



President's Column: *Providing hope through pro bono services*

By Tiffany Grove

We've entered into a new fiscal year for the Capital Area Bar Association (CABA). I am excited to have the opportunity to serve as the President of CABA for the 2019–2020 year.

I want to thank our immediate past president, Will Manuel, for his outstanding leadership. Will worked hard for CABA and continuously shared his energy with all of us. During his presidency, CABA's 2018–19 year was highlighted by a terrific golf tournament and the inaugural croquet tournament which together raised \$10,000 for the Mississippi Volunteer Lawyers Project. Congratulations and thanks also go to our retiring board members Christina Seanor and Andrew Harris, who completed their terms.

This year we hope to activate and engage our members to work together to continue the tradition of service with an emphasis on professionalism. We look forward to continuing CABA's commitment to pro bono activities and public service. U.S. Supreme Court Justice Sonia Sotomayor, who recently visited our state, encourages this mission. She says "we educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society, to ensure that justice exists for

all, both legal and economic justice."

In 2019–2020, CABA will continue to encourage pro bono service. Under-funding of legal services programs threaten access to justice in our communities. But there is hope. Our local pro bono legal service organizations are under excellent leadership and we've seen what is possible when we work together.

Pro bono work reminds us of the good that lawyers can do in this world. Many of you answered the call and volunteered at the pro bono legal clinic co-sponsored by CABA and held in the Hinds County Chancery Courthouse on July 26, 2019. A record number of participants received legal assistance; we were able to serve over 130 people. However, the turnout was so large, we had to turn people away. There is obviously still great need. In response, CABA is co-sponsoring another legal clinic at the Hinds County Chancery Courthouse on Friday, October 18, 2019. Whether you practice in Hinds County or the metropolitan areas of Madison and Rankin Counties, we encourage you to volunteer and help ensure access to our legal system for all people.

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The views expressed in the articles published are solely those of the authors and do not represent the views of CABA, its officers, directors, or staff.

CABA Membership Luncheon Meeting

Tuesday, Oct. 22, 2019

Lunch at 11:30, Meeting at 12:00 • The Capital Club

Free Lunch

1 Hour of CLE. Attorney Will Manuel will present the CLE presentation "*The Happy Lawyer—Rarer Than Bigfoot?*" The meeting will include Attorney Kyra Roby, with the United States Census Bureau, to deliver a brief rundown on the upcoming 2020 Census and what we need to know.



Professionalism and collegiality remain a critical emphasis for CABA. It has long been a core tenet of CABA's mission statement "to promote and cultivate the spirit of cooperation and good fellowship among the members of this association; and all to the end of fostering and maintaining the highest respect of the members of the community." We look forward to providing opportunities to strengthen the relationships among our members with CABA social events, service projects, and regular membership meetings.

Please mark your calendar and plan to attend some of this year's first events. Our annual fall social is Thursday, September 26, at the Iron Horse Grill from 5:30 to 7:30 pm. Drinks, appetizers and a tour of the Music Experience at the fall social are all included with your membership. Our annual Christmas party is moving to a new location, Char Restaurant, and will be held December 5 from 5:30 to 7:30 pm. Again, drinks and appetizers are included with membership. I hope you will join us.

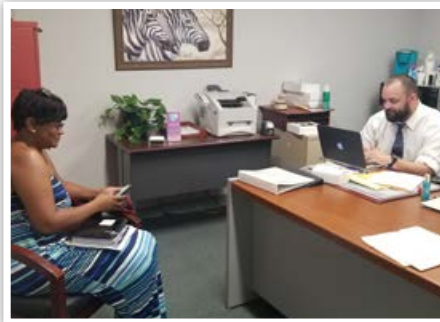
CABA is over 80 years old and is the largest local bar association in Mississippi. We are continually looking for ways to improve the benefits of membership. Let us know your ideas for ways CABA can better fulfill its mission of service to the profession and the community. Better yet, join a committee and help serve. A list of committees is available on our website. Call or email a committee chair, an officer, a board member, or our executive director, Jane Harkins, to volunteer. 📌

Legal Clinic

Photos from July 26 Legal Clinic Co-Sponsored by CABA: (Other sponsors were MVLP, Mission First, Forman Watkins, and AARP)



Judge Wise Martin, CABA Member Chad King, Judge Tiffany Grove and Carlyn Hicks with Mission First Legal Aid Clinic



CABA Member Andrew Sorrentino with clinic participant



CABA Member Matthew Thompson with clinic participant



CABA Member Venecia Green and attorney Edward Wiggins with clinic participant



CABA Member Margaret Cupples with Robin Breland Kennebrew, MVLP Clinic Coordinator



CABA Member Melissa Malouf with clinic participant

SOCIAL MEDIA

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Statistics show that 90% of organizations now maintain social media profiles, and CABA is among that majority. You can find the Capital Area Bar Association's page on Facebook and find us on Twitter (@CABALaw). Social media is a simple way to improve communications within our organization, but we need our members to help to build an effective social media presence. If you are currently on Facebook or Twitter, please engage. Whether you like us, follow us, or comment on posts, you are helping build CABA's social media profile.

Lynn Fitch and Jennifer Riley-Collins Vie to Be State's Next Attorney General

By Chris Shaw



Quietly ignored amidst the mud-slinging campaigns leading to the November 5 Gubernatorial election is another state-wide election that features two of Mississippi's most accomplished and uniquely experienced lawyers.

Jennifer Riley-Collins and Lynn Fitch —with a combined 54 year of legal experience between them—are vying to become Mississippi's 40th Attorney General. The winner will replace Jim Hood, who has served as the State's Attorney General for the last 15 years.

This election's winner will also have the notable distinction of being Mississippi's first female Attorney General. The significance of that fact is not lost on Collins or Fitch, both of whom cut their own distinct, sometimes difficult, paths to get here.

"When I first started there were very few females practicing law," said Fitch. "The only really prominent female was [former Lt. Governor] Evelyn Gandy. She was a tremendous mentor for all women lawyers."

Mississippi's 2019 election for Attorney General will be only the third time in state history that two women will be the major party candidates for the same statewide office. A win for Riley-Collins would be even more historic, as she would also be the first African-American to serve in a statewide office in Mississippi since the 1800s.

Other notable firsts for female attorneys are:

- Susie Blue Buchanan —first female lawyer in Mississippi (1916)
- Zelma Wells Price —first female appointed as judge in Mississippi (1953)
- Lenore L. Prather —first female appointed as a Justice of the Mississippi Supreme Court (1982) and its Chief Justice (1998)

- Evelyn Gandy —first female appointed as Assistant Attorney General (1959)
- Joy Lambert Phillips —first female to serve as President of the MS Bar Association (2005)

Jennifer Riley-Collins' Military Service Informs Her Public Service



Riley-Collins, former executive director of the American Civil Liberties Union of Mississippi, is no stranger to fighting her way through obstacles. In fact, by the time she got to law school, graduating in 2 and ½ years as a newly-divorced mother with 3 children was not really that daunting of a task.

One reason for that is when Riley-Collins arrived at Mississippi College School of Law she had already spent over 12 years in active military service, tasked with handling intelligence and counter-intelligence duties. And when you lead other soldiers managing classified information, dealing with issues of espionage, and learning to recognize the range and weapons capabilities of enemy aircraft—all things Riley-Collins dealt with in her 14-year career with U.S. Army Intelligence—you aren't intimidated by much. Riley-Collins also spent 17 years after her Army career ended and her legal

career began with the National Guard and Army Reserve.

"I believe in making sure everyone is protected," said Riley-Collins. "That's why these two careers (military and her law practice) are so much alike."

After finishing law school, it wasn't long before Riley-Collins began using her military mindset to protect those who needed protecting; vulnerable children in particular. Her private legal practice career took a permanent turn in less than a year when she began volunteering for various children's advocacy groups. Not long after, her reputation as a zealous advocate for children spread throughout the State.

"I was doing youth court public defense here, but then started getting calls from people around the state asking me to handle cases," said Riley-Collins. "There were interesting cases where judges didn't feel like the defense counsel had the necessary skill set because of myriad factors on how the kids ended up in youth court jurisdiction."

It was through this work, and a frank conversation with now-retired Judge Skinner, where Riley-Collins found that using her law license to vigorously protect those most vulnerable—including children—was her next mission after protecting the country while serving in the military.

"Judge Skinner told me that I'm not really doing these kids any justice" by simply allowing them off the hook, said Riley-Collins. "But I told him these kids are entitled to a zealous defense and I'm here to make sure they get it. We can't just dismiss the law and not apply it evenly just because they are children."

From there, Riley-Collins helped develop state-wide training for lawyers who practice in youth court so that children will have competent counsel when faced with youth court proceedings. She also carried that passion into later work with the Mississippi Center for Justice and the Southern Poverty Law Center on children's advocacy and access to justice

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issues, and eventually, as executive director of the Mississippi ACLU.

She credits her time as an intelligence officer to her approach to her legal career protecting the most vulnerable, hopefully as Mississippi's next Attorney General.

"As an intelligence officer, one of the things you do is think strategically; what is my enemy likely to do and what is the most dangerous thing he or she might do," said Riley-Collins. To protect your unit, you have to know your enemy, so that is how I practice law. I want to think about what we are going to do to make sure the citizens of Mississippi are protected and how we fight against the types of things that keep us at the bottom in some categories."

Lynn Fitch Seeks to Lead Office Where Her Commitment to Public Service Began



For current State Treasurer Lynn Fitch, a victory November 5 would mean a return to the office where she first began her diverse legal career. While she served in a number of roles those first few years—everything from prosecuting to representing state agencies to writing legal opinions for the AG—Fitch was in the trenches early.

In the office a little over five years, Fitch found herself as one of the first lawyers to try a video-taped criminal trial at Parchman prison.

"It was videotaped because the three inmates on trial were too dangerous [for a conventional trial.]," said Fitch. "That case ended up being appealed to the Fifth Circuit Court of Appeals and we won every time."

With this experience, Fitch was hooked on public service. She knew then her legal career would have to be one "where I had the opportunity to be engaged with and protect the interests of this state," said Fitch. "So I asked to stay on with the Attorney General's office." That decision put Fitch squarely in the middle of some of the biggest challenges and opportunities the State has faced—from legalization of casinos to the devastation of Hurricane Katrina.

Next up for Fitch was her assignment to a different kind of trench—the State Legislature, where she began working as its counsel. Fitch dove into the role, working to bridge committees together, writing, and assisting others in writing significant pieces of legislation, one of which was the 1990 Mississippi Gaming Control Act that legalized state casinos.

Fitch was in private law practice for 7 years after leaving the Legislature, practicing primarily in the bond area. But when Haley

Barbour was elected Governor in 2004 and asked her to return to state government and serve in his administration, the return to her passion of doing her part to help Mississippi was too much to turn down.

She began as Deputy Attorney General, assigned to the Mississippi Department of Employment Security where her charge was "to make this an employment office, not an unemployment office." She implemented a model where the Department's Administrative Law Judges could hold telephonic hearings, dramatically increasing the number and speed of cases the Department could handle. And when Hurricane Katrina came crashing onto the Mississippi shoreline in 2005, her Department was ready.

"We were able to work with the Department of Labor and use our model to handle these cases," said Fitch. "We also brought in 20 other states and taught them how we were handling the cases, and they still use that model to this day."

Fitch became the director of the State Personnel Board in 2011, where she also implemented an electronic file system, improving the Department's efficiency and ability to process matters.

Despite her successes in the agencies she has led, Fitch is quick to give credit to her predecessors—especially former Lt. Governor Evelyn Gandy.

"She was so encouraging on the importance of working together and broadening the horizons and opportunities for women lawyers," said Fitch. "I ended up chairing the Women in the Profession of the Mississippi Bar and creating the Gandy Lecture series, both of which still exist today." 🍀

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Reluctantly Discovering the Pleasures of Pro Bono Work

By Ellen Robb



Many people go to law school with aspirations of becoming an Atticus Finch. I remember speaking with a contemporary attorney when we were both relatively new to the practice of law. His comment was something like “of course, everyone goes to law school because they want to help people.” I was not at all part of his “everyone.” I am not an uncaring cold person at all. But, I studied business in college and graduate school and my purpose of going to law school was to continue in the business world. Helping others is great, but for me, helping others with legal issues for free was not in the cards.

Imagine my surprise when I opened a letter from MVLP’s Gayla Carpenter-Stevens announcing that I was “selected to receive the 2019 Pro Bono Award.” How in the world did this happen? While I spent time over the years listening to what types of cases MVLP had open and desperately needed attorneys to handle, I would get a queasy feeling when thinking about representing someone in a divorce case. And how am I going to get in my minimum billable hours plus more to get a bonus if I’m giving up time to represent someone pro se? Sorry, no thanks, not for me. I wish I had taken the time to explore the many different ways to provide pro bono services earlier in my career.

When I started my own firm a couple of years ago, I decided that it was time to dedicate some of my time to helping others with legal issues. Really, my lawyer friends decided this for me by referring their relatives and neighbors who needed help but their law firms had conflicts. One woman, in particular, was being sued by a big bank/credit card company. My friend’s law firm represented said bank. This lady literally had no money other than her modest at best social security check but needed an attorney to help her sort out the mess. Sure, I’ll help her out (but don’t forget to call me when you need a mediator, contract researcher, or help with an appeal—and spread the word while you’re at it!).

Now, I’m still not chomping at the bit to

take on a divorce case, but I will help mediate a divorce with clients who otherwise could not afford that alternative. I’ve also discovered that I enjoy participating in the various clinics MVLP and other organizations host throughout the year. While the clinics have not been topics in my typical fields of practice, there are experienced lawyers (and sometimes judges) available to discuss the cases and sort out issues.

The clinics provide a way for volunteer lawyers to help people basically on the spot with important things that make an impact in their ability to get ahead and strive. For example, there are lots of children living with grandparents or other relatives—they need a guardianship to enroll in school. Guardianship clinics get kids



Robb accepting the MVLP Pro Bono Award

to school. Expungement clinics help people who have a criminal history but are eligible to have it removed from their record. Once this is done, they can get work. These are win/win scenarios as the individual involved benefits as does the community. Clinics are a great option for attorneys who cannot commit to giving more than a few hours at a time to provide pro bono services. Busy lawyers or associates concerning with billable hours can incorporate a clinic day or two into their practice. I wish I had understood this when I was a younger lawyer. Look for a statewide expungement clinic set for March 21, 2020 presented by the Magnolia Bar and Mississippi Women Lawyers Association are headlining.

There are other opportunities beyond volunteer legal clinics and domestic work—examples are MVLP’s Mississippi Settlement Assistance Program and the Fifth Circuit’s Pro Bono Program for pro se civil appellants. Attorneys who volunteer with Mission First Legal Aid Office assist with issues such as non-divorce family law, consumer

law, government benefits, housing, and debtor/creditor disputes. Look for other opportunities in unfortunate widespread events such as weather disasters or high impact situations such as the recent ICE Raids.

While we as Mississippi Lawyers do not *have* to provide pro bono services, it is certainly encouraged:

Each member of the Mississippi Bar in good standing and not exempt hereunder, as part of the member’s professional responsibility, should (1) render pro bono legal services to the poor and (2) participate, to the extent 102 possible, in other pro bono service activities that directly relate to the legal needs of the poor.

—Miss. R. Prof. Conduct 6.1(a)

If you have already completed your bar renewal for this year, were you able to check the box stating you’ve provided pro bono services? I’ve checked the no but I’ll send in a check box before—so I’ve been there and am not judging. But not this year! Consider committing to providing services during this bar year. Think outside of the box and look for ways to pitch in—there will be an opportunity that fits your comfort level and abilities. As Justice O’Connor stated, we owe it to our profession:

Certainly, life as a lawyer is a bit more complex today than it was a century ago. The ever increasing pressures of the legal marketplace, the need to bill hours, to market to clients, and to attend to the bottom line, have made fulfilling the responsibilities of community service quite difficult. But public service marks the difference between a business and a profession. While a business can afford to focus solely on profits, a profession cannot. It must devote itself first to the community it is responsible to serve. I can imagine no greater duty than fulfilling this obligation. And I can imagine no greater pleasure.

—Justice Sandra Day O’Connor, 78 Or. L. Rev. 385, 391 (1999). 🍀

Dispatches from the Federal Court

By Terryl Rushing

2019 Bar Convention

Judges from both the Northern and Southern District attended the 2019 Annual Meeting of the Mississippi Bar at the Sandestin Beach Resort in Florida. The Courts' Clerks, David Crews and Arthur Johnston, presented a CLE program on the workings of the Courts, and Magistrate Judge David Sanders and District Judge Keith Starrett presented a CLE program on their views from the bench. As is customary, the Courts provided the speaker for the General Assembly.

This year's speaker was Mark Lanterman, the Chief Technology Officer for Computer Forensic Services. If you weren't there, you missed some great tips on cyber-protection and a fascinating tour of the Dark Web, including crime scene photographs of the artist Prince. (My daughter-in-law, Stevie, says she is traumatized for life.) The Federal Courts also hosted a breakfast for members of the Bar.

At the Alumni Luncheon for the University of Mississippi's School of Law, Arthur Johnston was recognized as the Outstanding Alumni for 2019, a well-deserved honor. Sadly, this was the last year that Chief Judge Carl Stewart will represent the Fifth Circuit in that role, as his term ends at the end of September.

We will miss him, and we hope he comes back in a personal capacity. More than once Judge Stewart expressed his gratitude for the warmth and camaraderie he experienced at the Mississippi Bar's meeting, and he will strongly recommend to his successor, Judge Priscilla Owen, that this outreach be continued.

POWER Act

In 2018, the United States Congress passed the "Pro Bono Work to Empower

and Represent Act of 2018," or the "POWER Act." Recognizing the high rate of domestic violence, dating violence, and sexual assault cases in this country, the Act finds that efforts should be made in all forums to provide legal representation to the victims of those crimes. Accordingly, the District Courts are required to conduct annual public events designed to encourage attorneys to provide pro bono legal services to these victims.

The Northern District sponsored a program on May 30, at All Saints Episcopal Church in Tupelo. Speakers included a Chancery Court Judge, a representative from the Mississippi Attorney General's Office, a psychologist who works with victims, and the Tribal Prosecutor for the Mississippi Band of Choctaw Indians.

The Southern District's program was held on July 23 at the Thad Cochran United States Courthouse in Jackson. Chancellor Denise Sweet-Owens, Chancellor Cynthia Brewer, County Court Judge Kent McDaniel and County Court Judge Staci O'Neal led a panel discussion on the special need for legal assistance in these cases. At the end of the program, several lawyers expressed an interest in volunteering. The Court is grateful for the assistance of several entities who assisted in the planning, including Gayla Carpenter-Sanders, Executive Director and General Counsel for the Mississippi Volunteer Lawyers Project.

The Mississippi Settlement Assistance Program

This program is a joint collaboration between the Mississippi Volunteer Lawyers Project and the Southern District to provide free legal assistance to low-income pro se litigants in civil matters before the Court. Specifically, the program is designed to assist litigants with resolution of cases, provide federal court mediation experience to attorneys who are certified to volunteer with this program,

and help clear the Court's pro se docket. It is available to non-prisoner and incarcerated individuals who have filed pro se civil rights claims.

Training programs were held earlier in the year, both in Jackson and Hattiesburg, and a panel of certified lawyers is available. Those attorneys will review the pleadings to draft or respond to a settlement demand letter, draft the required Confidential Settlement Memorandum, and participate in settlement conferences. Their representation is limited to those duties; however, lawyers may eventually take these cases on a paying basis. The Judges are currently identifying potential cases, and some attorneys in the program have already participated in settlement negotiations before the Court.

Model Intern Diversity Pilot

As part of the Administrative Office's strategic plan for creating diversity in judicial employees, federal courts have been encouraged to promote workplace diversity by hiring college students drawn from disadvantaged communities to serve as interns. The Southern District has the second program in the country, and Emanuel Lewis, a Tougaloo student, is working in Magistrate Judge Linda Anderson's office. He is available to do limited research and document organization, as well as shredding sensitive documents. The program aims to expose these students to a wide range of legal and non-legal careers. ➡

Something to “Wine” About

By Stevie F. Rushing



This past May, my mother, sister, and I traveled to Napa Valley for a week of California food, wine, and sunshine. True to form, my mother managed to find the California version of Fairhope, Alabama to

be our landing spot. St. Helena is centrally located in Wine County and renowned for its downtown area. Nicknamed “Napa Valley’s Main Street,” the area features charming shops, bakeries, art galleries, and restaurants like the acclaimed Goose & Gander.

Everything in St. Helena seems carefully curated to achieve a calm, Ina Garten-esque aura. Even our “home” for the week was no exception. The Wydown Hotel houses only twelve rooms, each accented with unique furniture, art, and other amenities that made it feel more like your new urban loft than a hotel room (*i.e.*, no paper coffee cups here). And every morning begins with a continental breakfast featuring local fare. As for the evenings, yes, there are freshly baked cookies.

The charm only gets worse when you leave the main drag. Our first stop every morning was Oakville Grocery, where we scanned row after row of wine, oils, teas, and dry goods before compiling a lunch for later in the day. Since 1881, the Grocery has provided locals and visitors alike with fuel and fellowship. Whether you need to stock up for a winery picnic or drop in for a quick meal, the Grocery has everything you need—literally; they also have clothing.

But of course, the main reason we came to California was for the wine. California wineries compete not only in selection but also in ambiance. And that ambiance runs the gamut, from Castello di Amorosa, an authentically styled 13th century Tuscan castle winery, to HALL, with its minimalist interior and extensive

collection of modern art (which includes the 35-foot tall steel rabbit that welcomes you). Each winery truly had something unique to offer—that is, until we reached the end of the tour and the sales pitch began. At that point, a leveling playing field emerged: No winery would ship to Mississippi.

Indeed, Mississippi is one of a handful of states that don’t allow wine to be directly shipped to someone for any reason. Instead, under the three-tier system, the State of Mississippi is the lone wholesaler of alcoholic beverages. And all alcoholic beverages must ship to a centralized



warehouse in Gluckstadt, Mississippi, where they are held until ordered by retailer package stores. But an active lawsuit may change that.

In early 2017, the Alcohol Beverage Control Division of the Mississippi Department of Revenue and the Alcohol and Tobacco Enforcement Division of the Mississippi Attorney General’s Office began investigating shipments of alcoholic beverages into Mississippi. That investigation reportedly discovered that companies were illegally shipping wine into Mississippi, including to underage Mississippians and dry counties. In December 2017, Attorney General Jim Hood and the Commissioner of Revenue filed a civil enforcement action to compel compliance with Mississippi’s Local Option Alcoholic Beverage Control Law, Miss. Code § 67-1-1 *et seq.* Those sued include Wine Express Inc. of Mount

Kisco, New York; the California Wine Club of Ventura, California, the Gold Medal Wine Club of Santa Barbara, California and Bottle Deals Inc. of Syosset, New York. Only three companies responded to the lawsuit. In August 2018, those companies convinced Rankin County Chancery Court Judge John S. Grant III that Hood lacked personal jurisdiction over them.

A key question in the trial court and on appeal is whether the Uniform Commercial Code can define the contacts relevant to establishing personal jurisdiction.¹ The wine companies believe so, contending that because the shipment contracts were “Free on Board,” title to the wine passed outside Mississippi—meaning that under the UCC’s definition of “sale,” all sales occurred outside Mississippi. This, the wine companies contend, combined with the companies’ lack of physical presence, employees, business permits, property, or advertising in Mississippi, precludes a Mississippi court from exercising personal jurisdiction over the wine companies. Hood, however, contends that such “technicalities in private contracts” do not control. Instead, Hood points to the interactivity of the wine companies’ websites, along with facts like the wine companies’ knowledge of the purchasers’ residence and the number of sales made to Mississippi residents.

In addition to the UCC’s impact on personal jurisdiction, the parties dispute the constitutionality of Mississippi’s direct-shipment law.² The wine companies believe such laws violate the Dormant Commerce Clause by depriving Mississippi residents of their access to out-of-state markets and impeding interstate commerce. Hood disagrees, arguing that the direct-shipment law treats all businesses, both in and outside of Mississippi, the same, because all direct-to-consumer shipment of alcoholic beverages are prohibited.

In sum, we may just yet be able to ship our California wine back home to Mississippi. But until then, take good notes on your next trip to Napa Valley and pray that your local wine store has good taste in California cabs. 🍷

1. The arguments and analysis contained in this article derive entirely from the author’s personal reading of the appeal briefs.

2. Appellants contend that this issue was not raised in, briefed for, or addressed by the trial court and therefore is not properly on appeal.

A Lawyer's Reflections on the Neshoba County Fair

By Simon Bailey



The morning of August 2, my family members shook the red dust from our clothes, packed several ice chests of leftover food and drinks, and rubbed our tired eyes. We closed the shutters and doors

of Cabin 209 after another rewarding Neshoba County Fair and returned to our separate homes.

Our retreat marked the end of 8 days and 7 nights of festivity, reunion, and mingling with old and new friends—the same activities someone in our bloodline has enjoyed in the same location for nearly 80 years, and which others have enjoyed at the Fairgrounds for 130 years and counting.¹ We will return to the Cabin in a year, stopping there in the offseason only occasionally to ensure that the roof is not leaking and that wasps are not nesting in the kitchen.

My 5-year-old son, who attended his first Fair when he was just 7 weeks old, and my 8-month-old daughter, who attended her first Fair this year, do not yet appreciate how deliciously odd this ritual is. They assume it is normal to live a week each year in a 2-story human-sized chicken coop with clattering AC window units and a big open room on the second floor filled with beds that sleep grandparents, parents, aunts, cousins, siblings, and guests (some recurring, others who are first-timers probably questioning their sanity for having agreed to stay the night).

For my children, the Fair is simply what one does. In time, they will learn that this annual rite is wonderful but not normal.



They will discover that other people go to the beach in July.

I hope my children grow to love the Fair as I do, even as they learn that it is unlike any other place. The Fair uplifts my spirit. Conversations are longer and take place on wide porches buzzing with people coming and going. The real world and its rhythms seem somehow farther away than the map indicates.

Like many of you reading this, I spend most of the year in an office chair, staring at a computer screen, talking on the phone, and watching time race away in tenths-of-an-hour that I carefully record. The real world is the world of the clock and the time pad. I am hyper-aware of the passage of time because the legal profession is. Yet the Fair has the power to make me lose that awareness. I relax and let the time pass, probably because that is what the 10,000-or-so² people around me seem to be doing.

In this sense, the Fair is like a week-long collective protest of 21st-Century-norms. It is countercultural *because* it is so deeply traditional. And its traditions are many. Any regular Fairgoer can tell you what to expect from the Heart O' Dixie Triathlon; the flea market; the exhibits of arts, crafts, and agricultural products at the Exhibit Hall; the antique car show; the horse races; the political speeches; the A.J. Yates, Jr. Memorial Late Night Sing; and the hundreds of smaller planned get-togethers organized by individual cabins. Regular Fairgoers know what to expect because these events occur every year, are handed down generationally, and change very little.

These deeply-rooted traditions are the attributes of “an intermittent yet continuing community, temporary yet permanent.”³ The Fair's continuity confers significance and causes otherwise-time-obsessed people like me to slow down and participate at the

1. Steven H. Stubbs, *Mississippi's Giant Houseparty: The History of The Neshoba County Fair* (2005).
 2. Penelope Green, *Family*, Southern Style, N.Y. TIMES, Aug. 2, 2012, at D1.

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community's chosen pace.

Each tradition enjoyed at this pace has its own loyal following, but no single tradition is the reason people attend the Fair. The sense of community is the Fair's animating principle and covers all. People come for an "annual reaffirmation"⁴ of family and community that the modern world does not offer.

The Fair's political speeches make my case. This year I watched a handful of the speeches on Thursday morning of the Fair—generally the biggest political day of all. Hundreds of people sat underneath the pavilion at Founder's Square. Hundreds more, like me, assembled in the sawdust-covered perimeter around it. (I saw several CABA members.) People swished their multicolored cardboard fans emblazoned with names and slogans, wore campaign shirts and stickers, and held signs. Some waited behind the stage, hoping to steal a moment with a particular candidate once he or she finished speaking.

One politician after another thundered away onstage, delivering applause lines and jabbing opponents. After people-watching for about 20 minutes, it struck me that the crowd was listening but not closely. Most people chatted with those around them and listened with only one ear. I realized then that even the political speeches—for which the Fair is famous—are not about the speeches themselves. People do not crowd in and around the pavilion in the heat of the day to learn anything substantive, to hear some public policy detail. People like the speeches because the politicians deliver the speeches in a style and setting reminiscent of the distant past. The fans, the shirts, the stickers, and the signs combine with fiery words to make a pageant, of sorts, for the politically-inclined.

Fairgoers take the politicking from there, spending hours after the speeches discussing which politician's style best fit the atmosphere, who told the best joke, and so forth. And the



“ My 5-year-old son, who attended his first Fair when he was just 7 weeks old, and my 8-month-old daughter, who attended her first Fair this year, do not yet appreciate how deliciously odd this ritual is.”

Fairgrounds are crawling with vote-seekers and political chatter, even in the days before the speeches begin. I have met every consequential Mississippi political figure of the last 30 years face-to-face—not because I'm particularly political, but because the Fair is a uniquely great way for people to connect with the people they elect.⁵

Equally, the Fair is a great way for non-politicians to talk to one another about politics, an environment where people tend to be plainspoken about their values. Fair neighbors were determined by a sort-of land rush that their ancestors took part in decades ago. So people are not necessarily clumped together by social status or lock-step ideology. Opposing

views are exchanged, mostly with civility.

Simply put, the Neshoba County Fair delivers politics as it delivers everything else: the old-fashioned way. That is its charm and allure. And the speeches, while important, are one part of the whole.

My son—who prefers the Ferris wheel to political oratory—is already asking when we can return to Cabin 209. He cannot wait to sleep in that big open room in close-quarters with family and friends. With more than 300 days remaining before the next Fair, it is too early to start a countdown with him. But I am glad he is asking. Maybe the traditions will endure. 🍷

3. Robert Craycroft, *The Neshoba County Fair: Place and Paradox in Mississippi* (1989).

4. Id.

5. Kate Gregory, *The Neshoba County Fair*, *THE 'SIP MAGAZINE*, Summer/Fall 2017 (quoting Marshall Ramsey).

The new bar admittees joined us for our *Fall Social* on Sept. 26, at the Iron Horse Grill.



OFFICE HOARDING

By Terryl Rushing

Who among us has not had a co-worker whose office made you shudder? The office that you skirt around, eyes averted, on your way to the break room. The office that you make sure clients, prospective employees and visitors never see. Hoarders walk-and work-among us, of various types and preferred treasure.

Perhaps the most common office hoarder saves office supplies. Supply hoarders must believe that Bostitch will stop making staplers, Pentel will discontinue pens, Sharpie will stop making markers, and Post-It will stop putting sticky on its notes. Think of Milton and his red Swingline in the movie *Office Space* (“*I believe you have my stapler...*”) In many cases, it’s not the stuff they want, it’s the perceived power of having stuff. Give them what they need—go beg for one of those really nice gel pens. It will make their day.

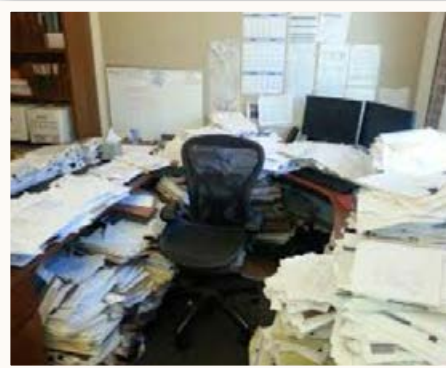
Paper hoarding is perhaps more disruptive, because paper takes up more space. And while it might be relatively easy to count how many red markers you have, it’s much harder to sort through paper to decide what is trash and what is, well, just slightly more valuable trash. The paper hoarder often has the mess organized in his head, and many really can, if necessary, pluck a single sheet of paper out of a foot-high pile of documents.

Then there are the people who just—save stuff. Everything from twenty years of tax returns to yesterday’s hamburger wrapper. Photographs of ex employees who have been gone so long no one remembers their names. The weekly sales inserts from years of newspapers. Empty pill bottles. Half-full soda cans.

Organization is for people too lazy to look for their stuff.

Hoarders believe that the message they are sending with their clutter is that they are way too busy, way too important, to spend time cleaning their office. As Albert Einstein once reflected, “If a cluttered desk is a sign of a cluttered mind, of what, then, is an empty desk

a sign?” What co-workers perceive, however, is an employee who’s less productive, or lazy, or, as my Delta relatives would say, “puredee nasty.” An Officemax survey says that more than half of their respondents admit to thinking negatively of their co-workers with messy desks. In fact, professionals who see a colleague’s cluttered workspace reportedly assume that person must be lacking in other aspects of his or her job (40 percent) or take it one step further and have a lower overall opinion of this colleague (13 percent).



If you’re hoping that one of those hoarding reality shows will appear to clean out your co-workers office, dream on. Food containers and used ketchup packets are not nearly gross enough for TV. Unless there’s a dead cat or two buried under the paper, they won’t be interested. That’s not to say, though, that your weird office mate doesn’t have a house full of psychosis.

You don’t want to be—or know— or live next to these guys:

“I want to be left alone.”
—Marlene Deitrich

In early March, 1947, an anonymous call came in to a New York City police precinct, informing the police about a smell of decomposition emanating from a Harlem brownstone apartment. It was not the first such call—police had been responding to that apartment for one complaint or another for years. They had never breached the front entrance, behind which a forbidding tower of

boxes and discarded items blocked the way. Instead, one of the owners, Langley Collyer, would meet whomever the City had dispatched and resolve whatever problem was presented.

This time, however, no one answered the repeated knocks on the door, and the police began the arduous task of dismantling the piles and discarding their contents. Not satisfied with the slow progress, another officer climbed a ladder to punch through a window to the second floor. He was also confronted with mounds of objects that should have been discarded. Finally, after five hours of digging, police found the body of—not Langley, but his brother Homer, who was blind and paralyzed. An examination revealed that Homer had been dead for only a matter of hours, and the cause of death was starvation and heart disease.

Initially, police suspected that Langley was the anonymous caller and began searching for him. When the search was unsuccessful, and Langley failed to attend Homer’s funeral, attention returned to the brownstone, and the search resumed amidst the mountains of refuse therein. A few weeks later, Langley’s body was discovered, covered by a suitcase and partially eaten by rats, in a “tunnel” surrounded by old furniture. Apparently, Langley was bringing food to his brother when he tripped one of the booby traps he had built into the hoard and was crushed. The cause of death was suffocation.

The story of the Collyer brothers gripped the City, and references to them still appear in literature and television. They were not among the grimly poor, living in squalor in cheap apartments. Their father was a wealthy, but eccentric, gynecologist, and their mother, from a patrician New York family, was an opera singer. The brothers both attended Columbia University. Homer practiced admiralty law, and Langley was a concert pianist. In 1933, however, Homer, who would have been around fifty-two, lost his eyesight due to hemorrhaging in his eyes; later, he was paralyzed by inflammatory arthritis, and Langley quit his job to care for his brother. Alarmed and frightened by the demographic changes in Harlem, the brothers became increasingly reclusive. Ultimately,

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Homer became housebound. Langley was also unseen, for the most part, and only ventured out in the dead of night for essential supplies. The Collyer brothers were hoarders before hoarding was... well, it was never cool, but before the disorder was listed in the DSM-5.

The Mayo Clinic defines “hoarding disorder” as “a persistent difficulty discarding or parting with possessions because of a perceived need to save them. A person with hoarding disorder experiences distress at the thought of getting rid of the items. Excessive accumulation of items, regardless of actual value, occurs.” Hoarding reality programs feature people whose hoarding (or “collecting,” as many of them call it) has gotten completely out of hand. The hoarder’s home is shown, and described, on camera. Typically, the piles of

“*A person with hoarding disorder experiences distress at the thought of getting rid of the items. Excessive accumulation of items, regardless of actual value, occurs.*”

collected objects is immense, and the hoarder has retreated to a small “nest” within which to conduct the affairs of daily life. It is common to find that appliances and plumbing are no longer operational. In some cases, utilities have been cut off for lack of payment. Refrigerators are full of rotted food, vermin are everywhere, and an occasional cat skeleton will sometimes be unearthed during the cleaning process.

What does this have to do with lawyers? Turns out, attorneys are some of the worse office hoarders of all. Some of this stems from the nature of our practice; we’re obligated to hang on to papers that, technically, belong to someone else. Ethics rules require document retention: Rule 1.16(d) requires a lawyer, after the termination of representation, to “take steps to the extent reasonably practicable to protect a client’s interest, such as... “surrendering papers and property to which the client is entitled...” However, “The lawyer may retain papers relating to the client to the extent permitted by other law.” Rule 1.15 of the Rules of Professional Conduct requires that “records of... trust account funds and other property shall be kept and preserved by the lawyer for a period of seven years after termination of the representation.” Documents that prove

the steps that an attorney took to prosecute his client’s case can support a defense to a malpractice suit.

That’s all well and good, but how much is too much? What about deadlines that are missed because your “tickler” system is, basically, strewn across your office floor? What if an associate, paralegal, or secretary uses the same system? Your ethical responsibilities extend to subordinate lawyers (Rule 5.1) and staff (Rule 5.3) and require you to make “reasonable efforts” to put in place managerial practices that ensure that others conform to the ethical rules. Preamble “In all professional functions a lawyer should be competent, prompt and diligent. Rule 1.3 provides, “A lawyer shall act with reasonable diligence and promptness in representing a client.” The most common

basis for bar discipline and malpractice suits is a claim that the lawyer missed a deadline. In reviewing several articles on “How to Pick a Lawyer,” I found that a common piece of advice is to get a look at the lawyer’s office. If you see that the only way to his desk is via a hoarder’s path through documents, it’s safe to assume that the file you step on could be your own.

You don’t want to be this guy.

Artistic, creative types often thrive on disorganization, claiming that they work better in an environment that is not regimented. That’s great if you’re a talent scout, a sports agent, or a painter. It’s a not-so-wonderful trait for lawyers. Clutter leads to disorganization, which leads to failure to properly document deadlines, which leads to missing deadlines, which leads to sanctions, bar discipline, and malpractice suits. Similarly, disorganization leads to missing documents, which leads to non-billable, wasted time searching for documents that should have been readily available. Missing documents lead to failure to prepare for meetings and hearings. Wasting time leads to haste, which can lead to legal error, failure to properly record billable time or commingling of funds. It also uses time

that could have been spent communicating with clients.

Here’s what happened to a lawyer who repeatedly missed deadlines because he lacked a proper, organized system of keeping up with his cases. He blamed his secretary, which is the legal equivalent of saying your dog ate your calendar. In a disciplinary action brought by the Bar of the state where he practiced, he was placed on suspension. Among the conditions imposed were the following:

44. *Law Office Organization.* The respondent will establish and utilize a diary and docketing system which includes a mechanism by which approaching court **deadlines** and statutes of limitations are noted. The respondent will review each of his cases at least every two weeks to determine what action needs to be taken. The respondent will update his **calendar** on a daily basis. The respondent will reconcile his **calendar** with his assistant’s **calendar** on a daily basis. The respondent will reconcile his **calendar** with the Johnson County District Court’s **calendar** on a weekly basis.

45. *Audits.* The practice supervisor will conduct audits of the respondent’s files every six months, beginning September 1, 2013, and continuing throughout the time the respondent remains on probation. The practice supervisor will make a report of each audit. In conducting the audits, the practice supervisor will review each of the respondent’s open case files. In the report of the audit, the practice supervisor will determine if **deadlines** were met, if the respondent maintained adequate communication, and if there were any irregularities in the cases. Additionally, the practice supervisor will note any matters which amount to a violation of the Kansas Rules of Professional Conduct or the Rules Relating to the **Discipline of Attorneys**. In the audit report, the practice supervisor will also provide the respondent with a list of changes to incorporate in his practice to improve the respondent’s practice. The practice supervisor will provide a copy of the audit report to the respondent and the disciplinary administrator.

Seems to me that picking your files up off the floor is a small price to pay to avoid having

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to report to the calendar police on a daily basis.

Help me!

These tips are common to most de-cluttering advice:

- Clean off your desk every Friday afternoon. Reward yourself with a beer afterward, if necessary, but don't condemn yourself to starting in the black hole of data on Monday morning.
- Work on one project at a time. That's the only project that should be on your desk. Well, okay, in the middle of your desk. In front of your monitor.
- Don't be a digital hoarder. Just because nobody else can see your clutter, doesn't

mean it doesn't exist, especially in your email boxes. Delete unneeded emails on a weekly basis.

- Sit in your visitor's chair to see what others see. Okay, take the files off the chair first. Making your office attractive will make you feel better, especially on Monday morning.
- Set up a filing system and use it. File, don't pile.
- Only touch a piece of paper once, then file it or throw it away. That goes for potato chip bags, candy wrappers, and ketchup packets—why are you eating at your desk anyway? Go take a walk.

What if it's not you who is the hoarder, but a co-worker? At all costs, keep them

from "colonizing" beyond their assigned area. Hoarders follow the common properties of gas—they (and their stuff) will expand to fill any available space. Lobby to have them moved to the least accessible office in the building; the hoarder may even support you in this. Don't loan them anything you want to see again, and never, never rely on them for time-sensitive information.

Hoarding is a complex disorder; the causes and the manifestations are individualized. If it's you, be sensitive to the impact your condition creates for yourself, your career, and others. If it's a co-worker, be sensitive to their condition, but always mindful of your own boundaries. And if they disappear into their office for days, well, remember the Collyer brothers. 🏠

CABA August Membership Meeting

Mississippi Bar President Amanda Tollison spoke about the Bar's goal of improving attorney wellness and attorney Rick Patt discussed recent cases from the Mississippi Supreme Court.



Legal Writing for Screen Readers

By Vicki Lowery



In the not-so-distant future, Theodore Forrence predicts that more than a few judges will be reading briefs on portable electronic devices with hyperlinks to interactive timelines, videotaped trial testimony, and other evidence.¹ Changes in the way we read legal briefs are changing how lawyers draft them.

the left side of the main text. With slightly less frequency, screen readers also read some of the surrounding areas (shown in yellow) located toward the top and left sides of the main text. In contrast, some words on the page were not viewed by *any* screen readers who were subjects of the study. These words were located toward the bottom right of the page.

In an environment of multitasking, frequent interruptions, and fast communication like e-mail, legal readers are now “skimming” more than we are “studying.” And what’s more, screen reading is literally changing how we read documents including appellate

for appealing to the rewired reader:³

1. Help readers work less (connect the dots for readers, make the logical structure obvious and intuitive).
2. Use effective headings (frequent headings aid in skimming, need headings typically every one to three pages).
3. Use numbered lists and bullet points.
4. Use outlines (visual structure is critical).
5. Use effective summaries (write summaries of documents; summaries of a section of a larger document, paragraphs, etc.)
6. Omit words (shorter reading time).
7. Keep it simple (simplicity in document design, language, and logic).
8. Use white space effectively (white space helps readers).
9. Use visuals (text, charts, photographs, etc.).
10. Focus on readers: testing and editing (e.g., edit from the reader’s perspective). ➔

“Eye-tracking patterns indicate that when we read text on a screen, we read in an “F-pattern.”

Robert Dubose, author of *Legal Writing for the Rewired Brain: Persuading Readers in a Paperless World*,² warns that our brains are “being rewired” by technological advances such as personal computers and electronic tablets. And this “rewiring” is changing how we read documents.

When reading text on paper, our eyes move from left to right, moving line by line from top to bottom. But usability studies focused on eye-tracking patterns indicate that when we read text on a screen, we read in an “F-pattern.”

The “heat patterns” visible in the photos below depict where screen readers most frequently look at certain parts of the page (red areas)—a few horizontal lines across the top of the main text, the headings, the first sentences of some paragraphs, and a line running down

and trial briefs.

In order to cope with the changes in how briefs are being read, Dubose offers ten tips



1. Theodore C. Forrence, *Using Timelines, Dispute Charts and Pictures to Enhance Statements of Facts*, APPELLATE ISSUES (Spring 2012), at 20, http://www.americanbar.org/content/dam/aba/publications/appellate_issues/2012spring_ai.authcheckdam.pdf.
 2. Robert Dubose, *Legal Writing for the Rewired Brain: Persuading Readers in a Paperless World* 37–40 (Texas Lawyer: An ALM Publication 2010).
 3. *Id.*

» On Computing

Focused on the Contemporary Lawyer



Improved Apps you may have seen before



By Joel Howell

Apps and software continue to refine and improve. Several of these you've seen before, but there are some important enhancements since the last mention. First, a very useful program:

[Power PDF Advanced](#) **KOFAX**

(developed by Nuance, now owned by Kofax) has many notable features, including an intuitive user experience, tech-enabled device support that allows you to change text easily in PDF files, redaction features, and collaborative real time functions. File conversion from Word (or like word processors) into PDF format and back again is seamless. The real-time collaboration tool is ideal for creating, editing, commenting, and marking up PDF documents, all while allowing those in your group to view and actively edit at the same time. Security measures allow password protected PDF files to be sent via email. The learning curve is minimal, and it is significantly cheaper than Adobe Acrobat.

[Dropbox](#) is free, but has available upgrades in storage capacity and certain functions offered that the free version does not have. Notable features for this app include: flexible storage plans which range in a variety of prices. The ease of operations includes file and version recovery for mistaken document deletions. The team folder management feature is a valuable resource, especially with the smart sync and Dropbox paper features. Dropbox also offers a wide array of administrative features, from viewing team activity to transfer of files (and administrative permissions). Through the use of link permissions only the people who you want to see and edit the document can. In addition to link permissions, this app offers remote wipe, to clear files from lost or stolen devices meaning confidential files can stay that way. Additional notable features include third-party app integrations as well as live support.

 **Dropbox**

[Slack](#) is free with monthly plan options from \$8–15 per month. Some notable features include the ability not only to private message individuals, but also to create “channels” where specific conversations within the office can occur. For example, if only three attorneys are working on a particular case, the whole office would not be placed in that channel. Rather only those who are deemed necessary for that project would be placed in that channel’s chat. These channels can be password protected as well. Files can be stored and displayed with ease within channels. If a file is of importance to a project, there is the pin feature that allows the document/ post to be easy to find even after many messages have been sent among the channel’s participants.

 **slack**

[Smokeball](#) is a free app with in app purchases ranging from \$30 per month per user or \$1,000 per month for a set number of users. This app allows for specific matter types to be automatically tailored to your practice area. Smokeball touts four distinctive features. First, it can become the central hub for your entire practice where the resources are built for your state and practice area, allowing a person to keep track of files, schedule appointments with that client, and even keep track of account billing for that client, all within an easy to use format. Second, the seamless integration with Microsoft Word and Outlook allows for ease of downloading and transferring of documents within a group. Plus, everything done through Smokeball saves automatically! Third, the integrated online billing feature allows for billing to occur automatically (or manually if you choose) based on the automatic time tracking feature. Not to mention that this app allows for easy integration with many different accounting programs (QuickBooks, LawPay, Xero Accounting, etc.). Finally, the “key insights” feature allows for administrators to pinpoint profitability by matter, etc.

 **SMOKEBALL**

[Trial Pad](#) is \$129.99 (with no additional fees), or you can buy the Unlimited Litigation Bundle for \$299.99 which includes Trial

 **TRIALPAD**

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Pad, Transcript Pad, and DocReviewPad. Notable features of this iPad app include the ability to create custom exhibit stickers and organize key documents by issue or witness. Whether you are going to arbitration, mediation, or trial this app allows you to use the presentation tool to annotate all documents, photos, or videos right from you iPad and create a dynamic, engaging, and informative presentation.

[Transcript Pad](#) is priced at \$89. What makes this app different from Trial Pad are the expanded features for reviewing, annotating, and summarizing transcripts. It allows you to search for keywords across multiple documents, create custom issue codes, and highlight/ underline important lines within the text. Additionally, you can create flagged sections with added notes and create powerful customized reports. One of the best features of this app is the quick editing of video depositions, allowing you to edit video, insert text, etc. all within the app, so you can create an ideal legal presentation in any situation.



[DocuReviewPad](#) (also \$89) is available as a standalone app. With it, you can review documents, add Bates numbers, generate reports, and create production sets.



[Notary Cam](#) is \$25 per notarization with international pricing options as well. One of the best features of this app is the ability to have a notary public at your disposal anytime day or night, 365 days a year. Also, if you travel out of the country and need a notary public during your meeting, they offer notarizing of documents (\$79/notarization). You can also get bulk pricing; quotes are available through their website. Instead of having to send constant emails or call customers about getting documents notarized, Notary Cam allows you to track customer notarizations and follow notarizations in real time. Another great feature is the ability to have multiple signers from different locations. ➡



Questions or comments?

Drop me an email: jwh3@mindspring.com

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FALL 2019

August 18–December 5

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 Friday 7:00 am–7:00 pm
 Saturday 9:00 am–7:00 pm
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LABOR DAY HOLIDAY: August 30 – September 2

Friday (Aug 30) 7:00 am–5:00 pm
 Saturday–Monday (Aug 31–Sep 2) CLOSED

FALL BREAK: October 17–October 20

Thursday and Friday (Oct 17–18). 7:00 am–5:00 pm
 Saturday (Oct 19) 9:00 am–7:00 pm
 Sunday (Oct 20) noon–midnight

THANKSGIVING: November 22–December 1

Friday (Nov 22) 7:00 am–5:00 pm
 Saturday and Sunday (Nov 23–24) CLOSED
 Monday and Tuesday (Nov 25–26) 7:00 am–5:00 pm
 Wednesday–Sunday (Nov 27–Dec 1) CLOSED



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