

# Making A Difference

---

## Mid-Year Review



2008

---



**LEGAL SERVICES**  
ALABAMA

---

## Executive Director's Mid-Year Review The First Half of 2008

The first half of 2008 has been a challenging and exciting time for Legal Services Alabama. After surviving the financial doldrums last year, we have established financial stability. Consequently, our attention is now riveted on the quality and quantity of services we provide to our clients.

Four of our staff attorneys participated in the Alabama State Bar's "Divorce on the Beach" family law conference in Destin, Florida in May. They received invaluable training from topnotch instructors, networked with some of Alabama's finest divorce lawyers and were able to share LSA's own unique perspective in a professional forum.

Six staff members attended the Alabama State Bar Annual Meeting in mid-July. The lawyers attended CLE approved workshops and lectures and made



LSA a full participant in our state bar's activities. We also staffed an exhibit with information about LSA and our services and recruited Private Attorney Involvement Lawyers for our program. We compiled a mailing list of 75 lawyers who expressed an interest in our PAI program as both reduced fee and volunteer lawyers.

We have received scanners for all of our staff and begun mandatory training of every staff member in both scanning and Legal Files, our case management system. These scanners were made possible by grants received from Alabama Power and ADECA. By early fall, our entire LSA family will be certified in basic case management technology. We expect to see an increase in the quality of our work reflected both in services to clients as well as the preservation of valuable data.

We have challenged our staff to do more in the last half of this year and invite and request the good advice and counsel of all our friends and colleagues.

— *James H. Fry*

---

## Helping Clients with Consumer Problems

### Case #1

In a collections lawsuit, Brenda was being sued in Circuit Court on two separate accounts which totaled almost \$38,000. Brenda denied having these accounts and denied ever using the accounts for cash advances or purchases. Brenda was served with discovery which she answered, and LSA, on Brenda's behalf, filed discovery. The adverse party, having no proof of the debts, filed motions to dismiss, and the Court granted the motions without prejudice. LSA had assisted Brenda several months earlier on a collections suit that was filed in District Court. That suit was dismissed by the Court because the adverse party could not produce any evidence to show that Brenda had an account with them.



### Case #2

Diane came to LSA after receiving a revival of judgment in a case based on very old hospital charges that she had assumed paid or forgiven, but now, together with interest, totaled more than \$8,000. Diane has considerable equity in her home which she bought in recent years before knowing about the judgment. LSA filed for her homestead exemption of \$5,000 with Probate Court, prior to a writ of execution being filed, and afterward provided Diane a new charity application to file at the hospital. A wage garnishment was then filed against Diane's wages, which in her situation would be difficult to claim as exempt. However, the hospital awarded Diane a charity write-off, and LSA filed a copy with the Court along with a motion to dismiss the garnishment. A settlement was reached for return of the garnished wages, and a total Satisfaction of Judgment was issued to remove any lien on her home.

---


## Collection by Arbitration

LSA is seeing quite a few clients who have received notice of arbitration claims that are filed in the names of collection firms which have bought accounts, not in the name of the original account owner. Our clients tend to ignore claims and cases where they do not recognize the plaintiff. Most of these matters have gone to award and judgment without any action by the client. This has led to wrongful entry of judgments against clients because many of these claims were improperly served and the awards were “entered in the State of Alabama,” not in accordance with the Code of Alabama that requires that awards be entered in the county where the hearing was held. In most cases there was no “hearing.” The paperwork was simply signed by an attorney who has a contract with one of the arbitration companies to handle its cases.

LSA recently represented Joyce who had been served with an arbitration confirmation notice. Upon reviewing the court file, it was clear that the original service was improper so LSA filed an answer and objection to confirmation. The Plaintiff failed to appear at the final hearing, so the objection was granted. About 3 months later, the same Plaintiff refiled its confirmation in another county, claiming that the new county was where the award had been issued. Eventually, this case was dismissed. It was clear that the award was simply recopied and refiled. Then, the same Plaintiff filed a general collection lawsuit back in the original county—this case was assigned to a different judge than the first confirmation case. Again, LSA filed objections including copies of all prior pleadings. The judge held a hearing on this matter and issued a dismissal with prejudice.

We are working hard to educate our clients about arbitration. Slowly but surely the courts are clarifying arbitration issues which will help all parties involved in such cases.

— *Laura Nolan*



*Slowly but surely the courts are clarifying arbitration issues which will help all parties involved in such cases.*

---

## New LSA Staff 2008



**Doug Freeman**  
NeighborWorks Attorney  
Montgomery Office  
Start Date: June 2, 2008  
Law School: Jones School of Law



**Lisa Nixon**  
NeighborWorks Intake Screener  
LSA Call Center  
Start Date: June 2, 2008



**Leigh Reynolds**  
NeighborWorks Attorney  
Birmingham Office  
Start Date: June 23, 2008  
Law School: University of Alabama



**Dina Rogers**  
Administrative Assistant  
Montgomery Office  
Start Date: March 31, 2008



**Shane Smith**  
Staff Attorney  
Birmingham Office  
Start Date: June 30, 2008  
Law School:  
Birmingham School of Law



**Charles Yow**  
Staff Attorney  
Birmingham Office  
Start Date: June 30, 2008  
Law School:  
University of Mississippi

---

## Helping Clients With Housing Problems

Jackie entered a lease-purchase agreement with a local real estate agent and made her payments in a timely manner on her residence. She had been the housekeeper for the seller, but after she told the seller that she no longer wanted to clean her house, she received a notice that her payments had not been received. She again sent the payments, this time by certified mail. The seller filed an unlawful detainer action against her and refused to drop the suit. LSA represented her in District Court. The court ruled in Jackie's favor and she retained her residence.



## Helping Clients With Elder Law Problems

Susan, a widow, the second wife of the decedent, was unintentionally excluded from her late husband's will. The husband died before a new will could be executed naming the new wife in place of the former wife, who was also deceased. The grown children - now the second wife's step-children - did not like their step-mother and tried to exclude her from any share of her late husband's estate. LSA filed a petition for an elective share of the estate and was able to get a one-third share of the estate for the widow. Susan had sold a lot of her possessions to help pay medical bills for her husband, and the elective share of his estate enabled her to purchase a townhouse and to get her personal finances back on track.

---

## NeighborWorks

More than two million households across the country are faced with a significant risk of foreclosure as the housing market cools down and adverse mortgage terms, such as adjustable rate mortgages, reset. In Alabama, many of these people are already LSA clients. Most of the rest could be. Almost all are at risk of losing their most significant asset: their home.



As part of its response to the foreclosure crisis, Congress established a National Foreclosure Mitigation Counseling program. Congress designated NeighborWorks America to provide grants to organizations that help home owners avoid foreclosure. The aid is concentrated in states such as Alabama with high rates of defaults and foreclosures, primarily in the sub-prime housing market.

This spring, LSA received a grant to provide foreclosure mitigation counseling to help eliminate the default and foreclosure of mortgages of owner-occupied single-family homes at risk of foreclosure. On June 29-30, LSA conducted training on how to provide the counseling and on steps our advocates can take to help people keep their houses. The advocates learned about getting accurate budget information and helping clients prioritize expenses by taking advantage of benefit programs that could save them money, which would make more money available for house payments. They also learned about all the steps that they can take to allow someone to keep their house, ranging from mortgage foreclosure mitigation to bankruptcy to defending ejectment actions.



LSA has already opened more than 100 cases under this grant and will this year open 600 or 700 more. We expect to help hundreds of people to keep their homes.

---

## Helping Clients With Public Benefits Problems

Joan's first husband went to prison 42 years ago. When he went to prison, the husband told her that he was filing for divorce. Joan believed him although she never received a divorce decree. Joan then entered into what she believed was a valid common law marriage with her second husband. When her common law husband died after 42 years of marriage, Joan applied for widow's benefits under his Social Security account. SSA denied her claim because she was still legally married to her first husband. LSA filed a petition for an annulment. The Court granted and held that the first marriage was null and void on grounds of misrepresentation. Joan reapplied with SSA, filing the annulment. SSA again denied her claim, this time on the basis that she did not receive the annulment until after the death of the common law husband. LSA represented Joan at an ALJ hearing. She furnished evidence of joint bank accounts, joint income tax returns, joint credit card accounts and ownership of real property with her common law husband. The ALJ determined that Joan was common law married and entitled to widow's insurance benefits under her common law husband's account and also to a lump sum benefit on his earnings account.

Since she applied for SSA, Joan's health has deteriorated to the point she must use an electric scooter to get around. She plans on using the SSA benefits to help her with medical expenses and other necessities.



---

## **Successful 11th Circuit Appeal: Section 8 Housing *Ervin v. Housing Authority of the Birmingham District***

Ms. Ervin used a Section 8 voucher to help pay the rent on an apartment in Birmingham. In August 2005, a police captain sent a letter to Ervin's landlord, saying that they found illegal narcotics during a search of her property. The letter in no way connected Ms. Ervin with the drugs. Ms. Ervin's landlord forwarded the letter to the Housing Authority.



The Housing Authority sent Ms. Ervin a letter terminating her Section 8. The part of the letter entitled "Factual Basis for Determination" stated "use of property for illegal drug sales and/or purchase."

Ms. Ervin requested an informal hearing. At the hearing, the Housing Authority's lawyer testified that she had learned from the police that one detective had arrested a woman at Ms. Ervin's home, and that a second detective executed a search warrant later in the day and seized three marijuana plants. Ms. Ervin admitted someone had been arrested, but she denied the other allegations.

The hearing officer found that a preponderance of the evidence established that Ms. Ervin had allowed her unit to be used for drug-related criminal activity and upheld the termination of Ms. Ervin's housing assistance.

LSA filed suit for Ms. Ervin in federal court, claiming the hearing violated her due process rights by relying solely on hearsay and improperly shifting the burden of proof to her, rather than the Housing Authority. The court granted summary judgment to the Housing Authority. LSA then appealed to the Eleventh Circuit.

On June 17, 2008, the Eleventh Circuit found the administrative decision was based wholly on hearsay that lacked the reliability and probative value necessary for due process. It sent the case back to the district court. The Housing Authority is now attempting to settle the case. Ms. Ervin is asking for reinstatement of her Section 8 and for compensation for the damages she suffered during the time that she lacked the assistance she needed in order to be able to afford to pay rent for an apartment.

— *Larry Gardella*

---

## Helping Clients With Domestic Violence Problems

Carolyn applied for LSA services regarding a housing issue. She was served by the sheriff with a 7-day unlawful detainer for non payment of rent. Carolyn and her five children had lived in the same apartment for the past 6 years and owed the Housing Authority \$23.00. LSA contacted the housing authority's attorney and requested Carolyn be allowed to pay the money and waive the court costs and attorney fees. LSA also discussed the abuse Carolyn had been enduring and the danger she was in with site manager, assistant director, and attorney. LSA then talked with Carolyn about the issue – she had been beaten with a steel rod, jumped out of a window, and ran down the complex streets to get away from her husband. Her husband did not live with her. LSA offered to get a restraining order against the husband for her safety. LSA also talked with Carolyn about getting a divorce and going into shelter for a while. She agreed to do whatever LSA felt was best for her and her children.

LSA hand delivered the rent to the housing authority. Carolyn left the apartment and moved to the shelter with her five minor children. LSA even assisted with finding someone to transport her children to 3 different schools. The housing authority agreed to relocate Carolyn to another area. LSA assisted Carolyn with getting back on food stamps and with obtaining a cell phone for emergencies from the local domestic violence shelter. LSA filed a divorce for Carolyn and she now feels safe in her new home.







207 Montgomery Street, Suite 1200  
Montgomery, AL 36104