
LEGISLATURE AND INSTITUTE  
MEMBERSHIP 2001-2002**

**HONORABLE DEMETRIUS C. NEWTON, PRESIDENT  
HONORABLE ROBERT L. MCCURLEY, JR., DIRECTOR  
HONORABLE PENNY A. DAVIS, ASSOCIATE DIRECTOR**

**REPORT TO THE ALABAMA  
LEGISLATURE  
AND  
INSTITUTE MEMBERSHIP  
2001-2002**

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January 8, 2002

TO: Alabama Legislature and Institute Members

It is my pleasure to submit the Institute's Annual Report to the Alabama Legislature and Institute Membership.

The Alabama Law Institute is the official law revision and reform agency for the State of Alabama. Its purpose is to aid the Legislature in proposing and drafting more clear, simple, and up-to-date laws.

This year the Legislature is asked to consider revisions of the Uniform Enforcement of Domestic Violence Orders Act and the Uniform Anatomical Gift Act. The Alabama Supreme Court will be asked to adopt the Uniform Certification of Questions of Law as a rule of court. This Report sets forth a digest of these projects. A copy of these drafts can be obtained from the Institute's website at [WWW.ALI.STATE.AL.US](http://WWW.ALI.STATE.AL.US) . More detailed information is available upon request.

It is the hope of the staff of the Institute to always be of assistance to members of the Legislature in any research or drafting projects which arise. If the Institute can help you, please call me or the Director. The continued cooperation of all members of the Institute and Legislature will ensure that the Institute will continue to give an important service to the Legislature and the people of the State of Alabama.

Respectfully yours,

Demetrius C. Newton  
President

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## REPORT OF THE DIRECTOR

The Alabama Law Institute has completed and presents to the 2002 Legislature two bills: Uniform Enforcement of Domestic Violence Orders Act and the Uniform Anatomical Gift Act.

This Report is limited to the revisions completed and before the 2002 Legislature with only a mention of previously passed laws and projects currently under revision. To keep the membership apprised of Institute activities we periodically publish a newsletter and maintain a web site: **[www.ali.state.al.us](http://www.ali.state.al.us)** and each edition of the *Alabama Lawyer* contains an article entitled "Legislative Update."

The Alabama Law Institute systematically updates all of its handbooks. We are currently revising the *Election Handbook, Tenth Edition*, and the *Alabama Government Manual, Eleventh Edition*.

Finally, in the criminal law area, the Criminal Procedure Committee continued to function to assist the Supreme Court as they make minor modifications in the Criminal Procedure law. This year the committee is studying the Interstate Compact for Adult Supervision.

We are again conducting a Capital Intern Program for the state to bring gifted young persons into state government during the 2002 Regular Session of the Legislature. Three individuals were chosen from applicants from colleges throughout the State of Alabama to assist the Governor, Lieutenant Governor, and Speaker of the House of Representatives.

During the 2002 Regular Session the Alabama Law Institute has, for the third year, been asked to secure additional legal counsel for the Senate Judiciary and all standing committees of the House of Representatives.

Committee counsel will be available to committees and assist the members as they interpret and understand the bills presented to the committee. They will also be available to assist with any needed committee amendments. This program provides legislative committees with independent, professional staffing in addition to that provided by the Legislative Reference Service and the Legislative Fiscal Office.

The Institute now is staffed by four full-time employees, only two of whom are lawyers. The efficiency of the office is due in great part to the fine legal mind and leadership of Penny Davis, Associate Director, who has been with the Institute since 1979, and the very capable assistance of Mrs. Linda Wilson and Mrs. Nancy Foster. To supplement our staff, we make extensive use of students who serve as our law clerks. Because of this small staff, we are greatly indebted to the law professors and practicing attorneys who are the reporters for the various Institute projects. We further could not function without the generous, free legal talent contributed by the Bar of Alabama who serve on our numerous committees.

The Institute is fortunate to have access to the 350,000 book law library of the University of Alabama School of Law and its computer capabilities to enable us to perform quality research.

Finally, the work of the Institute would be only academic if it were not for the overwhelming acceptance of our work by the Legislature in passing every major completed project presented to it by the Institute.

January 2002

Bob McCurley  
Director

## I.

### INTRODUCTION

Created by act of the Legislature in 1967, the Alabama Law Institute was funded and commenced operations in 1969.<sup>1</sup>

The Institute is housed in the Law Center Building on the University of Alabama Campus so as to have available the research facilities of the state's largest research law library which is essential to major law revision. It also enables the Institute to have immediate access to the legal experts in various fields under study as ready consultants. The Institute was placed in Alabama's state-sponsored law school not only as a cost-efficient measure but to remove it from the political influence of the State Capitol.

The purpose of the Institute is to clarify and simplify the laws of Alabama, to revise laws that are out-of-date and to fill in gaps in the law where there exists legal confusion.

The Alabama Law Institute works closely with the Legislative Reference Service in the yearly placing of acts passed by the Legislature within the Code of Alabama for proper placement and codification. The Legislative Reference Service prepares the vast majority of bills for each session for the Legislature, however, major code revision work, such as revision of an entire section of law, as Alabama's Business Corporation law, Criminal Code, etc. are handled by the Alabama Law Institute.

The Law Institute receives its projects from members of the Legislature, state government, from the Bar or may initiate the study itself when revisions are needed.

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<sup>1</sup>Ala. Code §§ 29-8-1 through 29-8-5.

Once a topic is selected, the Institute selects someone to serve as chief draftsman, who is called a reporter for the study. Experts in the field under revision, as well as Legislators are requested to serve on an advisory committee to prepare the proposed revision. Written commentaries accompany the proposed bill to assist the Legislator and those who will be interested in the revision. The Institute issues written drafts with commentaries to each Legislator. Many of these projects require intensive study over several years. This meticulous and proficient study provides a credible basis for the Legislature to consider the Code revision as being technically accurate. Once a revision is complete, hearings are held around the State for further consideration by the Council of the Alabama Law Institute.

The membership of the Alabama Law Institute is limited to a maximum of 150 members of the Alabama State Bar Association who are elected for fixed terms, the judges of the Alabama Supreme Court, courts of appeals, and circuit courts, federal judges domiciled in Alabama, full-time law faculty members of Cumberland Law School and the University of Alabama School of Law, all members of the Institute Council and all lawyer members of the Legislature, who are licensed to practice in Alabama. The governing body of the Institute is the Institute Council composed of six practicing attorneys from each congressional district as well as representatives from the appellate courts, Attorney General's office, Alabama State Bar Association, law schools, Legislature, and the Governor's office.

Legislators operate without a staff. They can receive assistance from the Alabama Law Institute. Law clerks and other experts can do an in-depth study of technical legal problems. This coordination of efforts meant that approximately \$1,000,000 of donated legal talent was contributed during the seven years while the Criminal Code was being drafted and taught to lawyers, peace officers and court personnel. This year another \$300,000 of legal services was donated in the drafting of the Revised Article 9 of the Uniform

Commercial Code. Like sums are prevalent in the preparation of all Law Institute revisions. The chief draftsman receives a small stipend while all committee members volunteer their efforts. Wide exposure is given to all bills before they ever reach the Legislature. The drafts are placed on the internet and written drafts are prepared for review. Input is encouraged from all affected parties as well as the general public.

The Alabama Law Institute is basically a volunteer agency with a Director, Associate Director and secretaries who organize the volunteer efforts. Last year we assisted various committees working on law revision for the Legislature. Committee members rendered their service without compensation. Much of the drafting is performed by law professors, attorneys and judges at a very nominal cost. Extensive use is made of law students as law clerks.



## II.

### **PROCEDURE FOR NEW PROJECTS**

1. The Institute, through the Director, receives and considers suggestions from legislators, judges, public officials, the practicing bar and the general public to discover inequities and inconsistencies in the law and possibilities for its improvement and expansion.

2. The Director of the Institute submits the suggestions for revision or clarification of the law which the Institute has received to the Institute Executive Committee and then to the Institute Council.

3. The Council selects a limited number of suggestions as its projects.

4. The Council, through the Director, selects an advisory committee composed of experts on the subject who are responsible for drafting the act or revision.

5. Usually, the Director and advisory committee select a Reporter from one of the Alabama law schools or the Institute staff to prepare the initial draft.

6. The Reporter prepares a draft of the proposed legislation and presents a draft with commentary to the advisory committee for comments and criticisms. The advisory committee makes such changes as it deems appropriate before approving the draft.

7. The advisory committee then submits to the Institute Council the proposed act for their consideration and approval.

8. Once approved by the Law Institute Council the recommended law revision is presented to the Alabama Legis-

lature for its consideration. The time required for preparation and approval of such revisions varies from a matter of months to several years.

### III.

## PROJECTS PRESENTED TO THE LEGISLATURE IN 2001

1. **Alabama Uniform Interstate Enforcement of Domestic Violence Orders Act** Chairman: Drew Whitmire  
Reporter: Penny Davis

This act will provide a uniform effective system for enforcement of domestic violence protection orders across state lines. To facilitate the interstate enforcement of civil and of qualified criminal domestic protection orders as stipulated in an important provision of the 1994 Federal Violence Against Women's Act. This full faith and credit provision directs states to honor "valid" protection orders issued by other jurisdictions and to treat those orders as if they were their own.

Although the Federal Violence Against Women's Act provided protection and was national in scope, it left several important questions unanswered and states to their own discretion as to how to set up procedures to effectively implement the enforcement.

For example, the federal act does not answer the question of whether states are required to enforce provisions of foreign orders that would not be authorized by the law of the enforcing state. It is silent as to whether protected individuals seeking enforcement of an order must register or file the order with the enforcing state before the action can be taken on their behalf. It is also vague about whether custody and support orders are included.

In recent years some states have enacted their own enabling legislation but these statutes vary greatly, both in method and extent to which they will enforce foreign protection orders. The new act that the Institute is considering has two purposes. It defines the meaning of full faith and credit in the

context of the enforcement of domestic violence protection orders and it establishes uniform procedures for their effective interstate enforcement.

Under this Act:

- Courts must enforce the terms of protection orders of other states as if they were their own, unless the order expires, regardless of which state the victim has entered.
- Enforcing states must enforce all of the terms of the order, even if the order provides relief that would be unavailable under the laws of the enforcement jurisdiction.
- Terms of orders that concern custody and visitation matters are enforceable if issued for the purpose of protection. Terms that concern support are not.
- Enforcement mechanisms must be applied to orders issued before the effective date of the act.

The act envisions that enforcement will require law enforcement officers in enforcing states to rely on probable cause judgements that a valid order has been violated. The law enforcement officers, as well as other government agencies, will be encouraged to rely on individual judgements based on probable cause by the acts inclusion of the broad immunity provision protecting agencies of the government acting in good faith.

This act, when passed by each state, will enable states to treat cases consistently and will fill the gap left in the federal act.

## **2. Alabama Uniform Anatomical Gift Act**

Alabama currently has the 1968 Uniform Anatomical Gift Act. It is codified at sections 22-19-41 through 22-19-47. In 1987 the National Conference of Commissioners on Uniform State Laws passed an updated version. It has subsequently been codified in over twenty states and is being considered in

several others.

This new act has been circulated and approved by the Alabama Medical Association, University of Alabama in Birmingham Hospital and various medical groups. This bill enlarges the list of individuals who may be consulted regarding the donation of organs. The act also specifies the circumstances in which coroners, medical examiners, or other local public health officials may be permitted to remove a part of the body for the purpose of transplantation.

The bill clarifies the rights of the parties involved in the donation and clarifies the authority of the individuals involved in the procedures for removing and transplanting a part.

This bill also provides that if an organ donation authorization is attached or imprinted to a motor vehicle license, the revocation, suspension, expiration, or cancellation of that license does not invalidate the anatomical gift.

1. Uniform Institutional Funds Act

In 1993 Alabama passed a modified version of the Uniform Institutional Funds Act and limited it to educational institutions. The Uniform Educational Institutional Funds Act is codified in Ala. Code §§16-61A-1 through 8.

The Uniform Management of Institutional Funds Act was passed by the Uniform Law Commissioners in 1972. It was subsequently approved by the American Bar Association and has been adopted in some form in almost every state. The premise of the Uniform Act is the need for the governing boards of educational institutions as well as charitable, religious or any other eleemosynary institutions to be able to make more effective use of endowments and other investment funds. To modify investment restrictions that no longer seem necessary, the act proposes to provide the following:

1. a standard of prudent use of appreciation in invested funds;
2. specific investment authority;
3. authority to delegate investment decisions;

4. a standard of business care and prudence to guide governing boards in exercise of their duties under the act; and
5. a method of releasing restrictions on use of funds or selection of investments by donor acquiescence or court action.

After reviewing the policy issue of limiting the current Alabama law to educational institutions, it was determined that charitable, religious, or other eleemosynary institutions in Alabama would benefit from having the opportunity to utilize the investment flexibility provided by the Uniform Act. Thus, while not warranting a special study committee, the proposed changes were sent to the Alabama Law Institute Council members for their review. After receiving a favorable response, this act will be introduced in the 2002 Regular Session with an effective date of October 1, 2002.

## IV.

### REVISIONS UNDER STUDY

#### 1. Uniform Residential Landlord/Tenant Act

In the last few years, several bills have been introduced in the Alabama Legislature concerning landlord/tenant laws. The approach taken by these bills have been quite diverse and have resulted in a request by the Legislature that the Alabama Law Institute undertake a study of residential landlord/tenant laws. The Uniform Residential Landlord/Tenant Act was drafted by the National Conference of Commissioners on Uniform State Laws in 1972.

The Uniform Act concerns landlord/tenant relationships under rental agreements for residential purposes only. The act does not apply to rental agreements made for commercial, industrial, agricultural, or any other purpose other than residential. Article I concerns the general provisions and definitions of the act, including principles relating to obligations, good-faith, and unconscionability. Article II focuses on the landlord obligations, which include security deposits, prepayment of rent, and disclosures. Also, included in Article II are the landlord's responsibilities relating to maintaining the premises and any limitations of liability on the landlord.

Article III focuses on the tenant obligations. This Article includes the tenant's responsibilities to maintain the property, rules and regulations, and tenant use in occupancy.

Article IV is the provision dealing with remedies. Part I covers tenant remedies and Part II concerns landlord remedies. Tenant remedies, in Part I, include sections concerning noncompliance by the landlord, failure to deliver possessions, and failure to supply essential services. Other remedies relate to fire or casualty, damage, or the landlord's unlawful ouster, or diminution of services. The landlord remedies, in Part II, include noncompliance with the rental agreements, failure to maintain the property, or abandonment of the property. Also included are landlord's liens,

remedies after determination, and the recovery of possessions, possessions limitations.

Part III of Article IV includes periodic tenancy, holdovers, and abuse of access. Article V prohibits retaliatory conduct.

## 2. Certification of Questions of Law

Currently, Rule 18 of the Alabama Rules of Appellate Procedure provides a limited authorization to entertain certified questions of Alabama law. However, it does not provide authorization to certify questions of law to courts of other jurisdictions. In 1995, the Uniform Commissioners of State Laws adopted the Uniform Certification of Questions of Law.

The Uniform Certification of Questions of Law Rule would provide a greater expanded authorization to entertain certified questions of Alabama law. It would also provide an authorization to certify questions of law to courts of other jurisdictions. The question to be certified must arise in a “pending litigation” before the certifying court. It is only required that the answer to the question to be certified “may” be determinative of an issue in the pending litigation. The question to be certified must be “one for which an answer is not provided by controlling the appellate decision, constitutional provision, or statute of the other jurisdiction.”

After reviewing Alabama’s current Rules of Court, as well as the Alabama Constitution, it was determined that the certification of questions of law should be posed as a rule of court, rather than presented as an act of the Legislature.

12. Interstate Compact for Adult Offender Supervision

The compact concerns the management, monitoring and supervision of adult parolee and probationers in states other than where they were sentenced. The goal is to ensure that it remains an effective management tool for those adult parolees and probationers who travel to, or are supervised in, states other than where they were sentenced.

The current Interstate Compact has been in place for more than 60 years but has been found to no longer support an evolving criminal justice system. Concerns raised by both the public and corrections practitioners led the Council of State Governments (CSG), in collaboration with the National Institute of Corrections, to revise the existing Interstate Compact.

Alabama became a signatory to the original Interstate Compact (1937) with the enactment of Ala. Code § 15-22-1 in 1939. This Act will repeal the original Interstate Compact, and establish the Interstate Compact for Adult Offender Supervision on behalf of Alabama. The Compact will take effect once it has been enacted into law by 35 states; currently 24 states have passed it. Once enacted the signatory states will begin making administrative decisions, by-laws, and the rules that signatory states must follow. Within the first twelve months of the enactment, under Article VIII of the Compact, member states are required to make rules in ten specific areas. All member states have an equal vote, and while nonmember states may be present and heard, they may not vote.

4. Uniform Parentage Act

Chairman: Noah Funderburg

Reporter: Penny Davis

Alabama passed its current Parentage Act in 1984. Alabama's act is based on the 1973 Uniform Act drafted by the National Conference of Commissioners on Uniform State Laws. This National model was revised in 2000. The Institute will begin its review of the National draft and Alabama's current law in the Spring of 2001.

The new act updates many sections from the 1973 act, including a much more comprehensive section on genetic testing, but also has many new provisions. For example, a new section is included in the revision which deals with voluntary acknowledgment of paternity. This is included in an effort to encourage states to adopt nonjudicial means to achieve early determination of paternity.

There is also a new section on establishment of a paternity registry. This allows fathers of children born out of wedlock to register if they wish to be notified of any termination of parental rights or adoption proceedings.

The revision allows standing to challenge the marital presumption of paternity. If a child has a presumed father, i.e. the husband of the mother at the time of birth, issues of paternity can get complex. The right of an “outsider” to claim paternity of a child born to a married woman varies considerably among the states. Some states do not allow such actions while others permit such actions. The revision provides a middle ground. It allows a proceeding which will seek to rebut this presumption of paternity, but the proceeding must be commenced not later than two years after the birth of the child. A two-year period allows an adequate time period to resolve the status of a child within the context of an intact family unit; a longer period may have severe consequences for the child.

The revision also incorporates provisions from the Uniform Status of Children of Assisted Conception Act (USCACA). Like USCACA, the revision offers validation of surrogacy contracts through court approval.

The new Uniform Parentage Act addresses rules for determining the parentage of a child. The primary focus remains on protecting the child, who has no voice in often complex circumstances giving rise to the child’s birth.

5. **Uniform Trust Code**  
Chairman: Ralph Yeilding

An Institute committee began reviewing the Uniform Trust Code proposed by the National Conference of Commissioners of Uniform State Laws in early 2001. This was the first attempt to bring together a codified law on trusts.

The use of trusts, both in family estate planning and commercial transactions, has increased dramatically in recent years. This has resulted in a corresponding rise in the number of day-today questions involving trusts and the recognition that trust law in many states is quite thin. While there are numerous Uniform Acts related to trusts, such as the Uniform Prudent Investor Act, the Uniform Principal and Income Act, the Uniform Trustees' Power Act, the Uniform Custodial Trust Act, and parts of the Uniform Probate Code, none is comprehensive. The UTC will enable states which enact it to specify their rules on trusts with precision and will provide individuals with a readily available source for determining their state's law on trusts.

Many individuals today use the revocable trust as their primary estate planning document. The UTC, unlike the existing statute of any state, has a separate article on revocable trusts. The UTC in general treats a revocable trust as the functional equivalent of a will but without the procedural formalities and court supervision involved in probate. The UTC specifies a standard of capacity for the creation of a revocable trust, presumes that a trust is revocable unless its terms provide otherwise, provides a method for revoking or amending the trust, includes a statute of limitations on a contest following the death of the settlor, and contains an optional provision that extends the enacting jurisdiction's rules on construction of wills to revocable trusts.

The UTC is a default act. With only limited exceptions, a settlor may spell out in the trust's terms how the trust is to be administered and distributed. The exceptions include the requirements for creating a trust and the rights of certain of a beneficiary's creditors, such as a child support claimant, to reach the beneficiary's interest in payment of a claim.

But for those settlors who have failed to so provide, the UTC

contains a comprehensive set of rules. The Code contains provisions on the creation of trusts, their day-to-day administration, and their modification and termination. Included are such matters as the procedure for transferring administration to another state, the appointment, resignation, removal and compensation of a trustee, and the duties and management powers of a trustee.

Consistent with its philosophy of keeping disputes out of court except when absolutely necessary, the UTC contains a provision for nonjudicial settlement and includes provisions that will enable disputes to be settled out of court even if the beneficiaries are minors, incapacitated, or unborn. For those disputes which do end up in court, the UTC includes a comprehensive set of rules on determining damages and other remedies.

**6. Uniform Prudent Investor Act**  
Chairman: Leonard Wertheimer  
Reporter: Professor Tom Jones

The Institute has been studying the Uniform Prudent Investor Act. The drafting committee has compared the revised Uniform Act, that has already been passed by 32 states, with Alabama's current statutory and case law. This is basically a "standard of care" act. It modernizes trustee powers.

Trustees of trusts and like fiduciaries have been subject to rules severely restricting the types of investment modalities in which they can invest the assets of the trusts that they administer and manage. Interest bearing instruments – safe income – of limited kinds are the limit of risk permitted or thought to be permitted under the traditional rules. Protect the paper value of the principal at all costs is the mandate for trustees. In addition, a trustee's performance is rated by the performance of each and every investment, singly, and not on the performance of the whole of the portfolio. Trustees have been precluded from obtaining professional investment help. The result for trusts is modest income production at best without regard for the erosion of a trust's assets by inflation.

The act provides rules governing investment that, in fact,

result in greater protection for the trust's assets while providing a prospect of better income. UPIA does not encourage irresponsible, speculative behavior, but requires careful assessment of investment goals, careful analysis of risk versus return, and diversification of assets to protect them. It gives the trustee the tools to accomplish these ends. UPIA requires trustees to become devotees of "modern portfolio theory" and to invest as a prudent investor would invest "considering the purposes, terms, distribution requirements, and other circumstances of the trust" using "reasonable care, skill, and caution."

The trustee has a list of factors which must be considered in making investment decisions, including "general economic conditions," "possible effect of inflation or deflation," "the expected total return from income and the appreciation of capital," and, "other resources of the beneficiaries." The trustee must take tax consequences of investment decisions into account. There is a positive obligation to diversify assets "unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying." The trustee's obligations are significant, requiring sophisticated approaches to investment that really take into account the right risk to return ratio for the particular trust.

In addition, a trustee's performance in UPIA is measured by the performance of all the assets together. A loss with respect to a single asset does not mean that the trustee has violated his or her fiduciary responsibilities. The act takes the truly holistic approach to investment practices.

In return for these obligation, UPIA removes any restrictions upon the types of investment modalities which may be chosen in a trust's portfolio. It is quite possible, for example, to hold positions in high-interest bonds or mutual funds investing in such bonds, in a diversified portfolio, if such an investment meets the needs of the particular trust in light of the risk/return analysis specific to that trust.

One of the boons to trustees of smaller trusts is the ability to invest in mutual funds. Mutual funds reduce investment risk by

diversifying their portfolios. By using mutual funds, a trustee of a trust that does not have a large enough corpus to effectively diversify its assets can enhance diversification of the trust's portfolio to limit the trust's risk of loss.

UPIA also permits the trustee to delegate investment and management functions "that a prudent trustee of comparable skills could properly delegate under the circumstances." Careful selection of the agent and careful, periodic review of the agent's actions are part of the trustee's responsibility when delegating authority. An agent has a responsibility of reasonable care in conducting the delegated business of the trust.

Some of the instruments in which trustees have been able to invest have become more volatile in price. Treasury bonds, for example, long thought to be safe investments, now fluctuate considerably in value with the fluctuation of interest rates. The former so-called safe investment may not be so safe anymore. In contrast, common stocks have shown consistently better returns over the years than bonds – yet trustees have been prevented from investing in common stocks. Stocks have been historically safer investments, therefore, in diversified portfolios than bonds have been. Trusts have been deprived of return at some greater risk by the antiquated rules that govern investment of their assets.

The UPIA provides rules that can be modified or waived in the trust agreement. Any person who wishes to put property in trust and who wants to provide different standards of conduct for the trustee is permitted to do so under UPIA.

7. **Business Entities**

Chairman: James Pruett

Reporter: Professor Howard Walthall

The Business Entities committee first drafted a law relating to conversions and mergers. See *Section V, Item 1*. This revision passed the legislature in 2000. The committee is continuing its study of the Alabama Business Entities. It is currently reviewing the Texas Business Entity Code that has been introduced in the Texas

Legislature. It is very comprehensive and undertakes many of the legislative reforms that were already being considered by the Alabama Business Entities committee. The committee is using the proposed Texas Business Entity Code as its model for further clarification of Alabama laws.

The committee has completed a review of the following chapters: Chapter I - Definitions and General Provisions; Chapter 2 - Purposes and Powers of Domestic Entities; Chapter 3 - Formation and Governance; Chapter 4 - Filings; Chapter 5 - Names of Entities; Registered Agents and Registered Offices; Chapter 8 - Indemnification and Insurance; Chapter 9 - Foreign Entities; Chapter 10 - Mergers and Conversions; Chapter 11 - Winding Up and Termination of Domestic Entities. Other chapters will be considered in conjunction with the “spoke”.

The committee has chosen to form subcommittees to review who will review specific entities to determine which particular provision should be included in the “hub” or “spoke” of the new Business Entities Act. The entities to be reviewed are as follows: Corporations; Non-Profit Corporations; Partnership, Limited Partnership, LLP’s; Limited Liability Companies; REITS and Business Trusts; Professional Corporations and Professional Associations; and Special Purposes Entities. It is anticipated that the study will not be complete until 2003.

**8. Criminal Procedure**

Chairman: Bill Bowen

Reporter: Bob McCurley

After the adoption of the Alabama Rules of Criminal Procedure in 1981, issues arose as to interpretations of the Rules. The Supreme Court asked the Alabama Law Institute and its Criminal Procedure Committee to continue to hold periodic meetings to address questions that were presented by judges, clerks and attorneys.

The majority of the questions presented to the committee were easily answerable by thorough reading of the rules and comments, and no modifications required. However, the committee meets several times a year to review issues and regularly submits revisions to both the

rules and the comments which are routinely adopted by the Supreme Court.

9. **Public Employees' Retirement System**

Chairman: Kyle Johnson

Reporter: Professor Jim Bryce

In 1997 the Law Institute formed a committee to review the Public Employees' Retirement Systems Law in Alabama. This committee's meetings have currently been suspended. The committee has studied the Uniform Management of Public Employee Retirement Systems Act and compared it to Alabama's current law. It has been noted that throughout the United States, state and local retirement systems currently manage in excess of one trillion dollars in assets for the benefits of the participants and beneficiaries. The federal law, The Employee Retirement Income Security Act (ERISA) does not apply to these systems. Consequently, the systems that we are studying are regulated in each state by state law. This new act is an attempt to assist states in the modernization, clarification, and the uniformity of rules governing the management of public retirement systems. Generally, the act is designed to protect the participants and beneficiaries of the public retirement system in two ways. First, the act will articulate the fiduciary obligations of the trustees who have discretionary authority over the various aspects of the system. Second, the act will assist with the monitoring of the retirement systems by requiring significant disclosure of the financial and actuary status of the systems.

The act is designed to replace laws that might inhibit or prevent the use of modern, investment practices. Drafters of the act consider the immediate beneficiaries of the revision as being the system's participants and beneficiaries but the ultimate beneficiaries being the State taxpayers by virtue of the State being able to offer employees either a better pension at the same cost or the same pension at a lower cost.

10. **Amendments to the Eminent Domain Code**

Chairman: Gerald Colvin

The Bench and Bar brought to the attention of the Alabama Law Institute the need for revisiting the manner in which interest is calculated under the Eminent Domain Code, in light of Williams v. Alabama Power Company, 737 So.2d 172 (Ala. 1999). A committee was convened in the fall of 1999 to study the possible amendments to § 18-1A-211 and § 18-1A-111 as they relate to calculation of interest. The interest rate will be tied to the amount as set forth in § 8-8-1. The interest shall begin to accrue on the date of taking. This study is on going but no legislation has been introduced.



## V.

### ENACTED LEGISLATION AND COMPLETED PROJECTS

#### 1. Uniform Electronic Transactions Act

This bill was passed in 2001 and became effective January 1, 2002. It is codified as §§ 8-1A-1 et. Seq. of the Code of Alabama.

The Electronic Signatures in Global and National Commerce Act or "E-SIGN" was passed by Congress and signed by the President on June 30, 2000. This new federal law establishes for the first time base line rules to facilitate the nationwide use of electronic signatures, contracts, and records in commercial transactions. This bill's focus is more on enabling electronic transactions and removing current barriers to such transactions than on the technical requirements of electronic signatures. The "E-SIGN" functions to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures.

The federal law does provide states with limited authority to modify, limit, or supercede the E-Sign Act basic provisions to comply with state law by the adoption of the Uniform Electronic Transactions Act. UETA was drafted by the National Conference of Commissioners of Uniform State Laws in 1999 and in the last two years has been adopted by the 22 states. The following summary of UETA is adapted from the NCCUSL comments to the Uniform Act.

Although related to the Uniform Commercial Code, the rules of UETA are primarily for "electronic records and electronic signatures relating to a transaction" that is not subject to any article of the Uniform Commercial Code, except for Articles 2 and 2A. A "transaction" means an action or set of actions occurring between two or more persons relating to

the conduct of business, commercial, or governmental affairs.

UETA applies only to transactions in which each party has agreed by some means to conduct them electronically. Agreement is essential. Nobody is forced to conduct by electronic transactions. Parties to electronic transactions come under UETA, but they may also opt out. They may vary, waive or disclaim most of the provisions of UETA by agreement, even if it is agreed that business will be transacted by electronic means. The rules in UETA are almost all default rules that apply only in the event the terms of an agreement do not govern.

UETA does not attempt to create a whole new system of legal rules for the electronic marketplace. The objective of UETA is to make sure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing any of the substantive rules of law that apply. This is a very limited objective--that an electronic record of a transaction is the equivalent of a paper record, and that an electronic signature will be given the same legal effect, whatever that might be, as a manual signature. The basic rules in UETA serve this single purpose.

The basic rules are in Section 7 of UETA. The most fundamental rule in Section 7 provides that a "record or signature may not be denied legal effect or enforceability solely because it is in electronic form." The second most fundamental rule is that "a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation." The third most fundamental rule states that any law that requires a writing will be satisfied by an electronic record. And the fourth basic rule provides that any signature requirement in the law will be met if there is an electronic signature.

Almost all of the other rules in UETA serve the fundamental principles set out in Section 7, and tend to answer basic legal questions about the use of electronic records and signatures. Thus, Section 15 determines when information is

legally sent or delivered in electronic form. It establishes when electronic delivery occurs--when an electronic record capable of retention by the recipient is legally sent and received. The traditional and statutory rules that govern mail delivery of the paper memorializing a transaction can't be applied to electronic transactions, however, UETA provides the appropriate rule.

Another rule that supports the general validity of electronic records and signatures in transactions is the rule on attribution in Section 9. Electronic transactions are mostly faceless transactions between strangers. UETA states that a signature is attributable to a person if it is an act of that person, and that act may be shown in any manner. If a security procedure is used, its efficacy in establishing the attribution may be shown. In the faceless environment of electronic transactions, the obvious difficulties of identification and attribution must be overcome. UETA, Section 9 gives guidance in that endeavor.

A digital signature is really a method of encryption that utilizes specific technology.

UETA may not however be characterized as a digital signature statute. It does facilitate the use of digital signatures and other security procedures in rules such as the one in Section 9 on attribution. Section 10 provides some rules on errors and changes in messages. It favors the party who conforms to the security procedure used in the specific transaction against the party who does not, in the event there is a dispute over the content of the message.

Nothing in UETA requires the use of a digital signature or any security procedure. It is technologically neutral. Persons can use the most up-to-date digital signature technology, or less sophisticated security procedures such as passwords or pin numbers. Whatever parties to transactions use for attribution or assuring message integrity may be offered in evidence if there is a dispute.

UETA is procedural, not substantive. It does not require anybody to use electronic transactions or to rely upon

electronic records and signatures. It does not prohibit paper records and manual signatures. Basic rules of law, like the general and statutory law of contracts, continue to apply as they have always applied.

There are three provisions in UETA that need special attention. First, UETA excludes transactions subject to the Uniform Commercial Code, except for those under Articles 2 and 2A, laws governing estates and trusts, and any other specific laws that a state wants to exempt from the rules applied in UETA. Some writing and signature requirements in state law do not impact the enforceability of transactions, and have objectives that should not be affected by adoption of a statute like UETA. The limitation of UETA to agreed electronic transactions will eliminate any conflict with other writing requirements for the most part.

Second, UETA provides for "transferable records" in Section 16. Notes under Article 3 and documents under Article 7 of the Uniform Commercial Code are "transferable records" when in electronic form. Notes and documents are negotiable instruments. The quality of negotiation relies upon the note or document as the single, unique item of the obligations and rights embodied in the note or document. Maintaining that quality as a unique item for electronic records is the subject of Section 16. A transferable record exists when there is a single authoritative copy of that record existing and unalterable in the "control" of a person. A person in "control" is a "holder" for the purposes of transferring or negotiating that record under the Uniform Commercial Code. Section 16 is essentially a supplement to the Uniform Commercial Code, until its relevant articles can be fully amended or revised to accommodate electronic instruments.

Third, UETA clearly validates contracts formed by electronic agents. Electronic agents are computer programs that are implemented by their principals to do business in electronic form. They operate automatically, without immediate human supervision, though they are certainly not autonomous agents. They are a kind of tool that parties use to communicate. Section 14 provides that a person may form a

contract by using an electronic agent. That means that the principal, which is the person or entity which provides the program to do business, is bound by the contract that its agent makes.

When somebody buys something on the Internet, therefore, that person will be assured that the agreement is valid, even though the transaction is conducted automatically by a computer that solicits orders and payment information.

Three sections, 17, 18, & 19 of UETA deal with electronic records that state governmental agencies create and retain.

## **2. Alabama Uniform Athlete Agents Act**

This bill was passed in 2001 and became effective October 1, 2001. It is codified as §§ 8-26A-1 through 31 of the Code of Alabama.

In 1987 the Alabama Legislature established the “Alabama Athlete Agents Regulatory Commission.” That law provided that no person could be an athletic agent in Alabama without first registering with the Commission. It was subsequently amended in 1994 to change the makeup of the Commission. The law was again amended to the current law in 1998 to add additional requirements in the approved form of contracts between the student athlete and the athlete agent and provide a criminal and civil penalty against the parties for failure to adhere to the law.

At least 28 states have enacted statutes regulating athlete agents. They vary in degree and do not contain registration reciprocity. An athlete agent intending to do business in each state was currently required to comply with 28 different sets of requirements for registration and regulation. This uniform act was drafted to protect the interest of student athletes and academic institutions by regulating the activities of athlete agents. This new law, provides the following:

- Reciprocity of registration.
- Authorizes denial, suspension, or revocation of

registrations based upon similar actions in other states.

- Regulates the conduct of individuals who contact student athletes for the purpose of obtaining agency contracts.
- Requires notice to educational institutions when an agency contract is signed by a student athlete.
- Provides a civil penalty for an educational institution damaged by the conduct of an athlete agent or a student athlete.
- Establishes civil and criminal penalties for violation of the act.

### **3. Revised Article 9 of the Uniform Commercial Code**

This bill was passed in 2001 and became effective January 1, 2002. It is codified as §§ 7-9A-101 et.seq. Of the Code of Alabama.

A major revision of Article 9 was drafted and approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws in 1999. It has been adopted in all 50 states and is now effective in each state.

The Uniform Commercial Code in Alabama was adopted in 1965 and was last revised in 1981. However, this revision is more wide sweeping than the earlier revision. Currently, financing statements are filed in either the probate office or in the Secretary of State's Office. Under this revision

the place of filing follows the domicile of the debtor rather than the location of the security. Further, there will only be one central data base.

For natural persons living in Alabama the filing will still remain in Alabama. However, for business entities, although located in Alabama and with property in Alabama, if they are foreign business entities, the filing will be in the state of organization.

It is also envisioned that filing could either be paper

documents or electronic records.

Article 9 is not simple, the following summary of Article 9 is adopted from the NCCUSL comments and is not a treatise on Revised Article 9, but is a schematic summary of its relevant changes provided by the drafters.

**1. The Scope Issue.** This revision expands the "scope" of Article 9. What this means literally is that the kinds of property in which a security interest can be taken by a creditor under Article 9 increases over those available in Article 9 before revision. Also, certain kinds of transactions that did not come under Article 9 before, now come under Article 9. These are some of the kinds of collateral that are included in Revised Article 9 that are not in original Article 9: sales of payment intangibles and promissory notes; security interests created by governmental debtors; health insurance receivables; consignments; and commercial tort claims. Nonpossessory, statutory agricultural liens come under Article 9 for determination of perfection and priority, generally the same as security interests come under Article 9 for those purposes.

**2. Perfection.** Filing a financing statement remains the dominant way to perfect a security interest in most kinds of property. It is clearer in Revised Article 9 that filing a financing statement will perfect a security interest, even if there is another method of perfection. "Control" is the method of perfection for letter of credit rights and deposit accounts, as well as for investment property. Control was available only to perfect security interests in investment property under old Article 9. A creditor has control when the debtor cannot transfer the property without the creditor's consent. Possession, as an alternative method to filing a financing statement to perfect a security interest, is the only method for perfecting a security interest in money that is not proceeds of sale from property subject to a security interest. Automatic perfection for a purchase money security interest is increased nationally from ten days in old Article 9 to Alabama's current twenty days in Revised Article 9. Attachment of a purchase money security interest is perfection, at least for the twenty-day period. Then another method of perfection is necessary to continue the

perfected security interest. However, a purchase money security interest in consumer goods remains perfected automatically for the duration of the security interest.

**3. Choice of Law.** In interstate secured transactions, it is necessary to determine which state's laws apply to perfection, the effect of perfection and the priority of security interests. It is particularly important to know where to file a financing statement. The Revised Article 9 makes two fundamental changes from old Article 9. In old Article 9, the basic rule chooses the law of the state in which the collateral is found as the law that governs perfection, effect of perfection, and a creditor's priority. In Revised Article 9, the new rule chooses the state that is the location of the debtor. Further, if the debtor is an entity created by registration in a state, the location of the debtor is the location in which the entity is created by registration. If an entity is a corporation, for example, the location of the debtor is the state in which the corporate charter is filed or registered. In old Article 9, the entity that is a debtor is located in the state in which it has its chief executive office. These changes in basic choice of law rules will change the place in which a financing statement is filed in a great many instances from the place it would have been filed under old Article 9.

**4. The Filing System.** The filing system in the Revised Article 9 includes a full commitment to centralized filing--one place in every state in which financing statements are filed, and a filing system that changes filing from a system of filed documents to a system of electronic communications and records. Under Revised Article 9, the only local filing of financing statements occurs in the real estate records for fixtures. Fixtures are items of personal property that become physically part of the real estate, and are treated as part of the real estate until severed from it. It is anticipated that electronic filing of financing statements will replace the filing of paper. Revised Article 9 definitions and provisions allow this transition from paper to electronic filing without further revision of the law. Revised Article 9 makes filing office operations more ministerial than old Article 9 did. The office that files financing statements has no

responsibility for the accuracy of information on the statements and is fully absolved from any liability for the contents of any statements received and filed. Financing statements may, therefore, be considerably simplified. There is no signature requirement, for example, for a financing statement.

**5. Consumer Transactions.** Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer than prior Article 9 did. Enforcement of a security interest that is included in a consumer transaction is handled differently in certain respects in the Revised Article 9. Examples of consumer provisions are: a consumer cannot waive redemption rights in a financing agreement; a consumer buyer of goods who pre-pays in whole or in part, has an enforceable interest in the purchased goods and may obtain the goods as a remedy; a consumer is entitled to disclosure of the amount of any deficiency assessed against him or her, and the method for calculating the deficiency; and, a secured creditor may not accept collateral as partial satisfaction of a consumer obligation, so that choosing strict foreclosure as a remedy means that no deficiency may be assessed against the debtor. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the Revised Article 9.

**6. Default and Enforcement.** Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with "secondary" obligors (guarantors), new special rules for some of the new kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor. These are some of the specific new rules: a secured party (creditor with security interest) is obliged to notify a secondary obligor when there is a default, and a secondary obligor generally cannot waive rights by becoming a secondary obligor; a secured party who

repossesses goods and sells them is subject to the usual warranties that are part of any sale; junior secured creditors (subsequent in priority) and lien holders who have filed financing statements, must be notified when a secured party repossesses collateral; and, if a secured party sells collateral at a low price to an insider buyer, the price that the goods should have obtained in a commercially reasonable sale, rather than the actual price, is the price that will be used in calculating the deficiency.

#### **4. Consolidation and Mergers of Business Entities**

This bill was passed in 2000 and became effective October 1, 2000. It is codified as §§ 10-15-1 through 7 of the Code of Alabama.

Over the last several years the number of business entities available in Alabama and throughout the United States has greatly expanded and virtually all existing business entities have been revised.

With eight choices of business entities now available in Alabama in each case Alabama has kept pace with the rest of the nation and in some cases, been out front in providing a range of business entities available in Alabama.

This act provides a convenient and simple way for the different types of business entities for profit to convert or merge with each other.

Business entities allowed to merge under this Act include the following with their effective dates:

Business Corporation (1995)

Limited Liability Company (1993)

General Partnership (1997)

Limited Partnership (1998)  
Limited Liability Partnership (1997)  
Real Estate Investment Trust (1995)  
Professional Corporation (1984)

These laws, having been created and revised at different times, may provide clear laws for mergers and conversions of entities of like kind but when entities of different kinds merge or convert the laws are often incomplete and conflicting.

This act is not exclusive. Business entities may be converted or merged in the manner provided in their own acts or under this act.

## **5. Uniform Principal and Income**

This bill was passed in 2000 and became effective January 1, 2001. It is codified in the Code of Alabama at §§19-3A-101 et seq.

The basic premise of a “principal and income” act is how to determine the allocation of income and expenses of a trust between a life beneficiary and a beneficiary after death.

Property may be left in trust with the income paid during the life of one individual and the remainder payable to another. This act allows the trustee, when directed by the donor, to pay the life beneficiary more or less than the income when it is fair and equitable to all beneficiaries.

There were two uniform principal and income acts prior to this Uniform Principal and Income Act. The first was the 1931 Uniform Principal and Income Act [UPAIA] and followed by the 1962 Revised Uniform Principal and Income Act.

Alabama basically had the 1931 Uniform Principal and Income Act with some amendments and additions that have been made through the years. Alabama never adopted the 1962 act. This revision allows Alabama Trustees and beneficiaries the same estate planning opportunity as that afforded in the other states.

The 1931 UPAIA was drafted when the nation was beginning to recover from "The Great Depression of 1929" and reflected financial attitudes relative to fiduciaries of the period. To refresh memories of the historical setting, which provided the frame-of-mind for the drafters of the 1931 UPAIA: the Dow Jones Industrial Average reached its peak of \$381.17 on September 3, 1929; the stock market crashed on "Black Tuesday", October 29, 1929; and the Dow finally reached its bottom in July 1932, down 89% from the 1929 peak. The New York Stock Exchange [NYSE] registered as a national securities exchange on October 1, 1934. Except for a few minor bumps in the graph, our Nation's economy has been generally on the rise, and to some extent inflationary, since 1931. The Dow Jones Industrial Average reached \$11,500 during the fall of 1999. The 1962 UPAIA reflected changes in attitudes over three decades and generally gave fiduciaries broader powers and more discretion. Nevertheless, it is not surprising that at the Millennium even broader discretion is essential for fiduciaries to apply their expertise in the best interest of *all beneficiaries*.

This act continues that trend of giving fiduciaries more flexibility with broader powers and more discretion. As stated below, one of the major considerations in drafting this act was that financial instruments and investment opportunities have been developed over six decades that were not even conceptualized in 1931. A second major change has been that today fiduciaries, and particularly corporate fiduciaries, conduct multi-state operations as fiduciaries. Thirdly, much of the large holdings of property interests, particularly of timber and other natural resources, are held by property owners who operate

inter-state. Generally, with respect to real property, the law of the situs of the property controls. The Alabama Court has stated, in Englund v. First National Bank of Birmingham, 381 So.2d 8 (Ala.1980), that even though a testamentary trustee was granted very broad power to allocate trust receipts between principal and income, the trustee was not authorized to make allocations where proper allocation is not a matter of honest doubt. If a trustee is attempting to apply the principal and income acts of different states to different portions of the same trust, attempting to determine when “a proper allocation is not a matter of honest doubt” may put a trustee in some jeopardy. The latter two considerations make uniformity of legislation dealing with principal and income allocations among the various states important.

Revision was needed to support the now widespread use of the revocable living trust as a will substitute, to change the rules in those acts that experience has shown need to be changed, and to establish new rules to cover situations not provided for in the old acts, including rules that apply to financial instruments invented since 1931.

The other purpose was to provide a means for implementing the transition to an investment regime based on principles embodied in the Uniform Prudent Investor Act, especially the principle of investing for total return rather than a certain level of “income” as traditionally perceived in terms of interest, dividends, and rents.

## **6. Uniform Determination of Death Act**

This act was passed in 2000 and became effective July 1, 2000. It is codified in the Code of Alabama at §§ 22-31-1.

This act provides a comprehensive basis for determining death in all situations. This bill amended Alabama's law in Ala. Code § 22-31-1 et. seq. which was passed in 1979. This uniform act is not radically different from prior Alabama law. It does make our determination of death aligned with the law. This uniform law has been adopted in 43 states, including Georgia and Mississippi.

The interest in this statute arose from modern advances in life saving technology. A person may be artificially supported for respiration and circulation after all brain functions cease irrevocably. The medical profession has also developed techniques for determining loss of brain functions while cardiovascular support is administered. At the same time, the common law definition of death cannot assure recognition of these techniques. The common law standard for determining death is a cessation of all vital functions traditionally demonstrated by an absence of spontaneous respiratory and cardiac functions. There is then a potential disparity between current and accepted biomedical practice and the common law.

Part 1 codified the common law basis for determining death - total failure of the cardiac respiratory system. Part 2 extends a common law to include the new procedures for determination of death based upon irreversible loss of brain functions. The overwhelming majority of cases will continue to be determined according to part 1. While artificial means of support preclude a determination under part 1, the act recognizes that death can be determined by alternate procedures. Under part 2 the entire brain must cease to function irreversibly. The "entire brain" includes the brain stem

as well as the neocortex. The concept of “entire brain” distinguishes determination of death under this act and “neocortical death” or “persistent vegetative state”. These are not deemed valid, medical or legal basis for determining death.

This act also does not concern itself with living wills, death with dignity, euthanasia, rules on death certificates, maintaining life support beyond brain death in cases of pregnant women or organ donors, and protection of a dead body. These subjects are left to other law.

This act is also silent on acceptable diagnostic tests and medical procedures. It sets the general, legal standard for determining death but not the medical criteria for doing so. The medical profession remains free to formulate acceptable medical practice and to utilize new, biomedical knowledge, diagnostic tests, and equipment.

Time of death, also, is not specifically addressed. In those instances in which time of death affects legal rights, this act states the basis for determining death. Time of death is a fact to be determined with all others in each individual case and may be resolved, when in doubt, upon expert testimony before the appropriate court.

7. **Uniform Child Custody Jurisdiction and Enforcement Act**

This act was passed in 1999 and became effective January 1, 2000. It is located in the Code of Alabama at §§ 30-3B-101 *et seq.*

The Legislature passed the Uniform Interstate Family Support Act (UIFSA) (§ 30-3A-101) that became effective in 1998 to clarify the law concerning child support when the parties live in different states. Complimenting that law is this act which is concerned with custody and visitation rights of parties who live in different states.

This act, the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) was promulgated by the National Conference of Commissioners on Uniform Laws. It revises and updates the Uniform Child Custody Jurisdiction Act passed in 1980 (Alabama Code §§ 30-3-20 through 44). Although this act follows to a large extent the format of Alabama's current laws there are a number of improvements.

First, the act adds remedial provisions to enforce interstate visitation determinations that were not previously covered under current law. Swift access to the court will now be available in visitation and custody cases. This is particularly critical in the area of visitation because if visitation rights cannot be quickly enforced then often the time frame available for the visitation by the non-custodial parent will have passed.

Second, this act revises the law on child custody jurisdiction in light of the enactment of several federal laws as well as the myriad problems that have developed over the last thirty years with inconsistent case law determinations. The changes in the law as it relates to child custody were drafted to parallel those of the Parental Kidnaping Prevention Act (PKPA) located at 28 E.S.C. § 1738A. For example, the act will prioritize home state jurisdiction in a similar manner as the

PKPA. Moreover, the new act clarifies the circumstances in which emergency jurisdiction applies, thus, clearing up the confusion that has developed as various courts have interpreted the current UCCJA language to provide a court with jurisdiction to modify another court's custody determination based solely upon emergency jurisdiction. Under this act the language specifies that emergency jurisdiction may be exercised only to protect the child on a temporary basis, not to provide jurisdiction to modify another court's determination.

The establishment under this act of continuing exclusive jurisdiction will eliminate some of the confusion in state courts as to which state has continuing jurisdiction. One manner of clarifying this was to provide a clear basis to determine when a court has relinquished jurisdiction. Specifically, for the first time, this act enunciates a standard of continuing jurisdiction and clarifies the law as it relates to modification jurisdiction.

A further clarification has been defining which custody proceedings are intended to be covered by this act. For example, this law specifically provides that adoption is not covered by this statute.

Finally, one of the major purposes of the revision to the UCCJA was to provide an effective enforcement mechanism for interstate visitation and custody cases. Article 3 of the act provides several remedies for the enforcement of custody and visitation provisions. For example, there is a procedure under this act for registering a custody determination in another state so that a party will know in advance whether that state will recognize that party's custody determination. Also, a number of remedies, such as habeas corpus, will be available to a parent to assist them if there is any problem with the enforcement of a custody or visitation order. The court is given greater flexibility in utilizing extraordinary remedies such as issuing a warrant for the physical possession of a child under certain circumstances.

## **8. Legal Separation**

This act was passed in 1998 and became effective January 1, 1999. It is located in Ala. Code § 30-2-40 .

This act is designed to allow couples who are facing marital discord to have a viable alternative to immediately obtaining a divorce. It has been drafted to provide flexibility so that it can be utilized by couples who hope for a brief period of legal separation while they attempt to reconcile or it can be used by couples who anticipate a long, perhaps even permanent separation but do not want to obtain a divorce for religious or other reasons.

Under Section (1)(a) the court shall enter a legal separation if requested by one or both of the parties provided that the jurisdictional requirements for a dissolution of a marriage have been met. In so doing, the court must comply with Rule 32 relating to the mandatory child support guidelines, if the couple has children.

Section (1)(b) reiterates that a decree of legal separation does not terminate the marital status of the parties. Section (1)(c) specifies that the terms of a legal separation can be modified or dissolved only by written consent by both parties and ratification by the court or by court order upon proof of a material change of circumstances. Moreover, the existence of a legal separation does not bar a party from later instituting an action for dissolution of a marriage.

Section (1)(d) contemplates that the terms relating to alimony or a property settlement in the legal separation will not generally be incorporated into a final divorce decree absent agreement by the parties. This section recognizes that in many instances the parties hope to reconcile and therefore

have not attempted to equitably divide their property during what is hoped will be only a brief period of separation. However, this section does provide the flexibility of allowing the couple to agree that if a reconciliation does not occur that the division of property and the alimony provision will be continued in a final decree.

Section (1)(e) provides that "the best interest of the child" standard shall apply if the parties to the legal separation later file for dissolution of their marriage.

Section (1)(f) provides that if both parties consent, property acquired by each party subsequent to the legal separation will be deemed the sole party of the person acquiring the property. Likewise, if both parties consent, each spouse may waive all rights of inheritance subsequent to the legal separation. This section has been included to provide flexibility to those parties who desire more economic certainty when a legal separation is anticipated to extend for a long period of time or when the parties prefer to have those matters settled by consent prior to the entry of the legal separation.

Section (1)(g) provides that the cost for legal separation is the same as if a dissolution of the marriage was requested.

Sections 30-2-30 and -31 relating to divorce from bed and board have been repealed.

The act had a delayed effective date to January 1, 1999 to enable the bench and bar to be informed of the new law.

**9. Uniform Multiple Persons Accounts**

This act was passed in 1997 and became effective March 1, 1997. It is located in Ala. Code §§ 5-24-1 -- 5-24-34.

This act addresses deposits in all types of financial organizations and corrects the problem of inconsistent treatment of joint accounts among different financial institutions in Alabama. It contains several sections which resolve ownership questions affecting parties and death beneficiaries of accounts. Separate sections are devoted to protecting financial institutions if they make payment in accordance with the account contract terms.

The act includes sample statutory forms that provide clear and simple instructions to both financial institutions and depositors in setting up multi-person accounts. Many of the account agreements formerly used in Alabama did not allow the depositor to distinguish among the different functions of the multiple-person account, with the result that the depositor's use of a joint account for one purpose may yielded unwanted results after death.

**10. The Uniform Interstate Family Support Act**

This act was passed in 1997 and became effective January 1, 1998. It is codified at Ala. Code §§ 30-3A-101 -- 906.

The recently enacted Federal Welfare Reform Acts required each state to pass the Uniform Interstate Family Support Act (UIFSA). UIFSA was initially passed in 1992 and was adopted by a majority of the jurisdictions in the United States. In 1996, the Commissioners adopted the 1996 draft that included amendments designed to improve the act as well as provide a smoother transition between those jurisdictions

who had adopted UIFSA with those who had not. This act replaces Alabama's prior law (Ala. Code § 30-4-80 through 98).

One of the major drawbacks to the former interstate income withholding law in Alabama is that the orders, in general, were not affected by other support orders. This resulted in the potential of several states issuing conflicting support orders relating to the same parties and child. This led to confusion on the part of a payor as to which amount he or she should pay and sometimes resulted in arrearage if the payor paid the lesser of the amounts specified in the orders.

Under UIFSA the act establishes a priority scheme in which there will be a determination as to which jurisdiction may issue a child support order. Thus, even though there may be more than one state involved in enforcing a child support order at the same time, the order that is being enforced will be the same amount. This is accomplished through the process of having one state assume continuing exclusive jurisdiction, with modification of that order under very limited circumstances.

UIFSA also contains a one-state enforcement mechanism that allows for direct withholding. Therefore, an order can be sent directly to an employer in a second state without the necessity of "domesticating" the order. The act also provides immunity for an employer who complies with income withholding order of another state in accordance with the provisions of the act.

UIFSA, also, substantially increases the methods in which courts and agencies may interact among each other concerning issues relating to child and spousal support. This allows the state to take advantage of the new technology available to speed up the enforcement process.

Another component of UIFSA is a long arm provision for asserting personal jurisdiction over a nonresident in an action

to establish paternity or support. Also, a state that issues a support order and remains the residence of either the obligor, obligee or child has "continuing exclusive jurisdiction" unless the individual parties agree in writing for another state to exercise jurisdiction. Moreover, an ex parte temporary support order or a temporary support order pending a determination of a jurisdictional conflict does not affect the "continuing exclusive jurisdiction" of the issuing court.

It should be noted that UIFSA does not affect the calculation of an arrearage under an existing order. Under the Bradley amendments, 42 U.S.C § 666(a)(9), arrearages are judgments that are entitled to full faith and credit.

The act provides for uniformity in the procedure involved in the enforcement of spousal and child support orders from various states. The Department of Human Resources is designated as the support enforcement agency for the State of Alabama.

#### **11. UCC Article 5 - Letters of Credit**

This act was passed in the 1997 Regular Session and became effective January 1, 1998. It is codified at Ala. Code §§ 7-5-101 -- 7-5-117.

The revision of this article is the first since the Uniform Commercial Code was passed in 1965.

A letter of credit is an instrument that participates in the payment system along with drafts, checks, electronic funds transferring money. A typical example would involve an American Company buying goods from a European manufacturer, the European manufacturer is willing to do business provided it has assurances of payment for the goods which are purchased. The American Company then applies to

its bank with which it has accounts and receives a letter of credit from the bank. The bank issues the document that it is in actual letter form. In the letter it guarantees the manufacturer in Europe that the bank will pay money up to a certain amount upon receipt of an appropriate document, usually a draft, from the European manufacturer. The letter of credit may also contain other documentary conditions that the parties agree on. The letter of credit provides the guarantee of payment to the European supplier that at an appropriate time in the transaction the manufacturer is paid upon presentation of the draft to the bank. Then the bank debits the appropriate account of the American company to receive its money. The letter of credit business is a two hundred billion dollar industry in the United States. Half of all exports outside the United States are financed by letters of credit.

This act conforms our law with international law and practice which facilitates international trade.

## **12. Limited Liability Company Act Amendments**

This act passed in the First Special Session in 1997 and became Act 97-920. It became effective January 1, 1998.

Alabama adopted its Limited Liability Company law in 1993. When Alabama passed its law it was the fourteenth state to pass a LLC law. In the few years since Alabama's enactment all other states have since passed LLC laws.

One of the major revisions in other states will allow for a one person LLC organization, whereas Alabama formerly required two or more. There was also a need for a merger provision to enable other entities to be able to merge into LLCs. Filing provisions with the Secretary of State have been modified to remove the filing of an annual report. Further there is a change in the buyout rule and additional fiduciary

obligations to the members with each other.

**13. Revised Limited Partnership Act**

This act passed in the First Special Session in 1997 and became Act 97-921. It became effective October 1, 1998.

Alabama passed its prior limited partnership in 1983, however, it followed the 1976 Uniform Limited Partnership Act.

The revision of the Alabama Limited Partnership Act had two goals, one narrow and the other more broad. First, the act amended the "default" rules that apply, in the absence of a provision in the partnership agreement, to the withdrawal of a limited partner from the partnership. The second, broader goal was to bring the Alabama Act in line with the most current version of the Uniform Limited Partnership Act promulgated by the National Conference of Commissioners on Uniform State Laws by streamlining the information required to be set forth in the certificate of limited partnership and by clarifying the activities in which a limited partner may engage without loss of limited liability.

**14. Transfer On Death Securities Registration Act**

This act passed in 1997 and was codified as Article 6 of Chapter 6 of Title 8 of the Code of Alabama. It became effective August 1, 1997.

This act allows for the transfer of stock upon the death of one of the parties without requiring the person's estate to be probated. Currently, Alabama has a statute which allows checking accounts in banks to be payable to a survivor upon the death of one of the parties. We also have a statute which allows "right of survivorship" for joint owners of real estate.

This act is consistent with those laws by allowing joint tenancy for stock.

**15. Article 8 of the UCC "Investment Securities"**

This act was passed in 1996 and became effective January 1, 1997. It is located in Ala. Code § 7-8-1.

In 1965 Alabama passed the Uniform Commercial Code. The Uniform Code was drafted by the Commissioners on Uniform State Laws and the American Law Institute. Article 8 has not been revised since that original legislation in 1965. For the past thirty years Alabama law has only recognized a stock purchase when a purchaser possesses a paper stock certificate. The revision proposed by this bill is technical in nature and will protect stock holders by allowing transfer of stock to be done electronically with the issuer rather than being held by the brokers. This means stock transfers will not have to rely on paper certificates. Now stock purchases and transfers will be effective by bookkeeping entries, rather than through the delivery of physical certificates. This uniform act is supported by all those in the securities industry and those dealing with securities.

**16. Partnership**

This bill was passed in 1996 and became effective January 1, 1997. It is located in Ala. Code § 10-8A-1001.

Although the revised Uniform Partnership Act retains the basic historical character of a partnership, there have been some changes to adapt to the way business is currently done and is expected to be done the next century. Under the UPA the partnership formed is an entity and not an aggregate of individuals. The UPA does not require filing a certificate to form a partnership, preserving availability of the partnership

form of organization to both large and small entities. It does however, permit the filing of a statement of partnership authority which may be used to limit the capacity of a partner to act as an agent of the partnership and to limit a partner's capacity to transfer property on behalf of the partnership. Such statement is voluntary. No partnership need file such a statement nor is the existence of the partnership dependent upon the filing of the statement. However, the statement if filed, has an impact upon a third party dealing with the partnership. Nonetheless, a limitation upon a partner's authority does not affect any third party who does not know about the statement, except as to real estate transactions. If there has been some limitation as to real estate transactions that are filed in the records office, then a third party dealing with that partner is held to know of that limitation.

#### **17. Limited Liability Partnership**

This act became effective January 1, 1997 and is codified at Ala. Code §§ 10-8A-101 et seq. The Partnership Act of 1997 included a new chapter on Limited Liability Partnership.

Although the Uniform Partnership Act retains the basic historical character of a partnership, there have been some changes to adapt to the way business is currently done and is expected to be done the next century. Under the UPA the partnership formed is an entity and not an aggregate of individuals. The UPA does not require filing a certificate to form a partnership. It does, however, permit filing a statement of partnership authority which may be used to limit the liability of a partner and to limit a partner's capacity to transfer property on behalf of the partnership. Such statement is voluntary. No partnership need file such a statement nor is the existence of the partnership dependent upon the filing of the statement. However, the statement if filed, has an impact upon a third party dealing with the partnership. Nonetheless, a limitation upon a partner's authority does not affect any third party who

does not know about the statement, except as to real estate transactions. If there has been some limitation as to real estate transactions that are filed in the records office, then a third party dealing with that partner is held to know of that limitation.

The act contains articles on: Nature of the Partnership; Relations of Partners to Persons Dealing with Partnership; Relations of Partner to Each Other and the Partnership; Transfers and Creditors of Partner; Partners Disassociation; Partner's Dissolution When Business Not Wound Up; Winding Up a Business; and Conversions.

#### **18. Repeal Article 6 of the UCC**

Alabama passed all the Uniform Commercial Code in 1965 including Article 6 "Bulk Transfers". The national drafters of the UCC, realizing that it was too inconclusive and covered more transactions than were really necessary, attempted to revise this article beginning in 1987. After several years of study, a 1989 revision was completed. However, in 1991 the Commission on Uniform State Laws withdrew their support from Article 6 and recommended that the article be repealed.

The parties will still be protected under the Alabama Fraudulent Transfers Act that was passed by the Legislature in 1989. It has been the general consensus nationally that the Fraudulent Transfer Act, which has been enacted in 33 states makes the "Bulk Transfers" no longer necessary.

Therefore, this act repeals Article 6 in the Alabama Code effective January 1, 1997.

#### **19. Joint Custody**

This act was passed in 1996 and became effective January 1, 1997. It is codified at Ala. Code § 32-3-150 et seq.

This act provides statutory clarification concerning joint and sole custody of children including enumerating factors for the court to consider as well as dealing with the accessibility of records by both parents. It espouses the policy of encouraging minor children to have frequent and continuing contact with both parents provided that such contact is in the best interest of the children. The act specifies that joint custody does not necessarily require equal physical custody. Section 30-3-151 of the act provides definitions for joint legal and physical custody and sole legal and physical custody.

Under Section 30-3-152 the court may award any form of custody that has been determined to be in the best interest of the child. It delineates the factors that the court will consider in determining whether joint custody is in the best interest of the child. Section 30-3-152(c) establishes a presumption that joint custody will be in the best interest of the child if both parents request joint custody. If the court fails to grant joint custody when requested by both parents, the court must make a specific finding of fact as to why joint custody was not granted.

The parents are required to submit a plan for the court to review concerning specific matters relating to the care and custody of the child if joint custody is to be implemented by the court. In the event that the parties are unable to reach such an agreement then the court will establish a plan.

Unless otherwise prohibited by court order or statute all the records and information pertaining to the child shall be equally available to both parents in all types of custody arrangements. Rule 32 relating to child support guidelines will be followed by the court. The awarding of joint custody does not preclude the court from later finding that one parent has committed a violation of the UCCJA or the Interference of

Custody Act as provided in Section 13A-6-45.

This act does not constitute grounds for modification of an existing order of child custody.

## **20. Articles 3 & 4 of the UCC**

This bill was passed in 1995 and became effective January 1, 1996. It is located in Title 7 of the Code of Alabama. Prior Articles 3 and 4 were written for a paper-based system. Therefore, they did not adequately address the issues of responsibility and liability as they relate to modern technologies now employed and the check collection procedures required by the current volume of checks.

Revised Article 3 modernizes, reorganizes and clarifies the existing law. The changes to Article 4 are more modest. Article 4 is amended as necessary to conform to changes in Article 3, to modernize it for automated check processing and transaction, and, as feasible, to accommodate the impact of federal Regulation CC. Provisions in Article 4 that are heavily impacted by Regulation CC are largely left alone and retained for non-preempted provisions and for items other than checks.

Many of the Official Comments to revised Article 4 direct the reader to those provisions in Regulation CC that impact on Article 4.

Revised Article 3 clarifies the types of contracts within Article 3, thus promoting certainty of legal rules and reduced litigation costs and risks. For example, variable rate instruments are included under revised Article 3 (§§ 3-104(a), 3-112), as are traveler's checks (§ 3-104(i)).

Revised Article 3 makes clear that a financial institution taking checks for processing or payment by automated means need not manually handle the instrument if such processing is

consistent with the institution's procedures and the procedures do not vary unreasonably from those of other banks (§§ 3-103(a)(7), 4-104(c)). These provisions are designed to accommodate and facilitate efficiency, lower costs and recognize the reality of existing check collection practices mandated by the Expedited Funds Availability Act and Regulation CC.

The definition of bank is expanded for the purposes of Articles 3 and 4 to include savings and loans and credit unions so that their checks are directly governed by the Uniform Commercial Code (§§ 3-103(c), 4-105(1)).

Except as against a holder in due course, § 3-402 allows a representative to show that the parties did not intend individual liability when the representative signed without adequate indication and representation. The revision allows full protection to the agent who signs a corporate check, even though the signature does not show representative status. Section 3-402(a) specifies that the law of agency will govern whether the person represented will be bound by the signature of the representative.

Revised § 3-404, as in present law, places the risk of endorsements by imposters, and those generated by dishonest employees drawing instruments for drawers, on drawers, but does not require that the indorsement be in strict conformity with the payee's name to get the benefit (§ 3-404(c)).

Revised § 3-405 expands the per se negligence rule in present § 3-405 to the case of an indorsement forged by a payee's employee, and in that case and that of the faithless employee who supplies a name to a drawer and then forges the indorsement of the payee, does not require strict conformity to the name to place loss on the drawer or employer. However, any negligence of the bank will be taken into account and a comparative negligence standard is adopted instead of

the present absolute rule (§§ 3-404(d), 3-405(b)).

Existing § 3-406 is revised so that negligence of the financial institution does not prevent it from asserting the preclusion, and comparative negligence is also the rule (§ 3-406(b)).

Actions for conversion of instruments will be governed by general conversion law (§ 3-420(a)). A payee who never received the check cannot sue a depository bank for dealing with a check with a forged indorsement (§ 3-420(a)(ii)). What a joint payee can recover is clarified in missing indorsement cases (§ 3-420(b)). A depository bank is made liable in conversion for acting inconsistently with the owner's rights when an indorsement is unauthorized and the revision blocks suit by the drawer for conversion (§§ 3-420(a)).

## **21. Unincorporated Nonprofit Association**

This act was passed in 1995 and became effective January 1, 1996. It is codified at Ala. Code § 10-3B-1 et. seq.

This act reformed the common law concerning unincorporated, nonprofit associations in three basic areas -- authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association. It also provides a default provision for the governance of such associations. It is based generally on the 1992 Uniform Unincorporated Nonprofit Association Act adopted by the Commission on Uniform State Law, and referred to hereafter as the "Uniform Act." The commentary is taken primarily from the Uniform Act with changes and additions to reflect Alabama law.

This law deals with a limited number of the major issues

relating to unincorporated, nonprofit associations in an integrated and consistent manner. Statutes dealing with particular types of unincorporated associations, including those in Title 10, Chapter 4 of the Alabama code, and those dealing with agricultural cooperatives in Title 2, Chapter 10 of the Alabama Code are not affected by the act.

Similarly, passage of this law nevertheless, leaves other matters relating to unincorporated, nonprofit associations to the state's common law or to statutes on the subject, where they exist. Alabama has statutes at Title 10, Chapter 4 dealing with special kinds of associations, such as churches, mutual benefit societies, fraternal orders, and cooperatives. Statutes such as Ala. Code § 6-3-4, dealing with venue for actions against an unincorporated organization or association, will remain applicable.

This act applies to all unincorporated, nonprofit associations. Nonprofit organizations are often classified as public benefit, mutual benefit, or religious. For purposes of this act, it is unnecessary to treat differently these three categories of unincorporated, nonprofit associations. Unlike some state laws, it is not confined to the nonprofit organizations recognized as nonprofit under Section 501(c)(3), (4), and (6) of the Internal Revenue Code. There is no principled basis for excluding any nonprofit association. Therefore, this law covers unincorporated philanthropic, educational, scientific, and literary clubs, unions, trade associations, political organizations, cooperatives, churches, hospitals, condominium associations, neighborhood associations, and all other unincorporated, nonprofit associations. Their members may be individuals, corporations, other legal entities, or a mix.

This law is designed to cover all of these associations to the extent possible. To the extent that Title 10, Chapter 4 of the Code of Alabama and other Code provisions deal with special types of nonprofit associations, this bill supplements existing legislation.

The basic approach of the act is that an unincorporated, nonprofit association is a legal entity for the purposes that the bill addresses. It does not make these associations legal entities for all purposes. It is left to the courts of Alabama to determine whether to use this law by analogy to conclude that an association is a legal entity for some other purpose.

It should be noted, too, that many of the provisions are intended to be supplemented by existing provisions of Alabama law. For example, § 10-3B-6, which provides for the recording of a statement of association authority, does not provide details concerning the filing process. It leaves to state law the details as whether the filing officer returns a copy marked "filed" and stamps the hour and date thereof, and the amount of the filing fee.

It should be emphasized also that this act is needed for the informal nonprofit organizations that do not have legal advice and so may not consider whether to incorporate.

## **22. Retirement Benefits**

This act passed in 1995 and became effective January 1, 1996. It amended Ala. Code § 30-2-51.

Until recently the retirement benefits were excluded from consideration by the court when property was divided upon divorce. Recently, under case law, the courts have begun to divide retirement benefits upon divorce. This act amends the code section to provide statutorily for the trial court to have discretion to include the present value of future or current vested retirement benefits in making a property settlement upon divorce. However, certain conditions must be met.

Subsection (b) delineates that three conditions must be met in order for the judge to have the authority to divide the

retirement benefit. First, the parties must have been married for a period of ten years during which the retirement was accumulated. The ten year requirement was selected because it is the same time requirement used for a spouse to draw social security benefits based on a former spouse's work record. Second, the court may not include the value of any retirement benefits that were acquired prior to the marriage including any interest or appreciation from those benefits that were acquired prior to marriage. Finally, the total amount of the retirement benefits that are paid to the non-covered spouse may not exceed 50% of the retirement benefits.

Under subsection (c) if the court determines that the covered spouse's benefits should be distributed to a non-covered spouse those benefits are not payable to the non-covered spouse until the covered spouse begins to receive his or her retirement benefits or reaches the age of sixty-five years old unless both parties agree to a lump sum settlement that is payable in one or more installments.

### **23. Cooling-Off Period**

This act passed as Senate Bill 14 in the 1996 Special Session. It became effective January 1, 1997.

This act is designed to mandate a "Cooling Off Period", thereby, enabling couples to have an opportunity to contemplate the ramifications of their actions prior to obtaining a divorce. Under current Alabama law there is no waiting period for couples to obtain a divorce. A couple, both of whom reside in Alabama, may now be granted a divorce on the same day on which the petition is filed.

This act changes the law so that the court cannot issue a final decree until at least thirty days have elapsed from the date of the filing of the summons and the complaint in a divorce action.

Subsection (b) of Section 1 authorizes the court during the waiting period to enter such temporary orders as are necessary concerning custody or support prior to the expiration of the waiting period.

#### **24. Civil Procedure**

The Alabama Supreme Court adopted amended rule changes which became effective October 1, 1995.

The Alabama Rules of Civil Procedure were 20 years old on July 3, 1993. The Federal Rules of Civil Procedure have undergone significant changes since the Alabama Rules were patterned after them in a project that ran from 1971 to 1973. The Institute requested funds from the State Bar's IOLTA to conduct this review. Funds were made available and Attorney Champ Lyons of Mobile compared the current Federal Rules with Alabama's Civil Rules. A number of changes were recommended and presented to the Civil Rules Committee and later to the Supreme Court.

## **25. Evidence**

These Rules were adopted by the Alabama Supreme Court and became effective January 1, 1996.

The Alabama Supreme Court requested the Alabama Law Institute to undertake a study of revising the Rules of Evidence. The committee began its study on September 9, 1988 and met approximately every six to eight weeks for four and a half years. The Alabama Rules of Evidence were presented to the Supreme Court who held several hearings on the rules. The rules were presented to the State Bar for study and comment before adoption.

The Federal Rules of Evidence were used as the model. A consensus developed that the federal rules would be adopted unless there were good reasons to deviate from them. Accordingly, some of these rules differ significantly from the corresponding federal rule. The differences usually resulted in either modifying the federal rule or replacing it altogether with the preexisting Alabama common law principle. However, it was agreed to model the work on privileges after a combination of the Uniform Rules of Evidence and the preexisting Alabama privilege statutes since the original proposed federal rules on privileges had been rejected.

In most instances, these rules continue the historic Alabama law of evidence either identically or with slight modification or expansion. Some rules, however, do abrogate preexisting Alabama law. Where change occurs it generally is to implement the overall policy of promoting greater admissibility. These rules mark a shift from a system of exclusion to one of admissibility.

## **26. Revised Business Corporations**

This act was passed in 1994 and became effective January 1, 1995. It is codified in Ala. Code §§ 10-2B-1.01 et. seq.

This act is based on the 1984 Revised Model Business Corporation Act but includes changes recommended by the ABA Committee since 1984.

This act continues the filing system under the former Alabama act under which the principal filing office for corporate documents is the office of the probate judge of the county in which the initial registered office of the corporation is located. This differs from the ABA version of the Revised Model Business Corporation Act, under which the secretary of state's office is the principal filing office. Section 1.25 is the provision of the act that details in which office various documents are to be filed. The requirements for the articles of incorporation have been somewhat streamlined, but, unlike the ABA version of the Revised Act, continues to require that a corporate purpose be stated and that the initial directors be designated. Section 2.02. One change from the old Alabama act is to permit the initial bylaws to be adopted by the directors. Section 2.06(a).

The "deceptively similar" test for the availability of a corporate name is continued. Section 4.01.

The concept of treasury shares is continued because of the restrictions on issuance of shares in the Alabama Constitution since the Alabama Supreme Court has held that a corporation's sale of treasury shares is not an "issuance" subject to the Constitutional restrictions. Brumfield v. Horn, 547 So. 2d 415 (Ala. 1989).

Shareholders. This act resolves three important issues

as to shareholder meetings not addressed in the prior act.

While the prior act recognized that a shareholder can expressly waive notice of a shareholder's meeting, Alabama Code, § 10-2A-49, did not address the question of whether a shareholder's attendance at the meeting constituted a waiver. Section 7.05(b) of this act provides that unless a shareholder makes an appropriate objection, his attendance at the meeting waives objection to lack of notice. This parallels the rule as to directors under former law. Alabama Code § 10-2A-65.

A second issue left unresolved under prior law was whether a shareholder could withdraw from a meeting and thereby "break the quorum." The commentary to Alabama Code, Section 10-2A-52 of the prior act noted that the prior act was silent on that question. The new law gives a shareholder the power to break a quorum by withdrawal.

A third issue unresolved under the prior act was whether a shareholder voting agreement is specifically enforceable. Section 7.31(a) declares that it is.

## **27. Limited Liability Companies**

This act was passed in 1993 and became effective October 1, 1993. It is codified in Ala. Code §§ 10-12-1 et. seq.

A limited liability company is a hybrid version of a corporation and a partnership. It offers its equity investors protection from personal liability while being classified as a partnership for federal income tax purposes. Thus, it can avoid federal corporate-level tax and pass through profits and losses to its members.

The Wyoming statute was used initially as the model, in

part perhaps because it had already received a favorable Revenue Ruling by the IRS. In its ruling the IRS decided that the limited liability company lacked the two corporate characteristics of free transferability of interest and continuity of life, while having the two corporate characteristics of limited liability and centralization of management. Thereby achieving tax classification as a partnership. Alabama initially following many of the concepts of the Wyoming statute, the final draft, however, added some additional provisions from the ABA Model Act and Uniform Commissioners on State Laws' initial draft.

## **28. Criminal Pattern Jury Instructions - 1993**

After the enactment of the Criminal Code in 1977 and at the request of the Administrative Office of Courts, the Institute and several judges developed the Criminal Jury Charges. A second edition was published in 1989. This latest study added jury charges to include a number of lesser included offenses that are not covered under the current edition. Additionally, capital jury charges were added. Judge Joe Colquitt headed the drafting of this edition.

## **29. Probate Procedure**

This act was passed in 1993 and became effective January 1, 1994. It is codified as Ala. Code §§ 43-2-830 et. seq.

Upon death real property passes to the devisees or the heirs and personal property passes to the personal representatives for distribution to the devisees or heirs.

All of the decedent's property is subject to homestead allowance, exempt property, family allowance, rights of creditors, elective share of the surviving spouse, and to

administration. § 43-2-830.

Although the duties and powers of a personal representative commences upon appointment, the powers relate back with regard to acts which are beneficial to the estate performed by the personal representative prior to the appointment. Even prior to the appointment, the personal representative may carry out the written instructions of the decedent relating to the decedent's body, funeral, and burial arrangements. § 43-2-821.

The personal representative is a fiduciary who must follow the prudent person standard and if named as the personal representative because of special skills, is under a duty to use those skills. § 43-2-833.

Unless the will provides otherwise, the personal representative will usually have to file an inventory within two months. The inventory shall be sent by the personal representative to any interested person who requests it. § 43-2-835.

The personal representative shall make a supplement to the initial inventory if additional property is located or to change erroneous market values or descriptions. § 43-2-836.

Except as provided by will, the personal representative shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled to it until the personal representative needs it for purposes of administration. A personal representative's written request for delivery is conclusive evidence of its necessity for administration.

The personal representative may pay taxes and expenses necessary to manage, protect and preserve the

property. § 43-2-837.

Section 43-2-843 of the Code of Alabama parallels the conservatorship law in that it enumerates actions that the personal representative may take without prior court approval unless the will or court specifically otherwise restricts the action.

Section 43-2-844 of the Code of Alabama parallels the conservatorship laws in that it enumerates actions that may only be taken with prior court approval unless the will expressly authorizes such action.

A personal representative is entitled to reasonable compensation. Factors to consider as guides in determining the reasonableness of the fee are established. Subsection (b) provides that the personal representative may under certain circumstances renounce the provisions in a will related to compensation and receive reasonable compensation. § 43-2-848.

The personal representative is entitled to receive necessary expenses and disbursements including reasonable attorney's fees for defending or prosecuting an action. § 43-2-849.

After notice to all interested parties, the court may review the reasonableness of the compensation paid out of the estate and order a refund for any excessive compensation. § 43-2-850.

Unless waived in the will, the personal representative must execute a bond or give collateral generally equal to the amount under the personal representative's control less the value of property under § 43-2-843 that can only be sold or conveyed with court authority. Also, the court may waive the

bond with the consent of all interested parties.

Even though the bond is waived in a will, it may nevertheless be required under limited circumstances such as the likelihood of waste occurring otherwise. § 43-2-851.

The terms and requirements of the bond, such as the joint and several liability of the personal representative and sureties are established in § 43-2-852 of the Code of Alabama.

Estates filed prior to January 1, 1994 continue under the old law unless they elect to come under the new law.

### **30. Administrative Procedure Amendments**

The amendments to the Administrative Procedure Act were passed in 1993 and became effective July 1, 1993.

After working under the Administrative Procedure Act for approximately ten years, the Committee reconvened to determine if there were any problems that needed to be addressed. Various agencies and interested parties submitted their suggestions for revisions to the Committee. After several meetings the Committee submitted a bill to accommodate most of those suggestions.

The following sections were amended as follows:

§ 41-22-5 - The amendment to this section clarifies that an agency rule may set the comment period on a rule to be between 35 to 90 days. If the agency takes action, it must then be filed with the Legislative Reference Service within 90 days after the end of the comment period. Once filed with Legislative Reference Service, the Legislative Review

Committee has 35 more days to act, i.e., this gives the Legislative Review Committee additional time to meet and review agencies rules.

§ 41-22-6 - The amendment to this section clarifies that completion of notice of the agencies action is the end of the notice period and not the beginning. Any rule not filed with Legislative Reference Service is invalid.

The amendment clarifies that a rule is effective 35 days after filing with Legislative Reference Service unless:

- 1) a later date is required by statute or rule;
- 2) an earlier date is required by statute;
- 3) it is an emergency rule; or
- 4) the committee disapproves it.

§ 41-22-12 - In contested cases, the bill provides for subpoenas, discovery and protective orders in accordance with the rules of civil procedure. This can only be enforced by a court. This section does not apply to the Ethics Commission.

§ 41-22-20 - The amendments to this section:

- 1) Clarify that judicial review may be either under this act or as otherwise provided by agency law;
- 2) Clarify that the time of appeal after rehearing begins running when notice of service is received;
- 3) Clarify that all parties to the agency proceeding will be made parties in an appeal proceeding, and
- 4) Clarify that an agency action may be reversed or modified if the petitioners rights are prejudice by any one or more of the seven enumerated reasons.

§ 41-22-22 - The amendment clarifies that a quorum for the Administrative Review Committee to be the same as for the Legislative Council. (At the time of this revision there were 22 members of the Legislative Council, but quorum for the Council is set by statute to be nine).

### **31. UCC Article 2A - Leases**

This act was passed in 1992 and became effective on January 1, 1993. It is codified at 7-2A-101 et. seq.

A lease is a contract, subject to contract law construction and enforcement principles. In Alabama, leases have been construed and enforced in a manner generally consistent with contract principles. There has, however, been a dearth of case law applying contract law to leases. Therefore, transactors have been left with little guidance in formulating the contours of their lease transactions. While general contract principles developed in other contexts are certainly competent to address and resolve a broad array of leasing issues, it is less clear that the general contract law is the best source of guidance for determining controversies involving considerations fundamental to the commercial law.

The drafting committee of the Uniform Act then identified and resolved several issues critical to codification:

Scope: The scope of the Article was limited to leases (Section 2A-102). There was no need to include leases intended as security, i.e., security interests disguised as leases, as they are adequately treated in Article 9. Further, even if leases intended as security were included, the need to preserve the distinction would remain, as policy suggests treatment significantly different from that accorded leases.

**Definition of Lease:** Lease was defined to exclude leases intended as security (Section 2A-103(1)(j)). Given the litigation to date a revised definition of security interest was suggested for inclusion in the Act. (Section 1-201(37)). This revision sharpens the distinction between leases and security interests disguised as leases.

**Filing:** The lessor was not required to file a financing statement against the lessee or take any other action to protect the lessor's interest in the goods (Section 2A-301). The refined definition of security interest will more clearly signal the need to file to potential lessors of goods. Those lessors who are concerned will file a protective financing statement (Section 9-408).

**Warranties:** All of the express and implied warranties of the Article on Sales (Article 2) were included (Sections 2A-210 through 2A-216), revised to reflect differences in lease transactions. The lease of goods is sufficiently similar to the sale of goods to justify this decision. Further, many courts have reached the same decision.

**Certificate of Title Laws:** Many leasing transactions involve goods subject to certificate of title statutes. To avoid conflict with those statutes, this Article is subject to them. (Section 2A-104(1)(a)).

**Consumer Leases:** Many leasing transactions involve parties subject to consumer protection statutes or decisions. To avoid conflict with those laws this Article is subject to them to the extent provided in Section 2A-104(1)(c) and (2). Further, certain consumer protections have been incorporated in the Article.

Finance Leases: Certain leasing transactions substitute the supplier of the goods for the lessor as the party responsible to the lessee with respect to warranties and the like. The definition of finance lease (Section 2A-103(1)(g)) was developed to describe these transactions. Various sections of the Article implement the substitution of the supplier for the lessor, including Sections 2A-209 and 2A-407. No attempt was made to fashion a special rule where the finance lessor is an affiliate of the supplier of goods; this is to be developed by the courts, case by case.

Sale and Leaseback: Sale and leaseback transactions are becoming increasingly common. A number of state statutes treat transactions where possession is retained by the seller as fraudulent per se or prima facie fraudulent. That position is not in accord with modern practice and thus is changed by the Article "if the buyer bought for value and in good faith" (Section 2A-308(3)).

Remedies: The Article has not only provided for lessor's remedies upon default by the lessee (Sections 2A-523 through 2A-531), but also for lessee's remedies upon default by the lessor (Sections 2A-508 through 2A-522). This is a significant departure from Article 9, which provides remedies only for the secured party upon default by the debtor. This difference is compelled by the bilateral nature of the obligations between the parties to a lease.

Damages: Many leasing transactions are predicated on the parties' ability to stipulate an appropriate measure of damages in the event of default. The rule with respect to sales of goods (Section 2-718) is not sufficiently flexible to accommodate this practice.

Consistent with the common law emphasis upon freedom to contract, the Article has created a revised rule that allows greater flexibility with respect to leases of goods (Section 2A-504(1)).

Though the Alabama act may occasionally differ in its formulation, the act is generally consistent with the approach of the Uniform Act with regard to the critical issues.

### **32. Family Law/Children's Code (1993)**

The committee met for two years on a variety of topics relating to children and family law. They completed drafts of the following five family law bills:

1. Legal separation;
2. Cooling off period;
3. Joint custody;
4. Retirement;
5. Punitive father's registry.

The committee also considered the Uniform Interstate Family Support Act. The committee will convene as necessary to consider any topics relating to family law that need to be updated.

### **33. UCC 4A - Funds Transfers**

This bill was passed in 1992 and became effective January 1, 1993. It is codified at 7-4A-101 et. seq.

Article 4A of the UCC was developed to fill a void in the law relating to a type of payment made through the banking system called a "funds transfer." Generally a "funds transfer is a large, rapid money transfer between commercial entities." For example, the average transfer involves \$5,000,000. Consumer transactions such as credit cards, debit cards,

automated teller machine transfers and checks are governed by the Electronic Funds Transfer Act not by this Article.

Although there is no comprehensive law governing commercial "funds transfers," Regulation J (federal law) covers the interbank part of any commercial "funds transfer" by the Federal Reserve network. Article 4A and Regulation J are compatible, embodying the same concepts. Thus, even though a majority of the "funds transfers" occurring in Alabama are covered under Regulation J, many transactions occur with no comprehensive rules and no readily ascertainable established law governing those transactions. Hence, the need for a comprehensive set of rules to govern these transactions.

Article 4A is designed to establish rules covering the rights and obligations connected with "funds transfers." The article balances the interest of banks, commercial users of this payment method and the public concerning such problems as; unauthorized payment orders, improper execution of payment orders, fraud and insolvency of participating banks. The article specifies who takes the risk of loss, who will be liable and what damages may be assessed.

Uniformity with Regulation J and with the majority of states who have enacted 4A is important to maintain a speedy and inexpensive system to transfer funds as Alabama expands into other national and international markets. A lack of uniformity could result in an inexperienced business person or entity inadvertently incurring excessive liability.

#### **34. Condominium Act**

This act, codified as Ala. Code § 35-8A-101, became effective January 1, 1991. This act updated a 1973 statute by clarifying numerous technical matters relative to realty

recordation, legal descriptions, insurance, termination, apartment conversions, and escrow of deposits, among others. It is a balanced re-adjustment of the authority of the developer, the condominium association and the condominium unit owners.

The following is a summary of the major changes:

Developer. The developer ("declarant" in the act) is given certain "development" rights which provide greater flexibility in development, especially in the "staged" development of low-rise condominiums. It also protects the developer from some types of interference by the association during the construction and marketing phases.

Association. The act regulates the transfer of control over the association from the developer to the public unit buyers. Associations are required to be incorporated. The bill strengthens the authority of the associations regarding the enforcement of fines and assessments owed by unit owners, which can be foreclosed in the manner of a mortgage and giving such obligations a limited protection from being cut off by a foreclosure of a first mortgage on the unit.

Unit Buyers. The initial public unit buyers are protected by requiring the developer to disclose matters which might affect the success of the development and the buyer's obligations. The developer must deliver to the initial buyers an offering statement containing the condominium documentation, current rules, covenants, and financial information. There is a seven day "cooling off" period after the delivery of the statement before a contract of purchase is enforceable. A penalty is provided for a conveyance without a delivery of the offering statement. Subsequent buyers are also protected by requiring, if a later buyer requests it, a disclosure of some of the same material by the seller and the association.

Buyers are protected by permitting the association to cancel unfavorable long term management contracts and recreation leases imposed by the developer on the association while the developer controls it. Unit buyers are protected from each other by requiring the condominium declaration to state limitations on use, occupancy, sales and leasing. The declaration also sets voting limitations on amendments to the declaration.

### **35. Adoption**

The Alabama Adoption Code, codified as Ala. Code § 26-10A-1, is based on the ABA Model Adoption Code and expands and strengthens the current law in Alabama related to adoption. This act became effective January 1, 1991.

There are several significant improvements in the law. The first was to increase the criminal sanctions against individuals who attempt to profit from buying and selling children.

The second improvement was to expand the consent or relinquishment for adoption provisions. It is felt that the current statutes do not fulfill constitutional requirements and consequently may result in potential problems with children who are adopted without proper parental consent or relinquishment.

Third, confidentiality has been modified to increase the amount of non-identifying information available to the adult adoptee while safeguarding the identity of the natural parents who do not wish to be identified.

The final significant change was to clarify the inheritance laws concerning adopted children.

This act repealed the current statutes relating to adoption of children and repealed the provisions allowing for adult adoptions for inheritance purposes.

### **36. Alabama Securities Act**

This act became effective January 1, 1991. The act codified as Ala. Code § 8-6-1, provides the most significant substantive changes:

(1) Transactional exemption from registration: This law, at Alabama Code § 8-6-11(a)(9), substituted the "purchaser" concept for the revised "offeree" concept in determining the availability of a statutory exemption from registration for offerings of securities to a limited number of investors. Under the prior law, an offer of securities made to more than ten persons, regardless of how many of these actually purchase the securities, would render the exemption unavailable. Under the new law, an offer can be extended to more than ten persons and will be exempt from registration as long as there were no more than ten purchasers of the securities.

(2) Marketplace exemption from registration: This provision, at Alabama Code § 8-6-10(7), extends the previous exemption of exchange-listed securities to all securities, whether exchange-listed or traded in the over-the-counter market, which are designated as "national market system" securities and meet existing listing criteria of the New York Stock Exchange, the American Stock Exchange or NASDAQ/NMS markets.

(3) Regulation of investment advisers: This provides regulatory protection to investors who deal with investment advisers. Similar regulation has been enacted by approximately 40 other states to combat frauds estimated to be

annually in excess of \$500,000,000. It prohibits a number of fraudulent and abusive practices and requires registration similar to that already required of broker/dealers in this state.

(4) Registration by notification: This expands the availability of registration by notification, the simplest method of registration under the statute. It is available to all exchange-listed and over-the-counter securities which are designated as "national market system" securities, in addition to the seasoned issuers for whom the procedure was previously available.

(5) Registration by qualification: This eliminates several requirements which practitioners have viewed as unnecessary impediments to the procedure for full registration. The revisions include the elimination of the bond requirement for issuers and the requirement that any applicant for registration be a dealer.

The foregoing represents some of the more significant substantive revisions. In addition, the notice and hearing provisions of the statute are amended to conform with the Alabama Administrative Procedures Act.

### **37. Criminal Pattern Jury Instructions - 1989**

At the request of the Administrative Office of Courts, the Institute and several judges revised the Alabama Criminal Pattern Jury Charges. The original work was completed in 1980 and had not been updated. There has been a substantial amount of change in criminal law, both legislative and case law since that time. This book reflects those changes. It was also reorganized to more closely parallel the Criminal Code.

### **38. Criminal Procedure**

The Alabama Supreme Court approved the Alabama Rules of Criminal Procedure as a rule of court effective January 1, 1991.

These rules were a culmination of work that began in January 1975. A draft was presented to the Court in June 1977. The Court circulated a copy of the Proposed Rules to each member of the Alabama Bar in August 1977.

The Court reviewed the Rules, made some changes and returned them to the Committee for additional study. The Committee re-presented the Rules to the Court in January 1983. In June 1989, the Court approved the Rules and published them in the November 30, 1989 West Southern Reporter advance sheets.

This comprehensive Code of Criminal Rules brought together for the first time the rules for the orderly disposition of criminal cases in the District and Circuit courts in Alabama.

The 36 rules included arrests, preliminary hearings, release, speedy trials, mental competency, juries, trials, verdicts, sentencing, probation and appeals. These rules also provided 110 exemplary forms.

### **39. Fraudulent Transfers Act**

This act was passed in 1989 and became effective January 1, 1990. It is codified as Ala. Code § 8-9A-1 through § 8-9A-12.

This act followed the 1985 version of the Uniform Fraudulent Transfers Act adopted by 20 states. It made Alabama compatible with the Bankruptcy Code.

This act defines "actual" fraud, generally the same as the prior Alabama law, by requiring actual intent to defraud, however, it also identifies a list of factors the court may consider in determining intent. The act further addressed "constructive" fraud which must include inadequate consideration and enumerates factors for consideration.

#### **40. Memorandum of Leases**

Ala. Code Section 35-4-6 was amended in 1989 to allow a memorandum of the lease to be recorded or the lease itself. The act became effective January 1, 1990.

A lease must be recorded within one year after execution for it to be enforceable beyond twenty years. The memorandum must state:

1. names of parties
2. term of lease
3. any options
4. legal description
5. any other provision

#### **41. Federal Lien Registration**

This act passed the Legislature in 1989 and follows the Uniform Federal Lien Registration Act drafted by the Commissioners on Uniform State Laws. It is codified at Ala. Code § 35-11-42 and became effective January 1, 1990.

Enactment was needed because Section 6323 of IRS Code (PL. 89-719, Federal Tax Lien Act of 1966) requires the state to designate an office for filing federal liens. In the absence of a statute, filing is with the clerk of the U.S. District Court.

Under this law, filing is basically as follows:

- a. real property - local probate office
  
- b. personal property:
  - 1. corporation or partnership - secretary of state
  - 2. trust - secretary of state
  - 3. decedent's estate - probate office
  - 4. all other cases - probate office

Fees are the same as Uniform Commercial Code filings.

#### **42. Notice for Statute of Nonclaims**

In 1989 the Legislature amended § 43-2-60 and 61 in response to changes in the law. They became effective May 16, 1989. A federal court in Alabama in Greyhound Financial Corp. v. Lochwood Investors (9/21/88) declared Alabama's Statute of Nonclaims unconstitutional. This was based on the United States Supreme Court case of Tulsa Professional Services v. Pope, 485 U.S. 478, 108 S. Ct. 1340, 99 L.Ed.2d 565 (1988).

This act cures the constitutional problems raised in the cases by requiring notice to be mailed to all known creditors as well as published in the paper.

#### **43. Redemption of Real Estate**

This act was passed in 1988 and became effective January 1, 1989 and is codified as Ala. Code §§ 6-5-247 through 257.

The act repealed §§ 6-5-230 through 246 and clarifies the law of redemption of real property by codifying case law as well as revising the statutory law.

Specifically the act clarified who is entitled to redeem and their priorities. It also delineated what are allowable charges that may be added to the foreclosure sale price. The bill retained the one year redemption period.

**44. Power of Sale Contained in Mortgages**

This act passed in 1988 and is codified as Ala. Code §§ 35-10-11 through 16 and became effective January 1, 1987. This law effects only those mortgages that were executed after December 31, 1988. The primary change from prior law is that it requires one to foreclose through the court on mortgages that are silent as to how a foreclosure is to be conducted. The purpose of this change was to avoid any possible constitutional challenge because of "state action."

**45. Children's Code (1988)**

In the 1980's, many federal government state agencies, organizations and committees recommended the review of laws that affect children. This committee was formed to review all the laws spread throughout the Alabama Code that affect children. The committee compared our laws with those in other states to determine any differences. Also, the committee compared the new legislation with existing law to determine its effect.

The staff has compared all Alabama statutes that affect children. This compilation enabled the committee to determine other areas which require study.

#### **46. Trade Names**

With passage of the Alabama Trademark Act in 1987, Alabama for the first time had a statutory system for the registration of trademarks and service marks. Ownership of such marks is established by common law through use. With registration, trademarks and service marks owners could put others on notice of their ownership claims. However, there has been no statutory scheme for registration of trade (business) names, ownership of which also is established by common law through use. Many practitioners go to great efforts to cast such names as service marks in order to obtain registration. Some even treat corporate name reservation as if it were a trade name registration system, apparently unaware that such reservation neither creates ownership rights nor serves as constructive notice of ownership claims.

This act found in Ala. Code § 8-12-20 et. seq. does not create an entire new registration scheme. Rather, it revises the classifications of the present trademark scheme to coincide with the federal and international registration classifications and adds trade names. Under both Alabama and federal law, trademarks and service marks are registrable. Such marks, however, must be the names of products or services. Names under which persons or companies are known and do business previously were not registrable. This Act effective January 1, 1989 provides effective means for a business to put others on notice of its claims to its business name.

#### **47. Uniform Guardianship and Protective Proceedings Act**

The Alabama Uniform Guardianship and Protective Proceedings Act (AUGPPA) was passed by the Legislature in 1987 and became effective January 1, 1988. It is found at Ala. Code § 26-2A-1 et. seq.

The act is based, to a large extent, on Parts 1, 2, 3 and 4 of Article V of the Uniform Probate Code. AUGPPA covers guardianships for minors, guardianships for reasons other than minority, and protective proceedings seeking court-appointed conservators or other protective orders for the estate concerns of minors, adult incompetents, absentees and others. The act has several features which represent significant improvements over prior Alabama law.

First, this act distinguishes between "guardians" of the person and "conservators" of the estates of wards. Previous to this act, Alabama used one term, "guardian," to characterize the duties and responsibilities of both of these offices. The single-term designation is ambiguous and not only confusing to persons dealing with the "guardian," but it also is confusing to the fiduciary acting in that capacity. Use of the two designations, even though one person may be acting in both capacities, provides a much needed clarification.

Second, this act gives definition to the procedures for appointing guardians and conservators and to their respective powers and duties that had been lacking in Alabama. While Alabama has had guardianships for many years and, therefore, it cannot be said that procedures for appointing guardians were nonexistent, the procedures needed refinement and definition to make them clearer. More clearly stated procedures also will make these procedures more consistent throughout the state. A severe gap in Alabama law existed with respect to the powers and duties of guardians. This act makes an enormous contribution with respect to the powers and duties of guardians and conservators.

Third, prior to this act for most of Alabama's history, guardians could be appointed only for minors and "incompetents." Even though there might be agreement that an individual needed help in their business or personal affairs,

there was and is a stigma that accompanies having that individual judicially declared an "incompetent." This act uses the term, "incapacitated," and greatly expands the various grounds for appointment of a guardian or conservator based on the definition of "incapacity." While Alabama has adopted this broader concept in some instances (e.g., with regard to "curators" and in the Adult Protective Services Act), this act consolidates the concept in one comprehensive act and gives more definition to the concept.

This act became effective January 1, 1988. Clarifying technical amendments were adopted in October, 1988.

#### **48. Deed in Lieu of Foreclosure**

This law was passed in 1987 and became effective August 12, 1987 and is codified as Ala. Code § 35-10-50.

Over the years numerous instruments often styled "Deed In Lieu of Foreclosure" have been recorded in Alabama. Usually these documents are conveyances from a mortgagor to a mortgagee of the equity of redemption. The practice has caused a great deal of confusion among real estate people, lawyers, title examiners and the general population. It has been said that these conveyances are foreclosure deeds, from which the statutory right of redemption emerges and that they preclude other lien holders from redeeming the property to protect their interests.

There is little doubt that these conveyances are not foreclosure deeds and they do not give rise to the statutory right of redemption. In addition, such deeds do not adversely affect the rights of persons who are not parties to the instrument.

This statute explains and rationalizes the subsequent

release of a mortgagor's equity of redemption to the mortgagee. The statute clearly describes the law which exists, to the effect that deeds from mortgagors to mortgagees affect only the rights and obligations of the parties to the deed. Because the instrument is a private transaction between the mortgagor and the mortgagee there is no foreclosure of the security interest and no statutory right of redemption arises. The rights of other lien holders, judgment creditors or other interests are not affected.

#### **49. Trade Secrets**

This act was enacted by the Legislature in 1987 and became effective August 12, 1987. Ala. Code § 8-27-1 et. seq.

Trade secret law unlike patent or copyright law does not create a property interest in intellectual property rather it controls the means by which certain knowledge may be acquired. For there to be trade secret protection there must first be a trade secret. To be a trade secret there must be a secret. That is, a device or process must not be generally known. Second, a device or process must be used in one's trade or business on a continuing basis. Third, the device or process, while it need not give one an advantage over his competitors, must give one the opportunity to gain an advantage over his competitors.

The secrecy element in addition to requiring that the device or process not be generally known also requires that reasonable steps be taken to prevent others from acquiring the information as stated above. Trade secret protection does not protect the device or process itself. Rather, it protects the possessor of the trade secret from the use of improper means in acquiring the trade secret. This usually means protection against the acquisition of a trade secret by means of breach of a confident.

The proper means of discovering another trade secret are independent development, reverse engineering, and purchase from the owner of the trade secret or from a third person without notice that the third person has improperly obtained the trade secret. In the case of a trade secret obtained from a third person without notice, one is not liable for obtaining the trade secret if he either paid value for the secret or changed his position in such a way that subject him to liability would be inequitable.

The duration of a trade secret is as long as and only as long as the device or process remains secret. It follows from this that damages or injunctive relief are measured by the expected life of the trade secret absent its improper acquisition.

This act defines a trade secret as follows: "The whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes."

## **50. Uniform Transfers to Minors**

This act was passed by the Legislature in 1986 and became effective October 1, 1986. Alabama Code §§ 35-5A-1 through 24.

The Uniform Transfers to Minors Act (UTMA) expands the scope of the Uniform Gifts to Minors Act (UGMA). The UGMA provides for gifts of money, securities and insurance policy proceeds to minor donees under the protection of a custodian. The UGMA was revised in 1966, but Alabama enacted the earlier version in 1957 and amended it to permit transfers by will and insurance policy proceeds. The primary advantages of this custodial mechanism, as compared with

trusts, conservatorships and the like, are its economy and informality. The proposed UTMA expands the UGMA's custodial mechanism so as to permit the transfer of personal and real property.

#### **51. Uniform Enforcement of Foreign Judgments Act**

This act was passed by the Legislature in 1986 and became effective October 2, 1986. Alabama Code §§ 6-9-230 through 238.

The purpose of the Alabama Uniform Enforcement of Foreign Judgments Act is to simplify the method of giving recognition and effect to the judgments of other states in the courts of Alabama by means of legislation, already adopted in a majority of states, designed to provide for a simple filing procedure.

In 1948, the National Conference of Commissioners on Uniform State Laws [and the American Bar Association] approved the original Uniform Enforcement of Foreign Judgments Act. This act was a distinct advance over the usual method. It provided a summary judgment procedure for actions on foreign judgments. Even this advance, however, fell far short of the method provided by Congress in 1948 for the inter-district enforcement of the judgments of the Federal District Courts. 28 U.S.C. § 1963. Further, widespread adoption by the states of some form of the Federal Rules of Civil Procedure which include regular summary judgment practice made special summary judgment acts superfluous.

This 1964 revision of the Uniform Enforcement of Foreign Judgments Act adopted the practice which, in substance, is used in Federal courts. It provides the enacting state with a speedy and economical method of doing that which it is required to do by the Constitution of the United States. It also relieves creditors and debtors of the additional cost and harassment of further litigation which would otherwise be

incident to the enforcement of the foreign judgment. This act offers the states a chance to achieve uniformity in a field where uniformity is highly desirable.

## **52. Eminent Domain Code**

The 1985 Legislature enacted a new Eminent Domain Code which became effective January 1, 1986. The act is codified in Alabama Code §§ 18-1A-1 et. seq.

The constitutional promise contained in the Fifth Amendment to the Federal Constitution and Sections 23 and 235 of the Alabama Constitution that "private property shall not be taken for public use, without just compensation" has been judicially held to require that the owner be put in as good a position pecuniarily as he would have occupied if his property had not been taken. The committee of the Alabama Law Institute, charged with the responsibility of preparing a Code on Eminent Domain, was primarily concerned with the method and procedure to insure the fair fulfillment of this constitutional commitment and due process.

Prior studies and suggested revisions of eminent domain statutes had not been enacted for various reasons, perhaps because sufficient consideration was not given to the multiple interests involved and affected. The committee, through many conferences and extended debates, sought to inject and resolve all interests. The Uniform Eminent Domain Code, approved by the National Conference of Commissioners on Uniform State Laws, prior revisions suggested in Alabama, including those of an earlier Code Committee of the Alabama Bar, and recommendations from attorneys, judges, appraisers and property owners have been incorporated into the Code as recommended by the Committee.

## **53. Nonprofit Corporation Act**

This act was passed by the Legislature in 1984 and became effective January 1, 1985. Ala. Code § 10-3A-1 et seq.

The Alabama Nonprofit Corporation Act of 1955, former Alabama Code Section 10-3-1 et seq., hereinafter referred to as the "Alabama Act," was adopted in large part from the 1952 Model Nonprofit Corporation Act. This act is based on the 1964 Model Nonprofit Corporation Act drafted by the Committee on Corporate Laws of the Section of Corporation, Banking and Business Law of the American Bar Association and reflects a policy of parallelism in that it follows as closely as permitted by the difference in subject matter of the corresponding provisions of the Alabama Business Corporation Act, Alabama Code Section 10-2B-1 et seq. Provisions in regard to stock are omitted and certain variations of practice are permitted for nonprofit corporations that are not customary or appropriate for business organizations. But otherwise, this act is deliberately and closely parallel with the provisions of the Alabama Business Corporation Act. It follows that decisions under the Alabama Business Corporation Act, or commentaries on it, which greatly outnumber those in regard to nonprofit corporations, should become increasingly helpful in the interpretation and application of this act.

#### **54. Limited Partnership Act**

This act was passed by the Legislature in 1983 and became effective on January 1, 1984. Alabama Code § 10-9A-1 et seq.

This act was based on the Revised Uniform Limited Partnership Act. The prior Alabama law was incomplete in that it did not fully delineate the liabilities of limited partners or provide safe harbor provisions for them. This act clarified the filing procedures for both foreign and domestic limited partners.

**55. Professional Corporation Act**

This act was passed by the Legislature in 1983 and became effective on January 1, 1984. Ala. Code § 10-4-380 et. seq.

This area of the law was formerly governed by two separate acts, the Professional Association Act of 1961 and the Professional Corporation Act of 1971. The new act brings these laws into conformity with the Alabama Business Corporation Act while combining them into one statute.

**56. Probate Code**

This act was passed by the Legislature in 1982 and became effective January 1, 1983. Ala. Code § 43-8-1 et. seq.

This revision is basically Articles I and II of the Uniform Probate Code which deal with "definitions" and "intestate succession and wills".

**57. Administrative Procedure Act**

The act passed the Legislature during the 1981 Regular Session, and became effective October 1, 1982. Ala. Code § 41-22-1 et. seq.

This law provides three basic provisions:

- (1) provides for rule-making procedures and publishing of rules;

(2) procedure for handling contested cases; and

(3) provides for legislative review of agency rules.

**58. Revised Article 9, Uniform Commercial Code**

Article 9 passed during the Regular Session in 1981, and became effective February 1, 1982. Ala. Code § 7-9-101 et. seq.

This revision simplified the process of filing financial statements, it also clarifies the law governing priority of conflicts between competing claimants to collateral, and generally updates Article 9 of the Uniform Commercial Code that was enacted in 1966.

**59. Business Corporation Act**

The act passed the Legislature in 1980 and became effective January 1, 1981. Ala. Code § 10-2A-1 et. seq.

This revision allows for one person corporations, close corporations and updated Alabama's 1958 corporation law.

**60. Banking Code**

The Banking Code was revised in 1979 to update Alabama banking laws that had not been revised since 1915. Ala. Code § 5-1A-1 et. seq.

**61. Rules of the Road**

The Rules of the Road were revised in 1980 to update Alabama's driving laws that were passed in 1926. The revision follows recommendations made in the Uniform Vehicle Code and is found at Ala. Code § 32-5A-1 et. seq.

**62. Criminal Code Form Indictments (1979)**

With the implementation of the new Criminal Code, existing indictment forms became obsolete. The Institute drafted new indictment forms for use under the Criminal Code. The committee was comprised of judges and district attorneys who drafted the indictments, not only for offenses under the new Criminal Code, but for a number of offenses that remain unchanged. Previously, Alabama did not have a complete set of form indictments. These form indictments are distributed by The Administrative Office of Courts and Office of Prosecution Services.

**63. Criminal Pattern Jury Instructions - 1979**

Under the chairmanship of Circuit Judge Joseph Colquitt, the Criminal Pattern Jury Charge Committee drafted jury charges to accompany the implementation of the new criminal code. The committee began working July, 1977 and completed comprehensive drafts of charges in four major felonies: homicide, theft, burglary, and robbery. Prior to the effective date of the Criminal Code, the committee drafted the balance of the charges. The committee drafts included general instructions as well as lesser included charges. The draft was submitted to the Alabama Supreme Court and is in use today.

**64. Criminal Code**

The Criminal Code passed the legislature in 1978 and became effective January 1, 1980 and is found at Ala. Code § 13A-1-1 et. seq.

It was the first major revision of Alabama's Criminal Code in the history of the state. The Criminal Code is in accord with those in other states that are similar to the Model Penal Code drafted by the American Law Institute. The Criminal Code is found at Ala. Code § 13A-1-1 et. seq.

## VI.

### RECENT PUBLICATIONS

1. **Probate Judges' Handbook**, 7<sup>th</sup> Edition, 2001

The Alabama Law Institute in conjunction with the Alabama Probate Judges' Association has published the Probate Judges' Handbook, 7<sup>th</sup> Edition to reflect the recent changes in the law. The chapter concerning responsibilities of the probate judge relating to election laws has been substantially expanded. Changes in the laws of administration of estates, commitments and adoption laws have been included.

Furthermore, several forms have been added or modified to assist in the implementation of these new laws. The forms are grouped together under specific topics.

The primary purpose of this Handbook is to serve as a quick reference for probate judges in finding legal sources of the duties with which they are entrusted by law. For newly elected probate judges especially, this Handbook can be an important tool in providing a general overview of the office and in helping to familiarize them with their many responsibilities.

2. **County Commissioners' Handbook**, 9th Edition, 2001

The eighth edition of the County Commissioners' Handbook was written to assist over 358 county commissioners from throughout the State of Alabama in the performance of their official duties. Included are chapters on organization of county government, administration of highways, taxation and financial administration and other functions. The

appendices includes the rules of order for meetings and the Code of Ethical Conduct.

The primary purpose of this handbook is to serve as a quick reference for county commissioners in finding legal sources of the duties with which they are entrusted by law. For newly elected county commissioners, this handbook can be an important tool in providing a general overview of the office and in helping to familiarize them with their many responsibilities.

This handbook has been substantially revised to include the many recent acts relating to counties. Mr. Buddy Sharpless, Director of the Alabama County Commissioners Association, has added practical pointers for commissioners and distributes this handbook to the county commissioners.

**3. Election Handbook, 9th Edition 2000**

This handbook, which follows the format of the 1998 edition, follows the entire election process in chronological order. It also has separate chapters for particular officials' responsibilities. There are chapters for Probate Judges' duties, sheriffs' duties, etc. This edition was edited with the assistance of Mr. Chuck Granger and Mr. Steve Prince of the Secretary of State's Office. The election calendar was prepared by Ms. Vicki Balogh of the Election Division of the Secretary of State's Office. It is distributed by the Secretary of State's Office.

**4. Criminal Pattern Jury Instructions - 2000**

Chairman: Joseph Colquitt

During 1999 - 2000, the editor wrote and edited jury instructions for the sentencing phase of capital murder trials. This work is complete and has been sent to the Administrative Office of Courts for distribution.

Additionally, existing instructions were reviewed and revised as necessary in an effort to address any improvements in existing instructions suggested by judges and attorneys. This revision also involved the study of all appellate court cases which discuss the pattern jury instructions in an effort to address all shortcomings in existing instructions.

Additional instructions were written to address issues which had not been included in earlier editions of the instructions. This group of instructions covered less-frequently encountered, non-capital charges as well as procedural issues not previously addressed in the instructions.

Once all of the instructions are published, judges and litigants in Alabama will have access to a rather complete set of pattern instructions. The three types of instructions developed in the present effort (capital sentencing instructions, non-capital instructions not previously drafted, and corrective instructions) are voluminous enough to cause an expansion from a one-volume work to two volumes.

**5. Sheriffs' Handbook, 2nd Edition 1999**

In 1999, the Law Institute developed the second edition of the Alabama Sheriffs' Handbook. This book is designed to provide sheriffs and their offices with a readily available compilation of the administrative and legal responsibilities of the sheriff's office. The chapter dealing with the legal background discusses the qualifications of office, the authority of the sheriff as well as the staffing of the sheriff's office. Chapter three provides an overview of the

administrative responsibilities of the sheriff's office. Specifically, it deals with the auditing and inspection of records, record keeping, and the management of the funds under the

control of the sheriff. It also discusses the responsibilities of the sheriff's office as it relates to elections.

As the county's chief law enforcement officer, the sheriff has a number of responsibilities. The handbook discusses extradition, consumer protection, public health and investigative activities.

A major responsibility of the sheriff is that of maintaining the county jail. The handbook includes a discussion relating to the incarceration of prisoners, visitation, correction programs, health of prisoners, and the liability of the sheriff.

Also, the handbook discusses in some detail a number of the various crimes against persons as well as property. It also includes laws relating to juveniles and the youthful offender act.

Additional responsibilities of the sheriff's office includes the service of civil process. This chapter discusses subpoenas, attachments, execution, and the sheriff's sales. Additionally the responsibilities of the juries in the various courts is discussed.

**6. Legislative Process, A Handbook for Alabama Legislators, 7th Edition, 1999**

The first edition was developed in 1978 and has been updated approximately every four years to correspond with the changes enacted with each new legislature. Although it was initially developed to serve as a handbook for Alabama

legislators, it has evolved into an important resource tool for teachers, students and others who are also interested in the legislative process.

In 1999 the Alabama Law Institute published the 7th Edition of the Legislative Process. This handbook was produced by the Institute in an effort to bring together in one convenient volume the many constitutional and statutory laws and legislative rules and practices that govern the Alabama Legislature and its lawmaking processes. It is written as a practical handbook for those involved in the legislative process in Alabama, and is directed especially to the members of the Alabama Senate and Alabama House of Representatives.

This handbook seeks to bring together in one volume pertinent information about Alabama's legislative process.

The handbook begins with a description of the organization of the Legislature, covering such matters as its historical background, meeting dates, officers and employees, rules, and the composition of each house. This background is followed by a discussion of the lawmaking process, describing how a bill is drafted, introduced and its route through both houses of the Legislature on its way to the Governor's office for his signature, where it will become an Act.

This book serves as a guide to students and individuals interested in the Alabama Legislative process.

7. **Alabama Government Manual**, 10th Edition 1998

The Alabama Law Institute published the Tenth Edition of *The Alabama Government Manual* in 1998.

The *Alabama Government Manual* is designed as a ready reference for state and local officials, members of the legislature, interested citizens and students, on the overall organization of governmental agencies in Alabama.

Since publication of the 1977 *Manual*, a number of developments have taken place relating to the structure of government agencies in Alabama. Though neither comprehensive government reorganization legislation or a Constitutional Revision program has achieved passage, various organizational changes have been implemented, and are reflected in the Manual. In addition, there has been significant restructuring in areas such as mental health and prisons, as a result of federal court orders, which have had the effect of placing affected institutions under direct supervision of the Governor's office. These changes also are reflected in the current volume. The Legislature in 1976 created a Legislative Sunset Committee, for the purpose of reviewing periodically the work of existing agencies, and making recommendations for realignment curtailment or expansion. The Committee has become one of the most active regular units of the Alabama Legislature, and its work product to date is reflected in the 1998 *Manual*.

8. **Alabama Legislation Cases and Statutes**, 4th Edition, 1998

This book is written to acquaint lawyers, law students and those involved in drafting, voting on and interpreting Alabama laws with the technical aspects of legislation.

The book is in six parts. The first part is to provide the reader or researcher with the historical background of the Alabama Legislature and the legislative services available to legislators. Alabama's legislators for the most part are

untrained in the legislative process and do not have a personal staff or office, yet they operate remarkably well.

The second part is an orientation in the organization of

the Legislature, discussing the general requirements of candidates, their election to office, reapportionment law, legislative sessions, and finally, Senate and House Rules.

Part three is a review of legislative procedure and covers legislative powers, oversight functions, local legislation, the non-law making functions of the Legislature, and the passage of bills through both houses of the Legislature and the Governor's action on them.

The fourth part deals with the mechanics of drafting, covering such objects as resolutions, constitutional amendments, statute drafting, amendments, codification of acts, and repealing of laws.

The fifth part deals with interpretation of statutes, the rules of construction, legislative intent, legislative history and judicial meaning of words used within statutes.

Finally, part six reviews the obligations of legislators, the ethics act, and rules for lobbyists.

**9. Warrant and Indictment Manual, 3rd Edition, 1998**

The third edition updates the two prior revisions and adds warrants and indictments for offenses not previously covered. Volume One encompasses the offenses located in the Criminal Code in Title 13A. Volume Two contains warrants and indictments for all other criminal offenses that are not located in the Criminal Code.



## VII.

### CURRENT PROJECTS OR STUDIES

4. Alabama Government Manual, 11<sup>th</sup> Edition, 2002

The Alabama Law Institute is currently working on the 11<sup>th</sup> edition of the Alabama Government Manual. The Alabama Government Manual is designed as a ready reference for state and local officials, members of the legislature, and interested citizens and students on the overall organization of governmental agencies in Alabama. The new addition will reflect the number of developments that have taken place relating to the structure of governmental agencies in Alabama since the 10<sup>th</sup> edition. Each year a number of changes in the structure in governmental agencies occur through the oversight function of the Legislative Sunset Committee that was established more than twenty years ago, to effectuate the most efficient means of having the state agencies respond to the ever-changing needs of the citizens of the State of Alabama.

5. Election Handbook, 10<sup>th</sup> Edition

The Election Handbook is written to provide candidates for public office and election officials with one source in which to find applicable provisions of Alabama law relating to municipal, county or state elections. Voting officials are given guidance concerning their duties during the election cycle. Consequently, this book will assist not only candidates and voters but also probate judges, sheriffs, boards of registrars, municipal and county commissioners, and other who have a significant part in conducting elections.

Individuals who work at the polls or have other responsibilities relating to the election process will find information that will be helpful to them in performing their duties. The handbook

will be organized to follow the entire election process in chronological order. The chapters will be organized in a manner to help each particular official understand their responsibilities.

This book is drafted in conjunction with the Secretary of State's Office.

## 6. Alabama Constitution Study

In the last few years there has been much public and legislative debate concerning the possibly of drafting a new Constitution for the state of Alabama. Alabama's current Constitution was enacted in 1901 and subsequently has been amended over seven hundred times. For the last few years the legislature has considered a number of bills that would lead to a potential revision or replacement of Alabama's current Constitution. At the end of the 2001 Regular Session, the House of Representatives passed a resolution asking the Alabama Law Institute to conduct an analysis of the amendments to the Constitution and to make recommendations to the Legislature concerning procedures for revising and consolidating the Constitution.

As requested, the Alabama Law Institute undertook an extensive study of the Alabama State Constitution led by Professor Howard Walthall. As a result of the study, the Institute will provide the Legislature with three different approaches for consideration to the meet the goal of providing the House of Representatives with specific guidelines for constitutional revisions.

To facilitate public and legislative discussion with a goal of subsequent implementation of a new constitution, a number of specific reports were prepared by the Law Institution. These charts were drafted under the direction of Professor Howard Walthall, Director of the State Constitutional Law Project at Cumberland School of Law. His charts analyze the 1901 Constitution article by article, as well as the amendments as they relate to those articles.

The charts show which articles have been revised and ratified, as well as those that have lapsed by the passage of time. Also, the report identifies the sections that have, subsequent to their enactment, been declared unconstitutional.

These reports and charts will be provided to members of the House of Representatives at the beginning of the 2002 Regular Session.

#### **4. Legislative Legal Staff**

For over 20 years the Alabama Law Institute has provided legal counsel for both the House and Senate Judiciary Committees. More recently the House has been reorganized and increased its staff support for its committees.

Beginning with the 2000 Regular Session, the Alabama Law Institute was asked to secure additional legal counsel for all standing committees in the House of Representatives. Committee counsel is available to assist committee members to interpret and understand the bills presented to the committee. They are also be available to assist with any needed amendments. The Institute continues to provide legal counsel to the Senate Judiciary.

## **5. Legislative Orientation**

In December 1998, the Institute conducted a three day orientation for the newly elected Legislature. This is the seventh orientation that the Institute has held since 1974. Shortly after the upcoming election in November 2002, the Law Institute will conduct an orientation for the new and returning legislators.

The first day of the conference will focus primarily on assisting the newly elected, first time legislators understand the legislative process. Also, a representative of each legislative agency that is available to assist the legislative membership is expected to outline to the legislators the assistance they provide to the Legislature.

The remaining days of the conference will focus on important issues that the Legislature will be facing in the upcoming quadrennium. The issues typically discussed include the following: trends in state legislatures, state's economic condition, education issues, health care problems, children's issues, and welfare reform concerns.

The membership will receive reports of the status of the state from judiciary, the legislative fiscal office and the Governor.

## **6. Sheriffs' Orientation**

In February 1999, the Institute held an orientation for the newly elected sheriffs of the State of Alabama. The program focused primarily on the administrative duties of the sheriff's office.

The program included information about service of process, records, administrative duties, repossessions, detinue and attachments. A number of topics relating to their jail responsibilities were discussed, including, work release, and detention and care of

juveniles.

Representatives from the FBI, Secret Service, Drug Enforcement, and other agencies with which the sheriffs will be working were included on the program. They explained the assistance their agency could provide to each sheriff's office.

7. **Home Page on Internet**

The Institute has developed a Home Page on the Internet in order to fully utilize the technological advances that enable a faster and more efficient transfer of information. The Home Page includes the following links: Legislature, state agencies, constitutional officers such as the Governor's office and Secretary of State, State Bar, Alabama School of Law and Cumberland School of Law.

Our address is: **[www.ali.state.al.us](http://www.ali.state.al.us)**.

Through the use of the ALI Home Page, legislators, counsel members, as well as the general public, will be apprised of the projects under study as well as their current status. Once the bills have been introduced, their position in the legislative process can be easily tracked.

8. **Probate Law for Probate Judges Basic and Advance Course**

In the last few years the Legislature has made substantial changes in the areas of law under the probate judges' jurisdiction. Additionally, court decisions in such areas as commitments and mental health have greatly changed the law.

Consequently we developed a three-year long training course to acquaint Probate Judges with various legal aspects of their office.

This course includes sessions on: (1) General Responsibilities of the Probate Office, (2) Estates, (3) Commitments, (4) Real Estate, (5) Eminent Domain, (6) Guardianships, (7) Adoptions, and (8) various laws affecting their office as elections, corporations, etc. This course is conducted with the assistance of experienced judges and faculty members from the University of Alabama School of Law.

This course focuses on the judge and his judicial role and includes not only lectures but practical demonstrations and practical exercises.

## **9. Model City Ordinances**

The Institute, in conjunction with the University of Alabama School of Law and the Alabama League of Municipalities developed a model set of municipal ordinances. Law students have been trained and are made available to cities to compare the cities' ordinances with the Model Ordinances to determine a need to update the municipal laws and to fill voids in the city ordinances.

This model set of ordinances is primarily for the over 400 small municipalities in the state of Alabama that do not have a full-time city attorney. A number of cities have already utilized this service since 1991.

Cities who desire to avail themselves of these services should contact the Alabama Law Institute directly. The current cost for the service is \$275.00 for three days of review plus mileage and expenses. If additional time is needed to complete the project, it is billed at \$10.00 per hour.



## VIII.

### PROJECTS OR STUDIES COMPLETED

A more detailed discussion of the following may be received by writing the Institute:

1. Alabama Election Handbook, 9th Edition (2000); 8th Edition (1998); 7th Edition (1996); 6th Edition (1994); 5th Edition (1990); 4th Edition (1986). Supplement to 3rd Edition (1982); 3rd Edition (1980); 2nd Edition (1977); 1st Edition (1977).
2. Legislative Process, 7<sup>th</sup> Edition (1999); 6<sup>th</sup> Edition (1995); 5<sup>th</sup> Edition (1991); 4<sup>th</sup> Edition (1987); 3<sup>rd</sup> Edition (1983); 2<sup>nd</sup> Edition (1979); 1<sup>st</sup> Edition (1975).
3. Alabama Legislation - Cases and Statutes, 4<sup>th</sup> Edition (1998); 3<sup>rd</sup> Edition (1994); 2<sup>nd</sup> Edition (1990); 1<sup>st</sup> Edition (1986).
4. Handbook for Alabama County Commissioners, 9<sup>th</sup> Edition (2001); 8th Edition (1997); 7th Edition (1993); 6th Edition (1989); 5th Edition (1986); 4th Edition (1982).
5. Probate Judges' Handbook, 7<sup>th</sup> Edition (2001), 6<sup>th</sup> Edition (1995); 5<sup>th</sup> Edition (1989); 4<sup>th</sup> Edition (1983).
6. Handbook for Alabama Tax Assessors, Tax Collectors, License Commissioners and Revenue Commissioners, 5th Edition (1996); 4th Edition

- (1990); 3rd Edition (1985); 2nd Edition (1981).
7. Sheriffs' Handbook, 2<sup>nd</sup> Edition (1993); 1<sup>st</sup> Edition (1993).
  8. Be It Enacted ... Alabama's Legislative Process, 1993
  9. The Quest to Make The Laws of Alabama, 1993
  10. Alabama Government Manual, 11<sup>th</sup> Edition (2002), 10<sup>th</sup> Edition (1998), 9<sup>th</sup> Edition (1994), 8<sup>th</sup> Edition (1990), 7<sup>th</sup> Edition (1986), 6<sup>th</sup> Edition (1982).
  11. Sheriffs' Desk Manual (1991).
  12. Model City Ordinances
  13. Federally Mandated State Legislation, 1986, 1987, 1988, 1990
  14. Family Violence Study, 1980
  15. Court Reporters' Manual, 1984
  16. Medicaid Study, 1977
  17. Energy and Environmental Law, 1981
  18. Uniform Child Custody and Enforcement Act, 1999

## **IX. TRAINING CONFERENCES**

Legislative Orientation Conference, 1974, 1978, 1982, 1986, 1990, 1994, 1998

Legislative Issues Conferences, 1976, 1977, 1979, 1980, 1981, 1985

Alabama Legislative - Congressional Conference, April 1980, May 1979

Probate Law for Probate Judges Basic Course, 1986-87, 1989-91, 1995-1998, 2001-2003

Probate Judges' Orientation 1976, 1985, 1989, 1995, 2001

Orientation of Sheriffs, 1979, 1983, 1987, 1991, 1995, 1999

Probate Judges' Training Conference and Probate Code Seminar, 1982, 1993, 1994, 1999

License Commissioners, 1992

Probate Judges Advanced Course, 1989-91

District Attorneys' Orientation, 1980

Basic Law for Sheriffs, 1979

## **X.**

### **LIST OF PUBLICATIONS**

Administrative Procedure Act, 40 pp., 1978

Adoption Code, 82 pp., 1988

Alabama Law Institute Handbook, 1970, '78, '84, '95

Alabama Legislation, 394 pp., 1985

Alabama Legislation, 2nd Edition, 381 pp., 1989

Alabama Legislation, 3rd Edition, 473 pp., 1992

Alabama Legislation, 4th Edition, 600 pp., 1998

Alabama Rules of Evidence with Commentary, 336 pp. 1993

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## XI.

### PROJECT ADVISORY COMMITTEES

\*Chairman  
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#### Administrative Procedure Act (1982)

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#### Administrative Procedure Revision (1993)

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**Article 2A**  
**Uniform Commercial Code (1993)**

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**Articles 3 & 4**  
**Uniform Commercial Code (1996)**

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**Article 4A**  
**Uniform Commercial Code (1993)**

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**Article 5**  
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**Article 9 (Revised)**  
**Uniform Commercial Code (1982)**

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Steadman S. Shealy, Jr.  
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**Banking Code (1979)**

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Horace W. Broom  
Guy H. Caffee, Jr.  
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Don H. Patterson  
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James D. Pruett  
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Charles S. Snell  
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**Business Corporation Act 1980**

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**Business Corporation, Revised (1995)**

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**Business Entities (1999)**

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**Children's Code (1988)**

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**Child Custody and Enforcement Act (2000)**

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Lynn Merrill

David Cauthen, Sr.

William Clark Samuel A. Rumore, Jr.

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Gary Pate

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**Common Interest Ownership (1991)**

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**Condominium Act (1991)**

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**Criminal Code (1980)**

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John Bookout	M. Clinton McGee
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**Criminal Code Form Indictments (1979)**

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**Criminal Code Form Indictments (1988)**

Robert E. Hodnette, Jr.	Robert M. Parker
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Robert E. Lee Key	Ted Pearson
Hardie B. Kimbrough	William C. Sullivan
Ron Meyers	Bernard Sykes
Earl Morgan	Lavern Tate
Lee Hale	G. H. Wright, Jr.
James A. Patton	Joe Carlton
Tom Sorrell	

**Criminal Code Form Indictments (1998)**

Robert E. Hodnette, Jr.*	Robert M. Parker
Joe Carlton	James A. Patton
Lee Hale	Ted Pearson
Leslie Johnson	Tom Sorrell
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Hardie B. Kimbrough	Bernard Sykes
Ron Meyers	Lavern Tate
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**Criminal Pattern Jury Instructions (1979)**

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**Criminal Pattern Jury Instructions (1988)**

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Joe Colquitt	Randall Thomas
Randall Cole	

**Criminal Pattern Jury Instructions (1994)**

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**Custodial Trust (1997)**

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**Domestic Violence Orders Act (2001)**

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**Eminent Domain Code (1985)**

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Michael F. Ford	Joseph D. Phelps
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**Eminent Domain Code (1999)**

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**Foreign Judgments (1986)**

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**Fraudulent Transfers (1990)**

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**Guardianship and Protective  
Proceeding Act (1986)**

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**Interstate Family Support (1998)**

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**Limited Liability Company (1993)**

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Thomas Mancuso  
George Maynard  
Michael Rediker  
Professor Howard Walthall  
Bradley J. Sklar  
Robert Walthall

**Limited Liability Company with  
Limited Liability Amendments (1998)**

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Scott Ludwig	Bradley Sklar
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Mark Maloney	Professor Howard Walthall
Bruce P. Ely	Professor Tom Jones
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**Limited Partnership Act (1981)**

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**Limited Partnership, Revised (1998)**

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**Multiple-Person Accounts (1997)**

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**Non-Profit Corporation (1983)**

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Sidney Cook	George Maynard
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	Watson Smith

**Parentage (2001)**

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Honorable Mike Bolin	Honorable Philip Lisenby
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Rebecca G. Brooks	Randall W. Nichols
David P. Broome	Jill O. Radwin
Jennifer Bush	Professor David Smolin
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**Partnership (1996)**

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Robert G. Johnson	

**Partnership with LLP (1996)**

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Scott Ludwig**	Timothy S. Tracy

**Principal and Income Act (1999)**

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Ralph Quarles	Daniel Markstein, III
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**Probate Code (1983)**

E.T. Brown*	Louis B. Lusk
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O. H. Florence	Irvine C. Porter
Randy Fowler	Judy Todd
John W. Gillon	Bob Woodrow
Lyman Holland	John N. Wrinkle
Professor Tom Jones**	

**Probate Procedure (1994)**

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Mike Bolin	Joe L. Payne
Annette Dodd	George Reynolds
Keith Foster	Frank Riddick
Randy Fowler	Kirby Sevier
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Lyman F. Holland, Jr.	Leonard Wertheimer, III
Professor Tom Jones**	Bob Woodrow, Jr.
Louis B. Lusk	John N. Wrinkle
Joe McEarchern	

**Professional Corporation Committee (1984)**

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Ira Burleson	Robert H. Pettey, Jr.
Harwell E. Coale, Jr.	Stephen J. Pettit
Steve Crawford	Don F. Siegal
C. Fred Daniels	Robert Tanner
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**Prudent Investor Act (2000)**

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Douglas Bell	J. Reese Murray, III
Anna Funderburk Buckner	William A. Newman, Jr.
Lyman F. Holland, Jr.	Ralph Quarles
Professor Tom Jones**	Alan Rothfeder
Robert L. Loftin	Irving Silver
Daniel Markstein, III	Leonard Wertheimer, III*
	Ralph Yeilding

**Public Employee Retirement Systems (1999)**

Jerry Bassett	William E. Shanks, Jr.
Professor Jim Bryce**	Chris Simmons
John Harrell	William Stephens
Kyle Johnson	Dana Thrasher
Jack Levy	Brand Walton, Jr.
Richardson McKenzie, III	

**Real Estate (1987)**

Hugh Lloyd*	George Maynard
Joe Adams	Drayton Pruitt, Jr.
Jim Campbell	Robert J. Russell
Professor Harry Cohen**	Louis Salmon
Wayne Copeland	Yetta Samford
Fred T. Enslin, Jr.	Morris Savage
Bill Hairston, Jr.	James M. Tingle
Bob Harris	Caroline E. Wells

**Rules of Civil Procedure (1993)**

David A. Bagwell	Champ Lyons, Jr.
A. W. Bolt, II	Bruce J. McKee
David R. Boyd	Richard S. Manley
Hon. Robert L. Byrd, Jr.	Oakley Melton, Jr.
Arthur Fite, III	James D. Pruett
Hon. James Haley	W. H. (Skip) Rogers
Francis H. Hare, Jr.	Hon. Dewaine L. Sealey
Prof. Jerome Hoffman	W. Stancil Starnes
Phillip A. Laird	John Taber
Jack Livingston	Larry Vines

**Rules of Criminal Procedure (2001)**

George Andrews, III	Lynda L. Flynt
Albert C. Bowen, Jr.	J. Doyle Fuller
Hon. William Bowen, Jr.*	Hon. James S. Garrett
Roger A. Brown	Thomas M. Goggans
Joseph A. Colquitt	Hon. Lewis E. Gosa
Robert G. Esdale	Hon. James H. Hard, IV
Stephen P. Feaga	Alex Jackson
Richard S. Jaffee	
Hon. Thomas R. Jones	
Hon. Eugenia L. Loggins	
Lane W. Mann	
Robert L. McCurley, Jr.**	
Thomas Parker	

Hon. Daniel Reeves  
Hon. Donald W. Stewart  
Sandra J. Stewart

Hon. Ned Michael Suttle  
Hon. John D. Whetstone

### **Rules of Criminal Procedure (1983)**

Robert E. Hodnette\*  
Karen Daniel Knight  
Oscar Adams, Jr.  
William H. Lumpkin  
Billy Burney  
Joe McLean  
Joseph A. Colquitt  
M. Clinton McGee  
Ed Carnes  
William McKnight  
William N. Clark  
Glenn F. Manning  
Rosa Hamlet Davis

Hugh D. Merrill  
Milton Davis  
Newman Sankey  
Nancy Smith Gaines  
Tom Sorrell  
Ian Gaston  
Lavern Tate  
Charles Graddick  
Lewey Stephens  
Lawrence J. Hallett, Jr.  
Charles Tarter\*  
Robert L. McCurley\*\*  
Charles Trost\*\*

### **Rules of Evidence (1996)**

Pat Graves\*  
Joe Colquitt  
Bill Clark, Ex Officio  
Greg Cusimano  
Professor Charles W.  
Gamble\*\*  
Sally Greenhaw  
Arthur J. Hanes  
Brooks Holmes  
A. Richard Igou  
Ralph Knowles, Jr.

L. Tennent Lee, III  
Howard Allyn Mandell  
William Hayes Mills  
Bruce J. McKee  
Frank B. McRight  
Richard Ogle  
Abner R. Powell, III  
C. Lynwood Smith, Jr  
Ernestine Sapp  
Clarence M. Small, Jr.

### **Rules of the Road (1980)**

Charles E. Alexander  
Gerald Anderson  
Houston D. Anderson  
James E. Berry  
Jack Blumenfeld  
Tommy Coleman  
R.R. Evans

Harold J. Hammond  
Professor Tim Hoff\*\*  
Frank D. Marsh  
Sam P. McClurkin  
William L. Sanky  
Robert Simpson

**Securities Act (1990)**

L. Burton Barnes*	Charles C. Pinckney
Louis H. Anders, Jr.	James D. Pruett
Carolyn L. Duncan	Yetta G. Samford, Jr.
Meade Frierson, III	R. Frank Ussery
Carl L. Gorday	C. Larimore Whitaker
Marshall S. Harris	William J. Ward
Thomas G. Mancuso	Prof. Manning Warren, III
James L. North	Howard P. Walthall**

**Trademark Act (1988)**

Oakley W. Melton, Jr.*	Thad G. Long
Ike Espy	C. Henry Marston
Andrew J. Gentry, Jr.	Walter Owens
Val Hain	Donald Stewart
Evelyn Ham	Harold See**
Nat Hansford	

**Trade Secrets/Trade Names (1987)**

L. Vastine Stabler, Jr.*	Sam Phelps
David B. Byrne, Jr.	Gary L. Rigney
Charles Cleveland	Professor Harold See**
Richard H. Gill	James Dale Smith
Thad Long	Ross Thompson, Jr.

**Transfers to Minors (1986)**

Lyman F. Holland*	Kyle Johnson
Joe Bailey	Winston V. Legge, Jr.
C. Fred Daniels	Ralph Quarles
William J. Gamble	Kirby Sevier
Kent Henslee	Don F. Siegal
Professor Tom Jones**	

**Trust Code (2001)**

LaVeeda Morgan Battle	Professor Tom Jones
Douglas Bell	Cynthia G. Lamar-Hart
James E. Bridges	Robert L. Loftin
Anna Funderburk Buckner	Bruce J. McKee
J. Sydney Cook, III	J. Reese Murray, III
Jon H. Deal, CPA	James Pruett
Robert T. Gardner	Bruce A. Rawls
Lyman F. Holland, Jr.	Irving Silver
Ted Jackson	Leonard Wertheimer, III
William T. McGowin, IV	Ralph Yeilding*

**Unincorporated Nonprofit Association (1996)**

L.B. Feld*	Redding Pitt
Bob Pearson	Thomas D. Samford, III
Manley L. Cummins, III	Leah Scalise
Mark L. Gaines	L. Vastine Stabler, Jr.
Bill Hinds	Alyce Spruell
Virginia Hopkins	Julia Stewart
Mary Ellen Lamar	Dr. Richard Thigpen**
Jim Main	James W. Webb
Malcolm N. Carmichael	James Jerry Wood



## XII.

### INSTITUTE STAFF AND ASSISTANTS

2001 - 2002

**Director:** Robert L. McCurley  
**Associate Director:** Penny Davis

**Secretaries:** Nancy Foster  
Linda Wilson

#### **Reporters:**

Donald Baker	Charles Gamble
Jim Bryce	Jerry Hoffman
Joseph Colquitt	Thomas L. Jones
Robert McCurley	Robert Loftin
Penny Davis	Gene Marsh
Mike Floyd	Howard Walthall

#### **Student Research Assistants:**

Stuart Albea	Neal Hutchens
Daniel Alexander	Joseph Stutz
Edgar Black	Rodney Waites
James Crane	Kimberly Ward

## **Former Research Assistants**

### **1975-1976**

Al Agricola  
Linda Breland  
David Broome  
Pat Boyd  
Karen Callahan  
George Callen  
Andy Campbell  
John Civils, Jr.  
Jane de Lissovoy  
Charles Dunn  
Lucian Gillis, Jr.  
Larry Hallett, Jr.  
Carl Johnson  
Tim McAbee  
James McNeill, Jr.  
David Martin, III  
Barry Mazer  
Joel Odum  
Herman Pagent  
Joe Pierce  
Dennis Riley  
Mike Tanner  
Julie Waters  
Tommy Wells

Herman Pagent  
Maury Sheven  
Steve Still  
Julie Waters

### **1977-1978**

Al Agricola  
John Civils, Jr.  
Penny A. Davis  
Therese de Saint-Phalle  
Jim Frost  
Ted Giles  
Lucian Gillis, Jr.  
Paula Hinton  
Carl Johnson  
David Martin, III  
Roy Moore  
Gerald Paulk  
Steve Rowe  
John Springer  
Steve Still  
Julie Waters  
Caroline Wells

### **1976-1977**

Al Agricola  
Karen Callahan  
George Callen  
Andy Campbell  
John Civils, Jr.  
Jane de Lissovoy  
Lucian Gillis, Jr.  
Carl Johnson  
Tim McAbee  
James McNeill, Jr.  
David Martin, III  
Roy Moore  
Mike O'Dell

**1978-1979**

Shap Ashley  
Jim Byram  
Andy Campbell  
Kathy Collier  
Therese de Saint-Phalle  
Penny A. Davis  
Rayford Etherton  
Jim Frost  
Jim Goyer  
Mike Graffio  
Paula Hinton  
Jeff Jones  
Kenny Mendleson  
Bert Owen  
Eddie Parker  
Gerald Paulk  
Perry Reeder  
Helen Roan  
Harold Stephens  
Bill Stokes

**1979-1980**

Sabrina Andry  
Paul Brown  
Kin Clinton  
George Day  
Kirk Davenport  
Edward Dean  
Tom DeBray  
Doug Dunning  
Raymond J. Hawthorne  
Regina Holmes  
Clare Hughes  
Jeff Jones  
Elizabeth Kim King  
Debra Ann Lee  
Jeffrey L. Luther  
Michael K. Majure  
James E. Smith, Jr.  
Jessica Ann Smith

Keith Norman  
Mary Lil Owens  
Perry Reeder  
Tommy Reynolds  
George Simons  
Elizabeth Skinner  
Harold Stephens  
Bill Stokes

**1980-1981**

Lynn Belk  
Lew Burdette  
Karen Burleson  
George Day  
William Gantt  
Raymond J. Hawthorne  
Regina Holmes  
Paula Ivey  
Michael Majure  
Keith Norman  
Perry Reeder Pearce  
Dudley Reese  
Tommy Reynolds  
Jessica Smith  
Harold Stephens  
Bill Stokes  
Jim Tompkins

**1981-1982**

Beverly Lynn Belt  
Robert Lew Burdette  
Brenda Burns  
William G. Gantt  
Anne J. Hendrix  
Paula D. Ivey  
James B. Tompkins

**1982-1983**

Anne H. Avera  
Brenda Burns

Gregg B. Everett  
William H. Filmore  
Clara L. Fryer  
Kevin L. Johnson  
Elizabeth Kim King  
Debra Ann Lee  
Elizabeth A. LeVan  
Mike Majure  
James E. Smith, Jr.  
David Key Taylor

**1983-1984**

Grant Baldwin  
Silver Broome  
Chris Dozier  
William H. Filmore  
Timothy Francis  
Lisa Huggins  
Kevin L. Johnson  
Elizabeth A. LeVan

**1987-1988**

Belinda Barnett  
George Martin, Jr.  
Joe Steadman  
Richard R. Whidden, Jr.  
Sylvia Garvin  
Michael J. Wiggins

**1984-1985**

Silver Broome  
Manley Cummins  
Ann Dozier  
Tim Francis  
Lisa Huggins  
Mary Ellen Lamar  
Elizabeth A. LeVan

**1985-1986**

Catherine Anderson  
Manley Cummins  
Mary Ellen Lamar  
Richard Silfen  
Mark Teal

**1986-1987**

Catherine Anderson  
Tim Culpepper  
Bob Maddox  
Adam Porter  
John Sharbrough  
Richard Silfen  
Wes Smith  
Jim Sturdivant  
Mark Teal

**1988-1989**

Richard R. Whidden, Jr.  
Sylvia Garvin  
Rebecca J. Anthony  
Michael J. Wiggins  
Russell Sandidge

**1989-1990**

Richard R. Whidden, Jr.  
Sylvia Garvin  
Rebecca J. Anthony  
Jean Powers  
Sam Sullivan  
Michael J. Wiggins  
Russell Sandidge  
Kevin Walding  
Henry Perry  
William H. Starnes

**1990-1991**

Jonathan E. Taylor  
Jill O. Radwin  
Rebecca J. Anthony  
Henry L. Perry  
Samuel Sullivan, Jr.  
Kevin Walding  
Charles A. Powell, IV  
William H. Starnes

**1991-1992**

Jonathan E. Taylor  
Jill O. Radwin  
Rebecca J. Anthony  
Risa Lischkoff  
Terre Su Little  
Richard Rouco  
Laurence J. McDuff  
Stephen L. Scott  
Jill O. Radwin

**1994-1995**

Douglas Adair  
Robert Colby Allsbrook  
Edward Shane Black  
Joseph Brian D'Angelo  
Leigh A. Haynie  
Alan D. Leeth

Amy Owen  
Laura Proctor  
Marjorie Dabbs  
Timmy Milam  
John McCulley

**1992-1993**

Richard P. Rouco  
Jill O. Radwin  
Charles E. Sanders, Jr.  
Wendy A. Harvey  
David Overstreet  
Stephen Scott  
William J. Daniel  
Michael C. Strasavich  
Mark P. Eiland  
Risa B. Lischkoff  
Laurence J. McDuff  
Daniel Wood

**1993-1994**

Douglas C. Adair  
Colby Allsbrook  
Mark P. Eiland  
John Daniel  
Alan D. Leeth

**1995-1996**

Robert Colby Allsbrook  
Edward Shane Black  
Joseph Brian D'Angelo  
Leigh A. Haynie  
Alan D. Leeth  
Karyl L. Rasmussen

**1996-1997**

Guy D. Chappell, III  
Anna-Katherine Graves  
Christopher A. Pankey  
Sarita T. Sanders  
Robert D. Selwyn

Laura H. Tucker

**1997-1998**

Shannon M. Moore  
Christopher A. Pankey  
Robert D. Selwyn

**1998-1999**

Thad A. Davis  
Ralph A. Ferguson, III  
Eric L. Johnson  
Othni J. Lathram

**1999 - 2000**

Phillip Hale  
Othni J. Lathram  
Jason Osborn  
Valanda D. Lewis  
Eric Roberts  
Eric L. Johnson  
Ralph A. Ferguson, III

**2000 - 2001**

Stuart Albea  
Daniel Alexander  
Edgar Black  
James Crane  
Neal Huchens  
Joseph Stutz  
Rodney Waites  
Kimberly Ward

**Alabama Law Institute Fellows**

Jim Bryce  
Nathaniel Hansford  
Thomas L. Jones  
Andrew Noble, III

Mary Lee Stapp  
Lewey Stephens, Jr.  
Dr. Richard Thigpen  
Howard Walthall



### XIII.

#### ALABAMA CAPITAL INTERNS

##### 1979

Sundra Escott	Governor's Office
Joe Varner	Lt. Governor's Office
Hoyt Baugh	Speaker's Office

##### 1980

Karen Fairclothe	Governor's Office
Lamar Higgins	Governor's Office
Lynn Walker	Lt. Governor's Office
Charles Carlton	Speaker's Office

##### 1981

Elizabeth Ann Valine	Governor's Office
Susan Alicia Waddell	Governor's Office
Kenneth Eugene White	Governor's Office
David Key Taylor	Lt. Governor's Office
Randall Virgill Houston	Speaker's Office

##### 1982

Ben Thompson	Governor's Office
Darrell E. Sprowl	Governor's Office
Allen E. Champion	Lt. Governor's Office
Phil Baker	Lt. Governor's Office
Terry Moorer	Speaker's Office

**1983**

Joel Laird	Governor's Office
Stan Allen	Lt. Governor's Office
Tim Hermetz	Speaker's Office

**1984**

Thomas Michael Burnum	Governor's Office
Sheron J. Rose	Lt. Governor's Office
Charles D. Penry	Speaker's Office

**1985**

Ben Foster	Governor's Office
Jean Powers	Lt. Governor's Office
Terry Morgan	Lt. Governor's Office
Kelley	Speaker's Office
Jane Shackelford	Speaker's Office

**1986**

Richard R. Newton	Governor's Office
Carl A. Petty	Lt. Governor's Office
Kristi Dubose	Speaker's Office
Timothy M. Broughton	Speaker's Office

**1987**

Susan Gunnells	Governor's Office
Orlanda Davis	Lt. Governor's Office
Christopher Frechette	Speaker's Office

**1988**

Randall G. Mathews	Governor's Office
JoAnn Sutton	Lt. Governor's Office
Janice K. Harris	Speaker's Office

**1989**

Amy Michelle Meacham	Governor's Office
Susan "Leigh" Preuitt	Lt. Governor's Office
Patrice Oden	Speaker's Office
Reba Campbell	Speaker's Office

**1990**

Tony Allen	Governor's Office
Deitra Crawley	Lt. Governor's Office
Jeff Miller	Speaker's Office
Chris Pankey	Speaker Pro Tem's Office

**1991**

David Bryan Johnson	Governor's Office
Barry Eugene Robertson	Lt. Governor's Office
William J. Rushing	Speaker's Office
Laura Lee Weeks	Speaker Pro Tem's Office

**1992**

Jonathan M. Lyman	Governor's Office
Amy E. Dixon	Lt. Governor's Office
Sonia C. Norris	Speaker's Office
Timothy Fortner	Speaker Pro Tem's

**1993**

Cameron Ward	Governor's Office
Jack Draper	Lt. Governor's Office
Roger Brown	Speaker's Office
Rebecca Dormon	Speaker Pro Tem's Office
Christine Rudolph	Legislative Reapportionment Office

**1994**

Allison Law  
Shane Sears  
Rodney Ellis  
Amy Atchison

Governor's Office  
Lt. Governor's Office  
Speaker's Office  
Speaker Pro Tem's Office

**1995**

David Fleming  
Kells Carroll  
Kimberly Baker  
Landra Stewart  
Kelly Stallworth

Governor's Office  
Lt. Governor's Office  
Lt. Governor's Office  
Speaker's Office  
Speaker Pro Tem's Office

**1996**

Shawn D. Freeman  
Amy Elizabeth Smith  
Latonska Dwain Boswell

Governor's Office  
Lt. Governor's Office  
House of  
Representatives

**1997**

Richard Jason Jordan  
Meagan Bishop  
Edward Dean Mott  
Frank Jerome Tapley  
Jonathan Scott Evans  
Mahari A. McTier

Governor's Office  
Lt. Governor's Office  
Senate  
Speaker's Office  
Speaker's Office  
House Judiciary

**1998**

Kristopher D. Robinson  
Melinda L. Stallworth  
Mary Rebecca Tyre

Governor's Office  
Lt. Governor's Office  
Speaker's Office

**1999**

Andrew "Drew" Dill  
Enjoli Donette White  
Denise S. Randall  
Brandon Paul Owens

Governor's Office  
Governor's Office  
Lt. Governor's Office  
Speaker's Office

**2000**

Jared Lyles  
David Bedsole  
Felicia Watkins

Governor's Office  
Lt. Governor's Office  
Speaker's Office

**2001**

James D. Martin  
Laura Beth Hammack  
Lara Allred Mendes  
Yolanda E. Ratchford

Governor's Office  
Lt. Governor's Office  
Speaker's Office  
House Judiciary

**2002**

Adrian J. Johnson  
Jason Harper  
Alisha L. Upchurch

Governor's Office  
Speaker's Office  
Senate Office