

# THE SENTINEL

## GBCDLA's Official Newsletter

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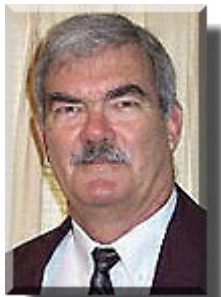
News & Notes

### MESSAGE FROM THE PRESIDENT: ERSKINE MATHIS

We have a lot on our plate for the coming year. With the State trying to set up individual public defender offices in each county, and a general belief by non lawyers that criminals don't really need quality representation, we have work to do.

The first thing I have to say about the subject of appointed lawyers is that we still have a small minority of attorney's who are filing exorbitant vouchers. I am on a three member committee who oversees questionable vouchers. Please, be diligent in your defense of indigents, but do not work just to raise your voucher. If something needs to be done, do it. If you have one of those semi-rare cases which takes up an inordinate amount of time, before you file your voucher, explain to the judge what problems you have had and why in this instance the voucher is going to be larger than normal. Most judges will tell you it is all right. What we do not need is lawyers doing extra work just to build the voucher or lawyers padding the voucher by listing hours they did not work.

### MESSAGE FROM THE President



### PRESIDENT'S COLUMN

By Erskine Mathis

I am having a problem finding a good private detective who will work on indigent cases. Someone who will work for the amount approved by the judge and will wait until after the voucher is paid to get their money. I don't need someone who will say they are a private detective and then, after I have hired them, find they obviously do not know the first thing about investigation.

All you people out there who use private investigators think about it and let's see if we can get a small group of people who actually can do work we can be proud of. Paul Martin, who now works for the U.S. District Court, was a retired homicide detective and was very good, but he no longer takes cases. If any of you know of a good investigator, let me know. I would like to compile a list of people we can recommend to our membership so they do not run up a bill and get nothing for it. Believe me, that is usually what happens. Just because you are paying someone doesn't mean that person is working.


Who does appointed appellate work? I would like to be able to go to the judges and tell them we have a bank of attorneys who want this work and can do a good job. Many people who try a lot of cases do not appeal the cases they lose. There is a good reason for this but when it happens the judges need good appellate lawyers they can turn to. Let's try and drum up some business.

I would like to ask the older, more experienced lawyers in our organization to think about other less experienced members and invite them to assist in trying cases. Many times a judge might appoint a less experienced lawyer to help try a case, but more often than not, experience comes at a price. If you want to try cases offer to help for free. It is much better to be trying a case with an experienced colleague and learning how to do it, than to be lead counsel in the first case you ever see tried.

That is not a fun experience. I know, I did that.

These are just some thoughts I put together about what I think we need to be doing this year. If any of you have suggestions you can reach me through the organization. Thank you and if any of you need anything regarding our mission, feel free to call.

Erskine Mathis



### **CONSIDERATIONS AND RECOMMENDATIONS FOR APPOINTMENT OF COUNSEL IN CAPITAL CASES IN JEFFERSON COUNTY – Contributed by John Lentine**

I've been asked by members of the Board of GBCDLA to write a short synopsis concerning the "Considerations and Recommendations For Appointment in Capital Cases" that was recently the topic of a unanimous resolution of the Circuit and District Court Judges of the Birmingham Division of Jefferson County and which will go into effect in early fall of this year. My hope is to try to answer some of the questions about how and why these considerations and recommendations were promulgated as well as to dispel any fears that have arisen more from fantasy than fact. Finally, I hope this will help make it easier for lawyers who wish to receive appointments for capital case to do so in the future.

#### The History:

The idea to initially discuss creating "Considerations and Recommendations" was begun based on the concerns of both Circuit and District Judges of the Criminal Division in the Birmingham Division of

Jefferson County arising from observations from the bench. Several judges from both the Circuit and District Court met with various representatives from our local criminal defense bar including the then President of the GBCDLA, several past Presidents of the GBCDLA and the ACDLA to discuss how the appointment of counsel in capital cases could be improved. It was decided after several meetings that a group of criminal defense lawyers would serve as a committee to draft possible guidelines/procedures dealing with various aspects of the appointment of counsel, number of counsel, minimum suggested qualifications above and beyond the statutory authority for first an second chair attorneys and training in the are of capital defense.

This new committee spent nearly a year researching the other death penalty states' qualifications and standards for the appointment of counsel in death penalty cases as well as reviewing the standards promulgated by the ABA and NLADA. The committee also reviewed all the relevant case law and statutes pertaining to the appointment and responsibilities of counsel in capital cases. Following the review of these materials the committee set out to write a draft that encompassed those areas that were deemed the most important in appointed capital representation. Once the initially draft was completed the committee the met with the Judges to discuss and refine the draft. This process took several months and after numerous meetings and several redrafts the final product was approved by the committee of lawyers and the Judges. This final draft entitled "Considerations and Recommendations For Appointment in Capital Cases" then went to all the Circuit and District Court Judges of the Criminal Division in Birmingham for their approval. Subsequently the Judges unanimously signed a resolution adopting them.

Judge Alfred Bahakel the then presiding judge of the criminal division

formed another committee to oversee the implementation of the considerations and recommendations. This new committee is made up of the new presiding judge of the Circuit Court Criminal Division Judge Tommy Nail, the presiding judge of the District Court Criminal Division, Judge Shelly Watkins and one local criminal defense lawyer and former committee member, John Lentine.

### The Considerations and Recommendations:

Copies of the Considerations and Recommendations along with the Attorney's Certification Form and Instruction sheet can be found in every Circuit and District Judge's courtroom as well as accessible from the GBCDLA, either by email or hopefully on its website. The Considerations and Recommendations specifically address several areas including, number of attorneys per case, supporting services, workload and obligations of counsel respecting workload, attorney eligibility for lead and co-counsel, training and implementation. The Attorney certification form is to be used for and by attorneys who wish to be included for consideration for capital appointments as either lead or co-counsel. Finally the instruction sheets set forth the procedures and address any how to questions for using the form.

### DISPELLING FATANSY FOR REALITY:

1.) ***"THESE ARE MANDATORY GUIDELINES FOR APPOINTMENTS IN CAPITAL CASES!" – Answer - NO they are not.***

The Considerations and Recommendations are not mandatory or binding on any judge insofar as the

appointment of counsel in capital cases. The only binding authority for appointment of counsel in capital cases is derived pursuant to statute (13A-5-54 Code of Alabama (1975)). Any judge can consider following the procedures set out in the Considerations and Recommendations, but it is totally *discretionary* with the court as to whether to follow or not follow any of the procedures set forth in the Considerations and Recommendations.

2.) ***“THE CRIMINAL DEFENSE BAR HAD NO INPUT INTO THEIR CREATION OR IMPLEMENTATION!”***  
**Answer - WRONG.**

Despite the myth, these were created by criminal defense lawyers in an effort to ensure that quality and effective legal representation in death penalty cases was and is afforded to all indigent defendants.

3.) ***“I USED TO GET CAPITAL APPOINTMENTS BUT BECAUSE OF THESE I WILL NOT GET THEM!”*** **Answer - WRONG.**

Each and every lawyer who received appointments to capital cases prior to the implementation of these Considerations and Recommendations are included in the pool of lawyers for appointment in capital cases while the implementation process takes place. Each lawyer **MUST** fill out the Attorney Certification form to be considered for appointment in the future, however, the current appointment processes is still in affect. In the future depending on a Judge’s decision to use the guidelines then to receive an appointment the requirements must be met.

4.) ***“IT WILL BE TOO DIFFICULT TO MEET THE TRAINING REQUIREMENTS!”*** **Answer – WRONG.**

All that is required is 12 hours of CLE devoted to defending capital cases every **TWO (2) YEARS**. Each year the ACDLA sponsors a 12 hours CLE devoted to death penalty representations. Also there are numerous CLEs and death penalty training programs across the country available that will satisfy this requirement.

## **THE FUTURE:**

The process of implementing the Considerations and Recommendations is in its infancy. All lawyers who wish to receive appointments in capital cases in the future should immediately obtain a copy of these Considerations and Recommendations, an Attorney’s Certification form and Instruction Guide to assist in completing the form. The GBCDLA will sponsor a program on Thursday April 24, 2008 in Judge Vinson’s courtroom designed to specifically deal with all these issues and to answer any questions you might have. In the meantime if you have any questions please feel free to contact me either at my office (#328-1365) or via my email ([ssljohn@bellsouth.net](mailto:ssljohn@bellsouth.net)) and I will do my best to assist you with any of these matters.

John A. Lentine



**MENTORING.... A TWO  
WAY STREET**  
**By: Donald L. Colee Jr.**

As a young lawyer fresh out of law school I was fortunate to go to work in the District Attorney's Office at a time when there was very little formal training and tons of on the job training". I found myself in courtrooms prosecuting cases early on against many great veteran defense lawyers like Roderick Beddow, Jr., Drew Redden, Louis Wilkerson, Charlie Purvis, Larry Sheffield, Jr., and Arthur Parker. It was more than one time I left the courtroom with my tail tucked between my legs having found out what it was like to go against some of the best.

When I left the District Attorney's Office after seven years while I did have trial experience, I had no experience in representing criminal defendants and no experience on being on the other side of the table in the courtroom with a need to come up with a totally different approach under totally different circumstances. I found myself early on recruited by Judge Jim Hard to handle an especially nasty case. I immediately recognized how lost I really was with no idea as to how to proceed. I picked up the phone and called some one who I respected greatly and had told many people that if I ever got in Trouble he would be the first lawyer I would call. That was Arthur Parker.

Many of the newer lawyers never had the opportunity see Arthur in action. Arthur was a true lawyer's lawyer. I do not know any lawyer that had the total combined skills of Arthur. Arthur knew the law backwards and forwards, knew procedure like no one else, and yet still had the mastery of oratory to cross examine witnesses and win jurors over. I called Arthur and told him I was lost and needed help. Arthur did not hesitate and told me to meet him that evening. I sat there and

listened to Arthur come up with idea upon idea pointing out things to me that I had not seen, directing me to laws and legal cases! Arthur could look at the same thing I looked at and where I saw nothing he saw potential.

I would like to say that based upon everything Arthur pointed out to me I tried my case and won, but that was not the case. However, there were issues that Arthur said I should raise which I did. This eventually caused the case to be reversed and sent back to the Circuit Court where a new lawyer was appointed and the defendant obtained a much lesser sentence than he received after his first conviction.

I bring this story up to point out what true mentoring is, Arthur did not call himself a mentor. He had been that to many lawyers before I called him up, and was that to many other lawyers afterwards. But mentoring is a two way street. It required me, a young lawyer lost with no ideas to have the courage, to set aside my ego, and call another lawyer and ask for help, in particular to call an experienced lawyer with a thriving law practice. Arthur had hundreds of clients and I know he was a very busy man. But he took the time necessary to sit down with me and point me in directions that I could not see due to my lack of experience.

As our organization embarks on starting a mentoring program, we all need to remember these two things. First, for the experienced lawyer, we have all had experiences similar to the one described above. We have all had our "Arthur Parkers" to help us at some time or another when we were young and very green behind the ear. We lawyers who have had those experiences need to be willing to share our time and knowledge with young lawyers to assist them in improving their skills in representing their clients. Young lawyers need to be willing to

set aside whatever ego they may have, whatever fears they may have, and ask for help. I have found over the years that no lawyer will think any less of you when you pick up the phone and call them and tell them that you just don't know the answer and need help.

We, who work in the criminal defense area, have a special burden in representing our clients. While clients in other areas of law may lose property, money, and other things, the clients we represent lose their freedom. We have a special duty to ensure we do everything we can to provide them with competent representation. It is not asking too much of any of us to be willing to pick up the phone and admit we need a little mentoring from those who in years past were also "young lawyers" in need of mentoring.

I hope all the experienced criminal defense lawyers will offer their services as a mentor for the young lawyers who have chosen to do criminal defense work.

Don Colee

## NEWS & NOTES

### **Pay Your Dues with your Visa / Mastercard**

In an effort to make it easier to join the GBCDLA, we have added PayPal to our website. This will enable you to either Join the GBCDLA or renew your dues online using your Visa, Visa Debit, or Mastercard. If you haven't paid your 2008 dues, please take a minute to check out our new membership page online:

<http://gbcsla.tripod.com/id4.html>



### **Welcome to our Newest Members!!**

TJ Conboy ([tjconboy611@hotmail.com](mailto:tjconboy611@hotmail.com))

Philip Petersen ([petersenlegal@yahoo.com](mailto:petersenlegal@yahoo.com))

### **Upcoming CLE's!**

"DISTRICT COURT PRACTICE"

Speaker: Eric Guster

When: Thursday, May 22, 2008 @ 12:00pm

Where: Judge Vinson's Courtroom

CLE Credit: 1.0hrs

Cost: \$10 Members / \$15 Non-Members

### **Softball Showdown!!**

This year's Softball Showdown between the prosecutors and defense attorneys will be held on Friday, June 6 at 4:00pm. We will again be playing at George Ward Park in Homewood. Drinks and snacks will be provided for the players.

Please come out and play or cheer on your favorite team!

The Criminal Justice Section of the Birmingham Bar is sponsoring this event, but teams are open to non-members as well. Please spread the word to those who may be interested.

Judges are welcome to play on either team. Judges and prosecutors should contact Tyler Forsythe at [forsythet@jccal.org](mailto:forsythet@jccal.org). Defense attorneys should contact Amber Ladner at [amberlynnladner@hotmail.com](mailto:amberlynnladner@hotmail.com).

### **April 24<sup>th</sup> CLE a Resounding Success!!**

If you didn't make it to our April 24 CLE, you really missed a lot! The GBCDLA hosted a free "2 CLE's in One" event. We had pizza, drinks, and even dessert! Allen Flowers did a great job with "Sex Offender Notification and Registration Laws" presentation and so did John Lentine with his presentation on the new Capital Appointment Requirements. It was estimated that over 50 attorneys attended!!