

Board Book

State Bar of Georgia
Board of Governors
Agenda Book



2015 Midyear Meeting
Atlanta, Ga.



STATE BAR OF GEORGIA

255th BOARD OF GOVERNORS MEETING

Saturday, January 10, 2015

9:00 a.m.–12:00 p.m.

Marriott Marquis

Atlanta, Georgia

AGENDA

<u>Topics</u>	<u>Presenter</u>	<u>Page No.</u>
1) ADMINISTRATION		
a) Welcome and Call to Order	Patrise Perkins-Hooker President	1-8
b) Invocation	Rev. Dwight Andrews Senior Pastor First Congregational Church Atlanta, GA	
c) Recognition of Former Presidents, Judges..... And Special Guests	Patrise Perkins-Hooker	
d) Roll Call (by signature)	Pat O'Connor, Secretary	9-15
e) Approval of the Meeting Agenda.....	Patrise Perkins-Hooker	
f) Future Meetings Schedule	Patrise Perkins-Hooker	16-17
2) CONSENT AGENDA		
a) Approval of the Minutes of the 254 th meeting	Patrise Perkins-Hooker	18-22 of the Board of Governors on November 1, 2014

3) MIDYEAR MEMBERS' MEETING ACTION ITEMS - *All active State Bar of Georgia members are invited to attend and vote in the Midyear Members' Meeting.*

- a) Amendment to Bylaws Article V, Officers..... Bill NeSmith 23-25

4) BOARD ACTION ITEMS

- a) Disciplinary Rules & Procedures Committee Bill NeSmith 26-48

- (1) Rule 4-110 - Definitions
- (2) Rule 4-204.1 - Notice of Investigation
- (3) Rule 4-111 - Audit for Cause
- (4) Rule 4-217 - Report of the Special Master to the Review Panel
- (5) Rule 4-219 - Judgments and Protective Orders
- (6) Rule 1.6 - Confidentiality of Information
- (7) Rule 4-208.3 - Rejection of Notice of Discipline
- (8) Rule 4-213 - Evidentiary Hearing
- (9) Rule 12-107 - Confidentiality of Proceedings
- (10) Rule 3.5 - Impartiality and Decorum of the Tribunal
- (11) Rule 5.4 - Professional Independence of a Lawyer
- (12) Rule 8.4(d) - Misconduct
- (13) Rule 4-104 - Mental Incapacity and Substance Abuse
- (14) Rule 4-204 - Preliminary Investigation by Investigative Panel-Generally
- (15) Rule 4-221 - Procedures
- (16) Rule 4-403(c) and (d) - Formal Advisory Opinions
- (17) Rule 4-106(f)(2) - Conviction of a Crime; Suspension and Disbarment
- (18) Rule 4-227 - Petitions for Voluntary Discipline
- (19) Rule 7.3 - Direct Contact with Prospective Clients

- b) Fulton County Business Court..... Joel Wooten, Chair..... 49-66

Proposed Rule Amendment
Business Court Committee
Ken Hodges

- c) New Proposals of the Advisory Committee Dawn Jones, ACL Chair
on Legislation (ACL) Thomas Worthy

- (1) Council of Superior Court Judges.....Honorable Mary Staley.....67-68

- Judicial Salary Increase President

- (2) District Attorneys' Association of Georgia.....Gregory W. Edwards.....69-77

- District Attorney Pay Parity President

- (3) Indigent Defense Committee..... J. Michael Cranford, Chair...78-79

- Public Defender Pay Parity

- (4) General Practice & Trial Section.....James W. Hurt, Jr.....80-92
 - Long Arm Statute Revision Immediate Past Chair

- (5) Real Property Law Section..... Gayle Camp.....93-99
 - Water Lien Legislation Secretary/Treasurer

- (6) Fiduciary Law Section..... Nikola R. Djuric, Chair.....100-134
 - Uniform Fiduciary Access to Digital Assets Act

- (7) Business Law Section..... C. William Baxley, Chair...135-170
 - Business Corporation Code Amendments Bruce D. Wanamaker

- (8) International Trade in Legal Services..... Bernard L. Greer, Jr.....171-184
 - Committee Chair
 - Proposal to Enact the Uniform Unsworn Foreign Declarations Act in Georgia

- (9) Access to Justice Committee..... Patrise Perkins-Hooker...185-191
 - Attorneys for Rural Areas Assistance Act

5) LEGISLATION

- a) 2015 Legislation Session Preview Thomas Worthy

- b) Advisory Committee on Legislation Minutes (information)..... 192-195

6) ELECTIONS

- a) Nominations of State Bar Officers Patrise Perkins-Hooker
 (nominations = 5 minutes, seconds = 2 minutes)
 1 year terms 2015-2016
 - (1) Office of Treasurer
 - (2) Office of Secretary
 - (3) Office of President-elect

- b) Nominations of ABA Delegates Patrise Perkins-Hooker
 2 year terms September 2015 – August 2017
 - (1) Post 2 (currently held by Lester Tate)
 - (2) Post 4 (currently held by Donna Barwick)
 - (3) Post 6 will be held by the Immediate Past President as of August 2015

7) INFORMATIONAL REPORTS

- a) President's Report Patrise Perkins-Hooker . 196-202
- b) Treasurer's Report Rita Sheffey 203-208
Treasurer
- c) Young Lawyers Division Sharri Edenfield 209-223
YLD President
- d) Georgia Legal Services Program..... Phyllis Holmen
- e) Law Day 2014: ABA Outstanding Activity Award ... Patrise Perkins-Hooker, Co-Chair
Rita Sheffey, Co-Chair
- f) Activities in the Circuits Scott Watts, Clayton Circuit
Judy King, Gwinnett Circuit

8) SPECIAL PRESENTATIONS

9) WRITTEN REPORTS

- a) Executive Committee Minutes..... 224-235
 - (1) September 6, 2014
 - (2) October 24, 2014
- b) Office of General Counsel Report 236-239
- c) Military Legal Assistance Program 240-251
- d) Consumer Assistance Program 252-253
- e) Law Practice Management Program..... 254-256
- f) 2014 South Georgia Office (Tifton) Usage Report .. 257
- g) 2014 Coastal Georgia Office (Savannah) Usage Report 258-259
- h) Georgia Bar Exam – July 2014 General Statistics Summary 260

i) Communications Report..... 261-265

10) CLOSING

a) Old Business..... Patrise Perkins-Hooker

b) New Business..... Patrise Perkins-Hooker

c) Questions/Answers; Comments/Suggestions..... Board of Governors
Officers, Executive Committee
Executive Director
General Counsel

d) Adjournment..... Patrise Perkins-Hooker

Photo: Experience the heart of the hotel and the changing colors of the 50-foot sail illuminating the atrium.



STATE BAR OF GEORGIA
2015 MIDYEAR MEETING

JAN 8-10, 2015 | ATLANTA, GA | ATLANTA MARRIOTT MARQUIS



**State Bar
of Georgia**

EARLY-BIRD REGISTRATION ENDS DEC 12
HOTEL DEADLINE IS DEC 12
FINAL REGISTRATION ENDS DEC 26

Schedule of Events

Thursday, Jan. 8

7 a.m. - 7 p.m.

Registration

7 a.m. - 7 p.m.

YLD Cell Phone/Suit Drive

9 a.m. - 6 p.m.

Visit our Exhibitors

9 a.m. - 10 a.m.

Animal Law Section Annual Meeting

9 a.m. - 12 p.m.

CLE: Management Technology and Ethics

10 a.m. - 11 a.m.

SOLACE Committee

12 p.m. - 1:30 p.m.

Bar Center Committee Lunch

12 p.m. - 1:30 p.m.

Children and the Courts Committee

12 p.m. - 2 p.m.

Appellate Practice Section Lunch

12 p.m. - 2 p.m.

Taxation Law Section Lunch:
Bankruptcy/Tax Issues

1 p.m. - 5 p.m.

CLE: The Next Step Institute presented by the YLD Leadership Academy Alumni Committee and the YLD Alumni Leadership Council

2 p.m. - 3 p.m.

Family Law Section Executive Committee

4 p.m. - 5 p.m.

Family Law Section CLE

5 p.m. - 6:30 p.m.

Family Law Section Reception

6:30 p.m. - 8:30 p.m.

Committee to Promote Inclusion in the Profession: Georgia on my Mind Reception
(by invitation only)

7 p.m. - 9 p.m.

Executive Committee/Supreme Court Dinner
(by invitation only)

7 p.m. - 9 p.m.

Past Presidents' Dinner (by invitation only)

Friday, Jan. 9

8 a.m. - 6:30 p.m.

Registration

8 a.m. - 6:30 p.m.

YLD Cell Phone/Suit Drive

8 a.m. - 6 p.m.

Visit our Exhibitors

8 a.m. - 10 a.m.

Military Legal Assistance Program Committee and Executive Committee of the Military/Veterans Law Section

8:30 a.m. - 9:30 a.m.

Past Presidents' Breakfast

9 a.m. - 12 p.m.

CLE: Thurgood Marshall's Coming (A full-length play that portrays Marshall later in life as he ruminates and relives past trials and victories) (Video Replay)

9 a.m. - 12 p.m.

CLE: Trademark Infringement Issues for IP Practitioners, General Litigators and Corporate Lawyers

9:30 a.m. - 4 p.m.

Investigative Panel

10 a.m. - 3 p.m.

CLE: VA Accreditation and YLD Military Support Opportunities

11 a.m. - 12 p.m.

General Practice & Trial Law Section Board Meeting

12 p.m. - 1:30 p.m.

General Practice & Trial Law Section Lunch

12 p.m. - 1:30 p.m.

Indigent Defense Committee

12 p.m. - 2 p.m.

Discovery of Electronically Stored Information Task Force

12 p.m. - 2 p.m.

Intellectual Property Law Section Luncheon

12:30 p.m. - 4 p.m.

Review Panel

2 p.m. - 4 p.m.

CLE: Roundtable on Pro Bono—Just Do It!

2 p.m. - 5 p.m.

Georgia Bar Foundation Meeting

3 p.m. - 3:30 p.m.

YLD Nominating Committee

3 p.m. - 4 p.m.

Member Benefits Committee

3:30 p.m. - 5 p.m.

YLD General Session

5 p.m. - 6:30 p.m.

Product Liability Law Section Reception

5:30 p.m. - 7:30 p.m.

Workers' Compensation Midyear Reception

6:30 p.m. - 8:30 p.m.

Board of Governors Dinner

Saturday, Jan. 10

8 a.m. - 12 p.m.

Registration

8 a.m. - 12 p.m.

YLD Cell Phone/Suit Drive

8 a.m. - 12 p.m.

Visit our Exhibitors

9 a.m. - 12 p.m.

Board of Governors Meeting

Management Technology and Ethics

Thursday, Jan. 8 | 9 a.m. - 12 p.m.

Program Coordinator:

Natalie R. Kelly, program chair, director, Law Practice Management Program, State Bar of Georgia, Atlanta

Topics and Speakers:

Welcome and Program Overview

Natalie R. Kelly

Ethics in Practice for Solo and Small Firms

William Cobb, Office of the General Counsel, State Bar of Georgia, Atlanta

60+ Management and Technology Tips, Apps and Gadgets

Natalie Kelly

Co-Sponsors:

Law Practice Management Program, State Bar of Georgia; Law Practice Management Division, American Bar Association

Credit: 3 CLE hours, including 1 ethics

The Next Step Institute

Thursday, Jan. 8 | 1 p.m. - 5 p.m.

Presented by the YLD Leadership Academy Alumni Committee and the YLD Alumni Leadership Council

Program Coordinators:

Adriana Sola Capifali, YLD Leadership Academy Alumni Committee co-chair; Social Security Administration, Atlanta; **Titus Nichols**, YLD Leadership Academy Alumni Committee co-chair; District Attorney's Office, Augusta Judicial Circuit, Augusta; **Damon E. Elmore**, YLD Alumni Leadership Council; Moore Sparks LLC, Atlanta; **Michael Geoffroy**, YLD Alumni Leadership Council; LaMalva, Geoffroy & Oeland, P.C., Covington; **Kelly Campanella**, YLD director of programming; Georgia Department of Law, Atlanta

About the Seminar:

The Next Step Institute is for those YLD members who have graduated from the YLD Leadership Academy and are looking for guidance on the next steps they should take in their professional development. The program will include 3 hours of CLE credit. The first hour will focus on law practice management topics related to setting up a practice, including utilizing available resources, selecting practice areas, the how-to's of banking/business set up and hiring associates. The second hour will cover developing a client base, including a discussion on where to find, how to cultivate and how to market to potential clients. The third hour will focus on the best practices for utilizing the media, including web and social media, in your practice. Additionally, there will be a roundtable discussion on becoming a leader in your community, which will include discussions regarding issues arising from serving on a nonprofit board and running for office (no credit offered).

1 p.m. - 2 p.m.

Law Practice Management for the Young Lawyer: Setting up Your Law Practice (1 CLE hour)

2 p.m. - 3 p.m.

Law Practice Management for the Young Lawyer: Building a Client Base (1 CLE hour)

3 p.m. - 4 p.m.

Best Practices for Utilizing the Media and Web/Social Media in Your Practice (1 CLE hour)

4 p.m. - 5 p.m.

Becoming a Leader in Your Community (roundtable discussions, no CLE credit offered)

Speakers: TBD

Co-Sponsors:

YLD Leadership Academy Alumni Committee and the YLD Alumni Leadership Council; ICLE

Credit: 3 CLE hours



Atlanta Marriott Marquis is the host hotel for the 2015 Midyear Meeting



CLE Seminars

Thurgood Marshall's Coming

Friday, Jan. 9 | 9 a.m. - 12 p.m.

(A full-length play that portrays Marshall in later life as he ruminates and relives past trials and victories) (Video Replay)

About the Seminar:

May 17, 2004, marked the 50th anniversary of the U.S. Supreme Court decision in *Brown v. Board of Education of Topeka, KS*, which legally ended racial segregation in the public schools in the United States. The lead attorney for the plaintiffs in the case now known as *Brown* was Thurgood Marshall, a passionate and embattled civil rights lawyer. Marshall is one of the giant figures in the history of American jurisprudence. He was born into poverty and grew up in the Jim Crow racism of the early 20th century. He was the first African-American to serve as solicitor general of the United States and went on to become the first African-American to serve as an associate justice of the U.S. Supreme Court. Some called Marshall "Mr. Civil Rights," but he never wanted to be known as a "civil rights leader." He saw the law as the arena where minorities and oppressed citizens could find relief, and he wanted to be known first, last and always as a lawyer. He was a powerful and successful advocate for individual human and civil rights and continues to serve as a model for tenacity in the face of overwhelming odds.

Actor: T. Mychael Rambo as Thurgood Marshall

Credit: 3 CLE hours, including 1 ethics

Trademark Infringement Issues for IP Practitioners, General Litigators and Corporate Lawyers

Friday, Jan 9 | 9 a.m. - 12 p.m.

Program Coordinator:

Bradley K. Groff, chair, Intellectual Property Law Section, State Bar of Georgia; **Gardner Groff Greenwald & Villaneuva, P.C.**, Atlanta

Program Chair:

David M. Lilenfeld, Lilenfeld, P.C., Atlanta

About the Seminar:

Join the Intellectual Property Law Section of the State Bar for an engaging three-hour seminar featuring an overview of trademark infringement issues. Seminar Program Chair David

Lilenfeld assembles a faculty that will provide information not just for IP practitioners, but also for general litigators and corporate lawyers.

Speakers: TBD

Co-Sponsor:

Intellectual Property Law Section, State Bar of Georgia

Credit: 3 CLE hours

VA Accreditation

Friday, Jan 9 | 10 a.m. - 3 p.m. (Lunch will be provided)

Program Coordinators:

Sharri Edenfield, YLD president; *Edenfield, Cox, Bruce, & Classens, P.C.*, Statesboro; **Norman Zoller**, Military Legal Assistance Program, State Bar of Georgia, Atlanta; **Katie Dod**, chair, YLD Military Support Committee; *Merbaum Law Group, P.C.*, Decatur; **Ed Piasta**, YLD director of military law support; *Law & Moran Attorneys at Law, Atlanta*; **Kristie Piasta**, YLD director of military support; *Children's Healthcare of Atlanta, Atlanta*; **Quentin Marlin**, YLD director of military support; *Ellis, Painter, Ratterree & Adams, LLP, Savannah*; **Steve Shewmaker**, *Shewmaker & Shewmaker, LLC, Atlanta*

About the Seminar:

This seminar will cover all of the mandatory topics required for attorneys to become certified/accredited to represent veterans on benefits appeals before the Department of Veterans Affairs, including: basic eligibility, claims procedures, representation before the VA, DIC, pension, right to appeal and disability compensation. Additionally, a VA physician will speak on issues facing veterans returning to civilian life, including PTSD and traumatic brain injury. A Veterans Affairs ALJ will discuss perspectives from the bench on the representation of veterans. Recent case law will be reviewed. Unless already accredited, participants in this CLE program must submit a VA Form 21a (downloadable from the VA website) to the VA General Counsel in Washington, D.C. This process can take 4-6 weeks.

Pro bono opportunities for volunteer attorneys will be discussed as well.

Speakers:

Drew Early, *Shewmaker & Shewmaker LLC, Atlanta*

Cary King, *Jacobs & King LLC, Atlanta*

Dr. Lauren Ramshur, VA psychiatrist and assistant professor at *Emory School of Medicine, Atlanta*

Judge Robert E. Sullivan, chief veterans law judge, Board of Veterans Appeals, Washington, D.C.
Norman Zoller, Military Legal Assistance Program, State Bar of Georgia, Atlanta

Co-Sponsors:
 YLD Military Support Committee, Military Legal Assistance Program and the Military/Veterans Law Section of the State Bar of Georgia; ICLE

Credit: 5 CLE hours

Roundtable on Pro Bono – Just Do It!

Friday, Jan. 9 | 2 p.m. – 4 p.m.

Program Coordinators:
Avarita L. Hanson, director, Chief Justice's Commission on Professionalism, Atlanta; **Michael L. Monahan**, director, Pro Bono Project, State Bar of Georgia, Atlanta

About the Seminar:
 This roundtable discussion addresses the need and opportunities for all Georgia lawyers to engage in ensuring access to justice throughout Georgia through pro bono activities.



Topics and Speakers:
The Need and the Responsibility
Chief Justice Hugh P. Thompson, Supreme Court of Georgia, Atlanta (invited)
Rural Pro Bono
Tremaine Teddy Reese, Georgia Appleseed, Columbus (invited)
Metro-Atlanta Pro Bono
Martin Ellin, Atlanta Volunteer Lawyers Foundation, Atlanta
Use Your Other Language
Jana Edmonson-Cooper, Georgia Legal Services Program, Macon
Corporate/Law Firm Pro Bono
Rachel Epps Spears, Pro Bono Partnership of Atlanta, Atlanta
Meeting the Need Can Be Fun
Damon E. Elmore, Moore Sparks, LLC, Atlanta
Pro Bono and Technology: Tips for Participating
Michael L. Monahan
Questions and Answers, Wrap-Up and Acknowledgements
Avarita L. Hanson

Co-Sponsors:
 Chief Justice's Commission on Professionalism and the Pro Bono Project, State Bar of Georgia

Credit: 2 CLE hours, including 1 professionalism*

(*Professionalism credit is self-reporting, using the optional self-report form)



A special thanks to the Atlanta Marriott Marquis and their beautiful venue.

Special Events/Information

YLD Community Service Project: Cell Phone/Suit Drive

Jan. 8-10 during registration hours

Please bring gently used suits and business clothing to the Midyear Meeting along with any used cell phones (should be cleared of all data). These items will be donated to various community shelters. Drop boxes will be located near the registration area.

Board of Governors Dinner

Friday, Jan. 9 | 6:30 p.m. – 8:30 p.m.

Please join us for the Board of Governors Dinner. Everyone is welcome.

Attire

Business attire is appropriate for all meetings and events.

Hotel Accommodations

Cut-off date is Friday, Dec. 12

Atlanta Marriott Marquis
265 Peachtree Center Ave.
Atlanta, GA 30303
404-521-0000

The Atlanta Marriott Marquis is the host hotel, offering a discounted room rate of \$179 single/double per night. To make reservations and receive our special rate, call the Atlanta Marriott Marquis at 866-469-5475 and ask for the State Bar of Georgia's Midyear Meeting.

Reservations must be made by Friday, Dec. 12, as rooms will be on a space and rate availability basis after this date.



There are many events taking place in Atlanta during this time, so please be aware that you should make your hotel reservations as early as possible.

Check-in time is 4 p.m.
Check-out time is 12 p.m.

Registration

Final Deadline – Friday, Dec. 26

All participants must pre-register using the registration form. You may also register online at www.gabar.org.

Registrations will not be processed without payments. Verbal registrations will not be accepted. Faxes will only be accepted for "no charge" functions or payment by credit card.

Registrations along with payments must be received at the State Bar on or before Friday, Dec. 26, 2014, at which time pre-registration will close; onsite registration will open at the Atlanta Marriott Marquis on Thursday, Jan. 8, 2015.

Note: All pre-registrations and onsite registrations are subject to availability on a first-come, first-serve basis.

Exhibitors

- Business Appraisal Group, LLC
- Diminished Value of Georgia
- GEICO
- LawPay
- MLQ Attorney Services
- Tabs3 Software

**at time of printing*

Registration Form

Please use this form to register by checking all events you plan to attend. Registration is required for all events, including "no charge" functions. You may also register online at www.gabar.org. Final registration deadline is Friday, Dec. 26, 2014.

Attendee Information

Bar Number _____

Name _____

Nickname _____

Spouse/Guest Name _____

Address _____

City/State/Zip _____

Email _____

Special Needs / Dietary Restrictions _____

ADA

If you have a special need addressed by the Americans with Disabilities Act, please call our ADA coordinator at 404-527-8700.

Refund Policy

Meeting registration cancellation deadline is Friday, Dec. 26, 2014. The State Bar of Georgia will accept only written requests for refund of registration fees. No refunds will be made after Dec. 26.

Board Functions

	Before Dec. 12	After Dec. 12
<input type="checkbox"/> BOG Dinner (everyone welcome)	\$95	\$105
<input type="checkbox"/> BOG Meeting	N/C	N/C

CLE Programs

<input type="checkbox"/> Management Technology and Ethics.....	\$90	\$110
<input type="checkbox"/> Roundtable on Pro Bono: Just Do It!.....	\$80	\$100
<input type="checkbox"/> Thurgood Marshall's Coming (A full length play that portrays Marshall in later life as he ruminates and relives past trials and victories (video of the play)).....	\$30	\$50
<input type="checkbox"/> Trademark Infringement Issues for IP Practitioners, General Litigators and Corporate Lawyers.....	\$90	\$110
<input type="checkbox"/> VA Accreditation.....	\$75	\$95

Section Events

	Before Dec. 12	After Dec. 12
<input type="checkbox"/> Animal Law Meeting	N/C	\$20
<input type="checkbox"/> Appellate Practice Lunch	\$35	\$55
<input type="checkbox"/> Family Law CLE Only.....	\$20	\$40
<input type="checkbox"/> Family Law Reception Only.....	N/C	\$20
<input type="checkbox"/> Family Law CLE & Reception	\$20	\$40
<input type="checkbox"/> General Practice & Trial Law Lunch.....	\$54	\$74
<input type="checkbox"/> Intellectual Property Law Lunch.....	\$50	\$70
<input type="checkbox"/> Product Liability Law Reception	N/C	\$20
<input type="checkbox"/> Taxation Law Section Lunch	\$15	\$35
<input type="checkbox"/> Non-Member	\$54	\$74
<input type="checkbox"/> Workers' Compensation Reception.....	N/C	\$20

YLD Events

<input type="checkbox"/> YLD General Session.....	N/C	N/C
<input type="checkbox"/> CLE: YLD The Next Step Institute	\$40	\$60

Total Fees Enclosed: _____

Credit Card Information

Please bill my: Visa MasterCard AMEX

Credit Card Number _____

Exp. Date _____

Name as it appears on the card (Please print) _____

Signature _____

Payment Information

Registrations will be processed on a first-come, first-served basis. Visa, MasterCard and American Express are accepted. Please make checks payable to State Bar of Georgia and mail to Michelle Garner, Director of Meetings, 2015 Midyear Meeting, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. "No charge" and credit card orders may be faxed to 404-527-8717.



State Bar
of Georgia



State Bar of Georgia

2015 Midyear Meeting
104 Marietta St. NW, Suite 100
Atlanta, GA 30303-2743

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Parking Options

Please plan accordingly for parking. There are many events taking place in the downtown area the weekend of Jan 8-10. Below are some additional options, but please use your own due diligence when choosing offsite parking.



1. Atlanta Marriott Marquis Parking Garage
2. SunTrust Plaza Parking Garage
3. 227 Courtland St. Parking Garage
4. Peachtree Center Parking Garage
5. 31 Baker St. Parking Garage
6. 270 Spring St. Parking Garage

Source: www.atlantadowntown.com/guide/getting-around/parking

Board of Governors Attendance Record

	3-12	6-12(Fri)	6-12(Sat)	10-12	1-13	3-13	6-13(Fri)	6-13(Sat)	10-13	1-14	3-14	6-14(Fri)	6-14(Sat)	11-14
	Oconee	Sav	Sav	Jekyll	ATL	Oconee	HH	HH	Jekyll	ATL	Oconee	Amelia	Amelia	Jekyll
Virgil L. Adams	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Sarah Akins	•	•	•	e	e	•	•	•	e	•	•	•	•	•
Mark W. Alexander	n/a	n/a	•	e	•	•	•	•	•	•	•	•	•	•
Anthony B. Askew	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Emily S. Bair	•	•	•	•	•	e	•	•	•	•	•	•	•	•
Eric A. Ballinger	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Donna Barwick	•	•	•	e	•	e	e	e	e	•	e	•	•	•
Joshua C. Bell	•	•	e	•	•	•	•	•	•	•	•	•	•	•
Kenneth R. Bernard, Jr.	n/a	n/a	•	•	•	e	•	•	•	•	•	e	e	•
Diane E. Bessen	•	•	•	e	•	•	•	•	e	•	e	•	•	•
Sherry Boston	n/a	n/a	•	•	•	•	•	•	e	•	e	•	•	e
Jeb T. Branham	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	•	•	•	•
Thomas Neal Brunt	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Thomas R. Burnside III	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Stephanie D. Burton	•	•	•	e	•	•	•	•	e	•	•	•	•	e
JaDawyna C. Butler	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	•	•	•	•
S. Kendall Butterworth	•	•	•	e	•	e	•	•	e	e	e	•	•	•
David Lee Cannon, Jr.	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Paul Todd Carroll, III	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Carol V. Clark	•	e	e	•	•	•	•	e	•	•	•	•	•	•
John Christopher Clark	•	•	•	•	•	•	e	e	•	•	•	•	•	•
Edward R. Collier	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	•	•	•	•
Martin L. Cowen III	•	•	•	•	•	•	•	•	•	•	•	•	•	•

To request an excused absence, please email Secretary Pat O'Connor (pto@olivermaner.com)

Board of Governors Attendance Record

	3-12	6-12(Fri)	6-12(Sat)	10-12	1-13	3-13	6-13(Fri)	6-13(Sat)	10-13	1-14	3-14	6-14(Fri)	6-14(Sat)	11-14
	Oconee	Sav	Sav	Jekyl	ATL	Oconee	HH	HH	Jekyl	ATL	Oconee	Amelia	Amelia	Jekyll
Susan W. Cox	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Terrence Lee Croft	•	•	•	•	•	•	•	•	e	•	•	•	•	e
Matthew B. Crowder	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	e	•	•	•
William V. Custer, IV	•	•	•	•	•	•	•	•	•	•	•	•	•	•
David P. Darden	•	•	•	e	•	•	•	•	e	•	•	e	e	e
Gerald Davidson	•	•	•	•	•	•	•	•	•	•	•	e	e	•
J. Anderson Davis	n/a	n/a	•	•	•	•	•	•	•	•	e	e	e	•
Kimberly Cooper Davis	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•
Randall H. Davis	•	•	•	e	•	•	•	•	•	•	•	•	•	•
J. Antonio Delcampo	•	•	•	•	•	e	•	•	•	•	•	•	•	•
Scott Dewitt Delius	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•
Joseph W. Dent	•	•	•	•	e	•	•	•	•	•	•	•	•	•
Foy R. Devine	•	•	•	e	•	•	•	•	•	•	•	•	•	•
Thomas V. Duck, III	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	•	•	•	•
V. Sharon Edenfield	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	•	•	•	•
Damon E. Elmore	•	•	•	e	•	•	•	•	•	•	•	•	•	•
J. Randolph Evans	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	e	•	•	•	•
Archibald A. Farrar	•	•	•	•	•	•	e	e	•	•	•	•	•	•
Douglass Kirk Farrar	•	•	•	•	•	e	•	•	•	•	•	•	•	•
Elizabeth L. Fite	•	•	•	•	•	•	•	•	•	•	•	e	e	•
John A. Fitzner III	e	•	•	•	•	•	•	•	e	•	•	•	•	e
Gregory A. Futch	•	e	•	•	•	•	•	•	•	•	•	•	•	•
William Gilmore Gainer	•	•	•	•	•	•	e	e	•	•	•	•	•	•

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Board of Governors Attendance Record

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	Oconee	Sav	Sav	Jekyl	ATL	Oconee	HH	HH	Jekyl	ATL	Oconee	Amelia	Amelia	Jekyll
Laverne Lewis Gaskins	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	•	•	•	•
William C. Gentry	n/a	n/a	•	•	•	•	•	•	•	•	•	e	e	•
Donald W. Gillis	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•
Walter J. Gordon Sr.	•	•	•	•	•	e	e	e	•	•	•	•	•	e
Patricia A. Gorham	•	•	•	•	•	•	e	e	•	•	•	•	•	•
Karlise Y. Grier	•	•	•	•	•	•	•	•	e	•	•	•	•	•
Thomas F. Gristina	n/a	n/a	•	•	•	•	•	•	•	•	e	•	•	e
John Kendall Gross	e	•	•	e	•	•	•	•	•	e	e	•	•	e
James E. Hardy		e	e	•	•		•	•	•	•	•	•	•	•
Steven A. Hathorn	•	•	•	e	•	e	e	e	e	•	•	•	•	•
John G. Haubenreich	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Patrick H. Head	e	•	•	•	•	•	e	e	•	•	•	•	•	•
Lawton C. Heard, Jr.	n/a	n/a	•	•	•	•	•	•	•	•	•	•	•	•
Render M. Heard Jr.	e	•	•	e	•	•	•	•	•	•	•	•	•	•
Thomas W. Herman	•	•	•	•	•	•	•	•	•	•	•	•	•	e
R. Javoyne Hicks White	•	•	•	•	•	•	•	e	e	•	•	•	•	e
Donna Stanaland Hix	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Michael D. Hobbs	•	•	•	e	•	•	•	•	e	e	•	•	•	e
Kenneth B. Hodges, III	n/a	n/a	•	•	•	•	•	•	•	e	•	•	•	•
Phyllis J. Holmen	•	•	•	•	•	•	•	•	•	•	•	•	•	•
J. Marcus E. Howard	•	•	•	•	•	•	•	•	e	•	e	•	•	e
Amy V. Howell	•	•	•	e	•	•	•	•	e	•	•	•	•	e
Roy B. Huff Jr.		e	e	e	•	•	e	e	e	•	•	e	e	•

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	Oconee	Sav	Sav	Jekyl	ATL	Oconee	HH	HH	Jekyl	ATL	Oconee	Amelia	Amelia	Jekyll
James W. Hurt	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Chris Huskins	•	•	•	•	•	•	•	•	•	•	•	•	•	•
James T. Irvin	•	•	•	•	•	e	•	•	•	•	•	•	•	•
Robert D. James Jr.	n/a	n/a	•	•	•	•	•	•	•	•	•	e	•	•
William Dixon James	•	•	•	•	•	•	•	•	•	•	•	e	e	•
Curtis S. Jenkins	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Lester B. Johnson, III	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Dawn M. Jones	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Michael R. Jones, Sr.	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Elena Kaplan	•	•	•	•	•	•	•	•	•	•	•	•	•	e
Robert J. Kauffman	•	•	•	•	•	•	•	•	•	•	•	•	•	•
John Flanders Kennedy	•	•	•	•	•	•	e	e	•	•	•	•	•	e
William J. Keogh, III	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Barry E. King	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	•	•	•	e
Judy C. King	•	•	•	•	•	•	•	•	•	•	•	•	•	e
Seth D. Kirschenbaum	•	•	•	•	•	•	•	•	e	•	•	•	•	•
Catherine Koura	•	e	e	•	•	•	e	•	•	•	•	e	e	e
Edward B. Krugman	•	e	e	•	•	•	•	•	•	•	•	•	•	•
Jeffrey R. Kuester	•	•	•	•	•	•	•	•	•	•	•	•	•	e
Allegra Lawrence-Hardy	•	•	•	•	•	•	•	•	•	•	•	•	•	e
J. Alvin Leaphart	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Dawn Renee Levine	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•
David S. Lipscomb	•	•	•	•	•	•	•	•	•	•	•	•	•	•

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	Oconee	Sav	Sav	Jekyl	ATL	Oconee	HH	HH	Jekyl	ATL	Oconee	Amelia	Amelia	Jekyll
John Ryd Bush Long	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Ronald A. Lowry		•	•		•	e	•	•			•	•	•	•
Samuel M. Matchett		•	•		•	•	•	•	e	•	•	e	e	•
William R. McCracken	•		•	•	•	e	e	•	•	e	•	•	•	•
Brian A. McDaniel	•	e	e		•			•	•	•	•	e	e	•
Leticia A. McDonald	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Brad J. McFall	•				•	•			e	•	e			•
A. Dionne McGee	n/a	•	•	e	•	•	e	e	e	•	e	•	•	e
Ashley McLaughlin	n/a	n/a	•								•	•	•	e
Michael D. McRae	•				•				•	•	•	e	e	
Terry L. Miller	n/a	n/a	•	•	•	•	•	•	•	•	•	•	•	•
W. Benjamin Mitcham, Jr.		•	•	•	•	•	•	•	•	•	•	•	•	e
G.B. Moore III	n/a	n/a	•	e	•	•	•	•	e	•	•	•	•	e
Laura J. Murphree	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	e	•	•	•	•	•
Gwyn P. Newsom	n/a	n/a	•	•	•	•	•	•	•	•	•	•	•	•
Sam G. Nicholson	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	•	•	•
Dennis C. O'Brien	e	•	•	•	•	•	•	•	e	•	•	•	•	•
Pat O'Connor	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Samuel S. O lens								•						
Jonathan B. Pannell	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Joy Renea Parks	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•
Carson Dane Perkins	•						•	•	•	•	•	•	•	•
Patrise Perkins-Hooker	•	•	•	•	•	•	•	•	•	•	•	•	•	•

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	Oconee	Sav	Sav	Jekyl	ATL	Oconee	HH	HH	Jekyl	ATL	Oconee	Amelia	Amelia	Jekyll
R. Chris Phelps	•			•		•		•		•	•			•
Will H. Pickett, Jr.	•	•	•	•	•	•	e	e	•	•	e		e	•
Jill Pryor	•	e	e	e	•	•	e	e	e	•	•	e	e	•
William M. Ragland, Jr.	e	•	e	e	•	•	•	•	e	•	•	•	•	e
Robert V. Rodatus	•	e	e	e	•	•	e	e	•	•	•	e	e	•
Tina S. Roddenbery	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Brian D. Rogers	•	•	•	•	•	•	•	•	•	e	•	•	•	•
Joseph Roseborough		•	•	•	•	•	•	•	•	•	•	•	•	•
Charles L. Ruffin	•	•	•	•	•	•	•	•	•	•	•	•	•	•
William C. Rumer	•	•	•	•	•	•	•	•	e	•	•	•	•	e
Claudia Saari	•	•	•	e	•	•	•	•	e	•	•	•	•	•
Dennis C. Sanders				•	•	•	•	•	e	•	•	•	•	e
Rita A. Sheffey	•	•	•	•	•	•	•	•	•	•	•	•	•	•
H. Burke Sherwood	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•
Robert H. Smalley, III	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Philip C. Smith	•	•	•	•	•	•	e	e	•	•	•	•	•	•
R. Rucker Smith	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Daniel B. Snipes	•	•	•	e	•	e	•	•	•	•	•	•	•	•
H. Craig Stafford	•	•	•	•	•	•	•	•	e	•	e	•	•	•
Lawrence A. Stagg	•	•	•	e	•	•	•	•	•	•	•	•	•	•
Lawton E. Stephens	•	•	•	•	•	•	•	•	e	•	•	•	•	e
C. Deen Strickland	•	•	•	•	e	•	•	•	•	•	•	•	•	•
Frank B. Strickland	•	•	•	e	•	e	•	•	•	•	e	•	•	e

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	Oconee	Sav	Sav	Jekyll	ATL	Oconee	HH	HH	Jekyll	ATL	Oconee	Amelia	Amelia	Jekyll
Darrell L. Sutton	n/a	n/a	•	•	•	e	•	•	•	•	•	•	•	
Michael B. Terry	n/a	n/a	•	•	•	•	•	•	•	•	•	•	•	•
Anita W. Thomas		e	e	•	•	•	•	•	e	•	•	•	•	•
Dwight L. Thomas		•	•	e	•	•	e	•	e	•	•	•	•	•
Edward D. Tolley					•									
Clayton A. Tomlinson	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•
Martin E. Valbuena	•	•	•	•	•	•	•	•	e	•	•	•	•	•
Carl R. Varnedoe				•	•	•	•	•	•	•	•	•	•	•
Nicki N. Vaughan	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Carl A. Veline, Jr.	•			•	•	•	•	•	•	•	•	•	•	•
J. Henry Walker	•	•	•	e	•	•	•	•	e	•	•	•	•	•
Janice M. Wallace	n/a	n/a		•	•	•	•	•	•	•	•	•	•	•
Jeffrey S. Ward	n/a	n/a	•	•	e	•	•	•	•	•	•	•	•	•
Gwen Fortson Waring	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•
Harold B. Watts	•	•	•	e	•	•	•	•	e	•	•	•	•	e
John P. Webb	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Nancy J. Whaley	•	•	•	e	•	•	•	•	•	•	•	•	•	•
Sandy Wisenbaker	•	•	•	e	•	•	•	•	e	•	•	•	•	e
Kathleen M. Womack	•	•	•	•	•	e	•	•	•	•	•	•	•	•
Katie Wood	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Doug Woodruff	•			•	•	e	•	•	•	•	•	•	•	•
Gerald P. Word	•	•	•	•	e	•	•	•	e	e	e	•	•	•
Fred A. Zimmerman	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	•	•	•
• - Attended Meeting				e - Excused Absence							n/a - Not on BOG			

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Future Meetings Schedule

(12/11/2014)



Executive Committee

January 28, 2015		Executive Committee/Court of Appeals Dinner (11 a.m. EC – National Center for Civil & Human Rights; COA Dinner – location TBD)
March 27-29, 2015		Omni Grove Park Inn, Asheville, NC (Supreme Court Retreat)
May 15, 2015		Atlanta Legal Aid Society
September 11-13, 2015		Barnsley Gardens, Adairsville, GA (Executive Committee Retreat)

Board of Governors

Midyear 2015	Jan. 8-10, 2015	Atlanta Marriott Marquis
Optional Trip	Feb 23-March 5, 2015	Optional International Trip – South American Escape
Spring 2015	April 17-19, 2015	Brasstown Valley Resort & Spa, Young Harris, GA
Annual 2015	June 18-21, 2015	Evergreen Conference Center, Stone Mountain Park, Stone Mountain, GA
Fall 2015	October 23-25, 2015	Hyatt on River Street, Savannah, GA
Annual 2016	June 16-19, 2016	Omni Amelia Island, Amelia Island, FL

Young Lawyers Division

Midyear 2015	Jan. 8-10, 2015	Atlanta Marriott Marquis
Spring 2015	March 19-22, 2015	Hyatt French Quarter, New Orleans, LA

Annual 2015	June 18-21, 2015	Evergreen Conference Center, Stone Mountain Park, Stone Mountain, GA
Annual 2016	June 16-19, 2016	Omni Amelia Island, Amelia Island, FL

Special Events

2015	March 18-31, 2015	Magna Carta Exhibit and Symposium
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American Bar Association Meetings

Midyear 2015	February 4-10, 2015	Houston, TX
Annual 2015	July 30 – Aug. 5, 2015	Chicago, IL
Midyear 2016	February 3-9, 2016	San Diego, CA
Annual 2016	August 4-9, 2016	San Francisco, CA

Southern Conference Meetings

2015	October 8-10, 2015	Alexandria, Virginia
2016	October 13-16, 2016	Big Cedar Lodge, Branson, MO
2017	October 2017	Tennessee
2018	October 2018	Georgia
2019	October 2019	Florida

D-R-A-F-T
STATE BAR OF GEORGIA
BOARD OF GOVERNORS
MINUTES
November 1, 2014
Jekyll Island Club/Jekyll Island, GA

The 254th meeting of the Board of Governors of the State Bar of Georgia was held at the date and location shown above. Patrise M. Perkins-Hooker, President, presided.

Approval of the Meeting Agenda

President Patrise Perkins-Hooker noted the following changes to the Board of Governors agenda: 1) the legislative proposals under item 4 are action items; 2) the Amendments to Bylaws Article V under item 5a is an informational item only; 3) a report by the Business Court Committee has been added as item 6f; and 4) since William Hill withdrew his nomination to the JQC, under item 2c she submitted the nomination of Lester B. Johnson, III to fill the expiring term of Robert Ingram, and added the nomination of Lester Tate to fill his term when it expires in December. Thereafter, the Board of Governors, by unanimous voice vote, approved the agenda as revised.

Special Recognition

President Patrise Perkins-Hooker recognized the members of the judiciary, the Past Presidents of the State Bar, and the YLD members and other special guests in attendance.

Roll Call

Secretary Pat O'Connor circulated the attached roll (Exhibit A) for signature.

Future Meetings Schedule

President Patrise Perkins-Hooker referred the Board of Governors to the Future Meetings Schedule.

Consent Agenda

President Patrise Perkins-Hooker presented the following Consent Agenda and asked for approval of those items:

- 1) Minutes of the 252nd & 253rd Meetings of the Board of Governors
The minutes of the Board of Governors meetings on June 6, 2014 and June 7, 2014 at the Omni Amelia Island Resort, Amelia Island, Florida.
- 2) Executive Committee Minutes (information)
The minutes of the Executive Committee meetings on June 7, 2014 and August 22, 2014.

- 3) Appointments to Judicial Qualifications Commission (JQC)
 - a) Nomination of Lester B. Johnson, III for a four-year term (expiring term of Robert Ingram).
 - b) Nomination of Lester Tate for a four-year term (expiring term of Lester Tate).

- 4) Appointments to Commission on Continuing Lawyer Competency
 Appointment of Aasia Mustakeem and reappointment of Gerald Edenfield for three-year terms.

The Board of Governors, by unanimous voice vote, approved the remaining items on the Consent Agenda that were not previously revised.

Special Presentations

President Patrise Perkins-Hooker recognized and presented a resolution to Board member Randy Davis for his heroic act of flying to Liberia to rescue an Ebola patient.

Legislation

Following a report by Dawn Jones, Thomas Worthy, and proponents of the legislative proposals, the Board of Governors took the following action on proposed legislation. Dawn Jones announced that the Advisory Committee on Legislation will next meet at the State Bar Building on December 4, 2014.

<u>Legislative Proposal</u>	<u>Germane to Purposes Of the Bar</u>	<u>Support on Merits 2/3 Majority</u>
Family Law Section		
1) Attestation of Execution of Antenuptial Agreements	Passed by unanimous voice vote	Passed by 2/3 rd 's voice vote
Committee to Promote Inclusion in the Profession		
1) Funding Request for Victims of Domestic Violence vote (\$2.5 million)	Passed by unanimous voice vote	Passed by 2/3 rd 's voice vote
Georgia Resource Center		
1) Georgia Resource Center Funding (\$800,000) for 2014 Fiscal Year	Passed by unanimous voice vote	Passed by 2/3 rd 's voice vote
Real Property Law Section		
1) Unauthorized Practice of Law Legislation	Passed by unanimous voice vote	Passed by 2/3 rd 's voice vote

Thomas Worthy provided a preview of the 2015 Legislative Session. Legislative issues will include judicial salary increases, a Real Property Law Section proposal on water liens, and a proposal from the Bar's Discovery of Electronically Stored Information Task Force.

Amendment to Bylaw Article V – Officers

Paula Frederick reported on proposed amendments to Bylaw Article V that will be an action item at the General Members' meeting at the Midyear Meeting.

Amendments to Animal Law Section Bylaws

Paula Frederick introduced Bill NeSmith, the Bar's new Deputy General Counsel, who reported on proposed amendments to the Animal Law Section Bylaws. The Board of Governors, by unanimous voice vote, approved the proposed amendments (Exhibit D).

President's Report

President Patrise Perkins-Hooker reported on her program of activities for the 2014-15 Bar year and referred the Board to the detailed narrative of her activities included in the agenda. She continues to visit Bar associations around the state and to speak to groups at the high school and college level about the law. Her iCivics initiative is operating as a pilot project in five school systems, which has resulted in the training of 150 teachers and has reached over 20,000 students in the Atlanta Public Schools, and in the counties of Chatham, Muscogee, Liberty, Wilkinson and Harris. Shiriki Cavitt, YLD LRE Committee Co-chair, has assembled 153 attorney volunteers to assist teachers in their classrooms with the iCivics program. She reported that the Rural Lawyers initiative is moving forward with all of the companion pieces associated with the program. Funding is being sought through legislative appropriation to help with the initiative, and she is meeting with local county officials for their buy-in and support. She has improved and upgraded the technology used by the State Bar for conferencing with remote offices as well as expanded the Bar's communications efforts around the state, and she referred the Board members to a handout detailing those efforts. She reported that the Law School Incubator Program is still being developed under the guidance of Bucky Askew. She announced there will be a celebration of the Magna Carta's 800th Anniversary Commemoration in March 2015 that will include an exhibit and symposium spearheaded by Ken Shigley. Lastly, she provided an update on the Bar's previous efforts to purchase and secure a parking deck.

The Board of Governors received a written report on the President's activities and accomplishments from June-October 2014.

Treasurer's Report

Treasurer Rita Sheffey reported on the Bar's finances and investments. The Board of Governors received copies of the combined Operations and Bar Center Consolidated

Revenues and Expenditures Report for the Twelve Months Ended June 30, 2014; Operations Income Statement YTD for the Twelve Months Ended June 30, 2014; Bar Center Revenues and Expenditures Summary for the Twelve Months Ended June 30, 2014; State Bar Balance Sheet for June 30, 2014; and the Summary of Selected Payment Information for the Periods through September 30, 2012-2014.

YLD Report

YLD President Sharri Edenfield reported on the activities of the Young Lawyers Division. The Military Support Initiative will provide pro bono legal services to veterans. YLD members are being asked to volunteer their services with the Military/Veterans law Section's Legal Assistance Clinics around the state, to assist veterans with applications for benefits, to provide outreach to JAG officers who are young lawyers, and to support the Augusta Warrior Project, which is the recipient beneficiary of the 2015 Signature Fundraiser. Upcoming events include a VA Accreditation CLE and Veterans Assistance CLE on January 8, 2015, ongoing training sessions for Legal Assistance Clinics, and a First Responders/Veterans Wills Clinic in Statesboro in January/February 2015. The Legislative Initiative includes an effort to place attorneys in underserved areas around the state to help provide access to justice in Georgia's rural areas. The Professional Development Initiative will entail workshops and CLE's for young lawyers to further advances their careers and a Solo-Small Firm Institute/Affiliates Conference in Macon on February 21, 2015. In partnership with the Georgia Law School Consortium, a Succession Planning Program is being developed that will connect law students and young lawyers with older lawyers transitioning out of practicing law. She announced that the Family Law Committee held its Supreme Cork fundraiser in October, where it raised money for the AVLF, and that the High School Mock Trial Program's Law Academy took place September 19-21, 2014.

The Board of Governors also received a written report on the YLD committees, programs and projects for the 2014-15 Bar year.

Activities in the Circuits

Clayton Alan Tomlinson, Alapaha Circuit Board of Governors representative, reported on the activities of the Alapaha Circuit Bar Association.

Thomas R. Burnside, III, Augusta Circuit Board of Governors representative, reported on the activities of the Augusta Bar Association. YLD President-elect Jack Long reported on the activities of the Augusta Young Lawyers.

Robert H. Smalley, III, Conasauga Circuit Board of Governors representative, reported on the activities of the Conasauga Bar Association.

Member Benefits Committee

Judge Render Heard introduced Chip and Nick Trefrey of Member Benefits Inc. who provided a report on the State Bar's Health Insurance Exchange and the benefits available on the exchange.

Special Presentation

Chief Justice Hugh P. Thompson and members of the Supreme Court of Georgia presented a Supreme Court Proclamation to the family of Harvey Weitz expressing their deep gratitude for his legal career, service and friendship, and deep sadness to his family for their loss. Thereafter, President Patrise Perkins-Hooker presented a State Bar Resolution to Harvey's family recognizing his many contributions and notable achievements to the State Bar and the legal profession, and thanking his family for "loaning" him to us.

Business Court Committee

Ken Hodges reported on a proposed expansion of the Business Court and a rules change proposed by the Atlanta International Arbitration Society. Since this is expected to be an action item at the Midyear Meeting, Board members were encouraged to send comments to him or to Joel Wooten, the Business Court Committee Chair.

Office of General Counsel

The Board of Governors received a written report on the activities of the Office of General Counsel.

Military Legal Assistance Program

The Board of Governors received a written annual report on the Status of the Military Legal Assistance Program.

Consumer Assistance Program

The Board of Governors received a written report on the activities of the Consumer Assistance Program.

Law Practice Management Program

The Board of Governors received a written report on the activities of the Law Practice Management Program.

Chief Justice's Commission on Professionalism

The Board of Governors received a written report on the activities of the Chief Justice's Commission on Professionalism.

1 **State Bar of Georgia Bylaws**

2 **ARTICLE V OFFICERS (red-line)**

3 **Section 1. Generally.**

4 Officers of the State Bar shall consist of a President, a President-elect, an Immediate Past
5 President, a Secretary, and a Treasurer. Officers shall be installed each year during the annual
6 meeting and shall take an oath of office administered by an installation officer selected by the
7 president-elect. The president-elect may be sworn in separately from the other officers.

8 After their election installation, the Secretary and the Treasurer shall serve until the next annual
9 meeting. The Secretary and the Treasurer may not serve more than three consecutive terms.

10 The President, Immediate Past President, and the President-elect of the Younger Lawyers

11 Section Division shall be ex-officio officers of the State Bar.

12 **Section 2. The President.**

13 The President shall:

- 14 a. preside at all meetings of the State Bar;
- 15 b. chair the Board of Governors and preside at all of its meetings;
- 16 c. submit to the Board of Governors no later than the second meeting of the Board which
17 the President chairs, a proposed program of activities for the year, a list of the
18 appointments of chairpersons and members of standing committees for the year as
19 provided by the Rules and these Bylaws, and budgetary recommendations as deemed
20 appropriate; and
- 21 d. choose the site for the annual meeting that occurs at the end of his or her term and deliver
22 a report at the annual meeting of the members on the activities of the State Bar during his
23 or her term of office, and furnish a copy of the report to the Supreme Court of Georgia.

24 **Section 3. The President-Elect.**

25 The President-elect shall:

26 a. perform duties delegated to him or her by the President, prescribed by the Board of
27 Governors and as otherwise provided in the Bar Rules and Bylaws.

28 b. upon the absence, death, disability, or resignation of the President, the President-elect
29 shall preside at all meetings of the State Bar and the Board, and shall perform all other duties of
30 the President.

31 c. plan the program for the year in which he or she shall act as President, including
32 activities associated with the inaugural event during the Annual Meeting.

33 d. in planning his or her year, ensure continuity in the program of the State Bar for the
34 benefit of the legal profession and the public and make needed arrangements for the prompt
35 inauguration implementation of the program upon taking office as President.

36 e. serve as an ex-officio member of the Investigative Panel of the State Disciplinary
37 Board.

38 **Section 4. The Immediate Past President.**

39 The Immediate Past President shall:

40 a. chair the Board of Trustees for the Institute of Continuing Legal Education;

41 b. serve as an ex-officio member of the Review Panel of the State Disciplinary Board and
42 the Commission on Lawyer Competency; and

43 c. perform other duties delegated to him or her by the President and prescribed by the Board
44 of Governors.

45 Upon the absence, death, resignation, or disability of the Immediate Past President, the next most
46 immediate past president shall assume the duties of the Immediate Past President.

47 **Section 5. The Secretary.**

48 The Secretary shall have general charge of the records of the State Bar and shall act as secretary
49 for meetings of the Board of Governors and of the Executive Committee. The Secretary shall
50 also perform duties prescribed by the Board.

51 **Section 6. The Treasurer.**

52 The Treasurer shall:

- 53 a. deposit in accordance with the investment policy approved by the Board of Governors all
54 funds received by the State Bar in a bank or banks, or investment firm or firms,
55 designated by the Board of Governors;
- 56 b. disburse all funds of the State Bar pursuant to the budget by means of checks or vouchers
57 signed by the Treasurer and by one of the following: the Secretary, the President, the
58 Immediate Past President, the President-elect, the Executive Director, the Acting
59 Executive Director, the Assistant Executive Director or the General Counsel; however, in
60 the absence of the Treasurer, the President or the Secretary shall sign all checks or
61 vouchers;
- 62 c. keep regular accounts which at all times shall be open to inspection by the members of
63 the State Bar;
- 64 d. report annually, and more frequently if required by the President or the Board of
65 Governors, with regard to the financial affairs of the State Bar; and
- 66 e. direct an annual audit of all funds, property and accounts of the State Bar performed by
67 an independent certified public accountant selected by the Board of Governors, the report
68 of which shall be delivered to the officers and made available to the membership.

69 **Section 7. Ex-officio Officers.**

70 The President, Immediate Past President, and President-elect of the Younger Lawyers Section
71 shall be ex-officio officers of the State Bar. Their duties shall be prescribed by the Board of
72 Governors or delegated by the President, President-elect, or the Executive Committee of the
73 State Bar.

74 **Section 8. Bond.**

75 A blanket fidelity bond shall be obtained to cover all officers, employees, or other persons
76 handling funds of the State Bar. The bond shall be payable to the State Bar in an amount, not less
77 than \$25,000, to be determined by the Board of Governors.



GENERAL COUNSEL

Paula J. Frederick

ATTORNEYS

William P. Smith III
Jenny K. Mittelman
John J. Shiptenko
Jonathan Hewett
Rebecca A. Hall
A.M. Christina Petrig
William J. Cobb
Wolanda Shelton
William D. Nesmith III

Memorandum to: Members, Board of Governors
From: Paula Frederick
Date: December 10, 2014
Re: Proposed rules changes

The Executive Committee has approved the following proposed revisions to the Rules of Professional Conduct, and submits them for your consideration:

Rules 4-110 and 4-204.1—Lines 1-20, attached. Housekeeping amendments to change references from the old “Standards” to “Rules.”

Rule 4-111—Lines 21-30, attached. Housekeeping amendment to delete an unnecessary reference to the standards.

Rules 4-217 and 4-219—Lines 32-56, attached. Standardizes the time requirements for filing/responding to Exceptions at the Review Panel and Supreme Court.

Rule 1.6—Lines 62-90, attached. Nonsubstantive amendment to clarify that the exception to confidentiality at 1.6(b)(3) applies only to subparts (i) and (ii) of 1.6(b)(1).

Rule 4-208.3—Lines 92-105, attached. Clarifies that a respondent must file a sworn response to the Notice of Investigation before rejecting a Notice of Discipline.

Rule 4-213—Lines 108-123, attached. Substantive change that requires the Bar to pay for the hearing transcript in a disciplinary matter, and clarifies when the Bar must purchase a copy of the transcript for a respondent who is unable to pay.

Rule 12-107—Lines 126-149, attached. Housekeeping amendment to change references from Standards to Rules.

Rule 3.5—Lines 152-201, attached. Substantive amendments to add subpart (c) and comment 7, which prohibit communication with a juror or prospective juror.

Rule 5.4—Lines 204-239, attached. Substantive amendments to add subpart (e), which addresses working with lawyers organized under alternative business structures and the sharing of fees with such lawyers.

Rule 8.4(d)—Lines 242-251, attached. Clarifies when subpart (a)(1) applies.

Rules 4-104, 4-204 and 4-221 (g)—Lines 252-308, attached. Replaces references to “Committee on Lawyer Impairment” (which no longer exists) with “Lawyer Assistance Program.”

Rule 4-403 (c) and (d)—Lines 311-341, attached. Allows proposed formal advisory opinions to be published on the Bar’s website as an alternative to the *Georgia Bar Journal*.

Rule 4-106(f)(2)—Lines 343-358, attached. Conforms the procedure for cases involving a criminal conviction so that it is the same as other cases. The report of the special master may be filed with the Review Panel (at the request of either party) or directly with the Supreme Court (if neither party requests Review Panel review).

Rule 4-227—Lines 360-371, attached. Clarifies that petitions for voluntary discipline should be filed with the Clerk of the State Disciplinary Board with copies served upon the Special Master and all parties.

Rule 7.3—Lines 373-483 (redline), and 486-577 (clean). Substantive changes that do away with the requirement that the Bar “certify” lawyer referral services and instead require lawyers to use only services that meet certain requirements.

1 **Rule 4-110. Definitions**

2 ...

3 i. Notice of Discipline: A Notice by the Investigative Panel that the respondent will be subject to
4 a disciplinary sanction for violation of one or more ~~Standards of Conduct~~ Rules unless the
5 respondent affirmatively rejects the notice

6

7

8 **Rule 4-204.1. Notice of Investigation (red-lined)**

9 ...

10 b. The Notice of Investigation shall accord the respondent reasonable notice of the charges
11 against him and a reasonable opportunity to respond to the charges in writing and shall contain:

- 12 1. a statement that the grievance is being transmitted to the Investigative Panel, or
13 subcommittee of the Investigative Panel;
- 14 2. a copy of the grievance;
- 15 3. a list of the ~~Standards of Conduct~~ Rules which appear to have been violated;
- 16 4. the name and address of the Panel member assigned to investigate the grievance and a
17 list of the Panel, or subcommittee of the Panel, members;
- 18 5. a statement of respondent's right to challenge the competency, qualifications or
19 objectivity of any Panel member;

20

21 **Rule 4-111 Audit for Cause (red-lined)**

22 Upon receipt of sufficient evidence that a lawyer who practices law in this State poses a threat of
23 harm to his clients or the public, the State Disciplinary Board may conduct an Audit for Cause
24 with the written approval of the Chairman of the Investigative Panel of the State Disciplinary
25 Board and the President-elect of the State Bar. Before approval can be granted, the lawyer shall
26 be given notice that approval is being sought and be given an opportunity to appear and be heard.
27 The sufficiency of the notice and opportunity to be heard shall be left to the sole discretion of the
28 persons giving the approval. The State Disciplinary Board must inform the person being audited
29 that the audit is an Audit for Cause. ~~The failure of a lawyer to submit to an Audit for Cause shall~~
30 ~~be grounds for discipline pursuant to Standard 65.5.~~

31

32 **Rule 4-217. Report of the Special Master to the Review Panel (red-lined)**

33 ...

34 (d) Upon receipt of the Special Master's report and recommendation, either party may request
35 review by the Review Panel as provided in Rule 4-218. Such party shall file the request and
36 exceptions with the Clerk of the State Disciplinary Board in accordance with Bar Rule 4-221(f)
37 and serve them on the opposing party within thirty (30) days after the Special Master's report is
38 filed with the Clerk of the State Disciplinary Board. Upon receipt of a timely written request and
39 exceptions, the Clerk of the State Disciplinary Board shall prepare and file the record and report
40 with the Review Panel. The responding party shall have ~~ten (10) days~~ thirty (30) days after
41 service of the exceptions within which to respond.

42

43

44

45 **Rule 4-219. Judgments and Protective Orders (red-lined)**

46 (a) After either the Review Panel's report or the Special Master's report is filed with the Supreme
47 Court, the respondent and the State Bar may file with the Court any written exceptions,
48 supported by written argument, each may have to the report subject to the provisions of Rule 4-
49 217(c). All such exceptions shall be filed with the Court within ~~twenty days~~ thirty days of the
50 date that the report is filed with the Court and a copy served upon the opposing party. The
51 responding party shall have an additional ~~twenty days~~ thirty days to file its response with the
52 Court. The court may grant oral argument on any exception filed with it upon application for
53 such argument by a party to the disciplinary proceedings. The Court will promptly consider the
54 report of the Review Panel or the Special Master, any exceptions, and any responses filed by any
55 party to such exceptions, and enter judgment upon the formal complaint. A copy of the Court's
56 judgment shall be transmitted to the State Bar and the respondent by the Court.

57 ...

58

59

60

61

62 **RULE 1.6 CONFIDENTIALITY OF INFORMATION (red-lined)**

63 . . .

64 b.

65 1. A lawyer may reveal information covered by paragraph (a) which the lawyer
66 reasonably believes necessary:

67 i. to avoid or prevent harm or substantial financial loss to another as a result
68 of client criminal conduct or third party criminal conduct clearly in
69 violation of the law;

70 ii. to prevent serious injury or death not otherwise covered by subparagraph
71 (i) above;

72 iii. to establish a claim or defense on behalf of the lawyer in a controversy
73 between the lawyer and the client, to establish a defense to a criminal
74 charge or civil claim against the lawyer based upon conduct in which the
75 client was involved, or to respond to allegations in any proceeding
76 concerning the lawyer's representation of the client;

77 iv. to secure legal advice about the lawyer's compliance with these Rules.

78 2. In a situation described in paragraph (b)(1), if the client has acted at the time the
79 lawyer learns of the threat of harm or loss to a victim, use or disclosure is
80 permissible only if the harm or loss has not yet occurred.

81 3. Before using or disclosing information pursuant to paragraph (b)(1) (i) and (ii), if
82 feasible, the lawyer must make a good faith effort to persuade the client either not
83 to act or, if the client has already acted, to warn the victim.

84 b. The lawyer may, where the law does not otherwise require, reveal information to which
85 the duty of confidentiality does not apply under paragraph (b) without being subjected to
86 disciplinary proceedings.

87 c. The lawyer shall reveal information under paragraph (b) as the applicable law requires.

88 d. The duty of confidentiality shall continue after the client-lawyer relationship has
89 terminated.

90 The maximum penalty for a violation of this Rule is disbarment.

91

92 **Rule 4-208.3. Rejection of Notice of Discipline (red-lined)**

93 (a) In order to reject The Notice of Discipline the Respondent or the Office of the General
94 Counsel must file a Notice of Rejection of the Notice of Discipline with the Clerk of the
95 Supreme Court of Georgia within thirty (30) days following service of the Notice of Discipline.

96 (b) Any Notice of Rejection by the Respondent shall be served by the Respondent upon the
97 Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office
98 of the General Counsel of the State Bar of Georgia shall be served by the General Counsel upon
99 the Respondent. No rejection by the Respondent shall be considered valid unless the Respondent
100 files a written response ~~under oath to the pending grievance as required by Rule 4-204.3~~ at or
101 before the filing of the rejection. The Respondent must also file a copy of such written response
102 with the Clerk of the Supreme Court at the time of filing the Notice of Rejection.

103 (c) The timely filing of a Notice of Rejection shall constitute an election for the Coordinating
104 Special Master to appoint a Special Master and the matter shall thereafter proceed pursuant to
105 Bar Rules 4-209 through 4-225.

106

107

108 **Rule 4-213. Evidentiary Hearing (red-lined)**

109

110 (a) Within ninety (90) days after the filing of Respondent's answer to the formal complaint or the
111 time for filing of the answer, whichever is later, the Special Master shall proceed to hear the
112 case. The evidentiary hearing shall be ~~stenographically reported and may be transcribed at the~~
113 ~~request and expense of the requesting party~~ and transcribed at the expense of the State Bar of
114 Georgia. When the hearing is complete, the Special Master shall proceed to make findings of
115 fact, conclusions of law and a recommendation of discipline and file a report with the Review
116 Panel or the Supreme Court as hereinafter provided. Alleged errors in the trial may be reviewed
117 by the Supreme Court when the findings and recommendations of discipline of the Review Panel

118 are filed with the Court. There shall be no direct appeal from such proceedings of the Special
119 Master.

120 (b) Upon Respondent's a showing of necessity and financial inability to pay for a copy of the
121 transcript ~~a showing of financial inability by the respondent to pay for the transcription~~, the
122 Special Master shall order the State Bar of Georgia to purchase a copy of the transcript for
123 Respondent ~~provide the transcript~~.

124

125

126 **Rule 12-107. Confidentiality of Proceedings (red-lined)**

127

128 (a) All investigations and proceedings provided for herein shall be confidential unless the
129 respondent otherwise elects or as hereinafter provided in this rule and Part IV of the Bar Rules.

130 (b) Except as expressly permitted by these rules, no person connected with the Consumer
131 Assistance Program shall disclose information concerning or comment on any proceeding under
132 Part XII of these rules.

133 (1) Nothing in the rules shall prohibit truthful and accurate public statements of fact about a
134 proceeding under Part XII of these rules, provided however, that in the event of such statement
135 any other person involved in the proceeding may make truthful and accurate public statements of
136 fact regarding the proceeding, including information otherwise confidential under the provisions
137 of Rule 4-102(d), ~~Standard 28~~ Rule 1.6, as may be reasonably necessary to defend that person's
138 reputation;

139 (2) Willful and malicious false statements of fact made by any person connected with a
140 proceeding under Part XII of these rules may subject such person to rule for contempt by the
141 Supreme Court.

142 (c) In the event the conduct of the attorney appears to violate one or more of the ~~standards of~~
143 ~~conduct~~ Rules of Professional Conduct set forth in Part IV of the Bar Rules, and Consumer
144 Assistance staff in its sole discretion makes a determination under Rule 12-106 that the matter
145 cannot be resolved informally, then the Consumer Assistance staff shall inform callers of their
146 option to file a grievance and shall advise the General Counsel's office to send the appropriate
147 forms to the callers.

148 (d) The Consumer Assistance Committee and staff may reveal confidential information when
149 required by law or court order.

150

151

152 **RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL (red-lined)**

153

154 A lawyer shall not, without regard to whether the lawyer represents a client in the matter:

155 a. seek to influence a judge, juror, prospective juror or other official by means prohibited by
156 law;

157 b. communicate ex parte with such a person except as permitted by law; ~~or~~

158 c. communicate with a juror or prospective juror after discharge of the jury if:

159 1. the communication is prohibited by law or court order; or

160 2. the juror has made known to the lawyer a desire not to communicate; or

161 3. the communication involves misrepresentation, coercion, duress or harassment; or

162 d. engage in conduct intended to disrupt a tribunal.

163 The maximum penalty for a violation of part (a) and part (c) of this Rule is disbarment. The

164 maximum penalty for a violation of part (b) or part ~~(e)~~ (d) of this Rule is a public reprimand.

165 Comment

166 [1] Many forms of improper influence upon the tribunal are proscribed by criminal law. All of
167 those are specified in the Georgia Code of Judicial Conduct with which an advocate should be
168 familiar. Attention is also directed to Rule 8.4: Misconduct, which governs other instances of
169 improper conduct by a lawyer/candidate.

170 [2] If we are to maintain the integrity of the judicial process, it is imperative that an advocate's
171 function be limited to the presentation of evidence and argument, to allow a cause to be decided
172 according to law. The exertion of improper influence is detrimental to that process. Regardless of
173 an advocate's innocent intention, actions which give the appearance of tampering with judicial
174 impartiality are to be avoided. The activity proscribed by this Rule should be observed by the
175 advocate in such a careful manner that there be no appearance of impropriety.

176 [3A] The Rule with respect to ex parte communications limits direct communications except as
177 may be permitted by law. Thus, court rules or case law must be referred to in order to determine
178 whether certain ex parte communications are legitimate. Ex parte communications may be

179 permitted by statutory authorization.

180 [3B] A lawyer who obtains a judge's signature on a decree in the absence of the opposing lawyer
181 where certain aspects of the decree are still in dispute, may have violated Rule 3.5: Impartiality
182 and Decorum of the Tribunal regardless of the lawyer's good intentions or good faith.

183 [4] A lawyer may communicate as to the merits of the cause with a judge in the course of official
184 proceedings in the case, in writing if the lawyer simultaneously delivers a copy of the writing to
185 opposing counsel or to the adverse party if the party is not represented by a lawyer, or orally
186 upon adequate notice to opposing counsel or to the adverse party if the party is not represented
187 by a lawyer.

188 [5] If the lawyer knowingly instigates or causes another to instigate a communication proscribed
189 by Rule 3.5: Impartiality and Decorum of the Tribunal, a violation may occur.

190 [6] Direct or indirect communication with a juror during the trial is clearly prohibited. A lawyer
191 may not avoid the proscription of Rule 3.5: Impartiality and Decorum of the Tribunal by using
192 agents to communicate improperly with jurors. A lawyer may be held responsible if the lawyer
193 was aware of the client's desire to establish contact with jurors and assisted the client in doing so.

194 [7] ~~Reserved: A lawyer may on occasion want to communicate with a juror after the jury has~~
195 ~~been discharged. The lawyer may do so unless the communication is prohibited by law or a~~
196 ~~court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may~~
197 ~~not engage in improper conduct during the communication.~~

198 [8] While a lawyer may stand firm against abuse by a judge, the lawyer's actions should avoid
199 reciprocation. Fairness and impartiality of the trial process is strengthened by the lawyer's
200 protection of the record for subsequent review and this preserves the professional integrity of the
201 legal profession by patient firmness.

202

203

204 **RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER (red-lined)**

205 ...

206 d. A lawyer shall not practice with or in the form of a professional corporation or association
207 authorized to practice law for a profit, if:

208 1. a nonlawyer owns any interest therein, except that a fiduciary representative of the
209 estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during
210 administration;

211 2. a nonlawyer is a corporate director or officer thereof; or

212 3. a nonlawyer has the right to direct or control the professional judgment of a lawyer.

213

214 e. Notwithstanding the provisions of paragraph (d) above, but subject to (3) below, a lawyer
215 may

216 1. Provide legal services to clients while working in association with other lawyers
217 or law firms practicing in, and organized under the rules of, other jurisdictions,
218 whether domestic or foreign, including any such rules that permit non-lawyers to
219 participate in the management of such firms, have equity ownership in such firms,
220 or share in legal fees generated by such firms, and

221 2. Share legal fees arising from such legal services with such other lawyers or law
222 firms to the same extent as the sharing of legal fees is permitted under applicable
223 Georgia Rules of Professional Conduct.

224 3. The activities permitted under the preceding portion of this paragraph (e) are
225 subject to the following:

226 i. The association shall not compromise or interfere with the lawyer's
227 independence of professional judgment, the client-lawyer relationship
228 between the lawyer and the client, or the lawyer's compliance with these
229 rules; and

230 ii. Nothing in this paragraph (e) is intended to affect the lawyer's obligation
231 to comply with other applicable rules of professional ethics, or to alter the
232 forms in which a lawyer is permitted to practice.

233 The maximum penalty for a violation of this Rule is disbarment.

234 Comment

235 [1] The provisions of this Rule express traditional limitations on sharing fees. These limitations
236 are to protect the lawyer's professional independence of judgment. Where someone other than the
237 client pays the lawyer's fee or salary, or recommends employment of the lawyer, that

238 arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c),
239 such arrangements should not interfere with the lawyer's professional judgment.

240

241

242 **RULE 8.4 MISCONDUCT (red-lined)**

243 a. It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:

244 1. violate or knowingly attempt to violate the Georgia Rules of Professional Conduct,

245 knowingly assist or induce another to do so, or do so through the acts of another;

246 . . .

247 d. Rule 8.4(a)(1) does not apply to ~~Part Six of the Georgia Rules of Professional Conduct~~ any of
248 the Georgia Rules of Professional Conduct for which there is no disciplinary penalty.

249 The maximum penalty for a violation of Rule 8.4(a)(1) is the maximum penalty for the specific
250 Rule violated. The maximum penalty for a violation of Rule 8.4(a)(2) through Rule 8.4(c) is
251 disbarment.

252 **Rule 4-104. Mental Incapacity and Substance Abuse (red-line)**

253 . . .

254 b. Upon a finding by either panel of the State Disciplinary Board that an attorney may be
255 impaired or incapacitated to practice law due to mental incapacity or substance abuse, that panel
256 may, in its sole discretion, make a confidential referral of the matter to the ~~Committee on Lawyer~~
257 ~~Impairment~~ Lawyer Assistance Program for the purposes of confrontation and referral of the
258 attorney to treatment centers and peer support groups. Either panel may, in its discretion, defer
259 disciplinary findings and proceedings based upon the impairment or incapacitation of an attorney
260 pending attempts by the ~~Committee on Lawyer Impairment~~ Lawyer Assistance Program to afford
261 the attorney an opportunity to begin recovery. In such situations the committee shall report to the
262 referring panel and Bar counsel concerning the attorney's progress toward recovery.

263 c. In the event of a finding by the Supreme Court of Georgia that a lawyer is impaired or
264 incapacitated, the Court may refer the matter to the ~~Committee on Lawyer Impairment~~ Lawyer
265 Assistance Program, before or after its entry of judgment under Bar Rules 4-219 or 4-220(a), so
266 that rehabilitative aid may be provided to the impaired or incapacitated attorney. In such

267 situations the ~~committee~~ Program shall be authorized to report to the Court, either panel of the
268 State Disciplinary Board and Bar counsel concerning the attorney's progress toward recovery.

269

270

271 **Rule 4-204. Preliminary Investigation by Investigative Panel-Generally (red-line)**

272

273 a. Each grievance alleging conduct which appears to invoke the disciplinary jurisdiction of
274 the State Disciplinary Board of the State Bar of Georgia shall be referred in accordance with
275 Rule 4-204.1 by the Office of the General Counsel to the Investigative Panel or a subcommittee
276 of the Investigative Panel for investigation and disposition in accordance with its rules. The
277 Investigative Panel shall appoint one of its members to be responsible for the investigation. The
278 Office of the General Counsel shall simultaneously assign a staff investigator to assist in the
279 investigation. If the investigation of the Panel establishes probable cause to believe that the
280 respondent has violated one or more of the provisions of Part IV, Chapter 1 of these rules, it
281 shall:

282

1. issue a letter of admonition;

283

2. issue an Investigative Panel Reprimand;

284

3. issue a Notice of Discipline; or

285

4. refer the case to the Supreme Court of Georgia for hearing before a special
286 master and file a formal complaint with the Supreme Court of Georgia, all
287 as hereinafter provided.

288

All other cases may be either dismissed by the Investigative Panel or

289

referred to the Fee Arbitration Committee or the ~~Committee on Lawyer~~

290

~~Impairment~~ Lawyer Assistance Program.

291

292

293 **Rule 4-221. Procedures (red-line)**

294

295 (a) ...

296 (b) ...

297 (c) ...

298 (d) ...
299 (e) ...
300 (f) ...
301 (g) Pleadings and Communications Privileged. Pleadings and oral and written statements of
302 members of the State Disciplinary Board, members and designees of the ~~Committee on Lawyer~~
303 ~~Impairment~~ Lawyer Assistance Program, Special Masters, Bar counsel and investigators,
304 complainants, witnesses, and respondents and their counsel made to one another or filed in the
305 record during any investigation, intervention, hearing or other disciplinary proceeding under this
306 Part IV, and pertinent to the disciplinary proceeding, are made in performance of a legal and
307 public duty, are absolutely privileged, and under no circumstances form the basis for a right of
308 action.

309

310

311 **Rule 4-403. Formal Advisory Opinions (red-line)**

312 ...

313 (c) When the Formal Advisory Opinion Board makes a preliminary determination that a
314 Proposed Formal Advisory Opinion should be drafted, it shall publish the Proposed Formal
315 Advisory Opinion either in an official publication of the State Bar of Georgia or on the State Bar
316 of Georgia's website, and solicit comments from the members of the Bar. Following a reasonable
317 period of time for receipt of comments from the members of the Bar, the Formal Advisory
318 Opinion Board shall then make a final determination to either file the Proposed Formal Advisory
319 Opinion as drafted or modified, or reconsider its decision and decline to draft and file the
320 Proposed Formal Advisory Opinion.

321 (d) After the Formal Advisory Opinion Board makes a final determination that the Proposed
322 Formal Advisory Opinion should be drafted and filed, the Formal Advisory Opinion shall then
323 be filed with the Supreme Court of Georgia and republished either in an official publication of
324 the State Bar of Georgia or on the State Bar of Georgia's website. Unless the Supreme Court
325 grants review as provided hereinafter, the opinion shall be binding only on the State Bar of
326 Georgia and the person who requested the opinion, and not on the Supreme Court, which shall
327 treat the opinion as persuasive authority only. Within 20 days of the filing of the Formal
328 Advisory Opinion or the date the publication is mailed to the members of the Bar (if the opinion

329 is published in an official publication of the State Bar of Georgia), or first appears on the State
330 Bar of Georgia’s website (if the opinion is published on the website), whichever is later, the State
331 Bar of Georgia or the person who requested the opinion may file a petition for discretionary
332 review thereof with the Supreme Court of Georgia. The petition shall designate the Formal
333 Advisory Opinion sought to be reviewed and shall concisely state the manner in which the
334 petitioner is aggrieved. If the Supreme Court grants the petition for discretionary review or
335 decides to review the opinion on its own motion, the record shall consist of the comments
336 received by the Formal Advisory Opinion Board from members of the Bar. The State Bar of
337 Georgia and the person requesting the opinion shall follow the briefing schedule set forth in
338 Supreme Court Rule 10, counting from the date of the order granting review. The final
339 determination may be either by written opinion or by order of the Supreme Court and shall state
340 whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for
341 such other final disposition as is appropriate.

342

343 **Rule 4-106. Conviction of a Crime; Suspension and Disbarment (red-line)**

344

345 ...

346 f. 1. If the Supreme Court of Georgia orders the Respondent suspended pending the appeal,
347 upon the termination of the appeal the State Bar of Georgia may petition the Special
348 Master to conduct a hearing for the purpose of determining whether the circumstances of
349 the termination of the appeal indicate that the suspended Respondent should:

- 350 i. be disbarred under Rule 8.4, or
- 351 ii. be reinstated, or
- 352 iii. remain suspended pending retrial as a protection to the public, or
- 353 iv. be reinstated while the facts giving rise to the conviction are investigated and, if
354 proper, prosecuted under regular disciplinary procedures in these rules.

355 2. The Reports of the Special Master shall be filed with the Review Panel or the Supreme Court
356 as provided hereafter in Bar Rule 4-217. The Review Panel shall make its findings and
357 recommendation as provided hereafter in Bar Rule 4-218.

358

359

360 **Rule 4-227. Petitions for Voluntary Discipline (red-line)**

361

362 ...

363 (c) After the issuance of a formal complaint a Respondent may submit a petition for voluntary
364 discipline seeking any level of discipline authorized under these rules.

365 (1) The petition shall be filed with the Clerk of the State Disciplinary Board at the headquarters
366 of the State Bar of Georgia and copies served upon the Special Master and all parties to the
367 disciplinary proceeding. The Special Master ~~who~~ shall allow bar counsel 30 days within which to
368 respond. The Office of General Counsel may assent to the petition or may file a response, stating
369 objections and giving the reasons therefore. The Office of General Counsel shall serve a copy of
370 its response upon the respondent.

371 ...

372

373 **RULE 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS (red-lined)**

374 a. . . .

375 b. . . .

376 c. A lawyer shall not compensate or give anything of value to a person or organization to
377 recommend or secure the lawyer's employment by a client, or as a reward for having
378 made a recommendation resulting in the lawyer's employment by a client; except that the
379 lawyer may pay for public communications permitted by Rule 7.1 and except as follows:

380 1. A lawyer may pay the usual and reasonable fees or dues charged by a ~~bona fide~~
381 lawyer referral ~~service if the service:~~ service operated by an organization
382 authorized by law and qualified to do business in this state; provided, however,
383 such organization has filed with the State Disciplinary Board, at least annually, a
384 report showing its terms, its subscription charges, agreements with counsel, the
385 number of lawyers participating, and the names and addresses of lawyers
386 participating in the service;

387 i. does not engage in conduct that would violate these Rules if engaged in by
388 a lawyer;

389 ii. provides an explanation to the prospective client regarding how the
390 lawyers are selected by the service to participate in the service; and

391 iii. discloses to the prospective client how many lawyers are participating in
392 the service and that those lawyers have paid the service a fee to participate
393 in the service.

394 2. A lawyer may pay the usual and reasonable fees or dues charged by a bar-
395 operated non-profit lawyer referral service, including a fee which is calculated as
396 a percentage of the legal fees earned by the lawyer to whom the service has
397 referred a matter, provided such bar-operated non-profit lawyer referral service
398 meets the following criteria:

- 399 i. the lawyer referral service shall be operated in the public interest for the
400 purpose of referring prospective clients to lawyers, pro bono and public
401 service legal programs, and government, consumer or other agencies who
402 can provide the assistance the clients need. Such organization shall file
403 annually with the State Disciplinary Board a report showing its rules and
404 regulations, its subscription charges, agreements with counsel, the number
405 of lawyers participating and the names and addresses of the lawyers
406 participating in the service;
- 407 ii. the sponsoring bar association for the lawyer referral service must be open
408 to all lawyers licensed and eligible to practice in this state who maintain
409 an office within the geographical area served, and who meet reasonable
410 objectively determinable experience requirements established by the bar
411 association;
- 412 iii. The combined fees charged by a lawyer and the lawyer referral service to
413 a client referred by such service shall not exceed the total charges which
414 the client would have paid had no service been involved; and,
- 415 iv. A lawyer who is a member of the qualified lawyer referral service must
416 maintain in force a policy of errors and omissions insurance in an amount
417 no less than \$100,000 per occurrence and \$300,000 in the aggregate.
- 418 3. A lawyer may pay the usual and reasonable fees to a qualified legal services plan
419 or insurer providing legal services insurance as authorized by law to promote the
420 use of the lawyer's services, the lawyer's partner or associates services so long as
421 the communications of the organization are not false, fraudulent, deceptive or
422 misleading;
- 423 ~~4. A lawyer may pay the usual and reasonable fees charged by a lay public relations~~
424 ~~or marketing organization provided the activities of such organization on behalf~~
425 ~~of the lawyer are otherwise in accordance with these Rules.~~

426 ~~5.4. A lawyer may pay for a law practice in accordance with Rule 1.17: Sale of Law~~
427 ~~Practice.~~

428 d. A lawyer shall not solicit professional employment as a private practitioner for the
429 lawyer, a partner or associate through direct personal contact or through live telephone
430 contact, with a non-lawyer who has not sought advice regarding employment of a lawyer.

431 e. A lawyer shall not accept employment when the lawyer knows ~~or it is obvious or~~
432 reasonably should know that the person who seeks to employ the lawyer does so as a
433 result of conduct by any person or organization that would violate these Rules if engaged
434 in by a lawyer. ~~prohibited under Rules 7.3(e)(1), 7.3(e)(2) or 7.3(d): Direct Contact with~~
435 ~~Prospective Clients.~~

436 The maximum penalty for a violation of this Rule is disbarment.

437 **Comment**

438 *Direct Personal Contact*

439 [1] There is a potential for abuse inherent in solicitation through direct personal contact by a
440 lawyer of prospective clients known to need legal services. It subjects the lay person to the
441 private importuning of a trained advocate, in a direct interpersonal encounter. A prospective
442 client often feels overwhelmed by the situation giving rise to the need for legal services, and may
443 have an impaired capacity for reason, judgment and protective self-interest. Furthermore, the
444 lawyer seeking the retainer is faced with a conflict stemming from the lawyer's own interest,
445 which may color the advice and representation offered the vulnerable prospect.

446 [2] The situation is therefore fraught with the possibility of undue influence, intimidation, and
447 overreaching. The potential for abuse inherent in solicitation of prospective clients through
448 personal contact justifies its prohibition, particularly since the direct written contact permitted
449 under paragraph (b) of this Rule offers an alternative means of communicating necessary
450 information to those who may be in need of legal services. Also included in the prohibited types
451 of personal contact are direct personal contact through an intermediary and live contact by
452 telephone.

453 *Direct ~~Mail~~ Written Solicitation*

454 [3] Subject to the requirements of Rule 7.1: ~~Communications Concerning a Lawyer's Services~~
455 and paragraphs (b) and (c) of this Rule 7.3: ~~Direct Contact with Prospective Clients~~, promotional
456 communication by a lawyer through direct written contact is generally permissible. The public's
457 need to receive information concerning their legal rights and the availability of legal services has
458 been consistently recognized as a basis for permitting direct written communication since this
459 type of communication may often be the best and most effective means of informing. So long as
460 this stream of information flows cleanly, it will be permitted to flow freely.

461 [4] Certain narrowly-drawn restrictions on this type of communication are justified by a
462 substantial state interest in facilitating the public's intelligent selection of counsel, including the
463 restrictions of sub-paragraph (a)(3) & (4) which proscribe direct mailings to persons such as an
464 injured and hospitalized accident victim or the bereaved family of a deceased.

465 [5] In order to make it clear that the communication is commercial in nature, paragraph (b)
466 requires inclusion of an appropriate affirmative "advertisement" disclaimer. Again, the
467 traditional exception for contact with close friends, relatives and former clients is recognized and
468 permits elimination of the disclaimer in direct written contact with these persons.

469 [6] This Rule does not prohibit communications authorized by law, such as notice to members of
470 a class in class action litigation.

471 *Paying Others to Recommend a Lawyer*

472 [7] A lawyer is allowed to pay for communications permitted by these Rules, but otherwise is not
473 permitted to pay another person for channeling professional work. This restriction does not
474 prevent an organization or person other than the lawyer from advertising or recommending the
475 lawyer's services. Thus, a legal aid agency, a prepaid legal services plan or prepaid legal
476 insurance organization may pay to advertise legal services provided under its auspices. ~~Likewise,~~
477 ~~a lawyer may participate in lawyer referral programs and pay the usual fees charged by such~~
478 ~~programs, provided the programs are in compliance with the registration requirements of sub-~~
479 ~~paragraph (c)(1) or (c)(2) of this Rule 7.3: Direct Contact with Prospective Clients and the~~
480 ~~communications and practices of the organization are not deceptive or misleading.~~

481 ~~[8] A lawyer may not indirectly engage in promotional activities through a lay public relations or~~
482 ~~marketing firm if such activities would be prohibited by these Rules if engaged in directly by the~~
483 ~~lawyer.~~

484

485

486 **RULE 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS (clean)**

487 a. . . .

488 b. . . .

489 c. A lawyer shall not compensate or give anything of value to a person or organization to
490 recommend or secure the lawyer's employment by a client, or as a reward for having
491 made a recommendation resulting in the lawyer's employment by a client; except that the
492 lawyer may pay for public communications permitted by Rule 7.1 and except as follows:

493 1. A lawyer may pay the usual and reasonable fees or dues charged by a lawyer
494 referral service if the service:

495 i. does not engage in conduct that would violate these Rules if engaged in by
496 a lawyer;

497 ii. provides an explanation to the prospective client regarding how the
498 lawyers are selected by the service to participate in the service; and

499 iii. discloses to the prospective client how many lawyers are participating in
500 the service and that those lawyers have paid the service a fee to participate
501 in the service.

502 2. A lawyer may pay the usual and reasonable fees or dues charged by a bar-
503 operated non-profit lawyer referral service, including a fee which is calculated as
504 a percentage of the legal fees earned by the lawyer to whom the service has
505 referred a matter, provided such bar-operated non-profit lawyer referral service
506 meets the following criteria:

- 507 i. the lawyer referral service shall be operated in the public interest for the
508 purpose of referring prospective clients to lawyers, pro bono and public
509 service legal programs, and government, consumer or other agencies who
510 can provide the assistance the clients need. Such organization shall file
511 annually with the State Disciplinary Board a report showing its rules and
512 regulations, its subscription charges, agreements with counsel, the number
513 of lawyers participating and the names and addresses of the lawyers
514 participating in the service;
- 515 ii. the sponsoring bar association for the lawyer referral service must be open
516 to all lawyers licensed and eligible to practice in this state who maintain
517 an office within the geographical area served, and who meet reasonable
518 objectively determinable experience requirements established by the bar
519 association;
- 520 iii. The combined fees charged by a lawyer and the lawyer referral service to
521 a client referred by such service shall not exceed the total charges which
522 the client would have paid had no service been involved; and,
- 523 iv. A lawyer who is a member of the qualified lawyer referral service must
524 maintain in force a policy of errors and omissions insurance in an amount
525 no less than \$100,000 per occurrence and \$300,000 in the aggregate.
- 526 3. A lawyer may pay the usual and reasonable fees to a qualified legal services plan
527 or insurer providing legal services insurance as authorized by law to promote the
528 use of the lawyer's services, the lawyer's partner or associates services so long as
529 the communications of the organization are not false, fraudulent, deceptive or
530 misleading;
- 531 4. A lawyer may pay for a law practice in accordance with Rule 1.17.
- 532 d. A lawyer shall not solicit professional employment as a private practitioner for the
533 lawyer, a partner or associate through direct personal contact or through live telephone
534 contact, with a non-lawyer who has not sought advice regarding employment of a lawyer.

535 e. A lawyer shall not accept employment when the lawyer knows or reasonably should
536 know that the person who seeks to employ the lawyer does so as a result of conduct by
537 any person or organization that would violate these Rules if engaged in by a lawyer.

538 The maximum penalty for a violation of this Rule is disbarment.

539 **Comment**

540 *Direct Personal Contact*

541 [1] There is a potential for abuse inherent in solicitation through direct personal contact by a
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544 client often feels overwhelmed by the situation giving rise to the need for legal services, and may
545 have an impaired capacity for reason, judgment and protective self-interest. Furthermore, the
546 lawyer seeking the retainer is faced with a conflict stemming from the lawyer's own interest,
547 which may color the advice and representation offered the vulnerable prospect.

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549 overreaching. The potential for abuse inherent in solicitation of prospective clients through
550 personal contact justifies its prohibition, particularly since the direct written contact permitted
551 under paragraph (b) of this Rule offers an alternative means of communicating necessary
552 information to those who may be in need of legal services. Also included in the prohibited types
553 of personal contact are direct personal contact through an intermediary and live contact by
554 telephone.

555 *Direct Written Solicitation*

556 [3] Subject to the requirements of Rule 7.1 and paragraphs (b) and (c) of this Rule 7.3,
557 promotional communication by a lawyer through direct written contact is generally permissible.
558 The public's need to receive information concerning their legal rights and the availability of legal
559 services has been consistently recognized as a basis for permitting direct written communication
560 since this type of communication may often be the best and most effective means of informing.
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564 restrictions of sub-paragraph (a)(3) & (4) which proscribe direct mailings to persons such as an
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575 prevent an organization or person other than the lawyer from advertising or recommending the
576 lawyer's services. Thus, a legal aid agency, a prepaid legal services plan or prepaid legal
577 insurance organization may pay to advertise legal services provided under its auspices.

Fulton County Business Case Division
Key Performance Indicators (2014)

The Business Court facilitates the just resolution of complex commercial cases in a timely and cost efficient manner while meeting the special needs of complex civil cases such as the large amounts of documentary evidence, complex discovery issues, high ratio of dispositive motions, and complex questions of substantive law, which require additional judicial time and expertise to resolve. By grouping like cases before judges with expertise and experience in the substantive area of law, these cases can be resolved more efficiently than on the general docket. This decrease in the learning curve on the substantive matters (through repeated exposure), familiarity with the unique discovery and management needs of these types of cases, and a flexible docket (i.e., no criminal cases) helps the Business Court efficiently resolve complex commercial matters.

Business Court Program Objectives:

- Promote the timely and just resolution of complex commercial and business disputes in order to provide services to the many businesses in Fulton County.
- Promote efficient case assignment, management, and resolution in Fulton County Superior Court.
- Promote the development of business law in Georgia and the reputation of Fulton County as a business-friendly location in order to build/sustain the economic base.

Case Load:

In 2014 YTD, the Business Court has handled 48 total cases with 29 cases currently active. The number of cases accepted, closed, and actively pending for 2014 YTD and 2013 for the same period are represented below.

	Current 2014 (as of 10/13/14)	Prior year (as of 10/13/13)
Total Cases Accepted:	19 (2 case declined)	19 (2 cases declined)
Total Cases Closed:	19	14
Total Active Cases:	29	30

Also notable in 2014 is an increase in party-requested transfers as compared to the same period in 2013, generating increased transfer fee revenues and signaling an increased awareness of the Business Court's services within the legal and business communities.

Method of Transfer	Current 2014 (as of 10/13/14)	Prior year (as of 10/13/13)
Judicial Request	6	11
Party Motion	15	10

Financial Information:

Transfer Fees Collected YTD: \$13,000*¹

Senior Judge Pay:

	2014 (through July)	2013 (through July)	2012 (through July)
Total Pay	\$9,466 Annualized: \$16,227 (Approx. \$7,000 to finish out year)	\$14,200.22	\$17,078.74

Current Reserves (as of 8/22/14):

State Bar Grant: Approx. \$8,300 of the original \$12,000 left to spend

Transfer Fee Revenue: Approx. \$50,000 (only \$966.95 spent back in 2012)

Other Key Performance Indicators (through July 2014):

	2014	2014
	Actual (YTD)	Projection(YE)
Average Caseload	32	35
# Businesses Served by Business Court	196	296
# Attorneys Served by Business Court	283	330
# of Hearings	16	30
# of Orders	119	200
# of Trials	0	1
# of Case Management Services (availability)	11	22
# of Business Court Seminars (expertise)	4	8
# Relationship Building Activities with Chamber of Commerce, State Bar, and/or Georgia Law Schools	10	24

¹ A transfer fee was not collected in one case which was approved for transfer but was dismissed without prejudice before the transfer fee deadline passed. See *NNN Satellite 1100 & 2000 1, LLC. Et al. v. Daymark Realty Advisors, Inc.*, Civil Action File No. 2014CV242709. Another party motion was denied. See *Smith Gambrell & Russell v. 1230 Peachtree Associates*, Civil Action File No. 2014CV250516.

**Business Case Division: Statistical Analysis
2006-2014**

The following summary is taken from data from the inception of the Business Court in 2006 through July 16, 2014.

Over the life of the Business Case Division, 256 requests have been filed seeking transfer to the Business Court:

- 151 requests by party (59%)
- 105 requests by judges (41%).

Of these cases seeking transfer, 191 requests were accepted, 62 requests were declined, and 3 requests were withdrawn.

Of the 191 cases accepted for transfer, 34 cases are active, though 5 cases are stayed pending interlocutory appeal and 5 cases are stayed pending settlement.

Of the 157 cases that the court has closed:

- 87 were dismissed with prejudice by the parties,
- 27 were dismissed without prejudice by the parties,
- 9 were disposed of by the court on motions to dismiss,
- 18 were disposed of by the court on motions for summary judgment,
- 11 were disposed of in another fashion (removal to federal court, arbitration compelled, etc)
- 5 were disposed of by trial.

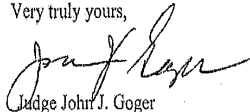
Second, the effort to increase the number of international arbitrations in Atlanta enjoys widespread support in the legal community and business community, and has garnered positive publicity in both the local and national press, including a recent mention in a New York Times article.¹ Partnering with the international arbitration efforts in its early stages will necessarily increase awareness of the current services provided by the Fulton County Business Case Division.

Finally, it is anticipated that most of these cases will require very little judicial resources. With a \$1,000 transfer fee in place, it is likely that the senior judge costs associated with any international arbitration matter transferred to the Business Case Division will not exceed the transfer fees collected.

Given the expected benefits to the Business Case Division, I ask on behalf of the Judges' Business Case Division Committee and ATLAS that the State Bar Business Court Committee present the proposed rule change to the State Bar Executive Committee for consideration by the Board of Governors. It is my understanding that the next Executive Committee meeting is to be held on November 20, 2014, and the next Board of Governors meeting will be held January 8-10, 2015.

This Committee has been an important resource to Fulton County Superior Court for many years, and has provided critical assistance in implementing rule changes that have led to stability and growth of the Division. We appreciate your consideration of this initiative and will be happy to provide any assistance needed.

Very truly yours,



Judge John J. Goger

¹ Clemmie Spalton, *New Hearing Centre For Atlanta*, GLOBAL ARBITRATION REVIEW, July 15, 2014; Meredith Hobbs & Julie Kay, *Atlanta vs. Miami*, FULTON DAILY REPORT, July 21, 2014; Elizabeth Olson, *Cities Compete to Be the Arena for Global Legal Disputes*, N. Y. TIMES, Sept. 11, 2014.



Superior Court of Fulton County

185 Central Avenue, S. W.

Atlanta, Georgia 30303

CHAMBERS OF
JUDGE JOHN J. GOGER

PHONE (404) 612-8671
FAX (404) 224-0580

October 13, 2014

Joel O. Wooten
Butler, Wooten & Fryhofer, LLP
105 13th Street
Columbus, Georgia 31901

Dear Mr. Wooten:

I write to you as the Chairperson of the State Bar Business Court Committee about a Business Case Division rule change proposal received from Atlanta International Arbitration Society ("ATLAS"). On August 20, 2014, ATLAS proposed a rule change to the current Atlanta Judicial Circuit Rule 1004 (the "Business Case Division Rule") to allow cases subject to the Georgia International Arbitration Code to be transferred to the Business Case Division. ATLAS's proposal and a redlined version of the relevant paragraphs of Rule 1004 with suggested revisions are attached to this letter.

At its August 22, 2014 meeting, the Fulton County Judges' Business Case Division Committee voted to recommend the proposed rule change as set forth in ATLAS's proposal but not the standing order revision which would reduce the transfer fee for international arbitration cases to \$300.

ATLAS's effort to establish a specialized court to hear disputes subject to international arbitration is consistent with similar efforts in New York and Miami. Atlanta, through ATLAS and in partnership with the new Atlanta Center for International Arbitration and Mediation at Georgia State University School of Law, is competing with New York and Miami to become the preferred venue for international arbitration.

While it is unlikely that the rule change will significantly increase the case load of the Fulton County Business Case Division, the rule change benefits the court is several ways. First and foremost, the rule change demonstrates the Business Case Division's commitment and responsiveness to the needs of Georgia's business and legal communities.

August 20, 2014

Judge John J. Goger
Chair, Business Court Committee
c/o Jody Rhodes, Business Court Program Director
Justice Tower Center
185 Central Avenue, SW
Atlanta, Georgia 30303

Re: Proposed Amendments to Atlanta Judicial Circuit Rule 1004 Pertaining to Cases
Subject to the Georgia International Arbitration Code.

Dear Judge Goger:

I write on behalf of the Atlanta International Arbitration Society ("Atlas") to follow up on discussions with Judge Westmoreland and Fulton County Business Court Program Director, Jody Rhodes, about possible amendments to Local Rule 1004 and to the Standing Order Regarding Transfer Fee Amount. These amendments would make the Fulton Superior Court Business Case Division available for proceedings pertaining to international arbitration under the Georgia International Arbitration Code O.C.G.A. § 9-9-20 with a transfer fee of \$300.

Atlas and "Legal Infrastructure"

Established in 2011, Atlas is coordinating a broad-based effort to make Atlanta a preferred venue for the resolution of international disputes. Its board and membership include a cross section of the commercial bar. It enjoys the support of the principal private ADR providers – American Arbitration Association and Judicial Arbitration and Mediation Service (JAMS). The law faculties at the University of Georgia and Georgia State as well as the Metro Chamber of Commerce also provide strong support.

While international dispute resolution has historically been centered in London, Paris and New York, other major and emerging commercial cities – among them Hong Kong, Miami, Singapore, Stockholm and Toronto – are now capturing a share of a growing market fueled by expanding global trade. They are doing so, in part, by focusing on "formal legal infrastructure" a factor which has been identified as the most important factor determining the venue chosen for international arbitration. See White & Case/Queen Mary University of London, *2010 International Arbitration Survey: Choices in International Arbitration*, at 17.

Early on and in line with this finding, Atlas members set out to overhaul Georgia International Arbitration Code to align it with the current version of the United Nations Commission on International Trade Law (“UNCITRAL”) model statute. With the support of the Georgia State Bar, the Atlas proposal was presented to and passed by the Georgia General Assembly in 2012. See O.C.G.A. § 9-9-20, et seq. Atlas has also been involved in establishing a state of the art hearing facility in the Atlanta Center for International Arbitration and Mediation to be located in the new \$82.5 million Georgia State College of Law building under construction in downtown Atlanta.

Protectionist bar rules have doomed the efforts of other would-be international arbitration hubs, such as California. If the underlying contract is governed by, say, German law, the parties must be free to have German lawyers represent them. Georgia is one of the few states to allow parties to be represented in international arbitrations by non-U.S. lawyers. Indeed, a recent ABA report singles out Georgia as having the most open all-around regime for foreign lawyer practice in the United States. See Memorandum from ABA Task Force on International Trade in Legal Services to State Supreme Courts and State and Local Bar Associations regarding “*International Trade in Legal Services and Professional Regulation: A Framework for State Bars Based on the Georgia Experience*” (Feb. 4, 2012).

International arbitrations tend to be seated in highly accessible crossroads cities to which counsel, arbitrators, parties, experts and fact witnesses can easily converge. Home to the world’s busiest airport, Atlanta is one of the world’s most convenient venues.

For those cities thriving as international arbitration centers, the economic impact is considerable. London exemplifies the potential upside. Over 80 percent of all arbitrations administered by the London Court of International Arbitration have no connection to England. See, 17 *Director General’s Report*, LCIA NEWS (Spr. 2012). That creates a lot of work for English lawyers and other service providers and of course business for the local hospitality industry. Indeed, in a speech to Parliament in 2011, the Chancellor of the Exchequer described international arbitration as one of the “unsung success stories” of the English economy. See, *UK Budgets for Arbitration*, GLOBAL ARBITRATION REVIEW (Mar. 23, 2011). But the benefits to the local legal community and hospitality industry merely scratch the surface. Building a brand as an international arbitration center sends a broader message to the world that the city is open for and friendly to international business. The experience of Singapore is instructive in that regard. “The Singapore Government was one of the first to recognise that [promoting the city as a seat of international commercial] arbitration was good for business; not just individual businesses, but the economy as a whole. By some estimates it is a billion-dollar industry.” Lucy Reed, Mark Mangan & Darius Chan, *Follow the Leader – The Rise of Singapore as a World-Class Arbitration Centre*, LEGALWEEK (Nov. 2, 2010).

Specially Designated Courts and International Arbitration

Within the past year, two U.S. cities, Miami and New York, have adopted new rules allowing parties to file enforcement proceedings regarding international arbitration agreements and awards before a dedicated, specialized court. Tracking international enforcement proceedings onto one docket facilitates judicial expertise, conservation of court resources and the efficient resolution of high-dollar, complex disputes. Commentators highlight that these rules contribute to procedural efficiency and promote consistency in the development of the jurisprudence of international arbitration. Thus, they are regarded as important additions to local legal infrastructure in these competitor cities. See B. Farkas and M. Cassard, *NEW YORK: A NEW HOME FOR INTERNATIONAL ARBITRATION, LITIGATION*, 45 (Summer 2014); See also *Final Report of the New York State Bar Association's Task Force on New York Law in International Matters* at 38. Indeed, Miami has been specifically touted over Atlanta as a venue for international arbitration proceedings precisely because the Miami-Dade Circuit Court has created an international arbitration division. See Quinn Smith, *Miami Has Done the Work To Be A True Center for International Arbitration*, *FULTON COUNTY DAILY REPORT* (July 21, 2014).

There is support for and an opportunity to pursue a similar approach here in Georgia. As noted, the State Bar of Georgia supported updating the international arbitration code in order to attract international arbitrations to Atlanta. Differentiated case management placing particular types of cases before specialized courts also enjoys widespread support from State Bar Members. As reported in "Embracing the Courts of the Future", approximately 70% of Georgia attorneys responding rated "case assignment tracks to separate routine cases from complex cases to speed disposition (sometimes called differentiated case management)" as "definitely" or "possibly worth considering." See pp. 8 and 47.

Proposed Modifications to Rule 1004

The Business Court and facilitating rule 1004 provide the infrastructure for easily creating a dedicated forum for international arbitration enforcement proceedings in Atlanta, Georgia. With minor modifications, Rule 1004 would allow cases subject to the Georgia International Arbitration Code to be transferred to the Business Court using the same procedure as used in other complex business cases. The proposed rule changes are confined to Sections 3(a) and 12.

Section 3(a) would be modified as follows:

- To add a specific reference to the Georgia International Arbitration Code as subsection 3(a)(viii).
- To revise the introductory language in subsection 3 to reference "actions brought pursuant or subject to..." various statutes. (This change is needed because actions are not typically going to be "brought" pursuant to the international arbitration code.)

- To add "and/or arbitration" to the examples of "complex commercial litigation" at the end of Section 3(a).

The proposed modification to Section 12 would strike the reference to "arbitration" in the following sentence: "The Division Judges, in consultation with all parties, shall have the ability to order nonbinding mediation, arbitration or other means of alternative dispute resolution..." This change is simply to avoid any confusion pertaining to whether an order to arbitrate under the international arbitration code could be regarded as "non-binding." It would not appear to alter the court's power, options or flexibility pertaining to ADR or other settlement techniques.


Proposed Modifications to the Standing Order

Regarding the standing order, we do not believe that cases referred to the Business Court under the international arbitration code would consume resources at the same level as cases referred under the other statutes listed in Rule 1004, Section 3(a) or other complex litigation. In fact, we anticipate that proceedings in most international arbitration cases coming to the court would be confined to a single motion petitioning the court to either enforce or stay an arbitration provision, to confirm or vacate an arbitration award, obtain interim relief pending the formation of the arbitral tribunal, or enforce a subpoena for evidence issued by the arbitrators. Under the circumstances, we propose that a reduced transfer fee (\$300) may be appropriate given the limited court resources anticipated for these enforcement proceedings as compared to other Business Court matters. If experience shows that this figure is not sufficient, then the standing order can again be altered to allow a higher or the original transfer fee of \$1000 to be applied to these matters.

Thank you for your consideration.

Best regards,

Sincerely,



Glenn P. Hendrix
President

Atlanta International Arbitration Society

cc: Judge Kelly Amanda Lee Ellerbe, Vice-Chair
Chief Judge Gail S. Tusan
Deputy Chief Judge Wendy L. Shoob
Judge Jerry W. Baxter
Judge D. Todd Markle

TEXT OF REVISED RULE AMENDMENT:

[Note: Revised and new text is marked in bold and with an underline and deletions are additionally marked with strikethrough.]

BE IT RESOLVED by the Board of Governors of the State Bar of Georgia to propose to the Supreme Court of Georgia that Atlanta Judicial Circuit Rule 1004 be amended as follows:

SECTION 1.

Rule 1004 of the Superior Court of Fulton County shall be amended by striking paragraph 3 thereof, relating to the definition of "Business Cases," and inserting in lieu thereof the following:

(a) The Division may accept for assignment Business Cases, which include actions brought pursuant or subject to the following:

- (i) Georgia Securities Act of 1973, as amended, O.C.G.A. § 10-5-1, et seq.;
- (ii) Uniform Commercial Code, O.C.G.A. § 11-1-101, et seq.;
- (iii) Georgia Business Corporation Code, O.C.G.A. § 14-2-101, et seq.;
- (iv) Uniform Partnership Act, O.C.G.A. § 14-8-1, et seq.;
- (v) Uniform Limited Partnership Act, O.C.G.A. § 14-9A-1, et seq.;
- (vi) Georgia Revised Uniform Limited Partnership Act, O.C.G.A. § 14-9-100, et seq.;
- (vii) Georgia Limited Liability Company Act, O.C.G.A. § 14-11-100, et seq.; and
- (viii) Georgia International Commercial Arbitration Code, O.C.G.A. § 9-9-20.**

In addition, Business Cases may include any action in which the amount in controversy (or, in a case of injunction relief the value of the relief sought or the cost of not getting the relief) exceeds \$1,000,000 and where one or more parties to the action or the Court believes warrants the attention of the Division, including, but not limited to, large contractual and business tort cases as well as other complex commercial litigation involving a material issue related to the law governing corporations, partnerships, limited partnerships, limited liability partnerships, and limited liability companies, including issues concerning governance, involuntary dissolution of a corporation, mergers and acquisitions, breach of duty of directors, election or removal of directors, enforcement or interpretation of shareholder agreements, ~~and~~ derivative actions ~~and/or arbitration~~.

(b) Notwithstanding anything contained herein to the contrary, cases that include the following claims shall not be classified as a Business Case without the consent of all parties:

- (i) Personal injury;
- (ii) Wrongful death;
- (iii) Employment discrimination; and
- (iv) Consumer claims in which each individual plaintiff's claims are in the aggregate less than \$1,000,000.

SECTION 2.

Rule 1004 of the Superior Court of Fulton County shall be further amended by striking paragraph 12 thereof, relating to the use of mediation, arbitration, and other means of alternative dispute resolution, and inserting in lieu thereof the following:

The Division Judges, in consultation with all parties, shall have the ability to order nonbinding mediation, nonbinding arbitration, or other means of alternative dispute resolution as dictated by the needs of a particular Business Case. The Division Judges themselves, with the consent of all

parties, may conduct such ~~non-binding~~ nonbinding mediation, nonbinding arbitration, or other means of alternative dispute resolution.

ATLANTA JUDICIAL CIRCUIT RULE 1004

BUSINESS CASE DIVISION

1.

The Judges of the Fulton Superior Court hereby create a "Business Case Division" (hereinafter referred to as the "Division").

2.

The purpose of the Division is to provide judicial attention and expertise to certain complex Business Cases.

3.

(a) The Division may accept for assignment Business Cases, which include actions brought pursuant or subject to the following:

- (i) Georgia Securities Act of 1973, as amended, O.C.G.A. § 10-5-1, et seq.;
- (ii) Uniform Commercial Code, O.C.G.A. § 11-1-101, et seq.;
- (iii) Georgia Business Corporation Code, O.C.G.A. § 14-2-101, et seq.;
- (iv) Uniform Partnership Act, O.C.G.A. § 14-8-1, et seq.;
- (v) Uniform Limited Partnership Act, O.C.G.A. § 14-9A-1, et seq.;
- (vi) Georgia Revised Uniform Limited Partnership Act, O.C.G.A. § 14-9-100, et seq.;
- (vii) Georgia Limited Liability Company Act, O.C.G.A. § 14-11-100, et seq.; and
- (viii) Georgia International Commercial Arbitration Code, O.C.G.A. § 9-9-20.

In addition, Business Cases may include any action in which the amount in controversy (or, in a case of injunction relief the value of the relief sought or the cost of not getting the relief) exceeds \$1,000,000 and where one or more parties to the action or the Court believes warrants the attention of the Division, including, but not limited to, large contractual and business tort cases

as well as other complex commercial litigation involving a material issue related to the law governing corporations, partnerships, limited partnerships, limited liability partnerships, and limited liability companies, including issues concerning governance, involuntary dissolution of a corporation, mergers and acquisitions, breach of duty of directors, election or removal of directors, enforcement or interpretation of shareholder agreements, and derivative actions and/or arbitration.

(b) Notwithstanding anything contained herein to the contrary, cases that include the following claims shall not be classified as a Business Case without the consent of all parties:

- (i) Personal injury;
- (ii) Wrongful death;
- (iii) Employment discrimination; and
- (iv) Consumer claims in which each individual plaintiff's claims are in the aggregate less than \$1,000,000.

4.

The Division is to be comprised of one or more Judges who manage, administer, and try the cases assigned to this Division, as the Chief Judge shall designate (the "Division Judge" or "Division Judges"). The Division Judges may select a judge to serve as the head of the Division (the "Division Leader"), who will be in charge of addressing issues with regard to case assignment, creating and implementing Division policies, representing the Division to the public, and performing all other functions that are necessary for the administration of this Division.

5.

A Business Case filed in the Fulton County Superior Court shall be eligible for assignment to the Division based upon: (1) the parties' joint request; (2) the motion of a party; or (3) a request submitted by the Superior Court Judge currently assigned that case, with notice to the parties. By filing a motion to transfer a case into the Division pursuant to subsections (1) or (2) above, the movant(s) agrees pursuant to O.C.G.A. § 15-6-77(1) to pay, pro rata, a transfer fee in an amount not to exceed \$2,500 as set forth in the "Standing Order Regarding Transfer Fee Amount" as currently published online at <http://home.fultoncourt.org/> ("Transfer Fee") to be used solely for the Business Court. Pursuant to Rule 1.2(B) of the Uniform Superior Court Rules, the Clerk of Court shall maintain the original of such Standing Order and provide copies of it, upon request. In the event that a Superior Court Judge requests that a case be assigned to the Division pursuant to subsection (3), no such Transfer Fee shall be required. The motion or request shall be directed to the Business Case Division Committee, via the Business Court Program Director, to determine, after allowing the parties twenty (20) days for briefing of the issue, whether the case is a Business Case Division case and whether it should be accepted for assignment into the Business Case Division. Pursuant to Uniform Superior Court Rule 6.7, the Chief Judge may shorten the time requirement applicable to transfer motions upon written notice and good cause shown. If so accepted, the Business Court Program Director shall reassign the case to a Division Judge within the Business Case Division.

6.

Upon a motion or request, if a majority of the Business Court Committee deems the case appropriate for assignment to the Division, the Business Court Program Director shall assign the case to the Division. Within the Division, the Business Court Program Director shall assign the Division's cases in rotation, taking into account, reasonably estimated discovery, dispositive

motions, availability of the Division Judge, the Division Judge's current case load, and trial time, as far as practicable, and any other applicable concerns. The Business Court Program Director shall make every effort to fairly assign the case load within the Division.

7.

When an active Judge's case has been reassigned to a Division Judge as a Business Case, the Court Administrator shall make such additional assignments to the active Judge as are necessary to comply with these rules.

8.

The Chief Judge/District Administrative Judge shall select or re-select all Division Judges from those Judges, considering their experience, training, and other relevant factors, who volunteer for such assignment for a period of two years. At the end of each two year term, the Chief Judge/District Administrative Judge shall decide the continuation of such assignment if the Division Judge volunteers for continued service. The Chief Judge/District Administrative Judge may reassign such Division Judge at any time in the best interests of the Court and the Division.

9.

The Business Cases assigned to the Division shall be governed by applicable law, including the Georgia Civil Practice Act, O.C.G.A. § 9-11-1, et seq., and the Uniform Superior Court Rules.

10.

The Division Judges, in consultation with all parties and pursuant to applicable law, shall have the ability to modify the schedule for the administration of Business Cases, including the schedule for conducting discovery, filing dispositive motions, conducting pre-trial procedures, and conducting jury and non-jury trials.

11.

In particular, the Division Judges, pursuant to O.C.G.A § 9-11-5(e) may modify the procedure for filing papers with the Court, including allowing such filings to be made by facsimile or by e-mail with the Court. Upon the written consent of all parties and upon any necessary waivers as may be required by law, the Division Judges may allow for service of papers filed with the Court by electronic means, including by facsimile or by e-mail. In the event that any procedures are modified pursuant to this paragraph, an electronic signature shall be deemed an original signature.

12.

The Division Judges, in consultation with all parties, shall have the ability to order nonbinding mediation, nonbinding arbitration, or other means of alternative dispute resolution as dictated by the needs of a particular Business Case. The Division Judges themselves, with the consent of all parties, may conduct such non-binding mediation, nonbinding arbitration, or other means of alternative dispute resolution.

13.

The calendar for the Division shall be prepared under the supervision of the Division Judges and shall be made available to all parties with Business Cases pending in the Division. Pursuant to agreement of the parties and the Court, the Court may notify parties of such calendar by electronic means, including by facsimile or by e-mail.

14.

Subject to the rules of evidence, the Division encourages the parties to use electronic presentations and technologically generated demonstrative evidence to enhance the trier-of-fact's

understanding of the issues before it and to further the convenience and efficiency of the litigation process.

15.

Within thirty (30) days of a Business Case being assigned to the Division, or such shorter or longer time as the Division Judges shall order, the parties shall meet with the Division Judge to whom the Business Case is assigned to discuss the entry of a case management order, including the following issues: (i) the length of the discovery period, the number of fact and expert depositions, and the length of such depositions; (ii) a preliminary deposition schedule; (iii) the identity and number of any motions to dismiss or other preliminary or pre-discovery motions which shall be filed and the time period in which they shall be filed, briefed, and, if appropriate, argued; (iv) the time period after the close of discovery within which post-discovery dispositive motions shall be filed, briefed, and, if appropriate, argued; (v) the need for any alternative form of dispute resolution, specifically including mediation; (vi) an estimate of the volume of documents and electronic information likely to be the subject of discovery from the parties and non-parties, and whether there are means by which to render document discovery more manageable and less expensive; (vii) and modifications to the rules under the Civil Practice Act or the Uniform Superior Court Rules as may be applicable to a particular case; (viii) such other matters as the Division Judge may assign to the parties for their consideration. Prior to the meeting with the Division Judge, lead counsel for each party shall meet in person to discuss subparts (i) through (viii) of this paragraph. At the initial meeting with the Division Judge, the parties shall submit a proposed case management order to the Division Judge for consideration.

16.

In an effort to reduce the length of discovery and quickly resolve any discovery disputes, the Division Judges shall be available to the parties to resolve disputes that arise during the course of discovery.

17.

In addition to telephone conferencing pursuant to Rule 9 of the Uniform Superior Court Rules, by mutual agreement between the parties and the Division Judges, counsel may arrange for any hearing or other conference to be conducted by video conference, subject to the same rules of procedure and decorum as if the hearing or conference were held in open court. In addition to charging the parties for other costs associated with Business Cases pending in the Division, the Clerk may charge the parties a fee for such video conferencing or may include the costs of such video conferencing in any standard fee charged to parties participating in Business Cases pending in the Division.

Salary Increase Request from Georgia’s Judges and Justices

Superior Courts

Superior court judges have not seen an increase in their state salaries since 1999. The 2015 session will mark 16 years since the last salary increase in their state pay. The cost of living has increased 43% since that time.

Superior court judges are requesting a three-year salary increase plan of \$15,000 per year to restore their salary to a level commensurate with their position and responsibilities. Superior courts have collected \$74 million for the Judicial Operations Fund since 2011. Less than 20% of this is needed to provide superior court judges with the requested salary increase.

The number of accountability courts in operation under superior court judges has nearly doubled in three years, from 46 in July 2011 to 84 in 2014. The labor intensity of these courts vastly increases judge workloads. Felony accountability courts saved Georgia taxpayers \$23 million in 2013. Only two-thirds of the first year’s savings would be needed to provide superior court judges with the requested salary increase.

Requesting \$15,000 salary increase per judge for Year 1 of multi-year plan.
Total costs: \$4,915,055

Requesting \$15,000 salary increase per judge for Year 2.
Total costs: TBD (based on fringe rates for that year and number of judges)

Requesting \$15,000 salary increase per judge for Year 3.
Total costs: TBD (based on fringe rates for that year and number of judges)

Supreme Court and Court of Appeals

The Justices of the Supreme Court and the Judges of the Court of Appeals support the salary increases requested by the Superior Court Judges, and the Justices and Appeals Judges seek a matching increase. The Supreme Court is the highest court in the State, and both the Supreme Court and Court of Appeals hear appeals from the Superior Courts and lower courts. The Supreme Court has been recognized as the most productive high court in the nation, and the Court of Appeals has been recognized as among the most productive intermediate appellate courts.

Like the Superior Court Judges, the Justices and Appeals Judges have seen no increase in their base salaries since 1999, and their total compensation has been flat since the last cost-of-living adjustment in January 2008. Currently, the Justices are paid an annual salary of \$167,210, and the Appeals Judges are paid an annual salary of \$166,186.

To match the \$15,000 increase requested by the Superior Court Judges, the Justices and Appeals Judges are requesting an increase of \$15,000 in FY2016, with additional requests anticipated to match further increases requested by the Superior Court Judges for FY2017 and FY2018.

In addition, the Justices and Appeals Judges are requesting an additional salary increase of \$10,000 in FY2016 to address an existing disparity with the Superior Court Judges in total compensation. As a result of local supplements, 37 percent of the Superior Court Judges now have a total compensation that exceeds that of the Justices and Appeals Judges. Such a compensation structure is unusual, if not unique; other than Oklahoma, we have found no other state in which it is even possible for trial court judges to be compensated more highly than the judges of the highest court in the state. Such a compensation structure not only fails to reflect the constitutional hierarchy of the judiciary, but it also provides a disincentive for many Superior Court Judges to even seek appointment or election to the Supreme Court and Court of Appeals (and both courts have traditionally included a number of former Superior Court Judges). At present, the most highly compensated Superior Court Judges are paid approximately \$20,000 more than the Appeals Judges. To address this disparity, the Justices and Appeals Judges seek an increase in FY2016 of \$10,000 in addition to the matching increase discussed above. The Justices and Appeals Judges anticipate requesting additional increases in FY2017 and FY2018 to further close the gap.

District Attorneys' Association of Georgia

Seeking Justice with Honor

Gregory W. Edwards, President

Dougherty Judicial Circuit

Tracy Graham Lawson, Vice President

Clayton Judicial Circuit

Scott Ballard, Secretary-Treasurer

Griffin Judicial Circuit

November 18, 2014

Ms. Dawn M. Jones, Chairman
Advisory Committee on Legislation
State Bar of Georgia
104 Marietta Street NW, Suite 100
Atlanta, Georgia 30303

RE: Request for Pay Parity

Madam Chairman,

The District Attorneys' Association of Georgia, requests that the State Bar of Georgia support legislation that would raise the state compensation of the District Attorneys to a level which is comparable to that of the Judges of the Superior Court. This request is made pursuant to Section 1.02 (a) (1) of Standing Board Policy 100.

In 1968, when the office of District Attorney became a full-time State-funded position, annual pay was set at \$18,000, an amount identical to that of Superior Court Judges. That salary would be equivalent to more than \$123,000 in 2014 dollars. In 1970, Superior Court Judges requested and received what amounted to a cost-of-living increase to \$20,000/year. Due apparently to a lack of organization or legislative experience, it being five years before the Prosecuting Attorneys' Council was even established, the District Attorneys did not request a similar increase in 1970 and their salary remained at \$18,000/year until 1974.

Throughout the 70's and continued until 2008, the District Attorneys and Judges have received similar, often identical pay increases on a percentage basis, but because the Judges have had a higher starting salary since 1970, those increases were larger on a dollar basis resulting in an ever increasing gap between the two salary levels. On an absolute dollar basis, the gap was largest in 2006 when Judges were paid more than \$13,000 (or 13%) more than District Attorneys. The gap was shrunk in 2008 to its present level of almost \$6,000. District Attorneys currently earn approximately 95% of the Superior Court Judges' salary level.

Based upon the substantial responsibilities placed upon the elected District Attorneys and their offices, and considering the pay history between District Attorneys and Superior Court Judges,

the Association believes that pay parity is appropriate and requests that the State Bar support the same.

In furtherance of this request, the Association provides the following information concerning those responsibilities and the detailed pay history of the two offices:

The District Attorney in Georgia

“Prosecutors are key decision-makers and policymakers in our criminal justice system. They represent our citizenry and strive not only to control crime, but to ensure that justice prevails.” Dillingham, *Prosecution in the 21st Century*, 2004. While popular culture portrays the District Attorney as the courtroom advocate for the people, their role has evolved considerably since 1968.

In Georgia, the prosecution function is assigned to the Judicial Branch. Ga. Const. Art. VI, Sect. VIII; O.C.G.A.15-18-19(a); *Fortson v. Weeks*, 232 Ga. 472, 478, 208 S.E.2d 68, 74 (1974) (“District attorneys are generally considered to be quasi-judicial officers”); Ga. Op. Att’y Gen. 2009-2, 2009 Ga. AG LEXIS 7. While their primary function is to prosecute criminal cases in the Superior and Juvenile Courts from the committal hearing through the direct appeals process as far as the Georgia Supreme Court, Ga. Const. Art. VI, Sect. VII, Para. I, they “are also charged with guarding against wrongful convictions.” (Dillingham) They are charged with balancing the needs and safety of the community, the victim and, even the accused in criminal cases.

Unlike other lawyers, who can simply refuse to take on more clients, the District Attorney does not control what cases are referred to his or her office. “In some jurisdictions, individual prosecutors handle more than one thousand felony cases per year. Prosecutors often have hundreds of open felony cases at a time and multiple murder, robbery, and sexual assault cases set for trial on any given day.” Gershowitz and Killinger, *The State Never Rests*, 105 Nw. U.L. Rev. 261 (2011).

In addition, the District Attorneys “works in many different professional environments: in community meetings, in consultations with the police, in misdemeanor and felony courtrooms, in sentencing commission and legislative hearings, and in budget meetings.” Levine & Wright, *Criminal Law: Prosecution in 3-D*, 102 J. Crim. L. & Criminology 1119, 1121 (2012).

District Attorneys also are responsible for managing an office staff of lawyers and paraprofessionals that is comparable to any medium or large law firm. In most Judicial Circuits, this involves supervising personnel who are located in more than one location, often at considerable distances from each other.

Among the specific duties that District Attorneys perform are these:

CRIMINAL – PRIOR TO OR IRRESPECTIVE OF AN ARREST

- Advise Law Enforcement on legal issues including but not limited to search and seizure issues, reviewing search warrants before applications, providing probable cause opinions related to arrests and searches, observing and advising at active crime scenes including homicide/suicide scenes which in some cases do not result in any arrest or prosecution.
- Provide training for local law enforcement on a variety of issues including case-law updates, courtroom testimony and demeanor, etc.

- Chair Child Fatality Review Committee in each county in circuit (most DA's have more than one county so more than one committee to chair), ensure compliance with relevant statutes (time limits for review, reporting, etc.).
- Chair Child Abuse Protocol Committee in each county in circuit (often more than one, see above). Ensure the protocol is updated as necessary to reflect changing conditions locally, changing State and Federal law, rules, regulations. Publish protocol. Ensure compliance with protocol by relevant agencies. Assist with training for protocol compliance including mandated reporter training with schools, medical personnel, etc.
- Chair Sexual Assault Protocol Committee at circuit level (often multi-county). Ensure the protocol is updated as necessary (as with child abuse protocols), publish protocol, ensure compliance therewith, and assist in training local law enforcement and other agencies on requirements of protocol.
- Coordinate and lead Multi-disciplinary Team Review Meetings concerning child abuse and molestation cases. Ensure that appropriate team members are present and appropriate materials and information are presented to the team. Facilitate discussions and decision making on cases, many of which are reviewed prior to any arrest and many of which are in fact closed without there being an arrest or prosecution protecting the rights and reputation of persons accused either falsely or where insufficient evidence exists for prosecution.
- Attend Truancy Prevention Protocol Meetings and Truancy Referral Conferences.
- Verify and sign revenue bond issue petitions for counties within circuit.
- Apply for and supervise wiretaps. Ensure compliance with State and Federal law concerning same.

CRIMINAL – BASED UPON OR FOLLOWING AN ARREST

- Advise Magistrate Courts regarding bond issues at daily first appearance hearings including cases in which arrestees are entitled to bond, cases where bond is discretionary with the court including factors for and against bond and recommendations of appropriate bond conditions, and cases in which the Magistrate Court is not legally authorized to set bond such that bond consideration must be deferred to Superior Court.
- Represent the State at Superior Court bond hearings and ensure that crime victims are aware of and able to attend and be heard if desired at such hearings.
- Receive warrants, tickets and other original charging documents. Open physical and electronic case files. Obtain reports and other relevant documentation from law enforcement agencies as well as criminal history information relevant to the case.
- Review criminal cases by reading reports, interviewing law enforcement and civilian witnesses and examining evidence as necessary to determine if prosecution is appropriate including determination of relevant legal issues surrounding searches and seizures and other matters. If prosecution is appropriate, determine the correct charges which may differ from the arrest charges and prepare formal charging document (accusation, indictment, special presentment) to file with the Court or present to Grand Jury.
- Prosecute criminal cases in Superior Court including both indigent cases and cases in which the defendant has hired counsel and including death penalty prosecutions. Provide discovery material to the defense attorney as required and document compliance with relevant statutes and case law by filing notices of such compliance with the Court.

Respond to defense motions to exclude evidence. File appropriate motions to allow for the admissibility of evidence where a pre-trial hearing is required. Prepare victims including child victims before testifying, subpoena and coordinate schedule with all victims and witnesses, coordinate with other states under the interstate witness compact and assist other states when they subpoena witnesses from Georgia, represent the State at pre-trial hearings and prepare orders as requested by the court. Represent the State at trial and at sentencing hearings and prepare written sentences as appropriate.

- When offenders on bail do not appear for court, determine and advise the court whether a bench warrant is appropriate, request bench warrants as needed. Advise court whether bond forfeiture is appropriate. Determine when bond forfeitures should be set aside.
- Determine when extradition appropriate when offender with Georgia warrant is found in another state. Assist other states in their request to extradite offenders in custody in local Georgia jails.

POST-CONVICTION

- Represent the State on motions for new trials and appeals except for death penalty appeals.
- Respond to pro-se appeals and motions filed by State inmates.
- Respond to habeas corpus petitions and represent the State at habeas hearings. Testify as necessary at habeas hearings.
- Draft petitions and conduct probation revocation hearings
- Coordinate dispositions in revocations with new criminal charges, many of which arise in different jurisdictions within the State or in different states from where the offender is on probation.
- Monitor compliance with suspended sentences, which often involve restitution ordered to victims. Petition to the court to revoke such sentences for non-compliance when appropriate and present evidence as needed to establish non-compliance and hearings on such petitions.
- Assist Parole Investigators with post-sentence investigations and provide information to the State Board of Pardons and Paroles as appropriate for parole consideration.
- Respond to notifications from the State Board of Pardons and Paroles regarding parole consideration as appropriate.

VICTIM ADVOCACY

- Meet with crime victims including surviving family members in homicide cases. Explain court procedures and answer questions about ongoing prosecutions. Explain victims' rights under the Crime Victim Bill of Rights (CVBR).
- Provide notifications to victims about court dates and other matters as required by the CVBR.
- Provide trained and certified victim advocates to attend court proceedings with victims.
- Ensure that victims' rights are protected and respected by the Courts and defense attorneys.
- Assist victims with preparation and presentation of victim impact statements.

- Assist victims with crime victim compensation applications and appeals.
- Make sure victim restitution collected as ordered by courts.
- Assist crime victims post-conviction with communications between the victim and the Department of Corrections, State Board of Pardons and Paroles, etc. Make sure victims are aware of their notifications rights and of services and resources available from these and other agencies including State and private probation.

GRAND JURY

- Assist Court with selection of Grand Jury including questioning potential Grand Jurors under oath about their qualifications to serve and running criminal histories on potential grand jurors for same purpose. Ensure that no indictment or action of the grand jury is invalidated based upon the presence of a statutorily unqualified person on the grand jury.
- Provide orientation/training to new grand juries to expand upon the Court's instruction as to their duties and responsibilities.
- Coordinate and schedule the grand juries legally mandated inspections (county jail, etc.)
- Advise grand jury when vacancies on the county board of education or county tax equalization board require their attention. Coordinate with clerk of court on legal publication requirements for vacancies. Schedule grand jury interviews with applicants and prepare appointment orders.
- Advise and assist the grand jury with any other authorized inquiry (juror/bailiff pay, etc.)
- Draft indictments and special presentments for the Grand Jury upon consideration of criminal cases. Present evidence to Grand Jury concerning criminal cases.
- Ensure that public officials and law enforcement officers are notified prior to indictment and afforded an opportunity to be present and make a sworn statement if they desire as provided by state law.

ACCOUNTABILITY COURTS AND PRE-TRIAL DIVERSION PROGRAMS

- Where available, participate and support accountability courts such as Drug Courts, Mental Health Courts, Veterans Courts, Domestic Violence Courts, DUI Courts and other forms of accountability courts which provide local alternatives to incarceration for appropriate offenders.
- Screen cases and offenders based on eligibility requirements for participation in accountability courts. Participate in accountability court meetings, reviews and court proceedings. Determine and advise courts concerning eligibility for certain statutory benefits provided to accountability court participants such as limited driving permits for drug court participants. Present evidence as required to establish non-compliance and to support judicial sanctions for same.
- Establish written guidelines for and manage pre-trial diversion programs. Screen applicants for eligibility based on statutory and locally established criteria. Monitor compliance with pre-trial diversion requirements. Prepare and file appropriate court orders and documents to facilitate offender participation including orders to dismiss criminal charges upon successful completion of the diversion program. Advise and

support victims so that their interests including restitution are included and respected in pre-trial diversion cases.

JUVENILE COURT

- Reviewing investigative material and determine whether delinquency charges should be brought against alleged juvenile offenders.
- Prepare and file petitions alleging specific acts of delinquency including criminal behavior by juveniles.
- Represent the State in Juvenile Court delinquency proceedings.
- Assist crime victims in cases in which a juvenile offender is involved as with adult-offender victims (see Victim Advocacy, above).

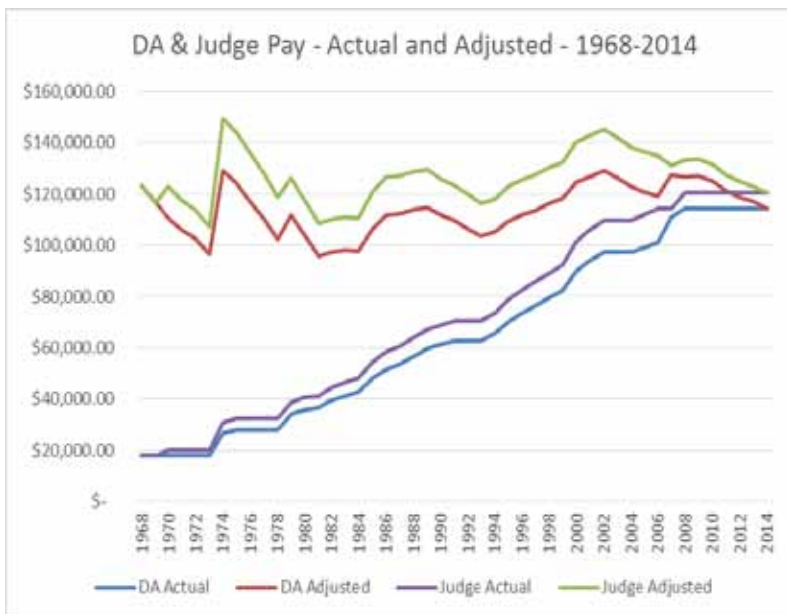
CIVIL/OTHER

- Review notifications from law enforcement when assets have been seized from citizens, determine whether seizure was lawful and whether forfeiture proceedings should be initiated, coordinate return of property when appropriate or prepare paperwork for administrative forfeiture or file civil action seeking forfeiture as appropriate. Represent the state in Superior Court on civil forfeiture proceedings that go to court.
- Manage office comprised of attorneys, investigators (many of which are certified peace officers), victim advocates and administrative personnel often located at multiple physical locations that may be spread out across multiple counties. Ensure that personnel receive appropriate training and support including CLE training for assistant district attorneys, POST certification for investigators and appropriate training and certification for victim advocates and other personnel including GCIC training/certification.
- Manage a multi-source budget including State and county funding; often involving multiple independent county budgets as well as managing funding from other sources including asset forfeiture receipts, crime victim fund surcharges revenue and various state and local grants.
- Interact with the news media on cases of public interest balancing the need to provide appropriate information while protecting the accused's right to receive a fair trial and in compliance with State Bar rules.
- Respond to open records request. Ensure that confidential materials such as Department of Family and Children Services records, criminal history records, and other materials that are exempted from open records request are not distributed unlawfully.
- Respond to requests for record restriction and expungements. Determine whether expungement/restriction is mandatory, discretionary or not permitted based on state law. Make discretionary decisions to grant or deny expungement requests as appropriate.
- Organize and conduct coroner's inquests.
- Prepare destruction/retention orders for law enforcement agencies concerning evidence and other property in their possession.
- Advise law enforcement concerning evidence retention questions on closed cases which may or may not be subject to appeals or habeas challenges.
- Administratively collect welfare fraud repayments.
- Prosecute and collect back child support.

- Domestic out-of-state child pick-up orders.

District Attorney and Superior Court Judge Pay History

The following chart and data table are based upon information provided by the Prosecuting Attorneys' Council of Georgia based on state records of the annual salary level for District Attorneys and Superior Court Judges beginning in 1968 and through the current year. The actual or unadjusted salary figures were then adjusted to present day value using the U.S. Bureau of Labor and Statistics inflation calculator, available on-line at http://www.bls.gov/data/inflation_calculator.htm. The adjustment was done on August 20, 2014 and reflects inflation rates as of that date.



The above-chart is based upon the following data table:

Year	DA Actual	DA Adjusted	Judge Actual	Judge Adjusted
1968	\$18,000.00	\$123,280.86	\$18,000.00	\$123,280.86
1969	\$18,000.00	\$116,898.47	\$18,000.00	\$116,898.47
1970	\$18,000.00	\$110,571.49	\$20,000.00	\$122,857.22
1971	\$18,000.00	\$105,930.22	\$20,000.00	\$117,700.25
1972	\$18,000.00	\$102,635.74	\$20,000.00	\$114,039.71
1973	\$18,000.00	\$96,625.54	\$20,000.00	\$107,361.71
1974	\$26,750.00	\$129,324.04	\$30,916.00	\$149,464.75
1975	\$28,000.00	\$124,044.68	\$32,500.00	\$143,980.44

1976	\$28,000.00	\$117,286.54	\$32,500.00	\$136,136.16
1977	\$28,000.00	\$110,125.48	\$32,500.00	\$127,824.22
1978	\$28,000.00	\$102,355.89	\$32,500.00	\$118,805.94
1979	\$34,000.00	\$111,620.69	\$38,500.00	\$126,394.02
1980	\$35,870.00	\$103,754.41	\$40,617.00	\$117,485.17
1981	\$36,498.00	\$95,699.04	\$41,328.00	\$108,363.47
1982	\$39,417.00	\$97,355.09	\$44,634.00	\$110,240.43
1983	\$40,995.00	\$98,101.12	\$46,419.00	\$111,080.76
1984	\$42,636.00	\$97,805.51	\$48,276.00	\$110,743.47
1985	\$48,000.00	\$106,324.01	\$54,500.00	\$120,722.05
1986	\$51,360.00	\$111,690.66	\$58,320.00	\$126,826.31
1987	\$53,412.00	\$112,063.17	\$60,560.00	\$127,060.32
1988	\$56,496.00	\$113,824.40	\$63,895.50	\$128,732.42
1989	\$59,712.00	\$114,773.69	\$67,369.00	\$129,491.37
1990	\$61,200.00	\$111,603.61	\$69,007.00	\$125,840.36
1991	\$62,736.00	\$109,784.78	\$70,560.00	\$123,476.38
1992	\$62,736.00	\$106,576.52	\$70,560.00	\$119,868.01
1993	\$62,736.00	\$103,478.80	\$70,560.00	\$116,383.96
1994	\$65,322.00	\$105,054.26	\$73,344.00	\$117,955.66
1995	\$69,972.00	\$109,431.34	\$78,564.00	\$122,868.63
1996	\$73,471.00	\$111,608.02	\$82,488.00	\$125,305.53
1997	\$76,404.00	\$113,460.18	\$85,782.00	\$127,386.54
1998	\$79,452.00	\$116,176.86	\$89,072.00	\$130,243.48
1999	\$82,635.00	\$118,220.13	\$92,502.00	\$132,336.16
2000	\$89,965.50	\$124,521.76	\$101,317.00	\$140,233.44
2001	\$94,032.00	\$126,549.23	\$105,937.00	\$142,571.10
2002	\$97,326.00	\$128,943.70	\$109,645.00	\$145,264.70
2003	\$97,326.00	\$126,070.49	\$109,645.00	\$142,027.81
2004	\$97,326.00	\$122,800.27	\$109,645.00	\$138,343.67
2005	\$98,926.00	\$120,728.72	\$111,838.00	\$136,486.45
2006	\$100,904.00	\$119,294.45	\$114,074.00	\$134,864.77
2007	\$111,023.00	\$127,622.74	\$114,074.00	\$131,129.91
2008	\$114,354.00	\$126,591.25	\$120,252.97	\$133,121.48
2009	\$114,354.00	\$127,043.24	\$120,252.97	\$133,596.79

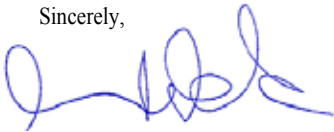
2010	\$114,354.00	\$124,993.01	\$120,252.97	\$131,440.80
2011	\$114,354.00	\$121,168.30	\$120,252.97	\$127,418.79
2012	\$114,354.00	\$118,711.62	\$120,252.97	\$124,835.38
2013	\$114,354.00	\$116,997.88	\$120,252.97	\$123,033.23
2014	\$114,354.00	\$114,354.00	\$120,252.97	\$120,252.97

If you have any questions regarding this request, please direct all correspondence to Chuck Spahos, Executive Director of the Prosecuting Attorneys' Council. His contact information is as follows:

Executive Director Chuck Spahos
Prosecuting Attorneys' Council of Georgia
104 Marietta Street, NW, Suite 400
Atlanta, Georgia 30303
404-969-4001
cspahos@pacga.org

He will coordinate with our membership to ensure our presence at any hearings regarding this matter.

Sincerely,



Gregory W. Edwards
President
District Attorneys' Association of Georgia

PROPOSAL RE: ESTABLISHING SALARY PARITY BETWEEN PUBLIC DEFENDERS AND PROSECUTING ATTORNEYS

1. A proposed change in the legislation as it pertains to O.C.G.A. § 17-12-25 is attached hereto as Exhibit A.
2. The intent of the amendment is to establish salary parity (equality) between Circuit Public Defenders and District Attorneys, and between Assistant Public Defenders and Assistant District Attorneys of similar experience levels.
3. The salary of District Attorneys is set by the General Assembly, pursuant to O.C.G.A. § 15-18-10 and various General Appropriations Acts through which cost-of-living adjustments are appropriated. The salary of Circuit Public Defenders is set in a similar manner, pursuant to O.C.G.A. §17-12-25. Assistant Public Defenders and Assistant District Attorneys are classified into one of four salary classifications, also by statute. The minimum pay for each classification is identical for APD's and ADA's, however the maximum is set as a percentage of the Circuit Public Defender's or the District Attorney's salary, and therefore ADA's can be paid more than their APD counterparts. See O.C.G.A. § 17-12-27 (APD's), and §15-18-14 (ADA's).
4. The Georgia Public Defenders Standards Council is aware of this proposal and has expressed no opposition to same. The Georgia Association of Criminal Defense Lawyers (GACDL) supports this proposal. There are no other known proponents or opponents. However, possible potential proponents or opponents of the legislation may include PAC, ACCG and the Southern Center for Human Rights; however at this time no position is known.
5. Possible known State Bar committees or sections that may have an interest in this legislation are the Indigent Defense Committee and the Criminal Law Section and both support this proposal
6. The Indigent Defense Committee recommends that this proposal be adopted by the State Bar of Georgia.

J. Michael Cranford (electronic signature)

J. Michael Cranford, Chairman

Indigent Defense Committee

(Exhibit “A”)

§ 17-12-25. Salary and cost-of-living adjustments; supplementation; private practice of law

Currentness

(a) Each circuit public defender shall receive an annual salary equal to that received by the District Attorneys, pursuant to O.C.G.A. §15-18-10 and other provisions of law, including of \$87,593.58, and cost-of-living adjustments that may be given to the District Attorneys by the General Assembly in the General Appropriations Act or other legislation; by a percentage not to exceed the average percentage of the general increase in salary as may from time to time be granted to employees of the executive, judicial, and legislative branches of government; provided, however, that any increase for such circuit public defender shall not include within-grade step increases for which classified employees as defined by Code Section 45-20-2 are eligible. Any increase granted pursuant to this subsection shall become effective at the same time that funds are made available for the increase for such employees. The Office of Planning and Budget shall calculate the average percentage increase.

(b) The county or counties comprising the judicial circuit may supplement the salary of the circuit public defender in an amount as is or may be authorized by local Act or in an amount as may be determined by the governing authority of the county or counties, whichever is greater.

(c) No circuit public defender shall engage in the private practice of law for profit or serve concurrently in any judicial office.

Credits

Laws 2003, Act 32, § 1, eff. Jan. 1, 2005; Laws 2004, Ex. Sess., Act 4, § 18, eff. Jan. 1, 2005; Laws 2008, Act 729, § 32, eff. July 1, 2008; Laws 2009, Act 155, § 1, eff. July 1, 2009; Laws 2012, Act 630, § 2-18, eff. July 1, 2012

Proposed Changes to Georgia's Long Arm Statute

Justice Hardy Gregory in his concurrence, and Justice George T. Smith in his dissent in Gust v. Flint, 257 Ga. 129 (1987) could not have stated it better:

I fail to see why Georgia would not want its courts to have the maximum jurisdiction permissible within constitutional due process. A legislative act simply extending the jurisdiction of the Georgia courts to the maximum limit permitted within the restraints of due process of law would accomplish this result.

Id. at 130 (Gregory, J. concurring).

"Georgia should have a Long-Arm Statute that fits the contours of the limits of constitutional due process." Id. (Smith, J. dissenting).

Georgia litigants have been prohibited from seeking redress in numerous scenarios due to the overly restrictive language of our Long Arm statute, which does not allow a Georgia litigant to exercise extraterritorial personal jurisdiction to the fullest extent of its constitutional due process boundaries. Our original Long Arm statute only allowed extraterritorial personal jurisdiction over non-residents when the non-resident committed the following acts:

- (1) Transacts any business within this state;
- (2) Commits a tortious act or omission within this state, except as to a cause of action for defamation of character arising from the act;
- (3) Commits a tortious injury in this state caused by an act or omission outside this state if the tort-feasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
- (4) Owns, uses, or possesses any real property situated within this state;

OCGA § 9-10-91 (1966). I will illustrate the restrictive nature of each of these original provisions in turn.

(1) Transacts any business within this state:

In examining the restrictive nature of subsection (1), our appellate courts interpreted that for Long Arm jurisdiction to exist under this provision, the cause of action was restricted to actions *ex contractu*, meaning that if the cause of action did not arise from a breach of a contract in some fashion, then this provision could not provide jurisdiction over the nonresident defendant.¹ For many years, the transaction of business had to *physically* occur within the state.² Fortunately, the case of Innovative Clinical & Consulting Servs., LLC v. First Nat. Bank of Ames, 279 Ga. 672 (2005) abrogated these earlier decisions.

Accordingly, under that literal construction, OCGA § 9-10-91(1) grants Georgia courts the unlimited authority to exercise personal jurisdiction over any nonresident who transacts any business in this State. Of course, because this statutory language would expand the personal jurisdiction of Georgia courts beyond that permitted by constitutional due process, we accordingly construe subsection (1) as reaching only “to the maximum extent permitted by procedural due process.

¹ “The Georgia legislature could have defined transactions of business as including both contractual and tortious actions, as other states have done. But they chose not to do so. By including tortious action under ... separate subsection(s), [OCGA § 9-10-91(2) and (3)], the legislature could not have meant for a cause of action in tort to arise from the transaction of business, under [OCGA § 9-10-91(1)] as well. Otherwise, [OCGA § 9-10-91(2)] (and later [OCGA § 9-10-91(3)]) would have been redundant and unnecessary.”

Whitaker v. Krestmark of Alabama, Inc., 157 Ga.App. 536, 537-38 (1981).

² “[The] only ‘purposeful acts’ were performed at its Washington, D. C., offices, with the results communicated to the appellant by mail. Mere telephone or mail contact with an out-of-state defendant, or even the defendant’s visits to this state, is insufficient to establish the purposeful activity with Georgia required by the ‘Long Arm’ statute.” Wise v. State Bd. for Examination, Qualification & Registration of Architects, 247 Ga. 206, 209 (1981).

Id. at 675.

(2) Commits a tortious act or omission within this state, except as to a cause of action for defamation of character arising from the act;

Georgia continues to restrict the reach of its Long Arm jurisdiction for defamation, and the original concerns for enacting this restriction has long outlived the “parade of horrors” that the General Assembly envisioned at the Long Arm Statute’s inception in 1966. Defamation was apparently carved out due to concerns over United States Constitution’s First Amendment rights regarding free speech. The effect of the exception for defamation in subsection (2) is to restrict the exercise of personal jurisdiction through the much-more restrictive subsection (3), which will be discussed *supra*.

As stated by the Bradlee Mgmt. Servs., Inc. v. Cassells, 249 Ga. 614 (1982) Georgia Supreme Court decision:

It would appear that subsection (b)'s exclusion of causes of action for defamation of character is based on a line of decisions rendered by the Fifth Circuit Court of Appeals. The New York Times Co. v. Connor, 365 F.2d 567 (5th Cir. 1966); Buckley v. New York Times Co., 338 F.2d 470 (5th Cir. 1964). These decisions hold that although the commission of a tortious act in the forum state is generally in and of itself a sufficient basis for exercising long arm jurisdiction, see Elkhart Engineering Corp. v. Dornier Werke, 343 F.2d 861 (5th Cir. 1965), “First Amendment considerations surrounding the law of libel require a greater showing of contact to satisfy the due process clause than is necessary in asserting jurisdiction over other types of tortious activity.” The New York Times Co. v. Connor, *supra*, 365 F.2d at p. 572. However, this does not mean that long arm jurisdiction is never exercisable in a defamation case. See Edwards v. Associated Press, 512 F.2d 258 (5th Cir. 1975); Curtis Publishing Co. v. Golino, 383 F.2d 586 (5th Cir. 1967).

Id. at 616-17.

As stated by Professor E.R. Lanier³ as early as 1990:

This notion – current only in the old Fifth Circuit – was effectively laid to rest by the U.S. Supreme Court in Calder v. Jones, 465 U.S. 783 (1984) and Keeton v. Hustler Magazine, Inc., 465 U.S. 770 (1983) where the Federal Supreme Court “reject[ed] categorically the suggestion that invisible radiations from the First Amendment may defeat jurisdiction otherwise proper under the Due Process Clause.” Keeton at 780, n. 12. Despite this emphatic negation by the Supreme Court, the old doctrine lives on in the Georgia Long Arm Statute unimpeded and unfettered by any legislative revision.

E.R. Lanier, *Long Arm, Short Reach: The Dilemma of Georgia’s Long Arm Statute*, *The Verdict*, December/January 1990, p. 22.

Further, As is made clear by Cassells, it is wholly unnecessary for Georgia’s Long Arm subsection (2) to be restricted in such a manner. All that is necessary for the exercise of extraterritorial jurisdiction against a nonresident tortfeasor is that the nonresident tortfeasor have the constitutional “minimum contacts” to allow the exercise of personal jurisdiction and that exercise not offend “traditional notions of fair play and substantial justice.” International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). Our judicial system is fully capable of examining and analyzing any heightened requirement of due process required by the First Amendment.

A case that demonstrates the absurd results of such a restriction regarding defamation is Huggins v. Boyd, 304 Ga.App. 563 (2010). There, the evidence in the trial court showed that for years, Huggins had from South Carolina repeatedly, in a harassing and intimidating manner, contacted Boyd. Id. He similarly contacted her friends, students, and professional colleagues at Georgia Tech with critiques about Boyd, leading

³ Professor E.R. Lanier is now Professor Emeritus at Georgia State University College of Law.

to the entry of a 12-month protective order by a Fulton County Superior Court enjoining such contact. Id. When this order expired and Boyd took a position at the University of Georgia in Clarke County, Huggins renewed his harassing contacts via out-of-state e-mails (this time to Boyd's friends and colleagues at UGA), causing Boyd to petition for a permanent protective order in Clarke County Superior Court to enjoin such contacts. Id. The trial court entered a permanent protective order against Huggins from stalking Boyd. Huggins challenged the order on the basis of lack of personal jurisdiction. The trial court denied Huggins motion, and he appealed. The Georgia Court of Appeals reversed, holding:

The question of personal jurisdiction is a matter of statute. OCGA § 16-5-94, which authorizes a party to petition a court for a protective order against stalking, states in subsection (b) that “[j]urisdiction for such a petition shall be the same as for family violence petitions as set out in Code Section 19-13-2.” OCGA § 19-13-2(b) provides that “[f]or proceedings under this article involving a nonresident respondent, the superior court where the petitioner resides . . . shall have jurisdiction, where the act involving family violence meets the elements for personal jurisdiction provided for under paragraph (2) or (3) of Code Section 9-10-91.” In pertinent part, paragraphs (2) and (3) of OCGA § 9-10-91 allow a Georgia court to exercise personal jurisdiction over a nonresident (as to a cause of action arising from any of the acts or omissions enumerated in that Code section) where that nonresident

(2) Commits a tortious act or omission within this state . . . ;
[or]

(3) Commits a tortious injury in this state caused by an act or omission outside this state if the tort-feasor . . . engages in any other persistent course of conduct . . . in this state. . . .

Id. at 564. The court held that the tort was not committed in Georgia, so subsection (2) of the Long Arm did not apply; and further that the act giving rise to the tortious injury took place in South Carolina, with the injury occurring in Georgia, so only subsection (3)

was applicable. Finally, the court found that Huggins had not engaged in any other persistent course of conduct in the state, and thus Long Arm jurisdiction could not be exercised. Id at 566; see also Anderson v. Deas, 273 Ga.App. 770 (2005) (same).

However, Judge Anne Barnes' special concurrence highlights the flaws in subsection (3) of our Long Arm Statute:

I concur in all that is said in the majority opinion, but write specially to note that having to set aside the protective order in this case is an unfortunate result of Georgia's unnecessarily restrictive Long Arm Statute, which under these facts requires both act and injury inside the state under OCGA § 9-10-91(2). It is illogical that venue for the crime of stalking is the place where threatening e-mail is received, OCGA § 16-5-90(a)(1), but that our courts cannot obtain personal jurisdiction over the stalker to issue a civil protective order unless the stalker engages in some additional "persistent course of conduct." OCGA § 9-10-91(3). As noted by the authors of a 2007 law review article about Georgia's Long Arm Statute, Georgia

residents are ... not fully protected in their ability to obtain long-arm jurisdiction over nonresident defendants in cases arising in the context of [I]nternet activity. ... The literal reading of subsection (2) by the Georgia state courts, which requires the tortious act to be committed within the state, severely limits the ability of injured residents to obtain personal jurisdiction over nonresidents who commit "cybertorts."

"Extraterritorial Personal Jurisdiction for the Twenty-First Century," Van Detta and Kapoor, 3 Seton Hall Circuit Rev. 339, 381 (2007).

Id at 567.

(3) Commits a tortious injury in this state caused by an act or omission outside this state if the tort-feasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

The Georgia Supreme Court in Innovative Clinical sought help from the General Assembly for what the justices view and an unnecessary restriction to Georgia's ability to address the torts of nonresidents:

For over 17 years the justices of this Court and the judges of the Court of Appeals have urged the Legislature to amend Georgia's long-arm statute so as to provide the maximum protection for Georgia residents damaged by the out-of-state acts or omissions committed by nonresident tortfeasors. Despite the eloquence of these pleas, the Legislature has chosen to retain the statutory limitations on in personam jurisdiction set forth in OCGA § 9-10-91(3). In our system of checks and balances, it is as inappropriate for the judicial branch to encroach upon the powers of the legislative or executive branches as it would be for either of those branches to encroach upon the powers of the judicial branch.

Id. at 674-75. These same concerns were reiterated by Judge Barnes in Huggins, *infra*.

Other travesties have occurred due to the overly restrictive verbiage of subsection (3). In Worthy v. Eller, 265 Ga.App. 487 (2004), an Alabama attorney practicing in Phenix City, Alabama represented a divorcing wife in Alabama against her husband. The divorcing couple had a child being cared for at a Columbus, Georgia child care facility and the husband attempted to retrieve the child from the daycare facility. The mother called her Alabama attorney and asked him to prevent the father from picking up the child. The wife's attorney called the Columbus daycare and informed the facility that a restraining order existed that prevented the father from the wife that he intended to pick up the child from the facility. The day care provider asked the attorney if he had a court order. The attorney wrote "per court order" on a motion for a temporary restraining order he had filed in Alabama and faxed it to the center. The attorney did

not, in fact, have a court order. The day care center called the police, who prevented Eller from seeing the child. Id.

The husband sued the wife's attorney for, *inter alia*, defamation, and alleged Long Arm jurisdiction under both subsections (2) and (3). The attorney filed a motion to dismiss based on lack of personal jurisdiction, which the trial court denied. The Georgia Court of Appeals reversed, finding that a) that defamation is expressly exempted from subsection (2), so subsection (2) could not apply; and b) subsection (3) did not apply because even though the tortious act was committed in Alabama but resulted in injury in Georgia, the tortfeasor had never practiced law out of the firm's Georgia office, that he has not regularly done or solicited business in Georgia, that he has not engaged in any persistent course of conduct in this state, and that he does not derive substantial revenue from services rendered in Georgia. Id. at 488.

Chief Judge Beasley, in a special concurrence with the dissent in Phears v. Doyne, 220 GA.App. 550 (1996) stated that the dissent "would allow a liberal interpretation of Georgia's Long Arm Statute. This would be in harmony with the judicially articulated lodestar of the statute, which is that it "contemplates that jurisdiction shall be exercised over nonresident parties to the maximum extent permitted by procedural due process." Id. at 552. Judge Beasley went further to implore the General Assembly that "[w]hether the Supreme Court's construction of the statute is correct or not, it is still open for the legislature to address the issue and assure the maximum recourse to Georgia courts for Georgia citizens to resolve disputes with foreign persons or entities." Id.

(4) Owns, uses, or possesses any real property situated within this state:

Subsection (4) has not caused a great deal of heartburn for litigants in the exercise of extraterritorial jurisdiction as the preceding three subsections, primarily due

to the specific jurisdiction requirements inherent in Georgia's Long Arm statute. However, there is nothing in United States Supreme Court jurisprudence to suggest that the ownership, use, or possession of real property within a state would not confer personal jurisdiction over the nonresident for matters unconnected to the realty. To the contrary, *International Shoe* established that due process would only require that a defendant not present in the forum state "have certain minimum contacts with [the forum State] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" 326 U.S. at 316. In the Court's view, when a corporation conducted activities within a state, it enjoyed the "benefits and protection of the laws of that state," and the "exercise of that privilege may give rise to obligations." *Id.* at 319. Accordingly, in cases where "those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." *Id.*

The Court then set the stage for what would come to be described as general jurisdiction when it noted that "there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Id.* at 318. In three decisions following *International Shoe*, the Court has specifically held and reaffirmed that a state court may, consistent with due process, exercise general jurisdiction, i.e., personal jurisdiction over a nonpresent defendant on claims unrelated to the defendant's forum contacts. See *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984); *Burnham v. Superior Court of California*, 495 U.S. 604 (1990).

Robert L. Ashe, *Getting Too Personal – An Analysis of Mitsubishi Motors Corp. v. Colemon and the Current State of Georgia’s Long-Arm Statute and Personal Jurisdiction*.⁴

Newer Provisions of Georgia Long Arm Statute: The Domestic Relations Subsections (5) and (6).

The fact that Georgia’s Long Arm statute did not contain any provision that the appellate court believed would encompass domestic relations, Georgia was without the ability to adjudicate issues surrounding family obligations involving a nonresident.

The “transacts any business” portion of the long-arm statute typically has been utilized to obtain jurisdiction over non-resident business entities which have purposefully availed themselves of the right to conduct commercial activities in this state. . . . While the phrase “transacts any business” is not free of all ambiguity, the term “business” is commonly understood as applying to dealings of a commercial, industrial, or professional nature. A number of states, recognizing the distinction between the transaction of “business” and the performance of family obligations, have specifically enacted “domestic relations” long-arm statutes. See, e.g., Fla.Stat. § 48–193(1)(e); N.C.Gen.Stat. § 1–75.4; see also Whitaker v. Whitaker, 237 Ga. 895 (1976). Unfortunately, Georgia has not.

Warren v. Warren, 249 Ga. 130, 130-31 (1982).

To fill this gap, the General Assembly added to two fixes of subsection (5) and (6):

(5) With respect to proceedings for divorce, separate maintenance, annulment, or other domestic relations action or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or if the defendant resided in this state preceding the commencement

⁴ This paper was a precursor to the more extensive paper published by Mr. Ashe and his colleagues in the Georgia State University Law Review, Volume 25, Issue 4, Summer 2009, *Getting Personal with Our Neighbors – A Survey of Southern States’ Exercise of General Jurisdiction and a Proposal for Extending Georgia’s Long-Arm Statute*.

of the action, whether cohabiting during that time or not. This paragraph shall not change the residency requirement for filing an action for divorce; or

(6) Has been subject to the exercise of jurisdiction of a court of this state which has resulted in an order of alimony, child custody, child support, equitable apportionment of debt, or equitable division of property if the action involves modification of such order and the moving party resides in this state or if the action involves enforcement of such order notwithstanding the domicile of the moving party.

At its most basic concept, the addition of subsection (5) and (6) illustrate the problems with Georgia's continued adherence to the concept of "specific jurisdiction" in the exercise of Georgia's Long Arm jurisdiction. In other words, if the act or omission is not specifically addressed in the Long Arm statute, it is out of the reach of the state's extraterritorial personal jurisdiction. As long as Georgia continues to adhere to the concept of specific jurisdiction, the General Assembly will be continually faced with the process of patching the holes in our Long Arm statute when new and particularized challenges to the Long Arm arise due to the lack of specific language covering the new scenarios are presented.

There have been pleas from our appellate courts over the past years to move away from specific jurisdiction and to embrace the concept of general jurisdiction:

The nonresident defendant does transact business within Georgia and could come under the first ground which OCGA § 9-10-91 provides for the exercise of personal jurisdiction over it. In this regard, there are enough of those "minimum contacts" which would satisfy federal and state constitutional due process concerns.

The problem is that the cause of action in this case did not arise from any of the acts or omissions in the transaction of that business, which is another requirement of long arm jurisdiction under that statute. They arose out of an airplane crash in Kentucky.

The dissent would hold that there was jurisdiction over the nonresident beyond the confines of the Long Arm Statute. Although that might be possible under constitutional due process law, as recognized in Gust v. Flint, 257 Ga. 129 (1987), that is not Georgia's law. “[T]he requirement that a cause of action ‘arise out of’ activities within the state (OCGA § 9–10–91), applies . . . to the exercise of personal jurisdiction over *nonresidents*.” *Allstate Ins. Co. v. Klein*, 262 Ga. 599, 600, 422 S.E.2d 863 (1992).

Pratt & Whitney Canada, Inc. v. Sanders, 218 Ga. App. 1, 5 (1995) (Beasley, J. concurring).

I fully agree with my colleagues in the majority that the Georgia Long Arm Statute, OCGA § 9–10–91, does not confer upon Georgia courts any authority to exercise personal jurisdiction over defendant Pratt & Whitney Canada, Inc. (“PWC”), the nonresident manufacturer of (allegedly) defective airplane engines, because this product liability action arises out of a plane crash in Kentucky and does not involve any tortious conduct or tortious consequences within the State of Georgia. PWC, however, contends that personal jurisdiction may be exercised over it *only* under the Georgia Long Arm Statute, OCGA § 9–10–91. **This analysis fails to appreciate the distinction between a *general* jurisdiction and a *specific* jurisdiction. It is my view that PWC is subject to a general jurisdiction in the courts of Georgia due to its continuous and systematic commercial activities in Georgia.**

Id at 6 (McMurray, J. dissenting, emphasis added).

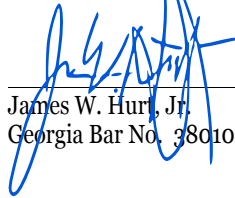
The concept is fully embraced by the United States Supreme Court as early as International Shoe. The Court noted that “there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities”- in other words, general jurisdiction. Id at 318.

CONCLUSION

For the reasons stated herein, and the frequent calls from our appellate courts to expand Georgia's extraterritorial jurisdiction to the fullest extent allowed under the due process clause of the Fourteenth Amendment, the United States Constitution, and the Constitution of Georgia, we respectfully ask that the State Bar of Georgia support the proposed amendments to Georgia's Long Arm Statute.

Respectfully submitted, this 21st day of November, 2014.

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**IMMEDIATE PAST CHAIR OF
THE GENERAL PRACTICE AND
TRIAL SECTION OF THE
STATE BAR OF GEORGIA**

SUMMARY

The changes proposed to the current statute, OCGA 36-60-17, are:

1. Clarification of the statute's wording so that it reflects case law and makes it very clear that a water lien attaches only to property owned by the party who contracted for service. For example, we utilized the term "applicant" in paragraph (b), so that it agrees with the usage in paragraph (a) of the term "application". The proposed legislation clarifies that a supplier may file a lien for unpaid services, but only against the party who has not paid, and that the property encumbered by any such lien shall be only that property owned by the party who has not paid.

2. Preservation of the "heightened status" of water liens to reflect case law by explicitly stating that these liens have the same priority as tax liens.

3. Subjecting water liens to filing and recording requirements so that there is public notice of the existence of these liens. The filing and recording requirement is needed for real estate practitioners to be able to report accurately the status of title to real property in Georgia. The additional provisions, for recording, cancellation, expiration, foreclosure, bonding and contest, track those found in the statutes governing mechanics and materialmen's liens.

The proposal recognizes the March 23, 2009 decision of the Supreme Court of Georgia which addressed water liens imposed by city ordinance, *Federal Home Loan Mortgage Corporation v. City of Atlanta* (285 Ga. 1890)(674 S.E.2d 905). The court decision in this case contains a brief and clear history of Georgia's law on water liens, including the reason that the current code section governing water service liens, OCGA 36-60-27, was enacted:

Prior to enactment of OCGA 36-60-17, Georgia had a "judicially-created policy that permitted delinquent water bills, regardless of who incurred the charges, to serve as the basis for the imposition of a lien of heightened status on the real property" to which water service had been provided. Heightened status meant that a water lien was like a tax lien -- deemed to arise when the water bill was due and unpaid, encumbered the property where water service had been provided, and exempt from the general notice and recording provisions of the Georgia Code. Further, "Georgia appellate courts ruled that unpaid water charges incurred by a previous owner or occupant survived foreclosure and became the obligation of the lender which foreclosed."

The "General Assembly enacted OCGA 36-60-17 to end the practice of imposing a lien against real property to secure payment of unpaid water charges unless the water charges had been incurred by the owner of the property, and to end the practice of water suppliers refusing to supply water to certain residential property because of the indebtedness of a prior owner, occupant, or lessee."

A copy of *FHLMC v. City of Atlanta*(285 Ga. 1890) is attached.

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 60 of Title 36 of the Official Code of Georgia Annotated so that liens for unpaid services provided by water and other suppliers must be placed of record to be effective.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

A new section shall be added to O.C.G.A. 36-60-17, as follows:

(e) A lien for service shall be effective upon the filing with the Georgia Superior Court Clerk's Cooperative Authority (GSCCCA) of the name of the party who incurred such service, within 90 days of the past due date for payment of such service. Such filing shall contain the name and the past due date.

(1) The GSCCCA shall maintain a record of such information filed by suppliers of services.

(2) Any supplier who files a name with the GSCCCA, shall request upon payment of the amount due that such name be removed from the record created by the GSCCCA.

285 Ga. 189 (Ga. 2009)

674 S.E.2d 905

FEDERAL HOME LOAN MORTGAGE CORPORATION

v.

CITY OF ATLANTA.

No. S08Q1846.

Supreme Court of Georgia.

March 23, 2009

Linda S. Finley, Baker, Donelson, Bearman & Caldwell, Dylan Wilson Howard, Atlanta, for appellant.

Elizabeth Brannen Chandler, Laura Sauriol, Mavis Theresa Stewart, Lemuel Herbert Ward, for Appellee.

BENHAM, Justice.

The United States District Court for the Northern District of Georgia has certified two questions of Georgia law to this Court pursuant to Georgia constitutional and statutory [674 S.E.2d 906] authorization and the rules of this Court. 1983 Ga. Const., Art. VI, Sec. VI, Par. IV; OCGA §§ 15-2-9(a); Rule 46 of the Rules of the Supreme Court of Georgia. The questions arise in a declaratory judgment action filed in the federal district court. We have been asked to determine whether the City of Atlanta's ordinance concerning action that may be taken when charges for water and sewer service are not paid is inconsistent with and thus pre-empted by OCGA §§ 36-60-17.^[1] We have also been asked to determine whether OCGA §§ 36-60-17 prohibits a municipality from retaining, as well as imposing, a lien on residential property to secure unpaid charges for water service to the residential property when the property is no longer owned by the person who incurred the charges.

In May 2007, the Federal Home Loan Mortgage Corporation (" Freddie Mac") filed a complaint in federal district court for declaratory and injunctive relief against the City of Atlanta (" the City") with regard to the supply of water services to a certain piece of improved real property^[2] located in the City of Atlanta. Freddie Mac holds an interest in the property by means of a special warranty deed executed by Wells Fargo Bank which had purchased the property at a foreclosure sale after Harold Singer, Jr., defaulted on his promissory note to Wells Fargo, which note was secured by a deed to secure debt executed by Singer in favor of Wells Fargo. After Freddie Mac obtained Wells Fargo's interest in the property, Freddie Mac learned from the City of Atlanta that Singer had incurred an outstanding water bill on the property of \$11,117. 90 and that the unpaid bill constituted a lien on the property. Unable to convey clear, marketable title to the property because it could obtain only a policy of title insurance on the property that specifically excepted the City's claim, Freddie Mac filed its complaint in which it sought a declaration that the Singer water bill was unenforceable against the purchaser at the foreclosure sale; that the water bill did not constitute a lien on the property; that the City did not have the

authority to refuse to provide water service to the property following the sale of the property at the foreclosure sale; and that the City's policy to refuse water service until the new owner of the property paid the sums incurred by the former property owner violated OCGA §§ 36-60-17. The questions presented being questions of state law and the answers being determinative of the matter pending in federal court, the district court certified the questions to this Court.

1. The uniformity clause of the Georgia Constitution provides:

Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws.

1983 Ga. Const., Art. III, Sec. VI, Par. IV(a). This clause precludes a local or special law when a general law exists on the same subject, with an exception where the legislature has authorized local governments to act pursuant [674 S.E.2d 907] to police powers and the resulting local ordinance does not conflict with the general law. *Franklin County v. Fieldale Farms Corp.*, 270 Ga. 272(2), 507 S.E.2d 460 (1998). See also *Pawnmart, Inc. v. Gwinnett County*, 279 Ga. 19, 608 S.E.2d 639 (2005) (local ordinance imposing certain requirements on pawnbrokers not preempted by state law).

Section 154-120(1) of the City's ordinances provides:

Upon the failure of any person to: (i) Pay any water bill ... or charge against any premises for which the person is responsible ...; or (ii) to send a written notice of dispute ..., the person will be sent a notice that their service will be terminated without further notice and the commissioner ... [is] authorized to turn off and discontinue water service to the person and premises until the bill or charge is paid.... Subject to OCGA §§ 36-60-17, the delinquent bill or charge shall be a lien on the property where the bill or charge was incurred....

Generally, OCGA §§ 36-60-17(a) prohibits a water supplier from refusing to supply water to a water meter because of the indebtedness of a prior owner, occupant, or lessee of the residence served by that meter. Subsection (b) requires water suppliers to keep records on the user of water service and seek reimbursement of unpaid charges initially from the person who incurred the charges. In subsection (c), a water supplier is prohibited from imposing a lien against real property to secure unpaid charges for water furnished unless the owner of the real property is the person who incurred the charges; in subsection (d), suppliers of gas, sewerage service, or electricity are similarly limited in their ability to impose a lien against real property to secure unpaid charges for services. To the extent the city ordinance authorizes the water supplier to discontinue service to the single-family residence served by its own meter until the water supplier receives payment for unpaid water charges incurred by a former owner, occupant, or lessee of the property, the city ordinance is in conflict with and is pre-empted by subsection (a) of OCGA §§ 36-60-17. Accordingly, the City, as water supplier, cannot refuse to supply water to the premises at issue until it receives payment of the water bill arrearage incurred by a former owner.

2. Freddie Mac maintains that the City ordinance is also in conflict with and preempted by subsection (c) of OCGA §§ 36-60-17. Subsection (c) prohibits a water supplier from imposing a

lien against real property to secure payment for unpaid water charges incurred by anyone other than the owner of the property. The city ordinance says the delinquent water bill or charge becomes a lien on the property where the bill or charge was incurred, subject to OCGA §§ 36-60-17.

Prior to the enactment of OCGA §§ 36-60-17 in 1994, this Court sanctioned the imposition of a lien on real property to secure payment of unpaid bills for water supplied to the property where a city charter or local ordinance authorized the water supplier to shut off water to the property for failure to pay the water bill and required that the water service not be restored until the arrears were fully paid. *City of Atlanta v. Burton*, 90 Ga. 486, 489, 16 S.E. 214 (1892). The bill for water supplied to the premises was " a charge upon the property to which the water was conveyed" and gave the water supplier the right " to enforce payment for water furnished by making the amount due for it a charge on the property supplied with it." 90 Ga. at 489, 16 S.E. 214. The Court saw the water supplier's right of enforcement as " somewhat analogous to a lien for taxes, which attaches to the property itself, and for the payment of which the property is subject...." Id. See also *Dodd v. City of Atlanta*, 154 Ga. 33, 39, 113 S.E. 166 (1922) (noting the city's ability to enforce the collection of costs related to water service by execution, levy and sale of the property served). In *Bowery Savings Bank v. DeKalb County*, 240 Ga. 528, 530-531, 242 S.E.2d 50 (1978), this Court viewed the creation of such a lien as the exercise of the police power and ruled that liens for unpaid water charges " have the same priority as liens for ad valorem taxes" and " were not extinguished by the banks' foreclosures of their security deeds...." Liens for all taxes due the state or any county or municipality " arise as of the time the taxes become due and unpaid and all tax [674 S.E.2d 908] liens shall cover all property in which the taxpayer has any interest from the date the lien arises until such taxes are paid." OCGA §§ 48-2-56(a). Taxes are paid " before any other debt, lien, or claim of any kind." OCGA §§ 48-5-28(a). As a result, the water lien, like the lien for ad valorem taxes, was deemed to arise when the water bill was due and unpaid, covered the property where the water bill was in arrears, and was exempt from the general notice and recording provisions of OCGA §§ 44-2-1 and 44-2-2.^[3] See *Atlanta Title & Trust Co. v. Inman*, 42 Ga.App. 191, 155 S.E. 364 (1930) (lien for tax imposed by municipality attached to property despite not having been recorded in superior court clerk's office).

Because of the heightened status given the water lien, Georgia appellate courts ruled that unpaid water charges incurred by a previous owner or occupant survived foreclosure and became the obligation of the lender which foreclosed upon the delinquent owner. See *Bowery Savings Bank v. DeKalb County*, supra, 240 Ga. at 530, 242 S.E.2d 50; *Druid Assoc., Ltd. v. National Income Realty Trust*, 210 Ga.App. 684, 436 S.E.2d 721 (1993).^[4] Six months after the decision of the Court of Appeals in *Druid Associates* holding that the foreclosing holder of a deed to secure debt was responsible for the delinquent water charges incurred by the tenant of the property owner suffering foreclosure, the General Assembly enacted OCGA §§ 36-60-17 to end the practice of imposing a lien against real property to secure payment of unpaid water charges unless the water charges had been incurred by the owner of the property, and to end the practice of water suppliers refusing to supply water to certain residential property because of the indebtedness of a prior owner, occupant, or lessee.^[5]

OCGA §§ 36-60-17 embodies a limited legislative modification of the judicially-created policy that permitted delinquent water bills, regardless of who incurred the charges, to serve as the basis for the imposition of a lien of heightened status on the real property at which the bills were

incurred. Through enactment of OCGA §§ 36-60-17(c), the General Assembly statutorily overruled the case law authorizing imposition of a "heightened-status" lien for unpaid water charges incurred by a former non-owner occupant. Where, however, unpaid water charges were incurred by an owner of the property, the judicial doctrine permitting the imposition of a "heightened-status" lien on the owner's residential property where the unpaid charges were incurred remains in place. Inasmuch as the city's ordinance expressly recognizes that its ability to impose a lien on real property on the basis of unpaid water bills for service to that property is limited by OCGA §§ 36-60-17, we conclude that the city's ordinance is not in conflict with subsection (c) of OCGA §§ 36-60-17.

3. In light of the discussion above, we answer the second question posed by the federal district court by stating our conclusion that OCGA §§ 36-60-17 does not prevent a water lien from arising when the owner of real property accrues unpaid water bills for water charges incurred by the property owner,

[674 S.E.2d 909] and OCGA §§ 36-60-17 does not affect the heightened status said water lien enjoys.

In summary, we conclude that Section 154-120(1) of the Code of Ordinances of the City of Atlanta, to the extent it allows the water supplier to refuse service to an applicant for service at a residential property at which each residential unit is served by a separate meter on the ground that there exists an indebtedness for water service incurred by a prior owner, occupant or lessee, is inconsistent with and pre-empted by OCGA §§ 36-60-17(a). Section 154-120(1) is not inconsistent with OCGA §§ 36-60-17(c) since the ordinance recognizes the water supplier's ability to impose a lien for non-payment of water charges is limited to instances where the owner incurred the indebtedness. Stated another way, OCGA §§ 36-60-17 does not prevent a water lien from arising when the owner of real property accrues unpaid water bills for water charges incurred by the property owner, and OCGA §§ 36-60-17 does not affect the heightened status said water lien enjoys.

Questions answered.

All the Justices concur.

Notes:

[¹] OCGA §§ 36-60-17 provides:

(a) No public or private water supplier shall refuse to supply water to any single or multifamily residential property to which water has been furnished through the use of a separate water meter for each residential unit on application of the owner or new resident tenant of the premises because of the indebtedness of a prior owner, prior occupant, or prior lessee to the water supplier for water previously furnished to such premises.

(b) For each new or current account to supply water to any premises or property, the public or private water supplier shall maintain a record of identifying information on the user of the water service and shall seek reimbursement of unpaid charges for water service furnished initially from the person who incurred the charges.

(c) A public or private water supplier shall not impose a lien against real property to secure unpaid charges for water furnished unless the owner of such real property is the person who incurred the charges.

(d) A public or private supplier of gas, sewerage service, or electricity shall not impose a lien against real property to secure unpaid charges for gas, sewerage service, or electricity unless the owner of such real property is the person who incurred the charges.

[2] The improvement is a single-family residence.

[3] OCGA §§ 44-2-1 requires every deed conveying lands to be recorded in the office of the clerk of superior court of the county in which the land is located, and sets out the priority of deeds (" a prior unrecorded deed loses its priority over a subsequent recorded deed from the same vendor when the purchaser takes such deed without notice of the existence of the prior deed"). OCGA §§ 44-2-2 requires the clerk of superior court to keep a docket for the filing for record of deeds, mortgages, and liens of all kinds.

[4] See also *Union Circulation Co. v. Russell*, 463 F.Supp. 884 (N.D.Ga.1978) (county ordinance authorizing withholding of water services from landlord's property where former tenant had incurred delinquent water bills does not violate due process of law or equal protection where there is an ordinance that expressly creates liens on property at which there is an unpaid water bill). Cf. *Chatham v. Jackson*, 613 F.2d 73 (5th Cir.1980) (in light of holding in *Bowery Savings Bank* concerning the priority of lien based on unpaid water bill, an ordinance authorizing withholding of water services until delinquent bill satisfied is not an unconstitutional " taking," and does not violate due process and equal protection).

[5] The latter action of the General Assembly was limited to water service to residential single-family and multi-family property where water is furnished through the use of a separate water meter for each residential unit.

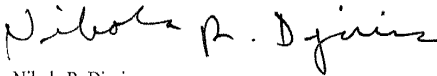
STATE BAR OF GEORGIA
FIDUCIARY LAW SECTION

To the Advisory Committee on Legislation:

The Uniform Law Commission has recently completed the Uniform Fiduciary Access to Digital Assets Act (UFADAA). UFADAA would update Georgia fiduciary law for the Internet age. When a person dies or loses the capacity to manage his or her affairs, a fiduciary (i.e., an executor, administrator, conservator, or agent under a power of attorney) receives legal authority to manage or distribute the person's property as appropriate. Most people now own a great variety of digital assets, including photographs, documents, social media accounts, web sites, and more. Access to digital assets is often limited by custodians through restrictive terms-of-service agreements. UFADAA ensures that fiduciaries have the access they need to carry out their duties in accordance with the account holder's estate plan, if there is one, otherwise in the account holder's best interests.

Currently, Georgia law makes no provision for the management or distribution of digital assets by fiduciaries.

The Fiduciary Law Section recommends the adoption of the UFADAA with the modifications necessary to make UFADAA consistent with existing Georgia fiduciary law.



Nikola R. Djuric
Atlanta, Georgia
Chairman, Legislation Committee
Fiduciary Law Section, State Bar of Georgia



THE UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

- A Summary -

In the Internet age, the nature of property and our methods of communication have changed dramatically. A generation ago, a human being delivered our mail, photos were kept in albums, documents in file cabinets, and money on deposit at the corner bank. For most people today, at least some of their property and communications are stored as data on a computer server and accessed via the Internet.

Collectively, a person's digital property and electronic communications are referred to as "digital assets" and the companies that store those assets on their servers are called "custodians." Access to digital assets is usually governed by a restrictive terms-of-service agreement provided by the custodian. This creates problems when account holders die or otherwise lose the ability to manage their own digital assets.

A fiduciary is a trusted person with the legal authority to manage another's property, and the duty to act in that person's best interest. The Uniform Fiduciary Access to Digital Assets Act (UFADAA) concerns four common types of fiduciaries:

1. Executors or administrators of deceased persons' estates;
2. Court-appointed guardians or conservators of protected persons' estates;
3. Agents appointed under powers of attorney; and
4. Trustees.

UFADAA gives people the power to plan for the management and disposition of their digital assets in the same way they can make plans for their tangible property: by providing instructions in a will, trust, or power of attorney. If a person fails to plan, the same court-appointed fiduciary that manages the person's tangible assets can manage the person's digital assets, distributing those assets to heirs or disposing of them as appropriate.

Some custodians of digital assets provide an online planning option by which account holders can choose to delete or preserve their digital assets after some period of inactivity. UFADAA defers to the account holder's choice in such circumstances, but overrides any provision in a click-through terms-of-service agreement that conflicts with the account holder's express instructions.

Under UFADAA, fiduciaries that manage an account holder's digital assets have the same right to access those assets as the account holder, but only for the limited purpose of carrying out their fiduciary duties. Thus, for example, an executor may access a decedent's email account in order to make an inventory of estate assets and ultimately to close the account in an orderly manner,

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

but may not publish the decedent's confidential communications or impersonate the decedent by sending email from the account. Moreover, a fiduciary's management of digital assets may be limited by other law. For example, a fiduciary may not copy or distribute digital files in violation of copyright law, and may not access the contents of communications protected by federal privacy laws.

In order to gain access to digital assets, UFADAA requires a fiduciary to send a request to the custodian, accompanied by a certified copy of the document granting fiduciary authority, such as a letter of appointment, court order, or certification of trust. Custodians of digital assets that receive an apparently valid request for access are immune from any liability for good faith compliance.

UFADAA is an overlay statute designed to work in conjunction with a state's existing laws on probate, guardianship, trusts, and powers of attorney. Enacting UFADAA will simply extend a fiduciary's existing authority over a person's tangible assets to include the person's digital assets, with the same fiduciary duties to act for the benefit of the represented person or estate. It is a vital statute for the digital age, and should be enacted by every state legislature as soon as possible.

For further information about UFADAA, please contact ULC Legislative Counsel Benjamin Orzeske at 312-450-6621 or borzeske@uniformlaws.org.



WHY YOUR STATE SHOULD ADOPT THE UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

The Uniform Fiduciary Access to Digital Assets Act (UFADAA) modernizes fiduciary law for the Internet age. Nearly everyone today has digital assets, such as documents, photographs, email, and social media accounts. Digital assets may have real value, both monetary and sentimental. However, Internet service agreements, passwords that can be reset only through the account holder's email, and federal and state privacy laws that do not contemplate the account holder's death or incapacity may prevent fiduciaries from gaining access to these valuable assets. UFADAA solves the problem by ensuring that legally appointed fiduciaries can access, delete, preserve, and distribute digital assets as appropriate.

- ***UFADAA gives account holders control.*** UFADAA allows account holders to specify whether their digital assets should be preserved, distributed to heirs, or destroyed.
- ***UFADAA treats digital assets like all other assets.*** If a fiduciary has the legal authority to inventory and dispose of all of a person's documents, it should not matter whether those documents are printed on paper, stored on a personal computer, or stored in the cloud. UFADAA provides a fiduciary with access to both tangible and digital property.
- ***UFADAA provides rules for four common types of fiduciaries.*** The executor of a decedent's estate may have responsibilities altogether different from those of an agent under a living person's power of attorney. UFADAA provides appropriate default rules governing access for executors, agents, conservators, and trustees.
- ***UFADAA protects custodians and copyright holders.*** Under UFADAA, fiduciaries must provide proof of their authority in the form of a certified document. Custodians of digital assets that comply with a fiduciary's apparently authorized request for access are immune from any liability. A fiduciary's authority over digital assets is limited by federal law, including the Copyright Act and the Electronic Communications Privacy Act.
- ***UFADAA provides efficient uniformity for all concerned.*** Digital assets travel across state lines nearly instantaneously. In our modern mobile society, people relocate more often than ever. Because state law governs fiduciaries, a uniform law ensures that, regardless of the state, fiduciaries will have equal access to digital assets and custodians will benefit from uniform regulation.

For further information about UFADAA, please contact ULC Legislative Counsel Benjamin Orzeske at 312-450-6621 or borzeske@uniformlaws.org.



A Few Facts about
THE UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

PURPOSE: The Uniform Fiduciary Access to Digital Assets Act (UFADAA) updates state fiduciary law for the Internet age. When a person dies or loses the capacity to manage his or her affairs, a fiduciary receives legal authority to manage or distribute the person’s property as appropriate. Most people now own a great variety of digital assets, including photographs, documents, social media accounts, web sites, and more. Access to digital assets is often limited by custodians through restrictive terms-of-service agreements. UFADAA ensures that fiduciaries have the access they need to carry out their duties in accordance with the account holder’s estate plan, if there is one, otherwise in the account holder’s best interests.

ORIGIN: Completed by the Uniform Law Commission in 2014.

ENDORSED BY:

APPROVED BY:

ENACTED BY:



For further information about UFADAA, please contact ULC Legislative Counsel Benjamin Orzeske at 312-450-6621 or borzeske@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

**UNIFORM FIDUCIARY ACCESS TO
DIGITAL ASSETS ACT**

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-THIRD YEAR
SEATTLE, WASHINGTON
JULY 11-17, 2014

WITH PREFATORY NOTE AND COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

October 6, 2014

ABOUT ULC

The **Uniform Law Commission (ULC)**, also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 123rd year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
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- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

**DRAFTING COMMITTEE ON
UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

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UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

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UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

PREFATORY NOTE

The purpose of this act is to vest fiduciaries with the authority to access, control, or copy digital assets and accounts. The act applies only to fiduciaries, who must always act in compliance with their fiduciary powers and duties. The goal of the Uniform Fiduciary Access to Digital Assets Act (UFADAA) is to remove barriers to a fiduciary's access to electronic records and to leave unaffected other law, such as fiduciary, probate, trust, banking, investment securities, and agency law. Existing law prohibits any fiduciary from violating fiduciary responsibilities by divulging or publicizing any information the fiduciary obtains while carrying out his or her fiduciary duties.

UFADAA addresses four different types of fiduciaries: personal representatives of decedents' estates, conservators for protected persons and individuals, agents acting pursuant to a power of attorney, and trustees. It distinguishes the authority of fiduciaries, which exercise authority subject to this act only on behalf of the account holder, from any other efforts to access the digital assets. Family members or friends may seek such access, but, unless they are fiduciaries, their efforts are subject to other laws and are not covered by this act.

As the number of digital assets held by the average person increases, questions surrounding the disposition of these assets upon the individual's death or incapacity are becoming more common. Few laws exist on the rights of fiduciaries over digital assets. Few holders of digital assets and accounts consider the fate of their online presences once they are no longer able to manage their assets. And these assets have real value: according to a 2011 survey from McAfee, Intel's security-technology unit, American consumers valued their digital assets, on average, at almost \$55,000. Kelly Greene, *Passing Down Digital Assets*, WALL STREET JOURNAL (Aug. 31, 2012), <http://goo.gl/7KAaOm>. These assets range from online gaming items to photos, to digital music, to client lists. There are millions of Internet accounts that belong to dead people. Some Internet service providers have explicit policies on what will happen when an individual dies, others do not; even where these policies are included in the terms-of-service agreement, most consumers click through these agreements.

The situation regarding fiduciaries' access to digital assets is less than clear, and is subject to federal and state privacy and computer "hacking" laws as well as state probate law. A minority of states has enacted legislation on fiduciary access to digital assets, and numerous other states have considered, or are considering, legislation. Existing legislation differs with respect to the types of digital assets covered, the rights of the fiduciary, the category of fiduciary included, and whether the principal's death or incapacity is covered. A uniform approach among states will provide certainty and predictability for courts, account holders, fiduciaries, and Internet service providers. It gives states precise, comprehensive, and easily accessible guidance on questions concerning fiduciaries' ability to access the electronic records of a decedent, protected person, principal, or a trust. For issues on which states diverge or on which the law is unclear or unknown, the act will for the first time provide uniform rules.

The general goal of the act is to facilitate fiduciary access while respecting the privacy and intent of the account holder. It adheres to the traditional approach of trusts and estates law, which respects the intent of the account holder and promotes the fiduciary's ability to administer the account holder's property in accord with legally-binding fiduciary duties.

With regard to the general scope of the act, the act's coverage is inherently limited by the definition of "digital assets." The act applies only to electronic records, which do not include the underlying asset or liability unless it is itself an electronic record.

The act is divided into fifteen sections. Sections 1-2 contain general provisions and definitions, including those relating to the scope of the fiduciary's authority.

Section 3 governs applicability, clarifying the scope of the act and the fiduciaries who have access to digital assets under UFADAA. Section 3 states that the act does not apply to the digital assets of an employer used by an employee during the ordinary course of business.

Sections 4-7 establish the rights of personal representatives, conservators, agents acting pursuant to a power of attorney, and trustees. Each of the fiduciaries is subject to different opt-in and default rules based on the presumed intent of the account holder and the applicability of other state and federal laws. A personal representative is presumed to have access to all of the decedent's digital assets unless that is contrary to the decedent's expressed intent or to other applicable law. A conservator may access digital assets pursuant to a court order. An agent acting pursuant to a power of attorney is presumed to have access to all of a principal's digital assets not subject to the protections of other applicable law; if another law protects the asset, then the power of attorney must explicitly grant access. And a trustee may access any digital asset held by the trust unless that is contrary to the terms of the trust or to other applicable law.

Section 8 contains general provisions relating to the rights of the fiduciary to access digital assets. Section 9 addresses compliance, and Section 10 grants immunity to custodians. Sections 11-15 address miscellaneous topics, including retroactivity, the effective date of the act, and similar issues. The act addresses only the rights of the four types of fiduciaries, and it is designed to provide access without changing the ownership of the digital asset.

UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Fiduciary Access to Digital Assets Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Account holder” means a person that has entered into a terms-of-service agreement with a custodian or a fiduciary for the person.

(2) “Agent” means an attorney in fact granted authority under a durable or nondurable power of attorney.

(3) “Carries” means engages in the transmission of electronic communications.

(4) “Catalogue of electronic communications” means information that identifies each person with which an account holder has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) “[Conservator]” means a person appointed by a court to manage the estate of a living individual. The term includes a limited [conservator].

(6) “Content of an electronic communication” means information concerning the substance or meaning of the communication which:

(A) has been sent or received by an account holder;

(B) is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and

(C) is not readily accessible to the public.

(7) “Court” means the [insert name of court in this state having jurisdiction in matters relating to the content of this act].

(8) “Custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of an account holder.

(9) “Digital asset” means a record that is electronic. The term does not include an underlying asset or liability unless the asset or liability is itself a record that is electronic.

(10) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(11) “Electronic communication” has the same meaning as the definition in 18 U.S.C. Section 2510(12) [as amended].

(12) “Electronic-communication service” means a custodian that provides to an account holder the ability to send or receive an electronic communication.

(13) “Fiduciary” means an original, additional, or successor personal representative, [conservator], agent, or trustee.

(14) “Governing instrument” means a will, trust, instrument creating a power of attorney, or other dispositive or nominative instrument.

(15) “Information” means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(16) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(17) “Personal representative” means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this [act].

(18) “Power of attorney” means a record that grants an agent authority to act in the place of a principal.

(19) “Principal” means an individual who grants authority to an agent in a power of attorney.

(20) “[Protected person]” means an individual for whom a [conservator] has been appointed. The term includes an individual for whom an application for the appointment of a [conservator] is pending.

(21) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(22) “Remote-computing service” means a custodian that provides to an account holder computer processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Section 2510(14) [, as amended].

(23) “Terms-of-service agreement” means an agreement that controls the relationship between an account holder and a custodian.

(24) “Trustee” means a fiduciary with legal title to property pursuant to an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.

(25) “Will” includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

Legislative Note: States should insert the appropriate term for a person named in a conservatorship or comparable state proceeding to manage another’s estate in paragraph (5), the appropriate court in paragraph (7), and the appropriate term for the individual that would be subject to a conservatorship or comparable state proceeding in paragraph (20).

In states in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted in paragraphs (11) and (22).

Comment

Many of the definitions are based on those in the Uniform Probate Code: agent (UPC Section 1-201(1)), conservator (UPC Section 5-102(1)), court (UPC Section 1-201(8)), electronic (UPC Section 5B-102(3)), fiduciary (UPC Section 1-201(15)), governing instrument (UPC

Section 1-201(18)), person (UPC Section 5B-101(6)), personal representative (UPC Section 1-201(35)), power of attorney (UPC Section 5B-102(7)), principal (UPC Section 5B-102(9)), property (UPC Section 1-201(38)), protected person (UPC Section 5-102(8)), record (UPC Section 1-201(41)), and will (UPC Section 1-201(57)). The definition of “information” is based on that in the Uniform Electronic Transactions Act, Section 2, subsection (11). Many of the other definitions are either drawn from federal law, as discussed below, or are new for this act.

An account holder includes any person who entered into a terms-of-service agreement with a custodian, including a deceased individual who entered into the agreement during the individual’s lifetime. A fiduciary is defined as a person, and a fiduciary can be an account holder when the fiduciary opens the account.

The definition of “carries” is drawn from federal law, 47 U.S.C. Section 1001(8).

The term “catalogue of electronic communications” in Section 2(4) is designed to cover log-type information about an electronic communication such as the email addresses of the sender and the recipient, and the date and time the communication was sent.

The term “content of an electronic communication” in Section 2(6) is adapted from 18 U.S.C. Section 2510(8), which provides that content: “when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.” The 2(6) definition is designed to cover only content subject to the coverage of Section 2702 of the Electronic Communications Privacy Act (ECPA), 18 U.S.C. Section 2510 et seq.; it does not include content not subject to ECPA. Consequently, the “content of an electronic communication”, as used later throughout UFADAA, refers *only* to information in the body of an electronic message that is not readily accessible to the public; if the information were readily accessible to the public, it would not be subject to the privacy protections of federal law under ECPA. See S. Rep. No. 99-541, at 36 (1986). When the privacy protections of federal law under ECPA apply to the content of an electronic communication, the act’s legislative history notes the requirements for disclosure: “Either the sender or the receiver can directly or through authorized agents authorize further disclosures of the contents of their electronic communication.” S. Rep. No. 99-541, at 37 (1986).

ECPA does not apply to private e-mail service providers, such as employers and educational institutions. See 18 U.S.C. Section 2702(a)(2); James D. Lamm, Christina L. Kunz, Damien A. Riehl and Peter John Rademacher, *The Digital Death Conundrum: How Federal and State Laws Prevent Fiduciaries from Managing Digital Property*, 68 U. Miami L. Rev. 385, 404 (2014) (available at: <http://goo.gl/T9jX1d>).

Example: X uses a Twitter account to send a message. If the tweet is sent only to other people who have been granted access to X’s tweets, then it meets the Act’s definition of “content of an electronic communication.” But, if the tweet is completely public with no access restrictions, then it does not meet the Act’s definition of “content of an electronic communication.”

A custodian includes any Internet service provider as well as any other entity that provides or stores electronic data of an account holder. A custodian does not include most employers because an employer typically does not have a terms-of-service agreement with an employee. The treatment of digital assets of an employer used by an employee in the ordinary course of the employer's business is discussed in Section 3.

The definition of a digital asset specifies that it is "a record that is electronic." Because records may exist in both electronic and non-electronic formats, this definition clarifies the scope of the act and the limitation on the type of records to which it applies. The term includes products currently in existence and yet to be invented that are available only electronically. It refers to any type of electronically-stored information, such as: 1) any information stored on a computer and other digital devices; 2) content uploaded onto websites, ranging from photos to documents; and 3) rights in digital property, such as domain names or digital entitlements associated with online games. See Lamm, *et al, supra*, at 388. Both the catalogue and content of an electronic communication are covered by the term "digital assets."

The fiduciary's access to a record defined as a "digital asset" does not mean that the fiduciary is entitled to "own" the asset or otherwise engage in transactions with the asset. Consider, for example, funds in a bank account or securities held with a broker or other custodian, regardless of whether the bank, broker, or custodian has a brick-and-mortar presence. This act affects records concerning the bank account or securities, but does not affect the authority to engage in transfers of title or other commercial transactions in the funds or securities, even though such transfers or other transactions might occur electronically. UFADAA simply reinforces the right of the fiduciary to access all relevant electronic communications and the online account that provides evidence of ownership or similar rights. An entity may not refuse to provide access to online records any more than the entity can refuse to provide the fiduciary with access to hard copy records.

The definition of "electronic communication" in Section 2(11) is that set out in 18 U.S.C. Section 2510(12):

"electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

- (A) any wire or oral communication;
- (B) any communication made through a tone-only paging device;
- (C) any communication from a tracking device (as defined in section 3117 of this title); or
- (D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

The definition of "electronic-communication service" in Section 2(12) is drawn from 18 U.S.C. Section 2510(15): "any service which provides to users thereof the ability to send or receive wire or electronic communications." The definition of "remote-computing service" in Section 2(22) is adapted from 18 U.S.C. Section 2711(2): "the provision to the public of

computer storage or processing services by means of an electronic communications system.” The definition refers to 18 U.S.C. Section 2510(14), which defines an electronic communications system as: “any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.”

Electronic communication is a particular type of digital asset and covers only the category of digital assets subject to the privacy protections of the Electronic Communications Privacy Act. For example, material stored on a computer’s hard drive is a digital asset but not an electronic communication.

A “fiduciary” under this act occupies a status recognized by state law, and a fiduciary’s powers under this act are subject to the relevant limits established by other state laws. The definition of fiduciary specifically applies to “each person” in order to cover co-fiduciaries.

The term “record” includes information available in both tangible and electronic media. The act applies only to electronic records.

The “terms-of-service agreement” definition relies on the definition of “agreement” found in UCC Section 1-201(b)(3) (“the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade”). It refers to any agreement that controls the relationship between an account holder and a custodian, even though it might be called a terms-of-use agreement, a click-wrap agreement, a click-through license, or a similar term. State and federal law determine capacity to enter into a binding terms-of-service agreement.

SECTION 3. APPLICABILITY.

(a) This [act] applies to:

(1) a fiduciary or agent acting under a will or power of attorney executed before, on, or after [the effective date of this [act]];

(2) a personal representative acting for a decedent who died before, on, or after [the effective date of this [act]];

(3) a [conservatorship] proceeding, whether pending in a court or commenced before, on, or after [the effective date of this [act]]; and

(4) a trustee acting under a trust created before, on, or after [the effective date of this [act]].

(b) This [act] does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

Comment

This act does not change the substantive rules of other law, such as agency, banking, conservatorship, contract, copyright, criminal, fiduciary, privacy, probate, property, security, trust, or other applicable law except to vest fiduciaries with authority, according to the provisions of this act, to access, control, or copy digital assets of a decedent, protected person (or other individual under Section 5), principal, settlor, or trustee.

Subsection (a)(2) covers the situations in which a decedent dies intestate, so it falls outside of subsection (a)(1), as well as the situations in which a state's procedures for small estates are used.

Subsection (b) clarifies that the act does not apply to a fiduciary's access to an employer's internal email system.

Example 1—Fiduciary access to an employee e-mail account. D dies, employed by Company Y. Company Y has an internal e-mail communication system, available only to Y's employees, and used by them in the ordinary course of Y's business. D's personal representative, R, believes that D used Company Y's e-mail system to effectuate some financial transactions that R cannot find through other means. R requests access from Company Y to the e-mails.

Company Y is not a custodian subject to the act. Under Section 2(7), a custodian must carry, maintain or store an account holder's digital assets. An account holder, in turn, is defined under Section 2(1) as someone who has entered into a terms-of-service agreement. Company Y, like most employers, did not enter into a terms-of-service agreement with D, so D was not an account holder.

Example 2—Employee of electronic-communication service provider. D dies, employed by Company Y. Company Y is an electronic-communication service provider. Company Y has an internal e-mail communication system, available only to Y's employees and used by them in the ordinary course of Y's business. D used the internal Company Y system. When not at work, D also used an electronic-communication service system that Company Y provides to the public. D's personal representative, R, believes that D used Company Y's internal e-mail system as well as Company Y's electronic-communication system available to the public to effectuate some financial transactions. R seeks access to both communication systems.

As is true in Example 1, Company Y is not a custodian subject to the act for purposes of the internal email system. The situation is different with respect to R's access to Company Y's system that is available to the public. Assuming that Company Y can disclose the communications under federal law, then Company Y must disclose them to R.

SECTION 4. ACCESS BY PERSONAL REPRESENTATIVE TO DIGITAL

ASSET OF DECEDENT. Subject to Section 8(b) and unless otherwise ordered by the court or provided in the will of a decedent, the personal representative of the decedent has the right to access:

- (1) the content of an electronic communication that the custodian is permitted to disclose under the Electronic Communications Privacy Act, 18 U.S.C. Section 2702(b) [as amended];
- (2) any catalogue of electronic communications sent or received by the decedent; and
- (3) any other digital asset in which at death the decedent had a right or interest.

Legislative Note: *In states in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted in paragraph (1)(C).*

Comment

This section is modeled on the formulation of the personal representative’s default power set out in UPC Section 3-715. The phrase, “unless otherwise...provided by the will,” is intended to indicate that a will controls the personal representative’s authority. As is true more generally with respect to interpretation of wills, public policy can override the explicit terms of a will.

The section clarifies the difference between fiduciary authority over digital assets other than the content of an electronic communication protected by ECPA and authority over ECPA-covered content of an electronic communication. For the content of an electronic communication, subsections (1) and (2) establish procedures that cover: first, the ECPA-covered content of communications and, second, the catalogue (logs and records) that electronic communications service providers may release without consent under the ECPA. Federal law distinguishes between the permissible disclosure of the “content” of an electronic communication, covered in 18 U.S.C. Section 2702(b), and of “a record or other information pertaining to a” subscriber or customer, covered in 18 U.S.C. Section 2702(c); see Matthew J. Tokson, *The Content/Envelope Distinction in Internet Law*, 50 Wm. & Mary L. Rev. 2105 (2009).

Content-based material can, in turn, be divided into two types of communications: those received by the account holder and those sent. Federal law, 18 U.S.C. Section 2702(b) permits a custodian to “divulge the contents of a communication “(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient” or “(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service.”

Consequently, when the account holder is the “addressee or intended recipient,” material can be disclosed either to that individual or to an agent for that person, 18 U.S.C. Section 2702(b)(1), and it can also be disclosed to third parties with the “lawful consent” of the addressee or intended recipient. 18 U.S.C. Section 2702(b)(3). Material for which the account holder is the “originator” can be disclosed to third parties only with the account holder’s “lawful consent.” 18 U.S.C. Section 2702(b)(3). (Note that, when the account holder is the addressee or intended recipient, material can be disclosed under either (b)(1) or (b)(3), but that when the account holder is the originator, lawful consent is required under (b)(3).) See the Comments concerning the definition of “content” after Section 2. By contrast to content-based material, non-content material can be disclosed either with the lawful consent of the account holder or to any person (other than a governmental entity) even without lawful consent. This information includes material about any communication sent, such as the addressee, sender, date/time, and other subscriber data, which this act defines as the “catalogue of electronic communications.” (Further discussion of this issue and examples are set out in the Comments to Section 8, *infra*.)

SECTION 5. ACCESS BY [CONSERVATOR] TO DIGITAL ASSET OF

[PROTECTED PERSON]. Subject to Section 8(b), the court, after an opportunity for hearing under [state conservatorship law], may grant a [conservator] the right to access:

(1) the content of an electronic communication that the custodian is permitted to disclose under the Electronic Communications Privacy Act, 18 U.S.C. Section 2702(b) [as amended];

(2) any catalogue of electronic communications sent or received by the [protected person]; and

(3) any other digital asset in which the [protected person] has a right or interest.

Legislative Note: *In states in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted in paragraph (1)(C).*

States should insert the appropriate term for a conservator or comparable fiduciary throughout this Section.

Comment

Section 5 establishes that the conservator must be specifically authorized by the court to access the protected person’s digital assets. Each of the different levels of access to the content of an electronic communication, to the catalogue of electronic communications, and to any other digital assets must be specifically granted by court order. The requirement in Section 5 for express authority over digital assets does not limit the fiduciary’s authority over the underlying assets, such as funds held in a bank account. The meaning of the term “hearing” will vary from

state to state according to state law and procedures.

Section 5 is comparable to Section 4. It responds to the concerns of Internet service providers who believe that the act should be structured to clarify the difference between fiduciary authority over digital assets other than the content of an electronic communication protected by federal law (the Electronic Communications Privacy Act (ECPA)), and fiduciary authority over ECPA-protected content of an electronic communication. Consequently, Section 5 sets out separate procedures for digital assets as well as the catalogue of electronic communications (logs and records) that relevant service providers may release without consent under ECPA, and the ECPA-covered content of an electronic communication.

The section refers to an individual or a protected person because a conservator may be appointed for a single transaction or without a finding that the person is a protected person.

State law will establish the criteria for when a court will grant power to the conservator. For example, UPC Section 5-411(c) requires the court to consider the decision the protected person would have made as well as a list of other factors. Existing state law may also set out the requisite standards for a conservator's actions. Under Section 8, if access to digital assets is granted by the court, the conservator has the same power over digital assets as the account holder. The conservator must exercise authority in the interests of the protected person.

SECTION 6. ACCESS BY AGENT TO DIGITAL ASSET OF PRINCIPAL.

(a) To the extent a power of attorney expressly grants an agent authority over the content of an electronic communication of the principal and subject to Section 8(b), the agent has the right to access the content of an electronic communication that the custodian is permitted to disclose under the Electronic Communications Privacy Act, 18 U.S.C. Section 2702(b) [as amended].

(b) Subject to Section 8(b) and unless otherwise ordered by the court or provided by a power of attorney, an agent has the right to access:

- (1) any catalogue of electronic communications sent or received by the principal;
- and
- (2) any other digital asset in which the principal has a right or interest.

Legislative Note: *In states in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes are incorporated into state law, the phrase should be deleted in*

paragraph (a)(3).

States may also need to amend their power of attorney statutes and forms to include this power.

Comment

This section establishes that the agent has default authority over all of the principal's digital assets, other than the content of the principal's electronic communications. When the principal does not want the agent to exercise such broad authority, then the power of attorney must explicitly prevent an agent from doing so. An agent has access to the content of electronic communications only when the power of attorney explicitly grants access.

Paragraph (a) is modeled on UPC Section 5B-201(a). Because a power of attorney contains the consent of the account holder, ECPA should not prevent the agent from exercising authority over the content of an electronic communication. See the Comments concerning the definitions of the "content of an electronic communication" after Section 2. There should be no question that an explicit delegation of authority in a power of attorney constitutes authorization from the account holder to access digital assets and provides "lawful consent" to allow disclosure of the content of an electronic communication from an electronic-communication service or a remote-computing service pursuant to applicable law. Both authorization and lawful consent are important because 18 U.S.C. Section 2701 deals with intentional access without authorization and 18 U.S.C. Section 2702 allows a service provider to disclose with lawful consent. Federal courts have not yet interpreted how ECPA affects a fiduciary's efforts to access the content of an electronic communication. *E.g., In re Facebook, Inc.*, 923 F. Supp. 2d 1204 (N.D. Cal. 2012).

SECTION 7. ACCESS BY TRUSTEE TO DIGITAL ASSET.

(a) Subject to Section 8(b) and unless otherwise ordered by the court or provided in a trust, a trustee that is an original account holder has the right to access any digital asset held in trust, including any catalogue of electronic communications of the trustee and the content of an electronic communication.

(b) Subject to Section 8(b) and unless otherwise ordered by the court or provided in a trust, a trustee that is not an original account holder has the right to access:

(1) the content of an electronic communication that the custodian is permitted to disclose under the Electronic Communications Privacy Act, 18 U.S.C. Section 2702(b) [as amended];

(2) any catalogue of electronic communications sent or received by the original or

any successor account holder; and

(3) any other digital asset in which the original or any successor account holder

has a right or interest.

Legislative Note: *In states in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted in paragraph (b)(1)(C).*

Comment

Subsection (1) clarifies that access to digital assets, including the content of electronic communications, is presumed with respect to assets for which the trustee is the initial account holder. A trustee may have title to digital assets when the trustee opens an account as trustee; under those circumstances, the trustee can access the content of each digital asset that is in an account for which the trustee is the original account holder, not necessarily each digital asset held in the trust.

Subsection (2) addresses situations involving an inter vivos transfer of a digital asset into a trust, a transfer into a testamentary trust, or a transfer via a pourover will or other governing instrument of a digital asset into a trust. In those situations, a trustee becomes a successor account holder when the settlor transfers a digital asset into the trust. There should be no question that the trustee with legal title to the digital asset was authorized by the settlor to access the digital assets so transferred, including both the catalogue and content of an electronic communication, and this provides “lawful consent” to allow disclosure of the content of an electronic communication from an electronic-communication service or a remote-computing service pursuant to applicable law. See the Comments concerning the definitions of the “content of an electronic communication” after Section 2. Nonetheless, subsection (2) distinguishes between the catalogue and content of an electronic communication in case there are any questions about whether the form in which property transferred into a trust is held constitutes lawful consent. Both authorization and lawful consent are important because 18 U.S.C. Section 2701 deals with intentional access without authorization and because 18 U.S.C. Section 2702 allows a service provider to disclose with lawful consent.

The underlying trust documents and default trust law will supply the allocation of responsibilities between and among trustees.

SECTION 8. FIDUCIARY AUTHORITY.

(a) A fiduciary that is an account holder or has the right under this [act] to access a digital asset of an account holder:

(1) subject to the terms-of-service agreement, copyright law, and other applicable

law, may take any action concerning the asset to the extent of the account holder's authority and the fiduciary's power under the law of this state other than this [act];

(2) has, for the purpose of applicable electronic privacy laws, the lawful consent of the account holder for the custodian to divulge the content of an electronic communication to the fiduciary; and

(3) is, for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including [this state's law on unauthorized computer access], an authorized user.

(b) Unless an account holder, after [the effective date of this [act]], agrees to a provision in a terms-of-service agreement that limits a fiduciary's access to a digital asset of the account holder by an affirmative act separate from the account holder's assent to other provisions of the agreement:

(1) the provision is void as against the strong public policy of this state; and

(2) the fiduciary's access under this [act] to a digital asset does not violate the terms-of-service agreement even if the agreement requires notice of a change in the account holder's status.

(c) A choice-of-law provision in a terms-of-service agreement is unenforceable against a fiduciary acting under this [act] to the extent the provision designates law that enforces a limitation on a fiduciary's access to a digital asset, and the limitation is void under subsection (b).

(d) As to tangible personal property capable of receiving, storing, processing, or sending a digital asset, a fiduciary with authority over the property of a decedent, [protected person], principal, or settlor:

(1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for purposes of any applicable computer-fraud and unauthorized-computer-access laws, including [this state’s law on unauthorized computer access].

Legislative Note: *A state with a computer trespass statute should add the appropriate reference in paragraphs (a)(3) and (d)(2) and may want to amend the statute to be in accord with this act.*

Comment

This issue concerning the parameters of the fiduciary’s authority potentially arises in two situations: 1) the fiduciary obtains access to a password or the like directly from the account holder, as would be true in various circumstances such as for the trustee of an inter vivos trust or someone who has stored passwords in a written or electronic list and those passwords are then transmitted to the fiduciary; and 2) the fiduciary obtains access pursuant to this act.

This section clarifies that the fiduciary has the same authority as the account holder if the account holder were the one exercising the authority (note that, where the account holder has died, this means that the fiduciary has the same access as the account holder had immediately before death). This means that the fiduciary’s authority to access the digital asset is the same as the account holder except where, pursuant to subsection (b), the account holder has explicitly opted out of fiduciary access. In exercising its responsibilities, the fiduciary is subject to the duties and obligations established pursuant to state fiduciary law and is liable for breach of those duties. Note that even if the digital asset were illegally obtained by the account holder, the fiduciary would still need access in order to handle that asset appropriately. There may, for example, be tax consequences that the fiduciary would be obligated to report.

In exercising its responsibilities, the fiduciary is subject to the same limitations as the account holder more generally. For example, a fiduciary cannot delete an account if this would be fraudulent. Similarly, if the account holder could challenge provisions in a terms-of-service agreement, then the fiduciary is also able to do so. *See Ajemian v. Yahoo!, Inc.*, 987 N.E.2d 604 (Mass. 2013).

Subsection (a) is designed to establish that the fiduciary is authorized to exercise control over digital assets in accordance with other applicable laws. The language mirrors that used in Title II of the Electronic Communications Privacy Act of 1986 (ECPA), also known as the Stored Communications Act, 18 U.S.C. Section 2701 *et seq.* (2006); *see, e.g.*, Orin S. Kerr, *A User’s Guide to the Stored Communications Act, and a Legislator’s Guide to Amending It*, 72 Geo. Wash. L. Rev. 1208 (2004). The subsection clarifies that state law treats the fiduciary as “authorized” under the two federal statutes that prohibit unauthorized access to computers and computer data, ECPA and the Computer Fraud and Abuse Act, as well as pursuant to any comparable state laws criminalizing unauthorized access. Computer Fraud and Abuse Act, 18 U.S.C. Section 1030 (2006); Lamm, *et al.*, *supra* (state law may be useful to federal courts

interpreting these statutes.)

ECPA contains two potentially relevant prohibitions. The first, 18 U.S.C. Section 2701(a), defines the crime of unlawful access to stored communications, which applies to a person who “(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or (2) intentionally exceeds an authorization to access that facility...” Thus, someone who has authorization to access the facility is not engaging in criminal behavior. Moreover, this section does not apply to “conduct authorized...by a user of that service with respect to a communication of or intended for that user.” 18 U.S.C. Section 2701(a), (c)(2).

The second, 18 U.S.C. Section 2702, entitled “Voluntary disclosure of customer communications or records,” concerns actions by the service provider. It prohibits an electronic-communication service or a remote-computing service from knowingly divulging the content of an electronic communication that is stored by or carried or maintained on that service unless disclosure is made (among other exceptions) “to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient” or “with the *lawful consent* of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote-computing service.” 18 U.S.C. Section 2702(b)(1), (3) (emphasis added). See the Comments concerning the definitions of the “content of an electronic communication” after Section 2. The statute permits disclosure of “customer records” that do not include content, either with lawful consent from the customer or “to any person other than a governmental entity.” 18 U.S.C. Section 2702(c)(2) and (6). Thus, in contrast to its restrictions on the release of content, the electronic-communication or remote-computing service provider is permitted to disclose the catalogue of electronic communications to anyone except the government.

The Computer Fraud and Abuse Act (CFAA) prohibits unauthorized access to computers. 18 U.S.C. Section 1030. Like ECPA, the CFAA similarly protects against anyone who “intentionally accesses a computer without authorization or exceeds authorized access.” 18 U.S.C. Section 1030(a).

State laws vary in their coverage but typically prohibit unauthorized computer access.

By defining the fiduciary as an authorized user: 1) the fiduciary has authorization under applicable law to access the digital assets under the *first* relevant provision of ECPA, 18 U.S.C. Section 2701, as well as under the CFAA; and 2) the fiduciary has “the lawful consent” of the originator/subscriber under applicable law so that the service provider can voluntarily disclose the digital assets pursuant to the *second* relevant provision of ECPA, 18 U.S.C. Section 2702, including the content of an electronic communication. Moreover, this language should be adequate to avoid liability under the state unauthorized computer access laws.

Subsection (a)(1) states that the fiduciary can take actions to the extent of the fiduciary’s power under the law of this state. Note that the fiduciary’s powers under state law are defined by statute, common law, and the terms of the governing instrument.

Subsection (b) addresses whether account holders can opt out of the rules in this act and whether Internet service providers can prevent fiduciary access. First, a terms-of-service agreement in which an account holder has made an affirmative choice to limit a fiduciary's right to access will supersede any contrary provision in a will, trust, protective order, or power of attorney. The affirmative act must clearly demonstrate the account holder's deliberate intent to prevent fiduciary access. Second, the subsection provides that any other term in a terms-of-service agreement that bars fiduciary access is void as against the state's strong public policy. While all of a state's laws could be considered that state's public policy, the phrase "strong public policy" is to be construed under conflict of laws principles to protect fiduciary access to digital assets under this act, notwithstanding a contrary terms-of-service agreement provision and even if the terms-of-service agreement chooses the law of another state or country to govern its contractual rights and duties. *See* Restatement (Second) Conflict of Laws § 90 and § 187 cmt. G; *see also* Uniform Trust Code § 107(1). However, a terms-of-service agreement provision for which an account holder has made an affirmative choice, separate from the account holder's assent to other provisions of the terms-of-service agreement, to limit a fiduciary's access to the account holder's digital assets is not voided by this act and will supersede any contrary provision in a will, or trust. (*See* Example 5).

Subsection (b) reinforces the concept that the fiduciary "steps into the shoes" of the account holder, with no more—and no fewer—rights. For example, the terms-of-service agreement controls the rights of the account holder (settlor, principal, incapacitated person, decedent). The act does not permit the account holder's fiduciary to override the terms-of-service agreement in order to make a digital asset or collection of digital assets "descendible," although it does preserve the rights of the fiduciary to make the same claims as the account holder. *See Ajemian v. Yahoo!, Inc.*, 987 N.E.2d 604 (Mass. 2013); David Horton, *Indescendibility*, 102 Calif. L. Rev. 543 (2014).

Under subsection (b), access by a fiduciary should not be considered a transfer or other use that would violate the anti-transfer terms or other terms of a terms-of-service agreement.

Subsection (c) supports the importance of fiduciary access by providing that any choice of law governing the effect of a terms-of-service agreement that prevents fiduciary access is unenforceable.

Subsection (d) clarifies that the fiduciary is authorized to access digital assets stored on tangible personal property, such as laptops, computers, smartphones or storage media of the decedent, protected person, principal, or settlor, exempting fiduciaries from application for purposes of state or federal laws on unauthorized computer access. For criminal law purposes, this clarifies that the fiduciary is authorized to access all of the account holder's digital assets, whether held locally or remotely.

Example 1—Access to digital assets by personal representative. D dies with a will that is silent with respect to digital assets. D has a bank account for which D received only electronic statements, D has stored photos in a cloud-based Internet account, and D has an e-mail account with a company that provides electronic-communication services to the public. The personal representative of D's estate needs access to the electronic bank account statements, the photo

account, and e-mails.

The personal representative of D's estate has the authority to access D's electronic banking statements and D's photo account, which both fall under the act's definition of a "digital asset." This means that, if these accounts are password-protected or otherwise unavailable to the personal representative, then the bank and the photo account service must give access to the personal representative when the request is made in accordance with Section 9. If the terms-of-service agreement permits D to transfer the accounts electronically, then the personal representative of D's estate can use that procedure for transfer as well.

The personal representative of D's estate is also able to request that the e-mail account service provider grant access to e-mails sent or received by D; ECPA permits the service provider to release the catalogue to the personal representative. The service provider also must provide the personal representative access to the content of an electronic communication sent or received by D if the service provider is permitted under 18 U.S.C. Section 2702(b) to disclose the content. The bank may release the catalogue of electronic communications or content of an electronic communication for which it is the originator or the addressee because the bank is not subject to the ECPA.

Example 2—Access to digital assets by conservator. C is seeking appointment as the conservator for P. P has a bank account for which P received only electronic statements, P has stored photos in a cloud-based Internet account, and P has an e-mail account with a company that provides electronic communication services to the public. C needs access to the electronic bank account statements, the photo account, and e-mails.

Without a court order that explicitly grants access to P's digital assets, including electronic communications, C has no authority pursuant to this act to access the electronic bank account statements, the photo account, or the e-mails. Based on law outside of this act, the bank may release the catalogue of electronic communications or content of an electronic communication for which it is the originator or the addressee because the bank is not subject to the ECPA.

Example 3—Access to digital assets by agent. X creates a power of attorney designating A as X's agent. The power of attorney expressly grants A authority over X's digital assets, including the content of an electronic communication. X has a bank account for which X receives only electronic statements, X has stored photos in a cloud-based Internet account, and X has a game character and in-game property associated with an online game. X also has an e-mail account with a company that provides electronic-communication services to the public.

A has the authority to access X's electronic bank statements, the photo account, the game character and in-game property associated with the online game, all of which fall under the act's definition of a "digital asset." This means that, if these accounts are password-protected or otherwise unavailable to A as X's agent, then the bank, the photo account service provider, and the online game service provider must give access to A when the request is made in accordance with Section 9. If the terms-of-service agreement permits X to transfer the accounts

electronically, then A as X's agent can use that procedure for transfer as well.

As X's agent, A is also able to request that the e-mail account service provider grant access to e-mails sent or received by X; ECPA permits the service provider to release the catalogue. The service provider also must provide A access to the content of an electronic communication sent or received by X if the service provider is permitted under 18 U.S.C. Section 2702(b) to disclose the content. The bank may release the catalogue of electronic communications or content of an electronic communication for which it is the originator or the addressee because the bank is not subject to the ECPA.

Example 4—Access to digital assets by trustee. T is the trustee of a trust established by S. As trustee of the trust, T opens a bank account for which T receives only electronic statements. S transfers into the trust to T as trustee (in compliance with a terms-of-service agreement) a game character and in-game property associated with an online game and a cloud-based Internet account in which S has stored photos. S also transfers to T as trustee (in compliance with the terms-of-service agreement) an e-mail account with a company that provides electronic-communication services to the public.

T is an original account holder with respect to the bank account that T opened, and T has the ability to access the electronic banking statements. T, as successor account holder to S, may access the game character and in-game property associated with the online game and the photo account, which both fall under the act's definition of a "digital asset." This means that, if these accounts are password-protected or otherwise unavailable to T as trustee, then the bank, the photo account service provider, and the online game service provider must give access to T when the request is made in accordance with Section 9. If the terms-of-service agreement permits the account holder to transfer the accounts electronically, then T as trustee can use that procedure for transfer as well.

T as successor account holder of the e-mail account for which S was previously the account holder is also able to request that the e-mail account service provider grant access to e-mails sent or received by S; the ECPA permits the service provider to release the catalogue. The service provider also must provide T access to the content of an electronic communication sent or received by S if the service provider is permitted under 18 U.S.C. Section 2702(b) to disclose the content. The bank may release the catalogue of electronic communications or content of an electronic communication for which it is the originator or the addressee because the bank is not subject to the ECPA.

Example 5—Access notwithstanding terms in a terms-of-service agreement. D, who is domiciled in state X, dies. D was a professional photographer who stored valuable digital photos in an online storage account provided by C. P is appointed by a court in state X to administer D's estate. P needs access to D's online storage account to inventory and appraise D's estate assets and to file D's estate tax return. During D's lifetime, D entered into a terms-of-service agreement with C for the online storage account. The choice-of-law provision selects the law of state Y to govern the contractual rights and duties under the terms-of-service agreement. A provision of the terms-of-service agreement prohibits fiduciary access to the digital assets of an

account holder, but D did not agree to that provision by an affirmative act separate from D's assent to other provisions of the terms-of-service agreement. UFADAA has been enacted by state X but not by state Y. Because P's access to D's assets is fundamental to carrying out P's fiduciary duties, a court should apply subsections (b) and (c) of this act under the law of state X to void the terms-of-service agreement provision prohibiting P's access to D's online account, even though the terms-of-service agreement selected the law of state Y to govern the contractual rights and duties under the terms-of-service agreement.

SECTION 9. COMPLIANCE.

(a) If a fiduciary with a right under this [act] to access a digital asset of an account holder complies with subsection (b), the custodian shall comply with the fiduciary's request in a record for:

- (1) access to the asset;
- (2) control of the asset; and
- (3) a copy of the asset to the extent permitted by copyright law.

(b) If a request under subsection (a) is made by:

(1) a personal representative with the right of access under Section 4, the request must be accompanied by a certified copy of [the letter of appointment of the representative or a small-estate affidavit or court order];

(2) a [conservator] with the right of access under Section 5, the request must be accompanied by a certified copy of the court order that gives the [conservator] authority over the digital asset;

(3) an agent with the right of access under Section 6, the request must be accompanied by an original or a copy of the power of attorney that authorizes the agent to exercise authority over the digital asset and a certification of the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) a trustee with the right of access under Section 7, the request must be

accompanied by a certified copy of the trust instrument[, or a certification of the trust under [cite trust-certification statute, such as Uniform Trust Code Section 1013],] that authorizes the trustee to exercise authority over the digital asset.

(c) A custodian shall comply with a request made under subsection (a) not later than [60] days after receipt. If the custodian fails to comply, the fiduciary may apply to the court for an order directing compliance.

(d) [Instead of furnishing a copy of the trust instrument under subsection (b)(4), the trustee may provide a certification of trust. The certification:

(1) must contain the following information:

(A) that the trust exists and the date the trust instrument was executed;

(B) the identity of the settlor;

(C) the identity and address of the trustee;

(D) that there is nothing inconsistent in the trust with respect to the trustee's powers over digital assets;

(E) whether the trust is revocable and the identity of any person holding a power to revoke the trust;

(F) whether a cotrustee has authority to sign or otherwise authenticate; and

(G) whether all or fewer than all cotrustees are required to exercise powers of the trustee;

(2) must be signed or otherwise authenticated by a trustee;

(3) must state that the trust has not been revoked, modified, or amended in a manner that would cause the representations contained in the certification of trust to be incorrect; and

(4) need not contain the dispositive terms of the trust.

(e) A custodian that receives a certification under subsection (d) may require the trustee to provide copies of excerpts from the original trust instrument and later amendments designating the trustee and conferring on the trustee the power to act in the pending transaction.

(f) A custodian that acts in reliance on a certification under subsection (d) without knowledge that the representations contained in it are incorrect is not liable to any person for so acting and may assume without inquiry the existence of facts stated in the certification.

(g) A person that in good faith enters into a transaction in reliance on a certification under subsection (d) may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person that demands the trust instrument in addition to a certification under subsection (d) or excerpts under subsection (e) is liable for damages, including attorneys' fees, if the court determines that the person did not act in good faith in demanding the instrument.

(i)] This section does not limit the right of a person to obtain a copy of a trust instrument in a judicial proceeding concerning the trust.

Legislative Note: *The bracketed language in paragraphs (d)-(i) allows states that have already enacted the Uniform Trust Code or a similar law permitting a certification of trust in lieu of furnishing a complete copy of the trust instrument to delete the bracketed language when setting out procedures concerning a trustee's request. States that have not adopted the Uniform Trust Code or a certification of trust procedure may choose to include the bracketed language, which is a slight modification of the language in Uniform Trust Code Section 1013.*

Comment

Subsection (a) allows a fiduciary to request access, control, or a copy of the digital asset. The term "control" means only the ability to move (unless prohibited by copyright law) or delete that particular asset. A fiduciary's control over a digital asset is not equivalent to a transfer of ownership or a laundering of illegally obtained material. Thus, this subsection grants the fiduciary the ability to access electronic records, and the disposition of those records is subject to other laws. For example, where the account holder has an online securities account or has a game character and in-game property associated with an online game, then the fiduciary's ability

to sell the securities, the game character, or the in-game property is controlled by traditional probate law. The act is only granting access and “control” in the sense of enabling the fiduciary to do electronically what the account holder could have done electronically. Thus, if a terms-of-service agreement precludes online transfers, then the fiduciary is unable to make those transfers electronically as well.

Example—Fiduciary control over a digital asset. D dies with a will disposing of all D’s assets to D’s spouse, S. E is the personal representative for D’s estate. D left a bank account, for which D only received online statements, and a blog.

E as personal representative of D’s estate has access to both of D’s accounts and can request the passwords from the custodians of both accounts. If D’s agreement with the bank requires that transferring the underlying title to the account be done in person, through a hard copy signed by the account holder and the bank manager, then E must comply with those procedures (signing as the account holder) and cannot transfer the funds in the account electronically. If the terms-of-service agreement for the blog permitted D to transfer the blog electronically, then E can make the transfer electronically as well.

Subsection (c) establishes 60 days as the appropriate time for compliance. This is true regardless of the procedure for supplying the requisite trust instrument. If applicable law other than this act does not prohibit the custodian from complying, then the custodian must grant access to comply. This provision should be read in conjunction with the state’s power of attorney act.

Subsection (h) allows for attorneys’ fees. As the comment to Section 709 of the Uniform Trust Code explains, reimbursement under this section may include attorney’s fees and expenses incurred by the trustee in defending an action. However, a trustee is not ordinarily entitled to attorney’s fees and expenses if it is determined that the trustee breached the trust. *See* 3A Austin W. Scott & William F. Fratcher, *The Law of Trusts* § 245 (4th ed. 1988).

SECTION 10. CUSTODIAN IMMUNITY. A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this [act].

Comment

This section establishes that custodians are protected from liability when they act in accordance with the procedures of this act and in good faith. The types of actions covered include disclosure as well as transfer of copies. The critical issue in conferring immunity is the source of the liability. Direct liability is not subject to immunity; indirect liability is subject to immunity.

Direct liability could only arise from noncompliance with a judicial order issued under

section 9. Upon determination of a right of access under sections 4, 5, 6, or 7, a court may issue an order to grant access under section 9. Noncompliance with that order would give rise to liability for contempt. There is no immunity from this liability.

Indirect liability could arise from granting a right of access under this act. Access to a digital asset might invade the privacy or the harm the reputation of the decedent, protected person, principal, or settlor, it might harm the family or business of the decedent, protected person, principal, or settlor, and it might harm other persons. The grantor of access to the digital asset is immune from liability arising out of any of these circumstances if the grantor acted in good faith to comply with this act. If there is a judicial order under section 9, compliance with the order establishes good faith. Absent a judicial order under section 9, good faith must be established by the grantor's assessment of the requirements of this act.

SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

[SECTION 13. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Legislative Note: Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

SECTION 14. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

SECTION 15. EFFECTIVE DATE. This [act] takes effect....

BUSINESS LAW SECTION
OF THE
STATE BAR OF GEORGIA

November 14, 2014


Advisory Committee on Legislation
State Bar of Georgia
c/o Ms. Wanda Segurs
Capitol Partners Public Affairs Group, Inc.
4200 Northside Parkway, NW
Building 12
Atlanta, Georgia 30327

Dear Wanda:

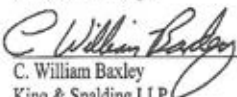
On behalf of the Business Law Section for the State Bar of Georgia (the "Section"), we are submitting herewith proposed amendments to the Georgia Business Corporation Code which our Section recommends be adopted.

Should you have any questions, please feel free to call either of us. Bruce can be reached at (404) 835-9502 (email: bwanamaker@lwglaw.com) and Bill can be reached at (404) 572-3580 (email: bbaxley@kslaw.com).

Very truly yours,



Bruce D. Wanamaker
Ledbetter Wanamaker Glass LLP
Chairman, Corporate Code Committee
Business Law Section
State Bar of Georgia



C. William Baxley
King & Spalding LLP
Chairman, Business Law Section
State Bar of Georgia

cc: Thomas Worthy, State Bar of Georgia
John Latham, Chair, Subcommittee on Directors and Officers
Thomas S. Richey, Chair, Working Group on Indemnification, Derivative Proceedings,
Judicial Removal of Directors, and Appointment of Custodians and Receivers

2015 STATE BAR LEGISLATIVE AGENDA

GEORIGIA BUSINESS CORPORATION CODE LEGISLATIVE PROPOSAL

1. Specific legislation (showing changes from current Georgia law) has been proposed and is attached hereto as Exhibit A.
2. An explanation of the proposed legislation is included on Exhibit A.
3. A summary of the relevant existing Georgia law is included in the explanation of the proposed legislation attached hereto as Exhibit A.
4. There are no known opponents of the proposed legislation.
5. No other section of the State Bar of Georgia is believed to have an interest in the proposed legislation.
6. The Business Law Section has adopted this proposal and recommends that this proposal be adopted by the State Bar of Georgia.
7. This proposal is submitted pursuant to Standing Board Policy 100, and the information included with this proposal is provided pursuant to that Policy.

EXHIBIT A

STATE BAR OF GEORGIA BUSINESS LAW SECTION CORPORATE CODE COMMITTEE

Proposal to Amend the Georgia Business Corporation Code

ARTICLE 8 DIRECTORS AND OFFICERS

PART 1 BOARD OF DIRECTORS

14-2-801. Requirement for and ~~duties~~functions of board of directors.

~~(a) Each corporation must have a board of directors, except~~(a) Except as provided in Article 9 of this chapter or in a written agreement meeting the requirements of Code Section 14-2-~~732-732~~, each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors, subject to any limitation set forth in the articles of incorporation, in rights, options, or warrants permitted by paragraph (2) of subsection (d) of Code Section 14-2-624, or except as provided in an agreement among the shareholders meeting the requirements of Code Section 14-2-732.

(c) No limitation upon the authority of the directors, whether contained in the articles of incorporation or an agreement among the shareholders meeting the requirements of Code Section 14-2-732, shall be effective against persons, other than shareholders and directors, who are without actual knowledge of the limitation.

(Code 1981, § 14-2-801, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2000, p. 1567, § 6; Ga. L. 2001, p. 4, § 14; Ga. L. 2015, p. ____, § ____.)

Note to 2015 Amendment

Source: 1984 Model Act § 8.01 (a)–(b), amended 46 Bus. Law. 297 (1990), § 8.01(b), amendment proposed, 54 Bus. Law. 1233 (1999), adopted, 55 Bus. Law. 1247 (2000); and 1984 Model Act §§ 8.01(b) amended and 8.01(c) added by amendment, proposed, 59 Bus. Law. 569 (2004), adopted, 60 Bus. Law. 943 (2005). Subsections (a) and (b) of this Code section are based on the Model Act § 8.01, which was revised subsequent to the enactment of former Code Section 14-2-801.

This Note to 2015 Amendment supersedes and replaces the Comment to Code Section 14-2-801 and the Note to 2000 Amendment. The 2015 amendments to Code Section 14-2-801, which were adopted for purposes of conformity with the Model Act, added the phrase “subject to the

oversight” to reflect a contemporaneous amendment to Code Section 14-2-830(b) differentiating between the board’s decision-making and oversight functions.

Subsection (a) requires that every corporation have a board of directors unless otherwise provided in accordance with Article 9 (governing statutory close corporations) or as provided in a written agreement meeting the requirements of Section 14-2-732, which may be set forth in the articles of incorporation, the bylaws or a separate shareholders’ agreement, approved in each case by all persons who are shareholders at the time of the agreement. The purpose is to provide corporations that do not elect statutory close corporation status with as much flexibility in managing their business as those that do elect. The reference to Section 14-2-732 effectively limits such arrangements to corporations that do not have shares regularly traded in public securities markets.

Subsection (b) states that if a corporation has a board of directors “all corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of” the board of directors. The quoted language is chosen to reflect the role and functions of boards of directors in all varieties of corporations. In a small corporation and in some larger corporations where the board of directors is composed entirely of persons actively involved in the management of the corporate business, it may be reasonable to describe management as being “by” the board of directors. But a different model may be appropriate for the boards of directors of publicly held corporations and in some larger privately held corporations, which often include individuals not actively involved in management. In these corporations the appropriate model may be that the business and affairs be managed “under the direction, and subject to the oversight, of” the board of directors, since operational management is delegated to executive officers and other professional managers.

The references in subsection (b) and subsection (c) to shareholder approved bylaws were replaced with a reference to an agreement meeting the requirements of Section 14-2-732, which section was added to the Code as a part of the amendment to the Code in 2000. See Official Comment to Code Section 14-2-732. Section 14-2-624(d)(2) is referenced in subsection (b) because that subsection authorizes provisions in a rights agreement or “poison pill” which restrict the power of future directors to redeem, modify or terminate such rights, subject to certain time limitations.

Subsection (b) should be read in conjunction with Section 14-2-732(b)(1), which provides that if the articles of incorporation, the bylaws or a separate agreement restrict the power of the board to manage the business, it must be approved or signed (as applicable) by all of the shareholders at the time of the agreement in order to be insulated from attack as an attempt to manage the corporation as if it were a partnership.

Subsection (b) should also be read in the context of subsection (c), which follows former Section 14-2-140(b), which codified the apparent authority of the board in dealing with third parties not on notice of restrictions on the board’s authority.

For corporations with fewer than 50 shareholders, election of statutory close corporation status does not provide the exclusive means for limiting or transferring board authority. See *Zion v. Kurtz*, 50 N.Y.2d 92, 405 N.E.2d 681 (Ct. App. 1980).

Any arrangement under Section 14-2-801 may also be established by a statutory close corporation election under Section 14-2-920.

14-2-803. Number and election of directors.

(a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

~~(b) The articles of incorporation or bylaws may authorize the shareholders or the board of directors to fix or change the number of directors or may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the~~
The number of directors may be fixed increased or changed decreased from time to time, within the minimum and maximum, by the shareholders or, if by amendment to, or in the manner provided in, the articles of incorporation or the bylaws so provide, by the board of directors.

(c) In the case of a corporation having cumulative voting:

(1) Any amendment of the bylaws decreasing the number or minimum number of directors must be adopted by the shareholders; and

(2) No amendment of either the articles of incorporation or the bylaws decreasing the number or minimum number of directors shall be effective when the number of shares voting against the proposal for decrease would be sufficient to elect a director if voted cumulatively at an annual election.

(d) After initial election or appointment pursuant to Code Section 14-2-205, directors are elected at each annual shareholders' meeting unless their terms are staggered under Code Section 14-2-806.

(Code 1981, § 14-2-803, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1989, p. 946, § 31; Ga. L. 2015, p. ___, § ___.)

Note to 2015 Amendments

Source: 1984 Model Act § 8.03, amendment proposed, 54 Bus. Law. 1233 (1999), adopted, 55 Bus. Law. 1247 (2000). This replaces provisions formerly found in § 14-2-141.

This Note to 2015 Amendment supersedes and replaces the Comment to Code Section 14-2-803 and the Note to 1989 Amendment. The 2015 amendments to Subsection (b) of Code Section 14-2-803, which were adopted for purposes of conformity with the Model Act, simplify and modernize the statutory rules relating to the number and election of directors. As a result of the changes in subsection (b), a corporation has the ability to achieve the combination of flexibility for the board of directors and protection for the shareholders that it deems appropriate. The

revised provision states that the number of directors may be increased or decreased in the manner provided in the articles of incorporation or in the bylaws.

Section 14-2-803 prescribes rules for the determination of the size of the board of directors of corporations that have not dispensed with a board of directors under Section 14-2-801(b), and for changes in the size of the board of directors once it is established.

Subsection (a) provides explicit permission for corporations to have any number of directors. Former § 14-2-141 required a board of directors to consist of at least three directors, unless there were fewer than three shareholders.

Section (b) provides a corporation with the freedom to design its articles of incorporation and bylaw provisions relating to the size of the board with a view to achieving the combination of flexibility for the board of directors and protection for shareholders that it deems appropriate. The articles of incorporation could provide for a specified number of directors or a board of a variable size within a range, thereby requiring shareholder action to change the fixed size of the board, to change the limits established for the size of the variable-range board or to change from a variable-range board to a fixed board or vice versa. An alternative would be to have the bylaws provide for a specified number of directors or a variable range for the board of directors. Any change would be made in the manner provided by the bylaws. The bylaws could permit amendment by the board of directors or the bylaws could require that any amendment, in whole or in part, be made only by the shareholders in accordance with Section 14-2-1020(a). Typically the board of directors would be permitted to change the board size within the established variable range. If a corporation wishes to ensure that any change in the number of directors be approved by shareholders, then an appropriate restriction would have to be included in the articles or bylaws.

Experience has shown, particularly in larger corporations, that it is desirable to grant the board of directors authority to change its size without incurring the expense of obtaining shareholder approval. Similarly, it may be desirable for the ability to change the size of the board of directors to rest solely with the board of directors. In closely held corporations, shareholder approval for a change in the size of the board of directors may be readily accomplished if that is desired. In many closely held corporations a board of directors of a fixed size may be an essential part of a control arrangement. In these situations, an increase or decrease in the size of the board of directors by even a single member may significantly affect control. In order to maintain control arrangements dependent on a board of directors of a fixed size, the power of the board of directors to change its own size must be negated. This may be accomplished by fixing the size of the board of directors in the articles of incorporation or by expressly negating the power of the board of directors to change the size of the board, whether by amendment of the bylaws or otherwise. See Section 14-2-1020.

Subsection (c) is also an addition to the Model Act, and restores the protection of cumulative voting rights formerly provided by § 14-2-141(b).

Subsection (d) makes it clear that all directors are elected annually unless the terms of members of the board are staggered. See Section 14-2-805 and its Comment.

14-2-806. Staggered terms for directors.

(a) The articles of incorporation or a bylaw adopted by the shareholders may provide for staggering the terms of ~~the~~ directors by dividing the total number of directors into two or three groups, ~~with each group containing one half or one third of the total, as near as may be.~~ In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

~~(b) If directors have staggered terms and the number of directors is thereafter changed:~~

~~(1) Any increase or decrease in the number of directors shall be so apportioned among the classes as to make all classes as nearly equal in number as possible; and (2)~~ When the number of directors is increased and any newly created directorships are filled by the board, the terms of the additional directors shall expire at the next annual election of directors by the shareholders.

(Code 1981, § 14-2-806, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2015, p. ____, § ____.)

Note to 2015 Amendments

Source: 1984 Model Act § 8.06, amendment proposed, 54 Bus. Law. 1233 (1999), adopted, 55 Bus. Law. 1247 (2000); Del. Code Ann. tit. 8, § 141(d); and former O.C.G.A. § 14-2-143.

This Note to 2015 Amendment supersedes and replaces the Comment to Code Section 14-2-806. The 2015 amendments to Subsection (a) of Code Section 14-2-806 deleted the requirement that each group of staggered directors contain one-half or one-third, as near as may be, of the total number of directors. The 2015 amendments to Subsection (b) of Code Section 14-2-806 deleted the requirement that if the number of directors on a staggered board is changed, any increase or decrease in the number of directors must be apportioned among the classes as to make all classes as nearly equal in number as possible.

Section 14-2-806 recognizes the practice of “classifying” the board or “staggering” the terms of directors so that directors are elected for two- or three-year terms rather than one-year terms.

Section 14-2-806 permits staggered boards without regard to size. Subsection (a) is drawn from Del. Code Ann. tit. 8, § 141(d), and provides maximum flexibility in the use of staggered boards.

Subsection (b) preserves prior Georgia law providing that when the number of directors is increased and any newly created directorships are filled by the board, the terms of the additional directors shall expire at the next annual election of directors by the shareholders.

PART 2
MEETINGS AND ACTION OF THE BOARD

14-2-821. Action without meeting.

~~(a) Unless~~(a) Except to the extent the articles of incorporation or bylaws ~~provide otherwise~~require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken ~~at a~~by the board of directors~~’ meeting~~ may be taken without a meeting if ~~the action is taken by all members of the board. The action must be evidenced by one or more consents in writing or by electronic transmission~~each director signs a consent describing the action to be taken, signed by each director, and delivered or ratified and delivers it to the corporation ~~for inclusion in the minutes or filing with the corporate records.~~

(b) A director’s consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

(c) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective.

(d) A consent signed and delivered by a director under this Code section has the effect of action taken at a meeting ~~vote~~of the board of directors and may be described as such in any document.

(Code 1981, § 14-2-821, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2004, p. 508, § 14; Ga. L. 2015, p. ___, § ___.)

Note to 2015 Amendments

Source: 1984 Model Act § 8.21, amendment proposed, 56 Bus. Law. 85 (2000), adopted, 56 Bus. Law. 875 (2001).

This Note to 2015 Amendment supersedes and replaces the Comment to Code Section 14-2-821 and the Note to 2004 Amendment. The 2015 amendments to Code Section 14-2-821, which were adopted for purposes of conformity with the Model Act, include revisions designed to simplify the language and for purposes of conformity with the definitions of “sign,” “deliver,” and “electronic transmission” set forth in Code Sections 14-2-140(29), (5), and (9), respectively that were amended or adopted in 2004. Subsection (a) was revised to clarify that while the articles or bylaws may require that some or all actions by the board of directors be taken at a meeting, action taken without a meeting by consent must be unanimous. A new subsection (b) was added to clarify the effect of a revocation of a consent by a director. A new subsection (c) was added to clarify that action taken by consent in lieu of a meeting becomes the act of the board of directors when one or more consents signed by all of the directors are delivered to the corporation.

The power of the board of directors to act unanimously without a meeting is based on the pragmatic consideration that in many situations a formal meeting is a waste of time. And, of

course, if there is only a single director (as is permitted by Section 14-2-803), a written consent is the natural method of signifying director action. Consent may be signified on one or more documents if desirable and or by electronic transmission. The consent document may specify the time at which the action taken thereunder is to become effective.

The reference in the prior version subsection (a) to the inclusion of consent in the minutes or filing with the corporate records was deleted as creating unintended doubt as to whether such inclusion or filing was a prerequisite to the validity of the action taken. The deletion of this language does not affect the obligation of the corporation set forth in Section 14-2-1601(a) to keep as permanent records a record of all actions taken by the board of directors without a meeting.

Subsection (b) follows the Model Act and makes clear that a director may revoke his or her consent prior to the delivery to the corporation of unrevoked written consents signed by all the directors. This is consistent with the recognition by Section 14-2-704(d) that shareholders have a similar authority to revoke written consents with respect to shareholder action.

14-2-825. Committees.

(a) Unless this chapter, the articles of incorporation or the bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on ~~them~~ any such committee. Each committee may have one or more members, who serve at the pleasure of the board of directors.

(b) Code Sections 14-2-820 through 14-2-~~824, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements~~ 824 apply both to committees of the board of directors, ~~apply to committees~~ and to their members ~~as well~~.

(c) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the ~~authority~~ powers of the board of directors under Code Section 14-2-801.

(d) A committee may not, however:

(1) Approve or propose to shareholders action that this chapter requires to be approved by shareholders;

(2) Fill vacancies on the board of directors or, subject to subsection (f) of this Code section, on any of its committees;

(3) Amend articles of incorporation pursuant to Code Section 14-2-1002 except that a committee may, to the extent authorized ~~in a resolution or resolutions adopted~~ by action of the board of directors, amend the articles of incorporation to fix the designations, preferences, limitations, and relative rights of shares pursuant to Code Section 14-2-602 or to increase or decrease the number of shares contained in a series of shares established in accordance with Code Section 14-2-602 but not below the number of such shares then issued; or

(4) Adopt, amend, or repeal bylaws; ~~or (5) Approve a plan of merger not requiring shareholder approval.~~

(e) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Code Section 14-2-830.

(f) The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the board action creating the committee or appointing one or more directors as alternate members provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, unanimously, may appoint another director to act in place of the absent or disqualified member.

(Code 1981, § 14-2-825, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2000, p. 1567, § 7; Ga. L. 2015, p. ___, § ___).

Note to 2015 Amendment

Source: 1984 Model Act §§ 8.25(a)–(e) amended and 8.25(g) added, proposed, 54 Bus. Law. 1233 (1999), adopted, 55 Bus. Law. 1247 (2000).

This Note to 2015 Amendment supersedes and replaces the Comment to Code Section 14-2-825 and the Note to 2000 Amendment. The 2015 amendments to Code Section 14-2-825, which were adopted for purposes of conformity with the Model Act, include revisions designed to simplify the language, to delete the approval of a plan of merger not requiring shareholder approval from the list of non-delegable powers in subsection (d), which was removed from Model Act § 8.25 in 2000, and to add a new subsection (f) to make provision for the replacement of absent or disqualified members of a committee.

Subsection (a) makes explicit the common law power of a board of directors to act through committees of directors and specifies the powers of the board of directors that are nondelegable, that is, powers that only the full board of directors may exercise. Subsection (a) permits a committee to consist of a single director. This accommodates situations in which only one director may be present or available to make a decision on short notice, as well as situations in which it is unnecessary or inconvenient to have more than one member on a committee. The Code leaves it to the discretion and business judgment of the board to determine when and to whom such delegations are prudent. However, certain Code Sections, such as Section 14-2-855, relating to a determination that indemnification is permissible, Section 14-2-744, regarding the maintenance of a derivative suit, and Section 14-2-862, relating to the approval of a director conflicting interest transaction require a committee to consist of at least two directors.

Subsection (b) of the Model Act, which required creation and appointment of a committee to be approved by a majority of the entire number of directors, was deleted from the Code. Such strict provisions could easily create some illegal committees, since boards might not be aware of special voting rules for creation of committees. Thus the Code takes the position that creation and appointment of committees should be governed by the usual rules for board action, which

permit action by a majority of a quorum, as provided in § 14-2-824(c), unless other voting rules have been adopted by the corporation for board action under Section 14-2-824(a).

Subsection (c) merely applies the usual procedural requirements for board action to committee action. Modification of these rules for particular committees would be permitted to the same extent, and in the same manner, as modification of these rules for board action.

The statement of nondelegable functions set out in subsection (d) is based on the principle that prohibitions against delegation to board committees should be limited generally to actions that substantially affect the rights of shareholders or are fundamental to the governance of the corporation. As a result, delegation of authority to committees under subsection (d) may be broader than mere authority to act with respect to matters arising within the ordinary course of business.

Model Act limitations regarding the authorization of distributions, including dividends, were deleted from the Code. Section 14-2-825(d)(3) is based on Del. Code Ann. tit. 8, § 141(c)(1) and is intended to eliminate any question that a committee of the board, such as a pricing committee, may be authorized by board action to approve an amendment to the articles of incorporation that fixes the designations, preferences, limitations and relative rights of shares under Code Section 14-2-602(a) or increases or decreases the number of shares in a series (but not below the number of such shares then issued) under Code Section 14-2-602(e).

Subsection (e) makes clear that although the board of directors may delegate to a committee the authority to take action, the designation of the committee, the delegation of authority to it, and action by the committee does not alone constitute compliance by a noncommittee board member with the director's responsibility under Section 14-2-830. On the other hand, a noncommittee director also does not automatically incur personal risk should the action of the particular committee fail to meet the standards of conduct set out in Section 14-2-830. The noncommittee member's liability in these cases will depend upon whether the director's conduct was actionable under Section 14-2-830(e)(3).

Section 14-2-825(e) has no application to a member of the committee itself. The standards of conduct applicable to a committee member are set forth in Section 14-2-830.

Section 14-2-825(f) is a rule of convenience that permits the board or the other committee members to replace an absent or disqualified member during the time that the member is absent or disqualified. Unless otherwise provided (for example, in order to maintain a quorum), replacement of an absent or disqualified member is not necessary to permit the other committee members to continue to perform their duties.

PART 3 STANDARDS OF CONDUCT

14-2-830. ~~General standards~~ Standards of conduct for directors.

~~(a) A director shall discharge his duties as (a)~~ Each member of the board of directors, when discharging the duties of a director, including ~~his duties~~ as a member of a committee: ~~(1) In~~

of the board, shall act in a manner ~~he~~the director believes in good faith to be in the best interests of the corporation;~~and,~~

~~(2) With the care an ordinarily prudent~~(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would exercisereasonably believe appropriate under similar circumstances.

~~(c)~~ In discharging his or her duties ~~a director~~(including as a member of a committee) a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection (e)(1) or subsection (e)(3) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(d) In discharging his or her duties (including as a member of a committee) a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the persons specified in subsection (e).

(e) A director is entitled to rely, in accordance with subsection (c) or (d), on:

(1) One or more officers~~or,~~ employees, agents, or representatives of the corporation whom the director reasonably believes to be reliable and competent in the ~~matters presented;~~ functions performed or the information, opinions, reports or statements provided;

(2) Legal counsel, public accountants, investment bankers, or other persons as to matters involving skills, expertise, or knowledge the director reasonably believes are matters (i) within the particular person's professional or expert competence, or (ii) as to which the particular person merits confidence; or

(3) A committee of the board of directors of which ~~he~~the director is not a member if the director reasonably believes the committee merits confidence.

~~(e) In the instances described in subsection (b) of this Code section, a director is not entitled to rely if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this Code section unwarranted.~~(f) A director shall not be liable to the corporation, its shareholders or any conservator or receiver of or for the corporation, or any assignee or successor-in-interest thereof, for any action or failure to take any action as a director if (1) he or she fulfilled the duties of his or her office in compliance with this Code section, or (2) such action or failure to take action does not constitute gross negligence or give rise to liability for conduct described in clauses (A) – (D) of Code Section 14-2-202(b)(4). As used in this Code section, "gross negligence" means a reckless indifference to or a deliberate disregard of the best interests of the corporation or its shareholders.

~~(d) A director is not liable to the corporation or to its shareholders for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this Code section—g)~~ A party asserting in a proceeding that a director is liable to the corporation or its shareholders for any action or failure to take any action as a director has the burden of establishing that liability is not precluded by any applicable bar to such proceeding by (1) any provision in the articles of incorporation authorized by Code Section 14-2-202(b)(4), (2) the protection afforded by Code Section 14-2-830(f), (3) the protection afforded by Code Section 14-2-861(a) or Code Section 14-2-861(b) (for action, in the case of Code Section 14-2-861(b), taken in compliance with Code Section 14-2-862 or 14-2-863), or (4) the protection afforded by Code Section 14-2-870.

(h) Nothing contained in this Code Section 14-2-830 shall (1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under Code Section 14-2-861(b)(3), alter the burden of proving the fact or lack of fairness otherwise applicable, (2) alter the fact or lack of liability of a director under another section of this Code, including the provisions governing the consequences of an unlawful distribution under Code Section 14-2-832 or a transactional interest under Code Section 14-2-861, (3) affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States, or (4) deprive the director of the applicability, effect or protection of the business judgment rule.

(Code 1981, § 14-2-830, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2015, p. ____, § ____.)

Note to 2015 Amendment

Source: 1984 Model Act § 8.30, comprehensively amended, proposed, 53 Bus. Law. 157 (1997), adopted, 53 Bus. Law. 813 (1998) § 8.30(c) added by amendment, proposed 59 Bus. Law. 509 (2004), adopted 60 Bus. Law. 943 (2005); Model Act § 8.31, added by amendment, proposed, 53 Bus. Law. 157 (1997), adopted, 53 Bus. Law. 813 (1998) § 8.30(c) added by amendment, proposed 59 Bus. Law. 509 (2004), adopted 60 Bus. Law. 943 (2005); Model Act § 8.31(a)1), amended, proposed, 60 Bus. Law. 341 (2004), adopted, 60 Bus. Law. 943 (2005).

This Note to 2015 Amendment supersedes and replaces the Comment to Code Section 14-2-830. The 2015 amendments to Code Section 14-2-830 contain revisions that (i) conform the statutorily prescribed duty of care of directors with the general standard of care for directors set forth in Section 830(a) of the Model Act, and thus eliminate the tort-like description of the duty of care as that which “an ordinarily prudent person in a like position would exercise” that was deleted from the Model Act in 1998; (ii) distinguish between the director’s decision-making and oversight functions; (iii) clarify and expand the ability of directors to rely on others, including reliance on the performance of delegated functions, to the extent that delegation is permissible under applicable law; (iv) codify the exculpation of a director from liability to the extent such director’s action or failure to take action does not constitute “gross negligence” or give rise to liability for conduct described in clauses (A)-(D) of Code Section 14-2-202(b)(4); (v) clarify that a party asserting liability in a proceeding that a director is liable to a shareholder for any action or any failure to take any action, as a director, has the burden of establishing that liability is not precluded by any bar to such proceeding by (1) any provision in the articles of incorporation authorized by Section 14-2-202(b)(4), (2) the protection afforded by Section 14-2-830(f), (3) the

protection afforded by Section 14-2-861(a) or Section 14-2-861(b) (for action, in the case of Section 14-2-861(b), taken in compliance with Section 14-2-862 or Section 14-2-863), or (4) the protection afforded by Section 14-2-870; (vi) clarify that the procedures to be followed where fairness is an issue are left to the decisional law of Georgia; (vii) provide that Code Section 14-2-830 has no effect on the consequences of an unlawful distribution under Code Section 14-2-832, a transactional interest under Section 14-2-861, or any rights that might be asserted by the corporation or its shareholders under any statute of Georgia or the United States; and (viii) provide that Code Section 14-2-830 shall not deprive a director of the applicability, effect, or protection of the business judgment rule.

In General

Section 14-2-830 focuses on the manner in which the director fulfills the director's duties, not the substance of the director's decisions. Under subsection (a), each board member should perform the duties of a director in a manner the director believes in good faith to be in the best interests of the corporation. The focus of subsection (b) is on the discharge of those duties by the board as a collective body. Under subsection (b), the members of the board or a board committee are to perform their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances. This standard of conduct described in subsection (b) is often characterized as the duty of care. Subsections (a) and (b) do not use the term "fiduciary" because that term could be confused with the unique attributes and obligations of a fiduciary imposed by the law of trusts, some of which are not appropriate for directors of a corporation.

Boards of directors and corporate managers continuously make decisions that involve the balancing of risks and benefits for the enterprise. Although some decisions turn out to be unwise or the result of a mistake of judgment, it is unreasonable to reexamine these decisions with the benefit of hindsight. Therefore, a director is not liable for injury or damage caused by the director's decision, no matter how unwise or mistaken it may turn out to be, if in performing the director's duties the director met the requirements of Section 14-2-830.

Even before statutory formulations of directors' duty of care, courts sometimes invoked the business judgment rule in determining whether to impose liability in a particular case. In doing so, courts have sometimes used language similar to the standards set forth in Section 14-2-830. The elements of the business judgment rule and the circumstances for its application are continuing to be developed by the courts. See, e.g., *Federal Deposit Insurance Corporation vs. Loudermilk*, S14Q0454 (Ga. July 11, 2014). Section 14-2-830 expressly acknowledges the application of the business judgment rule as a separate, independent and supplemental protection for directors and officers.

The Code preserves the approach of prior law in permitting contractual variation of directors' liabilities. For example, Section 14-2-202(b)(4) permits the articles of incorporation to exculpate directors from liability to the corporation or its shareholders for monetary damages for any action taken, or any failure to take any action, as a director, other than in the specific situations described in the exceptions to Section 14-2-202(b)(4). Similarly, in addition to the other indemnification and advancement of expense provisions contained in Part 5 of Article 8 of the Code, where exculpation in the articles of incorporation has not been provided in advance, shareholders can indemnify directors for such liability under Section 14-2-856.

Section 14-2-830 generally deals only with directors. Section 14-2-842 and its Official Comment explain the extent to which provisions comparable to Section 14-2-830 apply to officers.

Subsection (a)

The statement of the director's duties in subsection (a) preserves the "good faith" description of the duty of loyalty. However, the Model Act separates the concepts of "good faith" and "reasonable belief" and indicates that each board member should act both "(1) in good faith, and (2) in a manner the director reasonably believes to be in the best interests of the corporation." Prior drafters of the Code rejected this bifurcated approach contained in the Model Act and, consistent with the Code's prior approach, the Code continues to combine the requirements of the Model Act to require a good faith belief, rather than include separate requirements of both good faith and a "reasonable" belief. Accordingly, the requirement of good faith relates to the director's belief that the action is in the best interests of the corporation.

The phrase "best interests of the corporation" is key to an understanding of a director's duties. The term "corporation" is a surrogate for the business enterprise as well as a frame of reference encompassing the entire shareholder body. In determining the corporation's "best interests," a director has wide discretion in deciding how to weigh near term opportunities versus long term benefits as well as in making judgments where the interests of various groups within the shareholder body or having other cognizable interests in the enterprise may differ. See also Section 14-2-202(b)(5).

Subsection (b)

Subsection (b) addresses board conduct in the context of the board's decision-making and oversight functions. While certain aspects will involve individual conduct (e.g., preparation for meetings), these functions are generally performed by the board through collective action, as recognized by the reference in subsection (b) to board and committee "members" and "their duties." In contrast with subsection (a)'s individual conduct mandate, subsection (b) has a two-fold thrust: it provides a statutory standard of conduct for individual action and, more broadly, it states a conduct obligation - "shall discharge their duties" - concerning the degree of care to be collectively used by the directors when performing those functions. Subsection (b) is intended to make clear that deficient performance of Section 14-2-830 duties on the part of a particular director may be overcome by acceptable conduct (meeting, for example, subsection (b)'s standard of care) on the part of other directors sufficient in number to perform the function or discharge the duty in question.

Subsection (b) provides that directors have a duty to exercise "the care that a person in a like position would reasonably believe appropriate under similar circumstances." The prior formulation under the Code referred to "the care an ordinarily prudent person in a like position would exercise under similar circumstances." The phrase "ordinarily prudent person" constitutes a basic frame of reference grounded in the field of tort law. For this reason, its use has caused confusion and misunderstanding and has led some commentators to be concerned that the standard could suggest that negligence is the proper determinant for measuring deficient (and thus actionable) conduct. Accordingly, the phrase "ordinarily prudent person" has been removed

from the standard of care under the Code and in its place “a person in a like position” has been substituted. The standard is not what care a particular director might believe appropriate in the circumstances but what a person in a like position and acting under similar circumstances would reasonably believe to be appropriate. Thus, the degree of care that directors should employ, under Section 14-2-830(b), involves an objective standard.

The phrase “becoming informed,” in the context of the decision-making function described in subsection (b), refers to the process of gaining sufficient familiarity with the background facts and circumstances in order to make an informed judgment. There is no one way for “becoming informed,” and both the method and measure of becoming informed -- “how to” and “how much” -- are matters of reasonable judgment for the directors to exercise. The phrase “devoting attention,” in the context of the oversight function, does not require a proactive inquiry on the part of directors searching out inadequacies in the company’s information or reporting systems or noncompliance. Depending upon the circumstances, the oversight function may involve seeking assurances from management and advisers that information or reporting systems believed appropriate (such as those concerned with legal compliance or internal controls) are established and maintained. While directors typically give attention to future plans and trends as well as current activities, they should not be expected to anticipate the problems which the corporation may face except in those circumstances where something has occurred to make it obvious to the board that the corporation should be addressing a particular problem.

The reference in subsection (b) to “person” without embellishment, is intended to avoid implying any qualifications, such as specialized expertise or experience requirements, beyond the basic director attributes of common sense, practical wisdom, and informed judgment. The phrase “reasonably believe appropriate” refers to the array of possible options that a person possessing the basic director attributes of common sense, practical wisdom and informed judgment would recognize to be available, in terms of the degree of care that might be appropriate, and from which a choice by such person would be made. The measure of care that such person might determine to be appropriate, in a given instance, would normally involve a selection from the range of options and any choice within the realm of reason would be an appropriate decision under the standard of care called for under subsection (b). The combined phrase “in a like position. . . under similar circumstances” is intended to recognize that (1) the nature and extent of responsibilities will vary, depending upon such factors as the size, complexity, urgency, and location of activities carried on by the particular corporation, and (2) decisions must be made on the basis of the information known to the directors without the benefit of hindsight.

Subsection (c)

In discharging board or committee duties, a director is entitled to rely on the performance by any of the persons or committees specified in the relevant parts of subsection (e) to whom the board may have delegated the authority or duty to perform one or more of the board’s functions that are delegable under applicable law. Under subsection (c), however, a director so relying must be without knowledge concerning the matter in question that would cause the director’s reliance to be unwarranted. The delegation of authority and responsibility under subsection (c) may take the form of (i) formal action, including through a board resolution, (ii) implicit action, including through the election of corporate officers (e.g., chief financial officer or controller) or

the appointment of corporate managers (e.g., credit manager), or (iii) informal action, including through a course of conduct (e.g., involvement through corporate officers and managers in the management of a significant 50% owned joint venture). A director may properly rely on those to whom authority has been delegated pursuant to subsection (c) respecting particular matters calling for specific action or attention in connection with the directors' decision-making function as well as matters on the board's continuing agenda, such as legal compliance and internal control, in connection with the directors' oversight function. By identifying those upon whom a director may rely in connection with the discharge of duties, subsection (c) does not limit the ability of directors to delegate their powers under subsection (b) except where delegation is expressly prohibited by the Code or otherwise by applicable law. By employing the concept of delegation, subsection (c) does not limit the ability of directors to establish baseline principles as to management responsibilities. Specifically, Section 14-2-801(b) provides that "all corporate powers shall be exercised by or under the authority of" the board, and a basic board function involves the allocation of management responsibilities and the related assignment (or delegation) of corporate powers. For example, a board can properly decide to retain a third party to assume responsibility for the administration of designated aspects of risk management for the corporation (e.g., health insurance or disability claims). This would involve the directors in the exercise of judgment in connection with the decision-making function pursuant to subsection (b) (i.e., the assignment of authority to exercise corporate powers to an agent). See the Official Comment to Section 14-2-801.

Subsection (d)

In discharging board or committee duties, a director is entitled to rely upon information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by the persons or committees specified in subsection (e). The right to rely under this subsection applies to the entire range of matters for which the board of directors is responsible. Under subsection (d), however, a director so relying must be without knowledge concerning the matter in question that would cause the director's reliance to be unwarranted. Implicit in this is the understanding that directors are not required to be suspicious of employees and experts they have hired in good faith.

Subsection (e)

Reliance on one or more of the corporation's officers, employees, agents or representatives pursuant to subsection (e)(1), is conditioned upon a reasonable belief as to the reliability and competence of those who have undertaken the functions performed or who prepared or communicated the information, opinions, reports or statements presented. In determining whether a person is "reliable", the director may consider, among other things, (1) the individual's background experience and scope of responsibility within the corporation in gauging the individual's familiarity and knowledge respecting the subject matter and (2) the individual's record and reputation for honesty, care and ability in discharging responsibilities which he or she undertakes. In determining whether a person is "competent", the director may take into account, among other things, the same considerations and, if expertise should be relevant, the director may consider the individual's technical skills as well. Explicit recognition in the Code of the right of one director to rely on the expertise and experience of another director, in the context of board or committee deliberations, is unnecessary, for the group's reliance on shared experience

and wisdom is an implicit underpinning of director conduct. In relying on another member of the board, a director would quite properly take advantage of the colleague's knowledge and experience in becoming informed about the matter at hand before taking action; however, the director would be expected to exercise independent judgment when it comes time to vote.

Subsection (e)(2) permits reliance on the information, opinions, reports or statements of outside advisers retained by the corporation, including persons specifically engaged to advise the board or a board committee, but it does not allow a director to rely on the performance of outside advisers pursuant to subsection (c). Possible advisers include not only those in the professional disciplines customarily supervised by state authorities, such as lawyers, accountants, and engineers, but also those in other fields involving special experience and skills, such as investment bankers, geologists, management consultants, actuaries, and real estate appraisers. The adviser could be an individual or an organization, such as a law firm. Reliance on a nonmanagement director, who is specifically engaged (and may be additionally compensated) to undertake a special assignment or a particular consulting role, would fall within this outside adviser frame of reference. The concept of "expert competence" embraces a wide variety of qualifications and is not limited to the more precise and narrower recognition of experts under the Securities Act of 1933. A director may also rely on outside advisers where skills or expertise of a technical nature is not a prerequisite, or where the person's professional or expert competence has not been established, so long as the director reasonably believes the person merits confidence. For example, a board might choose to assign to a private investigator the duty of inquiry and properly rely on the private investigator's report. And it would be entirely appropriate for a director to rely on advice concerning highly technical aspects of environmental compliance from a corporate lawyer in the corporation's outside law firm, without due inquiry concerning that particular lawyer's technical competence, where the director reasonably believes the lawyer giving the advice is appropriately informed (by reason of resources known to be available from that adviser's legal organization or through other means) and therefore merits confidence.

Subsection (e)(3) permits reliance on a board committee when it is submitting recommendations for action by the full board of directors as well as when it is performing supervisory or other functions in instances where neither the full board of directors nor the committee takes dispositive action. For example, the compensation committee typically reviews proposals and makes recommendations for action by the full board of directors. In contrast, there may be reliance upon an investigation undertaken by a board committee and reported to the full board, which forms the basis for a decision by the board of directors either to take or not to take dispositive action. Another example is reliance on a committee of the board of directors, such as a corporate audit committee with respect to the board's ongoing role of oversight of the accounting and auditing functions of the corporation. In addition where reliance on information or materials prepared or presented by a board committee is not involved, in connection with board action a director may properly rely on oversight monitoring or dispositive action by a board committee (of which the director is not a member) empowered to act pursuant to authority delegated under Section 14-2-825 or acting with the acquiescence of the board of directors. See the Official Comment to Section 14-2-825. A director may similarly rely on committees not created under section 825 which have nondirector members. In parallel with subsection (e)(2)(ii), the concept of "confidence" is substituted for "competence" in order to avoid any inference that technical skills are a prerequisite. In the usual case, the appointment of committee members or

the reconstitution of the membership of a standing committee (e.g., the audit committee), following an annual shareholders' meeting, would alone manifest the noncommittee members' belief that the committee "merits confidence." However, the reliance contemplated by subsection(e)(3) is geared to the point in time when the board takes action or the period of time over which a committee is engaged in an oversight function; consequently, the judgment to be made (i.e., whether a committee "merits confidence") will arise at varying points in time. After making an initial judgment that a committee (of which a director is not a member) merits confidence, the director may depend upon the presumption of regularity absent knowledge or notice to the contrary.

Subsection (f)

Subsection (f) is self-executing, and the individual director's exoneration from liability is automatic, if compliance with the standard of conduct set forth in this section is established. Specifically, a director will not be liable to the corporation, its shareholders or any conservator or receiver, or any assignee or successor-in-interest thereof, for any action or any failure to take any action, as a director, if (a) the director fulfilled the duties of his or her office in compliance with this Code section, or (b) such action or failure to take action does not constitute gross negligence or give rise to liability for conduct described in clauses (A) – (D) of Section 14-2-202(b)(4). "Gross negligence" is defined as a reckless indifference to or a deliberate disregard of the best interests of the corporation or its shareholders. Subsection (f) provides relief only from liability to the corporation, its shareholders, and any conservator or receiver of or for the corporation, or any assignee or successor-in-interest thereof. Section 14-2-830 is intended to regulate only relationships among the participants in the corporate enterprise - shareholders, directors, and the corporation itself. As was stated in the Comment to the comparable statement of directors' duties and liabilities in the American Law Institute's Principles of Corporate Governance: Analysis and Recommendations (T.D. No. 4), § 14-2-401, at 12:

"The duty of care standards set forth in § 14-2-401 involve duties owed directly to the corporation. It should be emphasized that § 14-2-401 is not intended to create new third-party rights (e.g., for tort claimants or government agencies) against directors or officers. The standards set forth in Part IV apply only to the relationships among directors, officers, shareholders, and their corporations."

Subsection (f) makes clear that it will apply whether or not affirmative action was in fact taken. Subsection (f) applies (assuming its requirements are satisfied) to any conscious consideration or matters involving the affairs of the corporation. It also applies to the determination by the board of directors of which matters to address and which not to address. Subsection (f) also applies where a director has failed to consider taking action in circumstances where the standards of Section 14-2-830 are otherwise met.

Subsection (g)

Subsection (g) makes clear that a party asserting liability in a proceeding that a director is liable to a shareholder for any action or any failure to take any action, as a director, has the burden of establishing that liability is not precluded by any bar to such proceeding by (1) any

provision in the articles of incorporation authorized by Section 14-2-202(b)(4), (2) the protection afforded by Section 14-2-830(f), (3) the protection afforded by Section 14-2-861(a) or Section 14-2-861(b) (for action, in the case of Section 14-2-861(b), taken in compliance with Section 14-2-862 or Section 14-2-863), or (4) the protection afforded by Section 14-2-870.

If (1) a provision in the corporation's articles of incorporation (adopted pursuant to Section 14-2-202(b)(4)) shelters the director from liability for money damages, (2) the protection of Section 14-2-830(f) is applicable, or (3) if a safe harbor provision, under Section 14-2-861 or Section 14-2-870, shelters the director's conduct in connection with a conflicting interest transaction or the taking of a business opportunity, and such defense applies to the claims in plaintiff's complaint, in that event, the court should grant the defendant director's motion for dismissal or summary judgment (or the equivalent) and the proceeding would be ended. If the defense applies to some but not all of plaintiff's claims, the defendant is entitled to dismissal or summary judgment with respect to those claims. The relevant shelter provision is self-executing and the individual director's exoneration from liability is automatic.

Subsection (h)

The concept of "fairness" is often relevant to whether a director will have liability if his or her conduct is challenged. Specifically, a director can successfully defend a financial interest in a transaction with the corporation by establishing that it was fair to the corporation. See Section 14-2-861 and its Official Comment. Subsection (h)(1) expressly disclaims any intention to shift the burden of proof otherwise applicable where the question of the fairness of a transaction or other challenged conduct is at issue.

The Code deals expressly with certain aspects of director liability in other sections. For example, a director has a duty to observe the limitations on shareholder distributions set forth in Section 14-2-832 and, if a director votes for or assents to a distribution in violation thereof, the director has personal liability as provided in that section. Section 14-2-861 channels all directors' transactional interests into the exclusive treatment for directors' conflicting interest transactions that is provided in that section, rejecting an award of damages or other sanctions for interests that do not come within its conceptual framework. Subsection (h)(2) expressly acknowledges that the liability standard provided in Section 14-2-832 and the exclusive treatment for directors' transactional interests provided in Section 14-2-861 are unaffected by subsection (f) or (g).

While subsections (f) and (g) address director liability to the corporation or its shareholders under the Code and related case law, they do not limit any liabilities or foreclose any rights expressly provided for under other law. For example, directors can have liability (1) to shareholders (as well as former shareholders) who purchased their shares in a registered public offering, under section 11 of the Securities Act of 1933 and (2) to the corporation, for short-swing profit recovery, under section 16(b) of the Securities Exchange Act of 1934. Subsection (h)(3) merely acknowledges that those rights are unaffected by subsections (f) and (g).

Long before statutory formulations of directors' standards of conduct, courts would invoke the business judgment rule in evaluating directors' conduct and determining whether to impose liability in a particular case. Over the years, the courts have developed a broad common law concept geared to business judgment. In basic principle, a board of directors enjoys a

presumption of sound business judgment and its decisions will not be disturbed (by a court substituting its own notions of what is or is not sound business judgment) if they can be attributed to any rational business purpose. See *Sinclair Oil Corp. v. Levien*, 280 A.2d 717, 720 (Del. 1971). Relatedly, it is presumed that, in making a business decision, directors act in good faith, on an informed basis, and in the honest belief that the action taken is in the best interests of the corporation. See *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1983). When applied, this principle operates both as a procedural rule of evidence and a substantive rule of law, in that if the plaintiff fails to rebut the presumption that the directors acted in good faith, in the corporation's best interest and on an informed basis, the business judgment standard protects both the directors and the decisions they make. See *Citron v. Fairchild Camera & Instrument Corp.*, 569 A.2d 53, 64 (Del. 1989).

Because the elements of the business judgment rule and the circumstances for its application are continuing to be developed by the courts, it would not be desirable to freeze the concept in a statute. Subsection (h)(4) expressly acknowledges the application of the business judgment rule as a separate, independent and supplemental protection for directors and officers.

14-2-831. Derivative actions against directors and officers.

~~(a)~~ (a) Subject to Code Section 14-2-830 and to Code Section 14-2-842, a derivative proceeding, as defined in subsection (a~~1~~) of Code Section 14-2-740, may be brought by a shareholder, or an action may be brought by the corporation, against one or more directors or officers of the corporation to procure for the benefit of the corporation a judgment for the following relief:

(1) ~~To~~ Subject to any provision of the articles of incorporation authorized pursuant to Code Section 14-2-202(b)(4), to compel the defendant to account for official conduct or to decree any other relief called for by his or her official conduct in the following cases:

(A) The neglect of, failure to perform, or other violation of his or her duties in the management of the corporation or in the disposition of corporate assets;

(B) The acquisition, transfer to others, loss, or waste of corporate assets due to any neglect of, failure to perform, or other violation of duties; or

(C) The appropriation, in violation of his or her duties, of any business opportunity of the corporation;

(2) To enjoin a proposed unlawful conveyance, assignment, or transfer of corporate assets or other unlawful transaction where there is sufficient evidence that it will be made; and

(3) To set aside an unlawful conveyance, assignment, or transfer of corporate assets where the transferee knew of its unlawfulness and is made a party to the action.

(b) No action shall be brought for the relief provided in subsection (a) of this Code section more than four years from the time the cause of action accrued.

(c) This Code ~~section~~Section shall not limit any liability otherwise imposed by law upon any director or officer or any third party.

(Code 1981, § 14-2-831, enacted by Ga. L. 1989, p. 946, § 34; Ga. L. 2015, p. ____, § ____.)

Note to 2015 Amendment

Source: Former § 14-2-153; N.Y.B.C.L. §720.

This Note to 2015 Amendment supersedes and replaces the Comment to Code Section 14-2-831. The 2015 amendments to Code Section 14-2-831 include revisions to subsection (a) that add cross references to Code Section 14-2-830 and Code Section 14-842 to clarify application of any limitations set forth in such Code Sections on the ability to commence a derivative proceeding. The 2015 amendments also include revisions to subsection (a)(1) that were drawn from amendments to N.Y.B.C.L. §720 made subsequent to the initial enactment of Code Section 14-2-831, and clarify that the ability to commence a derivative proceeding may be limited or prohibited to the extent a director is entitled to exculpation for such conduct under Code Section 14-2-202(b)(4).

The 1989 amendments added this section, and renumbered former section 14-2-831 as section 14-2-832. Subsection (a) restored the general approach of former § 14-2-153(a), and expressly authorizes actions against officers and directors. Unlike former law, it authorizes derivative actions only for “shareholders” as defined in § 14-2-740, and for the corporation itself. While former law granted standing to receivers, trustees in bankruptcy, officers, directors, and judgment creditors, the general rule is to limit standing to shareholders. W. Fletcher, 13 CYCLOPEDIA CORPORATIONS (1984 Rev. Vol.) §§ 5972-5972.2. Common law courts have generally denied standing to creditors to bring derivative actions; other forms of action are available to creditors and their representatives. DeMott, SHAREHOLDER DERIVATIVE ACTIONS: LAW AND PRACTICE, § 4.03 (1987). While derivative actions are a judicial development, and are authorized without statutory expression, this subsection was added out of concern that repeal of the express grant of former law might imply a denial of the right to bring such actions. Former § 14-2-153 was based on N.Y. Bus. Corp. Law § 720, and was added in 1968.

Subsection (a) makes clear that any derivative proceeding brought under Code Section 14-2-831 is subject to the provisions of Code Section 14-2-830 and Code Section 14-2-842. In addition, clause (1) of subsection (a) clarifies that the ability to commence a derivative proceeding may be limited or prohibited to the extent a director is entitled to exculpation for such conduct under Code Section 14-2-202(b)(4).

Subsection (b) preserves the four year statute of limitations of former § 14-2-153(c).

Subsection (c) preserves former §14-2-153(d), and was intended to make it clear that this section is not to be construed as limiting any liability otherwise imposed by law upon any officer or director.

PART 4 OFFICERS

14-2-840. ~~Required officers~~ Officers.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) The board of directors may elect individuals to fill one or more offices of the corporation. A duly appointed officer may appoint one or more officers ~~or assistant officers~~ if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall ~~delegate~~assign to one of the officers responsibility for preparing the minutes of the directors' and shareholders' meetings and for maintaining and authenticating records of the corporation—~~required to be kept under subsection (a) of Code Section 14-2-1601 and subsection (a) of Code Section 14-2-1602.~~

(d) The same individual may simultaneously hold more than one office in a corporation.

(Code 1981, § 14-2-840, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2015, p. ____, § ____.)

Note to 2015 Amendment:

Source: 1984 Model Act §§ 8.40(b), (c) amendment proposed, 55 Bus. Law. 1233 (1999), adopted, 55 Bus. Law. 1247 (2000), correction, 56 Bus. Law. 93 (2000).

This Note to 2015 Amendment supersedes and replaces the Comment to Code Section 14-2-840. The 2015 amendments to Code Section 14-2-840 include revisions adopted for purposes of conformity with the Model Act, simplifying and modernizing the statutory text, and adding a provision to subsection (b) to clarify that a duly authorized officer may appoint one or more officers if authorized by the bylaws or the board of directors.

Subsection (a) permits every corporation to designate the offices it wants. The designation may be made in the bylaws or by the board of directors consistently with the bylaws. This is a departure from former § 14-2-150, which required the board to elect or appoint a president, the secretary, and the treasurer.

Subsection (b) indicates that, while it is generally the responsibility of the board of directors to elect officers, an officer may appoint one or more officers if authorized by the bylaws or the board of directors.

The board of directors, as well as duly authorized officers, employees or agents, may also appoint other agents for the corporation. Nothing in this section is intended to limit the authority of a board of directors to organize its own internal affairs, including designating officers of the board.

Subsection (c) provides that the bylaws or the board of directors also must assign to an officer the responsibility to prepare minutes and to maintain and authenticate the records of the corporation referred to in subsection (a) of Code Section 14-2-1601(a) and subsection (a) of Code Section 14-2-1602; the person performing this function is referred to as the “secretary” of the corporation throughout this Chapter. See Section 14-2-140.

The person who is designated by the bylaws or the board to have responsibility for preparing minutes of meetings and maintaining records of the corporation has inherent authority to bind the corporation by that officer’s authentication under this Code Section. This delegation of authority, traditionally vested in the corporate “secretary,” allows third persons to rely on authenticated records without inquiry as to their truth or accuracy.

Under subsection (d) a corporation may have this secretarial and all other corporate functions performed by a single individual.

14-2-841. ~~Duties~~ Functions of officers.

Each officer has the authority and shall perform the ~~duties~~functions set forth in the bylaws or, to the extent consistent with the bylaws, the ~~duties~~functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the ~~duties~~functions of other officers. Unless the articles of incorporation, bylaws, or a ~~resolution~~action of the board of directors of a corporation provide otherwise, the chief executive officer (or the president if no person has been designated as chief executive officer) of a corporation shall have authority to conduct all ordinary business on behalf of such corporation and may execute and deliver on behalf of a corporation any contract, conveyance, or similar document not requiring approval by the board of directors or shareholders as provided in this chapter.

(Code 1981, § 14-2-841, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1993, p. 1231, § 9; Ga. L. 2015, p. ___, § ___.)

Note to 2015 Amendment:

Source: 1984 Model Act § 8.41 amended, proposed 59 Bus. Law. 569 (2004), adopted 60 Bus. Law. 943 (2005).

This Note to 2015 Amendment supersedes and replaces the Comment to Code Section 14-2-841 and the Note to 1993 Amendment. The 2015 amendments to Code Section 14-2-841 include revisions adopted for purposes of conformity with the Model Act and for simplifying and modernizing the statutory text.

Section 14-2-841 recognizes that persons designated as officers have the formal authority set forth for that position (1) by its description in the bylaws, (2) by specific action of the board of directors, or (3) by direction of another officer authorized by the board of directors to prescribe the functions of other officers. It preserves the approach of former § 14-2-150.

The 1993 amendment changed existing Georgia law by conferring general authority on the chief executive officer or president of a company to conduct ordinary business and execute and deliver contracts, conveyances or similar documents on behalf of the corporation, excluding

agreements which expressly require approval of the board of directors or shareholders pursuant to other provisions of the Code. The 1993 amendment thus rejected Georgia case law which held that a president of a corporation has no such inherent authority. The 1993 Amendment permitted a corporation to negate such a delegation of authority by including an appropriate provision in its articles of incorporation or bylaws, or through resolution of its board of directors.

14-2-842. Standards of conduct for officers.

~~(a) An officer with discretionary authority shall discharge his duties under that authority:~~

(a) An officer, when performing in such capacity, has the duty to act:

(1) In a manner ~~he~~the officer believes in good faith to be in the best interests of the corporation; and

(2) With the care ~~an ordinarily prudent~~that a person in a like position would reasonably exercise under similar circumstances.

(b) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on ~~information, opinions, reports;~~

(1) The performance of properly delegated responsibilities by one or more officers, employees, agents, or representatives of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; and

(2) Information, opinions, reports or statements, including financial statements and other financial data, ~~if~~ prepared or presented by: ~~(1) One~~ one or more officers ~~or~~ employees, agents, or representatives of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or ~~(2) Legal~~ by legal counsel, public accountants, investment bankers, or other persons as to matters involving skills, expertise, or knowledge the officer reasonably believes are matters (A) within the particular person's professional or expert competence or (B) as to which the particular person merits confidence.

~~(c) In the instances described in subsection (b) of this Code section, an officer is not entitled to rely if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this Code section unwarranted.~~

~~(dc) An officer is shall not be liable to the corporation or to its shareholders, or any conservator or receiver of or for the corporation or any assignee or successor-in-interest thereof for any action taken as an officer, or any or failure to take any action, as an officer, if (1) he performed or she fulfilled the duties of his or her office in compliance with this Code section— or (2) such action or failure to take action does not constitute gross negligence or give rise to liability for (A) any appropriation, in violation of his or her duties, of any business opportunity of the corporation, (B) acts or omissions which involve intentional misconduct or a knowing violation of law, or (C) any transaction from which the officer received an improper personal benefit. As used in this Code section, “gross negligence” means a reckless indifference to or a~~

deliberate disregard of the best interests of the corporation or its shareholders.

(d) A party asserting in a proceeding that an officer is liable to the corporation or its shareholders for any action or failure to take any action as an officer has the burden of establishing that liability is not precluded by any bar to such proceeding by (1) the protection afforded by Code Section 14-2-864(b) or 14-2-864(c), (2) the protection afforded by Code Section 14-2-842(c), or (3) the protection afforded by Code Section 14-2-870.

(e) Nothing contained in this Code Section 14-2-842 shall (1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under Code Section 14-2-864(c)(3), alter the burden of proving the fact or lack of fairness otherwise applicable, (2) alter the fact or lack of liability of an officer under another section of this Code, including the provisions governing the consequences of a transactional interest under Code Section 14-2-864, (3) affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States, or (4) deprive the officer of the applicability, effect or protection of the business judgment rule.

(Code 1981, § 14-2-842, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 2015, p. ____, § ____.)

Note on 2015 Amendment

Source: 1984 Model Act § 8.42, amendment proposed, 53 Bus. Law. 813 (1998); adopted, 54 Bus. Law. 1229 (1999) § 8.42, added by amendment, proposed, 59 Bus. Law. 569 (2004), adopted, 60 Bus. Law. 943 (2005).

This Note to 2015 Amendment supersedes and replaces the Comment to Code Section 14-2-842. The 2015 amendments to Code Section 14-2-842 contain revisions that (i) conform the statutorily prescribed duty of care of officers with the general standard of care for officers set forth in Section 842(a) of the Model Act, and thus eliminate the tort-like description of the duty of care as that which “an ordinarily prudent person in a like position would exercise” that was deleted from the Model Act in 1999; (ii) expand the scope of Code Section 14-2-842 to cover all officers, rather than officers “with discretionary authority” as Section 842(a)(2) of the Model Act has provided since 1999; (iii) clarify and expand the ability of officers to rely on others, including reliance on the performance of delegated functions, to the extent that delegation is permissible under applicable law; (iv) codify the exculpation of an officer from liability to the extent such director’s action or failure to take action does not constitute “gross negligence” or give rise to liability for (A) any appropriation, in violation of his or her duties, of any business opportunity of the corporation, (B) acts or omissions which involve intentional misconduct or a knowing violation of law, or (C) any transaction from which the officer received an improper personal benefit; (v) clarify that a party asserting liability in a proceeding that an officer is liable to the corporation or its shareholder for any action or any failure to take any action, as an officer, has the burden of establishing that liability is not precluded by any bar to such proceeding by (1) the protection afforded by Section 14-2-842(c), (2) the protection afforded by Section 14-2-864(b) or Section 14-2-864(c) or (3) the protection afforded by Section 14-2-870; (vi) clarify that the procedures to be followed where fairness is an issue are left to the decisional law of Georgia; (vii) provide that Code Section 14-2-842 has no effect on a transactional interest under Section 14-2-864, or any rights that might be asserted by the corporation or its shareholders under any

statute of Georgia or the United States; and (viii) provide that Code Section 14-2-842 shall not deprive an officer of the applicability, effect, or protection of the business judgment rule.

This Code Section provides that a nondirector officer with discretionary authority must meet standards of conduct generally similar to those expected of directors under Section 14-2-830. Officers continuously make decisions that involve the balancing of risks and benefits for the enterprise. Although some decisions turn out to be unwise or the result of a mistake of judgment, it is unreasonable to reexamine these decisions with the benefit of hindsight. Therefore, an officer is not liable for injury or damage caused by the officer's decision, no matter how unwise or mistaken it may turn out to be, if in performing the officer's duties the officer met the requirements of Section 14-2-842.

An officer's ability to rely on others in meeting the standards prescribed in Section 14-2-842 may be more limited, depending upon the circumstances of the particular case, than the measure and scope of reliance permitted a director under Section 14-2-830, in view of the greater obligation the officer may have to be familiar with the affairs of the corporation.

It is made clear, in subsection (c), that fulfillment of the section's standards of conduct will eliminate an officer's exposure to any liability to the corporation or its shareholders, and that any action or failure to take action will not expose an officer to liability if it does not constitute gross negligence or give rise to liability for conduct described in clauses (A) or (B) of Section 14-2-202(b)(4) or liability for any transaction from which the officer received an improper personal benefit. In contrast, an officer failing to meet its standards will not automatically face liability. Deficient performance of duties by an officer, depending upon the facts and circumstances, will normally be dealt with through intracorporate disciplinary procedures, such as reprimand, compensation adjustment, delayed promotion, demotion or discharge. These procedures may be subject to (and limited by) the terms of an officer's employment agreement. See Section 14-2-844.

Subsection (d) makes clear that a party asserting liability in a proceeding that an officer is liable to a shareholder for any action or any failure to take any action, as an officer, has the burden of establishing that liability is not precluded by any bar to such proceeding by (1) the protection afforded by Section 14-2-864(b) or Section 14-2-864(c), (2) the protection afforded by Section 14-2-842(c), or (3) the protection afforded by Section 14-2-870.

The concept of "fairness" is often relevant to whether an officer will have liability if his or her conduct is challenged. Specifically, an officer can successfully defend a financial interest in a transaction with the corporation by establishing that it was fair to the corporation. See Section 14-2-864(c)(3) and its Official Comment. Subsection (e)(1) expressly disclaims any intention to shift the burden of proof otherwise applicable where the question of the fairness of a transaction or other challenged conduct is at issue.

The Code deals expressly with certain aspects of officer liability in other sections. For example, Section 14-2-864 channels all officers' transactional interests into the exclusive treatment for officers' conflicting interest transactions that is provided in that section, rejecting an award of damages or other sanctions for interests that do not come within its conceptual

framework. Subsection (e)(2) expressly acknowledges that the exclusive treatment for directors' transactional interests provided in Section 14-2-864 are unaffected by subsection (c) or (d).

While subsections (c) and (d) address officer liability to the corporation or its shareholders under the Code and related case law, they do not limit any liabilities or foreclose any rights expressly provided for under other law. Subsection (e)(3) merely acknowledges that those rights are unaffected by subsection (c) and (d).

Even before statutory formulations of officers' duty of care, courts sometimes invoked the business judgment rule in determining whether to impose liability in a particular case. In doing so, courts have sometimes used language similar to the standards set forth in Section 14-2-842. The elements of the business judgment rule and the circumstances for its application are continuing to be developed by the courts. Because the elements of the business judgment rule and the circumstances for its application are continuing to be developed by the courts, it would not be desirable to freeze the concept in a statute. Subsection (e)(4) expressly acknowledges the application of the business judgment rule as a separate, independent and supplemental protection for directors and officers.

The Note to 2015 Amendment to Section 14-2-830 supplements this Note to 2015 Amendment to the extent that it can be appropriately viewed as generally applicable to officers as well as directors.

14-2-843. Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice ~~in writing or by electronic transmission~~ to the corporation. A resignation is effective when the notice is ~~effective~~delivered unless the notice specifies a ~~future~~later effective ~~date~~time. A copy of the notice of resignation as delivered to the corporation may be filed with the Secretary of State.

(b) ~~A board of directors may remove any officer at any time with or without cause. Unless the bylaws provide otherwise, any officer or assistant officer appointed by an authorized officer pursuant to subsection (b) of Code Section 14-2-840~~An officer may be removed at any time with or without cause ~~by any officer having authority to appoint such officer or assistant officer; (i) the board of directors; (ii) the officer who appointed such officer, unless the bylaws or the board of directors provide otherwise; or (iii) any other officer if authorized by the bylaws or the board of directors.~~

(Code 1981, § 14-2-843, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1995, p. 482, § 5; Ga. L. 1996, p. 1203, § 4; Ga. L. 2004, p. 508, § 16.; Ga. L. 2015, p. ___, § ___.)

Note to 2015 Amendment

Source: 1984 Model Act §§ 8.43 (a), (b) amended and 8.43(c) added, proposed, 54 Bus. Law. 1233 (1999), adopted, 55 Bus. Law. 1247 (2000).

This Note to 2015 Amendment supersedes and replaces the Comment to Code Section 14-2-843, the Note to 1996 Amendments, and Note to 2004 Amendment. The 2015 amendments to Code Section 14-2-843 contain revisions adopted for purposes of conformity with the Model Act, simplifying and modernizing the statutory text, and for purposes of conformity with the

definitions of “sign,” “deliver,” and “electronic transmission” set forth in Code Sections 14-2-140(29), (5), and (9), respectively that were amended or adopted in 2004.

Subsection (a) is declarative of former law, although no comparable language was found in former Georgia law, which only recognized that officers could resign, under former § 14-2-150(d). The Code also recognizes that, with the consent of the board of directors, they may resign effective at a later date, and that the board of directors may fill a future vacancy to become effective as of the effective date of the resignation. The last sentence of subsection (a) of the Model Act, generally to this effect, was deleted as superfluous and confusing.

Subsection (a) also permits, but does not require, a resigning corporate officer to file a copy of the notice of resignation with the Secretary of State. Corporations are not required to amend annual registrations to reflect changes in their officers until the next annual registration. In the case of corporations that fail to file an annual registration, no notice of a resignation will be reflected in the records of the Secretary of State. Subsection (a) permits, but does not require, the Secretary of State to amend its records to reflect such resignations.

In part because of the unlimited power of removal, confirmed by subsection (b), a board of directors may grant an officer an employment contract that extends beyond the term of the board of directors. If a later board of directors refuses to reappoint that person as an officer, he has the right to sue for damages but not for specific performance of his employment contract.

Subsection (b) is also declarative of former law under § 14-2-151(a). The tenure of all corporate officers is subject to the will of the board of directors and in certain instances, by other officers. It provides the corporation with the flexibility to determine when, if ever, an officer will be permitted to remove another officer. To the extent that the corporation wishes to permit an officer, other than the appointing officer, to remove another officer, the bylaws or a board resolution should set forth clearly the persons having removal authority.

If the board of directors loses confidence in a corporate officer, that officer may be removed irrespective to contract rights or the presence or absence of “cause” in a legal sense. Section 14-2-844 provides that removal of an officer who has contract rights is without prejudice to whatever rights the former officer may assert in a suit for damages for breach of contract.

PART 5 INDEMNIFICATION

14-2-859. Application of part.

(f) Any provision in a corporation’s articles of incorporation or bylaws or in a resolution adopted or contract approved by its board of directors or shareholders that obligates the corporation to provide indemnification to the fullest extent permitted by law shall, unless such provision or another provision in the corporation’s articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders expressly provides otherwise, be deemed to obligate the corporation:

(1) To advance funds to pay for or reimburse expenses in accordance with Code Section 14-2-853 or subsection (c) of Code Section 14-2-856 to the fullest extent permitted by law; and

(2) To indemnify directors to the fullest extent permitted in Code Section 14-2-856, provided that such provision is duly authorized as required in subsection (a) of Code Section 14-2-856, and to indemnify officers to the fullest extent permitted in paragraph (2) of subsection (a) and subsection (b) of Code Section 14-2-857.

(Code 1981, § 14-2-859, enacted by Ga. L. 1988, p. 1070, § 1; Ga. L. 1996, p. 1203, § 5; Ga. L. 2006, p. 825, § 5/SB 469; Ga. L. 2015, p. ____, § ____.)

Note to 2015 Amendment

Subsection (f)(1) of Code Section 14-2-859 was amended to insert a cross reference to subsection (c) of Code Section 14-2-856 that was inadvertently omitted when subsection (f) was added to Code Section 14-2-859 in 2006.

PART 7 BUSINESS OPPORTUNITIES

14-2-870. Business Opportunities.

(a) A corporation may disclaim, in its articles of incorporation or bylaws or by action of its shareholders or board of directors, any interest of the corporation in, or in being offered, or in excluding directors or officers from taking advantage of or participating in, specific business opportunities or classes or categories of business opportunities that are, have been or may be in the future presented to the corporation or to one or more of its directors or officers. For purposes of this part, the terms “director” and “directors” include a person or persons other than directors to the extent discretion or powers of the board of directors are vested in such person or persons pursuant to Code Sections 14-2-732, 14-2-920 or 14-2-922.

(b) A director’s or officer’s taking advantage of, or participating in, directly or indirectly, a specific business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director or officer, in a proceeding by a shareholder or by or in the right of the corporation on the ground that such opportunity should have been first offered to the corporation or that the corporation had an interest in, or in being offered, or in excluding the director or officer from taking advantage of or participating in, such opportunity, to the extent the corporation has disclaimed any such interest with respect to such business opportunity pursuant to subsection (a) of this Code Section, either with respect to the specific business opportunity or with respect to a class or category of business opportunities that includes such opportunity.

(c) Action by the shareholders or board of directors of the corporation approving a disclaimer pursuant to subsection (a) that applies to a director with respect to a specific past, present or future business opportunity shall be effective for all purposes if the director brings such opportunity to the attention of the corporation (if such opportunity is not known to the corporation) and:

(1) Such disclaimer is approved by qualified directors in compliance with the procedures set forth in Code Section 14-2-862, as if the decision being made concerned a director's conflicting interest transaction, or

(2) Such disclaimer is approved by shareholders' action taken in compliance with the procedures set forth in Code Section 14-2-863, as if the decision being made concerned a director's conflicting interest transaction;

except that, rather than making "required disclosure" as defined in Code Section 14-2-860, in each case the director shall have made prior disclosure to those approving such disclaimer on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director, subject to subsection (e) of this Code Section, and that a "qualified director" is a director who, at the time action is to be taken under subsection (c)(1) of this Code Section, would be a qualified director under Code Section 14-2-862(d) if the business opportunity were a director's conflicting interest transaction.

(d) Action by the board of directors or shareholders of the corporation approving a disclaimer pursuant to subsection (a) that applies to an officer with respect to a specific past, present or future business opportunity shall be effective for all purposes if the officer brings such opportunity to the attention of the corporation (if such opportunity is not known to the corporation) and such disclaimer is approved by the board of directors or shareholders in compliance with the procedures set forth in Code Section 14-2-864, as if the decision being made concerned an officer's conflicting interest transaction, except that, rather than making "required disclosure" as defined in Code Section 14-2-864, in each case the officer shall have made prior disclosure to those approving such disclaimer on behalf of the corporation of all material facts concerning the business opportunity that are then known to the officer, subject to subsection (e) of this Code Section.

(e) Notwithstanding subsections (c) or (d) of this Code Section, a director or officer is not obligated to make prior disclosure to those approving a disclaimer on behalf of the corporation pursuant to subsection (c) or (d) of all material facts concerning the business opportunity subject to such disclaimer that are then known to the director or officer to the extent that the director or officer reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule, provided that such director or officer discloses to those acting on behalf of the corporation:

(1) All information required to be disclosed that is not so violative, and

(2) the nature of the director's or officer's duty not to disclose the confidential information.

(f) In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of or participation in a business opportunity by a director or officer, directly or indirectly, the fact that the director or officer did not employ the procedures described in this Code section before taking advantage of the opportunity shall not (1) create an inference that the opportunity should have been first presented to the corporation, that the corporation had an interest in, or in being offered, or in excluding the director or officer from taking advantage of

or participating in, such opportunity or that the director or officer has or will have appropriated the opportunity in violation of his or her duties by taking advantage of or participating in the opportunity or (2) alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

(Code 1981, § 14-2-870, enacted by Ga. L. 2015, p. ___, § ___.)

Note to 2015 Amendment

Source: 1984 Model Act § 8.70, added by amendment, proposed, 59 Bus. Law. 569 (2004), adopted, 60 Bus. Law. 943 (2005); 1984 Model Act § 1.43, added by amendment, proposed, 60 Bus. Law. 341 (2004), adopted, 60 Bus. Law. 943 (2005); Del. Code Ann. tit. § 122(17).

New Code Section 14-2-870 is generally based on Model Act §8.70 and statutes in various states that address the power of a corporation to disclaim any interest the corporation may have in certain business opportunities. Mississippi, Virginia, Wyoming, Maine, Connecticut, Iowa and the District of Columbia have adopted versions of Model Act § 8.70. *See* Miss. Code Ann. § 79-4-8.70 (West. 1999); Va. Code Ann. § 13.1-691.1 (West. 2007); Wyo. Stat. Ann. § 17-16-870 (West. 2007); Me. Rev. Stat. Ann. Tit. 13-C, § 881 (West. 2005); Conn. Gen. Stat. § 33-785 (West. 2005); Iowa Code Ann. § 490.870 (West. 2009); D.C. Code § 29–306.80 (West. 2001). Those statutes generally address the procedure by which the corporation may disclaim any interest in a specific business opportunity presented to a director. The legislatures of Delaware, Missouri, Oklahoma, Texas, New Jersey and Puerto Rico have also adopted statutory provisions addressing business opportunities, but have generally only confirmed the corporation’s fundamental power to renounce an interest in a business opportunity, including in advance of the existence of the opportunity, without addressing procedural aspects of the renunciation in detail. *See* Del. Code Ann. tit. 8 §122 (17); Mo. Ann. Stat. § 351.385 (20) (West. 2001); Okla. Stat. Ann. tit. 18, § 1016(17) (West. 1999); Tex. Business Organizations Code Ann. § 2.101(21) (West. 2008); N.J. Stat. Ann. § 14A:3–1 (West. 2003); 2009 P.R. Laws Act 164. New Code Section 14-2-870 combines these approaches, covering not only the corporation’s power to disclaim an interest in an opportunity, but also providing “safe harbor” procedures for approving disclaimers with respect to particular opportunities.

New Code Section 14-2-870 generally uses the Model Act’s terminology, referring to a “disclaimer,” rather than a “renunciation,” as used in some of the statutes adopted in other states, but these terms were deemed synonymous and broadly to encompass corporate action forgoing a business opportunity whether expressly styled as a disclaimer or renunciation or in other terms (e.g., approval, authorization, waiver). This Section also follows the Model Act in referring to disclaimers of an “interest” in an opportunity. This term is intended to refer to any right or entitlement of the corporation with respect to an opportunity under any applicable test for determining that a business opportunity is one for which a director or officer could be liable for misappropriation.

Subsection (a) confirms the basic power of the corporation to disclaim, in its articles of incorporation or bylaws or by action of its shareholders or board, the corporation’s interest in a specific business opportunity or in particular classes or categories of opportunities. Among other things, subsection (a) clarifies that a corporation may determine in advance whether an

opportunity within a particular class or category of business opportunities is a corporate opportunity to be presented to the corporation, rather than to address such opportunities as they arise. This will allow corporations to attract, for example, directors who might be reluctant to jeopardize future business opportunities through service on the board without an advance agreement clarifying any obligation they might have to present opportunities to the corporation or to refrain from pursuing opportunities presented to them. Without an advance agreement, a corporation could have difficulty in attracting directors engaged in venture capital financing, financial advisory services or other businesses in which they receive, in the ordinary course of business, a variety of business opportunities from third parties with no relationship to the corporation. Subsection (a) is not intended to change existing law in this area, but to confirm and make explicit the corporation's power to enter into these advance agreements. Such clarification will also facilitate use of a corporation, as opposed to a limited liability company or other entity, as a business vehicle where desired. Limited liability companies and various other entities are already free to eliminate or define the duties of their members and managers with respect to business opportunities. *See e.g.*, O.C.G.A. §§ 14-11-305(4)(A)(limited liability company); 14-9-108(b)(1) (limited partnership). Subsection (a) also confirms that the corporation has the power to determine these matters after the fact, permitting the corporation to disclaim any arguable interest it may have had in a business opportunity in which a director or officer is participating. This deviates from Model Act § 8.70(a), which would only allow a business opportunity disclaimer before a director has become obligated in connection with an opportunity. Nothing currently restricts such after the fact disclaimers, and permitting them is consistent with the authority in Code Sections 14-2-862, 14-2-863 and 14-2-864, which permit after the fact approvals of director's conflicting interest transactions and officer's conflicting intent transactions. It was felt that a restriction on after the fact disclaimers would unnecessarily limit the discretion of the board, particularly since the need for board disclaimers might not be apparent until after the director or officer had become committed to participate in the business opportunity. After the fact board and shareholder ratification of corporate acts is commonplace, and the proposed authority to permit after the fact disclaimers in the business opportunity arena is considered comparable.

Subsection (a) is not intended to affect the level of judicial scrutiny that would apply to a board's action in disclaiming the corporation's interest in a business opportunity or in permitting a director or officer to participate in an opportunity, which will continue to be determined based on compliance with the directors' normal duties. *See* Code Section 14-2-830.

The classes or categories of business opportunities referred to in subsection (a) may be specified by any manner of defining or delineating business opportunities or the corporation's or any other party's entitlement thereto or interest therein, including, without limitation, by line or type of business, identity of the originator of the business opportunity, identity of the party or parties to or having an interest in the business opportunity, identity of the recipient or potential recipient of the business opportunity, periods of time or geographical location.

A number of the statutes adopted in other states expressly authorize renunciation of opportunities presented to shareholders or other persons in addition to directors and officers. Subsection (a) covers shareholders and such other persons only to the extent that the discretion or powers of the board of directors are vested in such persons pursuant to Code Sections 14-2-732, 14-2-920 or 14-922. The Code does not create or codify the common law corporate

opportunity doctrine applicable to directors and officers or define its parameters. Nevertheless, certain Code provisions touch on issues that relate to the application of that doctrine to directors and officers, such as by limiting the corporation's power to exculpate a director for appropriating a business opportunity of the corporation in violation of his or her duties. *See* O.C.G.A. § 14-2-202(b)(4). *See also* O.C.G.A. §§14-2-831(a)(1)(c), 14-2-856(b)(1), and 14-2-857(a)(2)(A)). Under these circumstances, it is appropriate to make the clarifications intended by this new subsection (a), confirming the corporation's power to disclaim an interest in certain business opportunities, specifically or by type, in favor of directors and officers. On the other hand, a corporation would not normally have any interest in opportunities available to a shareholder in the shareholder's capacity as such, except to the extent that the discretion or powers of the board of directors are vested in the shareholder pursuant to Code Sections 14-2-732 or 14-2-920 or such corporation is a statutory close corporation operating without a board of directors under Code Section 14-2-922. Accordingly, inclusion of shareholders in subsection (a) absent these special circumstances was deemed unnecessary and potentially misleading in that such inclusion could imply that a shareholder has a general duty to present business opportunities to the corporation. This limitation is not intended to suggest that a corporation lacks authority to disclaim in advance any interest in business opportunities available to any shareholder that the corporation may have for any reason. Corporations may have reason to renounce such interests in favor of not only shareholders, but also employees, agents, and other persons who are not directors or officers. These and related matters are frequently addressed in shareholder agreements, noncompetition agreements, and employment agreements, as well as in established principles of agency and other law. Corporations remain free to address business opportunity matters with respect to such persons, including shareholders in their capacity as such, in advance or otherwise.

Subsection (b) is derived from Section 8.70(a) of the Model Act and is a corollary to the general grant of authority in subsection (a). It confirms that an effective disclaimer under subsection (a) forecloses a claim against the director or officer based on the matters disclaimed, whether based on the Code or common law.

Subsection (c) describes a procedure available to a director who elects to subject a business opportunity, regardless of whether the opportunity would be classified as an opportunity in which the corporation has an interest, to the disclosure and approval procedures set forth therein. Subsection (c) is intended to make clear that use of the approval procedures described in Section 861 or 862 for director's conflicting interest transactions provides a safe harbor with respect to the approval process, eliminating any concern that approval of a disclaimer relating to a particular, business opportunity is ineffective due to, for example, participation in the vote on the disclaimer by a director who may participate in the opportunity. As subsection (f) makes clear, failure to follow the procedures in subsection (c) would not taint a particular disclaimer or imply that the director should have presented an opportunity to the corporation. In the case of advance disclaimers with respect to particular classes or categories of business opportunities, particularly if given when a specific opportunity may not yet exist, compliance with the disclosure concepts contemplated by subsection (c) would generally not be possible or meaningful. The efficacy and consequences of disclaimers approved outside the parameters of the safe harbor provision of subsection (c) would be governed by the rules otherwise applicable to corporate decisions, including, as noted above, any applicable duties of directors approving the disclaimer.

The safe harbor provided is as broad as that provided for a director's conflicting interest transaction in Code Section 14-2-861: if the director makes required disclosure of the facts specified and the corporation's interest in the opportunity is disclaimed by action by qualified directors under subsection (c)(1) or shareholder action under subsection (c)(2), the director has foreclosed any claim of breach of the duty of loyalty and may not be subject to equitable relief, damages or other sanctions if the director thereafter takes the opportunity for his or her own account or for the benefit of another person. As a general proposition, disclaimer by action by qualified directors under subsection (c)(1) must meet all of the requirements provided in Code Section 14-2-862 with respect to a director's conflicting interest transaction if the business opportunity were a director's conflicting interest transaction and disclaimer by shareholder action under subsection (c)(2) must likewise comply with all of the requirements for shareholder action under Code Section 14-2-863. Note, however, one important difference.

In contrast to director or shareholder action under Code Sections 14-2-862 and 14-2-863, which employ Code Section 14-2-860's definition of "required disclosure," subsection (c) instead requires the disclosure to those acting for the corporation of "all material facts concerning the business opportunity that are then known to the director." As a technical matter, Code Section 14-2-860 calls for, in part, disclosure of "the existence and nature" of the director's conflicting interest - that information is not only non-existent but irrelevant for purposes of subsection (c). But there is another consideration justifying replacement of the Code Section 14-2-860 definition. In the case of the director's conflicting interest transaction, the director proposing to enter into a transaction with the corporation has presumably completed due diligence and made an informed judgment respecting the matter; accordingly, that interested director is in a position to disclose "all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction." The conflicted director, placing himself or herself in the independent director's position, should be able to deal comfortably with the objective materiality standard. In contrast, the director proffering a business opportunity will often not have undertaken due diligence and made an informed judgment to pursue the opportunity following a corporate disclaimer. Thus, the disclosure obligation of subsection (c) requires only that the director reveal all material facts concerning the business opportunity that, at the time when disclosure is made, are known to the director. The safe-harbor procedure shields the director even if a material fact regarding the business opportunity is not disclosed, so long as the proffering director had no knowledge of such fact. In sum, the disclosure requirement for subsection (c) must be and should be different from that called for by the provisions of Article 8, part 6.

Subsection (d) of Code Section 14-2-870, which has no counterpart in the Model Act, describes a safe harbor for officers comparable to that available to directors under subsection (c). Subsection (d) is based on Code Section 14-2-864, which restored the safe harbor for conflicting interest transactions between the corporation and its officers formerly provided by O.C.G.A. § 14-2-155 (1982). Because Code Section 14-2-864 specifically provides a safe harbor for officer's conflicting interest transactions, it was feared that negative implications might arise were similar protections not provided by new Code Section 14-2-870 for business opportunities. The discussion of subsection (c) above applies equally to subsection (d).

Subsection (e), which has no counterpart in the Model Act, is designed to deal, in a manner similar to subsection (b) of Code Section 14-2-862, with situations in which a director or officer is not able to comply fully with the disclosure requirements of subsection (c) or (d) because of an extrinsic duty of confidentiality. Under certain circumstances, subsection (e) makes it possible for such a matter to be brought to the board or shareholders for consideration under subsection (c) or (d) and thus enable both the company and the director or officer to secure the protection afforded by subsection (c) or (d), as the case may be, for the business opportunity even though the director or officer cannot make the full disclosure usually required by those subsections. To comply with subsection (e), the director or officer must inform the directors or shareholders who vote on the disclaimer of the nature of the duty of confidentiality (e.g., inform them that it arises out of an attorney-client privilege or a duty as a director of another company that prevents him or her from making the disclosure called for by subsection (c) or (d)), and disclose all material facts concerning the business opportunity that are then known to the director to the extent such disclosure is not violative of such duty.

Subsection (f) reflects a fundamental difference between the coverage of Parts 6 and 7 of Article 8. Because Part 6 provides an exclusive definition of “director’s conflicting interest transaction,” any transaction meeting the definition that is not approved in accordance with the provisions of Part 6 is not entitled to its safe harbor. Unless the interested director can, upon challenge, establish the transaction’s fairness, the director’s conduct is presumptively actionable and subject to the full range of remedies that might otherwise be awarded by a court. In contrast, the concept of “business opportunity” under Code Section 14-2-870 is not defined, but is intended to refer generically to any business opportunity in a broad sense, with no implication that the corporation has or might have an interest therein of any type. This approach recognizes that, given the vagueness of the judicially-created corporate opportunity doctrine and related director and officer duties with respect to business opportunities, a director or officer might be inclined to seek safe-harbor protection under Code Section 14-2-870 before pursuing an opportunity that someone might argue at a later point was one that the director or officer should have presented to the corporation. By the same token, a director or officer might conclude that under applicable law the corporation has no cognizable interest in a particular business opportunity and that participation in it does not violate any duty and might choose to pursue it without seeking a disclaimer by the corporation under Code Section 14-2-870. Accordingly, subsection (f) provides that a decision not to employ the procedures of Code Section 14-2-870 neither creates any negative inference nor alters the burden of proof in any subsequent proceeding seeking damages or equitable relief based upon an alleged misappropriation of or participation in a particular business opportunity.

International Business Law Update

A proposal to enact the Uniform Unsworn Foreign Declarations Act in Georgia

I. The specific legislation, if any, which is pending or proposed

A bill to enact the Uniform Unsworn Foreign Declarations Act in Georgia.

II. If no legislation is pending or proposed, a statement of the issues to be addressed by the legislation

The Uniform Law Commission promulgated the Unsworn Foreign Declarations Act in 2008. The act permits, in state court proceedings, unsworn declarations under penalty of perjury to be executed by witnesses physically located outside the United States in lieu of affidavits, verifications, or other sworn court filings. The purpose of the act is somewhat similar to 28 U.S.C. § 1746, which is the federal statute permitting the use in federal courts of unsworn declarations under penalty of perjury.

III. A summary of the existing law

Georgia has not adopted the Unsworn Foreign Declarations Act. Under the Civil Practice Act, affidavits are typically required in support of routine filings, including summary judgment motions, even if the affiant resides outside the United States where public notaries may not be available.

Enactment of the Unsworn Foreign Declarations Act may also necessitate an amendment to O.C.G.A. § 9-11-56 of the Civil Practice Act, similar to Rule 56(c)(4), to confirm that unsworn foreign declarations may be used to support factual positions when supporting or opposing summary judgment motions.

IV. The principal known proponents or opponent of the legislation and a brief statement of the reasons for opposition or support

The Uniform Law Commission promulgated the Unsworn Foreign Unsworn Declarations Act in 2008, after the ABA House of Delegates urged promulgation of a uniform act on this issue in 2006. The act has been approved by the American Bar Association, and has been enacted in twenty-one other jurisdictions, including Alabama, Colorado, Connecticut, Delaware, the District of Columbia, Idaho, Indiana, Michigan, Minnesota, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Washington, and Wisconsin.

Due to the continued growth in international trade and foreign investment in Georgia, litigation involving foreign witnesses and/or Georgia witnesses who work abroad is increasingly common in Georgia courts. However, the requirement that foreign witnesses provide notarized affidavits creates significant inefficiencies for parties and practitioners when litigating in Georgia courts, and indirectly burdens international trade in Georgia. Affidavit requirements also are out of step with federal practice, which has permitted the use of unsworn declarations by foreign witnesses for nearly thirty-six years. As explained by the Uniform Law Commission in its prefatory note to the Unsworn Foreign Declarations Act:

Declarations of persons abroad are routinely received in state and federal courts and agencies. Many of the declarations are affidavits and other documents sworn to by declarants before authorized officials in United States embassies and consulate offices. Affiants in foreign countries with information relevant to U.S. proceedings or transactions could visit the U.S. consular office to finalize their affidavit or statement in a manner similar to a person within the U.S. visiting a notary public.

In recent years, though, particularly after the September 11, 2001 terrorist attacks, access to U.S. embassies and consulates has become more difficult because of closings or added security. Thus, obtaining appropriately sworn foreign declarations for court or agency use is much more difficult in the post-9/11 environment.

The Uniform Unsworn Foreign Declarations Act (UUFDA) was promulgated by the Uniform Law Commission at its Annual Meeting in 2008 to address this situation and to harmonize state and federal law.

UUFDA affirms the use in state legal proceedings of unsworn declarations made by declarants who are physically outside the boundaries of the United States when making the declaration. Under the UUFDA, if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the act, then the statement may be used as an equivalent of a sworn declaration. The UUFDA excludes use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary.

The UUFDA will extend to state proceedings the same flexibility that federal courts have employed for over 30 years. Since 1976, federal law (28 U.S.C. § 1746) has allowed an unsworn declaration executed outside the United States to be recognized and valid as the equivalent of a sworn affidavit if it contained an affirmation substantially in the form set forth in the federal act.

Several states also allow the use of foreign declarations (e.g., Cal. Civ. Proc. Code § 2015.5), but the state procedures are not uniform. Further, courts have ruled that 28 U.S.C. § 1746 is inapplicable to state court proceedings.

Enactment of the UUFDA harmonizes state and federal treatment of unsworn declarations. The act alleviates foreign affiants' burden in providing important information for state proceedings, while at the same time helping to reduce congestion in U.S. consular offices and allowing consular officials to increase focus on core responsibilities. Further, UUFDA will reduce aspects of confusion abroad regarding differences in federal and state litigation practice and help prevent potential negative connotations about cumbersome and inconsistent legal proceedings in the U.S. It should be enacted in every state.

There is no known opposition to the Unsworn Foreign Declarations Act. If necessary to ensure passage, exceptions could be created for provisions in the Civil Practice Act like O.C.G.A. § 9-11-9.1, which requires an affidavit to accompany a charge of professional malpractice.

V. A listing of the Bar's Committees or Sections that may have an interest in the proposal

- International
- Dispute Resolution

UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-SEVENTEENTH YEAR
IN BIG SKY, MONTANA
JULY 18 – 25, 2008

WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

November 8, 2008

ABOUT ULC

The **Uniform Law Commission (ULC)**, also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 117th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up-to-date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

**DRAFTING COMMITTEE ON UNIFORM UNSWORN FOREIGN
DECLARATIONS ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

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UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

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UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

PREFATORY NOTE

Declarations of persons abroad are routinely received in state and federal courts and agencies. Many of the declarations are affidavits and other documents sworn to by declarants before authorized officials in United States embassies and consulate offices. Affiants in foreign countries with information relevant to U.S. proceedings or transactions could visit the U.S. consular office to finalize their affidavit or statement in a manner similar to a person within the U.S. visiting a notary public.

In recent years, though, particularly after the September 11, 2001 terrorist attacks, access to U.S. embassies and consulates has become more difficult because of closings or added security. Thus, obtaining appropriately sworn foreign declarations for court or agency use is much more difficult in the post-9/11 environment.

The Uniform Unsworn Foreign Declarations Act (UUFDA) was promulgated by the Uniform Law Commission at its Annual Meeting in 2008 to address this situation and to harmonize state and federal law.

UUFDA affirms the use in state legal proceedings of unsworn declarations made by declarants who are physically outside the boundaries of the United States when making the declaration. Under the UUFDA, if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the act, then the statement may be used as an equivalent of a sworn declaration. The UUFDA excludes use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary.

The UUFDA will extend to state proceedings the same flexibility that federal courts have employed for over 30 years. Since 1976, federal law (28 U.S.C. § 1746) has allowed an unsworn declaration executed outside the United States to be recognized and valid as the equivalent of a sworn affidavit if it contained an affirmation substantially in the form set forth in the federal act.

Several states also allow the use of foreign declarations (e.g., Cal. Civ. Proc. Code § 2015.5), but the state procedures are not uniform. Further, courts have ruled that 28 U.S.C. § 1746 is inapplicable to state court proceedings.

Enactment of the UUFDA harmonizes state and federal treatment of unsworn declarations. The act alleviates foreign affiants' burden in providing important information for state proceedings, while at the same time helping to reduce congestion in U.S. consular offices and allowing consular officials to increase focus on core responsibilities. Further, UUFDA will reduce aspects of confusion abroad regarding differences in federal and state litigation practice and help prevent potential negative connotations about cumbersome and inconsistent legal proceedings in the U.S. It should be enacted in every state.

UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Unsworn Foreign Declarations Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Boundaries of the United States” means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) “Law” includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(5) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) “Sworn declaration” means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) “Unsworn declaration” means a declaration in a signed record that is not given under

oath, but is given under penalty of perjury.

Comment

1. The District of Columbia is included in the definition of “boundaries of the United States” to eliminate any potential ambiguity.

2. The definition of “law” is drafted in an open-ended manner to give it the widest possible application. The term is not ordinarily defined in uniform acts but in this context it is important that judges applying the act be in no doubt about its breadth. The wording is taken from the definition contained in the Revised Model State Administrative Procedure Act.

3. A “record” includes information that is in intangible form (e.g., electronically stored) as well as tangible form (e.g., written on paper). It is consistent with the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

4. The definition of “sign” is broad enough to cover any writing containing a traditional signature and any record containing an electronic signature. It is consistent with the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

SECTION 3. APPLICABILITY. This [act] applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This [act] does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

Comment

In keeping with the limited scope of the act, an unsworn declaration made within the geographical boundaries of the United States, even if the location is under the control of another sovereign, such as foreign embassies or consulates or federally recognized Indian lands, should not be deemed “outside the boundaries of the United States” for the purposes of this act. The act, so limited, meets the immediate needs addressed by the act. Moreover, notaries and officials authorized to administer oaths are more readily available in the United States.

SECTION 4. VALIDITY OF UNSWORN DECLARATION.

(a) Except as otherwise provided in subsection (b), if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this [act] has the same effect as a sworn declaration.

(b) This [act] does not apply to:

(1) a deposition;

(2) an oath of office;

(3) an oath required to be given before a specified official other than a notary public;

(4) a declaration to be recorded pursuant to [insert appropriate section of state's real estate law]; or

(5) an oath required by [insert appropriate section of state's law relating to self-proved wills].

Legislative Note: *Enacting states will need to ensure that the perjury laws of the enacting state include unsworn declarations.*

Comment

The use of unsworn declarations is not limited to litigation. Unsworn declarations would be usable in civil, criminal, and regulatory proceedings and settings. However, there are certain contexts in which unsworn declarations should not be used, and these contexts are listed in this section.

Except as provided in section 4 of this act, pursuant to this section, an unsworn declaration meeting the requirements of this act may be used in a state proceeding or transaction whenever other state law authorizes the use of a sworn declaration. Thus, if other state law, permits the use of either sworn testimony or an affidavit, an unsworn declaration meeting the requirements of this act would also suffice. Additionally, if other state law authorizes other substitutes for a sworn declaration, such as an affirmation, then as provided in subsection (a) of this section, an unsworn declaration meeting the requirements of this act could serve as a substitute for an affirmation.

SECTION 5. REQUIRED MEDIUM. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

Comment

Courts and agencies often restrict the medium in which pleadings, motions, and other documents may be filed. This section recognizes that such a restriction is binding on a person seeking to introduce a foreign unsworn declaration.

SECTION 6. FORM OF UNSWORN DECLARATION. An unsworn declaration under this [act] must be in substantially the following form:

I declare under penalty of perjury under the law of [insert name of enacting state] that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the ___ day of _____, _____, at _____,
(date) (month) (year) (city or other location, and state)

(country)

(printed name)

(signature)

Legislative Note: *Enacting states will need to ensure that the perjury laws of the enacting state include unsworn declarations.*

Comment

Section 3 of this act authorizes the use of unsworn declarations made outside the boundaries of the United States as defined in Section 2(1). The formal declaration in this section recites the areas defined as within the boundaries and does not rely on the definition in Section 2(1) because the person making the formal declaration might believe, and therefore declare that he or she is outside the boundaries of the United States even though at the time of the declaration the person making the declaration is in the Virgin Islands, Puerto Rico, or one of the other territories or insular possessions of the United States. The form of the declaration lessens the opportunity for mistake or fraud.

SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Comment

This section recites the importance of uniformity among the adopting states when applying and construing the act.

SECTION 8. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Comment

This section responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

SECTION 9. REPEALS. The following are repealed: _____.

Comment

Any state enacting the Uniform Unsworn Foreign Declarations Act likely will need to amend the state's laws by repealing any conflicting statutory provisions. This Section was added based on comments at the National Conference.

SECTION 10. EFFECTIVE DATE. This [act] takes effect [date].

Comment

This act will become effective in the enacting jurisdiction on the designated date.

PROGRAM DESCRIPTION TO INCREASE ACCESS FOR GEORGIA CITIZENS TO LEGAL SERVICES IN RURAL AREAS

Overview

Since 1883, the State Bar of Georgia, and its predecessor the Georgia Bar Association, has been the primary professional association in the state's legal community.

The 2014-2015 President of the State Bar has a desire to honor the State Bar's obligation to ensure that all the citizens of the State of Georgia have reasonable access to legal services and, in particular, how to improve access to justice by indigent and marginally employed citizens. Access to justice for indigent and marginally employed citizens in Georgia requires that there be attorneys that can be accessed by the local population who will provide pro bono and reduced fee services to this group of citizens. Unfortunately, there are six counties in Georgia with no attorneys. These counties do not have the population or the resources to adequately support the services of a lawyer without assistance from support organizations and individuals and the State of Georgia. Moreover, there are 53 counties with no more than 10 lawyers who practice in the designated areas.

The State Bar is ideally positioned to identify the challenges and provide solutions to problems associated with the legal needs of low and moderate-income families in Georgia. In so doing, the State Bar will honor its commitment to ensure that all citizens have access to quality legal services, and that persons living in Georgia will be able to find the assistance required to address their legal needs.

Nature and Scope of Problem

In a 2007-2008 survey of a sample of low-income households and moderate-income households conducted by Civil Legal Needs to assess their civil legal needs, survey participants were asked whether anyone in the household had experienced any of a number of common circumstances that would result in a legal problem. The survey findings indicated that there are more than one and half million households in low to moderate income brackets for whom legal help is out of reach economically for citizens. While, moderate income households documented roughly 4 million legal problems. This would suggest that low-income residents in Georgia experience nearly 2 million legal problems yearly which is approximately half that of moderate income households. Both groups of respondents in the survey reported percentages of substantive legal needs with which to contend in a year's period.

Across the region, attorney assistance is mostly secured in consumer related matters. Legal problems for low income people are more likely to relate to housing, economic security and basic needs rather than those experienced by people with higher income.

Take, for example the experience of Sue, who resided in Clay County, Georgia. Sue faced the danger of losing the family home because her mother passed away after a long and serious illness, during which no one took the time to see if the property taxes had been paid. Sue had been living with her mother and did not have the financial ability to locate an attorney. By the time, Sue reached a Georgia Legal Services attorney; the property had been sold at a tax sale. Sue had tried to get the tax sale purchaser to allow her family to redeem the property before she went to Georgia Legal Services but the purchaser had adamantly refused. This refusal was in direct violation of the statutes which govern the right of redemption of tax fifa sales. Sue had to travel to the nearest Georgia Legal Services office to find an attorney to help her save her family home. Georgia Legal Services prevailed against the tax fifa purchaser who was seeking to take advantage of Sue and her family's lack of legal knowledge to obtain property to which he was not entitled. Once the lawsuit was filed, the tax fifa purchaser immediately allowed Sue and her family to redeem the property. Sue should not have had to leave her community to obtain fairness and compliance with existing laws that are designed to protect the public.

Regardless of demographic region, legal problems of urban and rural low-income residents are similar. However, residents of rural areas have less knowledge of available legal resources and even less access to and success in using technology tools to assist them with their problems. Wide availability of pro bono legal services will ensure that all Georgia residents have access to fair representation in the legal system.

The Challenge

As a part of the State Bar of Georgia's emphasis on providing access to justice for all Georgia citizens regardless of a citizen's ability to pay, we are working to develop a program to place attorneys in all underrepresented counties. Our focus for 2014-2015 is driven by the desperate need of residents of five counties without any lawyers. These counties include: Baker, Chattahoochee, Glascock, Echols, and Webster counties.

The Proposed Approach

- ❑ The "Attorneys for Rural Area Assistance Program" will combine incentives and assistance for young lawyers willing to locate in six underserved areas. Preference in selection will be given to any attorney from the local area who wants to return home to practice and who meets the eligibility criteria for selection of attorneys to assist citizens in these areas.
- ❑ Selection criteria will require the designated attorney to work in the undeserved community on pro bono and marginal/reduced fee cases in addition to serving regular paying clients for a period of 5 years.
- ❑ County commissioners and/or local Economic Development offices in each county will be responsible for providing a designated office space for the attorney to use without charge for the first five years of their operations, and the designated attorney will provide an agreed upon number of pro bono or reduced fee legal services to the county in consideration for the office space provided.

❑ The State Bar will identify attorneys who will be selected to serve, assign mentors and provide access to support resources for the local attorneys, monitor, and evaluate each attorney's compliance with program requirements over the course of the program.

❑ The State Bar will encourage local civic clubs, organizations, city councils county commissions and other local boards to introduce and integrate the selected attorney into the local community so that the attorney is afforded an opportunity to truly become a member of the community he is serving.

To accomplish our goals we will need:

The General Assembly to adopt modifications to current state statutes to allow the program to proceed as proposed.

Agreements to be developed with appropriate state and local agencies to provide for forgiveness of loan indebtedness for attorneys who fulfill the conditions of participation. The amount of debt forgiveness will be based upon the lower of the total amount of debt incurred by the lawyer and three year total of the average out-of-state tuition charged by the two accredited state law schools.

To work with the General Assembly and the Governor's Office of Planning and Budget to secure state appropriations to the Georgia Department of Community Affairs to fund the five-year loan forgiveness program.

Development and Implementation of Program

The State Bar will commence the program by working with the Georgia Legal Services Program to help facilitate development of a process to assign and supervise assigned indigent cases in the underserved areas.

The solicitation process for new attorneys will start once the legislature approves the appropriation of funds for the program during the 2015 Regular Session of the Georgia General Assembly.

A selection committee comprised of representatives of the Georgia Legal Services Program, the five accredited law schools, the Governor's legal counsel, and the State Bar will select the attorneys to be assigned to each local county.

Formalization of County Participation

Should the County agree to participate in this program, the County will be required to adopt a resolution approved by the State Bar of Georgia acknowledging the County's consent to provide the incentives requested from the County. Once the funding is in place for the tuition loan forgiveness fund, a contractual agreement would need to be executed in order to formally acknowledge participation from all parties involved in the operation of this program.

This program is subject to the appropriation of funds from the Georgia General Assembly and the selection of attorneys to be awarded loan forgiveness agreements.

ATTORNEYS

ARTICLE 4

ATTORNEYS FOR RURAL AREAS ASSISTANCE PROGRAM

15-19-70. Short title.

This article shall be known and may be cited as the “Attorneys for Rural Areas Assistance Act.”

15-19-71. Purpose and intent.

It is the purpose of this article to increase the number of attorneys and improve access to justice in attorney underserved rural areas of Georgia by making grants to attorneys who have completed their legal education and allowing such payments to be used to repay law school student loan debt in return for the attorney agreeing to practice law and reside in such rural areas. It is the intent of the General Assembly that if funds are available to the Georgia Department of Community Affairs to make grants under this article or under other applicable state law, the Georgia Department of Community Affairs shall give priority to the grants under Code Section 50-8-123.

15-19-72. Administration by the Georgia Department of Community Affairs.

This article shall be administered by the Georgia Department of Community Affairs, and, as used in this article, the word “board” means the Georgia Board of Community Affairs created in Code Section 50-8-4.

15-19-73. Grant applicant qualifications; rules and regulations.

- (a) An attorney who receives a grant under the program provided for in this article shall be a citizen or national of the United States, an active member in good standing of the State Bar of Georgia at the time the grant is made.
- (b) The board shall make a full investigation of the qualifications of an attorney for a grant under the provisions of this article to determine the attorney’s fitness for participation in such a grant program, and for such purposes, the board may propound such examinations to attorneys as the board deems proper. The board’s investigation shall include a determination of the outstanding legal education loans incurred by the attorney while completing his or her legal education.
- (c) The board shall consider among other criteria for disbursing grants under the provisions of this article the county residency status and home area of the applying attorney and only award grants to attorneys who are actively practicing or beginning active practice and willing to relocate and reside in counties that qualify as attorney underserved rural areas as determined by the board pursuant to the rules and regulations adopted by it in accordance with this article. Residency in such county shall be established within three months of the grant award.

(d) The board may adopt and prescribe rules and regulations as it deems necessary or appropriate to administer and carry out the grant program provided for in this article.

15-19-74. Selection of grantees.

(a) (1) The board shall award a grant to one attorney for each county qualifying as an attorney underserved rural area.

(2) In making the determination of attorney underserved rural areas of Georgia, the board shall seek the advice and assistance of the State Bar of Georgia and the Administrative Office of the Courts.

(b) The board shall select the grantee from a list of up to two names compiled and presented by the State Bar of Georgia and executive counsel to the Governor pursuant to the rules and regulations promulgated by Code Section 15-19-73.

15-19-75. Contract between applicant and state agreeing to terms and conditions of grant; breach of contract.

(a)(1) Before being granted a grant provided for in this article, each applicant therefor shall enter into a contract with the State of Georgia agreeing to the terms and conditions upon which the grant is awarded, which contract shall include such terms and conditions as will carry out the purposes and intent of this article. The chairperson of the board, acting for and on behalf of the State of Georgia, shall execute the contract for the board. The contract shall also be properly executed by the applicant. The board is vested with full and complete authority to bring an action in its own name against any recipient of a grant under the provisions of this article for the performance of the contract and to collect any amount that may be due under the contract.

(2) Any recipient of a grant under the provisions of this article who breaches the contract for such grant by either failing to begin or failing to complete the rural practice service obligation under the contract shall be immediately liable to the board for the total amount of all grants received by the recipient plus an additional ten percent.

15-19-76. Cancellation of contract.

(a) The board shall have the authority to cancel the contract of any recipient of a grant under this article for violation of the rules or the contract deemed sufficient by the board, provided that such authority shall not be arbitrarily or unreasonably exercised. Upon such cancellation, the grant recipient shall not be eligible to receive further grant funds pursuant to this article.

15-19-77. Distribution of education loan repayment grants; conditions.

(a) The board shall award grants to each attorney approved by the board on a one-year renewable basis for a period not exceeding five years unless the attorney breaches or cancels the contract.

(b) Beginning the first month that an attorney is practicing pursuant to Code Section 15-19-73 the board shall begin to distribute the grant for education loan repayment in an amount not to exceed \$1,000 per month or the attorney's monthly law school loan payment based on a five year repayment schedule, whichever is smaller.

(c) The board shall attempt to operate in such a manner as to qualify for the tax benefits provided in 26 U.S.C.A. Section 108.

(d) Nothing in this article shall preclude the obligations of the attorney to repay his or her student loan by case or by service.

15-19-78. Funding.

The funds necessary to carry out the grant program authorized by this article may come from funds made available to the board from private, federal, state or local sources. Funds appropriated by the General Assembly for the purposes of this article shall be appropriated to the Department of Community Affairs for the specific purpose of the grant program authorized by this article, and for no other purposes.

15-19-79. Biennial report to the General Assembly.

The board shall make a biennial report to the General Assembly of its activities under the provisions of this article. Such report shall include the name of each recipient of a grant made under the provisions of this article, the amount of each such grant, and the rural area in which the recipient is practicing law.

ADVISORY COMMITTEE ON LEGISLATION

2014-2015

MINUTES OF MEETING NO. 2

December 4, 2014

State Bar of Georgia Headquarters

Atlanta, Georgia

The second meeting of the 2014-2015 State Bar of Georgia Advisory Committee on Legislation (“ACL”) was held on Thursday, December 4, 2014 at the State Bar of Georgia headquarters in Atlanta, Georgia.

ATTENDANCE

The following members and liaisons were present: Dawn Jones (Chair), Marc Howard (Vice Chair), Thomas Burnside, Carol Clark, John Christopher Clark, Michael Geoffroy, Seth Harp, Ken Hodges, Amy Howell, Kelly Koelker, Representative Mary Margaret Oliver, Jon Pannell, Rita Sheffey, Frank Strickland, Henry Walker, Patrise Perkins-Hooker, Steven Gottlieb, Phyllis Holmen, Mike Cuccaro, Hon. Mary Staley and Representative Wendell Willard.

The following members and liaisons participated via conference call: Curtis Jenkins, John Taylor, Carl Varnedoe, Ivy Cadle, Pattie Gorham, Dennis Sanders, Dennis Cathey, Susan Cox, George Reinhardt, Elizabeth Fite, Ana Maria Martinez, Lawton Heard, Hon. Josh Bell, Hon. Stephen Schuster

Others present included: Bob Kauffman, Thomas Worthy, Jeff Davis, Paula Frederick, Bill NeSmith, Rusty Sewell, Roy Robinson, Meredith Weaver, Wanda Segars, Todd Ashley, Nedal Shawkat, Tracy Mason, Shannon Weathers, Sandy Lee, Nick Djuric, Bill Clark, Jimmy Hurt, Gayle Camp, Bill Smith, Shelby Guilbert, Bernard Greer, Bob Bray, Kade Cullefer, Rocco Testani, Mary Prebula, Mace Gunter, John Gallagher, Joshua Bosin, Sharri Edenfield, Bill Custer, Michael Carey, Bill Baxley, Bruce Wanamaker and Mike Cranford.

CALL TO ORDER

ACL Chair Dawn Jones called the meeting to order at 10:07 am. Persons attending the meeting, including those participating by phone, introduced themselves and signed in.

APPROVAL OF MINUTES

The minutes of the September 16, 2014 meeting were approved.

LEGISLATIVE MATTERS

The ACL reviewed the following proposals. The proposals that were approved by the ACL will be considered by the Board of Governors at its mid-year meeting in Atlanta, Georgia on January 10, 2014

1. **Judicial Salary Increase.** Judge Mary Staley, President of the Council of Superior Court Judges, presented this proposal, which requests a salary increase of \$15,000 per year over three years for superior court judges. The proposal also requests a three-year salary increase for judges on the Court of Appeals and justices of the Supreme Court, with \$25,000 being requested for year one and years two and three to be determined by the General Assembly. The *Keller* vote was unanimous. The vote for supporting this proposal was unanimous. The Board of Governors will consider this proposal on January 10.
2. **District Attorney Pay Parity.** Todd Ashley of the Prosecuting Attorneys' Council presented this proposal, which requests that the salaries for elected district attorneys be brought to a level comparable to judges of the superior court. The *Keller* vote was unanimous. The vote for supporting this proposal was unanimous. The Board of Governors will consider this proposal on January 10.
3. **Public Defender Pay Parity.** Mike Cranford, Chair of the Indigent Defense Committee, presented this proposal, which requests that the salaries for circuit public defenders be brought to a level comparable to elected district attorneys. The *Keller* vote was unanimous. The vote for supporting this proposal was unanimous. The Board of Governors will consider this proposal on January 10.
4. **Improving Fairness in Private Probation.** Mike Cranford, Chair of the Indigent Defense Committee, and Sarah Geraghty, Senior Attorney at the Southern Center for Human Rights, presented this proposal, which is aimed at addressing unfair practices in the private probation business. The *Keller* vote 30-1 that the proposal was germane to the scope and purpose of the State Bar of Georgia. After the *Keller* vote, the Committee discussed that the Georgia Council on Criminal Justice Reform is in the process of thoroughly vetting this issue and working with all stakeholders to develop consensus-based reforms. Patrise Perkins-Hooker then moved that the "Committee take no action on this particular bill but direct its legislative team to work with all stakeholders and the Council on Criminal Justice Reform to support reforms." That motion passed unanimously.
5. **Improving Transparency in Private Probation.** Mike Cranford, Chair of the Indigent Defense Committee, and Sarah Geraghty, Senior Attorney at the Southern Center for Human Rights, presented this proposal, which is aimed at improving the transparency with which private probation providers operate. The *Keller* vote was unanimous. After the *Keller* vote, the Committee discussed that the Georgia Council on Criminal Justice Reform is in the process of thoroughly vetting this issue and working with all stakeholders to develop consensus-based reforms. Patrise Perkins-Hooker then moved

that the “Committee take no action on this particular bill but direct its legislative team to work with all stakeholders and the Council on Criminal Justice Reform to support reforms.” That motion passed unanimously.

6. **E-Discovery.** Mary Prebula, Chair of the Electronically Stored Information Task Force, presented this proposal, which amends the Georgia Civil Practice Act to codify rules for electronic discovery. Ms. Prebula presented the bill and explained the exhaustive efforts made by the Task Force to reach compromise positions between the plaintiffs’ bar and the defense bar on issues such as proportionality and safe harbor. She also explained that the proposal tracks the federal rules as much as possible, but not completely and that her Task Force and its members worked long hours to draft this proposal. Members of the Committee, however, voiced concern that full compromise between the plaintiffs’ bar and defense bar had not been reached on this proposal and that it is best to have rules consistent with the federal rules. A motion to table this proposal was passed unanimously.
7. **Long-Arm Statute Amendments.** Jimmy Hurt, Immediate Past Chair of the General Practice and Trial Section, presented this proposal, which expands Georgia’s extraterritorial jurisdiction to the fullest extent allowed under the due process clause of the Fourteenth Amendment. The *Keller* vote was unanimous. The vote to support the proposal was unanimous. The Board of Governors will consider the proposal on January 10.
8. **Taxation Statute Amendments.** Mace Gunter, Chair of the Tax Section, presented this proposal, which imposes a seven year limit on how far back a tax assessment could go. Members of the Committee expressed concern that imposing such a limit could encourage fraud and that adopting such a proposal could damage public perception of the profession. The *Keller* vote was unanimous. No motion was made to support the proposal.
9. **Water Lien Legislation.** Gayle Camp of the Real Property Law Section presented this proposal, which was originally introduced at the September 16 ACL meeting but edited per the Committee’s request to attempt to discourage opposition from the Association of County Commissioners of Georgia and the Georgia Municipal Association. The new proposal requires that local water authorities file liens for services at a centralized databank maintained by the Georgia Superior Court Clerk’s Cooperative Authority. The *Keller* vote was unanimous. The vote to support the proposal was unanimous. The Board of Governors will consider the proposal on January 10.
10. **The Uniform Fiduciary Access to Digital Assets Act.** Nick Djuric, Chair of the Legislative Committee of the Fiduciary Law Section, presented this proposal, which adopts the Uniform Fiduciary Access to Digital Assets Act, which gives fiduciaries the same access to digital assets that the decedent would have had. The *Keller* vote was unanimous. The vote to support the proposal was unanimous, with Representative Mary Margaret Oliver abstaining.

- 11. Business Corporation Code Amendments.** Bruce Wanamaker, Chair of the Corporate Code Committee of the Business Law Section, and Bill Baxley, Chair of the Business Law Section, presented this proposal, which contains multiple technical corrections to the Business Corporation Code. The proposal also contains a change of standard for director liability from negligent to grossly negligent. Bill Clark of the Georgia Trial Lawyers Association spoke to the Committee and opposed the change to the liability standard. The *Keller* vote was unanimous. Marc Howard moved that the Committee adopt the proposed bill without changes to Sections 830 and 842, which contained the liability shift. That motion passed unanimously. The Board of Governors will consider the proposal on January 10.
- 12. The International Business Law Update.** Ben Greer, Chair of the International Trade in Legal Services Section, and Shelby Guilbert, Counsel at King & Spalding, presented this proposal which contains three different requests. The first prong of the proposal enacts the Uniform Unsworn Foreign Declarations Act. The *Keller* vote was unanimous. The vote to support the proposal was unanimous. The Board of Governors will consider the proposal on January 10. The second prong of the proposal enacts the Uniform Foreign-Country Judgments Recognition Act. The *Keller* vote was unanimous. The vote to support the proposal was defeated 6-5. The third prong of the proposal requests that the State Bar take a preemptive position opposing any bill that may be introduced during Session that contains anti-foreign law language. The Committee unanimously voted to table this request until such bills are actually introduced.
- 13. The Attorneys for Rural Areas Assistance Act.** Patrise Perkins-Hooker, on behalf of the Access to Justice Committee, presented this proposal which provides for a student loan forgiveness program administered by the Georgia Department of Community Affairs for lawyers who are willing to live and work in underserved areas. The *Keller* vote was unanimous. The vote to support the proposal was unanimous. The Board of Governors will consider the proposal on January 10.
- 14. The YLD Access to Justice Proposal.** Sharri Edenfield, President of the YLD, and Joshua Bosin, Chair of the Long-Range Planning Committee for the YLD, presented this proposal, which mirrors the proposal above but expands the number of counties served and increases the amount of monthly loan forgiveness payments to account for private law school tuition. The Committee expressed support of the goals of this proposal but discussed the need to pilot the project first. The *Keller* vote was unanimous. A motion to table this proposal was unanimous.

ADJOURNMENT

With no further business before the Committee, Ms. Jones adjourned the meeting at 1:48 pm.

PRESIDENT'S ACTIVITY REPORT

for January 10, 2015 Board of Governors' Meeting

I have been actively working on my major projects including *iCivics*, providing access to lawyers in six counties, and promoting initiatives of the State Bar throughout Georgia. In addition, I am working on many projects designed to improve the operations of the Bar and service to our members, including upgrading the teleconferencing and video conferencing capabilities, working to expand the depth and extent of our communications on behalf of our members and local bar associations. I have met with school officials, teachers, students, justices, the Governor, members of the Governor's staff, economic development officers, employees at the State Bar and members of our due diligence team for the evaluation of a potential purchase of new property. I have also traveled extensively throughout the state to speak to local bar associations.

Below, please find highlights of what I have been involved with since June 7th:

JUNE 2014

- 11th Spoke to high school students in the Justice Robert Benham Summer Law Camp at Georgia State Law School about what it means to be a lawyer
- 11th Attended 2014 E. Randolph Williams Pro Bono Awards Ceremony at Hunton & Williams
- 11th Attended Women in the Law Awards event at the Commerce Club
- 12th Held initial meeting with Kyle Williams, Lamont Burwell, and Sharon Bryant on technology enhancements and upgrades needed at the headquarters and remote office facilities to improve connectivity
- 12th Represented the State Bar at the Legal Frenzy Awards Ceremony sponsored by Attorney General Sam Olens, the State Bar, and YLD officers
- 12th Served as speaker for American Constitutional Law Society's Pro Bono Service Reception for Summer Interns
- 13th Spent time at the State Bar Center interviewing with a reporter and participating in a group tour of the potential purchase sites; coordinating project updates and participating in various meetings
- 16th Participated in bi-weekly *iCivics* Implementation Committee telephone conferences
- 17th Served as luncheon speaker at Augusta Bar Association's monthly meeting
- 17th Participated on a conference call regarding AOC audit request from DOR
- 19th Met with Stacey Abrams on NOW accounts for State Bar members
- 20th Traveled to Wilmington, NC for North Carolina Bar Association Annual Meeting and the Installation of the new Bar President Catharine Biggs Arrowood

- 20th Dined with NC Past Presidents at their Annual Meeting; and attended the Inauguration Dinner at the North Carolina Bar Association
- 22nd Attended VIP Reception for the opening of the Center for Civil and Human Rights - State Bar has 2 annual passes. Gave one pass to Sharon Bryant for the staff.
- 23rd Spoke at the closing ceremonies for the Justice Robert Benham Summer Law Camp at King & Spalding
- 26th Spoke at the Swearing in Ceremony for New Lawyers in Fulton County
- 27th Spent the day at the State Bar Center working on projects and in meetings
- 28th Attended GABWA Glitter Gala where the State Bar sponsored a table
- 30th Participated in an *iCivics* Implementation Committee telephone conference

JULY 2014

- 3rd Participated in an *iCivics* Implementation Committee telephone conferences
- 3rd Interviewed by WSB-TV's Jocelyn Dorsey, Editorial Director for People to People television program at the State Bar Center
- 3rd Met with staff about pending stationery, technology and other projects
- 7th Hosted a luncheon meeting with all State Bar staff to introduce Jeff Davis on his 1st official day of work
- 8th Held lunch meeting with the Social Studies Coordinator for the Atlanta Public Schools (APS) to discuss logistics for APS' participation in the *iCivics* program
- 9th Met with Laz Parking working group to review title work for sites
- 10th Attended Women in the Profession Section of the Atlanta Bar Achievement Award at the Capital City Club
- 10th Met with Steve Gottlieb at Atlanta Legal Aid Society to discuss ALAS programs and support for the same
- 10th Met with Shaun Owens, Social Studies Coordinator for Georgia Department of Education re *iCivics*
- 14th interviewed with Fulton County Television (FGTV) at the State Bar Center
- 15th Participated in an *iCivics* Implementation Committee Telephone conference
- 15th Met with Governor Deal and key staff members about the unmet need for legal services in 6 counties
- 16th Met to discuss Georgia Appleseed initiative at State Bar Center
- 17th Participated in Georgia Bar Foundation Grant Awards Committee Meeting
- 17th Interviewed with Rolling Out magazine
- 18th Spent time at the State Bar Center working on various projects and in meetings with Paula Frederick on Office of General Counsel issues and Thomas Worthy on legislative issues
- 18th Had dinner with Justice Harris and Helen Hines

- 22nd Conducted Committee and Section Chair Orientation over lunch at the State Bar Center
- 23rd Had breakfast with Economic Development attorneys re project to secure lawyers in six counties project
- 25th Spent the day at the State Bar Center. Met with GLSP on 2014 Campaign.
- 25th Spoke at YLD Committee Chair Orientation
- 25th Interviewed with a reporter from the Atlanta Business Chronicle
- 25th Hosted a reception for the National Bar Association's Board of Governors at the State Bar Center
- 26-30th Attended various events, luncheons and award ceremonies at the NBA Annual Meeting at the Marriott Marquis
- 28th Participated in an *iCivics* Implementation Committee Telephone conference
- 29th Attended APS *iCivics* Training Session for APS teachers
- 29th Had lunch with Justice Melton and Ryan Teague for introductions and a discussion on State Bar projects

AUGUST 2014

- 4th Attended Cobb County Chamber of Commerce Breakfast as a guest of Justice and Helen Hines to hear the Executive Director of ARC speak
- 6th Met with City Hall officials about our request for a U-Turn and traffic related issues on Marietta Street
- 7–10th Attended National Council of Bar Presidents at the Annual Meeting of the ABA in Boston, MA
- 12th Attended Law Related Education Committee meeting to update the committee on the new *iCivics* pilot program
- 12th Met with Fulton County Daily Reporter Kate Brumback
- 14th Attended a reception for Emory University's new law students at Miller Ward House to give greetings
- 15th Served as keynote speaker at Emory University New Law Student Orientation on Professionalism
- 15th Held meetings with Thomas Worthy and Rusty Sewell on legislative issues.
- 15th Met with technology enhancement team about the status of the upgrade proposals and to finalize recommendations for the Executive Committee.
- 16th Attended Luncheon for Dr. Valarie Montgomery Rice, New President of Morehouse School of Medicine
- 17th Attended interment services for Harvey Weitz in Savannah
- 19th Attended Gate City and Multi-Bar Judicial Reception at King & Spalding.
- 20th Attended UPL Briefing and meeting with State Bar Staff
- 22nd Chaired Executive Committee at State Bar Headquarters

- 23rd Keynote Speaker for GABWA-Columbus Chapter, Columbus and Fountain City Bar Associations' Leadership Program in Columbus, GA
- 26th Attended Civil Legal Services Task Force Meeting to discuss Rural Lawyer Program
- 28th Lunch meeting with Chief Justice Thompson to update him on State Bar's activities

SEPTEMBER 2014

- 3rd Breakfast meeting with Fulton County Superior Court Judges to discuss a court project
- 5th and 6th Presided over Executive Committee Planning Retreat in Tifton, GA. Held a reception with the Tift County Bar Association and one with the President of ABAC
- 8th *iCivics* training held in Columbus, GA for Muscogee and Harris County School Systems
- 9th Attended Diversity Awards Presentation of the Multi-bar Leadership Council at Hall, Sullivan & Booth law firm
- 11th Attended reception sponsored by GABWA-Savannah Chapter and the Port City Bar Associations. Luncheon Speaker for Savannah Bar Association
- 12th Met with Chair of International Law Committee; attended Bar Center Committee meeting; worked in President's office for the rest of the day
- 15th Attended Communications and Cornerstone of Freedom Committee meeting
- 16th Attended Advisory Committee on Legislation meeting and Access to Justice Committee Meeting
- 18th Luncheon speaker at monthly meeting of the Columbus Bar Association; visited Chattahoochee County re: rural lawyers project; co-hosted GABWA meeting at State Bar Center
- 19th Luncheon speaker at the monthly meeting of the Macon Bar Association
- 22nd Chatham County School System *iCivics* training
- 24th Addressed attendees at the Georgia Diversity Luncheon held at the State Bar Center
- 25th Attended cook-out at Bill Smith's house in Unicoi, GA
- 26th Met with Bucky Askew about the Incubator Program; attended Chief Justice's Commission on Professionalism meeting; worked in the President's office for the rest of the day
- 30th Attended Law and Ethics luncheon at Ga Tech; participated in conference call about SEC regulations impacting State Bar investment accounts; attended Atlanta Business League's Breakfast and Luncheon Awards programs.

OCTOBER 2014

- 3rd Worked in the President's office; attended a luncheon meeting with General Counsel
- 7th Georgia Legal Services Program Champions Justice Recognition
- 9th Speaker at the Boy Scout's Whitney Young Banquet
- 10th -13th Attended Southern Conference of Bar Presidents Meeting in USVI
- 17th Worked in the President's office
- 22nd Speaker at the GAWBA Leadership Academy Graduation
- 24th Executive Committee meeting; worked in the President's office
- 25th Speaker at NewRoc Elementary, Rockdale County, GA
- 30th - Nov. 1st Presided over Board of Governors' Fall Meeting and attended related committee meetings.

NOVEMBER 2014

- 1st Board of Governors meeting in Jekyll Island, Georgia
- 3rd Attended Henry County Bar Association to support the presentation on the History of the Bar by Linton Johnson
- 3rd Hosted dinner for Commander Pede at the request of the Military and Veterans Committee
- 7th Career Day Speaker at Whiteford Elementary School; Spoke to John Marshall Law School's 1st year Ethics Seminar and worked the remaining portion of the day in the President's office at the State Bar
- 8th Spoke at the Georgia Defense Lawyer's CLE Conference in Brasstown Valley
- 14th Traveled to meet with Commission Chair in Glascock County, GA. Spoke to Women's Business Forum sponsored by Greenberg Traurig
- 18th Attended meeting on Incubator Project
- 19th Met with Milton Little about the State Bar of Georgia's participation in the United Way Campaign throughout the state
- 20th Attended Special Macon Bar Association Meeting to present awards to distinguished lawyers
- 21st Drove to and attended meeting with Webster County Commission Chair on Rural Lawyer Assistance Program. Provided Keynote address for BASICS graduation ceremonies
- 25th Attended visitation for Kirk McAlpin at his daughter's home in Atlanta on behalf of the State Bar of Georgia

DECEMBER 2014

- 3rd Attended Georgia Land Title Luncheon
- 4th Attended State Bar Advisory Committee on Legislation
- 5th Met with Attorney General Sam Olens on Legal Food Frenzy Kickoff
- 5th Participated in Mass Swearing In Activities for Fulton County; Attended YLD Leadership Academy Alumni Luncheon; Worked in the President's office for the remainder of the day
- 6th Attended Urban League of Greater Atlanta Women of Empowerment Award Banquet
- 7th Guest Speaker for League of Women Voter's Holiday Party
- 10th Drove to Baker County to meet with County Commission Chair regarding Rural Lawyer Assistance Program
- 11th Spoke at YLD Women in the Profession Luncheon program at the Swan House
- 12th Flew to Valdosta to be the speaker for their monthly luncheon
- 17th Lunch with Wayne Curtis of the Fulton County Daily Report; Met with members of the Cobb County Delegation in Marietta
- 18th Speaker at Counsel on Call CLE
- 19th Worked in President's Office at the State Bar Headquarters
- 20th to January 5th Holiday and Vacation

JANUARY 2015

- 5th Briefing meeting with Atlanta BOG Delegates
- 6th Briefing meeting with Savannah Bar Association
- 8th-10th Presided over Midyear Meeting of the Board of Governors

Major Milestones and Accomplishments:

- Represented the State Bar at eight bar association meetings.
- Held a successful orientation for new committee and section leaders.
- Hosted the NBA Board of Governors at a reception held in the State Bar Center.
- Successfully kicked off the *iCivics* program pilot in five school systems and completed training for the Atlanta Public Schools System, Chatham, Muscogee and Harris County School Systems.
- Worked to improve and update the technology used by the State Bar for conferencing with remote offices.
- Initiated demolition of the 5th floor and reviewed plans to make the 5th floor rentable.
- Worked with the Communications Department to increase its public outreach and publication success with newspaper articles placed around the state.

- Helped orient and support the new Executive Director.
- Responded to inquiries from members.
- Invitations from bar associations to speak.
- Paid respect to long term Board of Governors' member Harvey Weitz at his funeral and attended the visitation for Past President Kirk McAlpin.
- Helped coordinate due diligence efforts on potential purchase site and executed Purchase and Sale Agreement for the same.
- Worked to support Incubator Project at the State Bar Center.
- Met with local county officials in Chattahoochee, Glascock, Webster and Baker Counties about Rural Lawyer's Program.
- Submitted congratulatory articles and letters to the editors about good works of attorneys throughout the state.

12/8/14

**State Bar of Georgia Consolidated Revenues and Expenditures as of October 31, 2014
Operations and Bar Center**

Activity	2014-15 Net Dues	Actual YTD 2014-15			Budget 2014-15	
		# Memb.	Amount	% of Bud	# Memb.	Amount
Active	\$248	36,711	\$8,936,372	96.6%	37,300	\$9,250,400
Inactive	\$124	8,608	\$1,070,158	100.1%	8,625	\$1,069,500
Associates	\$100	18	\$1,900	95.0%	20	\$2,000
Foreign Legal Cnslt	\$248	6	\$1,488	120.0%	5	\$1,240
Students	\$0	135	\$0	0.0%	100	\$0
Emeritus	\$0	1,484	\$0	0.0%	1,450	\$0
Late Fees			\$249,295	113.3%		\$220,000
Prior Years Dues			\$2,105	35.1%		\$6,000
Total License & Dues		45,478	\$10,261,318	97.3%	46,050	\$10,549,140
Bar Center Revenue			\$910,039	25.8%		\$3,529,175
Alloc. Section Fees			\$111,795	99.4%		\$112,482
CSF Expense Reimb.			\$24,333	33.3%		\$73,000
Advertising & Sales			\$33,575	27.5%		\$122,200
Membership Income			\$77,428	31.9%		\$242,500
Interest Income			\$55,924	111.8%		\$50,000
Miscellaneous			\$331	11.0%		\$3,000
Total Revenue			\$11,474,743	78.2%		\$14,681,497
Total Expenses			\$5,279,206	34.7%		\$15,223,212
Net Gain (Loss)			\$6,195,537			(\$541,715)

Board Designated Amounts (Excluding Sections, and Restricted Funds)

Operating Reserve	\$2,750,000
Bar Center Reserve	2,000,000
Litigation Reserve	250,000
Total	\$5,000,000
Surplus (Cash Basis) Projected 6/30/14	
Operations	\$528,431
Bar Center	\$7,305,701
Total Reserves and Surplus	\$12,834,132

December 8, 2014

State Bar of Georgia
Income Statement YTD - Operations Only
For the Four Months Ending October 31, 2014

	YTD Actual	Annual Budget	Ytd % of Bud
Revenues			
Dues - Active	\$ 8,937,860	\$ 9,250,400	96.62
Dues - Inactive	1,070,158	1,069,500	100.06
Dues - Misc. Types	1,900	3,240	58.64
Dues - Late Fees	251,400	226,000	111.24
	<hr/>	<hr/>	
Total Dues & Licenses	10,261,318	10,549,140	97.27
Section Expense Reimb.	111,795	111,795	100.00
CSF Expense Reimb.	24,333	73,000	33.33
Advertising and Sales	33,575	122,200	27.48
Membership Income	77,428	242,500	31.93
Savannah Misc Income	350	0	0.00
Interest Income	55,924	50,000	111.85
Miscellaneous Revenues	(19)	3,000	(0.63)
	<hr/>	<hr/>	
Total Revenues	10,564,704	11,151,635	94.74
Expenses			
Administration	667,176	2,008,782	33.21
Management Info Systems	162,556	481,076	33.79
General Counsel	1,185,221	3,633,474	32.62
Consumer Assistance Pgm.	185,179	551,242	33.59
Communications	316,327	1,399,461	22.60
Fee Arbitration	138,743	494,683	28.05
Law Related Education	80,006	247,206	32.36
Law Practice Management	139,880	426,202	32.82
Coastal Georgia Office	87,067	197,264	44.14
South Georgia Office	77,437	169,035	45.81
Younger Lawyers Division	174,972	432,333	40.47
Unauthorized Practice of Law	250,293	757,145	33.06
Standards of the Profession	67,515	192,646	35.05
High School Mock Trial	18,312	123,108	14.87
Sections	37,976	111,795	33.97
Lawyer's Assistance Pgm	18,333	55,000	33.33
Pro Bono	70,739	212,216	33.33
Fastcase	61,364	190,000	32.30
Officers' Expenses	29,410	148,786	19.77
BASICS Program Contribution	140,000	140,000	100.00
Resource Center Contribution	110,332	110,332	100.00
Military/Vets Pro Bono	34,002	102,008	33.33
Other Expenses	53,654	512,206	10.48
	<hr/>	<hr/>	
Total Expenses	4,106,494	12,696,000	32.34
	<hr/>	<hr/>	
Net Income	\$ 6,458,210	\$ (1,544,365)	(418.18)

12/8/14

**State Bar of Georgia - Bar Center
Revenues and Expenditures - Executive Summary
For the Four Months Ended October 31, 2014**

Activity	YTD 10/31/14		Budget FY 14
	Actual	% Budget	
Income and Cash Receipts			
CCLC Contribution	\$0	0.0%	\$1,200,000
Interest Income	\$2,478	24.8%	\$10,000
Member Assessment	\$232,666	80.2%	\$290,000
Room Rentals and Various Charges	\$7,158	25.7%	\$27,800
Parking Revenues	\$77,415	31.9%	\$242,753
Rental Income	\$398,086	33.7%	\$1,181,915
Operating Budget Transfer	\$192,236	33.3%	\$576,707
Total Income and Cash Receipts	\$910,039	25.8%	\$3,529,175
Expenses and Cash Disbursements			
Building Rehabilitation	\$162,630	650.5%	\$25,000
Conference Floor Renovations	\$0	0.0%	\$20,000
Tenant Improvements	\$93,583	187.2%	\$50,000
Furniture and Equipment	\$6,123	52.1%	\$11,750
Median and Landscaping	\$0	0.0%	\$5,000
Woodrow Wilson Exhibit and Law Museum	\$1,904	38.1%	\$5,000
President's Conference Room	\$0	0.0%	\$7,500
Law Related Education	\$17,500	33.0%	\$53,000
Conference Center Operating Expenses	\$197,331	47.5%	\$415,124
Third Floor Contingency	\$18,400	73.6%	\$25,000
Building Operating Expenses	\$528,462	31.0%	\$1,703,416
Parking Deck Operating Expenses	\$71,361	30.6%	\$233,281
Legal, Due Diligence and Closing Fees	\$75,418	0.0%	\$0
Total Expenses and Cash Disbursements	\$1,172,712	45.9%	\$2,554,071
Net Cash Flow	(\$262,673)		\$975,104

State Bar of Georgia
Balance Sheet
October 31, 2014

ASSETS - Current Assets

Total Cash & Short-Term Investments	19,160,572
Investment - Merrill Lynch	5,542,805
Investment - Fidelity	9
Investment - Georgia Banks	1,251,133
Total Long-Term Investments	6,793,947
Accounts Receivable	46,887
Accrued Interest Receivable	18,005
Due from Related Orgs/Emp	(171,924)
Prepaid Expenses	366,813
Bar Center Prepaid Expenses	48,321
Total Other Assets	308,102
Total Current Assets	26,262,621

Fixed Assets

Furniture & Equipment	5,130,057
Bar Center	26,568,177
Accum. Depreciation	(16,738,639)
Total Fixed Assets	14,959,595

Total Assets	\$ 41,222,216
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LIABILITIES AND CAPITAL

Accounts Payable	\$ 373,188
Other Current Liabilities	475,990
Vacation & Pers Day Accrual	423,255
Due to Client Security Fund	2,243,059
Deferred Income	7,500
C&W - Cushman Accounts Payable	80,757
BC-Accrued Expenses	27,729
C&W - Deferred Rent Income	29,495

Total Current Liabilities	3,660,973
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Total Long Term Liabilities	0
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Fund Balances - Beg. of Year

Total Fund Balances - Beg. of Year	30,405,791
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YTD Activity	7,155,454
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Total Liabilities & Capital	\$ 41,222,218
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State Bar of Georgia
Summary of Dues and Voluntary Contributions

Total Number of Members at
 Apr 30 of prev Bar year (active and inactive) 45,133 44,044 42,858

	Dues Season May Through November 2014	Dues Season May Through November 2013	Dues Season May Through November 2012
Dues			
Active - Number Paid	36,717	36,036	35,034
Inactive - Number Paid	<u>8,608</u>	<u>8,346</u>	<u>8,227</u>
Total Number Paid	<u>45,325</u>	<u>44,382</u>	<u>43,261</u>
Percent Paid	<u>100.43%</u>	<u>100.77%</u>	<u>100.94%</u>
Total Amount Paid - Active and Inactive	<u>10,121,731</u>	<u>9,788,915</u>	<u>9,382,172</u>

Georgia Legal Services

Number Paid	<u>2,282</u>	<u>2,206</u>	<u>2,313</u>
Percent of Total Members Paid as of November 30	<u>5.03%</u>	<u>4.97%</u>	<u>5.35%</u>
Amount Paid	<u>254,239</u>	<u>239,786</u>	<u>242,557</u>
Average Amount Paid	<u>\$ 111</u>	<u>\$ 109</u>	<u>\$ 105</u>

Legislative

Number Paid	<u>6,490</u>	<u>7,209</u>	<u>7,155</u>
Percent of Total Members Paid as of November 30	<u>14.32%</u>	<u>16.24%</u>	<u>16.54%</u>
Amount Paid	<u>613,625</u>	<u>679,516</u>	<u>659,073</u>
Average Amount Paid	<u>\$ 95</u>	<u>\$ 94</u>	<u>\$ 92</u>

Projected 2014-15 Dues Year Totals Based Upon The Current Participation Percentages (Note: Participation Usually Decreases For Members Who Pay Later):

Georgia Legal Services	<u>\$ 256,000</u>
Legislative	<u>\$ 625,000</u>

Contribution Amounts by Dues Year (May 1 - April 30)	GLSP	Legislative	
2013 - 2014	<u>\$ 241,362</u>	<u>\$ 691,736</u>	\$100 Contribution
2012 - 2013	<u>\$ 244,707</u>	<u>\$ 685,283</u>	\$100 Contribution
2011 - 2012	<u>\$ 240,678</u>	<u>\$ 656,254</u>	\$100 Contribution
2010 - 2011	<u>\$ 241,772</u>	<u>\$ 657,526</u>	\$100 Contribution
2009 - 2010	<u>\$ 235,276</u>	<u>\$ 650,806</u>	\$100 Contribution
2008 - 2009	<u>\$ 249,480</u>	<u>\$ 660,570</u>	\$100 Contribution
2007 - 2008	<u>\$ 264,255</u>	<u>\$ 1,235,022</u>	\$100 Contribution
2006 - 2007	<u>\$ 295,646</u>	<u>\$ 802,482</u>	\$100 Contribution
2005 - 2006	<u>\$ 751,762</u>	<u>\$ 159,480</u>	\$25 Contribution
2004 - 2005	<u>\$ 170,210</u>	<u>\$ 273,613</u>	\$20 Contribution

State Bar of Georgia 2015-2016 Budget Timetable

As of 12/3/14

- Mon. - December 8, 2014** Budget Timetable and the Budget Request Forms are sent to President-elect, YLD President-elect, Committee Chairs, and Bar staff.
- Fri. - January 9, 2015** **Deadline** for submission of all new budget requests to be submitted to Executive Director, Chief Operating Officer or Chief Financial Officer. **Non-emergency requests received after this date will be held for consideration in the 2016-2017 budget cycle.**
- Fri. - January 16, 2015** **Programs Committee** reviews any new budget requests from existing State Bar programs and any requests for new programs. Proponents are requested to appear to orally present and justify their requests.
- Fri. - January 30, 2015** **Personnel Committee** reviews any new staffing and compensation change requests. Proponents are requested to appear to orally present and justify their requests.
- Thrs. - February 12, 2015** **Finance Committee** reviews the recommendations of the Programs and Personnel Committees (the review is limited to their financial impact on dues and budget) and recommends the 2015-2016 dues level to the Executive Committee. Proponents, having already been heard, do not attend.
- (Dates below are determined by the Exec. Comm. meeting schedule and subject to change)*
- TBD - early March** **Finance Committee** recommends the 2015-2016 dues level to the Executive Committee (if not done in Feb.) and the final draft budget to the Executive Committee.
- Fri. - March 27, 2015** **Executive Committee** receives the recommendations of the Programs and Personnel Committees, and the Finance Committee's draft budget (including its report on the financial impact of those recommendations) and recommends the 2015-2016 dues level to the Board of Governors for the April 18 Board meeting. (Note: [Board agenda deadline is March 30](#))
- Sat. - April 18, 2015** **Board of Governors** sets the 2015-2016 dues level at the Spring Board Meeting (Brasstown Valley Resort - Young Harris, GA).
- TBD - April** **Finance Committee** recommends the final draft budget (if not done in Feb. or March) to the Executive Committee.
- Fri. - May 15, 2015** **Executive Committee** receives final draft budget for its review and recommendation to the Board of Governors for the June 20 Board meeting. (Note: [Board agenda deadline is May 27](#))
- Sat. - June 20, 2015** **Board of Governors** receives 2015-2016 final draft budget for approval at the Annual Board Meeting (Evergreen Center - Stone Mountain, GA).

Overview of the Budget Process:

1. Programs Committee recommends **substantial program changes** (additions, changes, or deletions) to the Executive Committee.
2. Personnel Committee recommends staffing for **existing programs** to the Executive Committee.
3. Finance Committee recommends a draft budget to the Executive Committee, including the financial impact of the recommendations of the Programs and Personnel Committees. It does not hear from proponents or repeat the work of the Programs and Personnel Committees, but instead advises on the financial results of their work.
4. Executive Committee reviews the recommendations of all three committees and suggests dues level and budget to the Board of Governors.
5. Board of Governors sets the dues level, check-offs, and section fees at its Spring Meeting, and sets the 2015-2016 budget at its Annual Meeting after a hearing open to all members.

12/11/14



**Report to the
Board of Governors
of the State Bar of Georgia**

January 10, 2015
Atlanta, Ga.

The theme for all of this year's YLD projects is "Service, Education, and Leadership." This theme is exemplified by President Sharri Edenfield's three main initiatives:

I. Military Support Initiative

Georgia YLD has made great strides in meeting their military support goals outlined in more detail at the Fall Meeting. Here is an update:

a. Support to Veterans Affairs Legal Clinics.

During the Fall YLD Meeting, YLD members enjoyed an excellent CLE regarding the opportunities to support Georgia's military community through volunteering pro bono services at the Veterans Affairs Legal Clinics around the state. The CLE was put on by Military Legal Assistance Program and Military/Veterans Law Section leaders Drew Early, Cary King, Eric Ballinger, and Jeff Arnold. Norman Zoller, the State Bar Coordinator for the Military Legal Assistance Program, and Mike Monahan, Director of the State Bar's Pro Bono Project, also provided invaluable insight and resources for helping YLD members who wanted to participate.

Additionally, President Edenfield has made presentations at the General Membership Meeting of the State Bar YLD as well as individually to the members of Cobb YLD, Augusta YLD, Glynn County YLD, Savannah YLD, and the Chief Justice's Committee on Professionalism about the opportunities available to volunteer at the Veterans Affairs Clinics located in Atlanta, Augusta, Carrollton, Georgia State Law School, and Emory Law School. Additionally, President Edenfield has met with the Executive Committees for both the Military Legal Assistance Program and the Military/Veterans Law Section to offer the assistance of the YLD to those entities. On Tuesday, November 4, 2014, President Edenfield attended the VA Accreditation CLE hosted at the State Bar and made a presentation on opportunities available to Bar members to volunteer their time to support veterans. The Military Support team has held a committee meeting to coordinate

the signing up and training of volunteers around the state and the recruitment of volunteers is ongoing.

- b. **Assistance with VA Appeals/Training on Veterans' Issues.** With 13 YLD affiliates around the state, especially in communities with strong ties to the military like Columbus, Savannah, and Augusta, the YLD has a vast network of young lawyer volunteers who can volunteer to contribute to this initiative. (See graphic). In addition to the VA Legal Clinics already in place, the YLD will provide training and educational opportunities to YLD members that will permit them to assist veterans in VA appeals.

On Friday, January 9, 2015, in conjunction with the Midyear Meeting, the YLD will co-host a VA Accreditation CLE with the Military Legal Assistance Program and Military/Veterans Law Section. This CLE will provide the requisite substantive information to meet the requirements for certification to assist veterans and appear before the VA ALJ on veterans' benefits appeals. In addition to the outstanding leaders from the Military Legal Assistance Program and Military/Veterans Law Section who will educate Bar members on the process, Dr. Lauren R. Ramshur, a psychiatrist with the Atlanta VA Medical Center who works on the PTSD team there, as well as Judge Sullivan (YLD Military Support Committee Chair Katie Dod's father who serves as a VA ALJ) have been confirmed as speakers. Dr. Ramshur will provide a short presentation to YLD members present about the kinds of issues veterans face (PTSD, Traumatic Brain Injury, etc.) when they try to reintegrate into society and for which they often seek VA benefits. Judge Sullivan will speak about the way that the VA Appeals system works and will provide valuable insight into how YLD members can best aid their veteran clients.

- c. **Supporting YLD JAGs.** While active-duty JAGs are not veterans, President Edenfield still wants every young lawyer in the JAG Corps stationed in Georgia to know that Georgia YLD welcomes their attendance and involvement at all of our YLD events. Therefore, in conjunction with the affiliate YLD Presidents near Georgia's military bases, YLD co-Director of Military Support and current JAG in the Georgia National Guard, Major Ed Piasta, is coordinating the outreach to each of the military bases around our state to invite the young lawyer JAGs to attend and/or get involved with their nearest affiliate and also the State YLD, regardless of whether the young lawyer is licensed to practice in Georgia.
- d. **Augusta Warrior Project is the beneficiary of the 2015 YLD Signature Fundraiser.** The Augusta Warrior Project ("AWP") has been selected as the YLD's recipient beneficiary for the 2015 Signature Fundraiser, which will be held on February 28, 2015 at Terminal West in the King Plow Arts Center, 887 West Marietta St NW, STE C. Atlanta, GA 30318. It will include a live auction and silent auction as well as live music. We hope everyone will attend and support the AWP.

CEO of the Augusta Warrior Project, Kim Elle, attended the YLD Fall Meeting and briefly spoke about the program and what the support will mean to the services it provides. Ms. Elle also gave President Edenfield and President-Elect (and Augusta attorney) Jack Long a tour of the AWP post on Fort Gordon where they were able to meet

with some of the AWP leaders who help veterans. This experience has only served to heighten the enthusiasm about AWP's selection as the Signature Fundraiser beneficiary.

II. Access to Justice and Young Lawyer Un/Underemployment

As a rural young lawyer, one of President Edenfield's top initiatives this year is finding solutions to issues that affect access to justice for all citizens while also helping to resolve the issue of un/underemployment that has hit young lawyers the hardest since the recession. The YLD Long Range Planning Committee has been instrumental in working to achieve President Edenfield's goal by primarily working on two projects:

a. YLD-drafted legislation supporting loan repayment/forgiveness to encourage young lawyers to move to rural areas, much like the "Physicians for Rural Areas Assistance Act" presently in place.

The Long Range Planning Committee has been working on a legislative proposal since May 2014 and has done a tremendous amount of research. The committee's research uncovered a more complicated program than might be recognizable at first blush.

First, there are a number of Georgia citizens who fall into the "modest means" category are often referenced when discussing Georgia's access to justice problem. These are the citizens who make too much money to qualify for assistance through the Georgia Legal Services Program or Atlanta Legal Aid, but they cannot afford the hourly rates that a lot that attorneys charge for their services. Nevertheless, these citizens can afford to pay something for legal assistance . . . if they can find it. While these modest means citizens could afford to pay a modest amount for legal assistance, if there is no attorney in their immediate vicinity, these individuals often find that they are unable to afford to pay for an attorney to travel to their community to represent them. Instead, they remain unrepresented.

Second, the lack of access to justice in rural areas costs everyone money, regardless of where one lives. When a citizen doesn't qualify for free assistance through GLSP or a related entity, the courts end up dealing with the individual on a pro se basis. This is most often seen in domestic cases. Judges in rural areas often don't have a large pool of attorneys to draw from in order to appoint to represent these citizens and the pool that does exist is often already over-taxed as it is. Therefore, what happens most often is that, in order to be fair to the parties, a judge has to dance a fine line between explaining the legal process to pro se parties without inadvertently offering legal advice or switching from her role as a judge to the role of an advocate. This dance dramatically slows down the judicial process, which increases the costs to run the judicial system. Then again, that is when the parties actually seek assistance from the courts.

There are a number of times that modest means individuals become overwhelmed with trying to figure out how to obtain the help they need and instead, they go without. This costs everyone in Georgia. An example of this occurring is when child support should be

established or modified, but the parent or guardian of the minor child doesn't act. Instead of obtaining the proper amount of child support from the appropriate party by going through the legal system, the parent or guardian may resort to what seems like a simpler option of obtaining government assistance for the child, even though money may be available to support the child through a relatively simple legal proceeding.

Finally, and perhaps more surprisingly, the number of lawyers in rural areas are not only shrinking, but aging as well. With the tidal wave of baby boomers retiring in the near future, lack of lawyers in rural areas will become an unmanageable problem if a solution is not found soon. Here is just a little bit of the research that President Edenfield and the Long Range Planning Committee did:

As of November 20, 2014:

- Georgia has 159 counties.
 - **6 counties have 0 lawyers:** Baker, Chattahoochee, Clay, Echols, Glascock, and Webster
 - **60 counties have between 1-10 lawyers:** Appling, Atkinson, Bacon, Banks, Bleckley, Brantley, Brooks, Burke, Calhoun, Candler, Charlton, Clinch, Crawford, Dade, Dooly, Early, Evans, Grady, Hancock, Harris, Heard, Irwin, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Lee, Lincoln, Long, Macon, Marion, Miller, Montgomery, Murray, Oglethorpe, Pierce, Pulaski, Quitman, Randolph, Schley, Screven, Seminole, Stewart, Talbot, Taliaferro, Tattall, Taylor, Telfair, Terrell, Treutlen, Turner, Twiggs, Warren, Wheeler, Wilcox, Wilkes, Wilkinson, and Worth.
 - 32 of the 66 counties have 1-5 lawyers who are considered “Active Members” because they pay dues and have a current/active law license. In reality, there are **38 counties** who have 1-5 Active Members who are available to represent private citizens in civil matters because these Bar members are not employed as judges, prosecutors, public defenders, in house counsel, or for a governmental entity.
 - 28 of the 66 counties have 6-10 lawyers who are considered “Active Members” because they pay dues and have a current/active law license. In reality, there are 22 counties who have 6-10 Active Members who are available to represent private citizens in civil matters because these Bar members are not employed as judges, prosecutors, public defenders, in house counsel, or for a governmental entity.

Using the State Bar of Georgia membership information and 2012 county population numbers from the Georgia Governor's Office of Planning & Budget:

- There are 799,157 Georgia residents in 66 counties who are served by 335 “Active” attorneys, or 269 Active AND Available attorneys.
- That means there is roughly 1 active, available lawyer to represent every 2,971 citizens in 66 counties or 42% of the counties in Georgia.

- Approximately 70% of State Bar of Georgia Active members (59% of Georgia YLD members) practice in the 5 county metro-Atlanta area.

The economic downturn hit young lawyers the hardest, making young lawyer un/underemployment and layoffs a regular problem. At the same time, Georgia's rural lawyer population is aging fast. In the next 10 years, assuming no younger lawyers move into the 66 counties that presently have 0-10 lawyers, and assuming that lawyers who reach the age of 65 either completely retire or cannot be considered actively available to represent private clients in civil matters, there will be **13** counties with no lawyers, not 6 counties: Baker, Calhoun, Chattahoochee, Clay, Echols, Glascock, Macon, Miller, Schley, Stewart, Taliaferro, Webster, and Wheeler. Further, out of the 60 Georgia counties that presently have 1-10 active available lawyers right now, 7 of these 60 counties will have 0 lawyers that aren't at least 65 years old and there will only be one county with 6 lawyers; the remaining 52 counties will have 5 or fewer attorneys younger than 65 years old.

The lack of lawyers in rural areas presents an opportunity and a challenge to Georgia YLD members, i.e. State Bar of Georgia members who are 36 years of age or younger or who have been admitted to their first bar for five years or less. The opportunity is, of course, that YLD members will be able to find meaningful employment as a lawyer in a rural area. The challenge is making it financially viable for a young lawyer to move to a rural lawyer and make less than what one may earn practicing law in a more metropolitan area in light of the staggering student loans that most recent law grads have when they become members of the Bar. In fact, it is important to note that out of the 66 counties described above, most rural lawyers are graduates from a private law school, with presumably more student loan debt. Therefore, when determining who would be interested in moving to a rural community to practice law, the YLD believes it is important to consider the pool of people who have traditionally made this choice and what kind of financial burden may be keeping this group of future law grads from making this same choice in the future.

Name	No. of Alumni in 66 counties	No. of diff't counties out of 66 where alumni practice
Emory	11	11
Georgia State	11	11
John Marshall Law	31	24
Mercer Law	86	41
University of Georgia	85	40
Out of State Law Schools	84	44
Inactive GA Pvt. Law Schools	28	23

Through the YLD's Long Range Planning Committee, the YLD submitted a legislative proposal to the Bar's Advisory Committee for Legislation for approval and inclusion on

the Bar's legislative agenda to establish a pilot program that will provide student loan repayment to lawyers who commit to practicing law in the most under-served areas of our state, much like the existing "Physicians for Rural Areas Assistance Act" for doctors, which provides incentives for doctors to practice in rural areas. The proposal opened up the opportunity for young lawyers practice law in any of the 66 counties with 0-10 lawyers. The amount of student loan repayment/forgiveness was determined by an average of all 5 Georgia law schools, so that young lawyers graduating from private schools would be incentivized to apply to the program, as these young lawyers are who have historically gone to practice law in rural areas anyway. Even though the pilot program would be funded primarily by a state budget appropriation, the YLD proposal, which drew from the successful South Dakota rural lawyers program, also counted on counties providing certain incentives. Additionally, the YLD recognizes that community support of a new young lawyer is crucial to the success of that young lawyer and to the success of the pilot program as a whole. Therefore, the YLD proposal also included county involvement in the selection process of the participants who would be moving into their respective communities.

After being voted on and unanimously approved by both the YLD Executive Committee and the 80 + members present during general session meeting of the YLD Fall Meeting, the Long Range Planning Committee submitted its proposal to the Bar's Advisory Committee on Legislation, with the formal presentation to be made at the ACL's December 4, 2014 meeting. President Edenfield and Josh Bosin, co-chair of the YLD Long Range Planning Committee, gave a presentation on the YLD's proposal and answered questions; however, the proposal was tabled.

- b. Succession Planning Program.** The second prong to the access to justice/young lawyer unemployment program deals with finding solutions to the problem of baby boomer-age attorneys looking to retire combined with the problem of a large number of young lawyers who, at the same time, are unemployed or who are underemployed. In researching how to solve these two problems, President Edenfield learned of a program in Texas called the "Succession Planning Program," whereby senior attorneys in solo and small firm practices reach out to the Texas Law Consortium (made up of the Career Services Offices for all 9 Texas law schools) and come up with a plan for attracting a young lawyer to mentor and eventually transition the practice to upon retirement. Each attorney and situation is different, but in the first year of the program, 12 young lawyers have already been placed.

Since the YLD Fall Meeting, President Edenfield has talked with representatives from career services offices from the Georgia law schools and has gotten positive feedback on duplicating the Texas model in Georgia. The law school representatives are presently working with the YLD and the State Bar's communications staff to hopefully kick off this program in early 2015.

III. “The Next Step” Leadership Training and Professional Development with the Alumni Leadership Council

The Alumni Leadership Council (“ALC”) has been an incredible resource for YLD members this year as they have served as mentors to YLD members and have also been instrumental in planning and leading professional development seminars and CLEs. While ALC member Joe Dent graciously came to the Summer Meeting in Florida to lead a CLE, during the YLD Fall Meeting, ALC member Damon Elmore moderated an exceptional panel of fellow ALC members and past Bar leaders on how to become a leader in the YLD and the Bar. Many thanks to ALC members Judge Josh Bell, Darrell Sutton, Stephanie Kirijan, Lester Tate, and Bill Barwick for serving on this panel and offering their thoughts to our members.

Additionally, ALC members Damon Elmore and Michael Geoffroy have been tremendous mentors and resources to Leadership Academy Alumni co-chairs, Adriana Sola and Titus Nichols, as they have helped them plan “The Next Step Institute,” to take place on January 8, 2015, during the Midyear Meeting. The Next Step Institute is designed to offer Leadership Academy Alumni advanced training in professional development topics like client development, law practice management, being a leader in your community, and running for office. ALC members are also assisting in providing speakers to the Solo-Small Firm/Affiliates Conference to be held in Macon on February 21, 2015.

Committees, Programs and Projects

Advocates for Students with Disabilities

Co-Chairs: Emma Hetherington & Laurice Rutledge

The Advocates for Students with Disabilities held a well-attended lunch meeting on November 13 at the Bar Center. They had a guest speaker lecture on Manifestation Hearings. On January 22, the Committee plans to hold a lunch meeting at the Bar Center to discuss plans for the new year.

Affiliate Outreach

Co-Chairs: Rachel Wilson, Zack Tumlin, & Amy Walters

Georgia YLD has 13 affiliates around the state: Rome, Cobb, Gwinnett, Dekalb, Western Circuit, Augusta, Macon, Houston Circuit, Columbus, Albany, Savannah, Glynn County, and Valdosta. The Affiliate Outreach team has been working hard to re-connect with each of the 13 affiliates to maximize their involvement and the benefits of association. In that regard, President Edenfield has visited Cobb, Augusta, Savannah, and Glynn County affiliates so far this year and is hopeful to visit the remaining affiliates before the year is over. Further, there has been some expressed interest in starting affiliates in Gainesville and Dalton and the Affiliate Outreach team is offering their assistance to the interested YLD members.

Importantly, the Affiliate Outreach team is working with the YLD Solo-Small Firm Committee to plan and host a first of its kind joint conference on Saturday, February 21, 2015 at Mercer Law School in Macon. While all YLD members are invited, the programming and activities are uniquely designed to appeal to affiliates as well as young lawyers who are interested in law

practice management topics as well. In addition to the programming, there will be a social/networking event component as well. Special thanks to Natalie Kelly, State Bar's Director of the Law Practice Management Program, Jana Edmondson-Cooper, Macon attorney and YLD co-Director of Member Outreach, and Stephanie Powell, Dean of Mercer Law's Career Services, for all of their help in planning the event.

Aspiring Youth Program

Co-Chairs: Dwayne Brown & Vanessa Leo

At its October meeting, the Aspiring Youth Program Committee began the process of getting the DOJ volunteer applications circulated for all participants to be granted access to DeKalb Regional Youth Detention Facility. At the meeting members brainstormed topics for reviving the Great Debaters Program. One idea is to hold a suit and tie drive to help garner donations for the youth offenders to have professional clothing to wear during the debates. The program is set to kick-off January 2015. On December 19, the Committee held a follow-up lunch meeting to their October meeting, where they further discussed plans for the new year.

Business Law

Co-Chairs: Steven Moulds & Emily Newton

The YLD Business Law Committee held a kick-off lunch in October to discuss events for the year. The Committee is planning a CLE on alternative dispute resolution clauses in February 2015 as well as a community service event in May 2015.

Community Service Projects

Co-Chairs: Kimberly Bourroughs & Jessica Nix

The Community Service Projects Committee hosted a well-attended Holiday Party on December 10 at Fado Irish Pub. This party also served as a toy drive for Toys for Tots. On December 13, the Committee held a well-attended gift wrapping party to wrap toys for children in DFCS custody. On January 22, the Committee plans to hold a lunch meeting at the Bar Center to discuss plans for the new year.

Criminal Law

Co-Chairs: Amanda Clark Palmer & Rebekah Shelnett

The Criminal Law Committee held a joint social with the Solo/Small Firm Committee and the Family Law Committee on November 5 at Stillhouse that was well-attended.

Ethics & Professionalism

Co-Chairs: Ami Koldhekar & Neal Weinrich

The Ethics & Professionalism Committee held a lunch meeting on November 5 at Lewis Brisbois Bisgaard & Smith, LLP to discuss plans for the year. On December 9, the Committee co-hosted a well-attended Lunch and Learn with the Real Estate Committee titled, "The Do's and Don'ts of Residential Mortgages: How Attorneys Can Stay out of Trouble." On March 5, 2015, the Committee plans to host a CLE at the Bar Center titled, "The Age-Old Question of 'Who is the Client?' and the Ethical Considerations Involved."

Family Law

Co-Chairs: Katie Kiihnl, Jamie Perez & Kelly Reese

In November, the Family Law Committee co-hosted a networking mixer with the Criminal Law Committee and Solo/Small Firm Committee at Stillhouse at East Andrews. The goal was to get to know some committees we haven't worked with previously, but with whom our practice areas overlap. Also in November, the committee partnered with the Juvenile Law Committee, Child Protection & Advocacy Committee, and Children & Courts Committee to host the "Code and Cocktails"/Winter Gift Drive happy hour at Hudson Grille Midtown. The goal was to educate attorneys on the new juvenile code while collecting gifts for children in foster care. Over 40 attorneys attended, and Juvenile Court Judge Rawlings lectured about the new juvenile code. The committees collectively gathered over \$200 in gifts for foster children.

In 2015, the committee will be hosting a "Meet the DeKalb County Judges" event similar to the events in Cobb and Fulton Counties. The current location is set for Leon's. We hope to host a "Meet the Gwinnett County Judges" event as well. Finally, we are planning the first YLD beach party (to be more formally named) at this year's Family Law Institute, which will replace the YLD cocktail reception. This has been a goal of ours for the last few years, and we hope to engage more YLD members as well as "big bar" members on the beach for some friendly competition (corn hole, beach volleyball, ladder golf, etc) and cocktails.

First Responder Pro Bono Wills Clinic

Co-Chairs: Katie Willett and Brandon Elijah

On Saturday, Oct. 25, 2014, the most recent First Responders Pro Bono Wills Clinic took place at Mercer Law School in Macon. The clinic included volunteer services from 17 YLD members and over 40 Mercer Law School students. The YLD members logged over 80 hours of pro bono estate planning services to 34 first responders and spouses from Bibb and Monroe County.

Among other contributions, Mercer Law student volunteers served as witnesses for 102 estate-planning documents that were drafted and executed. Third-year student Liz Phrampus said, "Generally Mercer Law offers a number of activities that encourage community service through various student organizations and class events. The Wills Clinic provided an excellent opportunity to see a will in person, observe the interaction between an attorney and their client, and help first responders secure estate plans for their loved ones to follow. I definitely left feeling as if I had given back to men and women that risk each day keeping us safe. The activity speaks to the way the Mercer culture thrives, through service to others." Jasmin Severino, a first-year student, agreed that the clinic was a great opportunity to give back, "Giving back to our community through events like the Wills Clinic really shows the level of integrity and compassion of Mercer Law students and faculty. Being able to gain first-hand experience, while helping our community in a legal environment is truly a priceless and rewarding experience."

The next First Responders Pro Bono Wills Clinic is scheduled to take place in Statesboro on Saturday, January 31, 2015. To date, the program has served over 152 first responders throughout the state who have received 456 estate planning documents through more than 412 pro bono hours volunteered by YLD members.

Intellectual Property

Co-Chairs: Sonia Lakhany & Tiffany Logan

The IP committee community service event was held on December 6. This year, committee members volunteered with the Atlanta Volunteer Lawyers Foundation (AVLF). AVLF provides legal representation and education to at-risk and/or low income individuals within the Atlanta community. During our service event, members interviewed potential AVLF clients to assess their legal claims. Full training was provided by AVLF the morning of the service event.

Judicial Law Clerk

Co-Chairs: Matt Gass & Emaly Standridge

The Judicial Law Clerk Committee held their first meeting of the year at Varuni Napoli. This social was held on November 4 and was well attended.

Juvenile Law

Co-Chairs: Araceli Jacobs & Deidre Merriman

The Juvenile Law Committee co-hosted “Code & Cocktails” on November 13 along with the Child Protection and Advocacy Section, Children and the Courts Section and the Family Law Committee. “Code and Cocktails” was a successful winter gift drive/happy hour at Hudson Grille Midtown. The goal was to educate attorneys on the new juvenile code while collecting gifts for children in foster care. Over 40 attorneys attended and Juvenile Court Judge Rawlings lectured about the new juvenile code. The committees collectively gathered over \$200 in gifts for foster children.

On November 18, the Committee held a well-attended lunch meeting at the Bar Center, which featured a presentation on Disproportionate Minority Contact in Georgia. On December 16, the Committee held a well-attended lunch meeting at the Bar Center.

Labor & Employment

Co-Chairs: Alison Ballard, Stan Hill, Abby Larimer

The Labor & Employment Committee hosted a lunch and learn on October 22 at the State Bar. Jeff Kerr of Mays & Kerr presented on "An Introduction to E-Discovery Concepts and Technology," which was very well received by the 20-25 members in attendance. The Lunch & Learn was approved for one hour of CLE credit by ICLE of Georgia.

The Committee also co-sponsored a reception to honor the 50th anniversary of the passage of Title VII, held at the Center for Civil and Human Rights on November 18. On December 3, 2014, the Committee hosted a half-day Trade Secrets Seminar at the State Bar for more than 50 committee members who were in attendance.

Law School Fellows

Chair: Sean Ditzel

The Law School Fellows Committee, comprised of young lawyers and two YLD Fellows from each of the law schools in Georgia had their first interaction at the YLD Fall Meeting in Jekyll Island. The law school fellows got their first exposure to the inter-workings of a YLD General Session and met and mingled with members of the YLD throughout the weekend. For the upcoming Midyear Meeting, the Law School Fellows Committee will be holding a

committee meeting prior to the General Session in order to plan on-campus activities for the Spring of 2015, as well as to discuss possible on-campus philanthropy initiatives.

Legal Food Frenzy

Co-Chairs: Katie Dod, Mandy Moyer, Justin Oliverio & Lisa Robinson,

There are four co-chairs this year in hopes of expanding the reach of the competition further across the state of Georgia and reaching out goal of 1.25 million pounds of food and funds donation. The Committee is currently in the process of putting together promotional materials with Ms. Lauren Kane of the Attorney General's Office and Mrs. Danah Craft, Executive Director of the Georgia Food Bank Association. Additionally, the chairs are searching for returning City Reps and new energetic faces to help spread the word about the Legal Food Frenzy and all that it seeks to foster in the surrounding communities. Please forward any suggestions on individuals that you may have concerning persons that would be interested in serving as City Reps for this year's campaign.

Litigation

Co-Chairs: Kevin Patrick & Ryals Stone

The Litigation Committee was honored to host its annual Clerks' Luncheon at Maggiano's in Buckhead on December 3. For the last several years, the clerks of court for the Court of Appeals and Supreme Court of Georgia, as well as the clerks for every state and superior court in all the metro-Atlanta counties have been invited. The clerks of court deserve to be recognized for playing such a pivotal role in the efficient administration of justice. They are tirelessly committed to the public and profession. Most importantly, this luncheon benefitted Youth Villages. This charity assists children that face behavioral challenges, as well as their families. We are also grateful to our generous sponsors for making this event a success.

Additionally, the Litigation Committee has planned a number of other exciting upcoming events for the Bar year. In keeping with the goals of involving young litigators and law students throughout our entire state, we will be taking our "War Stories" Lecture Series on the road for 2015 and are now planning on hosting it at the various law schools.

Long Range Planning Committee

Co-Chairs: Josh Bosin & Brantley Rowlen

The Long Range Planning Committee has spent the summer and fall hard at work primarily on two different projects: 1) the legislative initiative for student loan repayment to encourage rural lawyers to practice in an underserved county; and 2) the succession planning program. A great deal of research and planning has been put into both projects culminating in the committee's presentation of the legislative initiative on December 4 to the State Bar's Advisory Committee on Legislation and the agreement with the Georgia Law Schools on jointly promoting the Succession Planning program in Spring 2015.

Minorities in the Profession

Co-Chairs: Alex Barnett & Morgan Clemons

MIPC held an Election Watch Party on November 4 and it was a great success. Nearly 20 people were present to watch the election returns and enjoy food, drinks and the opportunity to network

with other young attorneys. On December 13, committee members volunteered with AVL's Saturday Lawyer Program.

Additionally, the committee is excited to be coordinating an historic CLE during the YLD Spring Meeting in New Orleans, Louisiana. Professor Emeritus Lawrence Powell of Tulane University along with several historical legal scholars in the New Orleans area have agreed to present a CLE on the SCOTUS opinion, *Plessey v. Ferguson*. We are looking forward to learning about not only the interesting distinctions of Louisiana law and civil rights laws of the time, but also the historical backdrop in front of which the case played out before the country.

Public Interest Internship Program

Co-Chairs: Jennifer Fleeman & Kerry Nicholson

On November 3, 2014, the Public Interest Internship Program (PIIP) committee held a reception to honor the 2014 PIIP Finalists. Top Finalist, Leyna Palmer, spoke about her summer internship at the Georgia Poverty Law Center. PIIP co-chairs Jennifer Fleeman and Kerry Nicholson hosted the reception and were joined by YLD President Sharri Edenfield, Finalist Caitlyn Wade, members of the State Bar Executive Committee, members of the YLD Executive Board, PIIP committee members, and members of the public interest community.

The Committee is also excited to begin the grant selection process in March 2015 for next year's finalists and recipients.

Real Estate

Co-Chairs: Sarah Madden & Doug Okorochoa

The Real Estate Committee is off to a great start for the year. We had a good group of young attorneys attend an event near Grant Park to begin restorations for the Judge Erskine Memorial Bench and Fountain. We removed a dead tree, raked out underbrush, and made the site more presentable. The committee plans to have a larger event in the spring to repair the dilapidated fountain and plant new flowers and shrubbery in the area.

The Committee also held a well-attended joint Lunch and Learn with the Ethics & Professionalism Committee on Dec. 9 at the Bar Center titled, "The Do's and Don'ts of Residential Mortgages: How Attorneys Can Stay out of Trouble." In the New Year, the committee plans to have a general meeting in January, and get the committee members involved in executing a second lunch and learn and a happy hour activity in March.

Signature Fundraiser

Co-Chairs: Ashley Akins & Jessica Fagan

The Signature Fundraiser Committee plans to host the 2015 Signature Fundraiser on March 7 at Terminal West in the King Plow Arts Center. The event includes a live auction, silent auction and live music. The theme this year is "Stars & Stripes" to benefit the Augusta Warrior Project, which exists to serve military veterans and connect these warriors with resources to improve their lives, including access to attorneys in order to secure veteran benefits.

Solo/Small Firm

Co-Chairs: Ashley Browning, Soo Hong & Carrie Trotter

The Solo/Small Firm Committee began their year with a well-attended joint social on November 5 at Stillhouse with the Family Law Committee and the Criminal Law Committee. Importantly, the Affiliate Outreach team is working with the YLD Solo-Small Firm Committee to plan and host a first of its kind joint conference on Saturday, February 21, 2015 at Mercer Law School in Macon. While all YLD members are invited, the programming and activities are uniquely designed to appeal to affiliates as well as young lawyers who are interested in law practice management topics as well. In addition to the programming, there will be a social/networking event component as well. Special thanks to Natalie Kelly, State Bar's Director of the Law Practice Management Program, Jana Edmondson-Cooper, Macon attorney and YLD co-Director of Member Outreach, and Stephanie Powell, Dean of Mercer Law's Career Services, for all of their help in planning the event.

Special Projects in Education

Co-Chairs: Trinity Hundredmark & Martina Palatto

The Special Projects in Education team is coordinating an event this Spring for YLD members to assist pre-screened individuals coming out of the correctional system in putting their best foot forward in finding a job. YLD members are working with the United Way and the Gwinnett County Sheriff's Office to organize this Saturday event where young lawyers will be reviewing resumes and doing mock job interviews to help these individuals make the successful transition from incarceration to meaningful employment. Additionally, YLD members will take the donations from the suits drive at the Midyear meeting and donations received throughout the spring and will help outfit the participants with professional attire for their interviews.

William W. Daniel National Invitational Mock Trial Competition

Chair: Matt Jones

The William W. Daniel National Invitational Mock Trial Competition Committee hosted a well-attended competition November 21-22 at the Fulton County Courthouse.

Women in the Profession

Co-Chairs: Nadia Deans & Sarah Statz

The Women in the Profession Committee hosted a holiday luncheon at the Swan Coach House on December 11. We were honored that Linda Klein, the first woman to serve as President of the State Bar of Georgia, and Patrise Perkins-Hooker, the current president of the State Bar of Georgia, were able to join us. The luncheon benefitted Toys for Tots.

Meetings & Important Upcoming Dates

Fall Meeting

The YLD Fall Meeting was held October 31-November 2, 2014 in Jekyll Island, GA at the Jekyll Island Club Hotel. The meeting kicked-off with a joint reception with the Glynn County YLD on Thursday evening at the King and Prince Hotel on St. Simons Island, where President Sharri Edenfield gave a short summary of the progress on her initiatives and encouraged Glynn County YLD members to get involved with the State Bar YLD. Friday morning, President Edenfield held an Executive Committee Meeting with the officers and directors before the General Session was held to discuss issues related to the legislative initiative. Over 80 YLD members and guests attended the General Session, where a vote was held on the legislative initiative and amending the bylaws. Ms. Kim Elle, the CEO for the Augusta Warrior Project, the 2015 Signature Fundraiser Beneficiary, gave brief remarks regarding the charity and its appreciation for being selected.

After the General Session was concluded, Alumni Leadership Council member and former YLD President, Damon Elmore, moderated a well-attended seminar on running for YLD office that included as panelists former YLD Presidents Judge Josh Bell, Stephanie Kirijan, Bill Barwick, and Darrell Sutton as well as former State Bar President Lester Tate. Additionally, a CLE on Military Support opportunities through the State Bar was coordinated by YLD co-Director of Military Support, Ed Piasta, and led by leaders from the State Bar's Military/Veterans Law Section and Military Legal Assistance Program, Norman Zoller, Drew Early, Cary King, Eric Ballinger, and Jeff Arnold. YLD members were fortunate to see former Immediate Past President for the State Bar, Buck Ruffin, be recognized by the Military/Veterans Law Section and Military Legal Assistance Program for his support. Finally, Ms. Avarita Hanson, Executive Director for the Chief Justice's Commission on Professionalism, led an interactive professionalism CLE entitled "Professionalism in the Digital Age." Attendees thoroughly enjoyed her examples of how to communicate professionally in the age of email, text messages, and social media.

The YLD enjoyed a group dinner on Friday evening at Bennie's Red Barn on St. Simons Island and then were hosted for festive Halloween cocktail/dessert reception by YLD Northern District Representative, Sutton Connelly, his grandfather and State Bar member, Bobby Lee Cook, and their firm, Cook & Connelly, at Mr. Cook's Sea Island Home. YLD members enjoyed attending the Board of Governors meeting on Saturday morning and enjoyed a Bloody Mary reception hosted by the Georgia Trial Lawyers Association immediately following the meeting. YLD members also joined Board of Governors members for tailgating and watching the GA/FL game down in Jacksonville and at the hotel.

Midyear Meeting:

Atlanta Marriott Marquis

Atlanta, GA

January 8-11, 2015

In addition to the General Session held on Friday, January 9, 2015, the YLD will help host some exciting new programming. On Thursday, January 8, the Alumni Leadership Council and Leadership Academy Alumni Committee will host the first ever "Next Step Institute," which will focus on advanced leadership development topics for Leadership Academy alumni, including

how to build a law practice, develop a client base, and run for political office. On Friday, January 9, 2015, prior to the General Session, the YLD Military Support Team, along with leaders from the Military/Veterans Law Section and Military Legal Assistance Program, will host a VA Accreditation CLE so that members can become certified to help veterans with VA benefits appeals.

Solo-Small Firm Institute/Affiliates Conference

Mercer Law School

Macon, GA

February 21, 2015

The YLD Solo-Small Firm Committee and the YLD Affiliates Outreach Team will be hosting a first ever combined day-long conference on Saturday, February 21, 2015, for YLD members around the state to meet in Macon for CLEs related to small firm issues as well as best practices for Affiliates. Social/networking events are planned as well with the Macon YLD.

2015 Signature Fundraiser benefitting the Augusta Warrior Project

Terminal West

Atlanta, GA

February 28, 2015

The 2015 Signature Fundraiser benefitting the Augusta Warrior Project will be held on Saturday, February 28, 2015, at Terminal West in midtown. Be on the lookout for information regarding tickets and sponsorship opportunities.

Spring Meeting

Hyatt French Quarter

New Orleans, LA

March 19-21, 2015

YLD members will be treated to a CLE on the famous U.S. Supreme Court case that arose from New Orleans, *Plessy v. Ferguson*, led by professors from Tulane University and coordinated by the Minorities in the Profession Committee. Ms. Avarita Hanson, Executive Director for the Chief Justice's Commission on Professionalism, will join the panel and provide insight from the professionalism perspective. The YLD Leadership Academy will be in attendance as this will make their fourth session. Additionally, all members will enjoy a General Session as well as taking in the sights, sounds, and delicious foods from the Crescent City.

Annual Meeting

Evergreen Conference Center

Stone Mountain, GA

June 18-21, 2015

**STATE BAR OF GEORGIA
EXECUTIVE COMMITTEE
MINUTES
September 6, 2014
South Georgia Office/Tifton, GA**

Members Present:

Patrise M. Perkins-Hooker, President; Robert J. Kauffman, President-elect; Rita A. Sheffey, Treasurer; Patrick T. O'Connor, Secretary; Charles L. Ruffin, Immediate Past President; V. Sharon Edenfield, YLD President; John R.B. Long, YLD President-elect; Darrell L. Sutton, YLD Immediate Past President; Elizabeth Louise Fite; Kenneth B. Hodges, III; David S. Lipscomb; Brian D. Rogers (by phone); and Nicki Vaughan.

Members Absent:

Phyllis Holmen.

Staff Present:

Sharon Bryant, Chief Operating Officer; Jeff Davis, Executive Director; Paula Frederick, General Counsel; Steve Laine, Chief Financial Officer; and Thomas Worthy, Director of Government Affairs.

Approval of the Meeting Agenda

Following a report by President Patrise M. Perkins-Hooker, the Executive Committee, by unanimous voice vote, adopted the meeting agenda.

Future Meetings Schedule

The Executive Committee received a copy of the Future Meetings Schedule.

Consent Agenda

President Perkins-Hooker presented the Consent Agenda. There being no objection or request for removal of any item, a motion was made and seconded to approve the following items on the Consent Agenda:

- a) Minutes of the August 22, 2014 Executive Committee Meeting
- b) Approval of Member's Request:
 - 1) Quentin C. Jones (approve waiver of late fee)
 - 2) Lawton Hawkins (approve waiver of late fee)
- c) Members Requesting Resignation (approve): Robin Butner (099952); Jennifer A. Beardsley (044691); Kamcheung T. Ip (384248); William E. Nethery (538867); Lark Bedrick (194805); An Ribstein (602490); Trish Felice Cohen (252018); Kamilah Clark (700218); Elizabeth A. Sautter (627379); Michael David Jones (402515); Angela Baker Clonts (170621)
- d) Members Requesting Disability (approve): Scott Sheridan (642048)

The Executive Committee, by unanimous voice vote, approved the above items on the Consent Agenda.

Clients' Security Fund

Paula Frederick and Treasurer Rita Sheffey provided a report on the Clients' Security Fund (CSF). While the CSF rules have allowed for a reasonably stable corpus over the years, unusual circumstances in the case of Miles Gammage will adversely affect the corpus of the fund. Currently, 25 claims have been submitted that total approximately \$1.5 million and more claims are expected. The CSF Board of Trustees has asked the Executive Committee to consider raising the aggregate amount that can be distributed each year from \$350,000 to \$500,000, and to implement a one-time assessment per Bar member to make sure the fund does not drop below \$1 million. Bar Rules provide for an automatic assessment of the Bar's membership whenever the fund balance drops below \$1 million. A subcommittee was appointed consisting of Darrell Sutton (Chair), Jack Long, Vince Clanton, Paul Threlkeld, Nicki Vaughan, and Rita Sheffey, with Bill NeSmith, the Bar's new Deputy General Counsel, providing staff support. The subcommittee will also explore how other Bar associations operate their client security funds.

Atlanta Legal Aid Society's 90th Anniversary Luncheon

The Executive Committee, by unanimous voice vote, approved a \$1,000 request to purchase two tables (\$500 each) at the Atlanta Legal Aid Society's 90th Anniversary Luncheon that will be held at the Georgia Aquarium on October 2, 2014. The cost will be paid from the Conference Sponsorship Account. One table will be for the Executive Committee members and the other table is for lawyers working in the civil legal services field.

Keller Presentation and Training

Paula Frederick provided information on *Keller v. State Bar of California*, which is a 1991 case that prohibits the State Bar from using mandatory dues to finance political and ideological activities that are not germane to the purposes of the Bar and with which members disagree. The case was ultimately appealed to the U.S. Supreme Court, which concluded that the California Bar's activities were more like those of a labor union and thus subject to First Amendment considerations, and the Court held that constitutionally funded activities must be limited to activities germane to the goals of regulating the profession and improving the quality of legal services. While there is no additional case law from the U.S. Supreme Court, Paula Frederick provided information on several federal appellate courts cases that have considered the issue. She reported that much of what we do in Georgia does either improve the quality of justice or goes towards regulating the law in Georgia and falls within the purposes of the State Bar of Georgia.

Long-Range Planning Committee (LRPB) Recommendations

Secretary Pat O'Connor, and former chair of the LRPC, reported on the committee's study of the trends, challenge and issues affecting lawyers in Georgia. From the study, the committee deemed the following issues to be the most important for further action by the State Bar. In order of significance, they are:

- 1) Creating pro se centers in each judicial circuit for people with low and modest incomes
- 2) Teaching lawyers about technology, future changes in technology, and how to use it ethically and effectively
- 3) Access to Justice - E-filing statewide system
- 4) Rural lawyers problem
- 5) Public service quality and compensation

Civil Legal Services Task Force Recommendations

Treasurer Rita M. Sheffey, and chair of the Civil Legal Services Task Force, reported that the Task Force will continue to explore the use of excess county law library funds and cy pres awards as funding sources for civil legal services. It will also look at a list of ideas compiled by the State Bar over the years on ways to obtain additional funding for legal services, and members were asked to come back at the next meeting with other suggestions of funding sources. She requested that any strategic planning process include a discussion on what is and should be the role of the State Bar in assisting legal services providers with their funding.

Next Generation Courts Commission Recommendations

President Perkins-Hooker referred the Executive Committee members to the Next Generation Courts Commission's study on improving the courts over the next ten to fifteen years and its recommendations outlined in its Executive Summary. Several recommendations are legislative in manner, some have been explored by the Civil Legal Services Task Force, and others are designed to be cooperative programs with the Bar.

ABA Vision 2016 Commission

President-elect Bob Kauffman reported on the ABA's Vision 2016 Commission. Many of the issues being discussed by the ABA Commission are the same as those that have come out of the Bar's Long-Range Planning Committee. Technology and the legal market are filling the gaps in the delivery of legal services, and the State Bar needs to look at how technology changes are going to affect the Bar over the next 10 years. The ABA Commission's Bar Admissions Areas of Study is looking at, among other things, the licensing of non-lawyers to perform legal tasks and a uniform Bar examination. Fourteen states are using a standard Bar admission exam, and the ABA is considering changing law school accreditation standards.

The Executive Committee received an article from *The Florida Bar News* titled "In 10 years, UPL will be a dead letter."

Strategic Planning for the State Bar of Georgia

The Executive Committee discussed the recommendations made by the various committees. While some overlap and some are already being pursued by other committees, there is not a comprehensive strategic plan that incorporates and prioritizes the various recommendations or provides direction and an action plan for the Bar to follow. Thereafter, the Executive Committee, by unanimous voice vote, approved creating a comprehensive strategic plan utilizing

the services of a facilitator to aid in the development of the strategic plan that will be selected through an RFP. The strategic plan will also consider the recommendations of the ABA Vision 2016 Commission and other suggested topics such as law school accountability and accountability courts.

Fee Arbitration Report

David Lipscomb provided an update on the Fee Arbitration Program. The Fee Arbitration Committee is requesting an Amicus Curiae Brief in the case of *Cordell and Cordell. P.C. v. Shaojun Gao*. Cordell (Appellant) refused to be bound by the results of arbitration and appealed the outcome of litigation filed to collect the award, and in the process challenged Bar Rule 6-502. Sutherland is representing Gao (Appellee) in the appeals process. Following that, the Executive Committee took the following action:

- 1) By unanimous voice vote, determined that the requested filing could not reasonably have been submitted for consideration by the Board of Governors since it does not meet until November 1, 2014;
- 2) By unanimous voice vote, found the subject matter to be within the scope and purpose of the State Bar, and
- 3) By unanimous voice vote, with President Perkins-Hooker and David Lipscomb abstaining, approved the filing of an Amicus Curiae Brief upholding the decision of the lower court and denying Appellant's appeal.

Treasurer's Report

Treasurer Rita Sheffey provided a report on the Bar's finances and investments. The Executive Committee received copies of the combined Operations and Bar Center Consolidated Revenue and Expenditures Report as of May 31 and June 30, 2014, the Summary of Selected Payment Information for the Periods of May 31 and June 30, 2012-2014, the Operations Only and Bar Center Only Revenues and Expenditures Report as of May 31 and June 30, 2014, and the Balance Sheet for May 31 and June 30, 2014. She reminded the Officers that we do have policies on expense reports and to please submit their reimbursement requests in a timely manner with detailed receipts and documentation.

President Perkins-Hooker and Steve Laine reported on a problem with the Bar's Merrill Lynch/Bank of America brokerage account. Effective September 1, Merrill Lynch no longer provided brokerage service to municipalities and had given that classification to the State Bar of Georgia. While the problem has been resolved in the short-term, the Executive Committee, by unanimous voice vote, ratified the President hiring an attorney to provide an opinion about the Bar's status as a "municipality."

YLD Report

YLD President Sharri Edenfield reported on the activities of the Young Lawyers Division. She recently addressed the Cobb YLD about pro bono military legal services, and the Fall Meeting will feature a 2-hour CLE on how young lawyers can provide those services. The Alumni Leadership Council is developing a program for new partners. The Aspiring Youth Committee

is rejuvenating the Great Debaters Project with area Youth Detention Centers. The LRE Committee is creating a Thurgood Marshall Program that will involve a moot court competition. She will be speaking at the Chief Justice's Commission on Professionalism's *Convocation on Aging in the Law* at The Carter Center on November 12, and she serving as the YLD representative on the Judicial Council's Committee on Access, Fairness and Public Trust. She thanked President Perkins-Hooker for involving the YLD in the iCivics initiative.

Military Legal Assistance Program

The Executive Committee received a written Overview of Legal Clinics Providing Legal Assistance to Service Members and Veterans.

Morris Hardwick Schneider Accuses Founder Nathan Hardwick of Embezzling \$30 million

The Executive Committee received a copy of a *Daily Report* article on the Morris Hardwick Schneider law firm that filed a law suit claiming Nathan Hardwick embezzled more than \$30 million from the first and its affiliated title company, LandCastle Title.

Old Business

President Perkins-Hooker reported on the State Bar's media placement of articles, television, radio and other social media outreach for June through August, and the Executive Committee was provided a copy of same.

President Perkins-Hooker reported on the law school incubator project, and the Executive Committee received a copy of a letter from four of Georgia's law school deans (Emory, Georgia State, Georgia and Mercer), and a copy of a letter from the law school dean at John Marshall, confirming their support for the development of an incubator program in Atlanta. All five law schools are looking at contributing \$25,000 each for the program's start up and hope the State Bar will consider providing annual funding for three years and locating the incubator in the State Bar Building. The Executive Committee, at its August meeting, referred the incubator program to the Bar Center Committee for it to consider whether or not the Bar should move forward with the 5th floor expansion and an abatement of rent for the incubator program.

New Business

Darrell Sutton reported that Georgia Council of Court Administrators is awarding the Cobb County Family Law Workshop its "Program of the Year" award. He reminded the Executive Committee about the September 25th Justice Jam Band of the Year fundraiser for the Cobb Justice Foundation.

Executive Session

Following a motion and second, the Executive Committee met in Executive Session to discuss real estate and litigation matters. Thereafter, by unanimous voice vote, the Executive Committee moved out of Executive Session.

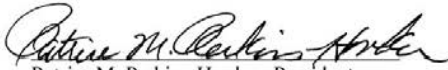
Adjournment

There being no further business the Executive Committee meeting was adjourned.



Patrick T. O'Connor, Secretary

Approved:



Patrise M. Perkins-Hooker, President

**STATE BAR OF GEORGIA
EXECUTIVE COMMITTEE
MINUTES
October 24, 2014
State Bar Building/Atlanta, GA**

Members Present:

Patrise M. Perkins-Hooker, President; Robert J. Kauffman, President-elect; Rita A. Sheffey, Treasurer; Patrick T. O'Connor, Secretary; Charles L. Ruffin, Immediate Past President (by phone); V. Sharon Edenfield, YLD President (by phone); John R.B. Long, YLD President-elect; Darrell L. Sutton, YLD Immediate Past President; Elizabeth Louise Fite; Kenneth B. Hodges, III; David S. Lipscomb; and Brian D. Rogers.

Members Absent:

Phyllis Holmen and Nicki Vaughan.

Staff Present:

Sharon Bryant, Chief Operating Officer; Jeff Davis, Executive Director; Paula Frederick, General Counsel; Steve Laine, Chief Financial Officer; and Thomas Worthy, Director of Government Affairs.

Approval of the Meeting Agenda

Following a report by President Patrise M. Perkins-Hooker, and a motion to move the Law School Incubator Program topic on the agenda from 6(a) to 3(c), the Executive Committee, by unanimous voice vote, adopted the revised meeting agenda.

Future Meetings Schedule

The Executive Committee received a copy of the Future Meetings Schedule.

Consent Agenda

President Patrise Perkins-Hooker presented the Consent Agenda. Following a request to remove Members' Requests by John B. Iwu, Dock H. Davis, and Richard Maxwell, and there being no request for removal of any other items, a motion was made and seconded to approve the remaining items on the Consent Agenda:

- a) Minutes of the September 6, 2014 Executive Committee Meeting
- b) Members Requesting Resignation (approve): Valerie Caproni-108937, James A. Gilbert-294150, Robert L. Hessman-349628, David H. McDonald-488752, Robert G. Nardone-534800, Tyson Smith-663830, Janna A. Andrews-019225, George R. Schenck-629093, Joy Anne Mullane-203718, Erin Camille Coleman-178017, Elise Gray-555151, Deborah R. Noe-233871, John Mark Crawford-194130,

Brandy Anne Bayer-043398, Inga Causey-832494, Janice Tanner-697575, Gustav F. Bahn-070217, Robert Jackson Martin-170576, Gregory W. Dye-236780, Michael D. Ginsberg-295800, Joseph M. Oliver Jr.-552300, Borden Martin Ray Jr.-596098, Sara Mallory Harned-467768, Kelly Gordon-595739, Morris S. Robertson-609775, Gary R. Brenner-079900, Emily Washburn-506576, Robin Schmahl-629440

- c) Members Requesting Disability (approve): Jeffrey F. Fenster-258575, Thomas W. Nilson-006187

- d) Approval of Members' Requests (staff recommendations in parenthesis):
 - 1) Kelly Woolfolk (deny waiver of dues and late fee)
 - 2) John Benneth Iwu (deny waiver of Fitness requirement)
 - 3) J. Richard Young (approve waiver of Fitness requirement)
 - 4) Dock H. Davis (deny waiver of Fitness requirement)
 - 5) Regina Stamps (approve waiver of late fee)
 - 6) Tamar Stern (approve waiver of late fee)
 - 7) Chad Talbott (deny waiver of late fee)
 - 8) Asaf Sarno (deny waiver of late fee)
 - 9) Sampson Oliver (deny waiver of late fee)
 - 10) Benjamin Wachstein (approve waiver of late fee)
 - 11) William Murray (approve waiver of late fee)
 - 12) Crystal Parker (approve waiver of late fee)
 - 13) Richard Maxwell (deny waiver of Fitness requirement and Bar exam)

The Executive Committee, by unanimous voice vote, approved the remaining items on the Consent Agenda.

Members' Requests

The Executive Committee took the following action on Members' Requests that were removed from the Consent Agenda:

- 1) John Bennett Iwu – by unanimous voice vote, approved the waiver of Fitness requirement

- 2) Dock H. Davis – by majority voice vote, affirmed denying the waiver of the Fitness requirement

- 3) Richard Maxwell – by majority voice vote, approved the waiver of Fitness and Bar exam requirement

Sponsorship Requests

Following a report by President Patrise Perkins-Hooker, the Executive Committee, by unanimous voice vote, ratified the actions of the President in providing sponsorships from the Conference Sponsorship Account to the following organizations: 1) \$2500 - GLSP Champions of Justice, 2) \$2500 – Gate City Bar Hall of Fame Gala, and 3) \$2500 - Atlanta Area Council Boy Scouts Whitney M. Young Jr. Service Award Banquet.

Commission on Continuing Lawyer Competency (CCLC)

The Executive Committee, by unanimous voice vote, approved the appointment of President Patrise Perkins-Hooker to the CCLC for a one-year term commencing January 1, 2015.

Law School Incubator Program

President Patrise Perkins-Hooker reported that at the request of the Executive Committee, the Bar Center Committee met and made a recommendation that the Bar provide office space for the incubator program on the 5th floor and that the restrooms on that floor be made ADA compliant, but it reserved judgment on the amount of rent to be charged for the space to its January meeting. Based on the Bar Center Committee's recommendation, President Patrise Perkins-Hooker asked for approval of the incubator program to the extent of providing it office space, but reserving the amount of rent to be paid or abated still subject to a recommendation by the Bar Center Committee. She clarified that the approval does not authorize any further expenditure of funds for the incubator program until further action is taken by the Executive Committee. Bucky Askew was present to provide more details about the program and answer any questions. Thereafter, the Executive Committee took the following action:

- 1) A motion that the State Bar will work with the five law schools in Georgia to develop a law school incubator program, which could include a provision of office space at the Bar subject to approval by the State Bar of a final budget and operational procedures for the proposed incubator program, was moved and seconded;
- 2) A friendly amendment to make the motion contingent upon a written financial commitment from all of the five law schools was withdrawn;
- 3) A motion asking for a Keller vote on germaneness was moved and seconded,
- 4) A motion to table the Keller vote as unnecessary died for lack of a second;
- 5) The Keller vote on germaneness passed by a hand vote of 8 in favor to 1 opposed, with David Lipscomb abstaining, and

- 6) The Keller vote on the merits of the law school incubator program was approved by a hand vote of 8 in favor to 1 opposed, with David Lipscomb abstaining.

Thereafter, the Executive Committee asked Bucky Askew to keep it informed as a budget and operational procedures are developed. President Patrise Perkins-Hooker offered to allow any Executive Committee members to work with Bucky Askew and the stakeholders as the program is further developed.

President's Report

President Patrise Perkins-Hooker announced that she will make a full report on her activities at next week's Board of Governors meeting. Her continued work on the iCivics program and the rural lawyers' initiative was ratified by the Executive Committee by unanimous voice vote.

Treasurer's Report

Treasurer Rita Sheffey provided a report on the Bar's finances and investments. The Executive Committee received copies of the Operations and Bar Center Consolidated Revenue and Expenditures Report for the twelve months ended June 30, 2014, the Balance Sheet as of June 30, 2014, and the Summary of Selected Payment Information for September 30, 2012-2014.

YLD Report

YLD President Sharri Edenfield reported on the activities of the Young Lawyers Division. She announced that there will be a meeting of the Glynn County YLD Affiliates on Thursday afternoon, October 30, at St. Simons Island in conjunction with the Fall Board of Governors/YLD Fall meeting. At that meeting, she will be discussing her military initiatives and the iCivics program. The Family Law Committee's Supreme Cork fundraiser for AVLF was held October 16. There is a First Responders Wills Clinic tomorrow in Macon and the clinics are being expanded to reach out to military veterans. She recently attended the ABA/YLD Fall Meeting in Portland, which had a full slate of Georgia ABA/YLD Delegates. She announced that three Georgia young lawyers were selected for the ABA/YLD Emerging Leaders Program and two were selected for the ABA/YLD Scholars Program.

Executive Director's Report

Jeff Davis reported that the Prosecuting Attorneys' Council of Georgia (PAC) will be vacating the office space it leases in the State Bar Building sometime in late December or early January. The Criminal Justice Coordinating Council, which leases office space on the same floor, needs additional space and is looking at moving into the PAC space. Replacement of the building's roof is underway and the replacement of the chillers will begin in February. He reported that he has been working with President-elect Bob Kauffman on a Request for Proposal for a long-range strategic study. When finalized, it

will be published on the Bar's web site and an outside consultant will be sought to assist with the process.

Legislative Report

Thomas Worthy reported on the legislative proposals approved by the Advisory Committee on Legislation at its September 16 meeting. The proposals will be presented to and voted on by the Board of Governors at the November 1 Board meeting. He also reported on a proposed bill that may be introduced this year that would require the Georgia Bar to make its dues voluntary.

The Executive Committee received copies of the Advisory Committee on Legislation Minutes of September 16, 2014, and the following legislative proposals: 1) Attestation of Execution of Antenuptial Agreements, 2) Funding Request for Legal Representation for Victims of Domestic Violence, 3) Funding Request for the Georgia Resource Center, 4) Water Lien Legislation, and 5) Unauthorized Practice of Law Legislation.

Communication's Report of Published Articles

The Executive Committee received a copy of published articles to date generated by the State Bar for the 2014-15 Bar year.

Georgia Bar Association – Association or Union

The Executive Committee received a copy of an email about lawmakers crafting legislation that would require the State Bar to make its dues voluntary.

ABA Article on Rural America

The Executive Committee received an *ABA Journal* article on *Too Many Lawyers? Not Here. In rural America, lawyers are few and far between.*

Health Law Section Article on Lawyers Mental & Substance Abuse Issues

The Executive Committee received a copy of the *Fall 2014 Georgia Health Law Developments Newsletter* article on *It's Time to Talk About It* that discusses lawyers with mental health and substance abuse issues.

Old Business

There was no old business.

New Business

Ken Hodges, on behalf of the Business Court Committee, reported on a proposed Business Case Division rule change from the Atlanta International Arbitration Society (ATLAS) to allow cases subject to the Georgia International Arbitration Code to be transferred to the Business Case Division. ATLAS's efforts to establish a specialized court to hear disputes subject to international arbitration is consistent with similar efforts

in New York and Miami. Time permitting, the Business Court Committee will give an information report on this matter at the November Board meeting.

President Patrise Perkins-Hooker briefly reviewed the November Board of Governors agenda.

Executive Session

Following a motion and second, the Executive Committee met in Executive Session to discuss real estate and litigation matters. Thereafter, by unanimous voice vote, the Executive Committee moved out of Executive Session.

Adjournment

There being no further business the Executive Committee meeting was adjourned.


Patrick T. O'Connor, Secretary

Approved:


Patrie M. Perkins-Hooker, President

GENERAL COUNSEL

Paula J. Frederick

ATTORNEYS

William P. Smith III
Jenny K. Mittelman
John J. Shiptenko
Jonathan Hewett
Rebecca A. Hall
A.M. Christina Petrig
William J. Cobb
Wolanda Shelton
William D. Nesmith III

Memorandum to: Members, Board of Governors
From: Paula Frederick, General Counsel
Date: December 10, 2014
Re: Report of the Office of the General Counsel

I am pleased to report on recent activity of the Office of the General Counsel.

Discipline: During November 2014 the OGC sent 210 Grievance forms to members of the public and received 137 filed Grievances. The Supreme Court of Georgia entered orders in eight disciplinary cases. The Year-to-Date Report on Lawyer Regulation (covering the period May 1, 2014 through November 30, 2014) appears at page 4 of this memorandum.

Screening Process: The office has instituted new procedures to further streamline the process for handling grievances. The process is now largely paperless and file management has improved as a result. The office has reduced the time that it takes to conduct the initial review of a grievance.

Rules Changes:

The following rules changes are pending or recently approved:

- Proposed revisions to the rules governing trust accounts, 1.15(I), (II), and (III), are pending at the Supreme Court. The proposal would require lawyers to have their IOLTA accounts in banks that have agreed to pay interest rates as high as the rates they pay on comparable non-IOLTA accounts.
- The Board will consider a package of proposed rules changes at the Midyear meeting. They include housekeeping amendments to Rules 4-110, 4-204.1, 4-111, 12-107, 4-104, 4-204, 4-221(g), and 4-227; revisions to standardize the time requirements for the Review Panel's consideration of a disciplinary matter (Rules 4-217 and 4-219); provisions that clarify the meaning of Rules 1.6, 8.4, 4-106(f)(2) and 4-208.3; and four substantive changes:
 - A proposed revision to Rule 4-213 would require the Bar to pay for the hearing transcript in a disciplinary matter and clarifies when the Bar must purchase a copy of the transcript for a respondent who is unable to pay;

- A proposed revision to Rule 3.5 would add a new Section (c) and Comment 7 to prohibit communication with a juror or prospective juror;
- A new Rule 5.4(e) would allow Georgia lawyers to work with lawyers who are organized under alternative business structures.
- Changes to Rule 4-403(c) and (d) would allow the Formal Advisory Opinion Board to publish proposed opinions on the Bar's website as an alternative to the *Georgia Bar Journal*.

Formal Advisory Opinion Board: The Board met December 10, 2014 to continue its review of existing opinions to determine whether they should be withdrawn or amended in light of recent revisions to the Rules of Professional Conduct. Two requests are pending:

- FAO Request No. 13-R2 – The Board has accepted the following question for drafting an opinion: May a lawyer contact and interview former employees of an organization represented by counsel when the former employees are bound by separation agreements governing non-disclosure and/or nondisparagement?
- FAO Request No. 14-R3 – The Board has received a request to draft an opinion dealing with the ethical propriety of an attorney employed as a part-time prosecutor serving as counsel in other criminal and/or civil matters. It appointed a subcommittee to make a recommendation whether to accept the request for drafting an opinion.

Pro Hac Vice Admission: The Supreme Court approved revisions to Uniform Superior Court Rule 4.4 by order of September 18, 2014. As amended the rule requires lawyers who seek admission *pro hac vice* to pay an application fee for each case plus an annual fee during each year that the case remains open. The money generated by the annual fee will go to the Georgia Bar Foundation for its use in funding pro bono efforts. Since the rule went into effect the Office has received 163 applications, resulting in a payment of \$22,600 to the Georgia Bar Foundation.

Clients' Security Fund: The Clients' Security Fund trustees have asked the Executive Committee to consider an amendment to Rule 10-103, which currently caps the amount the Fund may pay in any Bar year at \$350,000. The CSF trustees seek to increase the cap to \$500,000. The trustees have also asked the Executive Committee to support a one-time assessment against all Bar members to replenish the Fund.

Lawsuits:

- The Bar is a defendant in one matter pending in the Northern District of Georgia. We have filed a Motion to Dismiss since the claim involves a litigant who is unhappy with the outcome of his custody case.

- In October the Bar filed an amicus brief in a fee arbitration matter pending at the Court of Appeals. The purpose of the amicus was to respond to a challenge to the Bar Rules. The Court has not yet ruled.

Continuing Legal Education: Staff from the OGC have presented the following CLE programs since my last report:

- *Marketing & Ethics*; Solo & Small Firm Practice Fall Seminar;
- *Ethics for Guardians ad Litem*; Truancy Intervention Project;
- *Ethics Update 2014*; Fulton County Business Court judges;
- *Ethics and Aging Lawyers*; Chief Justices' Convocation on Professionalism;
- *Judges & Social Media*; Gate City Bar Association Judicial Section;
- *Ethics Update 2014*; Forsyth County Bar Association;
- *Programs offered by the State Bar of Georgia*; presented to visiting Brazilian judges through ICJE;
- *Ethics and Expert Witnesses*; ICLE;
- *The Ethical Minefields of Witnesses*; ABA Webinar;
- Special Master Training (to be presented January 8, 2015).

Committees and Other Projects:

- The Discovery of Electronically Stored Information Task Force and its Chair, Mary Prebula, prepared and presented proposed legislation to the Advisory Committee on Legislation on December 4. Although the Task Force's draft bill was tabled, Mary and her task force should be commended for the thousands of hours of work that went into their proposal.
- The Insurance Committee met December 3 to analyze the Bar's insurance needs. The Committee will make recommendations to the Executive Committee.
- Lawyers in the office coached and served as judges for the initial and final rounds of the Legal Ethics and Professionalism ("LEAP") Moot Court Competition, held at Mercer University Law School in November.

**Year-to-Date Report on Lawyer Regulation
 May 1, 2014 through November 30, 2014**

Grievance forms requested and sent to public	1,797
Grievance forms sent back to Office of General Counsel for screening	1,145
Grievances pending as of 4/30/2014.....	403
TOTAL	1,548
Grievances referred to State Disciplinary Board members.....	127
Grievances being screened by Grievance Counsel (GC)	334
Grievances closed by Grievance Counsel.....	1,076
Grievances moved to moot status by GC after attorney was disbarred	11
TOTAL	1,548

Regulatory Action May 1, 2014 through November 30, 2014

	<u>Attorneys</u>	<u>Cases</u>
Letters of Admonition Accepted	6	7
Investigative Panel Reprimands Administered	13	16
Review Panel Reprimands	6	9
Public Reprimand	2	2
Suspensions	17	21
Disbarments/Voluntary Surrenders	<u>16</u>	<u>23</u>
	60	78
Reinstatements Granted	4	
Reinstatements Denied	0	

MEMORANDUM FOR: Board of Governors of the State Bar of Georgia

**FROM: Norman E. Zoller, attorney coordinating the
Military Legal Assistance Program**

DATE: December 8, 2014

SUBJECT Status of the Military Legal Assistance Program

Background and Overview of Work: Yesterday the Military Legal Assistance Program (MLAP) of the State Bar of Georgia **marked its fifth year of operation** since its founding first under the aegis of Georgia Legal Services and then as its own separate entity. Since then, a **total of 1,318** connections have been made between a Georgia lawyer with a service member or veteran located throughout the State or from other places throughout the world, provided that jurisdiction of the case lies in a state or a federal court in Georgia, as summarized by category below.

In addition to processing requests for legal assistance, the program through oversight by the Military Legal Assistance Program Committee, also initiated or served as facilitator for other legal assistance-related activities to include the following:

- 1) New Legal Clinic at Georgia State University** Working in collaboration with the Military and Veterans Law Section, the College of Law, and the ROTC Department at Georgia State University, MLAP has assisted with creation of a new legal assistance clinic at Georgia State formally beginning operations on November 11, 2014, with a “soft opening” on October 15, 2014. This legal assistance clinic is similar to the one opened in February 2013 at Emory and will process requests for legal assistance principally from the more than 800 veterans enrolled at Georgia State. (Please see the Georgia State News item at **Exhibit A**). Conceptually, law students (about 70 have thus far volunteered to take part in this program) will interview prospective clients along with an attorney mentor (thus far, about 30 lawyers have volunteered to take part in this program). Thereafter, depending on the nature of the legal issue, the client will be referred to a volunteer lawyer in this program to handle the legal issue or will refer the client to MLAP under its standing referral procedures.
- 2) VA Accreditation.** A seven hour CLE program concerned with Georgia Military Law and VA Accreditation took place on November 4, 2014, in Atlanta. Among other speakers, this program featured Brigadier General Charles N. Pede, commander of the U.S. Army Legal Services Agency and chief judge of the U.S. Army Court of Criminal Appeals. This program qualified lawyers to become accredited or to renew accreditation to practice before the U.S. Department of Veterans Affairs (**Exhibit B**). The number of accredited lawyers in Georgia has increased from 160 in 2010 to now 634.
- 3) Emory Law Clinic Operations.** Working in conjunction with the Military and Veterans Law Section, the MLAP Committee assisted with establishment of the Emory Law Volunteer Clinic for Veterans (ELVCV). The Clinic opened in February

2013 and is processing requests for assistance and related veterans' issues on Tuesday afternoons during the semesters at the Law School. According to a report of November 3, 2014 (**Exhibit C**), from Lane Dennard, Program Co-Coordinator, a total of 65 students are currently taking part to serve as intake and research specialists, 72 lawyers are serving as mentors, and a total of 87 cases/ matters have thus far been processed.

- 4) **Legal Assistance Clinic Operations.** In addition to MLAP, legal assistance clinics are operating at the following sites: VA Medical Centers (VAMC) at Augusta and Decatur, VA medical facilities at Carrollton and Fort McPherson, and law school clinics at Emory University and Georgia State University. Another legal clinic is being considered at the Dublin VAMC. Discussions there took place with Dublin Bar officials on September 4, 2014.

- 5) **Marshall Tuttle Award.** The Marshall-Tuttle Award is given annually to an attorney who is deemed to be the outstanding lawyer providing *pro bono* or reduced-fee services to service members and veterans. The inaugural award was presented to Drew N. Early in 2011, the second award in 2012 to H. Lane Dennard, Jr., the third award to Cary S. King, and the fourth award to John Camp. The fifth award is scheduled to be presented at the Board of Governors meeting on January 10, 2015.

- 6) **Military Legal Assistance Programs in Georgia.** Mr. Zoller has been invited and is scheduled to attend and present information at the meeting on February 4, 2015, in Houston of the **National Association of Bar Executives** on the various military legal programs in Georgia. This presentation will include information about the MLAP (case reception and processing); legal clinics in VA medical facilities; legal clinics in law schools; support and creation of veterans courts, with mentorships; planning and conduct of CLE programs; outreach to Bar, veterans groups, and legal assistance offices; and recruitment, training, and retention of volunteer lawyers (about 850 currently), including the Young Lawyers Division.

- 7) **Cases Processed.** Below is a summary of the number and types of legal assistance cases received and referred to lawyers under the State Bar's Military Legal Assistance Program. Under the program, including the cases processed prior to its formal inception in 2009, **a total of 1,318 cases have been processed.** Further, a total of 38 additional cases are in process (i.e., in the pipeline), awaiting agreement authorizations from potential clients (29) or agreements from attorneys (9) to accept a case. Further, although the program does not handle criminal cases directly, about 190 inquiries have been received from veterans or service members seeking help on a criminal law matter (which are referred to the applicable county public defender or to a local bar association).

Family Law	652 (with 59 previous by GA Legal Services)
Contested Divorce	252
Uncontested Divorce	17

Divorce Enforcement	10
Child Support	84
Guardianship/Adoption	59
Visitation	27
Child Custody	144
Consumer Law	94
Housing/Property	78
Foreclosure	21
Veterans Benefits/Disability	183
Wills/Estates/Probate	66
Employment/USERRA/SCRA	35
Bankruptcy	19
Insurance	18
Personal Injury	34
Property Damage	3
Worker's Compensation	2
Contract	4
Medical Malpractice	5
Toxic Substances	5
Other	99
	1,318

EXHIBITS

A: News Item from GA State University College of Law, November 12, 2014

B: VA Accreditation CLE Program, November 4, 2014

C: Report of November 3, 2014, concerning Emory Law Clinic for Veterans

Free Legal Clinic for Veterans Officially Opens



Georgia State University College of Law and the Reserve Officers' Training Corps celebrated Veterans Day with a ribbon cutting ceremony for the Law Volunteer Clinic for Veterans on campus.

"It is a great pleasure to be able to dedicate this clinic," said Roy M. Sobelson, associate dean for academic affairs, professor of law and one of the clinic's organizers. "It's great because of the Shewmakers, Cary S. King and [Norman Zoller] who are providing these services free of charge to veterans."

The clinic provides free legal assistance to 800 veterans enrolled as students at Georgia State. Volunteer attorneys assist veterans with most legal issues including veterans benefits, divorce, wills, landlord/tenant and discharge issues. Army Lt. Col. Josh Brooks, chair of the Department of Military Science and Leadership for the ROTC program applauds the university for reaching out to its veterans to provide legal services.

"A lot of schools say, we're military-friendly...that means that they've got someone really skilled to get your GI bill benefits in their bank accounts," Lt. Col. Brooks said.

At the ribbon cutting ceremony, Lt. Col. Brooks presented the College of Law staff and its volunteers a challenge coin as a token of appreciation for their hard work. Volunteer attorneys Cary S. King (B.A. '63), Norman Zoller, Patricia Shewmaker (J.D. '08) and Steven Shewmaker (J.D. '05) were among the recipients.

"I am very proud to be at the beginning of this great clinic, the real history is that this country is able to rise above its differences and recognize the value of veterans," said Steven Shewmaker, a volunteer lawyer and a former Army Infantry officer.

Shewmaker said he is impressed by the tremendous amount of support that the community has shown for the Law Volunteer Clinic for Veterans in just a short amount of time.

"From lawyers that are in the military sections of the state bar, Georgia State graduates who are lawyers and especially students, they have all showed support," said Shewmaker.

Sobelson, who led the initiative to launch the Law Volunteer Clinic for Veterans, has conducted two meetings for prospective law students who may want to help with the clinic.

The first meeting brought more than 75 students with the second having about 65 students.

"I think the clinic is a great opportunity for students to give legal assistance during the school year for veterans, and also the attorneys are all vets and the students are vets as well. Vets, helping vets," said Benjamin Lynde, student assistant for the clinic.

VA ACCREDITATION

FEATURED SPEAKER



Brigadier General Charles N. Pede is the Commander, U.S. Army Legal Services Agency and Chief Judge, U.S. Army Court of Criminal Appeals. He holds a LL.M. in Military Law and a Masters Degree in National Security and Strategic Study. He attended the Judge Advocate Officer Basic and Graduate Courses, the Army Command and General Staff College, and the Industrial College of the Armed Forces.

Brigadier General Pede's awards include the Defense Superior Service Medal, the Legion of Merit, the Bronze Star with Oak Leaf Cluster, the Meritorious Service Medal with six Oak Leaf Clusters, the Army Commendation Medal with Oak Leaf Cluster, and the Joint Service Achievement Medal. He is also entitled to wear the Parachutist Badge and the Army Staff Identification Badge.

Co-sponsored by:



Military Legal Assistance Program,
State Bar of Georgia

Military/Veterans Law Section
State Bar of Georgia

PREREQUISITE FORM

If you have not already done so, attendees must complete and submit a **VA Form 21a** to the Department of Veterans Affairs as a prerequisite of the accreditation process. Simply go online and print a copy of the form for your use at:

<http://www.va.gov/vaforms/va/pdf/VA21a.pdf>

7 CLE Hours including

1 Ethics Hour • 1 Professionalism Hour • 2 Trial Practice Hours

Seminar will be held at these locations:

IN PERSON:

STATE BAR OF GEORGIA
HEADQUARTERS
104 Marietta Street NW
Atlanta, Georgia 30303

FOR DIRECTIONS PLEASE VISIT

[HTTP://WWW.GABAR.ORG](http://www.gabar.org)

VIA VIDEO CONFERENCE:

COASTAL GEORGIA
State Bar of Georgia
18 E. Bay Street
Savannah, Georgia 31401

SPACE LIMITED TO 30 ATTENDEES

VIA VIDEO CONFERENCE:

SOUTH GEORGIA
State Bar Of Georgia
244 E. Second Street
Tifton, Georgia 31794

SPACE LIMITED TO 30 ATTENDEES

A NOTE ON PARKING AT THE BAR CENTER: As of Sept. 2, 2014, Georgia DOT will begin work on replacing the Spring Street bridge, which will impact traffic and parking at the Bar Center. During this time, there will be only one-way access into the State Bar parking garage. You will enter and exit the Bar Center traveling southeast on Marietta Street. We urge all of our members and visitors to please allow extra time for congestion in this area when visiting the Bar Center. For more information, please visit www.gabar.org/springstdebtours.cfm

CANCELLATION POLICY



Cancellations reaching ICLE by 5:00 p.m. the day before the seminar date will receive a registration fee refund less a \$15.00 administrative fee. Otherwise, the registrant will be considered a "no show" and will not receive a registration fee refund. Program materials will be shipped after the program to every "no show." Designated substitutes may take the place of registrants unable to attend.

SEMINAR REGISTRATION POLICY

Early registrations must be received 48 hours before the seminar. ICLE will accept on-site registrations as space allows. However, potential attendees should call ICLE the day before the seminar to verify that space is available. All attendees must check in upon arrival and are requested to wear name tags at all times during the seminar. ICLE makes every effort to have enough program materials at the seminar for all attendees. When demand is high, program materials must be shipped to some attendees.

AGENDA

The registration fee for all seminars held at the State Bar of Georgia has been reduced by ICLE in recognition of the Bar's service to Georgia attorneys.

Presiding: *Jeffery L. Arnold*, Program Co-Chair, Section Chair, Military and Veterans Law, State Bar of Georgia; *Jeffery L. Arnold P.C.*, Hinesville
Steven P. Shewmaker; Program Co-Chair, Shewmaker & Shewmaker, LLC, Atlanta
Norman E. Zoller, Program Co-Chair, Coordinating Attorney, Military Legal Assistance Program, State Bar of Georgia, Atlanta

7:30 REGISTRATION AND CONTINENTAL BREAKFAST
 (All attendees must check in upon arrival. A jacket or sweater is recommended.)

7:55 WELCOME AND PROGRAM OVERVIEW
Steven P. Shewmaker

8:00 BASIC ELIGIBILITY AND CLAIMS PROCEDURES; REPRESENTATION BEFORE THE VA
Patricia A. Elrod-Hill, The Elrod-Hill Law Firm, LLC, Norcross

8:45 DIC AND PENSION
Victoria H. Watkins, Attorney at Law, Marietta

9:30 STAFF JUDGE ADVOCATE PANEL
Panelists TBD

10:30 BREAK

10:45 PROFESSIONALISM
Brig. Gen. Charles N. Pede, Brigadier General, Commander, U.S. Army Legal Services Agency, Chief Judge U.S. Army Court of Criminal Appeals, Fort Belvoir, VA

11:45 LUNCH (Included in registration fee)
Section Meeting
Jeffery L. Arnold

12:30 RIGHT TO APPEAL AND DISABILITY COMPENSATION
Douglas Sullivan, McElreath & Stevens, LLC, Atlanta

1:45 VA CASE LAW UPDATE
Drew N. Early, Shewmaker & Shewmaker, LLC, Atlanta

2:30 BREAK

2:45 ETHICS
George Edward Bradford Jr., Office of Regional Counsel, U.S. Department of Veterans Affairs, Atlanta

3:45 UPDATE ON GEORGIA VETERANS LEGAL ASSISTANCE PROGRAMS
H. Lane Dennard, Jr., Attorney at Law, Madison
V. Sharon "Shari" Edenfield, Edenfield, Cox, Bruce & Classens, P.C., Statesboro
Cary S. King, Jacobs & King LLC, Atlanta
Edward A. Plasta, Law & Moran Attorneys at Law, Atlanta
Prof. Roy M. Sobelson, Georgia State University College of Law, Atlanta
Norman E. Zoller

4:15 ADJOURN

Based on the availability of key participants, this CLE program is being conducted on Tuesday, November 4, which we know is Election Day. This is not inappropriate, as through this CLE we strive to improve the legal assistance we provide to our service members and veterans. We encourage you to vote early or on your way home following the CLE program.

THREE WAYS TO REGISTER: check the ICLE schedule on the web at www.iclega.org

Mail: ICLE • P.O. Box 1885 • Athens, GA 30603-1885 (make check payable to ICLE)

Fax: 706-354-4190 (credit card payment must accompany fax to be processed)

Online: iclega.org (credit card payment only)

Duplicate registrations may result in multiple charges to your account. A \$15 administrative fee will apply to refunds required because of duplicate registrations.

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Questions? Call ICLE Atlanta Area: 770-466-0886 • Athens Area: 706-369-5664 • Toll Free: 1-800-422-0893

VA ACCREDITATION • November 4, 2014 • 8690

EARLY REGISTRATION: \$160

ON-SITE REGISTRATION: \$190

I WILL ATTEND:

- ATLANTA (IN PERSON)
- SAVANNAH (VIDEO CONFERENCE)
- TIFTON (VIDEO CONFERENCE)

I am unable to attend. Please send ICLE program materials and bill me for the cost of materials only.

Early registrations must be received 48 hours before the seminar.

NAME _____ GEORGIA BAR # _____

FIRM/COMPANY _____ OFFICE PHONE _____

EMAIL _____

(To receive seminar notification and registration confirmation by email only.)

MAILING ADDRESS _____ ZIP + 4 _____

STREET ADDRESS _____ ZIP + 4 _____

CITY _____ STATE _____

- I am sight impaired under the ADA and I will contact ICLE immediately to make arrangements.
- I have enclosed a check in the amount of \$ _____ (See fees at left)
- I authorize ICLE to charge the amount of \$ _____ (See fees at left) to my MASTERCARD VISA AMERICAN EXPRESS*

Credit Card Verification Number: A three-digit number usually located on the back of your credit card; *AmEx is four-digits on the front of the card.

Account #: /

Expiration Date:

Signature:

EMORY LAW VOLUNTEER CLINIC FOR VETERANS
Report to: The Military/Veterans Law Section of
The Georgia Bar and the MLAP Committee of the Bar on
November 3, 2014 and
CLE Program November 4, 2014

- A. Introduction
- B. The Pro Bono Representation of Veterans
- C. Overview of the Need – There are over 770,000 Veterans in Georgia and over 200,000 of this total live in the Atlanta Metropolitan area. Many of these individuals have returned from Iraq and Afghanistan with service-connected injuries and mental illnesses such as Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI). Older Veterans, including those who have served in Vietnam and prior wars, also have disabilities associated with their prior military service. The objective of the Emory Law Volunteer Clinic for Veterans is to assist these individuals who have served our country with the legal issues that they face, especially claims for service-connected disability. With active support from the Military/Veterans Section of the State Bar and the Military Legal Assistance Program, the Emory Law Volunteer Clinic for Veterans (VCV) opened in February, 2013. This Clinic is off to a successful start.
- D. Summary of Cases and Involvement by Attorney Mentors and Student Volunteers
 - 1. 87 Cases/Matters
 - 2. 65 Student Volunteers (including four summer interns)
 - 3. 72 Lawyers volunteered for participation; 49 have participated at this point
 - 4. 5 cases pending intake
- E. Cases and Matters by Type
 - 1. VA disability cases and claims for increased rating
 - 2. Service related and need based pensions
 - 3. Appellate cases before the U.S. Court of Appeals for Veterans Claims (5 cases, 3 of which we have won)
 - 4. Discharge upgrade and military records correction (4 cases)
 - 5. Correction of records in VA healthcare system
 - 6. Employment law (Georgia Vietnam Veterans Alliance)

EXHIBIT C

7. Wills, Medical Directives and Powers of Attorney (5 cases; 3 cases have been completed)
8. 38 U.S.C. §1151 – disability caused by the fault or neglect of VA healthcare
9. Amicus briefs to the Ninth Circuit and U.S. Supreme Court (Garcia, Ritchie and Brannan)
 - (a) Garcia in Ninth Circuit - Should an employer be considered “notified” that a Veteran with PTSD has a disability protected by the ADA after a first debilitating incident (in this case an off job flash back)?
 - (b) Ritchie in the Supreme Court – Should there be an exception to the Supreme Court’s holding in Ferez that active service members are immune from liability for their conduct?
 - (c) Andrew Brannan - Joined amicus brief to the U.S. Supreme Court. Vietnam Veteran on Georgia’s death row diagnosed 100% disabled with PTSD prior to the offense; currently participating in proceedings before the Georgia Board of Pardons and Paroles.
10. Three significant policy initiatives: Veterans Courts, Homeless Veterans, and PTSD/mental health
 - (a) Papers on Veterans Courts presented to the Governor’s Criminal Justice Reform Council and House Legislative Counsel; legislation has been passed and signed by the Governor.
 - (b) Spoke at the Accountability Courts Conference in May of 2013 and September of 2014
 - (c) Participation in Stand Down for Homeless Veterans organized by the VA Hospital in December last year and on October 4, 2014. Student volunteers talked to 29 Veterans; 9 were referred to other agencies; Clinic is working through the remaining 20 to see how many we can help.
 - (d) Research on mental health/PTSD as it relates to less than honorable discharges.

F. Referral sources

1. Cases coming in directly to the Clinic (Fellow: Christopher Pitts) (new e-mail address and phone number for the Clinic: 404-727-0605; lawveteransclinic@emory.edu)
2. Cases referred by the Military Legal Assistance Committee of the State Bar
3. Five cases referred by the Veterans Consortium Pro Bono Program in Washington

4. Discharge upgrade cases referred by the Georgia Department of Veterans Services
 5. Legal Clinic at the VA Hospital
 6. Atlanta Legal Aid
 7. DeKalb County Community Service Board
- G. Publicity/Activities
1. Georgia Bar Journal
 2. Emory Law Journal
 3. Website
 4. Brochure
 5. Accountability Court Conferences—May 20-22, 2013; September 16, 2014
 6. Homeless Veterans Stand Down for the past two years
 7. Awards to student leaders (one student received the National Pro Bono Award for Leadership in the Clinic)
 8. On October 23, 2014, the Clinic received the State Bar of Georgia Law School Excellence in Access to Justice Award
 9. Clinic awarded the 2014 Emory University Most Outstanding Service/Volunteer Organization
- H. Successful Activities
1. Strong student leadership
 2. Enthusiastic student participation and good work by most of the volunteers
 3. Most student volunteers have had a successful clinical experience
 4. Procedures have worked well and may need only slight modification
 5. Strong support from the Military/Veterans Section of the State Bar and MLAP
 6. Good referrals and a good overall case load and case mix; currently at peak capacity with several cases pending intake
 7. In 2014, \$5,000 stipends for 3 Summer Interns; ½ stipend for 1 additional Intern working part time

8. Successful public policy work in Veterans Courts and Homeless Veterans
9. Drew Early is currently teaching a course for credit on VA disability law

I. Disposition in Cases – The Clinic has already obtained several successful dispositions despite the slow moving nature of the VA process.

1. For one client with a 100% rating for PTSD, a VA determination of incompetency was reversed. For that same client the VA awarded special compensation of \$1,160 per month for the physical effects of the Veteran's PTSD.
2. Of the five cases before the U.S. Court of Appeals for Veterans Claims, we have already prevailed in 3 cases. In these situations, the client's disability claims were remanded to the Board of Veterans Appeals for further consideration of the Veteran's claim.
3. The Clinic has also succeeded in helping Veterans navigate internal VA procedures (e.g., GI bill and VA payment of private hospital bill for emergency treatment).
4. In a case referred by MLAP we represented the widow of an Iraqi War combat Veteran with four minor children at home. The VA Regional Office in Philadelphia had denied the client's claim for Dependency and Indemnity Compensation (DIC). We appealed that decision arguing that the Client should be entitled to a pension because a service connected disability was a significant contributing cause of her husband's death. The Clinic prevailed in the appeal and the Client was granted a DIC pension of \$2,638 per month and the children were granted GI Bill educational benefits as well as assistance with health care. The Veteran's widow was also awarded back pay of about \$26,000.
5. For another veteran who has service connected PTSD his disability rating was increased from 20% to 70%. This increased his compensation by about \$1,200 per month.
6. For a retired Army veteran with 100% disability for Agent Orange exposure in Vietnam, \$98,910 in back pay was awarded.
7. Army Veteran Paratrooper who was injured in a training jump was remanded by the Board of Veterans Appeals for further development of evidence.
8. Successful dispositions; economic value to Veterans and their families.

J. Challenges for the future

1. Maintain and increase student interest
2. Continue to recruit qualified pro bono lawyers who will accept VA disability cases.

3. Fund raising

K. Summary

The Clinic had a robust beginning in terms of number of cases and had a good mix of cases. There has been very active student participation but the need currently exists to recruit more outside attorney/mentors to work with the students. Those interested can contact Christopher Pitts at christopher.pitts@emory.edu or 404-727-0605.

Reference material – Attorney/mentors should have access to the Veterans Benefit Manual by Stichman & Abrams; Federal Veterans Laws, Rules and Regulations, 2014 edition; and the Veterans Benefits Manual and Related Laws and Regulations on CD-ROM, all published by Lexis-Nexis.

THE NATION SHOULD “CARE FOR HIM WHO SHALL HAVE BORNE THE BATTLE AND FOR HIS WIDOW, AND HIS ORPHAN.” ABRAHAM LINCOLN, SECOND INAUGURAL ADDRESS (MARCH 4, 1865).

**CONSUMER ASSISTANCE PROGRAM
STATE BAR OF GEORGIA**

December 10, 2014

The Consumer Assistance Program (CAP) continues to serve both the public and members of the Bar, as it has since 1995. So far during this fiscal year (2014-2015) CAP has handled around 4,862 new or “unique” contacts (calls, letters, emails, faxes, and rare walk-ins). This does not include repeat calls, letters, emails, or follow-up contacts. CAP itself has handled 79.35% of these contacts. The remaining 20.65% have been referred to the Office of General Counsel (OGC) for investigation by way of grievances. It is beyond the scope of CAP’s responsibility to investigate or handle allegations of serious violations of the Georgia Rules of Professional Conduct and ethical misconduct.

CAP’s staff consists of three administrative assistants and two attorneys. CAP directly answers “live” about 97% of the calls received. The CAP Helpline is used when no one is available to answer calls live or for calls that come in after business hours. Calls that are not answered live are returned within the same or the next working day. CAP’s response to the voluminous mail, emails, and faxes, is usually within one day.

CAP’s two attorneys frequently contact members of the Bar by telephone, fax, or letter, at the request of clients. It is often helpful for attorneys to receive a confidential, non-disciplinary courtesy call, letting the attorneys know that their clients have contacted the Bar with various concerns or complaints. In order to facilitate communication between clients and attorneys, CAP notifies attorneys that their clients wish to hear from them, do not understand what is happening on their cases, need updates on case status, or, in the case of former clients, need their files. Realizing that CAP has heard only one side of the situation, CAP does not presume to advise attorneys on how to practice law or to assert that the client’s position is true and correct. Each CAP call is just a “heads-up” or courtesy call to the attorney. None of CAP’s actions in this regard reach attorneys’ permanent records, and all are confidential.

CAP is the contact point of the Bar for persons complaining about attorneys who are delinquent in paying their court ordered child support. Under OCGA 19-6-28.1 an attorney obligated to pay child support can be administratively suspended from the practice of law, if the custodial parent submits a certified copy of an order verifying the arrearage. The suspension is lifted once certain requirements are met in accordance with the Code and Bar rules. There has been no child support case during this fiscal year.

CAP is also a contact point for the Judicial District Professionalism Program (JDPP). This involves inquiries from lawyers or judges concerning unprofessional conduct and incivility among peers. This program is private, confidential, voluntary, and non-

disciplinary in nature. Its purpose is to open channels of communication by the informal use of local peer influence. During this fiscal year there have been no JDPP cases.

CAP remains within its annual budget of \$530,832, and it is anticipated that it will continue to do so.

Law Practice Management Program
(Abbreviated report for the 2014-2015 Bar Year)

This is a summary of program events scheduled and completed during the period July 1-December 5, 2014.

Consultation Report

Consultation by City			
City	#	City	#
Alpharetta	1	Marietta	2
Atlanta	9	Newnan	1
Columbus	1	Roswell	1
Douglasville	1	Savannah	1
Dublin	1	Smyrna	3
Macon	1	Stone Mountain	1

Firm Size	#
1 Attorney	10
2-4 Attorneys	14
5-8 Attorneys	-
9-15 Attorneys	-
16+ Attorneys	-

Consultation Type	#
General	11
Technical	13
Grand Total	24

Office Visits

LPM distributed **310** Starting Your Georgia Law Practice booklets as requested by attorneys. There were **40** startup discussions conducted by the Program via office visits.

Resource Library

Our lending library has a grand total of **1,554** books, CDs, and DVDs for checkout to members and their staff with an option to pick up materials at the Bar Center or to be mailed. During this period, there were a total of **267** checkouts by **94** patrons.

Software Library

The Program has a Software Library that consists of complete, working copies of software applications. Many of these products are legal specific, and require more guidance when being demonstrated than general applications. During this period, there were no office visits made to look at software programs in the Software Library.

Fastcase Report

During this period, a grand total of **49** members have attended Fastcase CLE seminars.

Since the decision was made to transition to Fastcase, **1,235** attorneys and **59** staff members have attended Fastcase live training. Others have taken advantage of webinar training.

Fastcase Reported Problems	
Member Reported Issue(s)	Fastcase Response / Resolutions
8/6/14 Member called to compliment the Member Benefits committee on the best contribution the State Bar has ever made in its history.	8/6/14 Passed this compliment on to the Fastcase staff.
9/17/14 Two members called asking when the 2014 statutes would be available.	9/17/14 Will check with CEO. In the meantime, inform members that the statutes are searchable alongside the 2014 Georgia Acts for the most up to date information.
9/24/14 Member could not find the citation on a case decided March 6, 2014, only found by case name and slip number.	9/29/14 Fastcase gets the new slip opinions on almost immediately but the citations publish a bit later. To ensure that we only need to touch each published opinion once (to include official and regional citation/pagination), we are usually a little bit slower to get the published version online. Will be glad to send an updated version of the case to member. Reporters are updated on a quarterly basis with full citation/pagination.

10/29/14 Member Reported: Member that called on 9-17 about the outdated code called again to ask when it would be posted. Concerned that data was not accurate and would like some kind of warning or alert.	10/31/14 FC Response: Fastcase reported that they “found a way to fast track the Georgia Code. We are setting things in motion today, and will need several weeks to finish the update. The new code will definitely be online by the end of the year.”
11/20/14 Member Reported: Member unable to find a case by citation. The 2014 case was available by name but the citation had not been updated. Expressed concern that others may miss crucial cases due to this error. He suggested a warning that the citations may not be up to date.	11/24/14 FC Response: CEO Ed Walters responded to my email concerning this missing citation (pagination) and the outdated code and the possibility of attaching a warning or alert. “Because both are pretty temporary (the Code will be updated shortly, and we update the pagination for the Bankruptcy Reporter all the time), I’d suggest that an alert probably isn’t necessary. (If either would be out of date for more than a few weeks more, but that’s unlikely to be the case.)”

Partner Usage Report for State Bar of Georgia from July 1-Dec. 5, 2014

		Jul	Aug	Sep	Oct	Nov	Dec	Total
First Time Logins	2014	4,054	1,352	806	3,976	1,222	231	11,641
Total Logins	2014	18,215	18,637	18,029	19,060	15,440	3,887	93,268
Total Users Who Logged In	2014	4,054	4,087	3,986	3,976	3,826	1,822	21,751
New Premium Subscriptions	2014	0	0	0	0	0	0	0
Searches Conducted	2014	102,435	104,858	100,752	105,075	86,113	27,525	526,758
Documents Viewed	2014	154,723	156,769	152,122	155,637	142,743	40,853	802,847
Documents Printed	2014	15,217	15,108	15,359	16,062	14,043	4,249	80,038
Total Transactions	2014	272,375	276,375	268,233	276,744	242,899	72,627	1,409,253

Speaking Engagements

There are a total of **16** completed and scheduled programs during this period. The Program’s staff has given **9** continuing legal education and special presentations to Georgia lawyers and other related groups. These presentations have been held in various local and national venues. **7** programs are scheduled for future dates.

July 29, 2014 National Bar Association (NBA) 89th Annual Convention & Exhibits CLE, *Social Media & Your Law Firm: Untapped Reward & Unknown Danger Panel Discussion* (Avarita Hanson, Paula Frederick, Natalie Kelly, Randall M. Kessler, Phaedra Parks), Atlanta Marriott Marquis, Atlanta, Georgia.

August 7, 2014 American Bar Association, Law Practice Division Annual Meeting, *Safely and Ethically Navigating the Cloud* (Natalie Kelly), Hilton Boston Back Bay, Boston, Massachusetts.

- August 14, 2014 LPM Solo & Small Firm Summer 2014 CLE (*sponsored*), *Using Financial Reports to Make Sense Of It All* (Natalie Kelly); *Billing & Collecting--Effective Tips and Tricks to Get Paid* (Natalie Kelly), Georgia Bar Conference Center, Atlanta, Georgia, 47 attendees.
- August 19, 2014 Transitioning into Law Practice Program (TILPP) Group Mentoring CLE, *The Virtual Law Office-Model Mentoring C* (Natalie Kelly), Georgia Bar Conference Center, Atlanta, Georgia, 134 attendees.
- September 12, 2014 Georgia Association of Black Women Attorneys (GABWA) Solo/Small Firm Symposium, *Smooth Operators: The Business of Law--Setting Fees/Case Management* (Natalie Kelly), Georgia Bar Conference Center, Atlanta, Georgia, 8 attendees.
- October 17, 2014 Basic Fiduciary Practice CLE, *Law Practice Management* (Sheila Baldwin), Hilton Garden Inn, Macon, Georgia, 57 attendees.
- October 30, 2014 LPM Solo & Small Firm Fall 2014 CLE: Driving Business to Your Law Practice (*sponsored*), *How to Build a Website in One Hour* (Natalie Kelly); Georgia Bar Conference Center, Atlanta, Georgia, 83 attendees.
- November 7, 2014 TILPP Mentor Orientation CLE, *State Bar of Georgia Resources for Mentors and Beginning Lawyers* (Sheila Baldwin), Georgia Bar Conference Center, Atlanta, Georgia, 9 attendees.
- November 14, 2014 Cobb County Bar Solo/Small Firm Section CLE, *Don't Reinvent the Wheel! Creating Systems to Make Your Practice Easier and Profitable* (Natalie Kelly), Board of Commissioners Room, Marietta, Georgia, 28 attendees.

Upcoming Speaking Engagements

- January 6, 2015 Dekalb Bar Association Family Law Section CLE, *Hot Topics in Practice Management* (Natalie Kelly), Dekalb History Center: Old Courthouse on the Square, Decatur, Georgia.
- January 8, 2015 LPM Midyear Meeting CLE (*sponsored*), *60+ Management and Technology Tips, Apps and Gadgets* (Natalie Kelly), Atlanta Marriott Marquis, Atlanta, Georgia.
- January 30, 2015 Internet Legal Research GPTV Broadcast, *Advanced Tips for Enhancing Legal Research on Fastcase* (Sheila Baldwin), Georgia Public Broadcasting Studios, Atlanta, Georgia.
- February 23, 2015 TILPP Beginning Lawyers CLE, Georgia Bar Conference Center, Atlanta, Georgia.
- March 10, 2015 Savannah Law School Presentation (Natalie Kelly and Paula Fredrick), Savannah Law School, Savannah, Georgia.
- April 24, 2015 LPM Solo & Small Firm Spring 2015 CLE (*sponsored*), Georgia Bar Conference Center, Atlanta, Georgia.
- July 17-18, 2015 2015 Solo & Small Firm Institute & Technology Showcase (*sponsored*), Georgia Bar Conference Center, Atlanta, Georgia.

State Bar South Georgia Office Statistics - January 2013 to November 2014

2013	Month	Client/Misc Meetings	Depositions	Mediations	Walk-ins	CLE's and Training	Total Events	Total People
	Jan	3	2	2	3	4	14	65
	Feb	4	5	3	6	9	27	83
	March	2	5	2	3	11	23	98
	April	4	3	1	6	2	16	110
	May	3	4	2	5	3	17	103
	June	3	6	2	6	3	20	93
	July	2	5	4	2	1	14	84
	Aug	4	5	2	3	1	15	87
	Sept	3	4	1	6	3	17	82
	Oct	5	6	3	2	7	23	112
	Nov	2	2	4	2	8	18	65
	Dec	2	0	2	0	7	11	42
								1024

2014	Month	Client/Misc Meetings	Depositions	Mediations	Walk-ins	CLE's and Training	Total Events	Total People
	January	5	4	3	7	5	24	63
	February	4	5	0	6	7	22	143
	March	3	3	4	4	11	25	112
	April	5	4	4	2	3	18	102
	May	3	5	4	3	0	15	78
	June	4	7	6	3	0	20	92
	July	6	4	3	2	0	15	57
	August	5	4	6	7	2	24	131
	Sept.	3	3	5	3	2	16	73
	October	3	8	3	2	8	24	113
	Nov.	4	3	0	2	8	17	62
								1026

*Does not include those served on the telephone and by mail.

Locations of Attorneys Using the Office:

Georgia: Albany, Americus, Ashburn, Athens, Atlanta, Augusta, Bainbridge, Blackshear, Blakely, Bonaire, Brunswick, Buford, Byron, Cairo, Camilla, Canton, Cartersville, Columbus, Conyers, Cordele, Covington, Decatur, Dixie, Douglas, Douglasville, Eastman, Fayetteville, Fort Valley, Gray, Hahira, Homerville, Jonesboro, Kingsland, Lawrenceville, Leesburg, Lexington, Lions, Macon, Marietta, Moultrie, Nashville, Ochlocknee, Ocilla, Pearson, Perry Quitman, Savannah, Soperton, St. Simons, Sylvania, Sylvester, Thomasville, Tifton, Tucker, Valdosta, Vidalia, Vienna, Warner Robins, Waycross, Whigham.

Florida: Jacksonville, Miami, Pensacola, Seminole, Lakeland, Tallahassee, Tampa

Out-of-State: Chicago, Dallas, Little Rock, Minneapolis, Charleston

State Bar of Georgia Coastal Georgia Office Statistics January 2013 to November 2014							
Month	Client/Misc Mtgs	Depositions	Mediation/ Arbitration	Walk-ins	CLE Opportunities/ Training	Total Events	Total Number of People Using Facility (Clients and Attorneys)
Jan-13	10	4	2	0	3-VC 6	22	127
February	8 2-VC	4 1-VC	3	2	6	23	139
March	3	8 2-VC	0	0	10 2-VC	21	161
April	3	8	3	0	2	16	125
May	6	8 1-VC	3	1	2 1-VC	20	122
June	5	4 1-VC	4	3	0	16	79
July	5	5 1-VC	5	0	1	16	118
August	6 2-VC	10 2-VC	3	0	4	23	145
September	4	4	5	0	1 1-VC	14	73
October	6	3	2	0	8 5-VC	19	121
November	4	3	4	0	7 1-VC	18	122
December	2	4 1-VC	3	1	4	14	80
Year Total:	62	65	37	7	51	222	1412
Attorney Locations For 2013: Savannah, Atlanta, Marietta, Augusta, Waycross, Mobile(AL), Statesboro, Brunswick, Lawrenceville, Metter, Albany, Macon, Richmond Hill, Hinesville (SC), St. Simons Is., Pooler, Valdosta, Buford(SC), Dunwoody, Watkinsville, Wyche(PA), Tampa(FL), Lyons, Dahlonega, Blue Ridge, Greenville(SC), Sylvania, Bogart, Royal Oak (MI)							

Month	Client/Misc Mtgs	Depositions	Mediation/ Arbitration	Walk-ins	CLE Opportunities/ Training	Total Events	Total Number of People Using Facility (Clients and Attorneys)
Jan-14	4	8 3-VC	3	0	5 3-VC	20	130
February	5	3	3	0	4	15	114
March	8	2	2	0	10 2-VC	22	227
April	3	6 2-VC	2	2	5 1-VC	18	179
May	8 1-VC	6 1-VC	5	1	0	20	102
June	9	5 1-VC	4	0	1	19	145
July	7	5 1-VC	5	0	0	17	77
August	8	7 2-VC	3	0	3	21	123
September	8	5 1-VC	5	1	5	24	203
October	12 2-VC	2	8	0	6	28	156
November	3	7	5	0	10	25	163
December	TBD						
Year Total:	75	56	45	4	49	229	1619

Attorney Locations For 2014: Savannah, Atlanta, Marietta, Augusta, Waycross, Statesboro, Brunswick, Lawrenceville, Macon, Richmond Hill, Hinesville (SC), St. Simons Is., Pooler, Valdosta, Tampa (FL), Sylvania, Rincon, Decatur, Springfield, Homerville, Hawkinsville, Alpharetta, Kingsland, Roswell, Stone Mtn., Corpus Christi (TX), Milledgeville, Carrollton, Cordele, Canton, Covington, Lexington, Tucker

July 2014 Georgia Bar Examination General Statistics Summary

Total of All Taking Examination – 1311

- 967 or 73.7% Passed
- 1133 First Timers Took Exam and 0909 or 80.2% Passed
- 0178 Repeaters Took Exam and 0058 or 32.5% Passed

Total of Lawyers Admitted in Another State Taking Examination – 114

- 0089 or 78.0% Passed

Georgia Law Schools Approved by The American Bar Association – 771

- 0699 First Timers Took Exam and 0591 or 84.5% Passed
- 0072 Repeaters Took Exam and 0029 or 40.2% Passed

Law Schools Approved by The Board of Bar Examiners – 9

- 0000 First Timers Took Exam and 0000 or 0.0% Passed
- 0009 Repeaters Took Exam and 0000 or 0.0% Passed

Out of State Law School Approved by The American Bar Association – 529

- 0434 First Timers Took Exam and 0318 or 73.2% Passed
- 0095 Repeaters Took Exam and 0027 or 28.4% Passed

Educational Waivers – 2

- 0000 First Timers Took Exam and 0000 or 0.0% Passed
- 0002 Repeaters Took Exam and 0002 or 100.0% Passed

ABA Approved Schools in Georgia							
	All Applicants			First Timers			AVE MBE
	#Took	#Pass	%Pass	#Took	#Pass	%Pass	
Mercer Law School	0123	0097	78.8	0116	0093	80.1	140.9
Emory University	0135	0118	87.4	0134	0117	87.3	144.6
University of Georgia	0175	0160	91.4	0165	0155	93.9	148.6
Georgia State University	0183	0165	90.1	0175	0161	92.0	145.7
John Marshall Law School	0155	0080	51.6	0109	0065	59.6	133.7
TOTALS	0771	0620	80.4	0699	0591	84.5	142.7

Board of Examiners Approved Schools							
	All Applicants			First Timers			AVE MBE
	#Took	#Pass	%Pass	#Took	#Pass	%Pass	
Atlanta Law School	0003	0000	0000	0000	0000	0000	128.2
Woodrow Wilson College of Law	0000	0000	0000	0000	0000	0000	0.0
John Marshall Law School	0006	0000	0000	0000	0000	0000	120.3
TOTALS	0009	0000	0000	0000	0000	0000	124.2

Educational Waivers							
	All Applicants			First Timers			AVE MBE
	#Took	#Pass	%Pass	#Took	#Pass	%Pass	
Foreign Legal Education	0002	0002	100.0	0000	0000	0.0	141.0
USA-Non-ABA Law School	0000	0000	0.0	0000	0000	0.0	0.0
TOTALS	0002	0002	100.0	0000	0000	0.0	141.0

2014-15 Media Report

PUBLISHED ARTICLES		Headline	Circulation	Readership
Date	Newspaper			
6/4/2014	Daily Report	Georgia legal community mourns loss of Wyc Orr	3,413	
6/4/2014	Cherokee Ledger-News, Woodstock	Kudos for Law Day celebration	40,000	
6/5/2014	The Times, Gainesville	State Bar mourns loss of Wyc Orr	17,906	
6/6/2014	Daily Report**	State bar's next president reflects the role of diversity	3,413	338,400/mo.
6/6/2014	Daily Report	State bar's next president reflects the role of diversity	3,413	
6/9/2014	Savannah Morning News	Patrick O'Connor sworn as State Bar of Georgia secretary	42,741	
6/9/2014	Daily Report**	Social Media Approves of First African-American State Bar of Georgia President		338,400/mo.
6/9/2014	Daily Report**	State Bar of Georgia Swears in First African-American President		338,400/mo.
6/10/2014	Atlanta Journal Constitution**	The State Bar has a New President		2,23mill.
6/11/2014	Atlanta Business Chronicle	Perkins-Hooker named 52nd president of State Bar of Georgia	30,935	
6/11/2014	Atlanta Daily World	State Bar of Georgia swears in first black president to lead the lawyer's association	150,000	
6/11/2014	Atlanta Daily World**	State Bar of Georgia swears in first black president to lead the lawyer's association	15,000	
6/16/2014	Daily Report**	Complete Coverage of the State Bar of Georgia 2014 Annual Meeting		338,400/mo.
6/18/2014	Metro Spirit, Augusta	Long adds to his list of titles	40,000	
6/18/2014	Marietta Daily Journal	Local elected to Board of Governors of State Bar of Georgia	15,043	
6/18/2014	Atlanta Journal Constitution**	Up Close: Patrice Perkins-Hooker		2,23mill
6/19/2014	Statesboro Herald	Edenfield is new YLD president	6,926	
6/20/2014	Athens Banner-Herald	UGA grad, Maysville native named employee of the year by state bar	13,644	
6/21/2014	Gwinnett Daily Post, Lawrenceville	Norcross attorney honored by State Bar of Georgia	63,276	
6/21/2014	Gwinnett Daily Post, Lawrenceville	Local association honored by State Bar of Georgia	63,276	
6/21/2014	Atlanta Inquirer*	State Bar Swears in First Black President		200,000
6/24/2014	Atlanta Inquirer**	State Bar Swears in First Black President*		200,000
6/24/2014	South Fulton Neighbor	South Fulton resident is state bar's first black president	24,200	
6/24/2014	South Fulton Neighbor**	South Fulton resident is state bar's first black president		17,490
6/24/2014	Augusta Chronicle	Milietomes: Jack Long	47,177	
6/25/2014	Marietta Daily Journal	Sutton completes term as president of State Bar's young lawyer org.	15,043	
6/26/2014	The Atlanta Voice*	State Bar of Georgia swears in first African-American president	40,000	
6/26/2014	The Atlanta Voice**	State Bar of Georgia swears in first African-American president*		120,000
6/28/2014	The Times, Gainesville	Vaughan elected to State Bar committee	17,906	
7/1/2014	Atlanta Tribune	New president of Georgia Bar Association		35,000
7/8/2014	Brookhaven Neighbor**	State Bar of Georgia installs new officers	36,750	
7/8/2014	Brookhaven Neighbor**	State Bar of Georgia installs new officers		18,375
7/8/2014	Northside Neighbor News**	State Bar of Georgia installs new officers		34,980
7/8/2014	Northside Neighbor News**	State Bar of Georgia installs new officers (Video)		17,490
7/9/2014	Savannah Tribune**	Patrice Perkins-Hooker installed as 52nd president of State Bar	10,000	
7/9/2014	Savannah Tribune**	Patrice Perkins-Hooker installed as 52nd president of State Bar*		5,000
7/14/2014	Cobb Business Journal	Local elected to Board of Governors of State Bar of Georgia	7,000	

* front page

** digital

2014-15 Media Report

7/14/2014	Savannah Herald*	Patrise Perkins-Hooker installed as 52nd president of State Bar of Georgia	12,000	12,000
7/14/2014	Savannah Herald**	Patrise Perkins-Hooker installed as 52nd president of State Bar of Georgia*		12,000
7/16/2014	Validosta Daily Times	Legal Food Frenzy winner	13,573	
7/16/2014	The True Citizen, Waynesboro	Judge Fryhofer was an inspiration	4,455	
7/16/2014	Houston Home Journal, Perry	Congrats to Legal Food Frenzy winner	11,191	
7/22/2014	Alpharetta Roswell Revue & News**	New State Bar president announced		140,000
7/22/2014	Alpharetta Roswell Revue & News**	New State Bar president announced		70,000
7/22/2014	The Forsyth Herald**	New State Bar president announced		17,490
7/22/2014	The Milton Herald**	New State Bar president announced		140,000
7/23/2014	The Milton Herald	New State Bar president announced		34,980
7/23/2014	The Forsyth Herald	New State Bar president announced		
7/23/2014	North DeKalb Neighbor	Congratulations to solicitor-general's office for success in legal food frenzy	22,000	
7/23/2014	The Johns Creek Herald**	New State Bar president announced		70,000
7/24/2014	The Johns Creek Herald	New State Bar president announced		140,000
7/25/2014	Albany Herald	Georgia Legal Services earns national award	11,893	
7/25/2014	Daily Report	Georgia legal community mourns loss of Judge Owen Forrester	3,413	
7/26/2014	CrossRoads News, DeKalb	Sherry Boston nabs state award for top food drive	28,000	
7/28/2014	Daily Report	Congratulations to new Georgia Legal Services president	3,413	
7/28/2014	Athens Banner-Herald	Legal program earned national honor	13,644	
7/29/2014	Savannah Morning News	3 Savannah attorneys named to state bar's YLD leadership roles	42,741	
7/30/2014	Daily Report	Board of Young Lawyers Division announced	3,413	
7/31/2014	Gwinnett Daily Post, Lawrenceville	Duluth attorneys appointed to state bar YLD Board of Directors	63,276	
8/1/2014	Rolling Out Weekly Magazine**	Perkins-Hooker makes history as first black president, State Bar of Georgia (video)	966,000/mo.	
8/2/2014	Manetta Daily Journal	Manetta attorneys named to Bar division board	15,043	
8/3/2014	Albany Herald	LEGAL: Sarah F. Kjellin	11,893	
8/6/2014	Daily Report	Congratulations to Judge Carnes on Senate confirmation	3,413	
8/6/2014	Forsyth Herald	Young lawyers' community outreach director from Alpharetta	17,000	
8/6/2014	Forsyth Herald**	Young lawyers' community outreach director from Alpharetta		70,000
8/7/2014	Columbus Ledger-Enquirer	Loss to community, profession	31,659	
8/7/2014	Revue & News, Alpharetta/Roswell	Young lawyers' community outreach director from Alpharetta	28,000	
8/7/2014	Johns Creek Herald	Young lawyers' community outreach director from Alpharetta	20,000	
8/7/2014	Johns Creek Herald**	Young lawyers' community outreach director from Alpharetta		70,000
8/8/2014	Daily Report	Congratulations to Ernest Greer on receiving national honor	3,413	
8/10/2014	Columbus Ledger-Enquirer	Columbus attorneys appointed to Young Lawyers Division board	31,659	
8/13/2014	Alpharetta Neighbor	Congratulations to Shigley on election to national post	11,450	
8/13/2014	Daily Report	Story of Georgia's Lawyers in Now in 2nd Printing	3,413	
8/14/2014	Northside Neighbor	Congratulations to Shigley on election to national post	34,980	
8/14/2014	Northside Neighbor**	Congratulations to Shigley on election to national post		17,490
8/14/2014	Monticello News	Letters to the Editor ... Congratulations!	2,535	
8/14/2014	Henry Neighbor	Congratulations to Shigley on election to national post	15,500	

* front page

** digital

2014-15 Media Report

8/15/2014	Atlanta Business Chronicle	Perkins-Hooker takes helm of State Bar of Georgia	35,029
8/15/2014	Henry Herald, McDonough	Stockbridge attorney gets state bar appointment	2,126
8/16/2014	Milton Herald	Young lawyers' community outreach director from Alpharetta	8,500
8/16/2014	Milton Herald**	Young lawyers' community outreach director from Alpharetta	70,000
8/17/2014	Statesboro Herald	State bar congratulates Franklin on honor	6,926
8/18/2014	Daily Report	Congratulations to JQC members on Freedom of Information Award	3,413
8/19/2014	Daily Report	Harvey Weitz was an Outstanding Lawyer, Community Leader and Friend	3,413
8/20/2014	Columbus Ledger-Enquirer	Georgia attorney one of three pilots who retrieved second American	31,659
8/21/2014	Times Courier, Ellijay	Weaver salute	6,056
8/21/2014	Pickens County Progress, Jasper	Letter to the Editor, re: Judge Weaver	6,947
8/21/2014	Daily Report	Cartersville Attorney Commended for Ebola Mission Role	3,413
8/21/2014	Morgan County Citizen, Madison	Congrats to Jeff Davis	3,413
8/21/2014	Harris County Journal, Hamilton	Congratulations and thanks, Judge	4,490
8/22/2014	Atlanta Jewish Times	Georgia legal community mourns loss of attorney	3,800
8/26/2014	Columbus Ledger-Enquirer	Bravo, Judge	6,553
8/27/2014	Jones County News, Gray	Lawson installed as Co-Editor	31,659
8/31/2014	Savannah Morning News	Attorney Harvey Weitz: A true professional	4,175
9/1/2014	Bold Favor Magazine**	A Polished and Poised President: Patrise M. Perkins-Hooker Makes History as First Black Leader of Georgia Bar By Liz Broadway Brown	42,741
9/3/2014	The Blackshear Times	Georgia legal community mourns loss of Francis Houston	3,264
9/3/2014	Atlanta Beltline News (blog)	An interview with Patrise Perkins-Hooker, President of the State Bar of Georgia	
9/4/2014	Gwinnett Daily Post, Lawrenceville	Former Gwinnett judge honored for continuing education efforts	63,276
9/4/2014	Daily Report	Congratulations to Augusta DA on Statewide Award	3,413
9/5/2014	Northeast Georgian, Cornelia	Congratulations to Weidner	7,370
9/7/2014	Valdosta Daily Times	Congratulating Golden	13,573
9/7/2014	Columbia County News Times, Evans	Wright's selection for District Attorney honor is well-deserved	17,500
9/9/2014	True Citizen, Waynesboro	Congratulations to District Attorney on statewide award	4,455
9/11/2014	Baldwin Bulletin, Milledgeville	Legal community mourns loss of Superior Court Judge James L. Cline	3,567
9/11/2014	The Herald Journal, Greensboro	Georgia Legal Community Mourns Loss of Judge Cline	4,579
9/11/2014	The Monticello News	Legal Community Mourns Loss of Judge Cline	2,535
9/16/2014	The Macon Telegraph	Local bar president	43,051
9/19/2014	Daily Report	Congratulations to Jill Pryor on her confirmation by the Senate	3,413
9/21/2014	The Walton Tribune, Mableton	Mourning loss of judge	2,590
9/30/2014	Daily Report	Georgia legal community mourns loss of David Hendrick	3,413
10/9/2014	Northside Neighbor	Georgia legal community mourns loss of Hendrick	34,980
10/9/2014	Henry Neighbor	Georgia legal community mourns death of Hendrick	32,500
10/10/2014	Atlanta Business Chronicle	2014 Law and Accounting Who's Who Metro Atlanta	35,029
10/10/2014	Atlanta Business Chronicle**	2014 Law and Accounting Who's Who Metro Atlanta	
10/22/2014	The Advance, Vidalia	Georgia legal community mourns loss of Attorney Will Thomas Whatley	6,911
10/23/2014	Rolling Out Weekly Magazine**	Patrise Perkins-Hooker Selected as "Top 25 Women of Atlanta"	966,000/mo.

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** digital

2014-15 Media Report

WIRE SERVICE					
6/1/2014	AP WIRE - Miami		Source: Daybook**		
6/1/2014	AP Wire - Atlanta		Source: AJC**		
SOCIAL MEDIA MARKETING				Followers/Page Likes	
6/1/2014	Facebook: Atlanta Voice		Mentioned Patrise Perkins-Hooker's installation as 52nd president	5,941	
6/13/2014	Twitter @WSBTVNewsdesk		Mentioned Patrise Perkins-Hooker's installation as 52nd president	5,859	
			"Congrats to the GA Bar Assn's first African-American President, Patrise Perkins-Hooker, sworn in last week. #wsbtv"		
6/13/2014	Twitter mention @gtalumni		Mentioned Patrise Perkins-Hooker's installation as 52nd president	2,360	
			"GT Alumna, Patrise Perkins-Hooker, was recently sworn in as the 1st African American president of the State Bar of GA"		
8/1/2014	Facebook: GLSP		Mentioned Patrise Perkins-Hooker's installation as 52nd president	225	
8/1/2014	Twitter mention @johneaves		Mentioned Patrise Perkins-Hooker's installation as 52nd president	1,599	
8/1/2014	Twitter mention @ovbrantley		Mentioned Patrise Perkins-Hooker's installation as 52nd president	381	
8/1/2014	Twitter mention @homebardeal		Mentioned Patrise Perkins-Hooker's installation as 52nd president	59	
9/2/2014	Twitter mention @iamsimmonsllaw		Mentioned Patrise Perkins-Hooker	1,039	
9/3/2014	Twitter mention @limeearix		Mentioned Patrise Perkins-Hooker	312	
			http://savannahnow.com/search- results?queryString=Jan%20Skutch%20blog%2C%20November%2025%2C%202014		
11/25/2014	Jan Skutch Blog (savannahnow.com)		Savannah attorney Johnson named to Judicial Qualification Commission:		
11/26/2014	Twitter mention @SavannahNow		@JSkutch http://ow.ly/i/71NhZ	17,000	
OTHER MEDIA PLACEMENTS					
Fall 2014	The YLD Review		From the State Bar President		
9/8/2014	GSA Law Website		New Legal Clinic To Help Veterans at Georgia State University http://law.asu.edu/2014/09/08/new-legal-clinic-o-help-veterans-georgia-state-university/		
Dec. 2014	National Bar Association Magazine		upcoming issue		
			Report prepared by:		
			Sarah Coole, director of communications, State Bar of Georgia		
			Linton Johnson, media consultant, Word Express LLC		
			Stephanie Jones, PR consultant, Anmedia & Associates <i>(distribution figures are subject to verification)</i>		

* front page
** digital