To: Partner Babette Bolick  
From:  
Date: September 26, 2009  
Re: Sarah Stanford v. Estate of Robert Stanford, File No. 09-2678  

I. ISSUE

Under Alabama law, can Sarah Stanford establish that her relationship with Robert Stanford constituted a common law marriage, which requires that she and Robert entered into a present, mutual agreement to be remarried following their divorce in December of 2008, given that they resumed cohabitation in June 2009, and their sexual relationship in July 2009; in August they purchased a home listed as husband and wife; Robert proposed several times and Sarah refused, for the time being considering due to Robert's recent history of infidelity; and their publicly referring to each other as husband and wife?

II. BRIEF ANSWER

Probably no. Of the three elements of common law marriage, Sarah has a case for meeting two of them. During Sarah's brief reunion with Robert, they cohabited. The second element is satisfied because the public has been made aware of the reconciliation in published reports. Thus, the only element at issue is present, mutual agreement, which is a criteria. Sarah probably does not meet for two reasons. First, she was hesitant to remarry Robert, by her own admission and Robert's private emails. Secondly, the relationship must be recognized by both parties as present and permanent, exclusive to all others. Humphrey v. Humphrey, 300 So. 2d 121 (Ala. 1974). Sarah has a case for meeting this second criterion because Robert and Sarah have publicly presented themselves as husband and wife, on their title-deed and in
Sarah’s CNN interview, when she refers to Robert as her husband. These acts could show that the couple already considered their relationship to be one of husband and wife. However, this element must be met after the parties have mutually assented to wed, which has not occurred.

**III. STATEMENT OF FACTS**

In December 2008, Georgia Governor Robert Stanford divorced Sarah after a public revealing of his affair with Evita Peron was revealed. Sarah and her ward adopted daughter, Amber, left Robert. Amber is Sarah’s thirteen-year-old niece who has lived with them since her parents died in a car accident eight years earlier. After his mistress left him and his term in office ended, Robert moved attempted to reconcile with Sarah in June of 2009. Later in June, Robert moved in.

In early July, Robert’s father died, splitting the estate between Robert and his brother. Robert was very saddened by the sudden death, and on July 31, had a fling with another woman. Sarah discovered the affair, and Robert vowed to change.

Robert used the funds from his father’s estate to purchase a home with Sarah. The deed lists the couple as husband and wife with rights of survivorship. But Sarah is hesitant to accept Robert’s proposal because of Robert’s infidelity problems. E-mail correspondence revealed Robert’s plans to remarry Sarah. She was very receptive to the reconciliation, as shown by her reference during a recent interview on CNN’s *Larry King Live* to Rob as “her husband,” but she stated that she could not marry him for the time being because of his history of infidelity.
An car accident ended Robert’s life before he could persuade her Sarah to marry him. Robert has no will or heirs; thus the entirety of the his estate was will be claimed by his brother unless Sarah can establish a common law marriage with Robert.

IV. DISCUSSION

In order to satisfy the question of establishing a claim for common law marriage, Sarah must prove that she and Robert had a relationship with (1) the legal capacity to be married, (2) the marriage was publicly recognized, (3) that she and Robert had presently and mutually agreed to be married. Skipworth v. Skipworth, 360 So. 2d 975 (Ala 1978). In this case, legal capacity element is met because the Stanfords are single and were not married at the time of their post-divorce reconciliation, giving them the capacity to be wed. Public recognition also is not at issue based on the newspaper clippings and the CNN interview. Thus, the only issue under contention is the third element, present, mutual agreement. Present, mutual agreement was defined in Skipworth as requiring two elements: a present agreement to be married, and a mutual understanding of a relationship that is permanent and exclusive to all others. Id. at 975. In other words, our client must demonstrate that she and Robert had plans to marry. Sarah must also prove that her and Robert’s relationship was already constant and publicly considered committed.

In Alabama, several cases have direct parallels with the one at hand. The precedent in Humphrey v. Humphrey is the case with the strongest argument against Stanford’s claim analogous to Sarah’s case. 300 Co. 2d 376 (Ala. 1974). In this case, legal capacity element is met because the Humphreys were single and were not married at the time of their post-divorce reconciliation, giving them the capacity to be wed. Public recognition also is not at issue based on the newspaper clippings and the CNN interview. Thus, the only issue under contention is the third element, present, mutual agreement. Present, mutual agreement was defined in Skipworth as requiring two elements: a present agreement to be married, and a mutual understanding of a relationship that is permanent and exclusive to all others. Id. at 975. In other words, our client must demonstrate that she and Robert had plans to marry. Sarah must also prove that her and Robert’s relationship was already constant and publicly considered committed.
that case, the couple, Roy and Eunice, had divorced a few months prior to Roy’s death. During that time, the couple continued to live together. But, the court found that a common law marriage did not exist because “Eunice and Roy . . . did not have a present intention again to become man and wife since they had already previously agreed to ceremoniously remarry in the future.” The court elaborates that “cohabitation is not sufficient to supply the mutual asset required for common law marriage; there must be present assent.” Id. at 121. The Humphreys had plans to remarry a few months after a messy, public divorce. Id. For the Humphreys, the ceremony was a necessary change in their relationship status. Id. Eunice continued to function as a single woman; purchasing a car with her maiden name and bailing the deceased out of jail with her maiden name. Id.

These facts played into the court’s reasoning that “Marriage, common-law or ceremonial, is not transitory,” it “contemplates a present permanent status.” Id. at 378. In other words, planning to wed and living together does not establish a common law marriage, instead the parties must objectively function as if they are already wed.

Skipworth, a newer more recent case, uses the same standards as Humphrey. Mary Burke and Clarence (Bill) Skipworth were divorced in 1965 after a long separation. Shortly following the divorce the Skipworths “forgave each other.” The relationship would continued until Bill’s death in 1976. Skipworth, 360 So. 2d at 975. The couple had planned to remarry in December of 1976, but Bill’s death in October prevented it. Id. at 975. Unlike Humphrey, the court found in favor of common law marriage. Id. The Skipworths met the present agreement standard. Id. “A mutual
understanding to enter at that time into a marriage relationship permanent and exclusive of all others. This agreement must be followed by public recognition of the existence of the ‘marriage’ and cohabitation or mutual assumption openly of marital duties and obligations.” Id at 976-77. This means that the relationship was clearly defined, and understood to be exclusive and binding. Bill and Mary continued to present themselves as a married couple to their doctors, friends, and relatives. Id. at 977. The couple also purchased a double grave and headstone. Id. It was primarily for legal reasons the couple had a planned a ceremony. Id.

In Cosby v. Cosby, the Alabama Court of Appeals court addressed a case of common law marriage and this case affirmed the precedent established by the Supreme Court in the 1970s. 426 So.2d 446 (Ala. Civ. App.1983). Elizabeth and Thomas Cosby were divorced in July 1980, but shortly after that divorce Thomas informed Elizabeth that, “in God’s eyes they were still married.” Id. at 446 The couple was not planning on a future ceremony since they believed they were already married and therefore needed not remarry. Id. Mrs. Cosby received mail and cashed paychecks under her husband’s name, and the couple was even photographed together at a child’s wedding as husband and wife. Id.

The primary issue, Unlike the couples in Cosby and Skipworth, is that Robert and Sarah did not have a mutual agreement to be wed or a mutual understanding of a relationship as a marriage. Without such agreement, it is very difficult to meet the court’s standards for present mutual agreement. In fact, the only case in which the couples did not have mutual plans for a future ceremony was...
Cosby, which the couple considered themselves still married “in God’s eyes,” a mutually understood permanent relationship. Thus, Sarah and Robert’s relationship seems to more closely follow the relationship in Humphrey, instead of the couples in Skipworth, and Cosby.

In Humphrey, just as in Sarah’s case, the community was well aware of the divorce, like Sarah’s case. Also, for both parties the reconciling happened much closer to the spouse’s passing. The Humphrey’s relationship needed the ceremony to change into a married relationship. In contrast, Sarah refused Robert’s proposal because it was a change to their relationship. Robert’s proposal, a few weeks prior to his death, followed a one-night affair; it was because of his issues with fidelity Sarah did not trust him. In Sarah’s own words, “I was not ready to make that leap.” To establish common law marriage the couple must “show present intention not future intention.” Piel v. Brown, 361 So.2d 90 (94). In Cosby, and Skipworth all of the relationship proceeded and functioned as a married relationship.

Secondly, the relationship was not exclusive to all others. Robert’s affair was only a few weeks prior to his passing; severely limiting the grounds to establish a mutual understood permanent relationship. Objectively, in Sarah’s favor there are grounds for her case to be made from her publicly naming Robert as her spouse and the names on the title appear to be pretty permanent.

Because of the facts listed, Sarah does not have mutual assent at its most basic level. Sarah has grounds for claiming common law marriage, but her fundamental lack of mutual assent makes it a case that is too much a risk to reasonably presume victory.
V. CONCLUSION

Sarah lacks a viable claim to establish a common law marriage with respect to her post-divorce relationship with Robert because she fails to meet the criteria established by the courts for present, mutual agreement. Her hesitancy in entering into a permanent, codified relationship pre-empts her claims as a common law spouse. Sarah should be advised of the risks of pursuing her claim of common law marriage because the elements present here are not satisfied.

Comment [SOL59]: This is not the right word to use in this context.
Comment [SOL60]: Better: Because Sarah refused Robert’s offer to remarry before his death, the couple lacked the present, mutual agreement to establish a common law marriage.